



**City Commission Meeting Agenda  
2 Park Drive South, Great Falls, MT  
Commission Chambers, Civic Center  
April 16, 2024  
7:00 PM**

The agenda packet material is available on the City’s website: <https://greatfallsmt.net/meetings>. The Public may view and listen to the meeting on government access channel City-190, cable channel 190; or online at <https://greatfallsmt.net/livestream>.

Public participation is welcome in the following ways:

- Attend in person.
- Provide public comments in writing by 12:00 PM the day of the meeting: Mail to City Clerk, PO Box 5021, Great Falls, MT 59403, or via email to: [commission@greatfallsmt.net](mailto:commission@greatfallsmt.net). Include the agenda item or agenda item number in the subject line, and include the name of the commenter and either an address or whether the commenter is a city resident. Written communication received by that time will be shared with the City Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and, will be so noted in the official record of the meeting.

**Meeting Decorum Statement**

1. Members of the public shall address their comments to the presiding officer and the Commission as a body and not to any individual member of the Commission or City staff.
2. Speakers shall keep their comments germane to the subject item on the agenda or, during petitions and communications, matters of significant public interest which are within the jurisdiction of the Commission.
3. Be respectful and do not engage in disorderly or boisterous conduct, including but not limited to applause, booing, or making any remarks that are, threatening, profane, abusive, personal, or slanderous that disturbs, disrupts, or otherwise impedes the orderly conduct of our meeting.
4. Signs, placards, banners, or other similar items shall not be permitted in the audience during our City Commission meeting.
5. Remain seated, unless addressing the body at the podium or entering or leaving the meeting. Private or informal conversations may occur outside of the Chambers. Obey any lawful order of the Presiding Officer to enforce the Rules of Decorum.
6. A complete copy of Rule 10 pertaining to the public participation is available on the table in the Commission Chambers and is included with the Meeting posting on the City’s Website.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL / STAFF INTRODUCTIONS**

**AGENDA APPROVAL**

**CONFLICT DISCLOSURE / EX PARTE COMMUNICATIONS**

**PROCLAMATIONS:**

1. Earth Day [April 22, 2024] and National Library Week [April 7-13, 2024].

## COMMUNITY INITIATIVES

2. Miscellaneous Reports and announcements from City County Health Department.

## 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 3 minutes. When at the podium, state your name and either your address or whether you are a city resident for the record.)*

3. Miscellaneous reports and announcements.

## NEIGHBORHOOD COUNCILS

4. Miscellaneous reports and announcements from Neighborhood Councils.

## BOARDS AND COMMISSIONS

5. Miscellaneous reports and announcements from Boards and Commissions.

## CITY MANAGER

6. Miscellaneous reports and announcements from City Manager.

## 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.*

7. Minutes, April 2, 2024, City Commission Meeting.
8. Total Expenditures of \$2,452,151 for the period of March 21, 2024 through April 3, 2024, to include claims over \$25,000, in the amount of \$1,839,581.
9. Contracts List.
10. Approve the Final Payment for the Parks & Rec ADA Restroom Project in the amount of \$5,710.60 to Wadsworth Builders and authorize the City Manager to make the payment.
11. Approve the Final Payment for the Natatorium Demolition Project in the amount of \$36,606.14 to Shumaker Trucking & Excavating Contractors, Inc., and \$369.76 to the State Miscellaneous Tax Fund, and authorize the City Manager to make the payments.
12. Set a public hearing on Resolution 10546, a Conditional Use Permit for a “Type II Community Residential Facility” land use upon the property located at 2201 11th Street SW for June 4, 2024.

**Action: Approve Consent Agenda as presented or remove items for separate discussion and/or vote by any Commission member. After motion is made, Mayor requests a second to the motion, public comment, Commission discussion, and calls for the vote.**

## PUBLIC HEARINGS

13. Resolution 10545, Conditional Use Permit (CUP) to allow handling of a hazardous substance, hydrogen sulfide (H<sub>2</sub>S), which is listed as an ingredient of asphalt, for the property addressed as 6501 18th Ave N. *Action: Conduct a public hearing and adopt or deny Res. 10545. (Presented by Brock Cherry)*

## **OLD BUSINESS**

14. Indoor Aquatics and Recreation Center, Change Order No.7. *Action: Approve or not approve Change Order No. 7 to Swank Enterprises in the amount of \$31,135.57 and authorize or not authorize the City Manager to execute the change order documents. (Presented by Steve Herrig)*

## **NEW BUSINESS**

15. Community Development Block Grant (CDBG) Funding Agreement with the Great Falls Parks and Recreation Department for the purchase of a Kubota utility vehicle to service Gibson and Elks Riverside Parks. *Action: Approve or not approve the funding agreement. (Presented by Tom Hazen)*
16. 33rd St Water Storage Tank Rehabilitation Construction Contract Award. *Action: Approve or not approve a contract in the amount of \$2,941,050 to DN Tanks and authorize or not authorize the City Manager to execute the necessary documents. (Presented by Christoff Gaub)*
17. Library Remodel Design Project Professional Services Agreement. *Action: Approve or not approve a Professional Services Agreement with CTA Inc., d/b/a Cushing Terrell, in the amount of \$873,158 and authorize or not authorize the City Manager to execute the agreement. (Presented by Susie McIntyre)*

## **ORDINANCES / RESOLUTIONS**

### **CITY COMMISSION**

18. Miscellaneous reports and announcements from the City Commission.
19. Commission Initiatives.

### **ADJOURNMENT**

*(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.)*

*Assistive listening devices are available for the hard of hearing, please arrive a few minutes early for set up, or contact the City Clerk's Office in advance at 455-8451. Wi-Fi is available during the meetings for viewing of the online meeting documents.*

*Commission meetings are televised on cable channel 190 and streamed live at <https://greatfallsmt.net>. City Commission meetings are re-aired on cable channel 190 the following Wednesday morning at 10 am, and the following Tuesday evening at 7 pm.*

# PROCLAMATION



**WHEREAS**, the global community now faces extraordinary challenges such as environmental degradation, warfare, climate change, food and water shortages, and global health issues; and

**WHEREAS**, all people, regardless of race, gender, income, or geography, have a moral right to a healthy, sustainable environment as our unique Montana Constitution advocates; and

**WHEREAS**, it is understood that the people of Great Falls and their government can locally step forward and take action to create positive environmental change to help combat the aforementioned global challenges; and

**WHEREAS**, a sustainable environment can be achieved on the individual and community level through educational efforts, consumer activism campaigns and public input to our growth policy and the city’s energy efficiency and conservation initiatives; and

**WHEREAS**, Earth Day is an opportunity to increase environmental awareness, and broaden support for environmentally sound policies to protect the planet that sustains us.

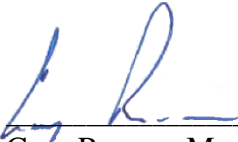
**NOW, THEREFORE, I, CORY REEVES, MAYOR OF THE CITY OF GREAT FALLS,** do hereby proclaim April 22, 2024 as

## EARTH DAY

in the City of Great Falls, and call this observance to the attention of all our citizens to recognize the efforts of Great Falls based Citizens for Clean Energy, the Golden Triangle Resource Council and the many local groups and volunteers who work to make Great Falls beautiful and thriving.



**IN WITNESS WHEREOF**, I have hereto set my hand and caused the Seal of the City to be affixed this 16th day of April, 2024.

  
 Cory Reeves, Mayor

# PROCLAMATION

- WHEREAS,** libraries offer the opportunity for everyone to connect with others, learn new skills, and pursue their passions, no matter where they are on life’s journey; and
- WHEREAS,** libraries have long served as trusted institutions, striving to ensure equitable access to information and services for all members of the community regardless of race, ethnicity, creed, ability, sexual orientation, gender, or socio-economic status; and
- WHEREAS,** libraries adapt to the every-changing needs of their communities, developing and expanding collections, programs, and services that are as diverse as the population they serve; and
- WHEREAS,** libraries are accessible and inclusive places that promote a sense of local connection, advancing understanding, civic engagement, and shared community goals; and
- WHEREAS,** libraries celebrate the joy of reading and improve quality of life for their communities; and
- WHEREAS,** libraries play a pivotal role in economic development by providing resources and support for job seekers, entrepreneurs, and small businesses, thus contributing to local prosperity and growth; and
- WHEREAS,** libraries are treasured institutions that preserve our collective heritage and knowledge, safeguarding both physical and digital resources for present and future generations; and
- WHEREAS,** libraries are an essential public good and fundamental institutions in democratic societies, working to improve society, protect the right to education and literacy, and promote free exchange of information and ideas for all; and
- WHEREAS,** libraries, librarians, and library workers are joining library supporters and advocates across the nation to celebrate National Library Week; and
- WHEREAS,** America is celebrating National Library Week including April 9 as National Library Workers’ Day and the immeasurable contributions made by library workers; April 8 as Right to Read Day; and April 11 as Take Action for Libraries Day encouraging community support for libraries.

**NOW, THEREFORE, I, CORY REEVES, MAYOR OF THE CITY OF GREAT FALLS,** do hereby proclaim April 7-13, 2024 as

## National Library Week

in the City of Great Falls, and urge all residents to visit their library and celebrate the adventures and opportunities they unlock for us every day.



**IN WITNESS WHEREOF,** I have hereto set my hand and caused the Seal of the City to be affixed this 16<sup>th</sup> day of April, 2024.

Cory Reeves, Mayor

**JOURNAL OF COMMISSION PROCEEDINGS**  
**April 2, 2024**

Regular City Commission Meeting

Mayor Reeves presiding  
 Commission Chambers Room 206

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

**PLEDGE OF ALLEGIANCE**

**ROLL CALL/STAFF INTRODUCTIONS:** City Commission members present: Cory Reeves, Joe McKenney, Rick Tryon, Shannon Wilson and Susan Wolff. Also present were City Manager Greg Doyon; Public Works Director Chris Gaub and Development Review Coordinator Mark Juras; Planning and Community Development Director Brock Cherry, Deputy Director Lonnie Hill and Senior Transportation Planner Andrew Finch; Finance Director Melissa Kinzler and Grant Manager Tom Hazen; City Attorney David Dennis and Deputy City Attorney Rachel Taylor; Police Captain Doug Otto; and City Clerk Lisa Kunz.

**AGENDA APPROVAL:** There were no proposed changes to the agenda by the City Manager or City Commission. The Agenda was approved as presented.

**CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS:** Commissioner McKenney referred to agenda item 16 and disclosed that he is a realtor. He is not involved in the rezone or project of item 16, has no personal gain, and intends to participate.

1.

**PROCLAMATIONS**

Arbor Day [April 26, 2024], Sexual Assault Awareness Month [April], Child Abuse Prevention Month [April], Public Safety Telecommunicators Week [April 14-20, 2024], Animal Control Officer Appreciation Week [April 14-20, 2024], and Week of the Child [April 6-12, 2024].

**MILITARY UPDATES**

2. **MISCELLANEOUS REPORTS AND ANNOUNCEMENTS FROM MONTANA AIR NATIONAL GUARD (MANG).**

None.

3.

**PETITIONS AND COMMUNICATIONS**

**Ben Forsyth**, City resident, provided handouts of Mont. Code Ann. §§ 16-12-101 and 16-12-301 (2021) and suggested those statutes are the mechanisms for the City Commission in controlling the health, safety and welfare harms created by marijuana. Mr. Forsyth suggested the Commission have a work session on this topic and he will provide laws from his attorneys that meet the requirements of a majority of the voters put forth in I-190 on November 3, 2020.

**Richard Irving**, City resident, commented that insurance costs are going to go up if public safety does not go up. The Library insisted on a levy ahead of the public safety levy. Experience suggests that after a levy passes it gets harder for people to vote for another one. Taxes have gone up more

**JOURNAL OF COMMISSION PROCEEDINGS**  
**April 2, 2024**

than what was communicated about the Library levy. Mr. Irving suggested that the Commission do whatever it could to get a handle on the Library before it sinks the next public safety levy and reelection of any of the Commission members.

**NEIGHBORHOOD COUNCILS**

**4. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

None.

**BOARDS AND COMMISSIONS**

**5. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

None.

**CITY MANAGER**

**6. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

City Manager Greg Doyon announced that:

- The City has maintained its Aa3 prime investment grade rating from Moody's Investor Services.
- Public Works street department staffing is down to about 60%. This will have implications across the departments and residents that are served. It has been difficult to recruit and retain certain positions within the City. If the street department is not able to get properly staffed, work will be redirected from their mill and overlay activities this summer to focus on other priorities, and will affect the ability to be responsive to pot hole complaints.

Manager Doyon provided an update on ARPA projects:

- Starting May 8, 2024, the Commission Chambers will be undergoing new HVAC construction, repair and restoration that is expected to take six to eight weeks. During that time Commission meetings will be held in the Gibson Room. Once completed, HVAC work will begin in the Missouri Room.
- Demolition for the Court project will start in late June and run through approximately March 2025.
- The boiler system demo project will begin at the end of April 2024. New boilers will be installed in May and should be running by September or October.
- A transformer was recently moved outside of the Civic Center building. That electrical service work will be done in May through August. There may be some building disruptions during that work.

## JOURNAL OF COMMISSION PROCEEDINGS

April 2, 2024

- Excavation on the Police Department Evidence Building project will start in August. Steel framing will begin in the spring with an expected construction completion date in September or October 2025.

### CONSENT AGENDA.

7. Minutes, March 19, 2024, City Commission Meeting.
8. Total Expenditures of \$2,591,235 for the period of March 7-20, 2024 to include claims over \$25,000, in the amount of \$2,050,471.
9. Contracts List.
10. Award a contract in the amount of \$1,030,645 to United Materials of Great Falls, Inc., for the East Fiesta Street Reconstruction project, and authorize the City Manager to execute the contract documents. **OF 1789.0**
11. Approve a Professional Services Agreement in the amount not to exceed \$294,189 to Advanced Engineering and Environmental Services, LLC, for the Sanitary Sewer System Capacity Model project, and authorize the City Manager to execute the agreement documents. **OF 1807.0**
12. Reject the single bid received for a Construction Contract for 32<sup>nd</sup> Street South ADA Upgrades, Phase I, and direct staff to modify project size and re-advertise for bids. **OF 1788.1**
13. Set Public Hearing on Resolution 10538, Establishing Residential and Commercial Sanitation Services Collection Rates Effective June 1, 2024.
14. Set Public Hearing on Resolution 10537, Establishing Residential and Commercial Water, Sewer and Storm Drain Utility Service Rates Effective June 1, 2024.

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

Mayor Reeves asked if there were any comments from the public. Hearing none, Mayor Reeves asked if there was any discussion amongst the Commissioners.

Commissioner Wilson received clarification that the payment to Broadway Menopause in agenda item 8 was for a payout for that production. The City collects the revenue and any balance goes to that production company.

Commissioner Wilson expressed concern about only one bid being received for agenda item 10.

Public Works Director Chris Gaub responded this is typical as there are only a couple of companies in Great Falls that perform this work. The bid is in line with the engineer staff estimates.

There being no further discussion, Mayor Reeves called for the vote.



**JOURNAL OF COMMISSION PROCEEDINGS**  
**April 2, 2024**

Motion carried 5-0.

**PUBLIC HEARINGS**

15. **ORDINANCE 3265 AMENDING TITLE 13, CHAPTER 24, AND TITLE 17, CHAPTERS 48 AND 52 REFERENCING THE CITY OF GREAT FALLS STORM DESIGN MANUAL OR STORM DRAINAGE DESIGN MANUAL AND CLARIFYING APPLICABILITY THRESHOLDS.**

**RESOLUTION 10539 ADOPTING THE STORM DRAINAGE DESIGN MANUAL.**

Mayor Reeves declared the public hearing open and asked for presentation of the staff report.

Public Works Director Chris Gaub reported that the Ordinance proposes to update the City Code to allow for adoption of an updated Storm Drainage Design Manual. The manual was first published in 1990 and has not been updated since. City staff discussed this topic at two previous work sessions. In essence, the manual promotes sound development policies and construction procedures to mitigate property damage and mitigate negative impact to the environment from storm water. The proposed update would also clarify the applicability criteria for when stormwater drainage facilities are required for development, bringing the Code up to current City practices under the Municipal Separate Storm Sewer Systems (MS4) permit.

The requested action is that the Commission adopt Ordinance 3265 that would update the City Code references from the 1990 Storm Drain Design Manual to the “most recent edition” of the manual, and adopt Resolution 10539 that formally adopts the updated manual.

Mayor Reeves asked if the Commissioners had any questions of staff. Hearing none, Mayor Reeves asked if there were any comments from the public in support of or in opposition to Ordinance 3265 and Resolution 10539.

There being no one to address the Commission, Mayor Reeves closed the public hearing and asked the will of the Commission.

**Commissioner Wolff moved, seconded by Commissioner Tryon, that the City Commission adopt Ordinance 3265.**

Mayor Reeves asked if there was any discussion amongst the Commissioners.

Commissioner McKenney referred to the first sentence of Section 1.5 of the Storm Drainage Design Manual and received clarification that staff could make administrative changes that were more efficient solutions without coming to the Commission for approval.

There being no further discussion, Mayor Reeves called for the vote.

**JOURNAL OF COMMISSION PROCEEDINGS**  
**April 2, 2024**

Motion carried 5-0.

**Commissioner McKenney moved, seconded by Commissioner Wilson, that the City Commission adopt Resolution 10539 adopting the City of Great Falls Storm Drainage Design Manual.**

Mayor Reeves asked if there was any further discussion amongst the Commissioners.

Commissioner Wilson noted she enjoyed reading the manual.


There being no further discussion, Mayor Reeves called for the vote.

Motion carried 5-0.

**16. ORDINANCE 3264 TO REZONE THE PROPERTY ADDRESSED AS 805 2<sup>ND</sup> STREET SW, FROM R-1 SINGLE-FAMILY SUBURBAN TO M-2 MIXED-USE TRANSITIONAL (BAY VIEW APARTMENTS).**


Mayor Reeves declared the public hearing open and asked for presentation of the staff report.

Planning and Community Development Director Brock Cherry, Planning and Community Development Deputy Director Lonnie Hill, Senior Transportation Planner Andrew Finch, and Public Works Development Review Coordinator Mark Juras reviewed and discussed the following PowerPoint slides:



**Item #16**

Public Hearing - Zoning map amendment to change the zoning for the property addressed as 805 2nd Street SW and legally described as Lot 1-A of the Amended Plat of Lot 1, Garden Home Tracts and Mark 23A of COS 4153, Located in the Southeast ¼ of Section 11, T20N, R3E, P.M.M., Cascade County, Montana, from R-1 Single-family Suburban to M-2 Mixed-use Transitional.



**At Minimum - Basis of Decision Zoning Map Amendment**

1. The amendment is consistent with and furthers the intent of the City's growth policy;
2. The amendment is consistent with and furthers adopted neighborhood plans, if any;
3. The amendment is consistent with other planning documents adopted by the City Commission, including the river corridor plan, transportation plan, and sub-area plans.
4. The code with the amendment is internally consistent;
5. The amendment is the least restrictive approach to address issues of public health, safety, and welfare;
6. The City has or will have the financial and staffing capability to administer and enforce the amendment

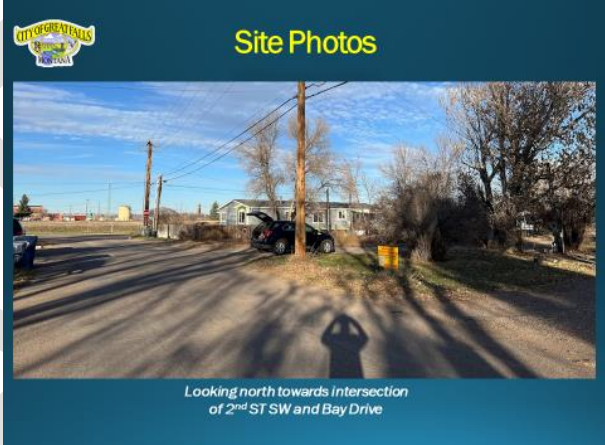
# JOURNAL OF COMMISSION PROCEEDINGS

## April 2, 2024

**Proposed Project Background**

- Applicant: Craig and Robert Stainsby
- Location: 805 2<sup>nd</sup> St SW
- Property Size: 4.46 acres
- Request: To rezone from R-1 to M-2
- Development: 92 total units of multi-family

Phase 1: 36-unit apartment building  
 Phase 2: 42-unit apartment building  
14 townhome units  
 92 total units



# JOURNAL OF COMMISSION PROCEEDINGS

## April 2, 2024

**Access & Parking Proposal**

Two (2) accesses off of Bay Drive  
 One (1) access off of 2<sup>nd</sup> St SW  
 Parking: Ph 1 = 69 spaces, Ph 2 = 50 spaces  
 119 total spaces (117 required)  
 \*Note that the proposed parking meets the City Code requirement of 1.5 spaces per Apartment.

**Preliminary Site Plan**

**Bay Drive Parkland Access**

- Propose to use existing access through parkland onto Bay Drive.
- Will enter into an agreement with COGF to build and maintain this access before a building permit is issued.

**Floodplain Analysis**

- Part of property within 100 yr floodplain (blue)
- Phase 1 (36-plex) is outside of floodplain
- Phase 2 (42-plex and townhomes) will require 310 permit and CLOMR-F from FEMA to place fill within 100 yr floodplain
- Any proposed work upon the bank or within the floodway may require review by Cascade Conservation District, Montana Fish Wildlife and Parks, and Army Corps Engineers.

**Floodplain Analysis**

**Growth Policy Analysis**

- Staff confirms that the proposed zoning map amendment to allow higher-density development on an infill parcel is supported by the City's Growth Policy. This is needed to provide additional housing, and the amendment must be consistent with multiple plan policies.
- Note the Growth Policy has a planning horizon until **2025**.
- Social – Housing (page 134)**
- Soc1.4.2: Expand the supply of residential opportunities, including single-family homes, apartments, manufactured homes, and assisted living facilities.
- Soc1.4.6: Encourage a variety of housing types and densities so that residents can choose by price or rent, location, and place of work.

# JOURNAL OF COMMISSION PROCEEDINGS

## April 2, 2024



### Growth Policy Analysis (Cont.)

**Environmental – Urban Form (page 144)**

- Env2.3.1: In order to maximize existing infrastructure, identify underutilized parcels and areas with infill potential as candidates for redevelopment in the City.

**Physical - Land Use (page 162)**

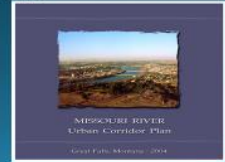
- Phy4.1.4: Foster the development of safe, walkable, neighborhoods with a mix of uses and diversity of housing types.
- Phy4.1.5: Encourage and incentivize the redevelopment or adaptive reuse of vacant or underutilized properties so as to maximize the City's existing infrastructure.

The proposed zoning map amendment will enable these policies to be addressed and further the implementation of the Growth Policy.



### Missouri River Urban Corridor Plan Analysis

- Subject Property is located within “Primary Impact Area” of the plan
- Primary impact area includes “lands with strong relationships to the river that are most central to the Corridor Plan”
- The plan identifies appropriate riverfront uses and specifically lists:  
**2-4 story rental apartments & townhouses.**



### Area Water, Sewer, Storm Capacity



### Area Water, Sewer, Storm Capacity

- Sewer System Demand
- 184 tenants \* 100 gallons per capita day (DEQ 4)
- Peaking Factor 4.16
- 76,544 gallons per day or 52 gallons per minute
- Existing 12” sanitary sewer main has capacity of 1,315 gpm
- Therefore, this development will not have a significant impact on the sewer system in the area.

### Area Water, Sewer, Storm Capacity

- Water System Demand
- 184 tenants \* 100 gallons per capita day + irrigation
- 31,223 gallons per day or 22 gallons per minute
- Peak hour demand of 120.34 gpm is added to the system, the resultant pressure drop of 0.24 psi
- Therefore, this development will not have a significant impact on the water pressure in the area.
- Sewer System Demand

### Area Water, Sewer, Storm Capacity

- Storm System Demand
- Per design manual, detain runoff, treat, and limit discharge to a lesser rate into the city's existing 36” main
- Prevents direct runoff into the Missouri River



# JOURNAL OF COMMISSION PROCEEDINGS

## April 2, 2024

**Traffic Review**

- Code requires Traffic Impact Analysis when estimated peak-hour trips generated by proposed development exceeds 300 peak-hour trips.
- City has the option to require one if the estimated peak-hour trips exceed 200 peak-hour trips.
- Proposed development is estimated to generate 43 peak-hour trips.
- Staff has performed an analysis based on public interest in the proposed use.

**Traffic Review**

**Trip Generation:** Average trips can be estimated using trip-generation rates from actual studies. New trips are estimated, and trips from the previous use are subtracted.

- 78 units of Multifamily Housing (Low Rise) would be expected to generate an average of 6.74 trips per dwelling unit on a weekday, for a total estimated average of **526 trips** per weekday.
- 14 units of Single-Family Attached Housing would be expected to generate an average of 7.20 trips per dwelling unit on a weekday, for a total estimated average of **101 trips** per weekday.
- 14 Mobile Home Park units would be expected to generate an average of 7.12 trips per dwelling unit on a weekday, for a total estimated average of **100 trips** per weekday. These trips are subtracted to assess the development's impact.

• The total estimated increase in daily trips generated by the development is **527 average daily weekday trips**.

**Traffic Review (Cont.)**

**Trip Distribution:** New trips are distributed by the favorability of each potential route, including likely destinations, design limitations (width, travel speeds, traffic control, lighting, etc.), directness, congestion, etc.

**Traffic Review (Cont.)**

**Existing and Projected Future Traffic:** Growth in traffic is used to analyze impact upon the existing street network.

STREET SEGMENT	DAILY VOLUME (DATE)	PROJECTED DAILY GROWTH	PROJECTED DAILY VOLUME	2025 PEAK HOUR VOLUME	PROJECTED PEAK HOUR GROWTH	PROJECTED PEAK HOUR VOLUME
Bay Drive (north of the development)	627 (2022)	185	812	n/a	12	n/a
Huffman Ave. (west of 2 <sup>nd</sup> St. SW)	810 (2022)	211	1,021	n/a	14	n/a
10 <sup>th</sup> Ave SW (between 4 <sup>th</sup> & 6 <sup>th</sup> Sts SW)	399 (2023)	132	531	52	9	61
2 <sup>nd</sup> St SW (south of Huffman Ave)	333 (2023)	132	465	39	9	48

**Traffic Review (Cont.)**

**Trip Generation, Distributed**

HUFFMAN AVE. 311 daily, 14 peak hr. BAY DR. 335 daily, 22 peak hr.

**Traffic Review (Cont.)**

**Bike/Pedestrian Review**

- Development would construct trail connection to River's Edge Trail in Garden Home Park.
- Bike route along 10<sup>th</sup> Avenue SW/2<sup>nd</sup> Street SW would see additional traffic. However traffic growth is projected to be relatively low and is not anticipated to adversely affect bicyclist safety (growth of 9 vehicles during peak hour, or around 1 additional vehicle per 6 1/2 minutes).
- Current pedestrian use of 10<sup>th</sup> Avenue SW/2<sup>nd</sup> St SW is mainly off paved travel surface – any growth in pedestrian use would be expected to use same off-street path-of-travel.

# JOURNAL OF COMMISSION PROCEEDINGS

## April 2, 2024

**Traffic Review (Cont.)**

Street Design

- Huffman Avenue/Bay Drive are built to typical local street standards. Pavement width is approx. 36', allowing for safe usage with room for parking and two travel lanes.
- 2<sup>nd</sup> Street/10<sup>th</sup> Ave SW has room for two-way traffic on the paved surface. Unpaved "boulevard" areas are used for parking or are landscaped.

**Traffic Review (Cont.)**

Conclusions/Recommendations

- Traffic will increase along area routes; however, current and projected daily volumes are in line with volumes on a typical local roadway, and current and projected peak hour volumes do not indicate congestion is likely to occur.
- Roadway designs are appropriate to safely carry projected volumes.
- Construction of a shared use path between the proposed development and Garden Home Park trail will provide a safe, off-street connection.
- No street modifications or improvements are expected to be necessary to accommodate the traffic generated by the proposed development.

**Voluntary Development Agreement**

- Developers expressed willingness to include voluntary commitments beyond M-2 zoning district
- Listed within *Draft Voluntary Development Agreement provided in packet*

Voluntary agreement commits to:

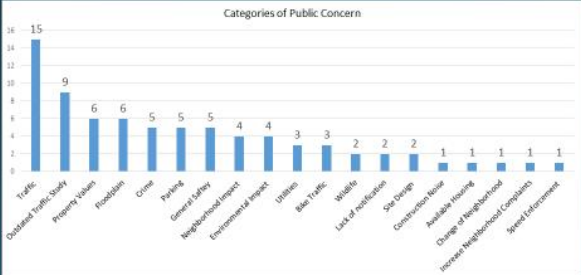
- 92 total dwelling units
- Increased setbacks
- Eliminated by-right land uses
- Screening between residential uses
- Off-site trail connection
- Be recorded and run with the land

**Neighborhood Council #2**

- Applicant presented at the Nov 8 meeting.
- Members in attendance made comments that not enough of the neighborhood was aware of the proposal or the meeting.
- A second meeting was held on Dec 6.
- Residents expressed various concerns, including traffic and safety.
- NC #2 did not take action on Dec 6, but at its Feb 13 meeting, it was voted unanimously to recommend denial of the request.

**Public Comment - Opponents**

- Provided in packet as *Attachment H: Public Comment*
- Staff received 25 comments in opposition
- Concerns are summarized into the categories below:




Category	Count
Traffic	15
Outdoor Traffic Safety	9
Property Values	6
Floodplain	6
Crime	5
Parking	5
General Safety	5
Neighborhood Impact	4
Environmental Impact	4
Utilities	3
Bus Traffic	3
Wildlife	2
Lack of notification	2
Site Design	2
Construction Issue	1
Available Housing	1
Change of Neighborhood	1
Increase Neighborhood Compliance	1
Street Enforcement	1

**Formal Protest**


- Residents within 150 feet of the subject property have filed a formal protest of the request.
- Documentation is provided as *Attachment J - Public Comment - Formal Protest*.
- Per OCCGF 17.16.40.040 and MCA 76-2-305 the request may not become effective except upon a favorable vote of two-thirds (2/3) of the present and voting members of the City Commission.

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 **Public Comment - Proponents**

- 11 letters were received in favor of the proposed request.
- On behalf of businesses, groups, and other organizations regarding:
  - The need for housing to attract workforce.
  - The need for housing to support Military Service Members.
  - The proposal will improve the neighborhood's aesthetics and values.
  - The proposal will improve the utilization of the riverfront.
  - The need for any housing in general.

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 **Findings of Fact Zoning Map Amendment (Cont.)**

**Social – Housing (page 134)**

- Soc1.4.2: Expand the supply of residential opportunities including single family homes, apartments, manufactured homes, and assisted living facilities.
- Soc1.4.6: Encourage a variety of housing types and densities so that residents can choose by price or rent, location, and place of work.

**Environmental – Urban Form (page 144)**


- Env2.3.1: In order to maximize existing infrastructure, identify underutilized parcels and areas with infill potential as candidates for redevelopment in the City.

**Physical – Land Use (page 162)**

- Phy4.1.4: Foster the development of safe, walkable, neighborhoods with a mix of uses and diversity of housing types.
- Phy4.1.5: Encourage and incentivize the redevelopment or adaptive reuse of vacant or underutilized properties so as to maximize the City's existing infrastructure.


The proposed zoning map amendment will enable these policies to be addressed and further the implementation of the Growth Policy.

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 **Findings of Fact Zoning Map Amendment (Cont.)**

**3. The amendment is consistent with other planning documents adopted by the City Commission, including a river corridor plan, transportation plan, and sub-area plans.**


- The subject property is located within the “Primary Impact Area” of The Missouri River Urban Corridor Plan shown on page 15 of plan
- Request and the proposed development meet multiple goals of the Missouri River Urban Corridor Plan. Staff finds consistency between request and the plan

 **Findings of Fact Zoning Map Amendment**

**1. The amendment is consistent with and furthers the intent of the City's growth policy.**

- The proposed zoning map amendment is consistent with the overall intent and purpose of the City of Great Falls 2013 Growth Policy Update.
- Staff finds the City's Growth Policy supports the proposed zoning map amendment to facilitate higher density development upon an infill parcel, particularly to provide needed housing.


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 **Findings of Fact Zoning Map Amendment (Cont.)**

**2. The amendment is consistent with and furthers adopted neighborhood plans, if any.**

- The subject property is located in Neighborhood Council #2
- Because there is no adopted neighborhood plan adopted for the general area, the amendment does not conflict with Criterion #2

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 **Findings of Fact Zoning Map Amendment (Cont.)**

**4. The code with the amendment is internally consistent**


The subject property is located within the “Primary Impact Area” of The Missouri River Urban Corridor Plan shown on page 15 of plan

- Rezone will not be in conflict with any portion of the existing City Code and will be internally consistent
- Developers expressed willingness to include voluntary commitments beyond M-2 zoning district



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 **Findings of Fact  
Zoning Map Amendment (Cont.)**

**5. The amendment is the least restrictive approach to address issues of public health, safety, and welfare.**

- No existing public health, safety, or welfare issues that have been identified for this property
- The proposed development will require water and sanitary sewer services to be extended from the utility mains that surround the property


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 **Findings of Fact  
Zoning Map Amendment (Cont.)**


**5. The amendment is the least restrictive approach to address issues of public health, safety, and welfare.**

- Residents to the south have expressed concern that traffic safety impacts will be excessive.
- Staff analysis indicates that because potential residential trips will be dispersed in three different directions, and that additional traffic generated by the project can be reasonably accommodated by the existing nearby street system.

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 **Conditions of Approval**


3. **Engineering Review.** The final engineering drawings and specifications for improvements to the subject property shall be submitted to the City Public Works Department for review and approval.
4. **Agreement with the Park and Recreation Department.** Prior the time of building permit must enter into an agreement with the City regarding the installation and maintenance of proposed improvements to the City's property adjoining the owner's site that will be used for access.

 **Findings of Fact  
Zoning Map Amendment (Cont.)**

**5. The amendment is the least restrictive approach to address issues of public health, safety, and welfare.**


- Proposal will trigger stormwater quantity and stormwater quality requirements.
- These items, and public safety, will be addressed during building permit review to ensure City requirements are met and safe access is provided within the property and to the surrounding streets.

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 **Conditions of Approval**

1. **General Code Compliance.** The proposed project shall be developed consistent with the conditions in this report and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. **Land Use & Zoning.** The proposed plans shall conform to the M-2 Mixed-use Transitional zoning district development standards contained within the Official Code of the City of Great Falls.

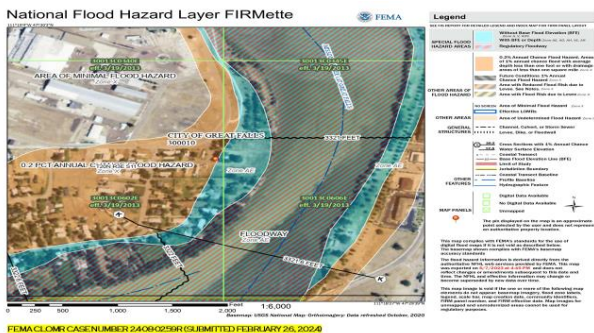
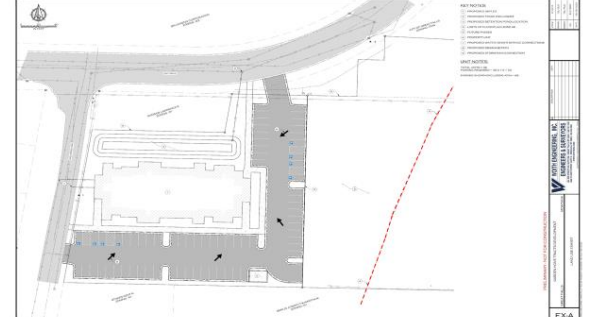
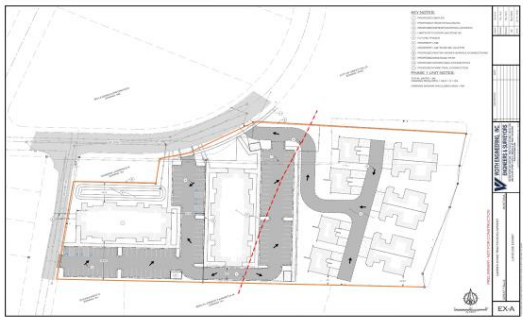
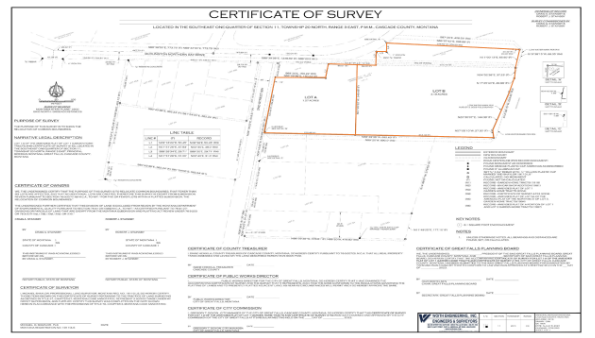
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 **Suggested Motion**

"I move that the City Commission (approve/deny) Ordinance 3264 allowing the rezone request from R-1 Single-family Suburban to M-2 Mixed-use Transitional for the property legally described in the Staff Report, the accompanying Findings of Fact, subject to the Conditions of Approval being fulfilled by the applicant, and accept the Voluntary Development Agreement."

Spencer Woith, Woith Engineering, representing the Applicant, first clarified that the project proposes 78 units that are intended to be quality, market rate units. The units are not subsidized housing. The remaining units are proposed to be high end "for sale" housing units, not rental units, and provide for home ownership opportunities. Mr. Woith reviewed and discussed the following PowerPoint slides:

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**DEVELOPMENT AGREEMENT TOPICS**

**3. LAND USE RESTRICTIONS**

- EMERGENCY SHELTER
- FAMILY DAY CARE HOME
- GROUP DAY CARE HOME
- NURSING HOME
- RESTAURANT
- GENERAL SALES
- ADMINISTRATIVE SERVICES
- FINANCIAL SERVICES
- FUNERAL HOME
- GENERAL SERVICES
- PROFESSIONAL SERVICES
- SMALL VETERINARY CLINIC
- VEHICLE SERVICES
- PARK
- RECREATIONAL TRAIL
- ADMINISTRATIVE GOV. OFFICES
- CIVIC USE FACILITY
- COMMUNITY CENTER
- COMMUNITY CULTURAL FACILITY
- COMMUNITY GARDEN
- PUBLIC SAFETY FACILITY
- WORSHIP FACILITY
- GENERAL SERVICES
- HEALTH CARE CLINIC
- HEALTH CARE SALES AND SERVICES
- COMMERCIAL EDUCATION FACILITY
- EDUCATIONAL FACILITY (K-12)
- EDUCATIONAL FACILITY (HIGHER ED.)
- INSTRUCTIONAL FACILITY
- TELECOMMUNICATION FACILITY
- PARKING LOT (PRINCIPAL USE)
- PARKING STRUCTURE
- TAXI CAB DISPATCH TERMINAL
- CONTRACTOR YARD (TYPE I)
- ARTISAN SHOP
- LIGHT MANUFACTURING AND ASSEMBLY

\*BASED ON M-2 PERMITTED USES. CONDITIONAL USES STILL REQUIRE A PUBLIC HEARING PROCESS.

**DEVELOPMENT AGREEMENT TOPICS**

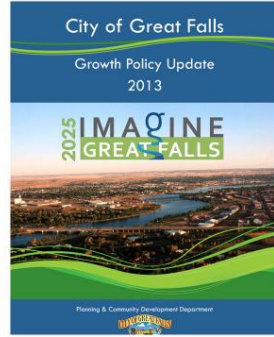
- RESTRICT UNIT DENSITY**
  - M-2 ALLOWED
    - 500 SQUARE FEET PER UNIT = 188 UNITS
  - RESTRICTING
    - 2,111 SQUARE FEET PER UNIT = 92 UNITS
- SETBACK INCREASES**
  - M-2 ALLOWED
    - FRONT YARD = 0 FEET
    - REAR YARD = 10 FEET
    - SIDE YARD = 5 FEET (ADJACENT TO RESIDENTIAL)
  - INCREASES
    - FRONT YARD = 5 FEET
    - REAR YARD = 30 FEET
    - SIDE YARD = 10 FEET (ADJACENT TO RESIDENTIAL)
- FENCING AND SCREENING**
  - A 6 FOOT PRIVACY FENCE TO BE INSTALLED AROUND THE PROPERTY WITH LANDSCAPING THAT ABUTS TO THE NEIGHBORING RESIDENTIAL.
- OFF-SITE TRAIL CONNECTION**
  - A 10 FOOT WIDE SIDEWALK/TRAIL CONNECTION TO GARDEN HOME PARK

# JOURNAL OF COMMISSION PROCEEDINGS

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### CITY OF GREAT FALLS GROWTH POLICY

- GROWTH POLICY UPDATED IN 2013



### MISSOURI RIVER URBAN CORRIDOR PLAN

- ADOPTED BY THE CITY OF GREAT FALLS IN 2004

### A MAJOR ROLE FOR THE MISSOURI RIVER CORRIDOR

**The River...**  
...a major community asset for enhanced mobility, growth, and economic development.

**The City on the River...**  
...a marketing theme and a strategy through which to tell the World about Great Falls, its business opportunities, and quality of life.

**An Opportunity...**  
...to generate higher markets in search of attractive quality jobs and therefore growth to sustain community and **lifeline development**.

**A Major Asset...**  
...and which all interests in the community can rally -- recreation, environmental enhancement, commercial development, expansion of Downtown Great Falls, residential and **housing developments**, law, and cultural facilities, and more.

**A Valuable Resource...**  
...an irreplaceable natural resource of water upon which demands are increasing  
...as habitat for fish and wildlife  
...as visual and psychological relief from the urban environment.

**Marketing the Strengths...**  
...of the Riverfront that creates real estate value -- proximity to Water, Views and Public Open Space.

### MISSOURI RIVER URBAN CORRIDOR PLAN

- NEARBY BAY DRIVE COMMUNITY CONCEPT PLAN



Mr. Woith reported that the project site previously contained a trailer park and the intent is to rezone the property. This project is adjacent to existing M-2 zoning. The zoning is referred to in the City Growth Policy as transitional zoning from industrial and warehouse uses. M-2 zoning provides a right of a variety of uses that the developer feels are incompatible with the surrounding uses and has voluntarily offered to enter into a Development Agreement restricting those uses.

The overall project contains two lots consisting of a total of 4.46 acres. Lot A is entirely out of the floodplain. The future phase of a 42-unit multi-family building and the 14-townhome units currently reside in the floodplain. The proposed 36-plex with the improvements shown sits well outside of the current designated floodplain.

The proposed site plan shows setbacks that are exceeding those of the M-2 zoning designation, as will be agreed to in the Development Agreement. Furthermore, the setbacks represented in this proposed site plan and the Development Agreement exceed those of the R-1 zoning that is adjacent to the project. It is the intent to maintain setbacks from the multi-family buildings from the property lines to the greatest extent possible.

Portions depicted in blue in the slides are in the potential flood zone. The development of this section of the project is contingent on obtaining FEMA approval to remove that area of land from the floodplain, and no development can occur until this has been accomplished. The applicant has hired a certified floodplain manager and is working with FEMA to determine what portions can have that designation removed. The application was submitted and accepted by FEMA on February 26, 2024 and is currently in review.

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Zoning designations do their best to capture land uses, and it is impossible to always capture all of those land uses. Certain allowable land uses do not always fit in certain areas. The development team recognizes that there are certain land uses and issues that are not compatible to the existing area. They are proposing a voluntary, legally binding document that will restrict the uses and design standards as shown on slides and set forth in the meeting packet:

- Restricting the total number of units that can be constructed on the parcel. M-2 zoning, by right, would allow 388 units to be constructed. This agreement will restrict that total count to 92.
- Further restricting the setbacks that are allowed in M-2 zoning.
- A list of land uses will be restricted to be built on the parcel.
- The developer will provide a six-foot privacy fence with a landscape buffer to the neighboring residential properties.
- A connecting sidewalk will be constructed from the development to the north to encourage pedestrian and bicycle traffic northerly away from the existing neighborhood and provide a safe connection to the existing River's Edge Trail.

When an area is selected to look at for redevelopment, it is not an arbitrary decision. A lot of thought and research goes into the project prior to this point. There are guiding land use documents that they follow, which is essentially the roadmap to what development is intended to look like in certain areas.

The Growth Policy and the Missouri River Urban Corridor Plan have gone through a public participation process and were ultimately approved by the City Commission as the guiding documents for what land use looks like in certain areas. This project fits within those guiding documents. The Commission has heard from the City Attorney, an independent planner and his attorney on the fact that this project is not spot zoning. Their attorney, Mr. McCormick, referenced a case where he was the attorney representing Flathead County in a case of spot zoning, and he believes that the City of Great Falls is not doing any spot zoning. This four-acre parcel along the banks of the Missouri River is right in the heart of Great Falls and follows the documents that were provided for planning.

Some of the submitted information contain questions about crime that the Police Department and studies have shown is not an issue. There have been studies that show that new multifamily development will have little to no effect on the surrounding housing stock. City staff has stated that the increased traffic will have minimum effects on the roads. It is in close proximity to downtown, adjacent to the River's Edge Trail and a City park. It already has all the utilities provided. Staff has stated that the capacity is there to serve the development. It does not stretch any response time for emergency services. It provides different housing options for the residents and Great Falls, and no subsidies are being requested from the City.

Mayor Reeves asked if the Commissioners had any questions of staff or the applicant's representative.

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Commissioner Wilson received clarification that the Missouri River Urban Corridor Plan is dated 2004. She inquired when that Plan would be up for renewal.

Director Cherry responded that certain types of plans, unlike the Growth Policy, do not have specific renewal dates. Staff would be interested in including a potential update to the Missouri River Urban Corridor Plan as part of the Growth Policy process or as otherwise directed by the City Commission.

Commissioner Wilson noted that the Growth Policy is old even though it is in effect until 2025. She encouraged citizens to get involved with the updated Growth Policy project to plan on what will be going on in the community.

Commissioner Wilson referenced a letter from Charity Yonker, Cascade County Planning Director/Floodplain Administrator, expressing concerns that FEMA could deny a final LOMR request, the rezoned property being open to a variety of uses beyond multi-family housing, the risk of this proposal not coming to fruition, and whether the Voluntary Development Agreement would actually be upheld under the law or deemed unenforceable.

City Attorney David Dennis responded that he does not understand Ms. Yonker's basis for concluding that the agreement would not be enforceable.

Commissioner Wilson commented that the Ordinance does not mention the Voluntary Development Agreement.

Commissioner Wilson inquired if it has been taken into consideration that approval of the Ordinance and project would displace those people with lower incomes living in the trailers with more expensive apartments they may not be able to afford.

Director Cherry responded that question would be better directed to the applicant/owners of the property.

Commissioner Wilson received clarification that a FEMA permit needs to be applied for and approved before fill material is brought onto the site. She inquired about the fill material currently on the site.

Planning and Community Development Deputy Director Lonnie Hill explained that he was notified by residents of the area of fill taking place upon the site that initiated a site response from him. He visited the site and asked the applicant and Woith Engineering Company to survey where the delineation is between the special flood hazard area and the area that is outside of the flood hazard area. The current stockpiles of material are located outside of the special flood hazard area.

Commissioner Wilson received clarification that no other testing has been done at the site other than the level one environmental assessment.

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Commissioner Wilson expressed concerns about the traffic increase on 10<sup>th</sup> Avenue SW making it difficult for bicyclists, and parking overflow affecting immediate neighbors in the area.

Commissioner Tryon received clarification that the mobile home park, when it existed, was a non-conforming use meaning it was in place prior to regulations requiring a conditional use or other permissible.

Commissioner Tryon received clarification that if the Commission were to deny the request the Commission would be required to present findings of fact geared toward its basis of decision as set forth in OCCGF 17.16.40.030.

Commissioner Tryon inquired the term of the Voluntary Development Agreement and how it would be monitored.

Director Cherry responded the Voluntary Development Agreement would be recorded and runs with the land indefinitely. The Department has a system in place to help catch properties with specialty permissions and documents that apply to them.

Mayor Reeves called a recess at 8:44 p.m. and called the meeting back to order at 8:51 p.m.

Mayor Reeves asked if there were any comments from the public in support of Ordinance 3264.

**Zach Griffin**, CEO of the Great Falls Area Association of Realtors, commented that housing is a matter that is of utmost importance in our community. Great Falls is a city with immense potential, but it faces critical challenges ensuring that its residents have access to safe, affordable housing. As we strive for progress and growth, we must not forget the fundamental need for shelter for all members of our community.

The Great Falls Association of Realtors mission statement is to provide programs and services to achieve the highest standards of ethics and professionalism and to advocate for all diverse housing opportunities and private property rights. The issue of housing affordability is pressing. Many families in Great Falls are struggling to find housing that fits within their budget, forcing them to make difficult choices between paying for housing and meeting other basic needs. Furthermore, the lack of affordable, work force housing can have ripple effects and currently does throughout our community. It affects our workforce as employers are struggling to find housing for their workforces. It affects our schools as our children from unstable housing situations may face challenges in their education. It affects our economy as businesses may struggle to attract and retain employees due to the high cost of living.

While the challenges are great, so too are the opportunities for positive change. The Commission has the power to make the difference in the lives of our fellow citizens by taking decisive action to address this housing crisis, which he referred to as a pandemic in our community. This will require collaboration and innovation. We must all work together with developers, nonprofit organizations

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and government agencies to increase the supply of affordable workforce housing in our city and invest in infrastructure and amenities to make our community vibrant and livable for all people of all income levels.

Mr. Griffin asked the Commission to be bold and to take a leading approach to addressing this housing crisis in Great Falls. It is not just a moral imperative, it is essential for the long-term prosperity and wellbeing of our city. By working together and taking bold action, we can create a community where everyone has a place to call home.

**Sherrie Arey**, Executive Director of NeighborWorks Great Falls, commented that this project is a culmination of a lot of effort over several years between the previous Commission and this Commission to push City Planning and the development community to find ways to bring homes to our community that are needed and in order to supply the housing stock that will be needed for us to grow. We have a tremendously old housing stock in Great Falls. The only way to help combat that is to bring more homes and that will bring affordability at all levels in the way we need. The folks that move into these apartments will open up spaces in other areas; it will open up other opportunities in other areas to improve, to have affordability and to increase our housing without expanding our services. Infill is key to helping our community.

There is still the issue of employment in our community. We have a tremendously low employment number, and we need more folks to come and put their roots down in Great Falls and to be that workforce that we need in our community. This project will provide homes for those individuals to begin their life in Great Falls, to continue their life and livelihood in Great Falls and hopefully to become homeowners and put their roots down in Great Falls.

There are many more steps the project has to go through before this is even fulfilled. NeighborWorks hopes this first step with zoning is passed tonight.

**Sandor Hopkins**, City resident, commented that when he and his wife moved to Great Falls in 2016 they struggled to find an affordable apartment to live in. They struggled to find any apartment to live in. It took them several months to secure housing. At that time, they were paying more in Great Falls than they were in Bozeman.

Mr. Hopkins is a member of the American Institute of Certified Planners and is a Certified Floodplain Manager. He clarified that he has had no involvement with this project. There is a housing issue in Great Falls that is getting worse. The people in Great Falls need a place to live and the community needs a way to generate that housing for people to live in. One of the ways that they do that is by creating community plans, such as the Growth Policy and the Missouri River Urban Corridor Plan. From those plans, codes and regulations are established that developers and landowners can then take and submit an application that meets the requirements of those codes and have some reasonable expectation that their development will be approved and will move forward in a reasonable and timely fashion.

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Mr. Hopkins encouraged the Commission's favorable vote and asked that they keep in mind that this will serve all the citizens of Great Falls, and it is a forward moving and forward-looking proposal.

**Katie Hanning**, Home Builders Association, commented that it is important for developers to have certainty. Those rules, as old as they are, are there for that. When they develop, it is not free. They are penciling it out. If they do not know for certain what is going to happen, they are not going to do it. Neither will anybody else that is watching all of this look at coming to Great Falls.

Ms. Hanning encouraged the Commission to pass this ordinance. Great Falls needs the housing, and the findings or facts are clear.

**Krista Smith**, 1328 Beargrass Dr., commented that she is the manager of the Great Falls Builders Exchange, executive secretary for the Great Falls Society of Architects, and her family has property on 10th Avenue Southwest. She acknowledged a group in the room that are adamant that the whole neighborhood does not want this ordinance to pass. That is untrue. Her family feels this project is a great thing for the neighborhood. There currently is a lot of blight. Over the last couple of years they were excited to see people investing in and improving their properties on this street. They are starting to see more youth in the neighborhood. She is not saying that they want to see any of the people that have been living there be forced out, because that is definitely not the case. The fact of the matter is that it is time to look at the opportunities to move Great Falls forward. Growth is not a terrible thing. She is impressed that there are developers from Great Falls who are willing to invest their own money in this project. They are not asking for subsidies. These are local people who understand that Great Falls needs this, and they are putting their money out there basically for the whole community. It is not low-income housing, but Great Falls needs all kinds of housing.

**Joel Worth**, Montana Carpenters Union representative, pointed out that a project like this would put a lot of local people to work and a lot of new apprentices started. He urged the Commission's approval to keep the community working.

**Michael Yegerlehner**, 313 2<sup>nd</sup> Street North, expressed approval of this action, but would have liked it to be low-income housing. He thinks there is a lot of fear. He lives next to a fourplex and townhomes, and blocks away are more apartments. There is no parking there except on-street parking. While it is inconvenient sometimes when someone takes his parking spot, he just deals with it because he lives in a city.

There is a housing shortage in town. When he moved to Great Falls, he could not afford to buy and he moved into an apartment, and later moved into a house. When he moved into the apartment, he did not become a crime-wielding maniac. He is still the same person he was before he moved in and when he moved out, and has lived with people who are lower income. It is easy to say there is no housing crisis when you have lived in the same home for 30 years or you bought that house 40 years ago. That is not the case now and is very difficult for a lot of people. He would love to see much smaller developments spread across the City. That is not an option right now, and this project



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meets a demand. He would live next to this project, and would have no problem expecting someone else to.

**Bradley Weast**, City resident, commented that he grew up in Great Falls, lived abroad for 35 years after he graduated from high school, lived in 16 different states and three different countries. He can attest that he has lived in a wide range of locations and next to things that you would not necessarily want to live next to. As a Chief Operating Officer of the Great Falls Hospital, he can say that housing is one of the key issues limiting bringing Allied Healthcare Professionals into the community. He supports creating housing, and affordable housing, so that we can continue to grow our community, the medical footprint, support of this community and its overall growth.

**Jolene Schalper**, Great Falls Development Alliance (GFDA), commented the Commission gets to help take an underperforming piece of land that can be served by existing City infrastructure and utilize it to its highest and best use to help meet one of our community's greatest needs. She made four points why this should be an easy decision:

- Staff conducted an extremely comprehensive analysis and City staff supports this rezone. They have exceeded the law in efforts to assuage neighborhood concerns. An example of this is the traffic study that was discussed in detail. Staff are land use, infrastructure, and traffic experts. They have consulted with additional experts to ensure that they are accurate in their assessment, and they recommend this rezone. GFDA firmly agrees with the staff assessments.
- The Development Agreement has been developed through cooperation and compromise to address neighborhood concerns. She noted that sometimes small audiences could be very vocal in opposition. Less than 30% of the neighbors spoke out in opposition. The others are either neutral or pro this development. These local developers have worked really hard to listen and make those concessions to be good neighbors. This is going to be good for the neighborhood and great for Great Falls overall public benefit.
- This rezone is in harmony with the City's legal development standards and visions. While those plans need to be updated, she noted that growth does take time. It does take 20 years to see the fruit of our efforts. You are not going to see Growth Plans overnight implement results. This project meets the current Growth Plans and the developers are following the guidelines that the City set forth.
- This community is in desperate need of housing at all levels for all incomes. This is clearly a public benefit. GFDA has conducted two recent studies that show our need for housing is dramatically increasing. We see the needs from our own families and friends who cannot find homes, from Colonel Voorhees, who stated publicly in January that housing was the number one priority for Malmstrom, and from Touro University, who told us that housing is their main concern with being here.

This is an incredible opportunity that the Commission has, and it is just the first step. There are still a lot of hurdles this project needs to go over. They are not asking the Commission to commit public funds, but they are asking the Commission to agree with the staff findings and to pass this rezone so the first step is accomplished. It is an incredible opportunity to act in the greatest interest of Great

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Falls. She urged the Commission to believe in the City's professional staff, heed the Development Agreement that was a compromise put together with neighborhood concerns, that the rezone is in harmony with the City's legal development standards and visions. GFDA urges the Commission's unanimous approval.

Additional written comments in support of Ordinance 3264, not already in the agenda packets, were submitted by: **Alan McCormick of Garlington, Lohn and Robinson, Kade Landon, Patsy Hagen, Kristina Landon, Col. Barry E. Little-USAF, Marlana Halko-Calumet Montana Refining, Darrell Block, Marlo Arthum, Terry Dutton, Tye Habel-TC Glass, Sean Hoven-Hoven Equipment Co., Dax Nebel-Nielsen Commercial, Inc., Layne Shanahan-Moderne Cabinet, Capcon Drain Pros., Kevin & Kody Smithy-Karma Coffee Brewing Co., Wayne Thares, Jesse Waldenberg-Central Plumbing, Heating & Excavation, Timothy Wylder.** Said comments in support pertained to the project being beneficial to nearby businesses, replacing what is less than desirable blight with substantial housing benefits that Great Falls desperately needs, supports the Growth Policy and will create precedent for future development, it is specifically discussed within the 2004 Missouri River Urban Corridor Plan, additional housing supports future growth, will attract new businesses to locate in the City and will support growth and success of existing businesses in the area, will create an increase in property tax revenue for the City, and the project will fill a critical need in the community.

Mayor Reeves asked if there were any comments from the public in opposition to Ordinance 3264.

**Steve Beaumont**, City resident, requested the Commission consider the negative impacts of this proposed rezone of Bay Drive property. The flow of traffic in and out of this area is comparable to the now scrapped plan of Dick's Trailer Park development proposal that was abandoned because of traffic complexities. There are no sidewalks or streetlights to or from this area, and no plans for improvements. The area has already undergone clearing of trees that were hundreds of years old and the habitat for Osprey families that he and his wife have enjoyed watching.

Mr. Beaumont commented that the railroad crossings range in condition from marginal to poor and often cause conflicts with travel as the train often stops on the crossing for lengthy time periods. The other railroad crossing has wood railroad ties that are disintegrating. The northbound exit is hindered by a one-way exit at the Central West exit. The addition of 92 units means hundreds of cars. Other areas could be used for housing developments. Over half of that development is in the floodplain.

**Julie Essex**, City resident, commented that the request before the Commission is a difficult one to decide. No one wants a project like this in his or her backyard. Garden Homes Tracts subdivision is zoned R-1. R-1 zoning is the only zone in Great Falls that allows chickens. This neighborhood also does not have sidewalks. This neighborhood has more in common with a rural agricultural area than a suburban area. Bay View Apartments will remove 4.46 acres from Garden Home Tracts in R-1 zoning. There are items that have been referenced from the City Growth Policy that supports the development of Bay View Apartments. There is an item from this same policy to oppose the

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development. Policy 1.4.13 sets forth “Protect the character, livability and affordability of existing neighborhoods by ensuring infill development is compatible with existing neighborhoods.” This project is a request to change existing R-1 to M-2. This change will create an island of high density, three story housing surrounded by rural residential housing, parks, river walks, river frontage and empty lots. The lot across the street is M-2, but it is not developed. It is owned by the BNSF Railroad Company and is near a Montana Department of Environmental Quality high priority cleanup site. This information is taken from a report prepared by the MDEQ dated 10-13-23.

She quoted from the Missouri River Urban Corridor Plan that “Superfund sites and other Brownsfields within the study area will continue to be deterrents to future development and redevelopment until they are remediated because of the environmental risks they pose. . .” Specifically, the Burlington Northern fueling facility – “Presently, no free product is observed in the river, but if sediments along the bank are disturbed, a fuel sheen can be observed.”

To say this M-2 rezoning request is an example of compatible land use based on the surrounding M-2 parcel is misleading. The surrounding M-2 parcel is next to an MDEQ high priority clean-up site and in all likelihood will not be developed. This existing R-1 parcel has nothing in common now with M-2 zoning, nor will it have anything in common with the existing M-2 parcel if it is rezoned. This request is not an example of compatible land use.

Ms. Essex continued that, should not the role of government be to represent the residents from which it has derived the power to govern. She believes most would agree that City growth is necessary. However, City growth must happen in a manner that is consistent with good governance. Growth that results in adverse impacts to existing neighborhoods and incompatible land uses is not consistent with good governance.

The City Growth Policy 4.2.6 states “The City may oppose zoning changes that will result in incompatible land uses and or result in adverse impacts to residential character or use of adjoining properties.” The issue before the Commission is clearly one that will result in incompatible land use. The proposed M-2 will have nothing in common with the existing M-2 or the surrounding R-1.

The issue before the Commission is clearly one that will result in adverse impact to the residential character. Over 100 Garden Home Tracts residents have provided evidence of the adverse impact by virtue of their signatures and testimony. The residents are overwhelmingly opposed to this development.

In conclusion, the same policy that was referenced to show support of this project also explicitly allows the Commission to deny it.

**Kim Wilson**, Law firm of Morrison, Sherwood, Wilson and Deola, Helena, MT, commented that he represents Kirby Berlin and Joe Berlin that own property immediately to the south of this development property. His comments pertain to the legal issues and the Commission’s legal

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obligations. As a point of clarification, there were still two trailers on the site three hours ago. The purpose of zoning is to protect and promote public health, safety and general welfare. In addition, under the statute, the Commission is obligated to consider the promotion of compatible urban growth and the character of the district and its peculiar suitability for particular purposes, which is under state zoning statute § 76-2-301. While there is no neighborhood policy in place the importance of neighborhood councils is underscored in the Growth Policy at page 11. “Their purpose is to provide a means for the citizens of Great Falls to actively participate in local government through a formal organization working at the neighborhood level. Neighborhood Councils provide advice and counsel to the City Commission on a variety of neighborhood issues.” That comment is underscored in Growth Policy 1.6.2. Neighborhood Council 2 voted unanimously to recommend denial of this proposal.

Planning staff listed only a few components of the Growth Policy and say that this project is consistent with the Growth Policy. The legal question is not whether it is consistent with whether it substantially complies with the Growth Policy, as several Montana Supreme Court decisions have indicated. He suggested that this zoning amendment does not meet that substantial compliance, citing the following Growth Policies:

- 1.4.11 Promote the character, quality and livability of neighborhoods by maintaining the quality of our existing housing stock.
- 1.4.13 Protect the character, livability and affordability of existing neighborhoods by ensuring that infill development is compatible with existing neighborhoods.
- 4.1.1 Promote and incentivize infill development that is compatible with the scale and character of established neighborhoods.
- 4.2.1. Development density and intensity should be oriented towards areas of the city most capable of supporting it.

The City may oppose zoning changes that will result in incompatible land uses and result in adverse impacts to the residential character.

His client, in written comments and will tonight speak about concerns including economic impact on existing homeowners, the obtrusiveness and unsuitability of this project scale to the neighborhood, including 92 new units is incompatible with the scale of this neighborhood. All of these concerns are also reflected in the Neighborhood Council's letter and their unanimous recommendation to deny this. They talked about increased traffic and inadequate sidewalks in the area. Second Street SW is a windy, narrow street with no sidewalks and hardly enough room for two cars to pass.

The lack of parking leads to increased street parking, and the Neighborhood Council said, “This proposal would dramatically alter the landscape of this quiet neighborhood.” Returning to the obligation under the statute to consider the compatibility with the Growth Policy and promote compatible urban growth, he urged the Commission to heed the recommendation of the Neighborhood Council. Their recommendation reflects the public health, safety and welfare of the

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residents of the area. On behalf of his clients and their neighbors, he asked the Commission to reject this proposal.

**Jeni Dodd**, City resident, noted that she is not a resident of the area, but has concerns. She does not understand how the Commission can vote on a draft ordinance. Two contaminated sites were identified near the project in the Missouri River Corridor Plan. The BN site is a high priority State superfund site and is immediately across the street from this project. It appears that it is also slightly up hill from the proposed Bay View site. It seems that any contamination of that site may have traveled from the BN property underground into the subject property and toward the river. She is concerned that disturbance on the project site could release chemicals in the soils into the river.

The Missouri River Plan mentions no free product is observed in the river, but if sediments along the bank are disturbed, a fuel sheen can be observed. Those sediments would be disturbed, not on the BN property because it does not border the river, but by this property that does border the river.

There was no consideration or discussion in the rezoning application or the staff analysis of potential impacts of ground disturbance in the project area to this existing contamination and river. Apparently, as Commissioner Wilson has stated, a limited environmental assessment of this property has been done. She thinks there should be a more extensive environmental assessment of the property before any zoning is changed. The Bay View project is also within the FEMA flood zone AE that is a 100-year flood zone. OCCGF 17.56.1.070 Compliance sets forth "Development, new construction, alteration, or substantial improvement may not commence without full compliance with the provisions of these regulations." It seems to her that dirt being moved around and piled on the site may be noncompliant. OCCGF 17.56.1.150 Land Divisions Subdivision Review sets forth "Locations for future structures and development are reasonably safe from flooding." With the townhomes within the hundred-year flood zone, she does not see how it can be insured that future structures and development are easily safe from flooding. She inquired the effects of 119 paved parking spaces to the floodway. She also feels there are issues with spot zoning. The Montana Supreme Court identified factors to be reviewed and considered when determining whether a zoning proposal is legal spot zoning. The zoning change would benefit one landowner, and is significantly different from the prevailing use in the area.

Ms. Dodd further suggested that the support of the Great Falls Development Alliance should be disregarded because Spencer Woith is a member of that organization and, therefore, creates a conflict of interest.

**Bill Budesky**, 614, 10<sup>th</sup> Avenue SW, commented that he worked for Public Works for 21 years. He tv'd the sewers in the project area. There is a lot of flow that goes into the 10th Avenue Southwest lift station, filters the water, and then it goes to the force main down Bay Drive. He inquired why they could not tap directly into that force main. He opined the lift station would be overloaded with an additional 71,000 gallons per day. He also opined that the water main on Second Street was marginal and does not know if that little stretch of main would be able to handle any more water pressure.

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With regard to traffic on 10th Avenue Southwest, Mr. Budesky commented that a study recommended lowering the speed limit to 20 miles an hour. The centerline is 10 feet off. All the people on even numbered houses do not have off street parking for people visiting unless they have a driveway going in their yard. Also, why was that street made a bike route when 9<sup>th</sup> and 10<sup>th</sup> Avenue Southwest are supposed to be non-compatible for pedestrians and bike traffic.

Mr. Budesky believes there is more traffic than what was reported. The 92 units, plus visitors, will create extra traffic. He further noted that 6<sup>th</sup> Street Southwest gets backed up from Fox Farm to the north to 10th when the light changes to red. Fox Farm intersection cannot take much more traffic than it already has. Because there is a half mile of straight road with no obstructions, the speed limit is exceeded every day by many people. It is a safety issue.

Mr. Budesky suggested a NeighborWorks affordable housing project similar to Castle Pines that wouldn't require a rezone.

**Kathy Steffenson**, resident on 2<sup>nd</sup> Street SW, commented that it is not fair to her that the vehicle lights coming from the project driveway at night will shine in her house. She tried to build another garage on her acre of land, but was told by the City that she has too much roof space.

**Kirby Berlin**, 825 2<sup>nd</sup> Street SW, commented that his residence is about 140 feet from the proposed project. He has heard from the proponents the call for affordable housing and the housing crisis repeatedly. Five minutes ago, he checked apartments.com and there were 282 apartments available right now at different price points and sizes. As far as the housing is concerned and those proponents for it, this project will benefit the seller and the developers. At the same time, 101 property owners of the neighborhood oppose this project. The opponents are exercising their right of democracy by showing the Commission and the City of Great Falls that they have 101 signed property owners who oppose this project. Neighborhood Council 2 listened to the neighborhood and unanimously rejected this proposal. Their rejection was submitted to the Commission. The 101 property owners filed a formal protest opposing this project.

Mr. Berlin commented that he has heard repeatedly that the Missouri River and Growth Policies are justification for this project. In reviewing both of the documents for development, the key words are responsible growth to develop communities and neighborhoods. He argued that 101 property owners from the very neighborhood who oppose this, is not responsible growth.

He suggested the Commission put value on the 101 property owners and the Neighborhood Council that oppose this project. This project is not responsible development and growth when the neighborhood does not want it.

Ultimately, it comes down to the Commission. The Commission has heard the facts, and seen the hard work that the City staff put in to come up with their information. Mr. Berlin commented that is what they are compensated to do. They are doing their job. He is having to pay money to protect

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his rights and freedoms. It comes down to the logic. He urged the Commission to look hard at the facts, feelings, concerns, and the value of democracy and transparency.

**Pam Wagner**, City resident and member of Neighborhood Council 2, commented she drives all over Great Falls. She is not a realtor, but works with a large realty. There are a lot of rentals. Affordable housing is not \$1,800/month. She wants growth, but not at the expense of her neighbors. She has also heard that there is a waiting list for the ARC Apartments. When she called, there were two and three bedroom units available.

**Maurice Cameron**, resides on 10<sup>th</sup> Avenue SW, commented that the impact to the existing neighborhood will be traumatic. Everyone in the neighborhood he has talked to opposes the project. Mr. Cameron noted that he met with a prior City official that lives in the area of 24<sup>th</sup> Street and 24<sup>th</sup> Avenue that experienced a similar situation with affordable housing across the street. The area is now infested with crime and the traffic is out of control. He commented that staff had to go by the traffic numbers that they had for this project, but they were wrong. He suggested a street light or speed bumps on 10<sup>th</sup> Avenue SW. He expressed concerns about safety, quality of life, and apartment renters not paying taxes. Mr. Cameron urged the Commission to postpone or table this item until there is a third-party traffic study, inclusive of bicyclists, pedestrians and animals.

**Dave Broquist**, 711 10<sup>th</sup> Avenue SW, commented he has resided at that location for approximately 30 years. The neighborhood overwhelmingly feels like they are being sacrificed to satisfy the desire of the Great Falls Development Alliance just to create housing of any kind at all costs to the residents in the community.

The proposed structures will overwhelmingly be the largest structures in the entire neighborhood. The depiction shows a house on the corner that is probably 14 feet tall next to what is proposed as a three-story apartment. He finds it kind of amusing that the vegetation on the plan makes it look nice, but the site was stripped of hundred-year-old trees. It is another example of a definite character change to the neighborhood. He urged the Commission to preserve the neighborhood for the benefit of the constituents and make the Commission's legacy one of commitment to the citizens.

**George Hilpert**, 716 9<sup>th</sup> Avenue SW, commented that the Missouri River is an asset to Great Falls and he does not want anything like this project built on the river to ruin it. He purchased his house in 1967 and raised three boys. He does not want to see the neighborhood ruined. Little kids walk two blocks on the narrow streets to catch the school bus. There is no parking or boulevards. He is for progress and housing, but he does not care for apartment houses. Mistakes have been made in Great Falls. He suggested the Commission learn from those mistakes and go forward.

Additional written comments in opposition to Ordinance 3264, not already in the agenda packets, were submitted by: **Karen and Ed Venetz, Judith Mortensen, Jane Brinkman, Judith Mortensen, Steve Gillespie, Kathy Steffenson, Nicholas Sudan, and Terry Bjork**. Comments in opposition pertained to increased traffic, safety, mixed-use zoning categories next to single-family zoning is irresponsible, grew up in the area and don't want multy-family housing in our area,

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will block views, spot zoning, degrades the neighborhood, high-density development appears to be solely a greed factor by the developer, contractors, realtors, crafts people and the City.

There being no one further to address the Commission, Mayor Reeves asked if the applicant or staff wanted to address any of the public comments.

Director Cherry made a point a clarification that he misspoke with regard to the draft ordinance. The ordinance and voluntary agreement are complete and will be recorded. Whenever there is a special area plan, such as the Missouri River Urban Corridor Plan regardless of how old it is, staff refers to it as part of its analysis, plus it is stated within the existing Growth Policy to refer to it. Any proposal of that plan could be argued that it would not look like the existing neighborhood because the entire intention of the plan is for some sort of transformation to occur.

Spencer Woith, Woith Engineering, clarified that the signed and notarized Voluntary Development Agreement is binding. With regard to infill, Mr. Woith commented that he comes to these meetings with proposed developments regularly, and there are a lot of conversations about overtaxing infrastructure, stretching growth too far, getting outside of response times, and it has been a push to do infill. He is here today with an infill project. He feels this addresses the Fire Chief's concerns about being in the proximity of fire stations.

The approximate 4 ½ acres in underutilized. The current property taxes being paid on that parcel are \$6,800 per year. The apartments alone would increase the taxable value to \$117,000.

He despises the term “affordable housing” because the definition of affordable, as many people have said tonight, is up to the individual. Affordable means so many different things to so many different people. But, the more housing opportunities that are created is simple economics 101. Supply and demand. Great Falls does have very old housing stock. New housing coming online will force people to update or lower the rents to make them affordable for people. It is very difficult with the higher interest rates and the cost of building to develop without subsidies.

Mayor Reeves closed the public hearing and asked the will of the Commission.

**Commissioner Wolff moved, seconded by Commissioner McKenney, that the City Commission adopt Ordinance 3264 allowing the rezone request from R-1 Single-Family Suburban to M-2 Mixed-Use Transitional for the property legally described in the staff report, the accompanying Findings of Fact, subject to the Conditions of Approval being fulfilled by the applicant, and accept the Voluntary Development Agreement.**

Mayor Reeves asked if there was any discussion amongst the Commissioners.

Commissioner Wolff commented that the Commission has heard from the neighbors several times. The area does look more rural than it does urban or suburban. She understands the emotions, and this is change that is very difficult. She lives in an area that is the old St. Thomas orphanage. When



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those buildings were taken down and the developers came in to develop Forest Glen, the neighbors opposed due to traffic and other concerns. It has done nothing but improve the housing value and the neighborhood.

She knows of many friends who want to downsize. Should they buy one of the condominiums or townhomes along the river, then that will free up a large family home for other families that need that kind of housing. This is an infill project and not paid for out of taxpayer dollars. She also appreciates that the developer did not ask for tax abatements or a TIF District. The development funds are coming out of their pocket.

Commissioner Tryon commented that this is not an easy decision. When he suggested the Commission postpone this decision two weeks ago it was because he wanted to slow it down a little bit to hear from the people that live in that neighborhood.

This is a bit of a precedent. The Commission approved one rezone in the last 20 years from an R-1 to Industrial to have a business on part of the property. He has visited the site to get a feel for the area. If he lived there, he would not want anything to change. But, he wonders how much of a difference it would make if somebody had suggested the same rezone of an R-1 to an M-2 in Prospect Heights, Country Club Addition, or Eagles Landing, and how those folks would react. He would guess it would be the same as the opponents herein. People do not want to see their neighborhoods change. He gets that.

He also is conflicted because Neighborhood Council 2 voted unanimously against this item. He puts a lot of stock in what the Neighborhood Councils do when it comes to issues like this because that is what they are there for. They are the people that live in those neighborhoods and work there.

He also senses there will be a lawsuit or some type of legal action regardless of the way the Commission votes. We are in a new realty in Great Falls. He is going to vote for this because this City Commission cannot produce the required findings of facts to sustain a denial of this request. The second reason he is voting for this is because of the housing needs. Great Falls is almost in a crisis and he know that because of the studies that have been done and presented to the Commission. With regard to affordable housing, the supply needs to increase in Great Falls in order for prices to begin to come down.

Mayor Reeves commented that he echoes Commissioner Tryon. From a legal standpoint, the findings of facts did not support denial. He, too, will be supporting the motion.

Commissioner Wilson commented that she has spent a lot of time and angst over this, attended the three hour Zoning Commission meeting, attended the Neighborhood Council 2 meeting, read all of the comments received both for and against, and spent several sessions with the Planning Director and City Attorney because of her question about the Findings of Fact.

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The Growth Policy needs to be updated, but it is still valid. There is no other way around it legally. The Commission is bound to Findings of Fact. She hopes people will get involved in the new Growth Policy because things really need to be updated to what the community wants.

Commissioner McKenney commented that Great Falls has a real housing shortage. It has been going on for years, and it will be going on for another decade. Great Falls will not catch up quickly. The whole country has a housing shortage. One of the challenges when it comes to dealing with the housing shortage is the fear of change.

During his time on the Commission the past two years, every time the Commission is asked to make a decision on housing, the neighborhood comes out to protest. If the City Commission let fear rule the day our city would end up in decline. Decline is the ultimate change. It is a slow death. A successful community embraces the process of continuous adaptation. Wherever we live now, our house at one point in time was not there. It was put there and change happened. We created change when we moved into our neighborhoods. But, once we get there, we do not want any more change.

We have to embrace it, and we do not want to stagnate. We want to welcome the kind of change that reflects our values and allows our children to remain here if they choose to. That means a growing economy, diverse employment options, and entrepreneurship. When employers are looking to expand or relocate, they need housing for their employees. Today, Great Falls cannot meet the housing needs of our current population. How in the world are we going to have a thriving economy when we cannot meet our current needs? We need housing of all types. When he ran for City Commission, he was very vocal with his goals - safe neighborhoods (fire, police, courts and legal), more housing of all types, and economic prosperity and vitality.

This decision is hard for the Commission. The Commission understands the emotion. He sees the fear of change when it comes to this project. But, he does not see any negative health, safety and welfare issues if the zoning request is approved. If there were those kind of issues, maybe the Commission could make another decision. But it is just the opposite. The community will be enhanced. He will be voting yes.

There being no further discussion, Mayor Reeves called for the vote.

Motion carried 5-0.

**OLD BUSINESS****NEW BUSINESS**

**17. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING AGREEMENT WITH THE GREAT FALLS HOUSING AUTHORITY FOR THE PURCHASE AND INSTALLATION OF TWENTY-FOUR (24) AMANA FURACES.**

Grant Administrator Tom Hazen reported that Great Falls Housing Authority owns and operates multi-family housing sites providing affordable housing to Low and Moderate Income families in our community. The Housing Authority is requesting \$60,000.00 of Community Development

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Block Grant (CDBG) funds to purchase and install 24 new Amana furnaces in some of these properties. The currently installed furnaces are beginning to reach the end of their useful life cycle. As these units reach this stage, they begin to fail, lose efficiency, and result in increased CO2 emissions. Installation of new units will secure against these deficiencies for the next decade plus.

A proposed use of traditional CDBG funds must meet certain eligibility thresholds defined in the United States Code of Federal Regulations. The rehabilitation of housing, especially of low-income rental or residential housing, is explicitly listed as an eligible use of CDBG funding. Additionally, creating benefits to low and moderate income persons is a national objective of the CDBG program. Further, the City of Great Falls Amended Action Plan has identified the goal of Housing Rehabilitation as a priority. Finally, the City Grant Committee has reviewed this proposal and unanimously approved it for funding.

As this project is in line with the national and local objectives of the CDBG program, benefits low to moderate-income residents, and improves available affordable housing, staff recommends approval of this proposal and funding this program.

**Commissioner Wolff moved, seconded by Commissioner Tryon, that the City Commission approve the CDBG Funding Agreement in the amount of \$60,000 to the Great Falls Housing Authority for the purchase and installation of twenty-four (24) Amana furnaces.**

Mayor Reeves asked if there were any comments from the public or discussion amongst the Commissioners. Hearing none, Mayor Reeves called for the vote.

Motion carried 5-0.

**18. COMMUNITY DEVELOPMENT BLOCK GRANT CORONAVIRUS (CDBG-CV) FUNDING AGREEMENT WITH THE YWCA GREAT FALLS TO PROVIDE ONE-ON-ONE COUNSELING TO 75 LOW TO MODERATE INCOME INDIVIDUALS.**

Grant Administrator Tom Hazen reported that This award is similar yet distinctive from the previous item. The proposal submitted by the YWCA of Great Falls is requesting funds from the Community Development Block Grant Coronavirus (CDBG-CV) pool allocated to the City. CDBG-CV funds were issued to municipalities receiving HUD distributions, or Entitlement Communities, to provide funding for programs designed to respond to the Coronavirus pandemic and other Infectious Disease outbreaks. These programs must also meet one of the three National Objectives previously discussed.

Studies reflect statistically demonstrable negative impacts of the pandemic on public stress, anxiety, and depression. The Mayo Clinic has also established that some recent increases in the use of alcohol and drugs may be related to these impacts. The YWCA has implemented a Counseling service specifically designed to respond to these behavioral health needs. These counseling services are offered specifically to LMI members of the Great Falls Community. These programs are designed to address the following treatment goals:

- Recall the traumatic events of the pandemic without being overwhelmed; and

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- Interact normally with family and friends without irrational fears or intrusive thoughts that may control behavior; and
- Return to pre-trauma level of functioning without avoiding people, places, thought, or feelings associated with the event; and
- Display a full range of emotions without losing control; and
- Develop and implement effective coping skills that allow for carrying out normal responsibilities and participating in relationship and social activities.

These services are offered to all ages and are funded wholly through this award. Additionally, these services are offered virtually. As a result, lack or limitations of transportation will not frustrate the provision of these services.

Addressing the mental health impacts of the COVID-19 pandemic is an eligible use of the CDBG-CV pool. Further, this program solely benefits the LMI community and is, therefore, in line with a National Objective of the CDBG program. Additionally, this program was previously awarded CDBG-CV funding. Finally, the City Grant Committee has unanimously approved this proposal for funding.

As this is an eligible project and is in line with local public interests, staff recommends approval of this award.

**Commissioner Wilson moved, seconded by Commissioner Wolff, that the City Commission approve the CDBG-CV Funding Agreement in the amount of \$65,882 to YWCA Great Falls to provide one-on-one counseling to 75 low to moderate income individuals.**

Mayor Reeves asked if there were any comments from the public. Hearing none, Mayor Reeves asked if there was any discussion amongst the Commissioners.

Commissioner McKenney asked how people would know about this service and is there still a need or waiting list and was informed there is a referral network in place. Local medical and behavioral health providers make the services known to potential LMI patients. According to the YWCA, there is very much still a need. They have brought on additional staff to offer the service and are using a portion of the funding to expand their computer systems to support it.

There being no further discussion, Mayor Reeves called for the vote.

Motion carried 5-0.

### **ORDINANCES/RESOLUTIONS**

**19. RESOLUTION 10544 ESTABLISHING A PUBLIC SAFETY ADVISORY COMMITTEE.**

City Manager Greg Doyon reported that, after failure of the 2023 Public Safety Levy and Bond ballot questions, the Commission has been exploring ways to address public safety needs. The Commission recognized that when voters soundly rejected the levy and bond proposal, they needed citizen input to assess future action. At the March 19, 2024 City Commission work session, the concept of developing a committee to assist the Commission with determining next steps to address public safety needs was discussed. A proposal to create an advisory body was discussed and there

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was general consensus to create the committee for the purpose to (1) determine broad priorities for public safety; (2) Determine priorities for Police, Fire, Court and Legal; (3) Recommend strategies for funding public safety priorities; (4) If so considered, consider timing of future levy; and (5) Strategies to engage a broad spectrum of community members and businesses. The Commission requested that the Committee's work be completed by September 2, 2024.

An overview of the City's budget with the Finance department will be required as to why the general fund cannot support some changes. There are very few areas left in the general fund to support public safety. He has said many times in the past that they tried to build capacity in the general fund to support public safety by cutting other areas and it did not work. That is why, in part, the ask was so big. The committee can take a look at whether the public recognizes that there is a public safety problem, help the City focus on where to narrow down where to put the limited resources or, if the City asks for new resources, where it needs to go to address those concerns.

**Commissioner McKenney moved, seconded by Commissioner Tryon, that the City Commission adopt Resolution 10544 establishing a Public Safety Advisory Committee.**

Mayor Reeves asked if there were any comments from the public.

**Jeni Dodd**, City resident, commented she is a proposed member of the Committee. She inquired why both of the State Legislators chosen for this Advisory Committee were not residents of Great Falls, why there wasn't an application process for this Committee like other boards, and why there are two Commissioners on the Advisory Committee if the Committee's purpose is to advise the City Commission.

She thinks citizens understand what is going on with public safety, but have concerns about paying their own bills, especially the seniors that she has talked to.

Mayor Reeves asked if there was any discussion amongst the Commissioners.

Commissioner Tryon noted that he also raised the issue of the two Legislators not being City residents. He is not as concerned about residency in Great Falls as he is about one of the Legislators not paying taxes in the City of Great Falls. That is a concern because they are going to be talking about, deliberating and vetting the public safety issue when they are not actually going to be paying any of the taxes that would be potentially recommended by this committee.

Commissioner McKenney responded that it was an invitation to join this panel, and that is not unusual. When it came to the Legislators, the Commission wanted a Senate and a House member that served on certain committees. The Commission was presented names of senators and representatives that represent Great Falls Citizens in their districts.

Motion carried 5-0.

**CITY COMMISSION****20. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

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Commissioner Wilson reported that she has worked several years with the unhoused population and those with pets are a deep concern to her. Many times these pets are their support animal. She announced that there would be a memorial service for Jesse James, a pet of one of her favorite unhoused people, at the Angel Room on Sunday at 11:00 a.m.

**21. COMMISSION INITIATIVES.**

None.

**ADJOURNMENT**

There being no further business to come before the Commission, **Commissioner Tryon moved, seconded by Mayor Reeves, to adjourn the regular meeting of April 2, 2024, at 10:37 p.m.**

Motion carried 5-0.

\_\_\_\_\_  
 Mayor Cory Reeves

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

**Minutes Approved: April 16, 2024**



Commission Meeting Date: April 16th, 2024  
**CITY OF GREAT FALLS**  
**COMMISSION AGENDA REPORT**

**ITEM:** \$25,000 Report  
 Invoices and Claims in Excess  
 of \$25,000

**PRESENTED BY:** Finance Director

**ACTION REQUESTED:** Approval with Consent Agenda

**LISTING OF ALL ACCOUNTS PAYABLE CHECKS ISSUED AVAILABLE ONLINE AT**  
<https://greatfallsmt.net/finance/checkregister>

**TOTAL CHECKS ISSUED AND WIRE TRANSFERS MADE ARE NOTED BELOW WITH AN  
 ITEMIZED LISTING OF ALL TRANSACTIONS GREATER THAN \$25,000:**

ACCOUNTS PAYABLE CHECKS FROM NEW WORLD	03/21/2024 - 04/03/2024	91,167.03
ACCOUNTS PAYABLE CHECKS FROM MUNIS	03/21/2024 - 04/03/2024	2,266,668.23
MUNICIPAL COURT CHECKS	03/21/2024 - 04/03/2024	83,668.50
MISCELLANEOUS ACCOUNTS PAYABLE WIRES	03/21/2024 - 04/03/2024	10,647.65
<b>TOTAL: \$</b>		<u><u>2,452,151.41</u></u>

**GENERAL FUND**

**SPECIAL REVENUE FUNDS**

**PARK DISTRICT**

SWANK ENTERPRISES	RECREATION CENTER CONSTRUCTION	383,228.37
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**DEBT SERVICE FUNDS**

**CAPITAL PROJECT FUNDS**

**ENTERPRISE FUNDS**

**WATER**

SLETTEN CONSTRUCTION	PROF ENG SERV WTP SOLIDS MIT/PMT12 (SPLIT AMONG FUNDS)	325,272.50
FERGUSON ENTERPRISES INC	WATER METER EQUIP MXU RADIO 459 EA	85,374.00
FERGUSON ENTERPRISES INC	WATER METER EQUIP MXU RADIO 216 EA	40,176.00
FERGUSON ENTERPRISES INC	WATER METER EQUIP 4" C2 OMNI MTR 8 EA	32,202.80

**SEWER**

SLETTEN CONSTRUCTION	PROF ENG SERV WTP SOLIDS MIT/PMT12 (SPLIT AMONG FUNDS)	325,272.50
CENTRAL PLUMBING & HEATING	1633.3 WWTP HVAC EVAL & REHAB/PMT2	110,017.33
PEC INC PLANNED & ENGINEERED	SAN SEW TRENCHLESS REHAB PH25/FINAL	50,783.93

**SANITATION**

JACKSON GROUP PETERBILT	548 TANDEM AXLE TRUCK W/REARLOADER	162,799.00
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**PARKING**

STANDARD PARKING CORPORATION	MONTH TO MONTH PARKING	37,035.30
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**INTERNAL SERVICE FUNDS**

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**CENTRAL GARAGE**

MOUNTAIN VIEW CO-OP	UNLEADED 121929 GAL DIESEL 152332 GAL	29,623.93
LAUREL 2 SPARTAN LLC	POLICE ADMIN. SUV UNIT #1	38,445.00

**TRUST AND AGENCY FUNDS**

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**COURT TRUST MUNICIPAL COURT**

CITY OF GREAT FALLS	FINES & FORFEITURES COLLECTIONS	65,530.64
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**UTILITY BILLS**

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NORTHWESTERN ENERGY	ELECTRIC SUPPLY MARCH 2024	65,316.23
HIGH PLAINS LANDFILL	LANDFILL CHARGES MARCH 2024	88,503.16

**CLAIMS OVER \$25,000 TOTAL:** \$ 1,839,580.69



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

**DATE: April 16, 2024**

**ITEM:** CONTRACTS LIST  
Itemized listing of administratively approved contracts.  
(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:** \_\_\_\_\_

**CONTRACTS LIST**

	<b>DEPARTMENT</b>	<b>OTHER PARTY (PERSON OR ENTITY)</b>	<b>PERIOD</b>	<b>AMOUNT</b>	<b>PURPOSE</b>
<b>A</b>	Planning and Community Development	Foundation for Montana History	03/27/2024 – 06/30/2025	\$5,000	2024 The Foundation for Montana History Grant Program Agreement for installation of interpretive signs at St. Peter’s Mission north of Cascade (CR: 010224.11A)

<b>B</b>	Great Falls Police Department	Floors & More, LLC.	04/16/2024 – 07/20/2024	\$45,862.61	Public Works Construction Agreement to remove old and install new carpet in remaining offices at Great Falls Police Department from replacement project started in 2023
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Commission Meeting Date: April 16, 2024  
**CITY OF GREAT FALLS**  
**COMMISSION AGENDA REPORT**

**Item:** Approve Final Payment: Parks & Rec ADA Restroom Project, OF 1810.0  
**From:** Sylvia Tarman, ARPA Project Manager  
**Initiated By:** Finance Department  
**Presented By:** Sylvia Tarman, ARPA Project Manager  
**Action Requested:** Approve Final Payment

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/deny) the Final Payment for the Parks & Rec ADA Restroom Project in the amount of \$5,710.60 to Wadsworth Builders, and (authorize/not authorize) the City Manager to make the payment.”

2. Mayor requests a second to the motion, public comment, Commission discussion, and calls for the vote.

**Staff Recommendation:** Staff recommends that the City Commission approve Final Payment for the Parks & Rec ADA Restroom Project.

**Background:** The Parks & Rec Admin Building Restroom Project was identified as a Tier 1 ARPA project by the City Commission at the April 5, 2022 meeting. The City Commission awarded a Professional Services Contract to LPW Architects in March 2023 to complete the design work for the new restroom. The construction contract was awarded to Wadsworth Builders in October 2023, for \$47,940.00. Construction began in January 2024, and concluded March 6.

**Conclusion** – City staff recommends approval of the Final Payment. Substantial Completion has been issued as of March 6, 2024 and City staff has verified that punch list items have been completed.

**Fiscal Impact:** This project is funded with ARPA funds, initially awarded at \$75,000.00. The Project total came to \$64,522.00 with all contracts for the project.

**Alternatives:** The City Commission could vote to deny approval of the Final Payment and request staff to further investigate if the project is ready for final payment. This action would result in further delaying payment to the contractor.

**Concurrences:** Representatives of the Finance Department have coordinated in development of this proposal.

**Attachments/Exhibits:**

Final Pay Application-Wadsworth Builders



# City Of Great Falls

PO Box 5021 \* Great Falls, MT 59405

Project #: 1750.1  
Date: Mar 25, 2024  
Pay Estimate #: Five, FINAL  
Period From: Mar 1, 2023  
To: Mar 25, 2024

## PERIODIC ESTIMATE FOR PARTIAL PAYMENT

Project Name: Park & Rec Restroom Remodel  
Location: Great Falls, MT

Contractor: Wadsworth Builders Company, Inc.  
Address: P.O. Box 2073  
Great Falls, MT 59403  
Phone: (406)-761-5033

RETAINAGE ADJUSTMENT	
1. Total Retainage to Date:	\$2,397.00
2. Less Securities Deposited:	\$2,397.00
3. Retainage Withheld (1 - 2)	\$0.00

CONTRACT AMOUNT STATUS	
1. Original Contract Amount:	\$47,940.00
2. Net +/- by Change Order:	
3. Contract Amount to Date:	\$47,940.00

CHANGE ORDER SUMMARY			
No.	Date Approved	Additions	Deductions
1			
2			
3			
4			
5			
TOTALS:			
NET TOTAL:			

CONTRACT STATUS	
1. Work in Place (from next page):	\$47,940.00
2. Total Work & Stored Material:	\$47,940.00
3. Retainage Withheld:	\$0.00
4. Total Earned Less Retainage:	\$47,940.00
5. Less Previous Payments (+ 1 % Tax):	\$42,229.40
6. Amount Due This Payment:	\$5,710.60
7. Less 1% State Contractor's Tax:	0
8. Payment Due Contractor:	\$5,710.60

I hereby certify that this submitted request for payment is correct, true and just in all respects and that payment or credit has not previously been received. I further warrant and certify by submission of this request that all previous work for which payment has been received is free and clear of all liens, disputes, claims, security interests, encumbrances, or causes of action of any type or kind in favor of the contractor, subcontractors, material suppliers, or other persons or entities and do hereby release the Owner from such.

Submitted by: Wadsworth Builders Company, Inc.  
(Company/Contractor)

[Signature] Date: March 25, 2024  
(Name) Colton Fatz Vice President

Reviewed by: LPW Architecture  
(Architect/Engineer)

[Signature] Date: 3-25-24  
(Name) Tim Peterson *Charles Langford*

Approved by: City of Great Falls

\_\_\_\_\_  
(Name) SHEET No. 1 OF 2 SHEETS

WORK IN PLACE/STORED MATERIALS - PAGE 1

City of Great Falls Park and Rec Restroom Remodel  
Great Falls, MT

WADSWORTH BUILDERS  
P.O. BOX 2073  
GREAT FALL, MT 59403

Project #:  
Date: March 25, 2024  
Pay Request Number: Five, FINAL

A Div. No.	B Description of Work	C Scheduled Value	D Work Previous D+E	E Complete This Period	F Materials Store	G Total Complete D+E+F	% G/C	H Balance To Finish	I Retainage 5%
1	Bonds/Insurance	\$ 1,900.00	\$ 1,900.00	\$ -	\$ -	\$ 1,900.00	100%	\$ -	\$ 95.00
2	Mobilization	\$ 2,100.00	\$ 1,800.00	\$ 300.00	\$ -	\$ 2,100.00	100%	\$ -	\$ 105.00
3	General Conditions	\$ 16,900.00	\$ 14,400.00	\$ 2,500.00	\$ -	\$ 16,900.00	100%	\$ -	\$ 845.00
4	Selective Demolition	\$ 850.00	\$ 850.00	\$ -	\$ -	\$ 850.00	100%	\$ -	\$ 42.50
5	Rough Carpentry	\$ 3,200.00	\$ 3,200.00	\$ -	\$ -	\$ 3,200.00	100%	\$ -	\$ 160.00
6	Doors/Frames/Hardware	\$ 1,300.00	\$ 1,300.00	\$ -	\$ -	\$ 1,300.00	100%	\$ -	\$ 65.00
7	Flooring	\$ 4,200.00	\$ 4,200.00	\$ -	\$ -	\$ 4,200.00	100%	\$ -	\$ 210.00
8	Taping and Paint	\$ 4,950.00	\$ 4,950.00	\$ -	\$ -	\$ 4,950.00	100%	\$ -	\$ 247.50
9	Bath Accessories	\$ 1,050.00	\$ 362.00	\$ 688.00	\$ -	\$ 1,050.00	100%	\$ -	\$ 52.50
10	Plumbing	\$ 8,300.00	\$ 8,300.00	\$ -	\$ -	\$ 8,300.00	100%	\$ -	\$ 415.00
11	Electrical	\$ 3,190.00	\$ 3,190.00	\$ -	\$ -	\$ 3,190.00	100%	\$ -	\$ 159.50
12		\$ -	\$ -	\$ -	\$ -	\$ -	#####	\$ -	\$ -
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Totals Page 1		\$ 47,940.00	\$ 44,452.00	\$ 3,488.00	\$ -	\$ 47,940.00	100%	\$ -	\$ 2,397.00



Commission Meeting Date: April 16, 2024  
**CITY OF GREAT FALLS**  
**COMMISSION AGENDA REPORT**

**Item:** Approve Final Payment: Natatorium Demolition Project  
**From:** Sylvia Tarman, Project Manager  
**Initiated By:** Finance Department  
**Presented By:** Sylvia Tarman, Project Manager  
**Action Requested:** Approve Final Payment

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/not approve) the Final Payment for the Natatorium Demolition Project in the amount of \$36,606.14 to Shumaker Trucking & Excavating Contractors, Inc., and \$369.76 to the State Miscellaneous Tax Fund, and (authorize/not authorize) the City Manager to make the payments.”

2. Mayor requests a second to the motion, public comment, Commission discussion, and calls for the vote.

**Staff Recommendation:** Staff recommends that the City Commission approve Final Payment for the Natatorium Demolition Project.

**Background:** The City Commission awarded the construction contract to Shumaker Trucking for the Parks & Rec Natatorium Demolition Project at the July 18, 2023 Commission meeting. Demolition and abatement began in October 2023. Construction of the final concrete sidewalks occurred this month once the weather cleared.

**Conclusion:** City staff recommends approval of the Final Payment. Substantial Completion has been issued as of April 12, 2024.

**Fiscal Impact:** This project is funded with CDBG funds for a contract total of \$283,575.00. This final payment will complete the project and assist the City with meeting our CDBG Timeliness goal.

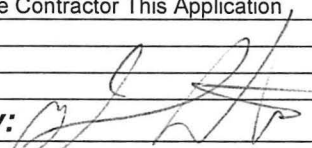
**Alternatives:** The City Commission could vote to deny approval of the Final Payment and request staff to further investigate if the project is ready for final payment.

**Concurrences:** Representatives of the Finance and Parks & Rec Departments have coordinated in development of this proposal.

**Attachments/Exhibits:**

Final Pay Application-Shumaker Trucking



B	A	B	C	D	E
1	<b>Shumaker Trucking &amp; Excavating Contractors, Inc.</b>				
2	<b>Natatorium Demolition</b>				
3	<b>Prepared for: City of Great Falls, Park &amp; Recreation</b>				
4	<b>Project Management: Parks &amp; Recreation</b>				
5					
6					
7					
8	Attr: Steve Herrig				
9	City of GF, Parks & Recreation				
10	P.O. Box 5021				
11	Great Falls, MT 59403				
12					
13					
14	Pay Application # Two -				
15					
16					
17	1	Original Contract Amount	289,775.00		289,775.00
18					
19		<b>Approved Additives</b>			
20	2	Change Order(s)	0.00		0.00
21	3	Adjusted Contract Amount			289,775.00
22					
23	4	Value of Original Work Completed To Date			283,575.00
24	5	Value of Approved Change Orders Completed			0.00
25	6	Materials Stored On Site			0.00
26	7	Total Work Completed To Date			283,575.00
27	8	Less Amount Retained	0.0%		0.00
28	9	Total Work Completed Less Retainage			283,575.00
29	10	Less Previous Pay Application -			246,599.10
30	11	Gross Amount Due This Request			36,975.90
31	12	Less 1% MT Gross Receipts Tax			369.76
32	13	Total Amount Due Contractor This Application			36,606.14
33					
34					
35					
36	<b>Submitted By:</b> 			<b>Date:</b>	
37	<b>Shumaker Trucking &amp; Excavating Contractors, Inc.</b>				
38	<b>P.O. Box 1279</b>				
39	<b>Great Falls, MT 59403-1279</b>				
40					
41					
42	<b>Approved By:</b>			<b>Date:</b>	
43	<b>City of Great Falls</b>				
44					

A													
1	<b>Shumaker Trucking &amp; Excavating Contractors, Inc.</b>												
2	<b>Natatorium Demolition</b>												
3	<b>Prepared for: City of Great Falls, Park &amp; Recreation</b>												
4	<b>Project Management: Parks &amp; Recreation</b>												
5	<b>Schedule of Values</b>												
6	<b>Pay Application # Two -</b>												
7													
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11													
12													
13	Attn: Steve Herrig												
14	City of GF, Parks & Recreation												
15	P. O. Box 5021												
16	Great Falls, MT 59403												
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Commission Meeting Date: April 16, 2024

**CITY OF GREAT FALLS  
COMMISSION AGENDA REPORT**

- Item:** Resolution 10546 – A Resolution by the City Commission of the City of Great Falls for a Conditional Use Permit for a “Type II Community Residential Facility” land use upon the property legally described as Lot 7 of Block 5 of the Montana Addition.
- From:** Sara Doermann, Associate City Planner, Planning and Community Development
- Initiated By:** Annaliza Koczur, Park View Assisted Living
- Presented By:** Brock Cherry, Director, Planning and Community Development
- Action Requested:** City Commission set Resolution 10546 for a public hearing on June 4, 2024
- 

**Suggested Motion:**

1. Commissioner moves:
 

“I move that the City Commission (set/not set) Resolution 10546 for a public hearing on June 4, 2024.”
  2. Mayor requests a second to the motion, public comment, Commission discussion, and calls for the vote.
- 

**Zoning Commission Recommendation:**

The Zoning Commission recommended that the City Commission deny the applicant’s request for a Conditional Use Permit for a “Type II Community Residential Facility” at the conclusion of the public hearing held on January 9, 2024.

**Framework for Staff’s Recommendation:**

The Conditional Use Permit process prescribes a public decision-making process to consider whether a land use not otherwise permitted by City code can fit into its locational setting without triggering specific negative impacts. In order for the City Commission to consider this decision, City staff has provided as much information as possible to determine whether impacts are either reasonable or clearly negative. The applicant’s request is difficult to evaluate because the increase in beds from 14 to 17 is rather small. However, there are two circumstances related to the applicant’s existing operation that have led to concerns from the neighborhood and questions from staff. First, the location of the assisted living facility happens to be next to an active student drop-off location where motorists drop off their children to walk to Meadow Lark Elementary School. Second, the facility receives a larger number of EMS calls than the typical single-family residences in the area.

The potential for conflict between EMS responders and the school drop-off activity was repeatedly noted in public input received by staff prior to the scheduled December 12th Zoning Commission Public Hearing. As a result, the applicant agreed to postpone her application until the Commission's January 9th Public Hearing in order for staff to get more questions answered and give the Commission better information to make its recommendation. The applicant's specific responses to staff's questions are outlined in Exhibit E, which is attached as an exhibit to this agenda report.

Because of the need to hear from the applicant and the public at the hearing itself, staff is not providing a positive or negative recommendation on this Conditional Use Permit request. Later in the report, under Conditional Use Criterion #2, staff provided justifications for both approval and denial of the applicant's request. After hearing all testimony, the Commission should determine which of these justifications is most appropriate.

If the City Commission approves the request, such an approval should note the following conditions of approval.

**Conditions of Approval:**

1. **General Code Compliance.** The proposed project shall be developed consistent with the conditions in this report, and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. **Land Use & Zoning.** The proposed plans shall conform to the R-2 Single-family Medium Density zoning district development standards contained within the Official Code of the City of Great Falls.
3. **Building Permit Review.** The final architectural drawings and specifications for improvements to the subject property shall be submitted to the Planning and Community Development Department for review and approval.

**Background:**

The applicant, Annaliza Koczur with Park View Assisted Living, has submitted an application to request a Conditional Use Permit (CUP) to allow for an increase in the number of residents from 14 to 17 within an established assisted living facility. The subject property is located at the southeast corner of 22<sup>nd</sup> Ave SW and 11<sup>th</sup> St SW, and west of Meadow Lark Elementary School. The subject property is zoned Single-family Medium Density (R-2) on an approximately 12,850 square foot lot.

The proposed addition of three (3) residents to increase the total number of occupants to seventeen (17) requires the applicant to request a CUP to expand what is known as a Type II Community Residential Facility. As defined within OCCGF 17.8.120, a Type I Community Residential Facility means a community residential facility with eight (8) or fewer individuals, whereas a Type II Community Residential Facility means a community residential facility with nine (9) or more individuals. Type I Community Residential Facilities only require staff level approval, while larger Type II Facilities require a Conditional Use Permit process.

The use of the property for a Community Residential Facility started in 1999 with the establishment of Donnalee's Assisted Living Care. This facility was originally certified by the City through the issuance of a Safety Inspection Certificate (SIC) for eight (8) beds as a Type I Community Residential Facility. Later, in 2000, Donnalee's Assisted Living Care received state licensure for up to twelve (12) beds. In 2014 Donnalee's Assisted Living Care came under its current ownership, Annaliza Koczur, with the facility name changing to Park View Assisted Living Facility. That same year Park View Assistant Living Facility received a Type I Community Residential Facility SIC to allow a twelve (12) bed facility.

Between 2014 and the present, Park View Assisted Living increased from twelve (12) beds to its current fourteen (14) bed occupancy. At the time of this report, Park View Assisted Living is up to date on their state licensure as a Category A facility with the ability to have up to nineteen (19) beds. According to staff's research, Category A facilities provide services to residents that need limited assistance, are generally in good health, and are not a danger to themselves or others. The state has confirmed that no additional state licensing is required for the applicant's proposal to add three (3) new beds. However, a Conditional Use Permit is required to allow an intensification of the Type II Community Residential Facility from 14 to 17 residents per city code.

### **Staff Evaluation of the Applicant's Conditional Use Permit Request:**

#### Proximity to Other Uses

The subject property is bounded on the north, west, and south by single-family residences. Directly east of the subject property is Meadow Lark Elementary School. A map showing the surrounding zoning districts is provided as an attachment to this agenda report. The map clearly shows the dominance of single family zoning in this area. However, the applicant's assisted living facility has co-existed near residential zoning and uses for over 20 years. Additionally, there is another smaller facility, known as Bluebird Assisted Living, located at 1101 24<sup>th</sup> Ave SW.

#### Improvements related to the requested increase in residents from 14 to 17

Representatives from the City's Building Division, Public Works Department, and Fire Department have participated in the review of the applicant's request. If the applicant's CUP is approved, the interior remodeling of the building required to convert interior space for residential occupancy requires a building permit. The building permit requirement is listed as a condition of approval to this CUP request. Such a permit must be reviewed and approved before any beds may be added.

Originally, staff believed that the installation of fire sprinklers would be required to increase residential occupancy. However, staff also reviewed the State's requirements for fire sprinkler installation associated with assisted living facilities with 19 or fewer beds. Fire sprinklers are not a State code requirement for the applicant's proposed 17-resident occupancy level.

#### Transportation

Using information provided by the Institute of Traffic Engineers (ITE) Trip Generation Manual (11th Edition), an Assisted Living Facility in a residential setting can be expected to generate an average of 0.18 vehicle trips per bed during the morning peak hour of traffic, and 0.24 trips per bed during the evening peak hour. With a proposed increase of 3 beds, the expected increase would be less than 1 vehicle trip during either the morning or evening peak hours.

Based upon the above estimation, as well as the applicant's follow-up responses to staff questions outlined in Exhibit A, the proposed increase in beds would be expected to have little to no discernable increase in traffic during the most congested parts of the day. However, as previously noted by staff in this report, the area just north of the facility functions as a school children drop off area for Meadow Lark School. City staff has received a large amount of input that school children might not be safe in this location as they make their way to school. Staff must note that the largest proportion of vehicle and pedestrian travel north of the property comes from nearby residents using this drop off, not from the applicant's assisted living operation.

#### Impacts of the proposed Conditional Use Permit

Based on the information provided by the applicant in Exhibit E, staff believes that the applicant has answered all questions related to employee traffic impacts, facility related transit usage, and nearby

resident concerns about the way the assisted living residents are vetted and supervised. Additionally, there are no specific parking requirements for community residential facilities within Title 17 of the OCCGF. The applicant has stated that none of the 17 senior residents drive. As a result, it is logical to determine parking impacts based on the number of employees per shift. Because there are only 1-2 employees on the same shift, the existing circle drive on the property can accommodate the vehicles needed to meet employee parking needs.

The issue that remains an open question for staff is that the current operation of Park View Assisted Living does generate a larger than normal EMS call volume for the City’s Fire Department. As shown in the chart below, annual emergency responses from 2018 to end of 2023 range between 19 and 42 per year with an average of 31 responses per year since 2018. Additionally, as noted in Exhibit B, a heat map showing the geographic dispersion of calls for the southwest and southcentral area of the community has been provided by the Fire Department. The Park View Assisted Living facility generates one of the highest call volumes on this map. Not only is this call volume clearly a greater number than what typically occurs in a single family home, it is reasonable to conclude that call volumes will increase if the bed count increases from 14 to 17. The question is whether the additional EMS traffic to the site, particularly in light of the nearby school drop off area, will create a negative effect or negligible impact in comparison to what is happening today.

Year	Total Number of Responses: 2201 11 <sup>th</sup> St SW
2018	31 Responses
2019	19 Responses
2020	42 Responses
2021	36 Responses
2022	33 Responses
2023	27 Responses

*Information provided by the City of Great Falls Fire Department.*

**Neighborhood Council Input & Recommendation:**

The applicant presented the request to Neighborhood Council #1 at its regularly scheduled meeting on October 10, 2023. The Council voted unanimously to support the proposed CUP. Since then, the Council has requested an additional meeting to hear from residents who were concerned about this request after the public notices went out. This meeting was scheduled for January 9, 2024. During this meeting, the council voted to change their support of the project, changing their recommendation to denial.

**Public Comment:**

Notice of the original December 12 public hearing was published in the Great Falls Tribune on Sunday, October 29, 2023. Additionally, notices were sent to adjoining property owners within 150 feet of the subject property, and a sign was placed upon the premises per code requirements. The notices to nearby residents and the sign placement on the property generated significant concerns which can be found within the correspondence labeled Exhibit G. Residents also asked for more information from both the applicant and staff regarding: 1) the public notice process, 2) number of current residents in the facility, 3) parking requirements, and 4) state certification.

Since the postponement of the project’s public hearing to January 9, staff received fewer comments. One new letter from the Great Falls Public School District is attached as Exhibit H.

Basis of Decision

The basis for decision on Conditional Use Permits is listed in OCCGF §17.16.36 and included as a separate attachment to this agenda report.

After careful consideration, staff believes that the most relevant criterion to determine whether or not the City Commission should recommend approval or denial is Criterion #2. Below are staff's two different findings.

Basis of Decision for Approval Option;

**2. The establishment, maintenance or operation of the zoning and conditional use will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare.**

The proposed use of a Type II Community Residential Facility will allow the applicant to increase the facility by three (3) individuals, which will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare. In this regard, the Commission can only consider whether the incremental increase in activity from 14 to 17 residents will create a new endangerment. The applicant has provided enough information to staff for a conclusion to be made that the applicant vets her residents, manages them appropriately, has adequate on-site parking for employees, and minimizes traffic impacts due to usage of transit. The delivery of equipment is reasonable, and there are virtually no visitors to this facility. The only issue identified by staff that is a potential cause for denial is EMS response. On this topic of concern, the applicant is not responsible for the school drop off activity to the north that has created the public safety concern expressed by nearby residents. Staff has no measurable data indicating that additional call volumes generated by the small increase will result in public safety incidents.

Basis of Decision for Denial Option;

**2. The establishment, maintenance or operation of the zoning and conditional use will be detrimental to, or endanger the health, safety, morals, comfort or general welfare.**

The applicant's request to increase the residential occupant limit from 14 to 17 residences will increase the amount of EMS visits to the facility. Based on 5-year time series data provided by the Fire Department, the number of visits is already higher than what would typically be expected with a permitted use in a single family zoning district. Additionally, the applicant's facility adjoins a location with high amounts of vehicle and pedestrian activity during certain periods due to the proximity of Meadow Lark Elementary School. Approval of the applicant's Conditional Use Permit will increase these conflicts and be detrimental to public safety.

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

- Resolution 10546
- Attachment A - Basis of Decision – Conditional Use Permit
- Attachment B - Aerial Map
- Attachment C - Zoning Map
- Attachment D - Application and original project narrative
- Attachment E - Follow-up information in response to staff questions
- Attachment F - Heat Map
- Attachment G - Public comment prior to December 12
- Attachment H - School District letter

RESOLUTION 10546

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT TO ALLOW A "TYPE II COMMUNITY RESIDENTIAL FACILITY" LAND USE UPON A PARCEL OF LAND ADDRESSED AS 2201 11<sup>TH</sup> ST SW AND LEGALLY DESCRIBED AS LOT 7 BLOCK 5 OF THE MONTANA ADDITION, SEC. 15, T20N, R3E, PMM, CASCADE COUNTY, MT.

\* \* \* \* \*

WHEREAS, the City of Great Falls has been petitioned to approve a Conditional Use Permit to allow for the establishment of a "Type II Community Residential Facility" land use upon the property legally described as as Lot 7, Block 5, the Montana Addition, Section 15, T20N, R3E, P.M.M., Cascade County, Montana (subject property); and,

WHEREAS, the subject property is presently zoned R-2 Single-family medium density, wherein a "Type II Community Residential Facility" land use is permitted upon receiving approval of a Conditional Use Permit; and,

WHEREAS, the proposed Conditional Use Permit for the establishment of a "Type II Community Residential Facility" land use upon the subject property meets the Basis of Decision requirements in the Official Code of the City of Great Falls (OCCGF) Section 17.16.36.040; and,

WHEREAS, the Great Falls Zoning Commission conducted a public hearing on January 9, 2024, to consider said Conditional Use Permit application and, at the conclusion of said hearing, passed a motion recommending a Conditional Use Permit for a "Type II Community Residential Facility" land use be denied by the City Commission for the subject property. If City Commission approves the request, the approval will be subject to the following conditions:



1. **General Code Compliance.** The proposed project shall be developed consistent with the conditions in this report, and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. **Land Use & Zoning.** The proposed plans shall conform to the R-2 Single-family Medium Density zoning district development standards contained within the Official Code of the City of Great Falls.
3. **Building Permit Review.** The final architectural drawings and specifications for improvements to the subject property shall be submitted to the Planning and Community Development Department for review and approval.
4. **Acceptance of Conditions:** No zoning or building permits shall be issued until the property owner acknowledges in writing that it has received, understands, and agrees to comply with the conditions of approval.

WHEREAS, the City Commission having allowed for proper public notice, conducted a public hearing to consider said application, and considered the comments and recommendations made by the Zoning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

That a Conditional Use Permit be granted for a “Type II Community Residential Facility” land use upon the property legally described as as Lot 7, Block 5, the Montana Addition, Section 15, T20N, R3E, P.M.M., Cascade County, Montana conditioned upon the owner complying with the conditions listed herein; and,

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that, pursuant to the Official Code of the City of Great Falls (OOCGF) 17.16.36.090, the permit shall be considered a covenant that runs with the land and shall be binding on all subsequent property owners. Additionally, pursuant to OOCGF 17.16.36.100, the Conditional Use Permit shall expire one (1) year after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. If the Conditional Use is established, but ceases to operate for more than six (6) months, the Conditional Use Permit shall expire.

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that this Resolution shall become effective from and after the date of the filing of said document in the office of the Cascade County Clerk and Recorder.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on June 4, 2024.

\_\_\_\_\_  
Cory Reeves, Mayor

ATTEST:

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

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David Dennis, City Attorney

## Attachment A

### CONDITIONAL USE PERMIT - BASIS OF DECISION

The applicant is requesting the approval of a Conditional Use Permit (CUP) for a Type II Community Residential Facility within an R-2, Single-family Medium Density zoning district for the property located at 2201 11<sup>th</sup> St SW.

#### 1. The zoning and conditional use is consistent with the City's Growth Policy and applicable neighborhood plans, if any.

The proposed conditional use including the addition of three (3) residents to the existing community residential facility is consistent with the following policies in the City's Growth Policy:

- Soc1.4.0 Encourage a diverse, safe and affordable supply of housing in Great Falls.
- Soc1.4.5 Continue to support the development of accessible housing units for those with physical and mental challenges and special needs, including members of the community with disabilities, etc.
- Soc1.4.8 Ensure that the area's existing housing stock is maintained in safe and sanitary condition through zoning review, inspection and building code enforcement activities.
- Soc1.4.9 Continue to ensure that the City promotes equal opportunity housing and access to housing for all residents and is in compliance with Federal and State requirements aimed at preventing housing discrimination.
- Phy4.3.0 Optimize the efficiency and use of the City's Public facilities and utilities.

#### 2. The establishment, maintenance or operation of the zoning and conditional use will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare.

- The Zoning Commission must find either:

##### Approval

The proposed use of a Type II Community Residential Facility will allow the applicant to increase the facility by three (3) individuals, which will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare. In this regard, the Commission can only consider whether the incremental increase in activity from 14 to 17 residents will create a new endangerment. The applicant has provided enough information to staff for a conclusion to be made that the applicant vets her residents, manages them appropriately, has adequate on-site parking for employees, and minimizes traffic impacts due to usage of transit. The delivery of equipment is reasonable, and there are virtually no visitors to this facility. The only issue identified by staff that is a potential cause for denial is EMS response. On this topic of concern, the applicant is not responsible for the school drop off activity to the north that has created the public safety concern expressed by nearby residents. Staff simply has no measurable data indicating that additional call volumes generated by the small increase will result in public safety incidents.

**Denial**

The applicant's request to increase the residential occupant limit from 14 to 17 residences will increase the amount of EMS visits to the facility. Based on 5-year time series data provided by the Fire Department, the number of visits is already higher than what would typically be expected with a permitted use in a single family zoning district. Additionally, the applicant's facility adjoins a location with high amounts of vehicle and pedestrian activity during certain periods due to the proximity of Meadow Lark Elementary School. Approval of the applicant's Conditional Use Permit will increase these conflicts and be detrimental to public safety.

- 3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.**

The residential uses in the neighborhood are generally single-family residences with the exception of Meadow Lark Elementary School, which is located east of the subject property. The increase of three (3) individuals to the facility is not significant enough to impair the character of the neighborhood because the additional individuals do not drive and can be managed by the same numbers of staff. As a result, the conditional use would not adversely impact the use and enjoyment, or property value of property in the immediate vicinity.

- 4. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.**

The proposed project will not impede the normal and orderly development and improvement of surrounding properties. Adjacent properties are already developed. In addition, the applicant is required to submit for a building permit to ensure the proposed request conforms to all applicable codes and regulations.

- 5. Adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.**

Adequate services and infrastructure already exist. Sidewalks, water and sewer mains, and improved roads are adjacent to the subject property.

- 6. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.**

The project proposal to increase the resident count by three individuals would generate minimal additional traffic, and will have no discernible impact upon the area road network. The applicant has stated the increase in beds will not require any additional staffing. Therefore, no additional off street parking spaces are required as part of this proposal.

- 7. The conditional use shall, in all other respects, conform to the applicable regulations of**

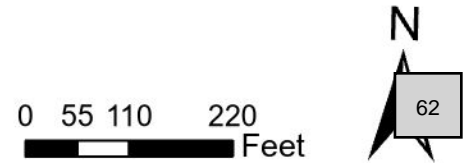
**the district in which it is located, except as such regulations may, in each instance, be modified by the City Commission.**

The requested conditional use conforms to the applicable regulation of the Land Development Code. Further, any proposed improvements upon the subject property shall comply with all applicable City codes and regulations.

# Aerial Map

## Legend

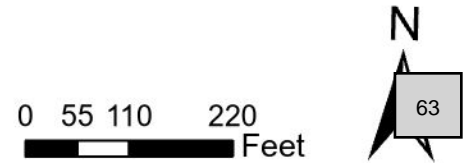
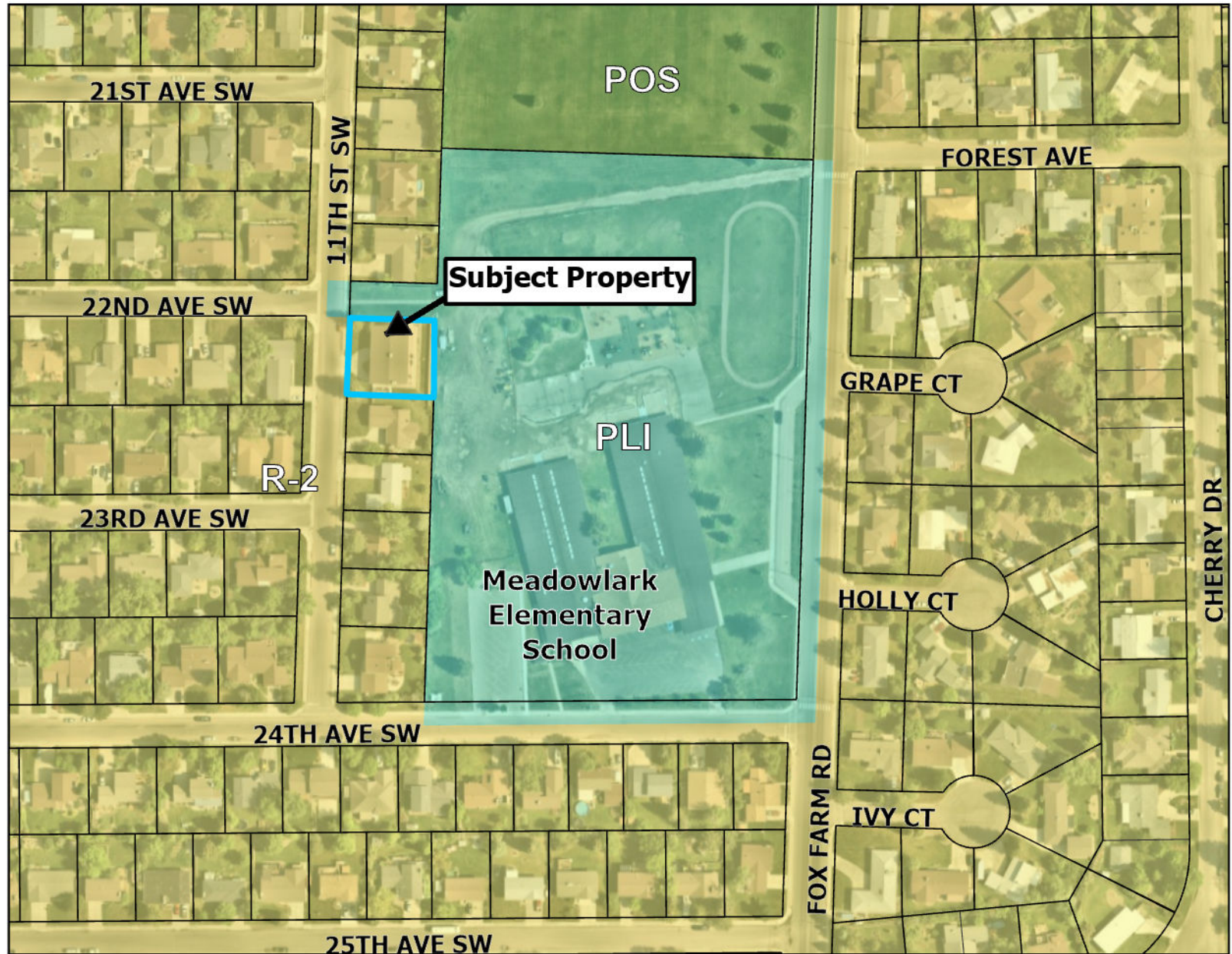
- 150 Buffer
- CityStreets
- City Limit
- Parcels
- LotLines



# Zoning Map

## Legend

- CityStreets
- City Limit
- Parcels
- LotLines
- Zoning**
- R-1 Single-family Suburban
- R-2 Single-family Medium Density
- R-3 Single-family High Density
- R-5 Multi-family Medium Density
- R-6 Multi-family High Density
- R-9 Mixed Residential
- R-10 Mobile Home Park
- PUD Planned Unit Development
- C-1 Neighborhood Commercial
- C-2 General Commercial
- C-3 Highway Commercial
- C-4 Central Business Core
- C-5 Central Business Periphery
- M-1 Mixed-use District
- M-2 Mixed-use Transitional
- I-1 Light Industrial
- I-2 Heavy Industrial
- PLI Public Lands and Institutional
- POS Parks and Open Space
- AI Airport Industrial
- U Unincorporated Enclave



CITY OF GREAT FALLS  
PLANNING & COMMUNITY DEVELOPMENT DEPT.  
P.O. BOX 5021, GREAT FALLS, MT, 59403 5021  
406.455.8430 • WWW.GREATFALLSMT.NET

CUP-000017-2023

10/4/2023

LAND USE APPLICATION

Park View Assisted Living

Name of Project (if applicable):

2201 11th St. SW lot, mt. south

Project Address:

Annaliza Koczur

Applicant/Owner Name:

2806 16th Ave South lot, mt. south

Mailing Address:

- Annexation by Petition: \$500
- Preliminary Plat, Major: \$1,500 + \$50/lot
- Final Plat, Major: \$1,500 + \$25/lot
- Minor Subdivision: \$1,250
- Zoning Map Amendment: \$2,000
- Conditional Use Permit: \$1,500
- Planned Unit Development: \$2,000
- Amended Plat, Non-administrative: \$1,000

Phone:

(406) 868-0744

Email:

parkviewaf@gmail.com

Representative Name:

Annaliza Koczur

Phone:

Email:

LEGAL DESCRIPTION:

Lot/Block/Subdivision:

Section/Township/Range:

ZONING (ZONING MAP AMENDMENT ONLY):

LAND USE (CONDITIONAL USE ONLY):

Community Facility Type I

Community Facility Type II

Current:

Proposed:

Current:

Proposed:

I (We), the undersigned, understand that the filing fee accompanying this application is not refundable. I (We) further understand that the fee pays for the cost of processing, and the fee does not constitute a payment for approval of the application. I (We) further understand that public hearing notice requirements and associated costs for land development projects are my (our) responsibility. I (We) further understand that other fees may be applicable per City Ordinances. I (We) also attest that the above information is true and correct to the best of my (our) knowledge.

Annaliza Koczur

Applicant/Owner's Signature:

10/4/23

Date:

Representative's Signature:

Date:



Mrs. Annaliza Koczur  
 Park View Assisted Living  
 2201 11<sup>th</sup> Street SW  
 Great Falls, MT 59404  
 September 26, 2023

To Whom It May Concern:

I respectfully request a conditional use permit for Park View Assisted Living, an assisted living facility that I own and operate within the City of Great Falls, to refurbish an unused garage into two bedrooms – one private and one semi-private.

According to Montana Department of Public Health and Human Services *Montana State Plan on Aging* signed August 27, 2021:

- Montana’s population is rapidly becoming older, often referred to as the “aging tsunami”. In fact, in 2017, the percentage of adults age 60 and older in Montana ranked 5<sup>th</sup> in the United States. According to the Montana Department of Commerce’s Research & Information Services Bureau, the population over age 60 has increased by 26.3% between 2001 and 2017, from approximately 159,412 to 255,841 in 2017. The population over age 60 represents 25.4% of the total population in Montana. Our fastest growing age group is 85 and older, with a total of 22,384. According to the AARP Across the States 2018 publication, by 2030 there will be an increase of 57% and by 2050 an increase of 208% in this age group. In contrast, the working-age population is projected to decrease, potentially reducing the number of workers in relation to the aging population needing support. (<https://dphhs.mt.gov/assets/sltc/AgingReports/MontanaStatePlanonAging.pdf>)

I work very closely with the Montana Department of Public Health & Human Services as well as Medicaid Waiver and the Center for Mental Health to provide a safe, happy and healthy home for our elderly Montanans.

Park View Assisted Living is licensed as a Category A facility meaning that my residents are mostly ambulatory. At times I have residents who use a wheelchair to get around; they can transfer themselves as necessary to perform life functions. I do not take in violent residents and my resident’s mental and physical health conditions are at an appropriate level to reside in an assisted living home without requiring the advanced services of a nursing home.

My residents are quiet, spending most of their time resting and relaxing within the home. I employ eight staff members. My staff and I take care of cooking, cleaning and providing necessary services to keep our residents clean, safe and healthy. I have worked diligently with local contractors to keep the facility running very well. I have provided beautiful remodels to the exterior, adding a new deck, new fencing and replacing an old retaining wall boarding the Meadowlark Elementary School

Council Members  
September 26, 2023  
Page 2

grounds. The additions/renovations have been in line with and even above what might be expected of a home in the Fox Farm community and, driving through the community, one would never know that the home is an assisted living. Vehicle traffic is minimal and usually accommodated by the driveway where up to four vehicles can park at one time. Most days, there is only one or two vehicles parked in the driveway. Park View's residents may have visitors too and thus, one or two visitor's vehicles may be parked on the street.

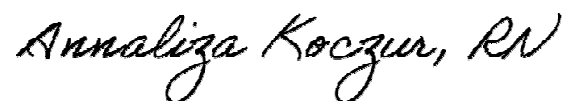
The safety of residents and staff are paramount in my facility. All appliances are modern and in good working order. I have a modern fire alarm installed at the facility which is tested and maintained on a regular basis. All residents can safely evacuate the facility and staff are trained to help evacuate residents in an orderly fashion. I assign rooms based on the resident's ability to safely evacuate the facility. My facility is located 0.4 miles from Great Falls Fire Station 4 and medical services are also just moments away. In accordance with City of Great Falls codes, a fire sprinkler system is part of the renovation.

Considering the discussion above, I would like to remodel the attached garage to add room for three residents. This would take the form of both a private room and a semi-private room. I am working with a local contractor, SAMS Construction and Painting, to accomplish the project if the City of Great Falls will grant permission to continue with the project.

I have been taking care of the elderly for over 28 years and wish to provide a beautiful home setting for those elderly in need of a place to live. I love taking care of the elderly; it is part of my culture and is certainly my passion. I love my elderly Montana residents; they deserve the safe, happy, caring environment that Park View Assisted Living offers.

Thank you for your time and consideration in this matter. I deeply appreciate the City of Great Falls and love serving its community. I look forward to your approval of the conditional use permit allowing for the remodel and addition of three more residents. If you have any questions at all, please don't hesitate to contact me at (406) 868-0344.

Very Respectfully Yours,



Mrs. Annaliza Koczur, RN  
Owner/Administrator; Park View Assisted Living  
(406) 868-0344 (mobile)  
(406) 315-2811 (fax)  
ackoczur74@gmail.com

## PARKVIEW ASSISTED LIVING

2201 11th Street SW  
Great Falls, Montana 59404  
Office: (406) 452-5810  
Fax: (406) 761-3845

December 4, 2023

I'd like to say at the start that I appreciate the community's concern for traffic safety and the safety of kids going to and from school and I'm happy to address their concerns.

Parkview's concern for safety is paramount, not just for the community we serve but also for neighbors, children and elderly residents. This is why we're installing a sprinkler system - code says to install it for safety and that's what we're going to do. We recently replaced the retaining wall in the back between the school and Parkview to ensure the safety of the children that live and play in the area as well as ensuring no damage to the environment occurs and that Parkview remains a beautiful addition to the community. We also installed a lovely patio and replaced the fence for both safety and aesthetics. Additionally, Parkview pays its fair share and more in property taxes ensuring the community benefits from its presence.

Operational traffic - Many community members are concerned about possible traffic-related impacts and dangers between the facility and school drop off/pick up.

Of note, Parkview doesn't track traffic data. Thus, there isn't any hard and fast traffic data that can be referenced. However, a discussion of different traffic should suffice in answering the questions posed by community members.

Above all, the community should understand that there will not be any appreciable increase in traffic by adding three residents. This is because UPS and FedEx deliver to the area regardless of Parkview's business. Deliveries won't be more frequent though they might be heavier should the need arise to order additional items. Parkview's deliveries are delivered in standard UPS and FedEx trucks; no deliveries take place using larger commercial tractor-trailer vehicles. Like any other residence in Fox Farm, furniture deliveries from such places as Ashley and Furniture Row are brought in using larger commercial vehicles though Parkview hasn't had a delivery of that sort in quite some time.

Staffing won't increase either as the same staff that now cares for the residents of Parkview will be able to serve the three additional residents. This again means that there won't be additional traffic due to our expansion.

Parkview's residents typically don't have many visitors, if any at all; a sad and discouraging testament to how the elderly are treated. Thus, additional visitors are of little concern when considering visitation against increased traffic.

1. How many deliveries, service visits, and staff drop offs are made each day and throughout a normal week (not holiday), including the hours of 8am - 9am and 3pm - 4pm?
  1. Deliveries amount to approximately three times per week or approximately 12 per month. Parkview may receive more packages or heavier packages should additional supplies be necessary but this would still come on a standard delivery truck and at the same frequency as historically has been occurring. Deliveries typically do not occur between 8am and 9am. UPS and FedEx travels around the community later in the mornings and afternoons servicing Parkview and the other residents of Fox Farm.
  2. Service Visits -
    - Typically a medical primary care provider visits the residents once a month.
    - A Medicaid Waiver Social Worker visits the residents twice a year (routine six month visit).
  3. A majority of the residents stay home. Two residents do their outing every Monday Through Friday. Of these two residents, one resident leaves at 7:45 am and returns home at 12:30 pm. The other resident leaves for adult daycare at 10:30 am and returns home at 4:30 pm. A third resident attends The Peak for swimming classes twice a week.
  4. Residents, like anyone else in the Fox Farm community, may have Uber, Lyft, Paratransit or family and friends pick them up and drop them off as they need to in the conduct of their lives. They use publicly acceptable transportation; Parkview residents have never had visitors or other transportation with loud mufflers. They use acceptable vehicles allowed on the public roads. They also only use the public roads; Parkview has never had a complaint that our residents were using driveways and other private areas of the residents of Fox Farm.
  5. My staff does use public transportation at times. Only two staff members drive. When they come to work, they always park in the driveway.
  6. Parkview does not have residents or services that come and go on a routine basis between 8am - 9am or 3pm - 4pm.
2. How many staff do you have at the facility during the day and where do they park?
  1. Parkview is staffed by two employees in the morning, one employee in the afternoon and one employee in the evening. The afternoon shift changes between 3pm and 4pm.
  2. Staff park in the driveway where there is plenty of room for three or even four vehicles. Should there be any overflow, staff may also park on the public road in front of Parkview. Typically, staff only use the driveway.
3. On average, how many personal visitors do the residents receive per day and week?
  1. Only two residents at Parkview receive a weekly visit from their family. Most of the time these visits occur between 10am and 1pm and, very infrequently, in the evening.

Every now and then, we may have a family that will come on weekends but it's not a routine visit. Visits rarely last an hour. Some of the residents may get a visit every four to six months. Regarding the other residents, they don't receive visitors so I and my staff become their family. Not everyone is fortunate enough to have family come see them.

Supervision of residents - There have been comments submitted about residents wandering the community unsupervised by staff. Please describe incidents that have been brought up in the comment letters received.

To be sure, Parkview is not a detention facility or an institution. Residents may come and go as they please, just as anyone in the community might come and go. Residents are allowed to travel within the boundaries of the laws of the City of Great Falls.

Residents are also allowed to use public infrastructure, particularly public roads and sidewalks just as any resident of Fox Farm or the City of Great Falls might do.

1. Where these comments based on a specific resident?
  1. Parkview did have a resident at one time who would travel on the sidewalks and, at times, linger in one spot or another, enjoying the sun and fresh air, and just wanting to be outside. This resident is no longer at Parkview.
2. What is the normal procedure for these incidents?
  1. Since Parkview residents may come and go at will as residents of the Fox Farm community, there isn't any "normal" procedure for a situation. Residents may use the public roads and sidewalks as any citizen might. If a community member called or stopped in to call attention to a resident who was on private property, staff would assist the resident back to Parkview.
3. When did the facility change from having category B to only Category A?
  1. Parkview changed from a Category B facility to a Category A facility on or about October 1st, 2014 during change of ownership.
4. How do you evaluate new residents before accepting them into the facility?
  1. Parkview goes through a thorough and exhaustive assessment process before introducing new residents into the Parkview family and the community. This assessment includes background checks on mental wellbeing, physical issues, social challenges (i.e. criminal activity, smoking, drinking and/or abuse of illegal substances). Throughout the resident's stay at the facility, the staff RN observes residents closely and continuously monitors them to ensure that the residents are safe within their home.

2. Parkview doesn't take residents based on a need for placement alone. A rigorous assessment process informs decisions. The assessment process ensures that a careful selection is made so that the resident has a high likelihood of fitting in well both at Parkview and within the community. The goal is to match the correct resident with our facility so as to keep Parkview and the community a happy and peaceful place for all.

Emergency calls - are records kept on how many and what kind of emergency calls are made?

1. While Parkview keeps safety records, there isn't any statute or code requiring Parkview to keep records of emergency calls. On the other hand, by state requirements, we are required to keep an incident report for any unusual event that occur within the home (e.g. a resident falls and is injured).

Specifically, what are the top three average calls for emergency calls?

1. Severe pain
2. Respiratory distress
3. Significant change in condition

As the owner of Parkview, I strive to create a harmonious place for my elderly residents to live out the remainder of their lives while being mindful and respectful of our community. I believe my investments into my home speak for themselves in keeping the highest standards within the community. While Parkview does not collect the type of data being requested by neighbors, I do hope that I have been able to provide some clarity as well as ensuring all that the addition of three new residents will not add to existing traffic or place children and community in harm's way. If you have additional questions, I would love to meet with you and discuss your concerns. Please reach out to me at [parkviewafl@gmail.com](mailto:parkviewafl@gmail.com) or by phone at 406-868-0344. Thank you for your time and consideration in this matter and have a wonderful day.

Yours Most Respectfully,

  
Annaliza Koczur





# Great Falls Public Schools

District Offices • 1100 4<sup>th</sup> Street South • P.O. Box 2429 • Great Falls, Montana 59403  
406.268.6052 • www.gfps.k12.mt.us

October 27, 2023

City of Great Falls  
Great Falls Planning Advisory Board  
Attn: Brock Cherry  
PO Box 5021  
Great Falls, MT 59403

To Whom It May Concern,

Thank you for your letter denoting the Park View Assisted Living Permit Application. This property is located within our school district boundaries. The following is a response to the information sent to the Great Falls Public School District. We have formulated the questions below to comment on the proposed subdivision.

**1. Will the existing school facilities be able to accommodate additional students?**

*The addition of the development will have an not have an impact on the Great Falls Public School District student numbers because this is a retirement home project.*

**2. Do you have any other comments or requirements on the proposed subdivision as it affects the public school system?**

*There may be a slight increase in traffic by Meadow Lark Elementary school, but not be significant enough for the school district to be concerned about.*

Sincerely,

Brian Patrick  
Director of Business Operations  
Great Falls Public Schools

**Vision Statement:** All kids are engaged in learning today. . . . for life tomorrow.  
**Mission Statement:** We successfully educate students to navigate their future.



## City of Great Falls Planning Advisory Board/Zoning Commission

To Whom it May Concern;

My wife and I are writing to speak against the conditional use permit for Park View Assisted Living, as we are unable to attend the public meeting. This house should have never been allowed to be an assisted living home to begin with. Too many stairs and the house was built for multifamily in 1976. Marge Dahlquist built the home and snuck an apartment on the main level next to the single garage. I have lived at my home across the street for 30+ years and the two prior owners always rented out that apartment. It is unlawful in our neighborhood, as it is zoned for single family residence only. No house in this neighborhood should have THIRTEEN + people in it!

### Traffic/Noise:

Just today during the 8:15 school drop off time, there was an ambulance and a fire engine in front of the house, creating major traffic issues while parents were dropping off their kids. It was a very unsafe situation for the children. (See enclosed photo)

We talked to Mike Macintosh at Great Falls Fire/Rescue. He said there has been 150 plus calls to the home since 2018.

On school mornings and afternoons during the drop-off and pick-up times for the Meadowlark School children, there is approximately 50 or more cars dropping kids off in front of this home, since it borders the school playground. It is extremely unsafe and difficult to drive in the area, as parents park on both sides of the street. The children are attempting to cross the street, as well as the children who are walking to school. In addition to this, we have the cars of the employees that work in the home as well as the Great Falls Transit paratransit van. This van parks in the driveway to pick up and/or drop off residents backs up

during this congested time, and children are also walking to the school, creating more danger. The van has back up alarms that can be heard three houses away, which occurs multiple times a day.

When the caretaker's spouses/boyfriends, etc. come to pick up their wives from work, they often leave their vehicles running (many times for 10-15 minutes) and/or leave their stereo blasting while they wait.

Many times my next door neighbor has to park his car in front of my house due to the visitors and employees parking in front of his house. Many times, he has to park his boat in front of my house just to unload it.

#### Unruly/mentally unstable people:

About 10 days ago in October, our outside cameras picked up a woman trying to hide out by our large stone mailbox. As we were watching, she eventually sat down on the lawn and then laid down. Finally, a police officer showed up and figured out she belonged to the assisted living home and after much talking, finally had to walk her back to the home.

Our neighbor who lives two houses down from the home is a single elderly lady. She has had men from the home ring her doorbell and stand on her porch for some time. I have had to call her and let her know there is a strange man at her door.

We as neighbors have all had to help with the residents that wander away. This happens quite frequently as many of the residents are outside with no supervision. Two of the men in wheelchairs/scooters ride them right down the middle of the street. We have been in the car behind them, and they are either unaware that there is a vehicle behind them, or don't care.

They have a bench in front of the home that gets used all day long by the smokers and workers who smoke. The parents of the young children

that are walking to school have told us that their kids are frightened by these residents and are scared to walk by the home.

Neighbors are aware that there is a sexual predator living in the home. His record was updated 7/20/23 and shows that this home was his current address (see enclosed attachment.) And this is at a home that is bordering a school playground?!? The owner is always advertising vacancies in the home via her Facebook page, and from what we have seen, she is obviously not vetting any of these people.

In conclusion, our preference would be that this business was never allowed in the neighborhood in the first place. But since we obviously are stuck with it now, our wishes would be that lets not make it bigger and add even more people and more traffic/problems.

Why is it possible for this owner to currently have 13 residents, when they are not allowed to have over 9 residents without a fire sprinkler system installed? Once they are allowed to refurbish/remove the garage, this will never be a family home. It will lose its curb appeal and will forever look like a commercial business. Please do not approve this conditional use permit to allow this assisted living business to grow even more and have even more residents than it already does.

Thank you for your consideration in this matter.

Steve and Lynne Durkin

1101 23<sup>rd</sup> Ave SW

Great Falls Mt 59404

REDACTED



**From:** Lori Luoma <[loriannluoma@hotmail.com](mailto:loriannluoma@hotmail.com)>  
**Sent:** Thursday, November 9, 2023 12:34 PM  
**To:** Jamie Nygard <[jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net)>  
**Subject:** Opposition to CUP for Park View Assisted Living Facility

To whom it may concern-

I am opposed to granting Park View Assisted Living Facility located at 2201 11 St. SW in Great Falls, MT a conditional use permit in order to convert their garages into additional bedrooms which allows for an increase in residents living in this facility. We have lived kitty-corner to the facility since 2019.

The facility is located next to a well-used path that leads to Meadow Lark Elementary School. Parents drop their children off and neighborhood kids are crossing the street right next to the facility. This busy business located in the middle of a residential neighborhood significantly contributes to the traffic congestion due to frequent emergency vehicle visits, numerous staff vehicles coming and going and paratransit vehicles. Increasing the number of residents will lead to further traffic congestion.

Facility residents have wandered away from the facility ending up in our neighbor's yards or at their front door. This is especially concerning because one of the residents is a convicted 3<sup>rd</sup> degree felon child sex offender from Utah. Allowing a sex offender to reside in a facility that is next to an elementary school and within in a neighborhood full of children shows lack of proper screening and concern by the facility's owner for the wellbeing of the neighborhood children. This is particularly alarming as we have four children.

I request the Great Falls Planning Advisory Board/Zoning Commission to please deny the conditional use permit for Park View Assisted Living Facility.

Sincerely,

Lori Luoma  
1101 22<sup>nd</sup> Ave SW  
Great Falls, MT 59404

-----Original Message-----

From: Terri Lester <[terri.lester@icloud.com](mailto:terri.lester@icloud.com)>

Sent: Friday, November 10, 2023 8:25 PM

To: Jamie Nygard <[jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net)>

Subject:

My name is Terri Lester. I am a former resident of the Meadowlark school neighborhood, a retired teacher from Meadowlark, school and currently a grandparent of children in the area one who attends Meadowlark school. I would like to submit my opposition for a conditional use permit at 2201 11th St. SW.

As a parent, my husband and I raised three children in that neighborhood at that time it was a very family friendly place to live. I now have great concerns as a grandparent, for my grandchildren walking to school down the path, walking to the park, playing with their friends and riding their bikes around the assisted living home.

I question the safety of the children with the increase in traffic and emergency vehicles not to mention the fact that a sexual offender resides in the home.

I realize this is one business in one neighborhood however, it also affects the entire city of Great Falls.

Therefore, more notice should be given to the entire city of Great Falls not just to a small number.

Thank you for the opportunity to submit my opinion. I hope you do what is best for our children.

Terri Lester

Sent from my iPhone

-----Original Message-----

From: Mary <[marykelly5@hotmail.com](mailto:marykelly5@hotmail.com)>

Sent: Friday, November 10, 2023 3:39 PM

To: Jamie Nygard <[jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net)>

Subject: Planning and Advisory Board and Zoning Commission

> Planning Advisory Board and Zoning Commission,

>

> Re: Conditional Use Permit for a "Type II Community Residential Facility" land use at 2201 11th St. SW

>

> Thank you for your request for public comment and considering our concerns in this matter. I wanted to be present at the meeting to read my letter but had to leave town to attend a work conference in Minneapolis.

>

> My name is Mary Bowe, and my family and I reside next door (across the path) from the Park View Assisted Living Residence at 2109 11th St. SW. I am writing today to express our strong opposition to the proposed expansion of the business in the above-stated residence.

>

> Our personal experiences with the facility, coupled with our aspirations for the neighborhood's growth and thriving community, have led us to the firm opinion that expanding the business would be detrimental.

>

> We have encountered multiple instances of residents attempting to escape, causing distress to our children and placing an uncomfortable burden on both my husband and me.

>

> Our neighborhood, which we take great pride in, is negatively affected by the increased number of residents and workers smoking out front. Additionally, the four to five garbage cans lining the streets, compared to the typical one at other residences, detract from the residential atmosphere we value.

>

> Moreover, we are concerned about safety issues associated with the assisted living residence. Despite claims of thorough vetting, a registered Sex Offender resides in close proximity to a school and a bus stop as well as near my five and seven-year-old children. The rise in traffic, both from residents and employees using the driveway and emergency vehicles frequenting the residence, further exacerbates safety concerns.

>

> Converting the garages into living spaces and installing an industrial fire sprinkler system would permanently eliminate the possibility of the property reverting to a single-family residence.

>

> We have always had concerns with the current residence. I have read in the Agenda's supporting document that it has resided in the neighborhood with no issues for 20 years. This is not true. The issues have just not been presented or neighbors have not had the opportunity to state their opinion. It is disappointing how the notice has gone out to a small contingent of neighbors. The sign presented in the lawn can only be read if you go physically onto the property to read the details. It is simply a piece of paper taped to a public hearing sign. I have had several parents of children inquire to us what it is about because it is not easy to find the details.

>



> I would like to request a listing of the Neighborhood Council names and addresses and question how they can have an educated opinion on this matter. The school's response is also disappointing referencing no increase in student population and little traffic issues. There are greater issues impacting the students that were not addressed in his response, but again the responder does not live in the area or work at Meadow Lark Elementary School.

>

> For the aforementioned reasons, we respectfully request that you deny the proposal from the Assisted Living Facility to add additional residents and renovate living spaces.

>

> Thank you for your attention to this matter.

>

> Sincerely,

>

> Mary Bowe and family

>

**From:** Brad Bergman <[brad.bergm@gmail.com](mailto:brad.bergm@gmail.com)>  
**Sent:** Saturday, November 11, 2023 7:17 PM  
**To:** Jamie Nygard <[jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net)>  
**Subject:** Conditional Use Permit application

To whom it may concern,

This letter concerns the conditional use permit (CUP) for a Type II Residential Facility at 2201 11th St SW, Great Falls, MT.

We reside directly across the street from Park View Assisted Living. We recognize the need for assisted living availability in our community, and we appreciate the services that Park View Assisted Living has provided for Great Falls. However, when taking into consideration the pros and cons of the facility expansion, our opinion is that this permit should not be approved.

Our primary concern relates to the safety of children attending Meadowlark Elementary School. Park View Assisted Living is located at a very busy location. During the school year, dozens of vehicles park out front to drop off and pick up children at Meadowlark Elementary school. This occurs twice daily. During these drop off times there are many children entering the road from behind parked vehicles. Over our 22 years here, we have witnessed some scary near-misses between child and vehicle. Vehicle traffic at Park View Assisted Living is also significant and will be expected to worsen should the expansion occur. I am concerned that the additional traffic will increase the likelihood of a child getting hit by a vehicle. I am not aware of any traffic safety measures occurring in front of our house, and I suspect the majority of non-bussed students are dropped off at this location.

As you are probably aware, there is another assisted living facility within two blocks of Park View Assisted Living. The other assisted living facility can be seen from Park View Assisted Living. As a longstanding resident of our neighborhood, we feel that promoting expansion of this business, especially when there is another similar business in such close proximity, detracts from the appeal and character of our neighborhood. If Great Falls is interested in maintaining desirable neighborhoods, which are necessary to preserve and attract valuable community members, we should be very careful about promoting development of businesses in our neighborhoods. We worry about the precedent this would establish for our community.

It appears that the permit application fulfills, or plans to fulfill conditions, required for approval. Please keep in mind that Park View Assisted Living does not appear to be substantially larger than the other single family homes in the neighborhood. We question the wisdom and safety of housing the proposed 17 residents in that home. I could not imagine trying to live comfortably with half that many people in my home. Moreover, in the case of an emergency one or two staff members would not be able to evacuate 17 residents, many of which are mobility-impaired, from the two story home in a timely fashion.

Thank you for considering our concerns regarding this permit application.

Sincerely,  
Bradford and Billi Bergman

**From:** Cory P. Moran <[cory@cobbmechanical.com](mailto:cory@cobbmechanical.com)>  
**Sent:** Sunday, November 12, 2023 10:05 PM  
**To:** Jamie Nygard <[jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net)>  
**Subject:** Parkview Assisted Living - 11.14.23

Dear distinguished Members of the Council,

**45-5-513. Geographic restrictions applicable to high-risk sexual offenders. (1) A high-risk sexual offender as provided in this section may not:**

**(a) establish a residence within 300 feet of a school, day-care center, playground, developed or improved park, athletic field or facility that primarily serves minors, or business or facility having a principal purpose of caring for, educating, or entertaining minors. This subsection (1)(a) does not apply if the residence was established on or before May 5, 2015.**

The intent of my writing you today is in order to memorialize my family's staunch protest of the proposed expansion of the Parkview Assisted Living Facility located at 2201 11<sup>th</sup> St SW that is scheduled for vote of approval on November 14, 2023 by our Council. The aforementioned Section of Montana Code (annotated 2021) should represent substantial cause for a vote denying the requested expansion of the facility. As of this writing, a convicted sexual offender resides in the Facility.

I believe this letter's impact would be best served by starting with our family's background, as I'm certain no reasonable vote in support of the request could be cast whilst having this information. My wife, Lacie, was born at the Columbus Hospital on 2<sup>nd</sup> Ave N. She attended Montana State University Great Falls receiving her degree in Surgical Technology. She worked at Great Falls Clinic as a surgical technician for five years. Our first daughter, Payslie, 8, was born in Great Falls and is currently a second grader at Meadowlark Elementary that abuts the Parkview Facility. Our daughter Charlotte, 2, was born while we were temporarily relocated to Bozeman, and will be attending Meadowlark Elementary in a few short years. We are a family with whose roots run deep in our beloved Town.

I began this letter with Section of Montana Code. There is a convicted sexual predator (male) living as a patient in a *mental health facility* directly next door to where my wife and I are raising two young girls. He is living in a facility that directly backs up to the playground of Meadowlark Elementary, as well as Montana Park where families from throughout our Town bring their children on weekends. There is never a shortage of children playing with one another any day of the week. The idea that a convicted sexual offender, who has already demonstrated a compromised ability to rationalize right from wrong, is living next door to my children keeps me awake at night. I am fully able to appreciate the need for help for individuals requiring assistance navigating life, but that assistance should not be rendered in a family neighborhood. The fact that this facility is able to exist in its current locale is unfathomable to Lacie and me. Furthermore, the Facility is only listed as *assisted living* and not licensed as specializing in *mental health*, which should be specifically noted by the determining Board in their vote.

Based on past policies voted on by this Council, it is evident that you support the growth of this Town we all love so deeply. Growth is not a bad thing- it benefits our local economy and helps improve the resources and facilities that our families are able to use. Benefits not known here in Great Falls prior. It's a wonderful time to live here, and my family and neighbors do not take this privilege for granted. However, growth with universal benefit can not subsist without a logical separation between residential and commercial entities. A common sense understanding of zoning areas particular to Great Falls must be applied and followed. I trust the permit for a single-family home in the retail center between Target and Albertson's would not be granted- why is this situation any different? This is the only commercial entity within five blocks of its location, and, as mentioned earlier, we are at a loss that it is able to exist at all.

Living next door to the Facility has not been a pleasant experience for my family. There are ambulances responding to calls on a weekly basis, often times in the middle of the night. Explaining to a skittish 8-year old with a blossoming imagination why the police are trying to come to our home at 2:00 AM because she heard sirens and saw red and blue strobing lights illuminate her bedroom is impossibly difficult- let alone trying to get her back to sleep after. The infrastructure of the neighborhood was simply not planned and built to accommodate the level of traffic the Facility creates. When the number of residents coupled with the number of staff coupled with the support required to run the Facility are totaled it creates a completely unreasonable sum of traffic that puts undue burden on the Facility's neighbors. Additionally, the path adjacent to the Facility is a heavily trafficked thoroughfare for the *children* who attend the elementary school. On a myriad of occasions my wife and I have witnessed resident acquaintances and staff commute to and from the Facility with complete disregard for the children who are ever-present on their bikes and on sidewalks. Whether driven by naivety or a lack of regard for common courtesy, the speeds by which many visitors have exhibited while traveling to and from the Facility are dangerous and, with the fear of having young children playing in the neighborhood always on my mind, could end up being deadly. Bottomline: the family neighborhood (lots of children) along the presence of the school (hundreds of children) means that the only prudent decision that should be made in this vote is that of denial of expansion. The street is well beyond traffic capacity as it is, the Facility accommodates residents of compromised mental capacity, and there is a sexual offender amongst the resident roster (could more become residents?). If anything, the real decision should be that of whether to introduce an article toward eliminating the Facility altogether.

I appreciate your time in reading this and the genuine consideration of what your vote means to the residents of this neighborhood- most importantly the children.

Most sincerely,

Cory, Lacie, Payslie, and Charlotte Moran

2205 11<sup>th</sup> St SW

To whom it may concern,

I am writing this letter in opposition to Park View Assisted living facility being granted the conditional use permit and being changed to a Type 2 facility. Our house lies between Park View and Bluebird assisted living facilities which are roughly 100 yards apart.

I want to share some first hand perspectives that address some of the impact this facility has on the immediate neighborhood. Per Sara at the planning department this impact is not written into the guidelines of the code, so it was not of consideration by the planning department.

The home has 2 off street parking spaces, which is mostly sufficient for the staff parking, and none of the residents require parking spaces. The issue that was not considered is the impact from the 13 current residents needing the support services brought to them. Some of these services include; medication delivery, oxygen delivery, home health, hospice nurses, nurse practitioners, mobile lab/imaging, and Great Falls transit services. The higher the occupancy at this facility, the greater the impact there will be in the immediate neighborhood from these service providers. This is compounded by the frequency of fire trucks and ambulances at the facility, per Mike at GF Fire Department, 154 calls since 2018.

The facility also lies right next to the walking path leading to Meadowlark Elementary. There is oftentimes a lot of congestion at this location when kids are going to and from school, or during events at the school. Often we see the support services trying to back out of the driveway at these same times, or emergency vehicles are trying to get to, or leave this residence. This creates a lot of traffic congestion and a potentially very dangerous situation for the kids and parents. Not to mention the potential delay in response time to the home.

I also found it interesting that Brian Patrick at GFPS provided a letter saying this has no impact on Meadowlark Elementary, but I question what research may have done before giving his statement. This change would not impact the school by adding any children, but it does affect a very high traffic location that is very important to the school. It was also brought to my attention that this home currently has a registered sexual offender with charges that were related to children.

I do believe Great Falls has a need for assisted living facilities, but I feel the proximity to the school and how close it is to the other assisted living facility (which uses the same supporting services) already puts a lot of strain on the neighborhood. It is my opinion that an approval of this request would compromise the integrity and character of this well established neighborhood. I ask that you deny this request.

Sincerely,

Kevin Taggart  
1100 23rd ave sw  
Great Falls, MT

**From:** [sldurkin@bresnan.net](mailto:sldurkin@bresnan.net) <[sldurkin@bresnan.net](mailto:sldurkin@bresnan.net)>

**Sent:** Monday, November 13, 2023 10:42 AM

**To:** Jamie Nygard <[jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net)>

**Subject:** Parkview Assisted Living Facility

To: All Planning Board/Zoning Commision and Staff

ie:Conditional use Permit Meeting for 2201 11th st SW GF, Mt

I am aware that the Board likes to see Public involvement and Public participation in there meetings. I believe the 6 homes that received the notice have all submitted a letter as opponents. All six cannot attend the meeting due to work schedules and I am in Arizona. There is Two Drs that couldn't change there appointment schedule, one pharmacist who cant leave work, one school teacher, stockbroker that has to be in Minneapolis, and the Electrical engineer that works in Wyoming. Our retired lady got in a small fender bender today so now she cant show up either and then there is me in Az. Please consider this as to why nobody showed up.

Sincerely, Steve and Lynne Durkin  
1101 23rd Ave SW  
Great Falls Mt. 59404  
406-788-7104

November 13, 2023 (Monday)

This response is to the Notice of Public Hearing at the Great Falls Planning Advisory Board/Zoning Commission on Tuesday, November 14, 2023 at 3:00 pm in the Commission Chambers, Room 206, Civic Center, 2 Part Drive, Great Falls, Montana. Said hearing is to consider a request from Annaliza Koczur, Park View Assisted Living.

My name is Jane Mart and I own my home/property located at 2209 11<sup>th</sup> St SW, Great Falls, MT 59404. I have resided here since December 7, 1978, which will be 45 years next month. My children, now adults, attended Meadowlark School from K-6.

I am opposed to this request for the following reason: the safety of elementary students attending Meadowlark Elementary School.

1. Monday through Friday during the school year and for other activities at the park adjacent to Meadowlark School, there is a line-up of vehicles to pick up and drop off students. Students – some not as tall as the vehicles, dart out to try to get to the vehicle that is there waiting for them. Vehicles are lined up on both sides of 11<sup>th</sup> St SW.
2. Many vehicles are not driving 30mph and less! There are no speed limit signs on 11 St SW.
3. There is no designated crosswalk; no attendants.
4. Weather is nice now. There are days when visibility is very low due to blowing snow, high wind, etc. Not good for children trying to get in/out of vehicles and off to school, on a very busy street.
5. Parking for picking up students is not adequate now, nor will it be adequate in the future if additional parking is required for the Park View Assisted Living facility.
6. Employee parking, vehicles picking up and/or delivering residents, medical supplies, etc., vehicles transporting the residents to/from medical and therapy appointments, are frequent. Ambulances and fire trucks are often required, 24/7. More residents and staff --more vehicles.
7. Employee smoking takes place alongside the southside of the building.
8. Visitor parking is not adequate for families and friends visiting residents, times of moving residents into or out of the facility, groups visiting for memorial services, relatives from out-of-town, etc. The groups may be small and/or the time of parking short; however, when students are being picked up or dropped off, the street becomes overcrowded and dangerous.

We need facilities like Park View Assisted Living. The Park View Assisted Living building and the attractive fencing, deck and the yard area, and the inside as well, is being kept up nicely; however, I believe that the Park View Assisted Living, with the additional traffic and considering the safety of elementary school children, would not be safe for the elementary school children.

Thank you.

*Jane Mart* 406-750-9247  
 2209 11 St SW  
 Great Falls, MT 59404

-----Original Message-----

From: Kevin Johnson <[kskejohnson@gmail.com](mailto:kskejohnson@gmail.com)>

Sent: Monday, November 13, 2023 2:43 PM

To: Jamie Nygard <[jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net)>

Subject: Conditional Use Permit - Type II Assisted Living Facility 2201 11th St SW

My name is Kevin Johnson, 1100 24th Ave SW, and have lived in the neighborhood that will be affected by an increase in occupancy of the Park View assisted living facility. The following are questions that I have regarding the CUP:

1. I notice that Park View Assisted Living is not registered with the Secretary of State in Montana. What is the legal name of the business? Should a formal approval for a change in use require the legal name of the entity that is applying for the CUP?
2. It was stated in the documents presented for the upcoming CUP that Park View was previously approved for an increase in occupancy to a Type II facility 12 residents and then to current occupancy of 14. When were these approvals granted? I've lived in the same home for 32 years and don't recall seeing a notice of a Planning Advisory Board meeting for these changes.
3. I noticed that there is a registered sexual offender - William Lauren Kitto - that lists the 2201 11th St SW address as his home. Is there any special training that is required to manage a high risk individual within the assisted living community? Given that the facility has a Type A license that requires minimal supervision, I am curious as to what measures have been undertaken regarding this situation. The letter written by the manager of the property indicates that they take in no violent individuals.
4. It is difficult to understand how a single family home in an area of Great Falls zoned R2 can handle the proposed 17 individuals that will be living in this home. Do all of the bedrooms in this home have more than one occupant? If so, what is the occupancy per bedroom? Are there any private rooms? How does this commercial property comply with the Americans With Disabilities (ADA) act? It appears that the majority of living space is on the second floor. Are there elevators located in the home? Because changes to the building are being made to accommodate additional residents, would the property require compliance with ADA? If there are barriers to access should these now be addressed?
5. I notice that a sprinkler system must be installed when the occupancy increases to 17. What is the City code for fire suppression? I'm surprised that a sprinkler system was not required when the occupancy increased to 14 or even 12.
6. I understand that currently none of the residents drive. Is it a requirement of the assisted living facility that no residents can drive?
7. Are CUP approvals grandfathered or would a new owner have to reapply upon a purchase of the business?
8. In a Type A assisted living facility there are no minimum staffing levels other than there must be one person on site 24 hours per day. At a minimum there could be just one staff member responsible for all residents. The application letter indicates that there are 8 employed for this facility. What are Park View's staffing requirements? What if the property were sold and the new owner had less stringent requirements?



9. When I looked on the State of Montana DPHHS site I noticed a more recent Administrative Rule of Montana Healthcare Facilities 37.106 sub chapter 28 -Assisted Living Facilities dated 9/24/2022. The document included in the package is from 2015. It seems that there are differences in the two documents. For example, there must be at least one toilet for every 4 residents. How many bathroom's will there be with 17 proposed residents? According to the 9/24/22 document this would indicate 5 separate toilet facilities. I see the appraisal for property tax purposes indicates only 3 baths and 6 bedrooms.

10. Changes in the number of facility beds requires the approval of DPHHS. Is there a formal approval in place?

Thank you for your time In reviewing these questions and my concerns regarding the business.



## Great Falls Public Schools

Director of Business Operations • 1100 4<sup>th</sup> Street South • P.O. Box 2429, Great Falls,  
MT 59403 • 406.268.6051 • Fax 406.268.6022 • [www.gfps.k12.mt.us](http://www.gfps.k12.mt.us)

December 8, 2023

City of Great Falls  
Great Falls Planning Advisory Board  
Attn: Brock Cherry  
PO Box 5021  
Great Falls, MT 59403

To Whom It May Concern,

Please consider this as a revised letter from Great Falls Public Schools regarding the Park View Assisted Living Permit Application. This property is located near Meadow Lark Elementary School. The school district has concerns about increased traffic in the vicinity of the school as it is located on a busy street, and it is our understanding that the City of Great Falls will be conducting a traffic study on this area because the increased traffic has an impact on the safety of students before and after school. In our first correspondence on this issue, we indicated that *"There may be a slight increase in traffic by Meadow Lark Elementary school, but not be significant enough for the school district to be concerned about."* We would like to review the results of the traffic study before deciding on the impact that traffic from this facility would have on the school. Our concern also lies with the ability of emergency vehicles to access the school building.

The District also has concerns about any registered sex offenders who may have the option or may be living in the facility. Due to the proximity to the school building, this situation would be considered as a potential threat to our students.

Sincerely,

A handwritten signature in black ink that reads "Brian Patrick".

Brian Patrick  
Director of Business Operations  
Great Falls Public Schools



Commission Meeting Date: April 16, 2024  
**CITY OF GREAT FALLS**  
**COMMISSION AGENDA REPORT**

**Item:** Resolution 10545 - Conditional Use Permit (CUP) to allow handling of a hazardous substance, hydrogen sulfide (H<sub>2</sub>S), which is listed as an ingredient of asphalt, for the property addressed as 6501 18th Ave N and legally described as Lot 6A of AgriTech Park Addition, SW ¼ SE ¼ of Section 34, T21N, R4E, P.M.M., City of Great Falls, Cascade County, Montana.

**From:** Lonnie Hill, Deputy Director, Planning and Community Development

**Initiated By:** Ponderosa Solutions LLC

**Presented By:** Brock Cherry, Director, Planning and Community Development

**Action Requested:** City Commission adopt Resolution 10545

**Public Hearing:**

1. Mayor conducts public hearing, pursuant to OCCGF 1.2.050 and Title 17, Chapter 16, Article 6.
2. Mayor closes public hearing and asks the will of the Commission.

**Suggested Motion:**

1. Commissioner moves:
 

“I move that the City Commission (adopt/not adopt) Resolution 10545 subject to the Conditions of Approval being fulfilled by the applicant.”
2. Mayor requests a second to the motion, Commission discussion, and calls for the vote.

**Zoning Commission, Neighborhood Council & Staff Recommendation:**

At the conclusion of a public hearing held on March 26, 2024, the Zoning Commission unanimously voted 5-0 to recommend that the City Commission approve the applicant’s request for a Conditional Use Permit (CUP) for the handling of hazardous substances on the subject property legally described above. Further, Neighborhood Council #4 on March 28<sup>th</sup>, 2024, voted 4 with 1 abstention, supporting the proposed CUP.

Additionally, Staff recommends approval with the following conditions:

**Conditions of Approval:**

1. **Modifications:** It is understood that minor changes are often necessary during the development and operation of a conditional use. The Administrator (the Administrator is the City employee

assigned by the City Manager to administer conditional uses) is hereby authorized to permit minor changes, as provided below.

2. **Changes in Use:** Conditional uses are regulated as such because the use presents the possibility of significant impacts on the community. Therefore, changes in conditional uses must be strictly limited. A significant change in the type or level of activity, including changes in the number of employees or operating hours, or changes in the types of materials present on the site, may void the conditional use permit. Proposed changes shall be submitted to the Administrator, who may require that the permit be amended following the same public process used for its adoption.
3. **Expiration:** The conditional use permit shall expire one (1) year after the date of issuance, if the operation has not been established for the applicant's request. The Administrator may extend the expiration date by up to one year if substantial work is ongoing.
4. **Abandonment:** If a conditional use ceases to operate for more than six (6) months, the conditional use permit is void.
5. **Chemicals:** The applicant is specifically approved for handling hydrogen sulfide (H<sub>2</sub>S). Handling of any other hazardous substance will require a new public review and permitting process for such changes.
6. **Emergency Management Plan:** An Emergency Management Plan shall be updated and approved by the Great Falls Fire Department before operation of the transloading facility commences. This plan shall be reviewed annually at the time the applicant renews its Safety Inspection Certificate (SIC) and revised as necessary to ensure compliance with the City's adopted fire code and other applicable regulations following a public hearing held on March 26, 2024, the Zoning Commission has unanimously recommended, with a vote of 5-0, that the City Commission approve the applicant's request for a Conditional Use Permit for the handling of hazardous substances on the above-mentioned property with a legal description..
7. **Spill Prevention and Control Plan:** The applicant shall review and update if necessary the Spill Prevention and Control Plan, in accordance with the requirements under OCCGF 13.12.080.G.3 to the Director of Public Works for review and approval before operation of the transloading facility commences.
8. **Industrial Wastewater Survey:** The applicant shall provide an updated Industrial Wastewater Survey to the Director of Public Works for review and approval as product inventory changes.
9. **Acceptance of Conditions:** The amendment will not go into effect until the applicant acknowledges in writing that it has received, understands, and agrees to comply with these conditions of approval.

**Background:**

On October 2, 2012, the City Commission adopted Resolution 9993 for annexation and approved Ordinance 3097 to assign the PUD zoning classification to AgriTech Park Addition. The entire AgriTech Park measures roughly 196.5 acres, of which roughly 193.7 acres are proposed to be industrial lots. AgriTech Park was developed as a rail-served heavy industrial park and serves as the only "shovel-ready" rail-served lots within the City limits.

The applicant, Ponderosa Solutions LLC, is looking to develop Lot 6A, located near the intersection of 18<sup>th</sup> Ave N and 67<sup>th</sup> St N and shown on *Exhibit B – Aerial Map*. Ponderosa Solutions LLC has been providing transloading services across the US for over 15 years, according to their application. They anticipate the facility will provide transloading of asphalt, steel, lumber, building materials, livestock feed, aggregates, and packaged goods.

Specifically, the process of transloading asphalt involves loaded delivery trucks arriving on site and parking alongside a transloader positioned next to an empty rail car. The transloader pumps the asphalt product from the truck into the railcar. The applicant states that asphalt is non-penetrating, non-flammable, and non-combustible, and therefore, it is low-risk when handling.

The application states that during peak season, the development will have roughly ten employees on-site and can be expected to generate an estimated 20 trips each day. In addition, according to the applicant, the facility is anticipated to process an average of fifteen truck deliveries each day, generating 30 truck trips. In total, the development can be expected to generate an estimated 50 daily trips.

### **Conditional Use Request:**

Chapter 20 of Title 17 of the Official Code of the City of Great Falls (OCCGF) requires a Conditional Use process before permitting a land use proposal that involves the handling of hazardous materials, among other potentially dangerous or offensive activities. Specifically, Section 17.20.3.060 states, “a permitted land use that emits air contaminants or potentially offensive odors outside of the building, or that handles radioactive materials, hazardous substances, hazardous waste, or regulated substances shall be considered a conditional use in every circumstance.” Because the EPA lists hydrogen sulfide (H<sub>2</sub>S) as a hazardous substance, a conditional use permit is required to allow the transload facility to handle asphalt.

### **2013 Growth Policy Update Analysis:**

Staff has reviewed the City’s 2013 Growth Policy Update and has concluded the Growth Policy supports the proposed conditional use to handle asphalt as part of a transloading facility. Specifically, on page 155, the Growth Policy states an economic policy to, “Continue efforts to expand, retain and attract new business to Great Falls.” Additionally, on page 164, the Growth policy states a physical policy that states, “Implement the City’s land use codes to protect the health, safety, and welfare of its residence.

The basis of decision for a conditional use permit is listed in OCCGF §17.16.36.040. The Conditional Use Permit process prescribes a public decision-making process to consider whether land use not otherwise permitted by the City Code can fit into its locational setting and identify if any additional conditions are required for the request. The recommended list of additional conditions for this request are listed as “Conditions of Approval” at the end of this report.

The Zoning Commission's recommendation and the City Commission's decision to approve, conditionally approve, or deny an application shall, at a minimum, consider the criteria which are attached as *Attachment A – Basis of Decision - Conditional Use*.

### **Fiscal Impact:**

Approval of the Conditional Use Permit will allow the applicant to establish a transloading facility that provides transloading services for several industries. The developer will pay for the cost of site improvements, including any utility services. The development of the subject property will increase the City’s tax base and revenue and potentially attract other industrial users needing transloading services.

**Alternatives:**

The City Commission could deny the conditional use permit requested by the applicant. For this action, the City Commission must provide alternative Finding of Fact/Basis of Decision to support a denial of the request.

**Concurrences:**

Representatives from the City's Public Works and Fire Departments have been involved with this application's review. All comments have been considered for the recommendation and conditions of the project.

**Attachments/Exhibits:**

- Resolution 10545
- Attachment A - Basis of Decision – Conditional Use Permit
- Attachment B - Aerial Map
- Attachment C - Zoning Map
- Attachment D - Applicant's Narrative
- Attachment E - Applicant's Preliminary Engineering Plans

RESOLUTION 10545

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE HANDLING OF A HAZARDOUS SUBSTANCE, HYDROGEN SULFIDE (H2S), WHICH IS LISTED AS AN INGREDIENT OF ASPHALT, ON THE PROPERTY ADDRESSED AS 6501 18<sup>TH</sup> AVENUE NORTH, AND LEGALLY DESCRIBED AS LOT 6A OF AGRITECH PARK ADDITION, SW ¼ SE ¼ OF SECTION 34, TOWNSHIP 21 NORTH, RANGE 4 EAST, P.M.M, CASCADE COUNTY, MONTANA.

\* \* \* \* \*

WHEREAS, Ponderosa Solutions LLC, has petitioned the City of Great Falls for a Conditional Use Permit to allow for the handling of hazardous substance, hydrogen sulfide (H2S), on the property legally described as Lot 6A, AgriTech Park Addition, SW ¼ SE ¼ of Section 34, Township 21 North, Range 4 East, P.M.M., Cascade County, Montana; and,

WHEREAS, the subject property is presently within a PUD Planned Unit Development zoning district with an underlying I-2 Heavy Industrial zoning district wherein the handling of hazardous substances is permitted upon processing and approval of a Conditional Use Permit; and,

WHEREAS, the proposed Conditional Use Permit for the handling of hazardous substances on said property meets the Basis of Decision requirements in the Official Code of the City of Great Falls Section 17.16.36.040; and,

WHEREAS, the Great Falls Zoning Commission conducted a public hearing on March 26<sup>th</sup>, 2024, to consider said Conditional Use Permit application, and at the conclusion of said hearing passed a motion recommending a Conditional Use Permit be granted for the property addressed as 6501 18<sup>th</sup> Avenue North and legally described as Lot 6A, AgriTech Park Addition, SW ¼ SE ¼ of Section 34, Township 21 North, Range 4 East, P.M.M., Cascade County, Montana, to allow for the handling of hydrogen sulfide (H2S) on site, subject to the following conditions:

**Conditions of Approval:**

- 1. Modifications:** It is understood that minor changes are often necessary during the development and operation of a conditional use. The Administrator (the

Administrator is the City employee assigned by the City Manager to administer conditional uses) is hereby authorized to permit minor changes, as provided below.

2. **Changes in Use:** Conditional uses are regulated as such because the use presents the possibility of significant impacts on the community. Therefore, changes in conditional uses must be strictly limited. A significant change in the type or level of activity, including changes in the number of employees or operating hours, or changes in the types of materials present on the site, may void the conditional use permit. Proposed changes shall be submitted to the Administrator, who may require that the permit be amended following the same public process used for its adoption.
3. **Expiration:** The conditional use permit shall expire one (1) year after the date of issuance, if the operation has not been established for the applicant's request. The Administrator may extend the expiration date by up to one year if substantial work is ongoing.
4. **Abandonment:** If a conditional use ceases to operate for more than six (6) months, the conditional use permit is void.
5. **Chemicals:** The applicant is specifically approved for handling hydrogen sulfide (H<sub>2</sub>S). Handling of any other hazardous substance will require a new public review and permitting process for such changes.
6. **Emergency Management Plan:** An Emergency Management Plan shall be updated and approved by the Great Falls Fire Department before operation of the transloading facility commences. This plan shall be reviewed annually at the time the applicant renews its Safety Inspection Certificate (SIC) and revised as necessary to ensure compliance with the City's adopted fire code and other applicable regulations.
7. **Spill Prevention and Control Plan:** The applicant shall review and update if necessary the Spill Prevention and Control Plan, in accordance with the requirements under OCCGF 13.12.080.G.3 to the Director of Public Works for review and approval before operation of the transloading facility commences.
8. **Industrial Wastewater Survey:** The applicant shall provide an updated Industrial Wastewater Survey to the Director of Public Works for review and approval as product inventory changes.
9. **Acceptance of Conditions:** The amendment will not go into effect until the applicant acknowledges in writing that it has received, understands, and agrees to comply with these conditions of approval.

WHEREAS, the City Commission having allowed for proper public notice, conducted a



public hearing to consider said application, and considered the comments and recommendations made by the Zoning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

That a Conditional Use Permit be granted to allow for the handling of hydrogen sulfide (H2S) on site for the property addressed as 6501 18<sup>th</sup> Avenue North and legally described as Lot 6A, AgriTech Park Addition, SW ¼ SE ¼ of Section 34, Township 21 North, Range 4 East, P.M.M., Cascade County, Montana, conditioned upon the owner complying with the conditions listed herein; and,

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that, pursuant to the Official Code of the City of Great Falls (OCCGF) 17.16.36.090, the permit shall be considered a covenant that runs with the land and shall be binding on all subsequent property owners. Additionally, pursuant to OCCGF 17.16.36.100, the Conditional Use Permit shall expire one (1) year after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. If the Conditional Use is established, but ceases to operate for more than six (6) months, the Conditional Use Permit shall expire.

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that this Resolution shall become effective immediately upon its passage and approval.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on April 16, 2024.

\_\_\_\_\_  
Cory Reeves, Mayor

ATTEST:

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

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David Dennis, City Attorney

## ATTACHMENT A

**CONDITIONAL USE PERMIT - BASIS OF DECISION**

The applicant is requesting the approval of a Conditional Use Permit (CUP) for Ponderosa Solutions LLC at 6501 18th Ave N to allow handling of a hazardous substance, hydrogen sulfide (H<sub>2</sub>S), which is listed as an ingredient of asphalt.

**PRIMARY REVIEW CRITERIA:**

The basis for decision for a conditional use permit is listed in OCCGF §17.16.36.040. The Zoning Commission's recommendation and the City Commission's decision to approve, conditionally approve, or deny an application shall be based on whether the application, staff report, public hearing, Zoning Commission recommendation, or additional information demonstrates that the decision of City Commission shall at a minimum consider the following criteria:

**1. The zoning and conditional use is consistent with the City's Growth Policy and applicable neighborhood plans, if any.**

The proposed conditional use is consistent with the overall intent and purpose of the 2013 City of Great Falls Growth Policy Update. This project and amendment is strongly supported by the following Economic and Physical portions of the Growth Policy.

Economic Policy 3.4 (page 155): Continue efforts to expand, retain and attract new business to Great Falls.

Physical Policy 4.2 (page 164): Implement the City's land use codes to protect the health, safety and welfare of its residents.

**2. The establishment, maintenance, or operation of the conditional use will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare.**

The CUP allows the City to review the proposed project and place appropriate conditions on the specific project to help mitigate or reduce the total off-site impacts a project may have on the surrounding properties and environment. The conditions listed under the Conditions of Approval apply specific measures to protect the health, safety, and general welfare of the public.

**3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.**

The proposed project is within an approved industrial park that was designed to accommodate heavy industrial uses. The surrounding properties have similar heavy industrial uses. The proposed project will meet all the development standards in the PUD Ordinance and underlying I-2 zoning district. The conditions imposed on the project should mitigate any potential harmful effects on Giant Springs State Park and nearby environmentally sensitive areas.

**4. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.**

**ATTACHMENT A**

The conditions of approval are proposed to minimize all effects on the surrounding area to be developed.

**5. Adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.**

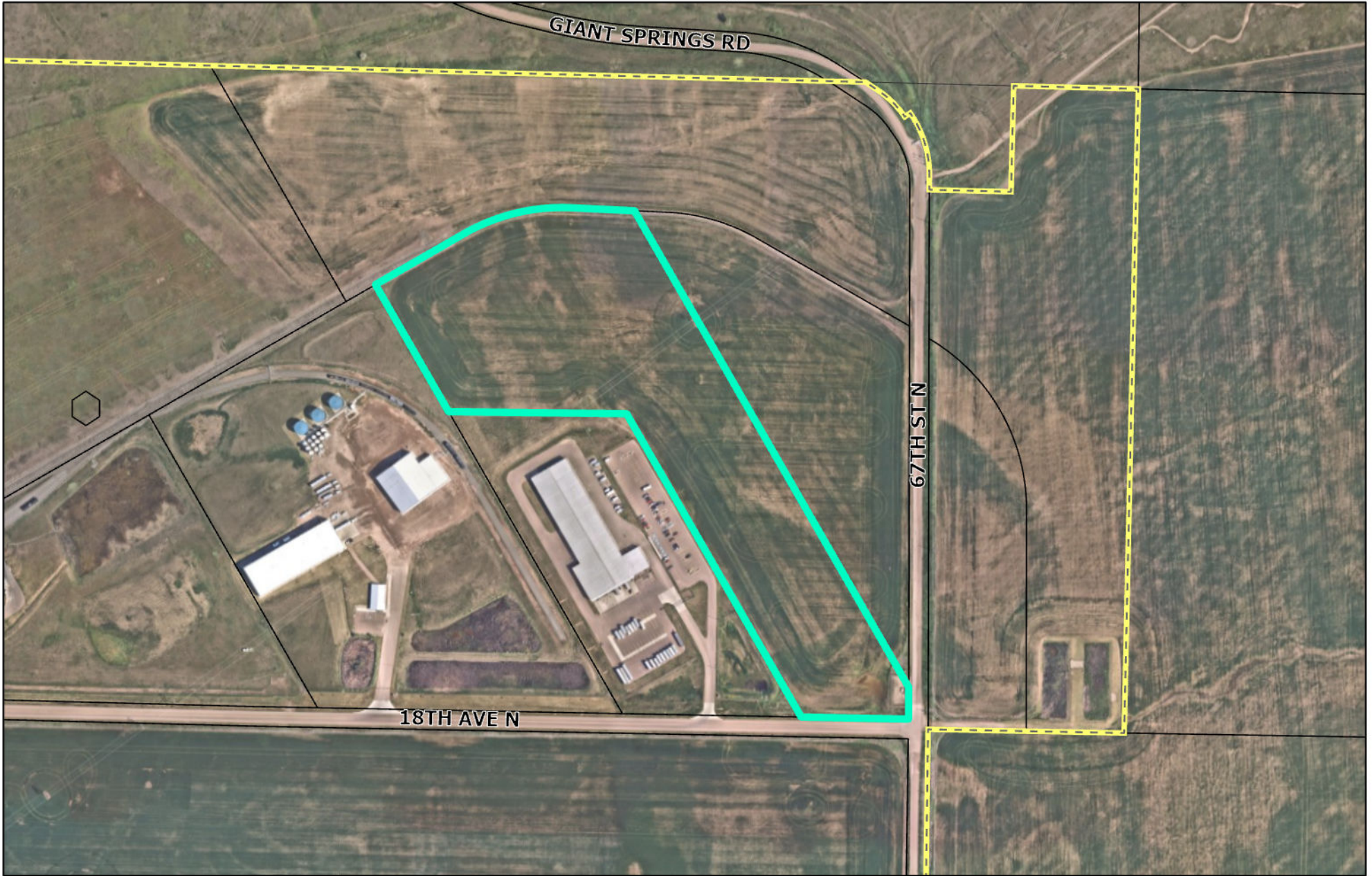
Construction of the facility will go through the City's permitting process which will ensure all adequate utilities, access roads, and drainage will be provided.

**6. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.**

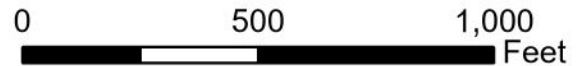
Ingress and egress to the proposed facility can be served through the existing rail line to the north and vehicular access to 18<sup>th</sup> Avenue North.

**7. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the City Commission.**

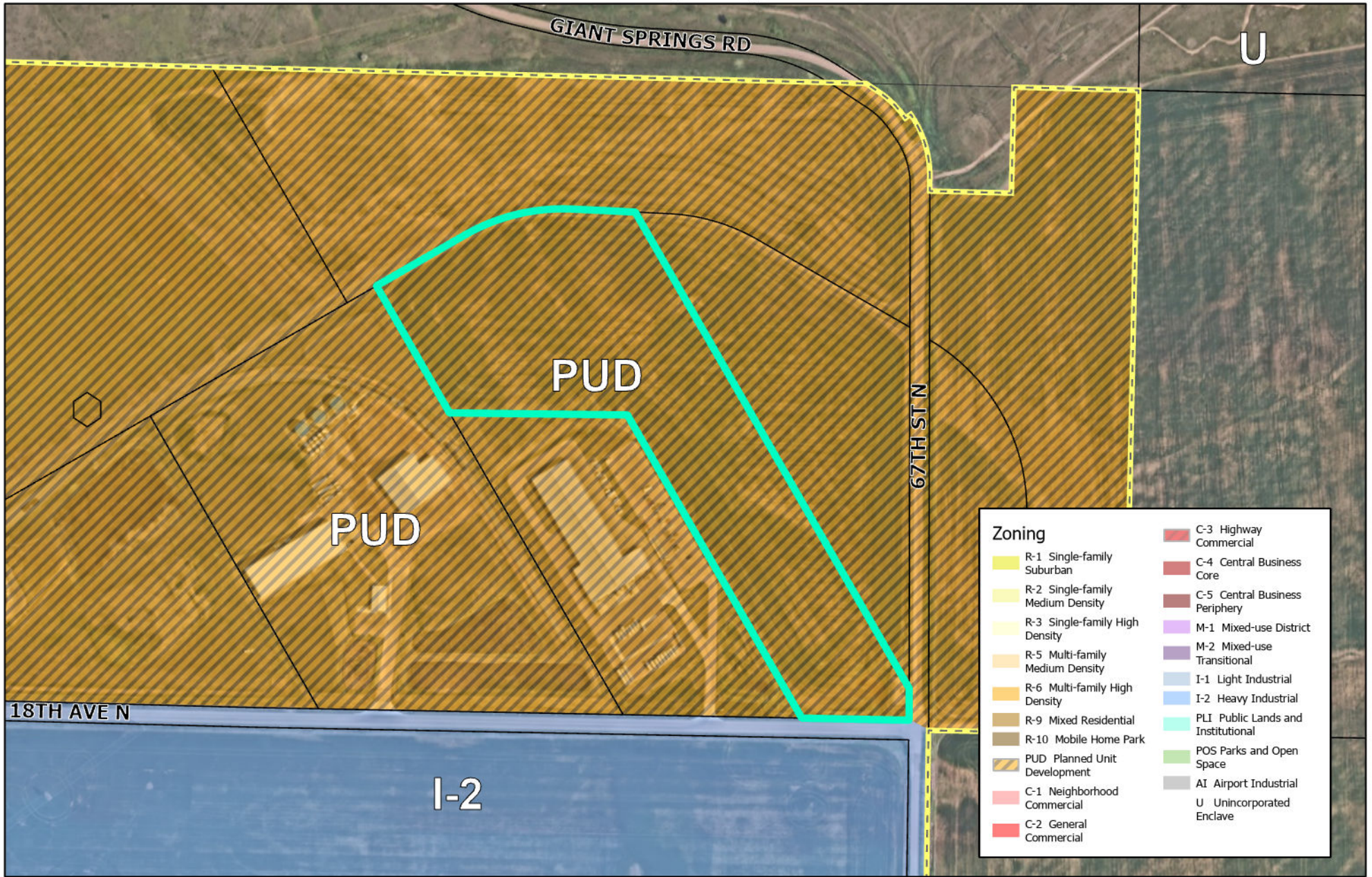
The proposed project will conform to the applicable regulations of the PUD Ordinance and underlying I-2 zoning district and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.



-  City Limit
-  Parcels
-  Subject Property - 6501 18th Ave N



# Zoning Map



City Limit

Parcels

Subject Property - 6501 18th Ave N



## ATTACHMENT D



Project Name: Great Falls Transload Terminal

Developer/Owner: Ponderosa Solutions LLC (F.K.A. Ponderosa Petroleum LLC)

### Project Description

At the request of existing Great Falls businesses, Ponderosa Solutions is proposing a multi-product transload facility to meet existing and increasing demand. Transload facilities provide a valuable service in the supply chain of moving goods from rail to truck and vice versa. Many area businesses do not have rail services and currently there is no commercial transloading site for them to utilize, leaving them dependent on one mode of transportation - trucking. Transportation and logistics costs in our region remain higher than other markets due to our location and the limited transportation options. By offering this much needed service, Ponderosa hopes to reduce regional transportation and logistics costs to area businesses and meet their demands.

At the proposed facility on Lot 6A in the Agritech Park of Great Falls, MT at 6501 18<sup>th</sup> Avenue North, Ponderosa will offer transloading and miscellaneous rail services to local customers.

Examples of transload commodities that have been requested by local businesses include:

- Asphalt
- Steel
- Lumber
- Drywall and other building materials
- Grains for livestock feed
- Aggregates
- and packaged goods that include food and merchandise

In addition, Ponderosa Solutions will be able to offer other common transload rail services that may include graffiti cleaning, stencil repairs, railcar heating, railcar cleaning, equipment repair and maintenance, short term railcar storage, etc.

Ponderosa has been providing a host of transloading services across the US for over 15 years. Transloading involves a variety of tools depending on the commodity. Transloading non-liquid goods can be performed using equipment such as forklifts, telehandlers, bucket loaders, grain augers, and conveyors. Transloading liquid goods is performed using well vetted custom pumping systems on mobile transload trucks.

Ponderosa Solutions can handle the routine commodities and specializes in handling the most difficult and unique commodities including high viscosity liquids.

As with most projects, this project started with an anchor customer requesting service and has expanded when the regional demand was established. The first phase of the project is to meet the demands of the anchor customer.

The anchor customer needs asphalt to be transloaded from tanker trucks to railcars at the proposed facility. Truck to railcar asphalt transloading will be performed using mobile transloaders. These are truck-mounted platforms with the pumps, piping, hoses, and controls to safely move products between tanker trucks and tanker rail cars.

For asphalt transloading, loaded delivery trucks will arrive onsite and park alongside the transloader which will be positioned next to an empty railcar. The truck will connect to the transloader with a hose, and the transloader will pump product from the truck into the railcar. Transloaders are equipped with redundant overfill protection devices which shut off the pump and sound an alarm when the railcar is near full to ensure the proper amount is distributed and avoid any spills.

Considering asphalt is non-penetrating, non-flammable, and non-combustible, it presents an inherently low risk when handling. The product being transferred is the same asphalt being used to pave roads throughout the City of Great Falls on a daily basis. Ponderosa does not anticipate that the operations of the facility will generate any waste or uncontrolled spills of asphalt. Over our 15 years in this industry, Ponderosa Solutions has established the highest of industry standards and implements thorough Spill Response and Prevention Plans (SPRP). Should a spill occur, it will be properly contained and remediated to ensure there is no hazardous impact to our employees or our surrounding community.

### **Reason for Request of Conditional Use Permit**

While asphalt is widely utilized in all our roads, asphalt by its nature contains very trace amounts of the byproduct Hydrogen Sulfide (H<sub>2</sub>S) at concentrations less than 0.1% in the form of a gaseous substance. When H<sub>2</sub>S is released from asphalt to the atmosphere at such low concentrations, it dissipates immediately posing negligible exposure concerns. In our other facilities we have not had to submit conditional use permit requests as asphalt is not deemed hazardous because the H<sub>2</sub>S is in such low concentration. In the City of Great Falls code OCCGF 17.20.3.060 - Certain land uses shown as permitted may be a conditional use, “A permitted land use[...] that emits air contaminants or potentially offensive odors outside of the building, or that handles radioactive materials, hazardous substances, hazardous waste, or regulated substances shall be considered a conditional use **in every circumstance.**” Thus, the presence of H<sub>2</sub>S, ‘in every circumstance’ no matter the quantity or form, requires a Conditional Use Permit if it is to be handled.



### **Proposed Development**

The development will meet the previously agreed upon development conditions as set forth in the existing AgriTech Park development agreement.

Phase 1 of the facility construction will include the installation of 3 rail tracks (Tracks C, D, and E), an office building, retention pond, parking lot, site lighting, perimeter fencing, access roads to the rail tracks, and landscaping. Phase 2 construction allows for 2 more rail tracks (Tracks A and B) and their service roads to be built when the capacity is needed. Phase 3, which is not depicted on the site map, could include expansion of any of these facilities. Generally, an expansion of the existing facilities would include adding railcar access platforms, adding equipment to transload a new commodity, and/or building new rail spurs.

### **Outdoor Lighting**

The facility will utilize lighting that is shielded and oriented in a manner to illuminate the intended area as in accordance with the existing AgriTech Park development agreement. The lighting design is specified in the drawings below and will comply with Chapter 40 of the City code.

### **Stormwater Facilities**

The site plan proposes the installation of one retention pond at the Southeast corner of the property and will meet the existing AgriTech Park development agreement. The total capacity and location is being determined by a professional civil engineer to meet the set standards.

### **Setbacks**

The proposed facility has the following depicted setbacks:

North: 205 ft  
 East: 72 ft  
 South: 94 ft  
 West: 67 ft

### **Height of Buildings**

Office – 20' peak height

### **Estimated Truck Trips**

Ponderosa anticipates an average 10 trips per day for operations staff. Delivery truck trips are estimated at an average of 15 per day over the course of the year. Truck traffic will consist of MT DOT legal trucks (80,000 GVWR).

## Operational Hours

24/7

## Number of Employees

Ponderosa will employ an average of 8 employees throughout the year.

## Existing Land Uses Nearby:



Pacific Steel and Recycling: “Pacific offers new steel sales, a wide variety of processing services for our customers to prepare their steel and agricultural steel products. We deal in Scrap, Commercial & Consumer and Electronics Recycling. Learn more about the large variety of items we handle.” ([website](#))

Montana Specialty Mills: “Our new, state-of-the-art crush plant and refinery represents a firm investment in Montana agriculture. Located along the Missouri River in Great Falls, this facility is focused on processing specialty oilseeds. Our Great Falls plant has the capability to load product into railcars, bulk trucks, and totes. This facility is designed to process identity-preserved crops, and we offer a wide variety of products and toll processing services.” ([website](#))

Helena Chemical: “Helena offers virtually every input that is used in production agriculture. This includes fertilizer, seed, crop protectants and many other products.” ([website](#))

FedEx: Shipping distribution center. ([website](#))

## **Governing agencies**

OSHA  
EPA  
DOT  
FRA  
DHS  
Montana DEQ

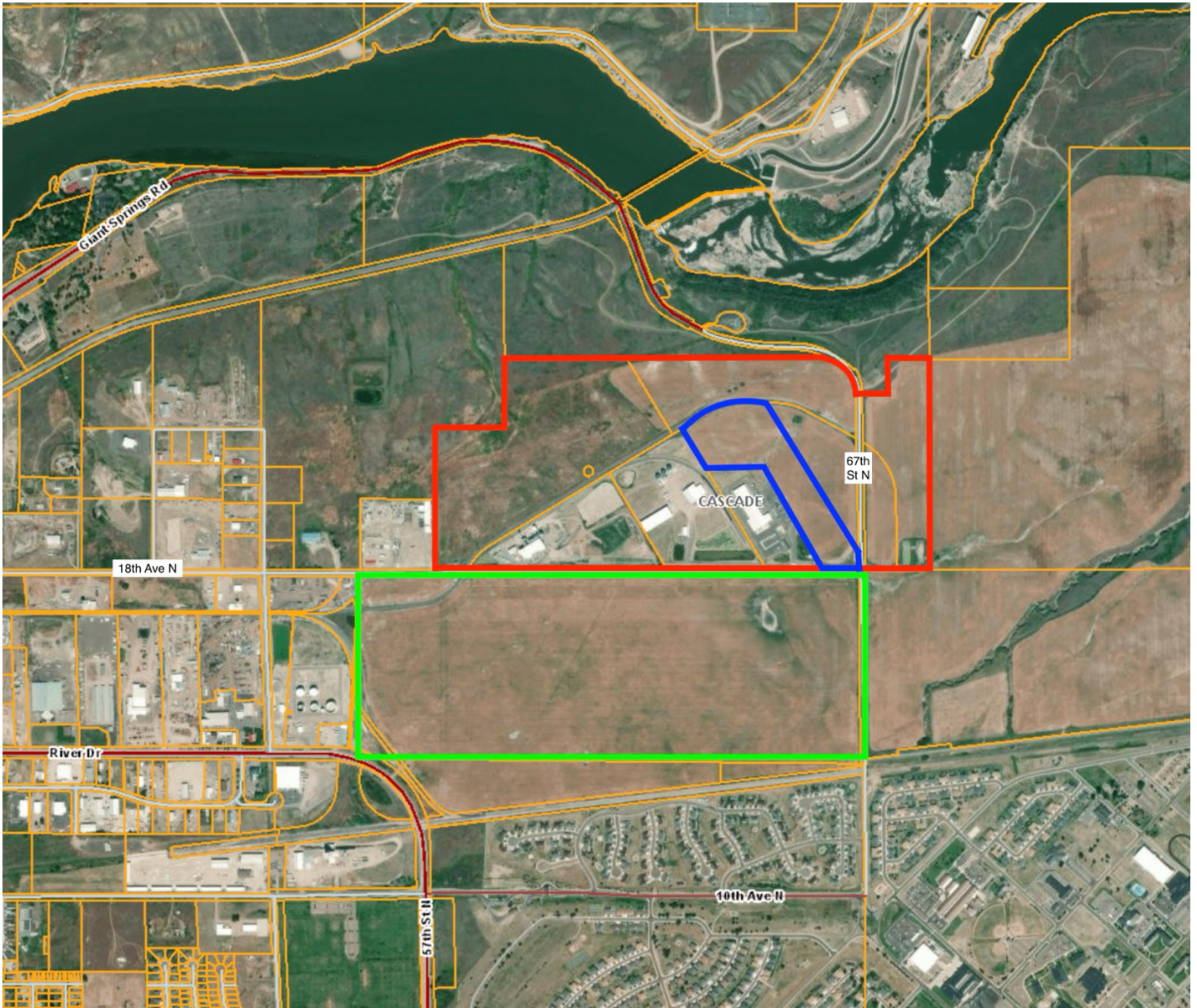
## **Additional Regulatory Compliance**




Air Quality Permit (Administrative Rules of Montana (ARM), Title 17 – Environmental Quality, Chapter 8 – Air Quality; Prevention of Significant Deterioration (PSD), Title V, or Federal Air Pollutant (HAP))

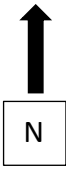
BNSF Guidelines for Industry Track Projects

Spill Prevention and Response Plans (SPRP) – also known as Spill Prevention, Control, and Countermeasure (SPCC) (EPA, Oil Pollution Act amendment to the Clean Water Act)

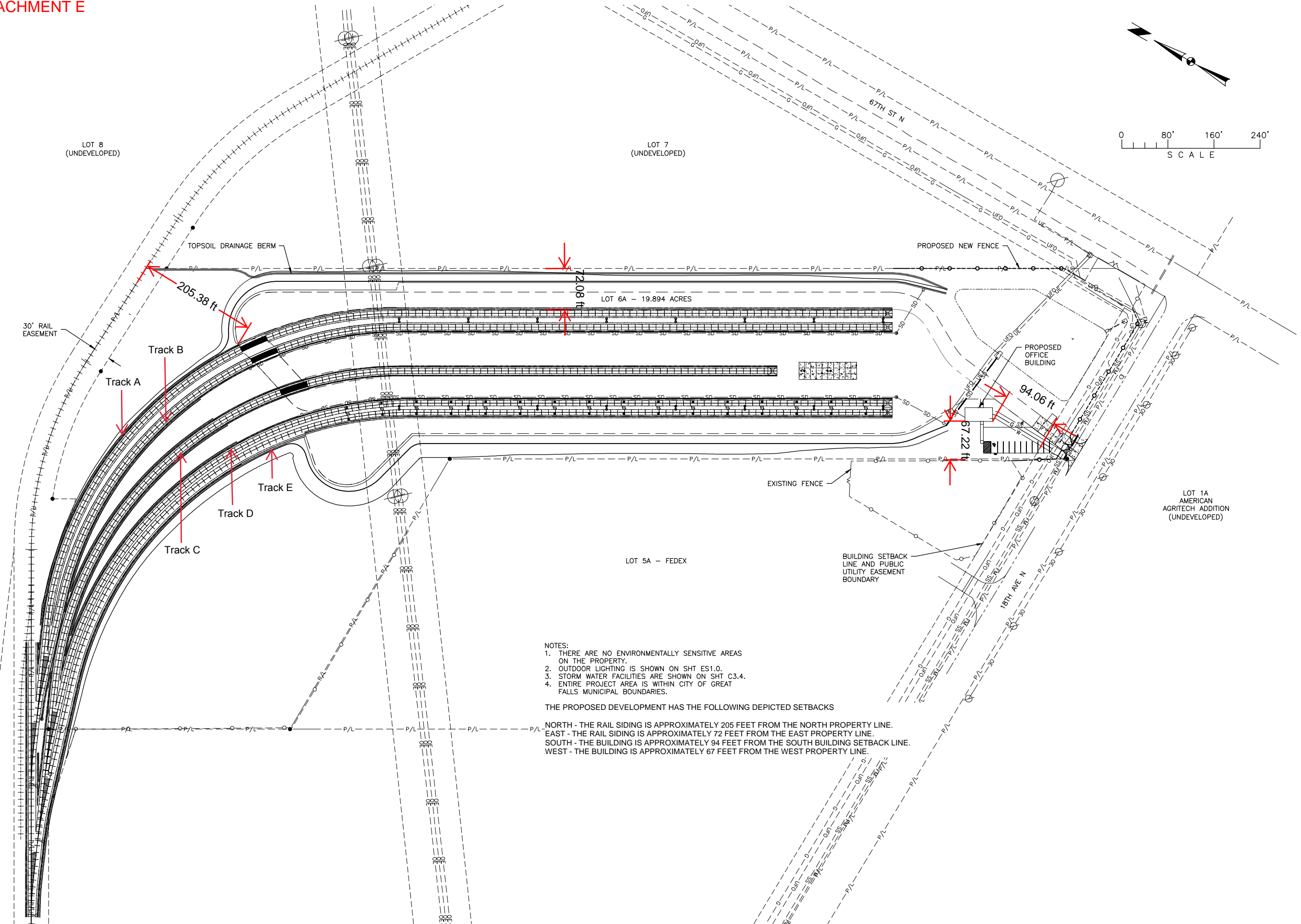
### Aerial Map



-  Subject Property
-  Agritech Park Subdivision
-  I-2 Zoned Development Area



PRINTED 2024-03-04, BY JOSEPH E. MATTER, I:\GTF\2023\23-059 PONDEROSA RAIL\06\_CADD\CIVIL\FIGURES\CONDITIONAL USE PERMIT\23-059 CUP LAYOUT.DWG



- NOTES:
1. THERE ARE NO ENVIRONMENTALLY SENSITIVE AREAS ON THE PROPERTY.
  2. OUTDOOR LIGHTING IS SHOWN ON SHT ES1.0.
  3. STORM WATER FACILITIES ARE SHOWN ON SHT C3.4.
  4. ENTIRE PROJECT AREA IS WITHIN CITY OF GREAT FALLS MUNICIPAL BOUNDARIES.

THE PROPOSED DEVELOPMENT HAS THE FOLLOWING DEPICTED SETBACKS

NORTH - THE RAIL SIDING IS APPROXIMATELY 205 FEET FROM THE NORTH PROPERTY LINE.  
 EAST - THE RAIL SIDING IS APPROXIMATELY 72 FEET FROM THE EAST PROPERTY LINE.  
 SOUTH - THE BUILDING IS APPROXIMATELY 94 FEET FROM THE SOUTH BUILDING SETBACK LINE.  
 WEST - THE BUILDING IS APPROXIMATELY 67 FEET FROM THE WEST PROPERTY LINE.

REV	DATE	REVISION

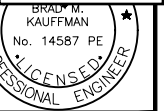


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 DATE:  
 JOB NO.  
 FIELDBOOK

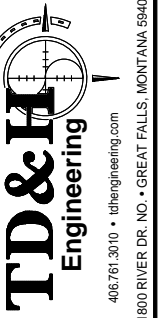
GREAT FALLS TRANSLOAD IN THE AGRITECH PARK  
 PONDEROSA SOLUTIONS  
 3/14/24  
 TD&H ENGINEERING  
 LOT 6A, AGRITECH PARK ADDITION





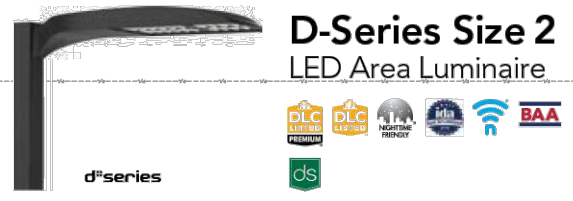
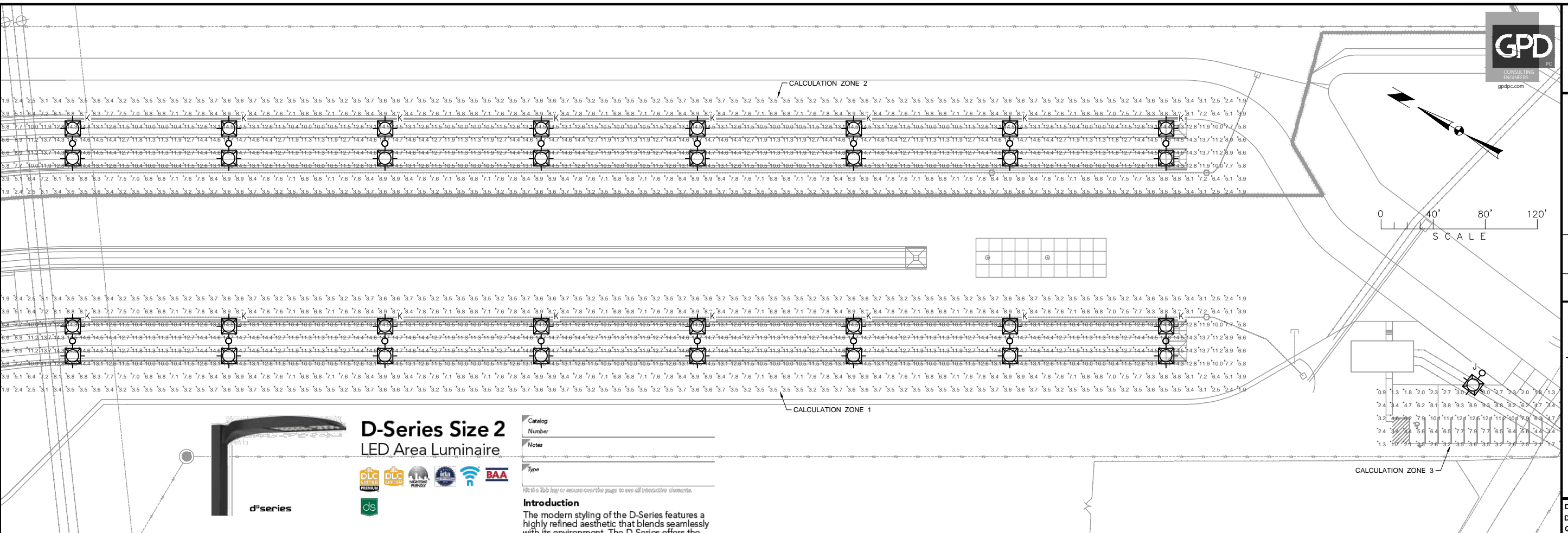


REV	DATE	REVISION

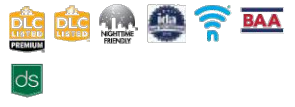


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 DESIGNED BY: BMK  
 QUALITY CHECK: GPD  
 DATE: 03-01-2024  
 JOB NO. 23-059  
 FIELDBOOK

GREAT FALLS TRANSLAND IN THE AGRITECH PARK  
 PONDEROSA SOLUTIONS  
 3/4/24  
 TD&H ENGINEERING  
 LOT 6A, AGRITECH PARK ADDITION

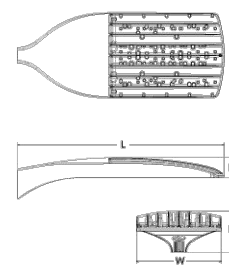


### D-Series Size 2 LED Area Luminaire



#### Specifications

**EPA:** 1.06 ft<sup>2</sup> (0.10m<sup>2</sup>)  
**Length:** 40.59" (103.1cm)  
**Width:** 16.76" (42.6cm)  
**Height H1:** 8.11" (20.6cm)  
**Height H2:** 3.96" (10.1cm)  
**Weight:** 46 lbs (20.9 kg)



Catalog Number	Notes	Type

**Introduction**  
 The modern styling of the D-Series features a highly refined aesthetic that blends seamlessly with its environment. The D-Series offers the benefits of the latest in LED technology into a high performance, high efficacy, long-life luminaire.  
 The outstanding photometric performance results in sites with excellent uniformity, greater pole spacing and lower power density. D-Series outstanding photometry aids in reducing the number of poles required in area lighting applications with typical energy savings of up to 80% vs. 1000W HID and expected service life of over 100,000 hours.

Items marked by a shaded background qualify for the Design Select program and ship in 15 days or less. To learn more about Design Select, visit [www.aaculitybrands.com/designselect](http://www.aaculitybrands.com/designselect).  
 \*See ordering tree for details.

#### Lighting Calculation Statistics

Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
Calc Zone 1 & 2	+	9.0 fc	14.7 fc	1.9 fc	7.7:1	4.7:1
Calc Zone 3	+	4.9 fc	12.5 fc	0.9 fc	13.9:1	5.4:1

#### GENERAL SHEET NOTES:

- THIS SHEET IS FOR THE PURPOSE OF SHOWING COMPLIANCE WITH THE CITY OF GREAT FALLS LIGHTING ORDINANCE AND IS FOR REFERENCE ONLY.
- NOTE THAT ALL 3 LIGHTING CALCULATION ZONES MEET CITY REQUIREMENTS FOR MAXIMUM AVERAGE LIGHT LEVEL AND AVERAGE TO MINIMUM RATIO REQUIREMENTS.
- LIGHTING CALCULATION ZONES 1 AND 2 ARE ALLOWED A MAXIMUM AVERAGE LIGHT LEVEL OF 10 FOOT CANDLES (INDUSTRIAL LOADING/UNLOADING AREA).
- LIGHTING CALCULATION ZONE 3 IS ALLOWED A MAXIMUM AVERAGE LIGHT LEVEL OF 5 FOOT CANDLES (COMMERCIAL PARKING LOT).
- ALL CALCULATION ZONES MEET THE CITY REQUIREMENTS FOR AN AVERAGE TO MINIMUM LIGHTING LEVEL RATIO OF 6:1 OR BETTER.

#### Ordering Information

Series	LEDs	Color temperature	Color Rendering Index <sup>1</sup>	Distribution	Voltage	Mounting
<b>DSX2 LED</b>	<b>Forward optics</b> P1 P5 P2 P6 P3 P7 P4 P8 <b>Rotated optics</b> P10 <sup>1</sup> P13 <sup>1</sup> P11 <sup>1</sup> P14 <sup>1</sup> P12 <sup>1</sup>	(this section 70CRI only) 30K 3000K 40K 4000K 50K 5000K (this section 80CRI only, extended lead times apply) 27K 2700K 30K 3000K 35K 3500K 40K 4000K 50K 5000K	70CRI 70CRI 70CRI 80CRI 80CRI 80CRI 80CRI	AFR Automotive front row T5S Type I short T2M Type II medium T3L6 Type III low glare <sup>1</sup> T4M Type IV medium T4L6 Type IV low glare <sup>1</sup> TFM Forward throw medium	MVOLT (120V-277V) <sup>1</sup> HVOLT (347V-480V) <sup>1</sup> XVOLT (277V-480V) <sup>1</sup> 120 V <sup>1</sup> 208 V <sup>1</sup> 240 V <sup>1</sup> 277 V <sup>1</sup> 347 V <sup>1</sup> 480 V <sup>1</sup>	<b>Shipped included</b> SPA Square pole mounting (#8 drilling) RPA Round pole mounting (#8 drilling) SPRS Square pole mounting #5 drilling <sup>1</sup> RPRS Round pole mounting #5 drilling <sup>1</sup> SPRN Square narrow pole mounting #8 drilling WBA Wall bracket <sup>1</sup> MA Mast arm adapter (mounts on 2.3/8" OD horizontal tenon)

Control options	Other options	Finish options		
<b>Ship ped installed</b> NLTAIR2 PIRHN nLight AIR gen 2 enabled with bi-level motion / ambient sensor, 8-40 mounting height, ambient sensor enabled at 26-113.8" PR High low, motion/ambient sensor 8-40 mounting height, ambient sensor enabled at 26-113.8" PER NEMA twist-lock receptacle only (controls ordered separate) <sup>1</sup> PERS Five-pin receptacle only (controls ordered separate) <sup>1</sup>	PER7 Seven-pin receptacle only (controls ordered separate) <sup>1</sup> FAO Field adjustable output <sup>1</sup> BL30 Bi-level switched dimming 50% <sup>1</sup> BL50 Bi-level switched dimming 50% <sup>1</sup> DMG 0-10v dimming wires pulled outside fixture (for use with an external control, ordered separately) <sup>1</sup> DS Dual switching <sup>1</sup>	<b>Ship ped installed</b> SPD20KV 20kV surge protection HS House-side shield (black finish standard) <sup>1</sup> L90 Left rotated optics <sup>1</sup> R90 Right rotated optics <sup>1</sup> CEE Coast Construction <sup>1</sup> HA 50°C ambient operation <sup>1</sup> BAA Buy America (Act Compliant) SF Single fuse (120, 277, 347V) <sup>1</sup> DF Double fuse (208, 240, 480V) <sup>1</sup> 3G Vibration rated for 3G <sup>1</sup>	<b>Shipped separately</b> EGSR External Glare Shield (reversible, field install required, matches housing finish) BSDB Bird Spikes (field install required)	DBR20 Dark Bronze DBL20 Black DNL20 Natural Aluminum DWH20 White DBR20D Textured dark bronze DBL20D Textured black DNL20D Textured natural aluminum DWH20D Textured white

CITY PERMIT REVIEW SET





Commission Meeting Date: April 16, 2024  
**CITY OF GREAT FALLS**  
**COMMISSION AGENDA REPORT**

**Item:** Indoor Aquatics and Recreation Center, O.F. 1770.0  
**From:** Park and Recreation  
**Initiated By:** Park and Recreation  
**Presented By:** Steve Herrig, Park and Recreation Director  
**Action Requested:** Approve Change Order No. 7

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/not approve) Change Order No. 7 to Swank Enterprises in the amount of \$31,135.57 for the Indoor Aquatics and Recreation Center, and authorize the City Manager to execute the change order documents.”

2. Mayor requests a second to the motion, public comment, Commission discussion, and calls for the vote.

**Staff Recommendation:**

Staff recommends the City Commission approve Change Order No. 7 in the amount of a \$31,135.57 for the Indoor Aquatics and Recreation Center, and authorize the City Manager to execute the change order documents.

**Summary:**

Change Order No. 7 includes the following:

1. Cast Letter Changes	\$ 20,541.92
2. Key Switches for Gym Equipment	\$ 953.91
3. Knox Box	\$ 837.32
4. Sponsor Signs for Gym Scoreboards	\$ 564.65
5. FDC Relocations	<u>\$ 8,237.77</u>
<b>Total</b>	<b>\$ 31,135.57</b>

**Background:**

On November 2, 2021, the City Commission awarded a contract to Swank Construction in the amount of \$18,349,000 which included the Base Bid of \$17,995,000 and Alternate #19 in the amount of \$354,000 for the construction of the Indoor Aquatics and Recreation Center.

On March 1, 2022, the City Commission approved deductive Change Order No. 1 for Swank Construction for a savings of \$244,655 from the original awarded contract price. The change order did not affect any of the amenities of the facility; changes affected materials used to accomplish a cost savings without jeopardizing the quality of amenities or facility.

Since March 2022, the Commission approved the following change orders:

- July 5, 2022 - Change Order No. 2 for Swank Construction for \$91,029.58 which addressed plan review and permit fees as well as structural enhancements.
- June 6, 2023 - Change Order No. 3 for Swank Construction for \$116,680.25 which addressed structural enhancements and added Alternates #5, #6, and #12.
- September 5, 2023 - Change Order No. 4 for Swank Construction for \$588,052.50 which addressed site work, structural enhancements and added Alternates #3, #7, and #20.
- October 3, 2023 - Change Order No. 5 for Swank Construction for \$13,753.20 which addressed structural and aesthetic enhancements in the office areas.
- January 16, 2023 - Change Order No. 6 for Swank Construction for \$52,978.33 which addressed some functionality, aesthetic, and safety enhancements in the HVAC system, exterior lighting, camera wiring and locations, exterior fencing, emergency eye wash & shower, and added Alternate #15.

**Brief Project Budget Summary** (detail attached):

Architectural Services:	Budgeted \$1,885,109.00
	Expended \$1,684,998.58
Construction Services:	Budgeted \$18,966,838.86
	Expended \$16,665,332.64
Miscellaneous Construction/ Professional Services:	Expended \$166,351.58
Total Project Cost Budgeted: \$21,018,299.86	
Total paid: \$18,516,682.80	

Proposed change order #7 will increase the total project budget to \$21,049,435.43.

Bids for the Indoor Aquatics and Recreation Center consisted of approximately 45,000 square feet of new construction, site work such as excavation, new utility extensions, new parking lots, playgrounds, and landscaping. The building will be multi-functional and will include a recreation pool, lap pool, gym, fitness center, walking track, multipurpose room, party room, locker rooms, restrooms, child watch area, attractive lobby with seating and fireplace, reception area, offices, storage and mechanical rooms, and an elevator. The building is located at 900 29<sup>th</sup> St. South.

Significant Impact

The facility will meet the community’s recreational and aquatics needs that were identified in the Park and Recreation Master Plan adopted by the City Commission in November 2016. The facility will also assist the military with water training needs for the military missions at both Malmstrom AFB and the Montana Air National Guard. The facility will contribute to the quality of life of service members and their families and the surrounding communities.

Workload Impacts

Design services were completed by LPW Architecture in cooperation with TD&H Engineering (the design team). The design team will also provide project management services. City staff will provide general contract management with the design team and the Contractor. City staff is providing grant management for the \$10 million in U.S. Department of Defense grant funds that have been awarded for the project.

Conclusion

City staff recommends awarding Change Order No. 7 to Swank Enterprises in the amount of \$31,135.57.

**Fiscal Impact**

The total project budget for the Indoor Aquatics and Recreation Center project was projected to be \$20 million. Funding includes 50% by a U.S. Department of Defense Office of Local Defense Community Cooperation (OLDCC) Grant, and 50% by funding generated through the sale of bonds by the Great Falls Park District No. 1.

The total cost of construction including 7 change orders to date, professional services, and miscellaneous expenses is estimated to be \$21,049,435.43. The additional \$1,049,435.43 of expenses not covered by the grant and bond issuance will be paid by donations received to date of \$577,843.00, a tourism grant of \$87,434.00, and the remaining \$384,158.43 from Park District assessments. Any future change order will also be paid from Park District assessments. The Park District is projected to have a cash balance available for other projects starting in December 2024.

The Bannack Group was retained by the City to conduct a fund-raising campaign to address facility needs identified during the initial bid process, but did not have any identified funding. The fund-raising effort is ongoing and not all the actual cash pledges have been received by the City. In some cases, the pledges will be received in installments over five years. It has not been determined if future donations received will replenish the Park District Fund or be used for AHBS operations or other expenses.

**Alternatives:**

The City Commission could vote to not approve Change Order No. 7.

**Concurrences:**

LPW Architecture and TD&H Engineering (the design team), and City staff agree that the changes are needed and essential to the quality and completion of the project.

**Attachments/Exhibits:**

Change Order No. 7  
Alternates & FFE list  
Construction Budget

# AIA Document G701® – 2017

## Change Order

**PROJECT:** (Name and address)  
Great Falls Indoor Aquatics and Recreation Center  
LPW Project No. 20-019

**CONTRACT INFORMATION:**  
Contract For: General Construction  
Date: November 2, 2021

**CHANGE ORDER INFORMATION:**  
Change Order Number: 007  
Date: March 19, 2024

**OWNER:** (Name and address)  
City of Great Falls  
P.O. Box 5021  
Great Falls, Montana 59403

**ARCHITECT:** (Name and address)  
L'Heureux Page Werner, PC  
15 Fifth Street South  
Great Falls, Montana 59401

**CONTRACTOR:** (Name and address)  
Swank Enterprises Inc.  
P.O. Box 568  
Valier, Montana 59486

**THE CONTRACT IS CHANGED AS FOLLOWS:**  
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)  
Please see attached PCO's #037, #040, #041, #042, and #43.

The original Contract Sum was	\$ 18,349,000.00
The net change by previously authorized Change Orders	\$ 617,838.86
The Contract Sum prior to this Change Order was	\$ 18,966,838.86
The Contract Sum will be increased by this Change Order in the amount of	\$ 31,135.57
The new Contract Sum including this Change Order will be	\$ 18,997,974.43

The Contract Time will be unchanged by Zero (0) days.  
The new date of Substantial Completion will be


**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

L'Heureux Page Werner, PC  
ARCHITECT (Firm name)

Swank Enterprises, Inc.  
CONTRACTOR (Firm name)

City of Great Falls  
OWNER (Firm name)

  
SIGNATURE

  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

Kevin J Lacey Construction  
Administrator  
PRINTED NAME AND TITLE

Kevin J. Forbes - Vice President/ Project  
Manager  
PRINTED NAME AND TITLE

\_\_\_\_\_  
PRINTED NAME AND TITLE

March 19, 2024  
DATE

March 19, 2024  
DATE

\_\_\_\_\_  
DATE



Swank Enterprises  
615 Pondera Ave [PO Box 568]  
Valier, Montana 59486  
Phone: (406) 279-3241  
Fax: (406) 279-3321

Project: 1-584 - INDOOR AQUATIC & REC CTR - GF  
900 29th St. South  
GREAT FALLS, Montana

### Prime Contract Potential Change Order #037: CE #048 - Cast Letter Changes

<b>TO:</b>	CITY OF GREAT FALLS PO BOX 5021 GREAT FALLS Montana, 59403	<b>FROM:</b>	Swank Enterprises Valier 615 Pondera [PO Box 568] Valier Montana, 59486
<b>PCO NUMBER/REVISION:</b>	037 / 0	<b>CONTRACT:</b>	1 - INDOOR AQUATIC AND REC CENTER - GF Prime Contract
<b>CREATED BY:</b>	Kevin Forbes (Swank Enterprises Valier)	<b>STATUS:</b>	Pending - In Review
<b>LOCATION:</b>		<b>CREATED DATE:</b>	1/4/2024
		<b>TOTAL AMOUNT:</b>	\$20,541.92

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*

CE #048 - Cast Letter Changes

Add "SCHEELS" to the exterior and interior cast letters for the project. Also included is changes to the sizes.

**ATTACHMENTS:**

[Sylvan Bid - Indoor Aquatics Signs Revised.pdf](#) [\\_20-019 GF COMMUNITY REC CENTER - LIONS 2\\_RENDER FILE ONLY - Sheet - X1-0 - SIGNAGE DIMENSIONS.pdf](#)

#	Cost Code	Description	Type	Amount	Bonds & Insurance (1.00% Applies to all line item types.)	Subtotal
1	10-430 - Exterior Signs	Exterior "Back-Lite" Cast Aluminum Letters, Interior Cut Aluminum Letters	Materials	\$15,868.00	\$158.68	\$16,026.68
2	10-001 - Specialties Finish Labor	Additional Labor to Install Exterior SCHEELS Letters	Labor	\$1,050.00	\$10.50	\$1,060.50
3	10-001 - Specialties Finish Labor	Additional Labor to Install Interior SCHEELS Letters	Labor	\$525.00	\$5.25	\$530.25
<b>Subtotal:</b>				<b>\$17,443.00</b>	<b>\$174.43</b>	<b>\$17,617.43</b>
<b>MT Gross Receipts Tax (1.00% Applies to all line item types.):</b>						<b>\$176.17</b>
<b>Overhead (5.00% Applies to all line item types.):</b>						<b>\$880.87</b>
<b>Profit (10.00% Applies to all line item types.):</b>						<b>\$1,867.45</b>
<b>Grand Total:</b>						<b>\$20,541.92</b>

KEVIN LACEY (L'HEUREUX PAGE WERNER PC)

15 5TH ST S  
GREAT FALLS Montana 59401

CITY OF GREAT FALLS

PO BOX 5021  
GREAT FALLS Montana 59403

Swank Enterprises Valier

615 Pondera [PO Box 568]  
Valier Montana 59486

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE



10 10<sup>th</sup> St W  
Billings, MT 59102  
(406) 628-7610  
(406) 969-1473 fax

January 18, 2024

PROJECT: Indoor Aquatics & Recreation Center  
ARCHITECT: LPW Architecture  
ADDENDUM: 1,2,3,4,5

Dimensional Letter Signage Bid

Thank you for the opportunity to provide a quote per plans and specification for the above project. Bid is for materials only supplied to jobsite. Please review all qualifications & exclusions.

**SECTION 101419** – DIMENSIONAL LETTER SIGNAGE as manufactured by Gemini. **\*\*Backlit signage, cast aluminum letters\*\***

Add – Dimensional Letter sizing change	<b><u>\$3,573.00</u></b>
Add – Interior & Exterior ‘SCHEELS’	<b><u>\$12,295.00</u></b>

TERMS: All items are quoted F.O.B. factory, full freight allowed to jobsite. Installation, blocking, field verifications, state, local or TERO taxes are not included unless specifically noted.

Contact us with any questions or concerns.

Kayle Axtman  
[kayle@sylvansiteservices.com](mailto:kayle@sylvansiteservices.com)



Swank Enterprises  
615 Pondera Ave [PO Box 568]  
Valier, Montana 59486  
Phone: (406) 279-3241  
Fax: (406) 279-3321

Project: 1-584 - INDOOR AQUATIC & REC CTR - GF  
900 29th St. South  
GREAT FALLS, Montana

### Prime Contract Potential Change Order #040: CE #052 - Key Switches for Gym Equipment

<b>TO:</b>	CITY OF GREAT FALLS PO BOX 5021 GREAT FALLS Montana, 59403	<b>FROM:</b>	Swank Enterprises Valier 615 Pondera [PO Box 568] Valier Montana, 59486
<b>PCO NUMBER/REVISION:</b>	040 / 0	<b>CONTRACT:</b>	1 - INDOOR AQUATIC AND REC CENTER - GF Prime Contract
<b>CREATED BY:</b>	Kevin Forbes (Swank Enterprises Valier)	<b>STATUS:</b>	Pending - In Review
<b>LOCATION:</b>		<b>CREATED DATE:</b>	2/23/2024
		<b>TOTAL AMOUNT:</b>	\$953.91

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*

CE #052 - Key Switches for Gym Equipment

The specifications for the Athletic Equipment 11 55 23.13 and Gym Divider 11 66 53 are specified to have remote operation. The electrical prints have provisions to provide a 6 gang box per Note 12 on E3.0 for height control of the backboards. Also Note 13 on the same sheet has two locations called for rough-in and wire to be pulled to the motor for the gym divider. Since this is currently installed it makes sense to have the key switches installed as a second option for control of the backboards and the curtain. The key switch for the backboards will provide retraction only. The height control of the backboards will have to done off the remote.

**ATTACHMENTS:**

[MSEC - Key Swithes for Gym Equipment.pdf](#)

#	Cost Code	Description	Type	Amount	Bonds & Insurance (1.00% Applies to all line item types.)	Subtotal
1	11-480 - Athletic/Therapeutic Eq	Provide Key Switches for the Basketball Backboards and Gym Divider	Subcontractor	\$810.00	\$8.10	\$818.10
<b>Subtotal:</b>				<b>\$810.00</b>	<b>\$8.10</b>	<b>\$818.10</b>
<b>MT Gross Receipts Tax (1.00% Applies to all line item types.):</b>						<b>\$8.18</b>
<b>Overhead (5.00% Applies to all line item types.):</b>						<b>\$40.91</b>
<b>Profit (10.00% Applies to all line item types.):</b>						<b>\$86.72</b>
<b>Grand Total:</b>						<b>\$953.91</b>

**KEVIN LACEY (L'HEUREUX PAGE  
WERNER PC)**

15 5TH ST S  
GREAT FALLS Montana 59401

**CITY OF GREAT FALLS**

PO BOX 5021  
GREAT FALLS Montana 59403

**Swank Enterprises Valier**

615 Pondera [PO Box 568]  
Valier Montana 59486

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE



**QUOTATION**

406 / 454- 0420

FAX ----- 406 / 454- 0439

Quotation #	
P.O. #	

DATE: 02/21/24

PREPARED FOR:

NAME:

PROJECT: INDOOR AQUATIC CENTER

ADDRESS:

GREAT FALLS, MT 59405

INQUIRY #	DUE DATE	COUNTY	DISTRICT	STATE	SALESMAN

QTY.	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED
1	LOT	KEY SWITCHES BY DRAPER 1 EA. 6 GANG KEY SWITCH 2 EA. 1 GANG KEY SWITCH  DELIVERED PRICING ONLY - INSTALL BY OTHERS		\$ 810.00

TERMS: NET 30 DAYS  
 FREIGHT: FOB----- GREAT FALLS, MT  
 PRICES FIRM FOR 30 DAYS ONLY  
 SPECIFICATIONS: ALL manufacturer's  
 standard construction and finishes.

THANK YOU ----  
 Sales Rep:  
 BY: BRYAN SCHMIDT  
 Title ----- contract sales dept.  
 Montana School Equipment Co.

--BLS--





Swank Enterprises  
615 Pondera Ave [PO Box 568]  
Valier, Montana 59486  
Phone: (406) 279-3241  
Fax: (406) 279-3321

Project: 1-584 - INDOOR AQUATIC & REC CTR - GF  
900 29th St. South  
GREAT FALLS, Montana

### Prime Contract Potential Change Order #041: CE #054 - Knox Box

<b>TO:</b>	CITY OF GREAT FALLS PO BOX 5021 GREAT FALLS Montana, 59403	<b>FROM:</b>	Swank Enterprises Valier 615 Pondera [PO Box 568] Valier Montana, 59486
<b>PCO NUMBER/REVISION:</b>	041 / 0	<b>CONTRACT:</b>	1 - INDOOR AQUATIC AND REC CENTER - GF Prime Contract
<b>CREATED BY:</b>	Kevin Forbes (Swank Enterprises Valier)	<b>STATUS:</b>	Pending - In Review
<b>LOCATION:</b>		<b>CREATED DATE:</b>	3/6/2024
		<b>TOTAL AMOUNT:</b>	\$837.32

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*

CE #054 - Knox Box

It was discovered that a "KNOX BOX" was not called out in the contract documents for the building. Great Falls Fire Department requires them to be installed.

**ATTACHMENTS:**

[Sales Order\\_SO-KA-439951.pdf](#)

#	Cost Code	Description	Type	Amount	Bonds & Insurance (1.00% Applies to all line item types.)	Subtotal
1	10-999 - Total Specialties	KNOX BOX	Materials	\$561.00	\$5.61	\$566.61
2	10-001 - Specialties Finish Labor	Labor to Install, Fasteners	Labor	\$150.00	\$1.50	\$151.50
				<b>Subtotal:</b>	<b>\$711.00</b>	<b>\$718.11</b>
<b>MT Gross Receipts Tax (1.00% Applies to all line item types.):</b>						<b>\$7.18</b>
<b>Overhead (5.00% Applies to all line item types.):</b>						<b>\$35.91</b>
<b>Profit (10.00% Applies to all line item types.):</b>						<b>\$76.12</b>
<b>Grand Total:</b>						<b>\$837.32</b>

**KEVIN LACEY (L'HEUREUX PAGE  
WERNER PC)**

15 5TH ST S  
GREAT FALLS Montana 59401

**CITY OF GREAT FALLS**

PO BOX 5021  
GREAT FALLS Montana 59403

**Swank Enterprises Valier**

615 Pondera [PO Box 568]  
Valier Montana 59486

\_\_\_\_\_  
SIGNATURE DATE

\_\_\_\_\_  
SIGNATURE DATE

\_\_\_\_\_  
SIGNATURE DATE



# Sales Order

#SO-KA-439951

Web Order #: NET1037986

3/2/2024

Knox Company  
1601 W Deer Valley Rd  
Phoenix AZ 85027  
United States

**BILL TO:**  
172904  
Swank Enterprises , Kevin Forbes  
615 Pondera Ave  
Valier MT 59486-5556  
United States  
4062793241  
kforbes@swankenterprises.com

**SHIP TO:**  
Swank Enterprises , Kevin Forbes  
615 Pondera Ave  
Valier MT 59486-5556  
United States  
4062793241

Terms	Shipping Method	PO #
PP - Prepaid	Ground Shipping < 75 LBS	

Item	Description	Quantity	Units	Rate	Amount
3263	3200 SURFACE, ALUM., HINGED	1	EA	\$527.00	\$527.00

Installation Address: Indoor Aquatic and Rec Center, 900 29th St South GREAT FALLS, Montana 59405-3228  
Primary System Code Role: PS-17-0011-05-89-BOXES

<b>Subtotal</b>	<b>\$527.00</b>
<b>Tax Amount</b>	<b>\$0.00</b>
<b>Shipping and Handling</b>	<b>\$34.00</b>
<b>Deposit Collected</b>	<b>(\$561.00)</b>

**Total**      **\$0.00**



SO-KA-439951

Terms and Conditions

All pricing is subject to change and is based on a quantity order to be shipped all at one time. Prices quoted are valid through the "Expires On" date shown. All shipping and handling fees, if provided, are estimates based upon ground service to the address shown above. Knox will provide you a firm cost for shipping and handling fees when order is placed. Knox provides detailed installation instructions with each Knox product. However, Knox is not responsible for actual installation.

SALES TAX DISCLAIMER: Knox is required to collect sales tax for purchases made in the following states: AL, AR, AZ, CA, CO, CT, FL, GA, IA, IL, IN, KS, KY, MA, MD, ME, MI, MN, NC, NE, NJ, NM, NV, NY, OH, OK, PA, RI, SC, TN, TX, UT, VA, VT, WA and WI. Where applicable, Knox will charge sales tax unless you have a valid sales tax exemption certificate on file with Knox. If you are sales tax exempt, you must provide us with an exemption certificate at the time the order is placed.



Swank Enterprises  
615 Pondera Ave [PO Box 568]  
Valier, Montana 59486  
Phone: (406) 279-3241  
Fax: (406) 279-3321

Project: 1-584 - INDOOR AQUATIC & REC CTR - GF  
900 29th St. South  
GREAT FALLS, Montana

### Prime Contract Potential Change Order #042: CE #055 - Sponsor Signs for Gym Scoreboards

<b>TO:</b>	CITY OF GREAT FALLS PO BOX 5021 GREAT FALLS Montana, 59403	<b>FROM:</b>	Swank Enterprises Valier 615 Pondera [PO Box 568] Valier Montana, 59486
<b>PCO NUMBER/REVISION:</b>	042 / 0	<b>CONTRACT:</b>	1 - INDOOR AQUATIC AND REC CENTER - GF Prime Contract
<b>CREATED BY:</b>	Kevin Forbes (Swank Enterprises Valier)	<b>STATUS:</b>	Pending - In Review
<b>LOCATION:</b>		<b>CREATED DATE:</b>	3/7/2024
		<b>TOTAL AMOUNT:</b>	\$564.65

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*

CE #055 - Sponsor Signs for Gym Scoreboards

Provide and install "Park and Recreation Department" and "Steel Etc." logos on the two scoreboards in the gymnasium. There will be 2 of each logo on the 2 scoreboards located in the upper left and right corners per the attachment.

**ATTACHMENTS:**

[Walker - Scoreboard Signs.pdf](#)

#	Cost Code	Description	Type	Amount	Bonds & Insurance (1.00% Applies to all line item types.)	Subtotal
1	10-440 - Panel Signage	Sponsor Logos for Gym Scoreboards	Materials	\$479.48	\$4.79	\$484.27
				<b>Subtotal:</b>	<b>\$479.48</b>	<b>\$484.27</b>
<b>MT Gross Receipts Tax (1.00% Applies to all line item types.):</b>						<b>\$4.84</b>
<b>Overhead (5.00% Applies to all line item types.):</b>						<b>\$24.21</b>
<b>Profit (10.00% Applies to all line item types.):</b>						<b>\$51.33</b>
<b>Grand Total:</b>						<b>\$564.65</b>

KEVIN LACEY (L'HEUREUX PAGE  
WERNER PC)

15 5TH ST S  
GREAT FALLS Montana 59401

CITY OF GREAT FALLS

PO BOX 5021  
GREAT FALLS Montana 59403

Swank Enterprises Valier

615 Pondera [PO Box 568]  
Valier Montana 59486

\_\_\_\_\_  
SIGNATURE DATE

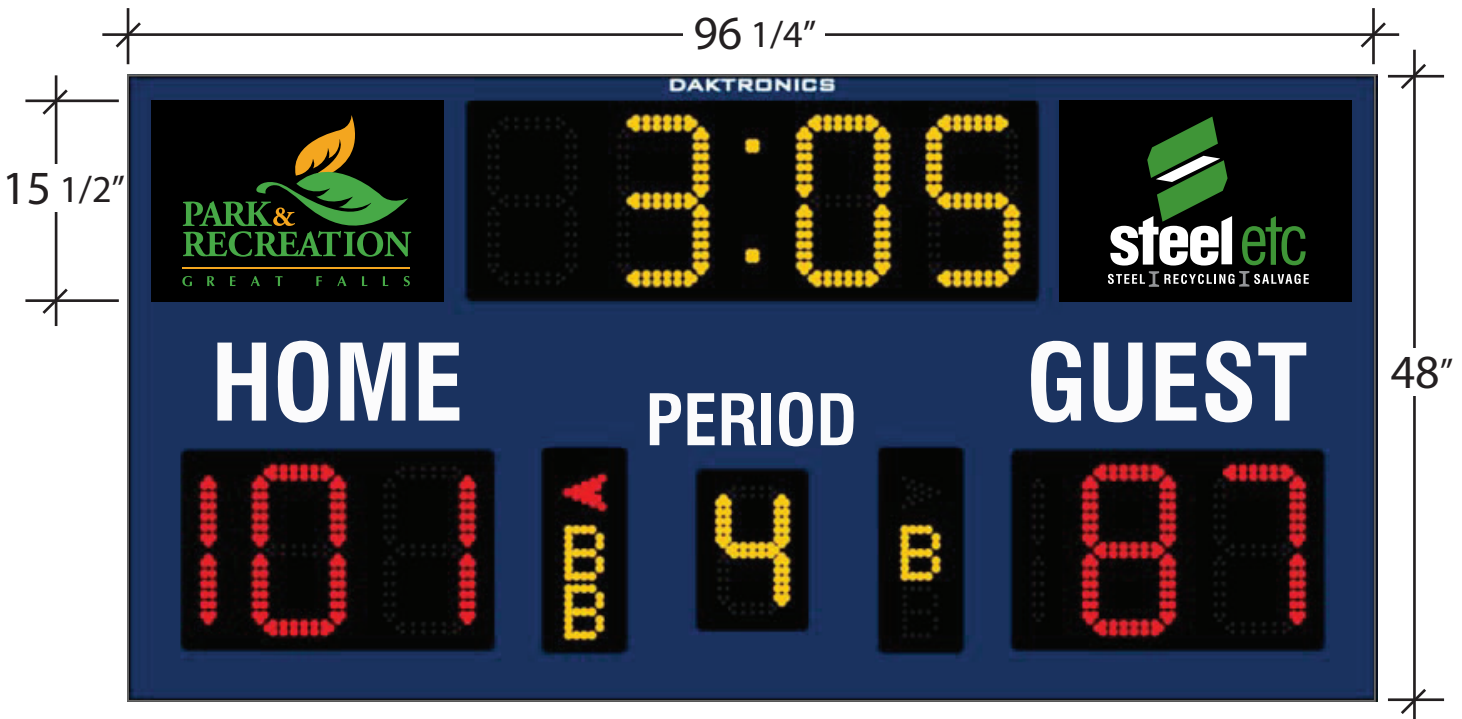
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SIGNATURE DATE

\_\_\_\_\_  
SIGNATURE DATE



# Scheels Aim High Big Sky Aquatic and Recreation Center

## SCOREBOARD SPONSOR GRAPHICS



- 4 mil. UV Printed Permanent Adhesive
- Indoor or Outdoor; Waterproof and UV safe



Swank Enterprises  
 615 Pondera Ave [PO Box 568]  
 Valier, Montana 59486  
 Phone: (406) 279-3241  
 Fax: (406) 279-3321

Project: 1-584 - INDOOR AQUATIC & REC CTR - GF  
 900 29th St. South  
 GREAT FALLS, Montana

**Prime Contract Potential Change Order #043:  
 CE #056 - Move FDC Location to East Entry**

<b>TO:</b>	CITY OF GREAT FALLS PO BOX 5021 GREAT FALLS Montana, 59403	<b>FROM:</b>	Swank Enterprises Valier 615 Pondera [PO Box 568] Valier Montana, 59486
<b>PCO NUMBER/REVISION:</b>	043 / 0	<b>CONTRACT:</b>	1 - INDOOR AQUATIC AND REC CENTER - GF Prime Contract
<b>CREATED BY:</b>	Kevin Forbes (Swank Enterprises Valier)	<b>STATUS:</b>	Pending - In Review
<b>LOCATION:</b>		<b>CREATED DATE:</b>	3/14/2024
		<b>TOTAL AMOUNT:</b>	\$8,237.77

**CHANGE REASON:** Client Request

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*

CE #056 - Move FDC Location to East Side of Building

It has been requested by the Great Falls Fire Department that the current FDC location be moved to the east side of the building near the main entry. The new line will connect to the existing system at or near Storage Closet 146 and exit the building inside the closet.

**ATTACHMENTS:**

[Liberty Electric - Add new FDC H-S and monitor module.pdf](#) [\\_GFFS - New FDC Location.pdf](#)

#	Cost Code	Description	Type	Amount	Bonds & Insurance (1.00% Applies to all line item types.)	Subtotal
1	15-350 - Fire Sprinklers	Relocate FDC Connection	Subcontractor	\$2,474.00	\$24.74	\$2,498.74
2	16-100 - Electrical Sub	Exterior Horn Strobe at new FDC	Subcontractor	\$3,271.03	\$32.71	\$3,303.74
3	1-630 - Job Clean-up	Core Hole in Precast, Misc. Clean Up	Labor	\$750.00	\$7.50	\$757.50
4	9-920 - Painting - Interior	Touch-Up Paint on Conduit, Drywall	Subcontractor	\$500.00	\$5.00	\$505.00
<b>Subtotal:</b>				<b>\$6,995.03</b>	<b>\$69.95</b>	<b>\$7,064.98</b>
<b>MT Gross Receipts Tax (1.00% Applies to all line item types.):</b>						<b>\$70.65</b>
<b>Overhead (5.00% Applies to all line item types.):</b>						<b>\$353.25</b>
<b>Profit (10.00% Applies to all line item types.):</b>						<b>\$748.89</b>
<b>Grand Total:</b>						<b>\$8,237.77</b>

**KEVIN LACEY (L'HEUREUX PAGE  
 WERNER PC)**

15 5TH ST S  
 GREAT FALLS Montana 59401

**CITY OF GREAT FALLS**

PO BOX 5021  
 GREAT FALLS Montana 59403

**Swank Enterprises Valier**

615 Pondera [PO Box 568]  
 Valier Montana 59486

\_\_\_\_\_  
 SIGNATURE DATE

\_\_\_\_\_  
 SIGNATURE DATE

\_\_\_\_\_  
 SIGNATURE DATE



**406-315-7666**  
11 5th St N Suite M  
Great Falls, MT 59401

[gffs2018@outlook.com](mailto:gffs2018@outlook.com)

## CHANGE ORDER #001

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TO: Swank Attention:

Date: 3-14-24

RE: Aquatics

Adding and relocation of FDC per request of city

4 galv pipe  
4 additional check valve  
additional ball drip assembly  
fittings

installation to new location

parts and labor total- \$2,474.00

This Change Order Shall Reflect existing Sub-Contract Agreement.

Prepared by: Karn Vogl

Accepted by:

MT LIC #FPL-BEL-001158  
Great Falls Fire Sprinklers, Inc.

Signature: \_\_\_\_\_



# PROPOSED CHANGE ORDER

**Liberty Electric Inc.**  
 9660 Summit Drive  
 Missoula, MT 59808

**CCN #** 11  
**Date:** 3/7/2024  
**Project Name:** Great Falls Aquatic and F  
**Project Number:** GF22RECCTR  
**Page Number:** 1

Client Address:

**Swank Enterprises**  
 Contact: Kevin Forbes  
 750 W Reserve  
 Kalispell, MT 59901

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**Work Description**

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**Name of Project: Great Falls Aquatic and Recreation Center**

We reserve the right to correct this quote for errors and omissions.

This quote covers direct costs only, and we reserve the right to claim for impact and consequential costs.  
 This price is good for acceptance within **30** days from the date of receipt.

**The following is our pricing to add an additional exterior horn/strobe at the new FDC point and a monitor module near the new flow switch.**

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**Itemized Breakdown**

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Description	Qty	Net Price U	Total Mat.	Labor U	Total Hrs.
3/4" CONDUIT - EMT	160	121.62 C	194.59	6.00 C	9.60
3/4" CONN SS STL - EMT	7	122.12 C	8.55	12.50 C	0.88
3/4" COUPLING SS STL - EMT	13	124.90 C	16.24	5.00 C	0.65
1/2" FLEX - STEEL	3	111.32 C	3.34	3.75 C	0.11
1/2" CONN FLEX DC SQUEEZE STRAIGHT	1	169.34 C	1.69	12.50 C	0.13
1/2" CONN FLEX DC SQUEEZE 90 DEG	1	321.39 C	3.21	12.50 C	0.13
#18- 2P F/A CABLE 105 DEG	75	188.00 M	14.10	7.13 M	0.53
#14- 2P F/A CABLE 105 DEG	178	298.00 M	53.04	8.00 M	1.42
4x 2 1/8" SQ BOX COMB KO	3	307.64 C	9.23	28.75 C	0.86
4" SQ BLANK COVER	2	62.37 C	1.25	3.13 C	0.06
HAMMER-ON CLIP TO 1/4" FLANGE W/ STRAP HNGR	14	733.82 C	102.73	8.75 C	1.23
F/A MODULE - MONITOR - ADDRESSABLE	1	58.75 E	58.75	0.63 E	0.63
F/A HORN a/o STROBE - WALL SURF MNT BACK BOX -	1	163.75 E	163.75	0.25 E	0.25
2" DIAM CORE 6" THICK WALL	1	50.00 E	50.00	2.50 E	2.50
<b>Totals</b>	<b>460</b>		<b>680.48</b>		<b>18.98</b>

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**Summary**

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General Materials		680.48
<b>Material Total</b>		<b>680.48</b>
JOURNEYMAN (18.98 Hrs @ \$66.99)		1,271.47
FOREMAN @ 25% (4.75 Hrs @ \$68.99)		327.70
AS-BUILT DRAWINGS (1.00 Hrs @ \$68.99)		68.99
<b>Subtotal</b>		<b>2,348.64</b>
Overhead (@ 15.000 %)		352.30

**ORIGINAL**

# PROPOSED CHANGE ORDER

Client Address:

**Liberty Electric Inc.**  
9660 Summit Drive  
Missoula, MT 59808

**Swank Enterprises**  
750 W Reserve  
Kalispell, MT 59901

**CCN #** 11  
**Date:** 3/7/2024  
**Project Name:** Great Falls Aquatic and P  
**Project Number:** GF22RECCTR  
**Page Number:** 2

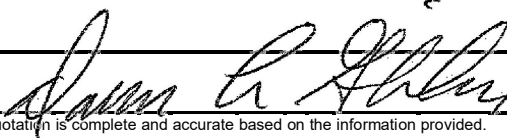
## Summary (Cont'd)

Markup	(@ 10.000 %)	270.09
<b>Subtotal</b>		<b>2,971.03</b>
Fire Alarm sub work	(\$300.00 + 0.000 % + 0.000 % + 0.000 %)	300.00
<b>Subtotal</b>		<b>3,271.03</b>
<b>Final Amount</b>		<b>\$3,271.03</b>

## CONTRACTOR CERTIFICATION

**Name:** Darren Gilcher

**Date:** 3/7/24

**Signature:** 

I hereby certify that this quotation is complete and accurate based on the information provided.

## CLIENT ACCEPTANCE

**CCN #** 11  
**Final Amount:** \$3,271.03

**Name:** \_\_\_\_\_

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

**Signature:** \_\_\_\_\_

**Change Order #:** \_\_\_\_\_

I hereby accept this quotation and authorize the contractor to complete the above described work.

<u>Unfunded Recreation Center Alternates</u>	<u>Original Cost</u>	<u>Current Cost</u>	
Gymnasium divider curtain	\$9,900	\$17,282	funded in CO #3
Class/party room divider	\$14,700	\$19,632	funded in CO #3
Sauna 125 Complete, including door	\$29,000	\$48,776	funded in CO #3
Acoustic panels in gym and pool area	\$124,900	\$143,630	funded in CO #4
Frog slide in leisure pool	\$40,000	\$47,754	funded in CO #4
Outdoor splash pad	\$318,000	\$393,828	funded in CO #4
Security cameras (P&R)	\$94,000	\$51,265	
Timing system and scoreboard for lap pool (P&R)	\$77,000	\$50,000	
Exterior playground equipment & basketball hoop (P&R)	\$81,200	\$50,000	
Flagpole, concrete pad and accociated lighting	\$9,400	\$12,900	funded in CO #6
Portable bleachers (P&R)	\$10,200	\$10,200	
	<b>Alternates left to fund</b>	<b>\$271,800</b>	<b>\$174,365</b>
Fitness Equipment	\$150,000	\$150,000	
Office Equipment	\$50,000	\$50,000	
Concessions	\$25,000	\$25,000	
Common Areas	\$25,000	\$25,000	
	<b>\$250,000</b>	<b>\$250,000</b>	
	<b>Total Left to Fund</b>	<b>\$521,800</b>	<b>\$424,365</b>

Above is the list of unfunded alternates for the new recreation center. It is our goal for the sponsorship/fundraising efforts to get us back within budget and bring as many of these alternates on board as possible.

## Aim High Big Sky Construction Budget

<b>Revenues</b>	Amended Budget
Park Maintenance District from Debt Issuance	\$10,000,000.00
Federal Grant	\$10,000,000.00
Tourism Grant	\$87,434.00
Contributions & Donations Received	\$577,843.00
Park Maintenance Assessments	\$384,158.43
<b>Total Revenues</b>	<b>\$21,049,435.43</b>
<b>Project Expenses</b>	
Construction (includes State 1% withholding)	
11/2/2021 Swank Enterprise Base bid	\$17,995,000.00
11/2/2021 Swank Enterprise Alternate #19	\$354,000.00
3/1/2022 Swank Enterprise Change Order #1	(\$244,655.00)
7/5/2022 Swank Enterprise Change Order #2	\$91,029.58
6/6/2023 Swank Enterprise Change Order #3	\$116,680.25
9/5/2023 Swank Enterprise Change Order #4	\$588,052.50
10/3/2023 Swank Enterprise Change Order #5	\$13,753.20
1/16/2024 Swank Enterprise Change Order #6	\$52,978.33
4/16/2024 Swank Enterprise Change Order #7 (pending approval)	\$31,135.57
<b>Total Construction</b>	<b>\$18,997,974.43</b>
Professional Services	
10/13/2020 L'Heureux Page Werner, PC Design	\$1,828,659.00
7/5/2022 L'Heureux Page Werner, PC Additional Services	\$56,450.00
<b>Total Professional Services</b>	<b>\$1,885,109.00</b>
Miscellaneous Construction and Professional Expenses	
8/17/2021 Trenchless Solutions- Water Main Relocation	\$136,860.00
DEQ/water line	\$525.00
NW Energy	\$15,243.00
State Pool Inspection	\$1,800.00
Tribune	\$1,029.00
Builders Exchange	\$81.00
Building permit	\$3,750.00
Engineering	\$2,916.00
Water Line Inspections	\$4,148.00
<b>Total</b>	<b>\$166,352.00</b>
<b>Total Expenses</b>	<b>\$21,049,435.43</b>
<b>Revenues Over (Under) Expenses</b>	<b>\$0.00</b>



Commission Meeting Date: April 16, 2024  
**CITY OF GREAT FALLS**  
**COMMISSION AGENDA REPORT**

**Item:** Approval of a Community Development Block Grant (CDBG) Funding Agreement with the Great Falls Parks and Recreation Department for the purchase of a Kubota Utility Vehicle to service Gibson and Elks Riverside Parks

**From:** Finance Department

**Initiated By:** Finance Department

**Presented By:** Tom Hazen, Grant and Project Administrator

**Action Requested:** Approval of the CDBG Funding Agreement in the amount of \$51,004.20 to the Parks and Recreation Department.

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/not approve) the CDBG Funding Agreement in the amount of \$51,004.20 to the Parks and Recreation Department for the purchase of Kubota Utility Vehicle.”

2. Mayor requests a second to the motion, public comment, Commission discussion, and calls for the vote.

**Staff Recommendation:** Staff recommends approval of the requested CDBG Funding Agreement for an amount of \$51,004.20 to the Parks and Recreation Department for the purchase of Kubota Utility Vehicle.

**Summary:** The City’s Parks and Recreation Department has submitted a grant request to finance the purchase of a Kubota Utility Vehicle (UTV). This vehicle will be a key component in the maintenance of Gibson and Elks Riverside Parks. The UTV will be used to clear snow in the winter, perform maintenance, and collect trash and debris.

Gibson and Elks Riverside park border areas of town with predominantly low to moderate income households. The CDBG program places an emphasis on programs that provide services or benefits to low to moderate income areas. Such services may include improvements and benefits to Parks and Recreation areas. As such, this project is an eligible use of CDBG funding.

**Fiscal Impact:** The cost of this project will be covered through CDBG funding, thereby saving the Parks and Recreation Department from having to fund the project through either departmental resources.

**Alternatives:** If the Commission were to reject the proposed funding agreement, Parks and Recreation would need to postpone the project until other funding sources were secured.

**Concurrences:** Staff from Finance and Public Works have cooperated to present this project. This request is consistent with the City's adopted Amended Annual Action Plan, which contains the goal of Public Facilities and Improvements.

**Attachments/Exhibits:** 2023/2024 City of Great Falls – Park and Recreation Department Funding Agreement

Quote Provided By  
 Johnson Distributing  
 TIM MCALLISTER  
 1021 3rd. St. N.W.  
 Great Falls, MT 59404  
 email: tim@johnsondistributing.com  
 phone: 4064536541

-- Standard Features --

-- Custom Options --



V Series RTV-X1100CWL-H  
 \*\*\* EQUIPMENT IN STANDARD MACHINE \*\*\*

**DIESEL ENGINE**

Model Kubota D1105  
 3 Cyl. 68.5 cu in  
 +24.8 Gross Eng HP  
 75 Amp Alternator

**TRANSMISSION**

VHT-X  
 Variable Hydro Transmission  
 Forward Speeds:  
 Low 0 - 15 mph  
 High 0 - 25 mph  
 Reverse 0 - 17 mph  
 Limited-slip Front Differential  
 Rear differential lock

**HYDRAULICS**

Hydrostatic Power Steering  
 with manual tilt-feature  
 Hydraulic Cargo Dump  
 Hydraulic Oil Cooler

**FLUID CAPACITY**

Fuel Tank 7.9 gal  
 Cooling 8.3 qts  
 Engine Oil 4.3 qts  
 Transmission Oil 1.8 gal  
 Brake Fluid 0.4 qts

**CARGO BOX**

Width 57.7in  
 Length 40.5 in  
 Depth 11.2 in  
 Load Capacity 1102 lbs  
 Vol. Capacity 15.2 cu ft

+ Manufacturer Estimate

**KEY FEATURES**

Factory Cab w/ A/C, Heater,  
 Defroster  
 Fully opening roll-down door  
 windows  
 Digital Multi-meter  
 Speedometer  
 Pre-wired w/ speakers/antenna for  
 stereo  
 Front Independent Adjustable  
 Suspension  
 Rear Independent Adjustable  
 Suspension  
 Brakes - Front/Rear Wet Disc  
 Rear Brake Lights / Front  
 Headlights  
 2" Hitch Receiver, Front and Rear  
 Deluxe 60/40 split bench seats  
 with driver's side seat adjustment  
 Underseat Storage Compartments  
 Deluxe Front Guard  
 (radiator guard, bumper, and lens  
 guard)

**SAFETY EQUIPMENT**

SAE J2194 & OSHA 1928 ROPS  
 Horn  
 Dash-mounted Parking Brake  
 Spark Arrestor Muffler  
 Retractable 2-point Seat Belts

**DIMENSIONS**

Width 63.2 in  
 Height 79.5 in  
 Length 120.3 in  
 Wheelbase 80.5 in  
 Tow Capacity 1300 lbs  
 Ground Clearance 10.4 in  
 Suspension Travel 8 in  
 Turning Radius 13.1 ft

Factory Spray-on Bedliner  
 "L" Models Only

Bright Alloy Wheels (Silver-  
 painted)  
 Silver-painted with machined  
 surface  
 "S" Models only

**TIRES AND WHEELS**

Heavy Duty Worksite 25 x 10 - 12, 6 ply

RTV-X1100CWL-H Base Price: \$26,399.00

(1) RTV BED MOUNTED SPAYER V5292A-RTV BED MOUNTED SPAYER	\$2,159.00
(1) RTV-X1100C LED FRONT WORKLIGHT 77700-11811-RTV-X1100C LED FRONT WORKLIGHT	\$193.53
(1) REAR WORK LIGHTS / FOR RTV-X1100 K7731-99630-REAR WORK LIGHTS / FOR RTV-X1100	\$167.05
(1) TURN SIG/HAZARD LGT KIT/RTV-X1100C K7731-99610-TURN SIG/HAZARD LGT KIT/RTV-X1100C	\$377.17
(1) STROBE LIGHT MOUNT KIT 77700-VC5058-STROBE LIGHT MOUNT KIT	\$205.01
(2) STANDARD EXTERNAL MIRROR KIT CAB PNF 77700-V5059-STANDARD EXTERNAL MIRROR KIT CAB PNF	\$204.12
(1) REAR NET K7731-99280-REAR NET	\$324.64
(1) DIESEL RTV TELEMATICS HARNESS V6721-DIESEL RTV TELEMATICS HARNESS	\$149.00
(1) AT&T TELEMATICS MODEM DCU6700-AT&T TELEMATICS MODEM	\$449.00
(1) BACKUP ALARM K7591-99640-BACKUP ALARM	\$188.06
(1) CV-J GUARD KIT - FRONT K7591-99150-CV-J GUARD KIT - FRONT	\$135.53
(1) CV-J GUARD KIT - REAR K7591-99160-CV-J GUARD KIT - REAR	\$135.53
(1) 4PT HITCH AND POWER UNIT V5293B-4PT HITCH AND POWER UNIT	\$6,059.00
(1) PTO DRIVE AND K-CONNECT V5299B-PTO DRIVE AND K-CONNECT	\$4,439.00
(1) 4PT HITCH UPGRADE KIT PNF V5298-4PT HITCH UPGRADE KIT PNF	\$579.00
(1) 60" ROTARY BROOM V5260-60" ROTARY BROOM	\$4,829.00
(1) AUX HYDRAULIC PUMP D1105 V5272-AUX HYDRAULIC PUMP D1105	\$589.00
(1) 2ND FUNCTION HYDRAULIC VALVE KIT V5232A-2ND FUNCTION HYDRAULIC VALVE KIT	\$3,339.00
(1) 3RD FUNCTION HYD VALVE UPGRADE KIT V5233-3RD FUNCTION HYD VALVE UPGRADE KIT	\$489.00
(1) FRONT QUICK HITCH V5289-FRONT QUICK HITCH	\$1,349.00
(1) OIL COOLER KIT V5240-OIL COOLER KIT	\$1,929.00
(1) HAND THROTTLE KIT V5245-HAND THROTTLE KIT	\$259.00
(1) 78" WIDE V-BLADE PNF V5295A-78" WIDE V-BLADE PNF	\$3,969.00

<b>Configured Price:</b>	<b>\$58,915.64</b>
Sourcwell Discount:	(\$12,961.44)
<b>SUBTOTAL:</b>	<b>\$45,954.20</b>
Dealer Assembly:	\$3,300.00
Freight Cost:	\$1,350.00
PDI:	\$400.00

Total Unit Price: \$51,004.20  
 Quantity Ordered: 1  
 Final Sales Price: \$51,004.20

**Final pricing will be based upon pricing at the time of  
 final delivery to Sourcewell members.  
 Purchase Order Must Reflect Final Sales Price.**

To order, place your Purchase Order directly with the quoting dealer

\*Some series of products are sold out for 2022. All equipment specifications are as complete as possible as of the date on the quote. Additional attachments, options, or accessories may be added (or deleted) at the discounted price. All specifications and prices are subject to change. Taxes are not included. The PDI fees and freight for attachments and accessories quoted may have additional charges added by the delivering dealer. These charges will be billed separately. Prices for product quoted are good for 60 days from the date shown on the quote. All equipment as quoted is subject to availability.

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198.7.1.1.1.1



**CITY OF GREAT FALLS**  
**2023/2024 Community Development Block Grant Agreement**  
**BY AND BETWEEN**  
**THE CITY OF GREAT FALLS, MONTANA, AND**  
**City of Great Parks and Recreation Department**

**City of Great Parks and Recreation Department**, hereinafter referred to as the Grantee, hereby enters into this Agreement with the Planning and Community Development Department of the City of Great Falls, a Municipal Corporation of the State of Montana, hereinafter referred to as the City on this **16th** day of **April, 2024**.

**SECTION 1 – PROJECT DESCRIPTION**

The Grantee has approved of, and hereby agrees to, the following project description, program budget and tentative activity schedule:

- A. The Grantee has been awarded as a subrecipient of the City to receive United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funds in the amount of **\$51,004.20**.
- B. Personnel assigned to scope of work includes: **Steve Herrig, Director**. Contact Information: **sherrig@greatfallsmt.net, 406-455-8980**.
- C. The project scope will **include the purchase of one Kubota D1105 Utility Vehicle and equipment to provide service and maintenance to the Gibson and Elks Riverside Parks**. The project will be implemented during the time period of **April 16th, 2024 to June 30, 2025**.
- D. Grantee is responsible for any costs and for expenses incurred in excess of the grant amount. Non-profit agencies will not be funded for staff salaries, benefits, office consumables, and rent payments for agency office space or utility costs. All grant funds will need to be expended by the Grantee prior to **June 30, 2025**. Any remaining unspent funds will revert back to the City after that date.
- E. Requests for extension can be submitted by the Grantee and considered for approval by the City. Extension requests must be submitted by **May 31, 2025**. Refer to *24 CFR 570.503* regarding Scope of Work, Time of Performance, and budget documentation.

**NATIONAL OBJECTIVE**

The CDBG national objective most pertinent to the proposed project is **benefitting low to moderate income families**.

Determination of eligibility is fully described in 24 CFR 570.200 through 24 CFR 570.209.

The project will address the national objective by **improving Parks, Facilities in low to moderate income areas..**

**SECTION 2 – GENERAL CONDITIONS**

**A. GENERAL COMPLIANCE:**

The Grantee agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570. These are the HUD regulations concerning the CDBG program. The Grantee also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. Additionally all regulations under 2 CFR 200 apply.

**B. INDEMNIFICATION:**

- a. The Grantee waives any and all claims and recourse against the City of Great Falls, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipient's performance of this Contract.
- b. The Grantee shall indemnify and hold harmless the City of Great Falls and its agents and employees from and against all claims, damages, losses and expenses, penalties including attorney fees arising out of, or resulting from, the performance of the work, provided that any such claim, damage, loss, or expense which is:
  - i. attributable to bodily injury, sickness, disease or death or to damage or destruction of tangible property, other than the work itself, including the loss and use resulting therefrom;
  - ii. caused in whole or in part by any negligent act or omission of the contractor(s), and subcontractor(s), or anyone directly or indirectly employed by any one of them or anyone else, for whose acts any of them may be liable, regardless whether or not is caused in part or by party indemnified hereunder; and,
  - iii. caused in whole or in part by its failure to adhere to the terms of this contract.

**C. SUSPENSION/TERMINATION/REIMBURSEMENT:**

The Grantee agrees that suspension or termination of this project may occur if the Grantee materially fails to comply with any term of this Agreement, or any rules, regulations or provisions referred to herein, and that this grant may be terminated by the City for convenience. These conditions are fully described below in 2 CFR 200.338 and 2 CFR 200.339.

**1. 2 CFR 200.338 Remedies for Noncompliance**

- a. If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.207 Specific Conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:
    - i. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
    - ii. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
    - iii. Wholly or partly suspend or terminate the Federal award.
    - iv. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
    - v. Withhold further Federal awards for the project or program.
    - vi. Take other remedies that may be legally available.
2. 2 CFR 200.339 Termination
- a. The Federal award may be terminated in whole or in part as follows:
    1. By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
    2. By the Federal awarding agency or pass-through entity for cause;
    3. By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
    4. By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish

the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

- b. When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).
  1. The information required under paragraph (b) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either –
    - i. Has exhausted its opportunities to object or challenge the decision, see § 200.341 Opportunities to object, hearings and appeals; or
    - ii. Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.
  2. If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:
    - i. Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;
    - ii. Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.
  3. Federal awarding agencies, shall not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

- c. When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in § 200.343 Closeout and § 200.344 Post-closeout adjustments and continuing responsibilities.

D. REVERSION OF ASSETS:

1. Upon final payment by the City, the Grantee agrees that any unspent funds shall no longer be obligated by the City to the Grantee.
2. The Grantee agrees to the following:
  - a. It will strive to deliver the kinds of services to the types of beneficiaries that will enable it to always meet at least one of the national objectives of the CDBG program referred to in *24 CFR 570.208*. This stipulation is in effect for five years from the date of issuance of the final payment by the City for this activity;
  - b. If at any time during these five years the Grantee is no longer conducting a program or programs that are CDBG eligible, the Grantee agrees to return all furnishings, equipment, or personal property that was paid for by CDBG funds, or reimburse the City in the amount that is equal to the value;
  - c. This agreement shall comply with the requirements specified in *24 CFR 570.503(b)(7)*; and
  - d. If any furnishings, equipment or personal property (under the above the criteria) are no longer in control or possession of the Grantee, said Grantee agrees to reimburse the City in the amount that is equal to the furnishing, equipment, or personal property value at the time of the purchase, and that the City may use any legal means necessary to obtain restitution for these items from the Grantee.

E. TERM OF THE AGREEMENT:

1. The term of this Agreement with the exception of Section 2-D above shall expire when the final payment is made or on **June 30, 2025**, whichever is later.
2. The term of the Agreement pertaining to Section 2-D shall expire only when the applicable criteria are met by the Grantee and accepted by the City.

F. PUBLICATIONS:

In all documents referencing the CDBG Project the Grantee agrees to insert the following language, to the fullest extent possible, and submit a copy to the City:  
 “-funded by the City of Great Falls CDBG Program.”

## **SECTION 3 – ADMINISTRATION REQUIREMENTS**

### **A. FINANCIAL MANAGEMENT:**

1. The Grantee agrees to provide the City with the following documents (if applicable) before any funds are disbursed by the City:
  - a. This signed Community Development Block Grant Agreement;
  - b. Grantee’s Articles of Incorporation;
  - c. Grantee’s tax-exempt status certification;
  - d. Grantee’s by-laws or other such operational information;
  - e. Any other pertinent information which the City requests; and
  - f. Any Grantee lease agreements.
  
2. The Grantee shall comply with the current requirements and standards, in effect to the date of this agreement, of *2 CFR, Part 200* and containing reference to *2 CFR, Part 230, “Cost Principles for Non-Profit Organizations”* or *2 CFR, Part 220, “Cost Principles for Educational Institutions,”* as applicable, and with the following Attachments to *2 CFR, Part 215*:
  - (1) “Financial Reporting”;
  - (2) “Bonding and Insurance”;
  - (3) “Retention and Custodial Requirements for Records”;
  - (4) “Standards for Financial Management Systems”;
  - (5) “Monitoring and Reporting Program Performance”;
  - (6) “Property Management Standards”; and
  - (7) “Procurement Standards”.

### **B. DOCUMENTATION AND RECORD-KEEPING:**

1. The Grantee agrees to maintain all records required by the Federal regulation specified in *24 CFR Part 570.506*, which are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:
  - a. Records providing a full description of each activity undertaken;
  - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
  - c. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
  - d. Financial records as required by *24 CFR Part 570.502*, and *2 CFR Part 200*; and
  - e. Other records necessary to document compliance with Subpart K of *24 CFR 570*.

2. The Grantee shall retain all records pertinent to expenditures incurred under this contract for period of five (5) years after the termination of all activities funded under this Agreement.
3. The Grantee shall maintain grant beneficiary information, as requested by the City which will include client eligibility for services, and client ethnicity. The Grantee agrees to provide the City all non-duplicated information required. This report is due, upon request of funds or, if not applicable, on or before **July 15, 2025**, and will cover the period from **April 16th, 2024** through **June 30, 2025** unless otherwise specified by the City.
4. The Grantee understands that certain client information collected under this contract is private and use or disclosure of such information, when not directly connected with the administration of the City's or Grantee's responsibilities with respect to services provided under this contract, is prohibited. Client information that might be utilized for identity theft including Social Security numbers, bank account numbers, and other personal information shall be kept under lock and key by the Grantee.
5. The Grantee shall maintain real property inventory records which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall confirm with the "changes in use" restrictions specified in *24 CFR Parts 570.503 (b)(7)*, as applicable.
6. All Grantee records with respect to any matters covered by this Agreement shall be made available to the City or HUD, at any time during normal business hours, as often as the City or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Grantee within 30 days after the Audit Report. Failure of the Grantee to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments.
7. At the City's discretion, the City may monitor the Grantee on-site to review all Grantee records with respect to any matters covered by this Agreement. A fifteen (15) day notice of an on-site monitoring will be provided and in accordance with 24 CFR 570 Part 570.502(b)(vii). On-site monitoring of the Grantee will be conducted less frequently than quarterly and more frequently than annually.
8. Under the conditions of 24 CFR 570.508, public access to program records shall be provided to citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality, notwithstanding 2 CFR 200.337.

C. REPORTING AND PAYMENT PROCEDURES:

1. Program Income

The Grantee agrees that this CDBG activity, as proposed, generates no program income as defined in *24 CFR 570.500(a)* and therefore, the requirements of *24 CFR 570.504* are not applicable to this project. This paragraph does not nullify any of the requirements described in Section 2-D of this Agreement.

2. Payment Procedures

The City will pay to the Grantee/Contractor funds available under this contract based upon information submitted by the Grantee and consistent with any approved budget, and City policy concerning payments. Payments will be made for eligible expenses actually incurred by the Grantee, and not to exceed actual cash requirements. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of the Grantee. Final invoices must be received by City no later than 15 days after the end of the contract to be eligible for payment, unless an extension is given by the City.

3. Progress Reports

The Grantee shall submit regular progress reports to the City in the form, content, and frequency as required by the City.

D. PROCUREMENT:

1. Federal Standards

The Grantee shall procure all materials, property, or services in accordance with the requirements of *2 CFR Part 215.40*, Procurement Standards.

2. Compliance

The Grantee agrees to comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided therein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this contract.

E. OTHER PROGRAM REQUIREMENTS:

1. The Grantee shall carry out the activities under this contract in compliance with all Federal laws and regulations as described in *24 CFR 570 Subpart K*:

- (1) 570.600, General;
- (2) 570.601, Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063; 99;
- (3) 570.602, Section 109 of the Act;
- (4) 570.603, Labor Standards;
- (5) 570.604, Environmental Standards;
- (6) 570.605, National Flood Insurance Program;
- (7) 570.606, Displacement, Relocation, Acquisition, and Replacement of Housing;



- (8) 570.607, Employment and Contracting Opportunities;
- (9) 570.608, Lead-Based Paint;
- (10) 570.609, Use of Debarred, Suspended or Ineligible Contractors or Subrecipients;
- (11) 570.610, Uniform Administrative Requirements and Cost Principles;
- (12) 570.611, Conflict of Interest;
- (13) 570.612, Executive Order 12372; and
- (14) 570.613, Eligibility Restrictions for Certain Resident Aliens;
- (15) 570.614, Architectural Barriers Act and the Americans with Disabilities Act; and except that:
  - (i) The Grantee does not assume the City’s environmental responsibilities described in 570.604; and
  - (ii) The Grantee does not assume the City’s responsibility for initiating the review process under the provisions of 24 CFR Part 52.

**SECTION 4 – PERSONNEL & PARTICIPANT CONDITIONS**

**A. CIVIL RIGHTS :**

1. Compliance

Grantee will comply with Federal requirements set forth in 24 CFR Part 5, subpart A which includes nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.

2. Nondiscrimination

The Grantee will not discriminate against any employee or applicant for employment, because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Grantee will take affirmative action to insure that all employment practices are free from such discrimination.

**B. AFFIRMATIVE ACTION:**

1. W/MBE

The Grantee will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract.

2. Access to Records

The Grantee shall furnish and cause each of its own subrecipients or subcontractors, to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

3. EEO Statement  
The Grantee will, in all solicitations or advertisements for employees and/or contractors placed by or on behalf of the Grantee, state that it is an Equal Opportunity Employer under the provisions of 24 CFR 570.607(a).
4. Subcontract Provisions  
The Grantee will include the provisions of the above paragraphs regarding Civil Rights and Affirmative Action in every subcontract, so that such provisions will be binding upon each of its own subrecipients or subcontractors. City will monitor all subcontracts/agreements to verify that Grantee is in compliance.

C. EMPLOYMENT RESTRICTIONS:

1. Labor Standards  
The Grantee agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland “Anti-Kickback” Act, and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this contract.
  - a. This requirement applies for all contractors engaged under contracts in excess of \$2,000 and shall apply to residential properties only if such property contains no less than 8 units; for construction, renovation, or repair work financed in whole or in part with assistance provided under this contract. The Grantee shall maintain and obtain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request. The Grantee shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of the paragraph.
2. Section 3 Clause  
The Grantee affirms that to the maximum extent possible it will employ local (Section 3) contractors on any projects using CDBG funds (under the provisions of 24 CFR 135).
  - a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution

of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to

the maximum extent feasible, but not in derogation of compliance with section 7(b).

D. CONDUCT:

1. Assignability

The Grantee shall not assign this contract or any of the payments that become due without the written consent of the City.

2. Subcontracts

The Grantee shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such an agreement.

a. The City will monitor all subcontracted services to assure contract compliance.

b. The Grantee shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

c. The Grantee shall undertake procedures to ensure that all contracts and subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of contracts and subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Conflict of Interest

Except for approved administrative and/or personnel costs, no person having responsibilities dealing with CDBG assisted activities may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement, either for themselves or their family, during their tenure or for one year thereafter. In its entirety:

24 CFR §570.611 Conflict of interest.

(a) *Applicability.*

(1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.317 and 200.318, shall apply.

(2) In all cases not governed by 2 CFR 200.317 and 200.318, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to §570.202; or grants, loans, and other assistance to

businesses, individuals, and other private entities pursuant to §570.203, 570.204, 570.455, or 570.703(i)).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(d) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

4. Religious Organization

The Grantee agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in *24 CFR 570.200(j)*. The Grantee hereby certifies that none of the beneficiaries of its activities or services are based upon any religious preference.

5. Political Activities and Lobbying

The Grantee agrees that under *24 CFR 507.207*, the following activities will not be assisted with CDBG funds:

- a. Buildings or portions thereof, used for the general conduct of government as defined at § 570.3(d);
- b. General government expenses; and
- c. Political activities.
- d. The Grantee certifies, to the best of his or her knowledge and belief, that:

- (i) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- (ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing, or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions;
- (iii) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- (iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to penalty as authorized by section 1352, Title 31, U.S. Code.

APPROVED BY: THE CITY OF GREAT FALLS:

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

DATE: \_\_\_\_\_

ATTEST:  
(Seal of the City)

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

APPROVED FOR LEGAL CONTENT:

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David Dennis, City Attorney \*

\* By law, the City Attorney may only advise or approve contract or legal document language on behalf of the City of Great Falls, and not on behalf of other parties. Review and approval of this document was conducted solely from the legal perspective, and for the benefit, of the City of Great Falls. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.

APPROVED BY: **City of Great Parks and Recreation Department**

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**Steve Herrig, Director.**





Commission Meeting Date: April 16, 2024  
**CITY OF GREAT FALLS**  
**COMMISSION AGENDA REPORT**

**Item:** Construction Contract Award: 33<sup>rd</sup> St Water Storage Tank Rehabilitation  
O. F. 1794.1

**From:** Engineering Division

**Initiated By:** Public Works Department

**Presented By:** Christoff T. Gaub, Public Works Director

**Action Requested:** Consider Bids and Approve Contract

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (award/not award) a contract in the amount of \$2,941,050.00 to DN Tanks, for the 33<sup>rd</sup> Street Water Storage Tank Rehabilitation and authorize the City Manager to execute the necessary documents.”

2. Mayor requests a second to the motion, public comment, Commission discussion, and calls for the vote.

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**Staff Recommendation:**

Approve construction contract award.

**Summary:**

This project will rehabilitate the 80-year-old 33<sup>rd</sup> Street Water Storage Tank, extending the life of the tank and enabling it to provide water to the core part of Great Falls.

**Background:**

The 33<sup>rd</sup> St Water Storage Tank was constructed in the mid 1940’s. It is one of two water tanks on the main zone that serves 2/3 of the City. It stores 4.75 million gallons of water, which is 50 percent of the City’s total water storage capacity. This type of water storage tank typically has a useable life of approximately 100 years. During the annual inspection, the dive crew noted cracking on the inner wall and excessive water leaking out of the tank. City staff estimates the amount of water leaking out of the tank to be approximately 50 gallons per minute, or 26 million gallons per year. The City retained Burns and McDonnell Engineering Company, Inc. to complete an evaluation of the tank.

Workload Impacts

AE2S has designed and will provide construction administration and necessary certification documents. City Staff tested the system without the tank in service this spring to verify that the water supply will not

be adversely effected while the tank is being lined. Furthermore the project calls for the tank to be offline this fall when demand is low.

#### Purpose

This project will extend the useable life of the 33<sup>rd</sup> St Water Storage Tank by at least 10 years, and decrease the amount of water lost through leaks and decrease any infiltration into the foundation of the tank.

#### Project Work Scope

This project consists of removing and replacing the interior and exterior linings of the water storage tank, removing and replacing the tank access and safety features, and repairing the damaged concrete.

#### Evaluation and Selection Process:

The specifications were advertised two times in the Great Falls Tribune. One bid was received on April 3, 2024. There are only a handful of companies that are qualified to do this type of work throughout the country. DN Tanks, the original designer of the tank, submitted a responsible bid of \$2,941,050.00. DN Tank's bid was within 6% of the engineer's estimate, which was prepared by AE2S. Staff is confident that this is a reasonable bid.

#### Conclusion:

Lining the tank will extend the 33<sup>rd</sup> St Water Storage Tank's usable life for approximately 10 years. This additional time enables the City to develop the most effective and efficient long term (100 year) strategy on water storage infrastructure.

#### **Fiscal Impact:**

Water Enterprise Funds have been programmed and budgeted for this project. The project has been selected and prioritized in accordance with the Public Works Capital Improvement Program and will be funded utilizing Water Plant Enterprise funds.

#### **Alternatives:**

The City Commission could vote to deny award of construction project and re-bid or cancel the project. This action would result in delaying the project and lead to more lost water from the water storage tank and needing to replace the water storage tank sooner without the rehabilitation. The City would not have time to develop and put in place a strategic plan for future water infrastructure.

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

Bid Tabulation

Project Summary

CITY OF GREAT FALLS  
 P.O. BOX 5021  
 GREAT FALLS, MT 59403

BID TABULATION SUMMARY  
 Great Falls 33rd Street Reservoir Rehabilitation

O.F. 1794.1


April 3, 2024

R. Hanson (AE2S)

O.F. 1794.1

	Name of Bidder	Acknowledge Addendum #1	Acknowledge Addendum #2	Acknowledge Addendum #3	10% Bid Security	Affidavit of Non-Collusion	Certificate of Non-Segregated Facilities	Certificate of Compliance with Insurance Req	Base Bid	Alternate 1 (Not Selected)	Total Bid (Base + Selected Alt)
1	DN Tanks	X	X	X	X	X	X	X	\$ 2,941,050.00	\$ 185,000.00	\$ 2,941,050.00
2											
3											
4											
5											
6											
	<b>Engineer's Estimate</b>								\$ 2,785,000.00	\$ 250,000.00	<b>\$2,785,000.00</b>

Respectfully submitted by:

  
 Ross Hanson  
 AE2S Project Manager

4/3/2024  
 Date

**OF 1794.1 - 33rd Street Reservoir Rehabilitation**

**Base Bid for: Construction**

**Engineer's Estimate**

**DN Tanks**

Item	Description	Est Quantitie	Unit	Unit Price	Total Price	Unit Price	Total Price
1	Mobilization	1	LS	\$ 175,000	\$ 175,000	\$ 287,500	\$ 287,500
2	Interior Coating Removal/Surface Preparation	1	LS	\$ 725,000	\$ 725,000	\$ 968,600	\$ 968,600
3	Interior Additional Abatement Required	1	LS	\$ -	\$ -	\$ -	\$ -
4	Interior Lining Installation	1	LS	\$ 1,035,000	\$ 1,035,000	\$ 691,300	\$ 691,300
5	Tank Disinfection/Water Tightness Testing	1	LS	\$ 25,000	\$ 25,000	\$ 20,100	\$ 20,100
6	Exterior Coating Removal/Surface Preparation	1	LS	\$ 250,000	\$ 250,000	\$ 346,100	\$ 346,100
7	Exterior Additional Abatement Required	1	LS	\$ -	\$ -	\$ -	\$ -
8	Exterior Concrete Repair	1	LS	\$ 50,000	\$ 50,000	\$ 90,000	\$ 90,000
9	Exterior Coating Installation	1	LS	\$ 250,000	\$ 250,000	\$ 150,700	\$ 150,700
10	Access and Safety Improvements	1	LS	\$ 150,000	\$ 150,000	\$ 246,500	\$ 246,500
11	Site Restoration and Sodding	1	LS	\$ 25,000	\$ 25,000	\$ 40,250	\$ 40,250
12	Miscellaneous Work	100000	Units	\$ 1	\$ 100,000	\$ 1.00	\$ 100,000
<b>Total Bid</b>					<b>\$ 2,785,000</b>		<b>\$ 2,941,050</b>

**Bid for: Alternate No. 1 Polyurea Lining Alternate**

Item	Description	Est Quantitie	Unit	Unit Price	Total Price	Unit Price	Total Price
1	Polyurea Lining Alternate	1	LS	\$ 250,000	\$ 250,000	\$ 185,000	\$ 185,000
<b>Total Bid</b>					<b>\$ 250,000</b>		<b>\$ 185,000</b>

**PROJECT SUMMARY SHEET:  
33<sup>RD</sup> St Water Storage Tank Rehabilitation, O.F. 1794.1  
FY 2023/2024 Capital Improvement Plan  
Current as of: April 3, 2024**

**Description:** 33<sup>rd</sup> St Water Storage Tank is 80 years old, typical life span is 100 years. Supplies water to the core part of Great Falls, Downtown to Malmstrom, south of the River. The tank has a capacity of 4.75 million gallons.

**Justification:** The tank was evaluated by Burn and McDonnell Engineering Company, Inc. and was found to be leaking approximately 50 gallons/min as well as showing its age.

**Scope:** Hire consultant to design the repair and rehabilitation of both the inside and outside of the tank. Inside rehabilitation includes patching any cracks and potentially lining the entire interior of the tank. Outside rehabilitation to include spot repairs.

**Added to CIP:** 2<sup>nd</sup> half FY2023, 2<sup>nd</sup> half FY2024 1<sup>st</sup> half FY2025

**CIP Timeline:** Design is 6 months behind due to scope change. Bidding is still on schedule/

**Cost:**

- CIP programmed cost/FY: \$400,000/FY23, \$1.5M/FY24, \$1.5M/FY25
- Current Working Estimate: \$3.5M
- Awarded Cost: Design \$336,365, Construction (to be awarded) \$2,941,050.00
- Final Cost: TBD

**Funding Source(s):** Water Plant Other Repair and Maintenance Funds

**Planned Execution Method:** Design-Bid-Build

**Planned Construction CY:** Fall/Winter 2024

**Current Project Stage (Estimated Completion Date):** Planning (Fall 2023), Design (Fall/Winter 2023), Bid (March 20, 2024), Construction (Fall/Winter 2024), Warranty (Winter 2026)

- Design Method: Consultant (AE2S)
- Contractor: DN Tanks

**Map & Site Pictures:**



*Figure 1 Foundation drain, approximately 50 gpm*

**PROJECT SUMMARY SHEET:**  
**33<sup>RD</sup> St Water Storage Tank Rehabilitation, O.F. 1794.1**  
**FY 2023/2024 Capital Improvement Plan**  
**Current as of: April 3, 2024**



Figure 2 Cracks and flaking inside of tank



Figure 3 Project Location



Commission Meeting Date: April 16, 2024  
**CITY OF GREAT FALLS**  
**COMMISSION AGENDA REPORT**

**Item:** Professional Services Agreement: Library Remodel Design Project OF 1762.5

**From:** Great Falls Public Library

**Initiated By:** Great Falls Public Library

**Presented By:** Susie McIntyre, Library Director

**Action Requested:** Approve a Professional Services Agreement with Cushing Terrell for the Library Remodel Design Project

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/not approve) a Professional Services Agreement with CTA Inc., d/b/a Cushing Terrell, in the amount of \$873,158.00 for the Library Remodel Design project, and (authorize/not authorize) the City Manager to execute the agreement.”

2. Mayor requests a second to the motion, public comment, Commission discussion, and calls for the vote.

**Staff Recommendation:** Staff recommends that the Commission approve the Professional Services Agreement.

**Summary:** The Great Falls Public Library Board of Trustees has reviewed and approved the Cushing Terrell Library Remodel Design contract and requests that the Commission also approve the contract.

**Background:** The number one goal of the Great Falls Public Library 2023-2026 Strategic Plan is to “create a safe, accessible library that will serve the community for the next 50 years.” A major step in reaching that goal is to “engage a professional team to create the detailed designs for the Library remodel as proposed in the Library Master Plan.”

The Library conducted a Request for Proposal process as required by City Financial policies. An RFP selection committee was formed consisting of Whitney Olson (Library Board), Noelle Johnson (Library Board), Russell Brewer (Public Works Engineer), Sue Warren (Foundation Board), Brianne Laurin (Foundation Director), Sarah Cawley (Library Staff), and Susie McIntyre (Library Director).

Three (3) proposals were received and opened on November 29, 2023. After much debate and consideration, the selection committee chose Cushing Terrell as the top scoring firm. Over the last two

months, we have developed a mutually agreeable Professional Services Agreement and accompanying Scope of Work. The contract was approved by the Library Board of Trustees at their March 26<sup>th</sup> meeting.

The proposed design work is the necessary first step in the Library Remodel. The attached scope of work defines the steps of the design process that will prepare for the construction phase of the project. The proposed design work for the Library remodel will also prepare the Library and Foundation to raise funds for the project by providing budget estimates and by defining sections of the project. Accessibility improvements can qualify for Community Development Block Grant Funds. Energy efficiency improvements can qualify for Federal funds designated for green projects. The Library remodel designs will also be used in conversations the Foundation will have with private citizens and foundations to request funding for the construction phase of the project.

**Fiscal Impact:** This project will not have a fiscal impact on the operational budget of the Library. The Great Falls Public Library Foundation participated in the Request for Proposal committee and is committed to this project. The Library currently holds \$117,000 in Library funds designated to the remodel project. As Cushing Terrell submits invoices, the Library will use existing funds and then request dedicated funds from the Foundation as needed to pay the invoices.

NOTE: Within the City Budget, there are two funds related to the Library--the *Library Fund* which holds the operational funds of the Library and the *Library Foundation Fund* which holds donated funds.

**Alternatives:** The Commission could decide to not approve the Cushing Terrell Professional Services Agreement which would delay the design work on the Library remodel. It would also have a negative impact on the ability to raise grants and private funds for future phases of the project.

**Concurrences:**

Library Board of Trustees  
Great Falls Public Library Foundation  
Library Strategic Plan 2023-2026  
Library Master Plan

**Attachments/Exhibits:**

Cushing Terrell Professional Services Agreement and Scope of Work



**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into by and between the **CITY OF GREAT FALLS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 5021, Great Falls, Montana 59403-5021, hereinafter referred to as “City,” and **CTA INC**, dba Cushing Terrell, 219 2<sup>nd</sup> Av South, Great Falls, MT, hereinafter referred to as “Consultant.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

**1. Purpose:** City agrees to hire Consultant as an independent contractor to perform for City services described in the Scope of Services attached hereto as Exhibit “A” and by this reference made a part hereof.

**2. Term of Agreement:** This Agreement is effective upon the date of its execution. Both parties reserve the right to cancel this Agreement by providing a written thirty (30) day notice to the other party.

**3. Scope of Work:** Consultant will perform the work and provide the services in accordance with the requirements of the Scope of Services attached hereto as Exhibit “A.”

**4. Payment:** City agrees to pay Consultant at the hourly rate(s) set forth in the Scope of Services, for a total not to exceed amount of EIGHT HUNDRED SEVENTY-THREE THOUSAND ONE HUNDRED FIFTY EIGHT DOLLARS (\$873,158.00) for services performed pursuant to the Scope of Services. Any alteration or deviation from the described work that involves extra costs will be performed by Consultant after written request by the City, and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

**5. Independent Contractor Status:** The parties agree that Consultant is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Consultant is not subject to the terms and provisions of the City’s personnel policies handbook and may not be considered a City employee for workers’ compensation or any other purpose. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

Consultant shall comply with the applicable requirements of the Workers’ Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Consultant shall maintain workers’ compensation coverage for all members and employees of Consultant’s business, except for those members who are exempted by law.

Consultant shall furnish the City with copies showing one of the following: **(1)** a binder for workers’ compensation coverage by an insurer licensed and authorized to provide workers’

compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

**6. Indemnification:** To the fullest extent permitted by law, Consultant shall fully indemnify, defend, and save City, its agents, representatives, employees, and officers harmless from and against any and all claims, actions, costs, fees, losses, liabilities or damages of whatever kind or nature arising from or related to Consultant's negligence and/or errors or omissions in the performance of this Agreement and Consultant's work on the Project contemplated herein or work of any subcontractor or supplier to Consultant. The indemnification obligations of this Section must not be construed to negate, abridge, or reduce any common-law or statutory rights of the City which would otherwise exist. Consultant's indemnity under this Section shall be without regard to and without any right to contribution from any insurance maintained by City. Consultant also waives any and all claims and recourse against the City or its officers, agents or employees, including the right of contribution for loss or damage to person or property arising from, growing out of, or in any way connected with or incident to the performance of this Agreement except responsibility for its own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, according to 28-2-702, MCA. These obligations shall survive termination of this Agreement and the services performed hereunder.

**7. Insurance:** Consultant shall purchase and maintain insurance coverage as set forth below. The insurance policy, except Workers' Compensation and Professional Liability, must name the City, (including its elected or appointed officers, officials, employees, or volunteers), as an additional insured or contain a blanket additional insured endorsement and be written on a "primary—noncontributory basis." Consultant will provide the City with applicable additional insured endorsement documentation. Each coverage shall be obtained from an insurance company that is duly licensed and authorized to transact insurance business and write insurance within the state of Montana, with a minimum of "A.M. Best Rating" of A-, VI, as will protect the Consultant, the various acts of subcontractors, the City and its officers, employees, agents, and representatives from claims for bodily injury and/or property damage which may arise from operations and completed operations under this Agreement. All insurance coverage shall remain in effect throughout the life of this Agreement and for a minimum of one (1) year following the date of expiration of Consultant's warranties. All insurance policies, except Workers' Compensation, must contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to Consultant, City, and all other additional insureds to whom a certificate of insurance has been issued. All insurance documentation shall be in a form acceptable to the City.

**\* Insurance Coverage at least in the following amounts is required:**

- |    |   |   |
|----|---|---|
| 1. | Commercial General Liability<br>(bodily injury and property damage) | \$1,500,000 per occurrence<br>\$3,000,000 aggregate |
| 2. | Products and Completed Operations                                   | \$2,000,000   |
| 3. | Automobile Liability  | \$1,500,000 combined single limit                   |
| 4. | Workers' Compensation   | Not less than statutory limits                      |

- 5. Employers' Liability \$1,000,000
- 6. Professional Liability (E&O) \$1,000,000 per claim  
(only if applicable) \$2,000,000 aggregate

Consultant may provide applicable excess or umbrella coverage to supplement Consultant's existing insurance coverage, if Consultant's existing policy limits do not satisfy the coverage requirements as set forth above.

**\* If a request is made to waive certain insurance requirements, insert the insurance item # and corresponding description from the list above: .**

**Legal reviewer initials:**  **Approved**  **Denied**

**8. Professional Service:** Consultant agrees that all services and work performed hereunder will be accomplished in a professional manner consistent with the professional standard of practice under similar circumstance and in the same location.

**9. Compliance with Laws:** Consultant agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. As applicable, Consultant agrees to purchase a City safety inspection certificate or special business license.

**10. Nondiscrimination:** Consultant agrees that all hiring by Consultant of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin, or other class protected by state and/or federal law.

**11. Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**12. Modification and Assignability:** This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Consultant may not subcontract or assign Consultant's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

**13. Ownership and Publication of Materials:** All reports, information, data, and other materials prepared by the Consultant pursuant to this Agreement are the property of the City. The City has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use without written verification or adaptation by the Consultant for the specific purpose intended will be at the City’s sole risk and without liability or legal exposure to the Consultant. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the City.

**14. Liaison:** City’s designated liaison with Consultant is **Susie McIntyre** and Consultant’s designated liaison with City is **Anthony Houtz**.

**15. Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

**IN WITNESS WHEREOF,** Consultant and City have caused this Agreement to be executed and intend to be legally bound thereby as of the date set forth below.

**CITY OF GREAT FALLS, MONTANA**

**CTA INC, dba CUSHING TERRELL  
CONSULTANT**

**By:** \_\_\_\_\_  
**Print Name:**  
**Print Title:**  
**Date:**

**By:** \_\_\_\_\_  
**Print Name: Anthony Houtz**  
**Print Title: Associate Principal**  
**Date: 1/16/2024**

ATTEST:

(Seal of the City)

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
David G. Dennis, City Attorney\*

\* By law, the City Attorney may only advise or approve contract or legal document language on behalf of the City of Great Falls, and not on behalf of other parties. Review and approval of this document was conducted solely from the legal perspective, and for the benefit, of the City of Great Falls. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.

January 16, 2024

# Cushing Terrell<sup>®</sup>

Great Falls Public Library  
Susie McIntyre, Director  
301 2<sup>nd</sup> Avenue North  
Great Falls, Montana 59401  
PH: (406) 453-0349

## Re: Architecture/Engineering Design Fee Proposal – Great Falls Library

Dear Susie :

Thank you again for the opportunity to work with your team – if there is anything you see in this proposal that you would like to edit or adjust, please let me know. Our team is excited to embark on this journey with you and continue to add depth and insight to the approach you have already begun.

### SCOPE OF PROJECT

The Great Falls Public Library is seeking to renovate their current facility in Great Falls, MT. See following figure for project location. The project will include architectural, mechanical, electrical, plumbing, structural, civil engineering, and landscape design services required to complete final construction documents based in general on the scope of work outlined in the masterplan completed in 2022. Cushing Terrell understands that the masterplan began to address a series of improvements throughout the existing building, and that our team will need to review each with your team and further inform the direction for the renovation. This proposal includes a hazardous materials inspection and excludes bidding and construction administration, as these services are anticipated to be needed later in the project, following full funding. Services not anticipated to be needed include platting, geotechnical engineering, traffic study and public utility extensions.

Figure 1: Existing Great Falls, MT Site



## **SCOPE OF SERVICES**

### **100 Land Surveying**

TD&H's survey team will provide a topographic survey of the site to develop working site information for the project, including existing property lines and utility locations. They will also carefully delineate the SE plaza topographically in order to facilitate improvements planned for that corner.

### **200 Landscape Design**

#### **201 Design Planning**

Collaborative design sessions addressing site configuration of landscape areas around buildings, parking lots, pedestrian routes and plazas. Primarily, this phase includes design and development of the plaza in the SE as well as restorative landscape design in the north park, along with design treatment in the north park related to a new structure location if necessary. Landscape design will also take into account tie-in to existing irrigation systems to work with the new design solution.

### **300 Due Diligence**

#### **301 Information Gathering**

Cushing Terrell will utilize existing plansets provided by the Library to initiate the information gathering phase of the project and construct a working three-dimensional model upon which the team will be able to integrate with the masterplan. Cushing Terrell will also field verify dimensions on-site and perform a 360degree image capture of the existing conditions.

#### **302 Masterplan Review and Presentation**

Cushing Terrell will coordinate worksessions with the Library team and further develop the masterplan. During this phase, Cushing Terrell will develop presentation materials and renderings to facilitate further discussion/decision-making as well as provide feedback to the community regarding vision for the future of the facility.

### **400 Design Development**

#### **401 All Disciplines – Design Intent Document Set**

All disciplines will compile a design intent document set that outlines all major systems and their combined impacts, along with an opinion of probable cost, for review with the Library to ensure that the scope of work matches the desires of the Library and matches the budget expectations. As design progresses, we would recommend a regular meeting with Library leadership at minimum two-week intervals.

#### **402 Design Development Categorized Estimating**

Our team will develop a comprehensive estimate that pockets the different areas of the proposed renovation into separate budgeting categories for prioritization by Library leadership.

#### **403 Public Presentation**

Our team will develop a public presentation for the community at the conclusion of Design Development.

## **500 Construction Documents**

### **501 Civil Construction Documents**

TD&H will prepare civil construction documents to accommodate a new site development for the southeast plaza that will include removal of the existing fountain and creation in coordination with the architect and landscape designer, of a new urban plaza. Documents will include accessibility travel review from the parking area to the main entrance location (new or existing).

### **502 Civil Specifications**

It is assumed that most of the civil specifications will reference the local specification manual (Montana Public Works Standards and Specifications) for asphalt, aggregates, concrete, stormwater piping, water piping and sewer piping.

### **503 Public Presentation**

Our team will develop a public presentation for the community near the conclusion of Construction Documents.

### **504 Engineering Reports**

Not anticipated at this time.

### **505 Construction Documentation Categorized Estimating**

Our team will develop a comprehensive estimate that pockets the different areas of the proposed renovation into separate budgeting categories for prioritization by Library leadership.

## **511 A/MEP Construction Documents**

CUSHING TERRELL will prepare construction documents that fully represent the architectural, mechanical, electrical, and plumbing needs for the project. Cushing Terrell will review the project for code compliance and accessibility needs, as well as finish requirements for local jurisdictional approval. An electrical photometric site plan will be developed as required for City permit.

## **512 Structural Construction Documents**

CUSHING TERRELL will review the existing plans and existing structural system against the anticipated requirements for the proposed renovation, including impacts due to new mechanical systems, access to get existing and new mechanical units into and out of the building, any additional equipment placed on the roof, and impacts of new stairwells and/or elevators in the building.

### **513 A/MEP/S Specifications**

Disciplines will incorporate specifications into the contract drawing set. If a more detailed specification is required for portions of the project, Cushing Terrell will provide that specification as a separate volume.

## **600 Landscape Architecture**

TD&H will provide construction documentation for the full scope of landscaping and irrigation work for the design solutions outlined in section 201 above.

**700 Permitting****701 NPDES Permitting/SWPPP-Excluded**

SWPPP permitting with DEQ-MT is excluded and will be the responsibility of the contractor, if required. It appears based on parcel area that the disturbance area will be less than 1 acre. DEQ-MT SWPPP permits are required for 1 acre of disturbance and greater.

**702 City of Great Falls Civil Permitting and Coordination**

Construction Documents will be prepared according to expected requirements of the City of Great Falls for Civil Permit, but will not be submitted until such time as the Library authorizes. As such, permitting is currently held out of this scope of work.

**703 Dry Utility Coordination**

Scope includes initial discipline coordination and coordination with power and gas providers.

**704 Building Permitting**

Construction Documents will be prepared according to expected requirements of the City of Great Falls for General Building Permit, but will not be submitted until such time as the Library authorizes. As such, permitting is currently held out of this scope of work.

**800 Bid Administration****801 Bid Administration**

Not required at this time

**900 Construction Administration****901 General Construction Administration**

Not required at this time

**1000 General Design Support**

General category for design support at the Library's request for additional design improvements not indicated above.



Services not set forth in this section are specifically excluded from the scope of the CUSHING TERRELL’s services and CUSHING TERRELL assumes no responsibility to perform any services not specifically listed in this agreement.

**COMPENSATION PROPOSAL**

This proposal is based upon Cushing Terrell’s understanding of the following assumptions:

<b>Task</b>	<b>Task Name</b>	<b>Task Fee</b>
100	Land Surveying	11,825
200&600	Landscape Design	30,360
300	Due Diligence / Site Planning	87,840
	Hazardous Materials Inspection/Report	20,000
400	Design Development	244,166
500	Construction Documents	
	Structural	53,860
	A/MEP	346,032
	Civil	64,075
700	Permitting	N/A
800	Bid Administration/Support	N/A
900	Construction Administration	N/A
1000	General Design Support	15,000

Reimbursable expenses for printing, phone, travel, mail, etc. will be charged at 1.05 times actual expense.

Thank you for the opportunity to be of service. Again, if you have any questions at all, or wish to modify this proposal or scope of work, please let me know.

Respectfully submitted,

Anthony Houtz, Associate Principal  
Cushing Terrell





# COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

## SECTION I – COVERAGES

### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice And Good Samaritan Coverage**
- "Bodily injury" arising out of the rendering of or failure to render the following health care services by any "employee" or "volunteer worker" shall be deemed to be caused by an "occurrence" for:

- (1) Professional health care services such as:
  - (a) Medical, surgical, dental, laboratory, x-ray or nursing services or treatment, advice or instruction, or the related furnishing of food or beverages;
  - (b) Any health or therapeutic service, treatment, advice or instruction; or
  - (c) The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or
- (2) First aid services, which include:
  - (a) Cardiopulmonary resuscitation, whether performed manually or with a defibrillator; or
  - (b) Services performed as a Good Samaritan.

For the purpose of determining the limits of insurance, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

However, this Incidental Medical Malpractice And Good Samaritan Coverage provision applies only if you are not engaged in the business or occupation of providing any of the services described in this provision.

**2. Exclusions**

This insurance does not apply to:

**a. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:

- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for

the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working

directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next

to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" arising from the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at the job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Access or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses,

public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Employment-Related Practices**

"Bodily injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the injury-causing event described in the definition of "employment-related practices" occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**r. Asbestos**

- (1) "Bodily injury" or "property damage" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
  - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
  - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or

assess the effects of an "asbestos hazard"; or

- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**s. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion**

Exclusions c. through h. and j. through n. do not apply to damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our



discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

**2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" arising out of an offense committed by, at the direction or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral, written or electronic publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral, written or electronic publication, in any manner, of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to

use another's "advertising idea" in your "advertisement".

**g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services.

**i. Infringement Of Intellectual Property Rights**

- (1) "Personal and advertising injury" arising out of any actual or alleged infringement or violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, trade dress, service mark or other designation of origin or authenticity; or

- (2) Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

- (1) Infringement, in your "advertisement", of:
  - (a) Copyright;
  - (b) Slogan; or
  - (c) Title of any literary or artistic work; or
- (2) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. of the definition of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**p. Internet Advertisements And Content Of Others**

"Personal and advertising injury" arising out of:

- (1) An "advertisement" for others on your web site;
- (2) Placing a link to a web site of others on your web site;
- (3) Content, including information, sounds, text, graphics, or images from a web site of others displayed within a frame or border on your web site; or
- (4) Computer code, software or programming used to enable:
  - (a) Your web site; or
  - (b) The presentation or functionality of an "advertisement" or other content on your web site.

**q. Right Of Privacy Created By Statute**

"Personal and advertising injury" arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act.

**r. Violation Of Anti-Trust law**

"Personal and advertising injury" arising out of a violation of any anti-trust law.

**s. Securities**

"Personal and advertising injury" arising out of the fluctuation in price or value of any stocks, bonds or other securities.

**t. Recording And Distribution Of Material Or Information In Violation Of Law**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**u. Employment-Related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the injury-causing event described in the definition of "employment-related practices" occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**v. Asbestos**

- (1) "Personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
  - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
  - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
  - (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**w. Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health

information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

**COVERAGE C MEDICAL PAYMENTS**

**1. Insuring Agreement**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
- provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers Compensation And Similar Laws**

To a person, whether or not an "employee" of

any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.
  - b. Up to \$1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
  - c. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
  - e. All court costs taxed against the insured in the "suit". However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed to the insured.
  - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a

party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
  - (1) Agrees in writing to:
    - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (c) Notify any other insurer whose coverage is available to the indemnitee; and
    - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (2) Provides us with written authorization to:
    - (a) Obtain records and other information related to the "suit"; and
    - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

**SECTION II – WHO IS AN INSURED**

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":
  - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited

liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (1)(b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services:

- (a) Subparagraphs (1)(a), (1)(b) and (1)(c) above do not apply to any "employee" or "volunteer worker" providing first aid services; and
- (b) Subparagraph (1)(d) above does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only

with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

**e. Unnamed Subsidiary**

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which such insured is also a named insured under another policy or would be a named insured under such policy but for its termination or the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

**a. Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally

undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
  - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**b. Lessors Of Equipment**

- (1) Any person(s) or organization(s) from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
- (2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

**c. Lessors Of Land Or Premises**

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

- 1. Any "occurrence" which takes place after you cease to lease that land; or
- 2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- 1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- 2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

**e. Permits Issued By State Or Political Subdivisions**

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

Any other person or organization who is not an additional insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
  - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
  - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

However:

- (1) The insurance afforded to such additional insured only applies to the extent permitted by law; and
- (2) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others

by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

The limits of insurance that apply to additional insureds is described in Section **III – Limits Of Insurance.**

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section **IV – Commercial General Liability Conditions.**

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**SECTION III – LIMITS OF INSURANCE**

**1. The Most We Will Pay**

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

**2. General Aggregate Limit**

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage **C**;
- b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage **B**.

**3. Products-Completed Operations Aggregate Limit**

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

**4. Personal And Advertising Injury Limit**

Subject to **2.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

**5. Each Occurrence Limit**

Subject to **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage **A**; and



**b. Medical expenses under Coverage C**

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

**6. Damage To Premises Rented To You Limit**

Subject to **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

**7. Medical Expense Limit**

Subject to **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

**8. How Limits Apply To Additional Insureds**

If you have agreed in a written contract or written agreement that another person or organization be

added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- a.** The limits of insurance specified in the written contract or written agreement; or
- b.** The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

**1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

**2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

**a. Notice Of Occurrence Or Offense**

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1)** How, when and where the "occurrence" or offense took place;
- (2)** The names and addresses of any injured persons and witnesses; and
- (3)** The nature and location of any injury or damage arising out of the "occurrence" or offense.

**b. Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1)** Immediately record the specifics of the claim or "suit" and the date received; and
- (2)** Notify us as soon as practicable.

You or any additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

**c. Assistance And Cooperation Of The Insured**

You and any other involved insured must:

- (1)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2)** Authorize us to obtain records and other information;
- (3)** Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4)** Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

**d. Obligations At The Insureds Own Cost**

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**e. Additional Insureds Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written

contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

**f. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or the additional insured is a partnership;
- (3) Any manager, if you or the additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or the additional insured is a corporation;
- (5) Any trustee, if you or the additional insured is a trust; or
- (6) Any elected or appointed official, if you or the additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

**3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a.** To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b.** To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

**4. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

**b. Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

**(1) Your Work**

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

**(2) Premises Rented To You**

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

**(3) Tenant Liability**

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

**(4) Aircraft, Auto Or Watercraft**

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability;

**(5) Property Damage To Borrowed Equipment Or Use Of Elevators**

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

**(6) When You Are Added As An Additional Insured To Other Insurance**

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

**(7) When You Add Others As An Additional Insured To This Insurance**

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

**(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also

primary, we will share with all that other insurance by the method described in **c.** below.

**(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this policy in reliance upon your representations.

**b. Unintentional Failure To Disclose Hazards**

If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to

impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. **"Advertisement"** means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper; or
- b. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. **"Advertising idea"** means any idea for an "advertisement".

3. **"Asbestos hazard"** means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. **"Auto"** means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or

other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

5. **"Bodily injury"** means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. **"Coverage territory"** means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in a. above;
  - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
  - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory or in a settlement we agree to.

7. **"Employee"** includes a "leased worker". "Employee" does not include a "temporary worker".

8. **"Employment-Related Practices"** means:

- a. Refusal to employ that person;
- b. Termination of that person's employment; or
- c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person.

9. **"Executive officer"** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. **"Hostile fire"** means one which becomes uncontrollable or breaks out from where it was intended to be.

**11. "Impaired property"** means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work", or your fulfilling the terms of the contract or agreement.

**12. "Insured contract"** means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage to Premises Rented To You Limit described in Section III – Limits of Insurance;
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

**13. "Leased worker"** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

**14. "Loading or unloading"** means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

**15. "Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained

primarily to provide mobility to permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

**16. "Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**17. "Personal and advertising injury"** means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral, written or electronic publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

- e. Oral, written or electronic publication, in any manner, of material that violates a person's right of privacy;
- f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or
- g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement".

**18. "Pollutants"** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**19. "Products-completed operations hazard":**

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-

completed operations are subject to the General Aggregate Limit.

**20. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

As used in this definition, computerized or electronically stored data, programs or software are not tangible property. Electronic data means information, facts or programs:

- a. Stored as or on;
- b. Created or used on; or
- c. Transmitted to or from;

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

**22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.**

**23. "Volunteer worker" means a person who**

- a. Is not your "employee";
- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

**24. "Your product":**

**a. Means:**

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes**

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
  - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

**25. "Your work":**

**a. Means:**

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

**b. Includes**

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

#### **1. BROAD FORM INSURED**

**Paragraph .1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add the following:**

##### **d. Subsidiaries and Newly Acquired or Formed Organizations**

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is a partnership or joint venture,
  - (b) That is an "insured" under any other policy,
  - (c) That has exhausted its Limit of Insurance under any other policy, or
  - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### **e. Employees as Insureds**

- (1). Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

##### **f. Lessors as Insureds**

- (1). The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (a) The agreement requires you to provide direct primary insurance for the lessor and
  - (b) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

##### **g. Additional Insured if Required by Contract**

- (1) When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (a) During the policy period, and
- (b) Subsequent to the execution of such written contract, and



- (c) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM , SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

**2. Primary and Non-Contributory if Required by Contract**

Only with respect to insurance provided to an additional insured in A.1.g. - Additional Insured If Required by Contract, the following provisions apply:

- (1) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(2) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (1) and (2) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in SECTION IV-Business Auto Conditions, B. General Conditions, Other Insurance 5.d.

**3. AUTOS RENTED BY EMPLOYEES**

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The SECTION IV- Business Auto Conditions, B. General Conditions, 5. OTHER INSURANCE Condition is amended by adding the following:

- e. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

**4. AMENDED FELLOW EMPLOYEE EXCLUSION**

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

**5. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

**6. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

**7. LOAN/LEASE GAP COVERAGE**

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal

obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

**8. AIRBAG COVERAGE**

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

**9. ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or
- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III, Physical Damage Coverage, Limit of Insurance, Paragraph C.2. is amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
  - (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
  - (3) An integral part of such equipment.
- c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

**10. EXTRA EXPENSE - BROADENED COVERAGE**

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

**11. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

**12. TWO OR MORE DEDUCTIBLES**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

**13. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;

- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

**14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

**15. HIRED AUTO - COVERAGE TERRITORY**

SECTION IV, BUSINESS AUTO CONDITIONS, PARAGRAPH B. GENERAL CONDITIONS, 7. - POLICY PERIOD, COVERAGE TERRITORY - is added to include the following:

- (6) For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

**16. WAIVER OF SUBROGATION**

Paragraph 5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS A. Loss Conditions is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

**17. RESULTANT MENTAL ANGUISH COVERAGE**

The definition of "bodily injury" in SECTION V-DEFINITIONS, C. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

**18. EXTENDED CANCELLATION CONDITION**

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

**19. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE**

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"
- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

**20. VEHICLE WRAP COVERAGE**

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)**

This policy is subject to the following additional Conditions:

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.
- B.** If this policy is cancelled by the Company for nonpayment of premium, or by the insured, notice of such cancellation will be provided within (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the certificate holder(s) will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.