



**City Commission Meeting Agenda  
2 Park Drive South, Great Falls, MT  
Commission Chambers  
December 17, 2019  
7:00 PM**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL / STAFF INTRODUCTIONS**

**AGENDA APPROVAL**

**CONFLICT DISCLOSURE / EX PARTE COMMUNICATIONS**

**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 address for the record.)*

1. Miscellaneous reports and announcements.

**NEIGHBORHOOD COUNCILS**

2. Miscellaneous reports and announcements from Neighborhood Councils.

**BOARDS AND COMMISSIONS**

3. Miscellaneous reports and announcements from Boards and Commissions.

**CITY MANAGER**

4. 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.*

5. Minutes, December 3, 2019, Commission Meeting.
6. Total Expenditures of \$2,255,428 for the period of November 21, 2019 through December 4, 2019, to include claims over \$5000, in the amount of \$2,066,717.
7. Contracts List.
8. Approve the Great Falls Housing Authority Community Based Policing Agreement effective January 1, 2020 and authorize the City Manager to sign the Agreement.
9. Approve the Franchise Agreement between Spectrum Pacific West, LLC and the City of Great Falls.

**Action: Approve Consent Agenda as presented or remove items for separate discussion and/or vote by any Commission member.**

## **PUBLIC HEARINGS**

### **OLD BUSINESS**

### **NEW BUSINESS**

10. Comprehensive Annual Financial Report (CAFR) and Audit Report, FY 2018-2019. *Action: Accept or deny the CAFR, the Required Client Communication Letter and the City's response and authorize staff to submit the related reports to other government agencies and financial institutions as necessary. (Presented by Melissa Kinzler)*
11. Fire Station Plumbing System Upgrades at Stations 1, 2 and 4. *Action: Award or not award a construction contract in the amount of \$149,750 to Copper Creek Construction for the Fire Station Plumbing Upgrades, and authorize the City Manager to execute the construction contract documents. (Presented by Steve Hester)*
12. Central Montana Agriculture and Technology Park (CMATP) TIF Phase III Storm Drain project, Construction Contract Award. *Action: Award or not award a contract in the amount of \$1,366,871 to MRTE, Inc., and authorize the City Manager to execute the construction contract documents. (Presented by Jim Rearden)*

### **ORDINANCES / RESOLUTIONS**

13. Central Montana Agriculture and Technology Park (CMATP) Storm Drainage Project. *(Presented by Craig Raymond)*

A. Resolution 10325, relating to a Central Montana Agriculture and Technology Park (CMATP) TIF Funding Application from the City of Great Falls Public Works Department for \$1,100,000. *Action: Adopt or deny Resolution 10325.*

B. Resolution 10318, relating to an additional request for \$1,500,000 of Tax Increment Industrial Infrastructure Revenue Bonds from the DNRC Water Pollution Control State Revolving Loan Program, Series 2020; Authorizing the Issuance and Fixing the Terms and Conditions Thereof. *Action: Adopt or deny Resolution 10318.*

14. Resolution 10323, Declaring that the Great Falls Planning Advisory Board and Zoning Commission Shall Consist of Seven (7) Members. *Action: Adopt or deny Res. 10323. (Presented by Joseph Cik)*

15. Resolution 10326, relating to the Great Falls Development Authority Application to the Big Sky Economic Development Trust Fund Program, Montana Department of Commerce, for a planning grant, to assist planning efforts by the Big Sky Country National Heritage Area, Inc. *Action: Adopt or deny Res. 10326. (Presented by Bill Bronson)*

### **CITY COMMISSION**

16. Miscellaneous reports and announcements from the City Commission.
17. 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.*

**JOURNAL OF COMMISSION PROCEEDINGS**  
**December 3, 2019**

Regular City Commission Meeting

Mayor Bob Kelly presiding

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

Commission Chambers Room 206

**PLEDGE OF ALLEGIANCE**

**ROLL CALL/STAFF INTRODUCTIONS:** City Commission members present: Bob Kelly, Bill Bronson, Mary Sheehy Moe, Owen Robinson, and Tracy Houck. Also present were the City Manager Greg Doyon and Deputy City Manager Chuck Anderson; Deputy City Clerk Darcy Dea; Public Works Director Jim Rearden; Planning and Community Development Director Craig Raymond; Finance Director Melissa Kinzler; Park and Recreation Director Steve Herring; Fire Chief Steve Hester; City Attorney Sara Sexe; and, Police Captain John Schaffer.

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

**CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS:** None.

**PETITIONS AND COMMUNICATIONS**

**1. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

**Jeni Dodd**, 3245 8<sup>th</sup> Avenue North, inquired about the City being unaware that it hadn't been receiving the local option tax from the County for three years.

Finance Director Melissa Kinzler responded that the City continued to receive the same amount of local option tax every year; however, those revenues were collected by the County and the City was unaware of an increase in the local option tax.

City Manager Greg Doyon added that auditors for the City had no way of discovering that there was an increase since the County is the entity that collects the local option taxes.

**NEIGHBORHOOD COUNCILS**

**2. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

None.

**3. DRAWING OF NEIGHBORHOOD COUNCIL 6 TIE VOTES OF WRITE-IN CANDIDATES.**

Due to tie votes between the write-in candidates for the fifth seat on Neighborhood Council District 6, a drawing was held. Commissioner Bronson drew the name of Hannah Pate to serve as the fifth member on Neighborhood Council 6 beginning in 2020. Staff will notify the write-in candidates, and the selected member shall file her "Declaration of Acceptance for Write-in Candidate" form with the Elections Office.

**JOURNAL OF COMMISSION PROCEEDINGS**  
**December 3, 2019**

**BOARDS & COMMISSIONS**

4. **MISCELLANEOUS REPORTS AND ANNOUNCEMENTS FROM BOARDS AND COMMISSIONS.**

Commissioner Robinson reported that National Census Day will be April 1, 2020, and that every household will receive a survey by this date. He added that citizens could respond to the survey online, by phone, or mail.

**CITY MANAGER**

5. **MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

City Manager Greg Doyon reported on the following:

- Commissioner Elect Rick Tryon will be touring City facilities and meeting staff, as well as attending a budget orientation.
- A Commission Retreat will be scheduled in January, 2020, with the possibility of having Training/Development Coordinator Mark Willmarth facilitate it.
- Formal Board, Commission and Council training will be in February, 2020, with Dan Clark, from the Montana State University Local Government Center.

**CONSENT AGENDA.**

6. Minutes, November 19, 2019, Commission Meeting.
7. Minutes, November 19, 2019, Special Commission Meeting.
8. Total Expenditures of \$2,121,851 for the period of November 5, 2019, through November 20, 2019, to include claims over \$5,000, in the amount of \$1,838,848.
9. Contracts List.
10. Grants List.
11. Approve the Interlocal Agreement with Malmstrom Air Force Base (MAFB) for distribution of their PSAP (Public Safety Answering Point) state funds.
12. Approve the Memorandum of Understanding (MOU) between the City of Great Falls and the Great Falls Area Community Foundation (GFACF) for receipt of donation funds for the Gore Hill Water Tower Mural Project. **OF 1625.9**
13. Award a contract in the amount of \$355,895 for Bid Alternate #1 to Dave Kuglin Construction, Inc., for the Historic Preservation of the 10th Street Bridge, Phase 3 project, and authorize the City Manager to execute the construction contract documents. **OF 1709.1**

**JOURNAL OF COMMISSION PROCEEDINGS**  
**December 3, 2019**

14. Approve Change Order No. 1 in the amount of \$5,827.17 to James Talcott Construction, Inc. for the Public Works Facility Improvements - Central Garage, Streets and Sanitation Buildings Siding & Windows project and authorize the City Manager to execute the agreements. **OF 1733.5**
15. Award the construction contract base bid in the amount of \$3,862,900 to Sletten Construction Company for the Water Treatment Plant Filtration Improvements, Phase I project, and authorize the City Manager to execute the construction contract documents. **OF 1637.1**
16. Approve the purchase of one 2016 Freightliner M2-106 LR7-58 Forestry tree truck from Altec NUECO, LLC, of Birmingham, AL through Sourcewell, formerly known as NJPA, for \$118,500, including shipping costs.
17. Approve the purchase of 4 sets of Genesis Extrication Equipment in the amount of \$134,941 from Municipal Emergency Equipment (MES) of Denver, CO through the National Purchasing Partners (NPP) Cooperative Purchase agreement.

**Commissioner Moe moved, seconded by Commissioners Robinson and Bronson, that the City Commission approve the Consent Agenda as presented with the exception of Item 12 for separate discussion.**

Mayor Kelly asked if there were any comments from the public or any discussion amongst the Commissioners.

**Jeni Dodd**, 3245 8<sup>th</sup> Avenue North, commented that the minutes from the previous meeting do not accurately reflect Mayor Pro Tempore Bronson's response to her comments about Resolution 10322. She requested that staff provide her with the prior language of the public participation rules.

Referring to Agenda Item 15, **John Hubbard**, 615 7<sup>th</sup> Avenue South, inquired if the Water Treatment Plant filtration improvements are new or existing.

Public Works Director Jim Rearden explained that the filter media and underdrain are upgrades that would be integrated with existing plant processes.

Referring to Agenda Item 15, **Ryan Wood**, Sapphire Technical Services, LLC, 705 40<sup>th</sup> Street South, commented that if Sletten Construction Company hires Sapphire Technical Services, they would be doing the stainless fabrication and installation for this well needed project.

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

Motion carried 5-0.

**JOURNAL OF COMMISSION PROCEEDINGS**  
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Referring to Agenda Item 11, Manager Doyon explained that the City has had a long-standing partnership with Malmstrom Air Force Base (MAFB) and that both entities benefit by being designated as each other's back up facility in case of an emergency. Referring to Agenda Item 15, Manager Doyon explained that the project was started and identified in 2011 and that water treatment is a process that includes multiple types of treatment. Manager Doyon reported that Agenda Item 16 was identified in the Park Maintenance District Plan and he commended Public Works Shop Manager Doug Alm for his efforts with regard to purchasing a cost effective truck. Manager Doyon commended Fire Chief Steve Hester for his effort with regard to receiving a grant that covered 90 percent of the cost for Agenda Item 17.

Referring to Agenda Item 12, Commissioner Moe inquired if donations made to the Great Falls Area Community Foundation are subject to public disclosure.

Manager Doyon responded that he would contact the Great Falls Area Community Foundation and report back to the Commission.

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

Motion carried 5-0.

Mayor Kelly wrote out a personal check for a donation to the Great Falls Area Community Foundation for the Gore Hill Water Tower Mural project.

**PUBLIC HEARINGS**

**18. LEASE AGREEMENT FOR PROPERTY WITHIN WADSWORTH PARK WITH THE MISSOURI RIVER SHOOTERS ASSOCIATION.**

Park and Recreation Director Steve Herrig reported that Missouri River Shooters Association is requesting to enter into an additional five-year lease with an option to renew for use of the shooting range facility at Wadsworth Park. The lessee will be responsible for a \$240 annual fee, utilities, and day-to-day maintenance. Both the City and the Lessee have the option to terminate the lease with 60 days written notice.

Mayor Kelly asked if the applicant was present and, if so, wished to provide any additional comments regarding the application. No one responded.

Mayor Kelly declared the public hearing open. He asked if the Commission had any questions of staff. Hearing none, Mayor Kelly declared the public hearing open.

No one spoke in support of or in opposition to the lease agreement.

Mayor Kelly closed the public hearing and asked if there was any discussion amongst the Commissioners.

**JOURNAL OF COMMISSION PROCEEDINGS**  
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Commissioner Robinson requested that the Wadsworth Park Master Plan be provided to the Commission.

Park and Recreation Director Herrig responded that he would provide the Wadsworth Park Master Plan to the Commission.

There being no further discussion, Mayor Kelly asked the will of the Commission.

**Commissioner Bronson moved, seconded by Commissioner Houck, that the City Commission approve a lease agreement of City owned property located in Wadsworth Park with Missouri River Shooters Association.**

Mayor Kelly asked if there was any further discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0.

**19. LEASE AGREEMENT OF CITY OWNED PROPERTY LOCATED IN THE COMMUNITY RECREATION CENTER.**

Park and Recreation Director Steve Herrig reported that A Child's World, LLC is requesting to enter into a lease for the portion of the City property located within the Community Recreation Center for the purposes of operating a daycare.

The lease provides an area on the lower level of the Community Recreation Center to operate a daycare. It includes access to the outside play area, and gymnasium upon availability. The lease is for three years with a monthly rate of \$1,500. A Child's World daycare is a consistent revenue source for the Community Recreation Center.

Mayor Kelly asked if the applicant was present and, if so, wished to provide any additional comments regarding the application. No one responded.

Mayor Kelly asked if the Commission had any questions of staff. Hearing none, Mayor Kelly declared the public hearing open.

No one spoke in support of or in opposition to the lease agreement.

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

**Commissioner Moe moved, seconded by Commissioner Robinson, that the City Commission approve a lease agreement of City owned property located in the Community Recreation Center for A Child's World, LLC.**

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

Commissioners Moe and Houck concurred that A Child's World daycare does a great job providing quality daycare for the community.



**JOURNAL OF COMMISSION PROCEEDINGS**  
**December 3, 2019**

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

Motion carried 5-0.

**OLD BUSINESS**

**NEW BUSINESS**

**20. REQUEST FOR PROPOSALS FOR SERVICES AND OPERATIONS COMPLEMENTARY TO THE GREAT FALLS ANIMAL SHELTER.**

City Manager Greg Doyon reported that on November 15, 2019, the City of Great Falls issued a Request for Proposals for services and operations complementary to the Great Falls Animal Shelter with a deadline of January 8, 2020. On November 19, 2019, the City Clerk's office received a written request from Pam Volk, Executive Director of Maclean Cameron Animal Adoption Center (MCAAC), requesting a thirty to sixty day extension of the proposal deadline.

**Commissioner Moe moved, seconded by Commissioners Robinson and Bronson, that the City Commission approve an extension of 45 days to the Request for Proposals for services and operations complementary to the Great Falls Animal Shelter.**

Written correspondence expressing opposition to the MCAAC's request for an extension to the RFP deadline date, was received from **Linda Metzger**, (via November 27, 2019 email). She commented that since Commissioner Robinson had recently made a contribution to the MCAAC, he should recuse himself from the vote.

Mayor Kelly asked if there were any comments from the public or any discussion amongst the Commissioners.

**Jeni Dodd**, 3245 8<sup>th</sup> Avenue North, requested that the Commission not approve MCAAC's request to extend the deadline for response to the RFP. Ms. Dodd commented that if Commissioner Robinson recently made a contribution to the MCAAC, he should recuse himself from the vote.

**John Huber**, 3912 14<sup>th</sup> Avenue South, member of the MCAAC Board of Trustees and Fundraising Committee Chair, thanked the Commission for its consideration of extending the RFP deadline. Mr. Huber explained that the Fundraising Committee is made up of citizens with business and family backgrounds, and that the extension would allow the committee more time to get together and put its best effort forward.

Commissioner Moe received clarification that no other potential applicants have submitted a proposal. She explained that Agenda Item 20 is not a proposal to grant an extension to any particular body, and that the extension applies to any potential applicant.

Commissioner Bronson concurred with Commissioner Moe's comments.

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

**JOURNAL OF COMMISSION PROCEEDINGS**  
**December 3, 2019**

Motion carried 5-0.

**ORDINANCES/RESOLUTIONS**

**21. RESOLUTION NO. 10321, ADOPTING RECOMMENDED PROCESS CHANGES TO THE DESIGN REVIEW BOARD.**

Planning and Community Development Director Craig Raymond reported that the City Commission adopted Resolution 10256 on November 7, 2018, which temporarily suspended the Design Review Board (DRB) for a period of six months. On June 4, 2019, the City Commission adopted Resolution 10297 that extended the suspension for another six months. Each of these requests was at staff's request.

The suspension has had some benefit in alleviating staff workload and streamlining the development process. Staff and some development community members still agree that the DRB can and should have a positive impact to the built environment in Great Falls. A refocused DRB process can have multiple benefits including reduced staff workload, development review efficiency and positive, value-added impact to the community development process.

There are three primary elements to the proposed changes to the DRB process:

**Earlier Review of Development Applications**-By reviewing plans earlier in the design process, project designers can have greater assurance and comfort that as they continue to develop full architectural drawings for any given project, they will have the input from staff and the DRB that they can count on. Historically, most projects would come before the DRB at roughly 80-100% completion. If there was input from staff or the DRB that would either require changes due to standards or suggestions and/or guidance based on the codified guidelines, in most cases this would cause delays and extra expense to the project developer. With the proposed changes, this can be avoided.

**Simplify DRB Application Submittal Requirements**-Under this proposal, the amount of information needed to submit to staff and the DRB is significantly being reduced. Instead of complete or near complete drawings being required, simpler conceptual plans, renderings and project narratives are all that would be required to be able to successfully move the project through the DRB phase of project approval. This too will save time and expense to the project developer.

**Reduce Burdens on City Staff**-City staff proposes to eliminate staff agenda reports for each project. After a short, simpler review of the provided documentation, staff will prepare a short review memo to the DRB outlining how the project complies with general zoning requirements. This will have a positive impact on staff efficiency and ultimately will provide for a smoother approval process.

**Commissioner Bronson moved, seconded by Commissioner Houck, that the City Commission adopt Resolution 10321.**

**JOURNAL OF COMMISSION PROCEEDINGS**  
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Mayor Kelly asked if there were any comments from the public or any discussion amongst the Commissioners.

**Jeni Dodd**, 3245 8<sup>th</sup> Avenue North, urged the Commission to not reinstate the DRB, and she suggested that it be eliminated entirely.

Commissioner Bronson commented that Resolution 10321 combines a proper balance between the rights of developers as well as the overall interest of the community and is an appropriate compromise of the DRB collaborative process. He added that project designers and developers add quality to the design of development projects and that reinstating the DRB, with the new conditions, would make the development review a better process.

Commissioner Moe commented that the DRB has professionals with specific expertise that benefits the Commission's decision-making, and provides the public access to the development process. She added that adopting Resolution 10321 would speed up the development process, as well as reduce the burden on staff.

Commissioner Robinson commented that the recommended process changes to the DRB are a great compromise, provides efficiency, transparency, and competency, as well as allowing public participation.

Mayor Kelly received clarification that the DRB has five members, meets twice a month as needed, and normally has no difficulty having a quorum.

Planning and Community Development Director Raymond added that the DRB members, as well as a variety of other professionals in the development community, have been involved with the process changes to the DRB.

Mayor Kelly expressed opposition to continuing the DRB, and opined that the DRB can often be an impediment to the development process. Mayor Kelly suggested changing the motion so that Resolution 10321 would be in effect for one year, to see if the new process has been effective or a hindrance.

Commissioner Bronson commented that Resolution 10321 allows the Commission to provide guidance to the Planning and Community Development Department. He suggested that staff follow-up with the Commission with regard to the effectiveness of the new process, at a future Commission meeting.

Director Raymond clarified that, if the Commission adopts Resolution 10321, City staff would develop applicable amendments to the Official Code of the City of Great Falls (OCCGF), which codifies the adopted process changes contained in Resolution 10321.

Commissioner Moe commented that she is not opposed to a trial period; however, she expressed concern with code changes until after a trial period.

Commissioner Houck concurred with Commissioner Moe's comments.

**JOURNAL OF COMMISSION PROCEEDINGS**  
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City Attorney Sexe suggested that the Commission could either amend the pending motion, adding the one-year timeframe, or leave the pending motion as is, and have staff report back to the Commission in one year.

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

Motion carried 5-0.

**CITY COMMISSION**

**22. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Kelly commended the Park and Recreation Department for clearing snow on the River's Edge Trail for the 17<sup>th</sup> Annual Burn the Bird on Thanksgiving Day.

Referring to the update from the Airport Authority Board at the work session, Commissioner Houck commented that the Airport Authority provides an economic impact for the community with tourism. Commissioner Houck appreciated Airport Director John Faulkner's comments about the need for a second runway at the airport in the future, and that the community be cognizant of the land-use around the runways.

Commissioner Moe suggested that the City develop a form to keep track of the City's share from the County's collection of local option taxes.

Public Works Director Jim Rearden reported that the Missouri River Crossing was put into service on November 25<sup>th</sup> and that the Sun River Crossing should be completed in the spring.

**COMMISSION INITIATIVES.**

**23.**

Referring to a proposed resolution that was discussed by the Citizen's for Clean Energy and Climate Resiliency group from a previous work session, Commissioner Moe commended that she has been in contact with a statewide group involved in energy core. She reported that the group has volunteers that could possibly help with staffing; however, the project needs to be narrowed to a one-year assessment of what the City's vulnerabilities in resilience and preparedness are.

**ADJOURNMENT**

**JOURNAL OF COMMISSION PROCEEDINGS**  
**December 3, 2019**

There being no further business to come before the Commission, **Commissioner Robinson moved, seconded by Mayor Kelly, to adjourn the regular meeting of December 3, 2019, at 8:15 p.m.**

Motion carried 5-0.

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Mayor Bob Kelly

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Deputy City Clerk Darcy Dea

**Minutes Approved: December 17, 2019**

DRAFT



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

**PRESENTED BY:** Finance Director

**ACTION REQUESTED:** Approval with Consent Agenda

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

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

ACCOUNTS PAYABLE CHECK RUNS FROM NOVEMBER 21, 2019 - DECEMBER 4, 2019	2,255,428.31
TOTAL: \$ <u>2,255,428.31</u>	

**GENERAL FUND**

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**CITY COMMISSION**

CASCADE COUNTY	2019 MUNICIPAL GENERAL ELECTION	48,880.55
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**SPECIAL REVENUE FUND**

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**911 SPECIAL REVENUE**

CENTURYLINK	NOVEMBER 2019 CHARGES (SPLIT AMONG FUNDS)	1,606.92
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**STREET DISTRICT**

GREAT FALLS SAND & GRAVEL INC	ASPHALT	11,735.12
NELSON ARCHITECTS LLC	OF 1744 PW EQUIPMENT BUILDING NO 1 REPAIR	12,505.22

**CENTRAL MONTANA AG TECH PARK TID**

TD&H ENGINEERING	OF 1658.1 CMATP TIF PHASE 3 STORM DRAIN	10,076.72
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**ENTERPRISE FUNDS**

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**WATER**

TD&H ENGINEERING	OF 1494.6 WATER MAIN CROSSINGS MISSOURI & SUN	37,873.55
ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES INC	OF 1637.1 WTP FILTRATION IMPROVEMENTS	114,871.11
JOHNSON DISTRIBUTING	KUBOTA RTV--X 1100 UTILITY VEHICLE WITH SNOWPLOW	23,673.70

**ENTERPRISE FUNDS (CONTINUED)**

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<b>911 DISPATCH CENTER</b> CENTURYLINK	NOVEMBER 2019 CHARGES (SPLIT AMONG FUNDS)	4,241.89
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<b>PARKING</b> STANDARD PARKING CORPORATION	CONTRACT SERVICES FOR OPERATING DOWNTOWN PARKING PROGRAM OCT 19	33,978.32
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**INTERNAL SERVICES FUND**

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<b>HEALTH &amp; BENEFITS</b> MONTANA MUNICIPAL INTERLOCAL AUTHORITY	INSURANCE DEDUCTIBLES AND PREMIUMS	864,892.75
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<b>FISCAL SERVICES</b> ANDERSON ZURMUEHLEN AND CO	FY 2019 AUDIT SERVICES	5,300.00
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<b>CENTRAL GARAGE</b> 3-V DISTRIBUTING INC	HYDRAULIC PUMP AND DRIVE FOR SNOWPLOW	10,440.00
A T KLEMENS INC	OF 1733.4 PW FACILITY IMPROVEMENTS	14,471.47
MOUNTAIN VIEW CO-OP	FUEL	40,085.71
WATCH GUARD VIDEO	WATCH GUARD VIDEO SYSTEMS 6 UNITS	30,720.00

<b>PUBLIC WORKS ADMINISTRATION</b> JAMES TALCOTT CONSTRUCTION	OF 1733.5 PW FACILITY IMPROVEMENTS	149,206.42
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**TRUST AND AGENCY**

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<b>PAYROLL CLEARING</b> STATE TREASURER	MONTANA TAXES	50,131.00
ICMA RETIREMENT TRUST	EMPLOYEE CONTRIBUTIONS	8,089.97
FIREFIGHTER RETIREMENT	FIREFIGHTER RETIREMENT EMPLOYEE & EMPLOYER CONTRIBUTIONS	62,555.10
STATEWIDE POLICE RESERVE FUND	POLICE RETIREMENT EMPLOYEE & EMPLOYER CONTRIBUTIONS	70,928.51
PUBLIC EMPLOYEE RETIREMENT	PUBLIC EMPLOYEE RETIREMENT EMPLOYEE & EMPLOYER CONTRIBUTIONS	129,547.35
US BANK	FEDERAL TAXES, FICA & MEDICARE	207,023.82
AFLAC	EMPLOYEE CONTRIBUTIONS	9,631.52
LABORERS INTERNATIONAL UNION	EMPLOYEE CONTRIBUTIONS	32,805.32
WESTERN CONF OF TEAMSTERS	EMPLOYEE CONTRIBUTIONS	19,363.10
MONTANA OE - CI TRUST FUND	EMPLOYEE CONTRIBUTIONS	28,603.23
NATIONWIDE RETIREMENT SOLUTIONS	EMPLOYEE CONTRIBUTIONS	16,241.03

**UTILITY BILLS**

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NORTHWESTERN ENERGY	SEPT 2019 TRANSMISSION CHARGES	9,806.67
NORTHWESTERN ENERGY	OCTOBER 2019 WATER PLANT CHARGES	7,431.23

<b>CLAIMS OVER \$5000 TOTAL:</b>		\$ <u>2,066,717.30</u>
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**COMMUNICATION TO THE CITY COMMISSION**

**DATE: December 17, 2019**

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

**PRESENTED BY:** Darcy Dea, Deputy 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>	Public Works	Advanced Engineering & Environmental Services, Inc. (AE2S)	12/17/2019-12/17/2020	\$140 per hour.	Professional Services Agreement for the instrumentation and controls annual maintenance and on-call services associated with the Water Treatment Plant (WTP)
<b>B</b>	Planning and Community Development	A T Klemens	12/03/2019-10/17/2020	\$2,866	Ratification of Change Order No. 1 increases the contract price for added insulation around a steam pipe and new ceiling tiles for the Civic Center HVAC System – Court’s project <b>OF 1587.1</b> (CR 110519.7C)



C	Public Works/Engineering	Great Falls Overhead Door/Castle Reef Enterprises LLC	04/16/2019-12/31/2019	\$1,150	Change Order No. 1 increases the contract price to secure spring anchor attachment; remove, rebuild, and reinstall operator; replace east side door; relocate lift Master operator and photo eyes; and reinstall Lift Master in wash bay of the Central Garage Division <b>OF 1733.3</b> (CR 110519.7G) (CR 041619.9E)
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**Item:** Great Falls Housing Authority Community Based Policing Agreement

**From:** Great Falls Police Department

**Initiated By:** Captain Rob Moccasin

**Presented By:** Chief Dave Bowen

**Action Requested:** City Commission approve the agreement and authorize the City Manager to sign the agreement.

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/not approve) the Great Falls Housing Authority Community Based Policing Agreement and (authorize/not authorize) the City Manager to sign the Agreement.”

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

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**Staff Recommendation:** Staff recommends that the City Commission accept the terms of the agreement and authorize the City Manager to sign the agreement.

**Background:** The Great Falls Police Department and the Great Falls Housing Authority have had a partnership Community Based Policing Agreement in place since the late 1980’s. The Great Falls Housing Authority funds one dedicated officer for the purpose of enforcement and investigations in the Great Falls Housing Authority projects. This officer also facilitates the Housing Youth Activity Center (HYAC) at the main housing complex. This officer handles calls during his or her designated shift. Before or after designated shifts, calls continue to be answered by the Patrol Officers. With the Housing Authority officer on site(s), it alleviates a substantial number of calls that patrol would have to respond to and resolve. Historically, call loads were high until the Housing Authority officer was established.

The Great Falls Housing Authority provides office space at the main complex for the officer.

**Fiscal Impact:** The City would receive \$115,435.00 annually (\$57,717.50 for 6 months per contract) to cover the officer’s salary and benefits from the Great Falls Housing Authority. The contract shall commence January 1, 2020, and end June 30, 2020, with an automatic six-month renewal based on the GFPPA negotiated contract wage with the City of Great Falls.

**Alternatives:** Discontinue the officer’s presence in the Housing Authority projects and reassign.

**Concurrences:** The Community Based Policing Agreement has been approved by the Housing Authority Board.

**Attachments/Exhibits:** Great Falls Housing Authority Community Based Policing Agreement

**GREAT FALLS POLICE DEPARTMENT  
AND  
GREAT FALLS HOUSING AUTHORITY  
COMMUNITY BASED POLICING AGREEMENT**

This contract is entered into this 1<sup>st</sup> day of January, 2020, by and between the City of Great Falls, hereinafter referred to as "City," and the Great Falls Housing Authority.

In receipt of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The City shall provide personnel and other resources in a Community Policing role at the Great Falls Housing Authority projects. One dedicated officer, excluding contractual time/training time off, shall be provided for the purpose of enforcement and investigations in the Great Falls Housing Authority projects. If the assigned officer or a temporary replacement is not available to the GFHA for longer than 40 hours in each six month agreement period, the GFHA payment will be waived for the period of time that an officer was not available. Payment will resume when an officer becomes available to the GFHA.
2. The Great Falls Housing Authority shall pay the City \$57,717.50 which would include the Officers salary and benefits. Payment shall be made on a monthly basis in the amount of \$9,619.58.
3. The City shall keep detailed records regarding the date and time of contacts exclusive of investigating records. The Great Falls Housing Authority may inspect these records at all reasonable times and these records shall be available for photocopying at no additional fee.
4. Indemnification – The City assumes full responsibility for the officer's performance. The City shall indemnify the Great Falls Housing Authority against, and hold the Housing Authority harmless from, any liability costs, damages, claims or causes of action which may arise as a result of performance by the City of its responsibilities under the terms of this agreement; provided, however, that the City, its Officers and employees shall not assume any liability for acts of the Great Falls Housing Authority, or any of its Officers or agents subject to limitation of MCA 2-9-108.
5. **This Agreement shall commence January 1, 2020 and end June 30, 2020 with an automatic six month renewal based on the GFPPA negotiated contract wage with the City of Great Falls. The GFHA agrees to pay the salary and benefits increase, if any, retroactive to July 1, 2019 based on the GFPPA negotiated contract wage.**

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first herein above written.

**CITY OF GREAT FALLS**

**GREAT FALLS HOUSING AUTHORITY**

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

\_\_\_\_\_  
Greg Sukut, Executive Director

ATTEST:

\_\_\_\_\_  
David Bowen, Chief of Police

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

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
Sara Sexe, City Attorney



**Item:** Franchise Agreement between Spectrum Pacific West, LLC and the City of Great Falls

**From:** Chuck Anderson, Deputy City Manager

**Initiated By:** City Manager's Office

**Presented By:** Chuck Anderson, Deputy City Manager

**Action Requested:** Approve the Franchise Agreement between Spectrum Pacific West, LLC and the City of Great Falls.

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**Suggested Motion:**

1. Commissioner moves:

“I move the City Commission (approve/not approve) a Franchise Agreement between Spectrum Pacific West, LLC and the City of Great Falls.”

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

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**Staff Recommendation:**

Staff recommends that the City Commission approve the Franchise Agreement and authorize the City Manager to sign the agreement.

**Summary:**

TCI Cablevision of Great Falls (Grantee) entered into a Franchise Agreement with the City of Great Falls on May 5, 1992. In that agreement, the City granted a non-exclusive franchise, which authorized the grantee to construct and operate a Cable system and offer cable service and other services in, along, among, upon, across, above, over, under, or in a manner connected with Public Ways within the service area. The initial term of the agreement was twenty seven (27) years, unless lawfully terminated in accordance with the agreement. That agreement technically expired in May 2019, but the verbiage in that agreement had both parties operating under the agreement until a new agreement had been negotiated. Both the City and Spectrum Pacific West (grantee) have been working on an updated Franchise Agreement, which is presented here.

**Background:**

The previous Franchise Agreement is twenty seven (27) years old, and a number of items needing to be updated due to changes in the cable industry and the local operating area. They include increased notification on developments, annexation notification, and definition of the service area.

The most notable changes contained in this agreement are;

Term - an initial term of ten (10) years is granted

Access Channel – is now defined, as a Public Education and Government (PEG) Access channel and the grantee will provide one (1) channel to the grantor for the non-commercial, video programming for public, education and government system access. Previously there were two (2) channels provided, with only one (1) being used.

Access Channel (aka.PEG) Grant - grantee will now provide a grant in the amount of twenty-seven thousand (\$27,000) dollars, payable to the grantor within ninety (90) days of the effective date of the agreement. Within one hundred and twenty (120) days following the three (3) year anniversary of the effective date of the agreement, the grantor may request an additional grant for twenty-seven thousand (\$27,000) from the grantee.

Service to Public Buildings – grantee will provide, without charge standard installation and one outlet of basic cable service to the City of Great Falls Civic Center and City of Great Falls Police Station. Previously, only one (1) outlet was provided to the Police Station.

**Fiscal Impact:**

The grantee pays to the grantor an annual franchise fee on a quarterly basis, that totals approximately seven hundred and fifteen thousand (\$715,000) dollars, which in an amount equal to five (5) percent) on the annual gross revenue received.

**Alternatives:**

The City Commission could vote to not grant the Franchise Agreement, or to direct staff to further research or negotiate another portion of the agreement.

**Concurrences:**

City Manager Office, Public Works Department, Parks and Recreation Department, Legal Department, and the Finance Department.

**Attachments/Exhibits:**

Proposed Franchise Agreement  
Previous Franchise Agreement approved in May 1992

**FRANCHISE AGREEMENT**  
**CITY OF GREAT FALLS, MONTANA**

**This Franchise Agreement (“Franchise”)** is between the City of Great Falls, Montana, hereinafter referred to as the “Grantor” and Spectrum Pacific West, LLC, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Grantee.”

**WHEREAS**, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

**WHEREAS**, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

**WHEREAS**, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

*NOW, THEREFORE, the Grantor and Grantee agree as follows:*

**SECTION 1**  
**Definition of Terms**

**1.1 Terms.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- B. “Commission” shall mean the governing body of the Grantor.
- C. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. “Channel” shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.
- E. “Equipment” shall mean any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of physical facilities located in the Streets, including the Cable System.



- F. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- G. “Franchise” shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Franchise Area.
- H. “Franchise Area” shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means.
- I. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Franchise Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state regulatory fees, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law and (4) any Government Access (as defined in Section 13.2 hereof) recovered from Subscribers.
- J. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- K. “Service Area” shall mean the area described in subsection 6.1 hereto.
- L. “Standard Installation” shall mean installations to residences and buildings that are located up to 125 aerial feet from the point of connection to Grantee’s existing distribution system.
- M. “State” shall mean the State of Montana.
- N. “Street” shall include each of the following located within the Franchise Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, extending, repairing and maintaining the Cable System.
- O. “Subscriber” shall mean any Person lawfully receiving Cable Service from the Grantee.

**SECTION 2**  
**Grant of Franchise**

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, extend, operate and maintain in, upon, along, across,

above, over and under the Streets, now in existence and as may be created or established during its terms, all Equipment, including the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

**2.2 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 15.12.

**2.3 Police Powers.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, resolution, or the City Charter as necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the mutual promises in this contract.

**2.4 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Franchise Area or be allowed to operate without a Cable System Franchise.

### **SECTION 3** **Franchise Renewal**

**3.1 Procedures for Renewal.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

### **SECTION 4** **Indemnification and Insurance**

**4.1 Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful

misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any Government Access channels.

**4.2 Insurance.**

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence Combined Single Limit
Umbrella Liability	\$1,000,000 per occurrence

B. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

**SECTION 5**  
**Service Obligations**

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

**5.2 Privacy.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

**SECTION 6**  
**Service Availability**

**6.1 Service Area.** The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Franchise Area where there is a minimum density of at least thirty-five (35) residences per linear strand mile of aerial cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service (the "Service Area"). The Cable Service will be provided at Grantee's published rate for standard installations if such residence is a Standard Installation. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where another operator is providing Cable Service or into any annexed area which is not contiguous to the Service Area. Grantee shall not be obligated to provide service to any area where

it is financially or technically infeasible to do so. Grantee at its discretion may make Cable Service available to businesses within the Service Area.

**Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-standard Installation charges to extend the Cable System from the tap to the residence.

**6.2 New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to notify developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within fifteen (15) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the fifteen day period, the cost of new trenching is to be borne by Grantee.

**6.3 Annexation.** The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section may be sent from Grantor or Grantee via email. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

## **SECTION 7** **Construction and Technical Standards**

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

**7.2 Construction Standards and Requirements.** All of the Grantee's Equipment shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

**7.4 Network Technical Requirements.** The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time.

## **SECTION 8** **Conditions on Street Occupancy**

**8.1 General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on reasonable terms and conditions.

**8.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.

**8.3 Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way. Work in the Street, on public property, near public property, or on or near private property shall be done in a matter that causes minimal interference with the rights and reasonable convenience of property

owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been placed in the Streets by, or under, the Grantor's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of any Person, or to interfere with new improvements the Grantor may deem proper to make or to unnecessarily hinder or obstruct the free use of the Streets or other public property. In the event of such interference, the Grantor may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

**8.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the Street as a result of its operation, construction, or maintenance of the Cable System to at least its prior condition, taking into account normal wear and tear and the nature of work required to be performed.

**8.6 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

**8.7 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

**8.8 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**8.9 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

**8.10 Emergency Use.** Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS").

## **SECTION 9** **Service and Rates**

**9.1 Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated to receive complaints and requests for repairs or adjustments at any time.

**9.2 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor notice of any changes in rates, programming services or Channel positions in accordance with applicable law.

**9.3 Rate Regulation.** Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

**9.4 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under Section 15.2 of this Franchise.

**9.5 Service to Public Buildings.** Subject to applicable law, Grantee shall provide, without charge, Standard Installation and one outlet of basic Cable Service to the following two (2) locations: 1) City of Great Falls, Civic Center, 2 Park Drive South, Great Falls, MT 59403; and 2) City of Great Falls Police Station, 112 1<sup>st</sup> Street, South, Great Falls, MT 59403. The Cable Service provided pursuant to this Section 9.5 shall not be used for commercial purposes. The Grantor shall take reasonable precautions to prevent any inappropriate use or loss or damage to the Grantee's Cable System.

## **SECTION 10** **Franchise Fee**

**10.1 Amount of Fee.** Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. The amount of franchise fee and the method of calculation shall be equal when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a franchise fee under this Section 10.1 shall be reduced by an equivalent amount.

**10.2 Payment of Fee.** Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.12. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

**10.3 Accord and Satisfaction.** No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

**10.4 Limitation on Recovery.** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. If any undisputed Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one percent (1%) over the prime interest rate.

## **SECTION 11** **Transfer of Franchise**

**11.1 Franchise Transfer.** The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

## **SECTION 12** **Records**

**12.1 Inspection of Records.** Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the material terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than one (1) year, provided that Grantee shall retain books and records relevant to the payment of the Franchise Fee for a period of three (3) years. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. Grantee acknowledges that Grantor is a public entity subject to Montana's public right to know and inspect public documents. If the Grantor believes it must release any books, records, or maps in the course of enforcing this Franchise, or for any reason, it shall advise Grantee in a timely manner so that Grantee may take appropriate steps to protect its proprietary or confidential interests in advance of such release. Grantee is responsible for demonstrating in a Court of competent jurisdiction that any records or information are confidential and not subject to public inspection.



**SECTION 13**  
**Government Access**

**13.1 Government Access.** Grantee shall continue to provide one Channel on the Cable System for use by the Grantor for non-commercial, video programming for government access programming. The Government Access Channel may be placed on any tier of service available to all Subscribers. Upon written request by the Grantor, the Grantor and Grantee shall meet to discuss converting the Government Access Channel into a high definition format.

**13.2 Government Access Support.** Grantee shall provide a Government Access Grant in the amount of twenty seven thousand dollars (\$27,000), payable to the Grantor within ninety (90) days of the Effective Date. Within one hundred and twenty (120) days following the three (3) year anniversary of the Effective Date, the Grantor may request an additional Government Access Grant in an amount up to twenty seven thousand dollars (\$27,000) from the Grantee to be made payable to the Grantor within ninety (90) days. The request shall be in writing pursuant to the notice requirements in Section 15.7 herein. The Grantee shall be entitled to recover such capital costs from subscribers as allowed by federal law. Grantor and Grantee acknowledge that pursuant to Federal Law [47 U.S.C. §§ 542(g), (g) (2) (C)] Government Access Grant funds are only to be used for Government Access capital equipment costs and not for operational costs. Government Access Grant funds shall be for the exclusive use of the Grantor within the Service Area and shall not be used for purposes other than as described under Section 13 herein. The Grantor shall be responsible for installing, operating, maintaining and replacing the equipment purchased as necessary. Upon written request, not more than once annually, Grantee may request from Grantor a letter describing how the capital Government Access Grant funds were used.

**13.3 Government Access Competitive Neutrality.** If any new or renewed franchise agreement contains obligations that are lesser in amount than the obligations imposed in this Section 13, Grantee's aggregate obligations under Section 13 shall be reduced to an equivalent amount. To the extent such a reduction is not sufficient to make the total obligations of this Franchise equivalent to the new or renewed franchise, Grantee may deduct from future franchise fee payments an amount sufficient to make the obligations of this Franchise equivalent to the new or renewed franchise.

**SECTION 14**  
**Enforcement or Revocation**

**14.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

**14.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

**14.3 Public Hearing.** If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Commission shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with subsection 15.8 hereof. At the hearing, the Commission shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Commission shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to the district court of the United States for any judicial district in which the Cable System is located, or in any State court of general jurisdiction having jurisdiction over the parties which shall have the power to review the decision of the Commission *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

**14.4 Enforcement.** Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

**14.5 Revocation.**

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of one or more instances of substantial noncompliance with a material provision of the Franchise by the Grantee. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise. The public hearing shall be conducted in accordance with the requirements of Section 14.3 above.
- B. Notwithstanding the above provisions, the Grantee reserves all of its rights under federal law or regulation.

- C. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place, in consultation with the Grantor.

## **SECTION 15** **Miscellaneous Provisions**

**15.1 Compliance with Laws.** Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise.

**15.2 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**15.3 Minor Violations.** Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties or hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

**15.4 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**15.5 Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 15.5 shall be

deemed a waiver of any remedies available to Grantee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

**15.6 Change in Law.** Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service in the Franchise Area to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

**15.7 Notices.** Unless otherwise provided by federal, State or local law, all notices pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, or nationally or internationally recognized courier service such as Federal Express. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: City of Great Falls  
Attn: City Manager  
PO Box 5021  
2 Park Drive South, Room 204  
Great Falls, MT 59403

Grantee: Charter Communications  
Attn: Director of Government Affairs  
951 West Custer Ave.  
Helena, MT 59601

Copy to: Charter Communications  
Attn: Vice President, Government Affairs  
601 Massachusetts Ave., NW  
Suite 400W  
Washington, DC 20001

**15.8 Public Notice.** Minimum public notice of any public hearing relating to this Franchise shall be made pursuant to Mont. Code Ann. § 7-1-4127.

**15.8.1** Grantor shall provide written notice to Grantee within ten (10) business days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public

rights of way. Any public hearings to consider such application or request shall have the same notice requirements as outlined in Paragraphs 15.7 and 15.8 above.

**15.9 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

**15.10 Entire Agreement.** This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

**15.11 Administration of Franchise.** This Franchise is a contract and neither party may take any unilateral action that materially changes the mutual promises and covenants contained herein. Unless such action is necessary to protect public health, safety, or welfare, or required by applicable federal law. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to *de novo* judicial review.

**15.12 Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise. If any fee that is passed through to Subscribers is required by this Franchise, such fee shall go into effect sixty (60) days after the Effective Date of this Franchise.

**15.13 No Third Party Beneficiaries.** Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise.

Considered and approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

City of Great Falls, Montana

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

Name/Title: \_\_\_\_\_

Attest:

(Seal of the City)

By: \_\_\_\_\_  
Lisa Kunz, City Clerk

Approved as to Form:

By: \_\_\_\_\_  
\*Sara R. Sexe, 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.

Accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to applicable federal and State law.

Spectrum Pacific West, LLC  
By Charter Communications, Inc., Its Manager

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

Name/Title: \_\_\_\_\_

## EXHIBIT B

### FRANCHISE AGREEMENT

This Franchise Agreement, by and between the City of Great Falls, (Franchise Authority) and TCI Cablevision of Great Falls, Inc. (Grantee), is made and entered into this 5th day of May, 1992.

#### RECITALS

Whereas: the Franchise Authority has determined that the Grantee has the financial, legal, and technical ability which is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community.

Now, Therefore, in consideration of the terms and conditions set forth herein, and it being the intention of the parties to be legally bound hereby, the Franchise Authority and the Grantee agree as follows:

#### SECTION 1 Definition of Terms

1.1. **Terms.** For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meaning ascribed to them below. When not inconsistent with the context, words used in the present tense include future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. **Affiliate** means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- B. **Basic Cable** is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.
- C. **Cable Act** means the Cable Communications Policy Act of 1984, as amended.
- D. **Cable Service** means (i) the one-way transmission to subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection of such Video Programming or any other lawful communication service.
- E. **Cable System** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service and other service to subscribers.

- F. **FCC** means Federal Communications Commission, or successor governmental entity thereto.
- G. **Franchise** shall mean the initial authorization, or renewal thereof, issued by the Franchise Authority, whether such authorization is designated a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or service to Subscribers.
- H. **Franchise Authority** means the City of Great Falls, Montana, or the lawful successor, transferee, or assignee thereof.
- I. **Grantee** means TCI Cablevision of Great Falls, Inc., or the lawful successor, transferee, or assignee thereof.
- J. **Gross Revenues** mean revenues which are derived from the operation of the cable system and attributable to the subscribers or customers within the service area. National advertising carried on the cable system for which the Grantee receives no revenues is excluded. Also, excluded are any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

Further, Gross Revenues means revenues (except as exempted by this definition) derived from all multi-channel services provided by TCI Cablevision of Great Falls, Inc. Cable related activities within the service area including but not limited to revenues from subscriber rates, pay television, premium channels, service tiers, service clusters, institutional networks, locally generated advertising revenue (e.g. Cable Adnet), installations, commissions from home shopping services, commercial access, or sale or rental of subscriber equipment.

- K. **Person** means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.
- L. **Public Way** shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Service Area which shall entitle the Franchise Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the TCI Cablevision of Great Falls, Inc. System. Public Way shall also mean any easement now or hereafter held by the



Franchise Authority within the Service Area for the purpose of public travel, or the utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchise Authority and the Grantee to the use thereof for the purposes of installing or transmitting TCI Cablevision of Great Falls, Inc. Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments, and other property as may be ordinarily necessary and pertinent to the TCI Cablevision of Great Falls, Inc. System.

- M. **Service Area** means the present municipal boundaries of the Franchise Authority, and shall include any additions therewith by annexation or other legal means.
- N. **Service Tier** means a category of Cable Service or other services, provided by Grantee and for which a separate charge is made by Grantee.
- O. **Subscriber** means a person or user of the Cable System who lawfully receives Cable Services or other services therefrom with Grantee's express permission.
- P. **Video Programming** means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

## SECTION 2 Grant of Franchise

2.1. **Grant.** The Franchise Authority hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.2. **Term.** The Franchise granted pursuant to this Ordinance shall be an initial term of twenty-seven (27) years from the effective date of the Franchise as set forth in Section 2.3, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.3. **Acceptance - Effective Date.** Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing with the City Clerk of the Franchise Authority within forty-five (45) days after the passage and final adoption of this Franchise. Subject to the filing of the written acceptance by Grantee, the effective date of this Ordinance shall be the forty-fifth day after its passage and final adoption.

2.4. **Favored Nations.** In the event the Franchise Authority enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the Grantee for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area, which contains terms more favorable to such person or entity in any regard than similar provisions of this Ordinance, then this Ordinance shall be deemed amended as of the effective date of the other franchise, permit, license, authorization or other agreement, so as to give the Grantee the benefit or any such favorable terms.

### **SECTION 3** **Standards of Service**

3.1. **Conditions of Street Occupancy.** All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

3.2. **Restoration of Public Ways.** If during the course of Grantee's construction, operation, or maintenance of the Cable System, there occurs a disturbance of any Public Way by Grantee, it shall, at Grantee's expense, replace and restore such Public Way to the condition equal to or better than the existing condition immediately prior to such disturbance and as provided for in the OCCGF 12.12.060. (Exhibit C)

3.3. **Restoration of a Subscriber's Property.** If at any time the Grantee (in furtherance of its right to construct, operate, and maintain a multi-channel system) disturbs the yard, residence, or other real or personal property of a subscriber, such Grantee shall ensure that the subscriber's yard, residence, or other personal property is returned, replaced, and/or restored to a condition equal to or reasonably comparable with said property prior to the disturbance. The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by the TCI Cablevision of Great Falls, Inc. This section also requires the Grantee to reimburse a subscriber or private property owner, for any damage caused by the Grantee, its subcontractor, or its independent contractor, in connection with the disturbance or a subscriber or private property owners's property.

3.4. **Relocation at Request of Franchise Authority.** Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchise Authority by reason of traffic conditions, public safety, street abandonment, freeway and traffic construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchise Authority; but the Grantee shall in all cases have the right of abandonment of its property. If public funds, under the control of the City of Great Falls, are available to any company using such street, easement, or right-of-way for the purpose

of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

**3.5. Relocation at Request of Third Party.** The Grantee shall, on the request of any person holding a building moving permit issued by the Franchise Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

**3.6. Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment.

**3.7. Use of Grantee's Equipment by Franchise Authority.** Subject to any applicable state or federal regulations or tariffs, the Franchise Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that (a) such use by the Franchise Authority does not interfere with a current or future use by the Grantee; (b) the Franchise Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to reasonable attorney's fees and costs.

**3.8. Safety Requirements.** Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

**3.9. Aerial and Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, Grantee shall have the sole discretion to construction, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section 3.9 shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section 3.0, in the event that all of the transmission or distribution facilities of the respective utilities providing telephone

communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

**3.10. Required extensions of Service.** The Grantee is planning a rebuild that will allow the system to have a minimum of 60 channel capacity. The rebuild is expected to be completed by December of 1996.

The Cable System as constructed as of the date of the passage and final adoption of this Ordinance substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1320 cablebearing strand feet (one-quarter cable mile) of its trunk or distribution cable it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under Section 3.11 of this Ordinance.

**3.11. Subscriber Charges for Extensions of Service.** No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers' or a density of less than fifteen (15) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rate basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

**3.12. Service to Public Buildings.** The Grantee shall provide without charge (1) outlet of Basic plus Expanded Basic Service to the Franchise Authority's office building, the police station and the public access studio. The outlets of Basic plus Expanded Basic Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets including but not limited to, those arising from copyright liability.

**3.13. Emergency Override.** In the case of any emergency or disaster, the Grantee shall, upon request of the Franchise Authority, make available its facilities for the Franchise Authority to provide emergency information and instructions during the emergency or disaster period. The

Franchise Authority shall hold the Grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchise Authority, including, but not limited to, reasonable attorney's fees and costs.

**3.14. Public Access Channel Grant** When requested by the Franchise Authority, based on the currently acknowledged Public, Educational and Governmental Access needs and interests of the community, but not sooner than September 1, 1993, Grantee shall allocate a sum of eighty thousand dollars (\$80,000), for use in the acquisition of equipment for the City and/or facilities in support of the City's community access activities. In addition to the one-time grant of \$80,000, Grantee shall also:

- a. Provide the capacity for live program origination on the public access television channel by returning seven upstream lines from the following locations to the Grantee's Headend Facility:
  1. Civic Center, Great Falls, Montana
  2. Great Falls High School, Great Falls, Montana
  3. CM Russell High School, Great Falls, Montana
  4. College of Great Falls, Great Falls, Montana
  5. Great Falls Vocational Technical School, Great Falls, Montana
  6. Columbus Hospital, Great Falls, Montana
  7. Deaconess Hospital, Great Falls, Montana

The upstream lines shall be completed in conjunction with completion of the cable system rebuild but no later than December 1996. However, the upstream line to the designated public access studio shall be completed on or before September 1993.

- b. Cost of construction, maintenance, installation, and/or service to public buildings not specified in Section 3.12 or for additional sites not specified in Section 3.14(a) will be the responsibility of the Franchise Authority.

**3.15. Access Channel.** Grantee shall provide two downstream channels for joint Public (community) access usage. Additional access channel capacity shall be provided at the request of the Franchise Authority when the existing channel capacity has been programmed to seventy percent (70%) of the time between 9:00 a.m. and 10:00 p.m. each day for a period of three (3) consecutive months with initial run and first rerun programming but not sooner than the completion of the cable system rebuild. The Channel designations shall be 7 and a channel to be determined at a later date.

## SECTION 4 Regulation by Franchise Authority

### 4.1. Franchise Fee

- A. Grantee shall pay to the Franchise Authority a franchise fee equal to 5 percent of Gross Revenues received by Grantee from the operation of the Cable System on a quarterly basis;

provided, however, that Grantee may credit against any such payments (i) any tax, fee, or assessment of any kind imposed by Franchise Authority or other governmental entity on a cable operator, or subscriber, or both, solely because of their status as such; (ii) any tax, fee, or assessment of general applicability which is unduly discriminatory against cable operators or subscribers (including any such tax, fee, or assessment imposed both on utilities and cable operators and their services), and (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax. The franchise fee payment shall be due and payable sixty (60) days after the close of the preceding quarter. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation. In no event, shall the franchise fee payments required to be paid by Grantee exceed five percent (5%) of Gross Revenues received by Grantee in any twelve (12) month period.

B. If the FCC, Congress, or other governmental entity with authority over multi-channel service ever allows a governmental entity or Franchise Authority to increase the franchise fee beyond five percent (5%), then the Franchise Authority shall have the authority to increase the franchise fee to the maximum rate allowable.

C. **Limitation on Franchise Fee Actions.** The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due. Unless, within five (5) years from and after said payment due date the Franchise Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the Franchise Authority shall be estopped from asserting any claims whatsoever against the Company relating to any such alleged deficiencies.

4.2. **Rates and Charges.** The Franchise Authority may not regulate the rates for the provision of Cable Service and other services, including but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as authorized pursuant to federal and state law relating thereto. From time to time, and at any time, Grantee has the right to modify its rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the Franchise Authority of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

In the event that Basic Service rate increases are subject to approval of the Franchise Authority, the Grantee may, at its discretion and without consent of the Franchise Authority, increase rates relating to the provision of Basic Service by an amount which is at least equal to five (5) percent per year.

4.3. **Renewal of Franchise.** The Franchise Authority and the Grantee agree that any proceedings undertaken by the Franchise Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions

of any subsequent provision of federal or state law.

In addition to the procedures set forth in said Section 626(a), the Franchise Authority agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of Grantee under the then current Franchise term. The Franchise Authority further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this section 4.3, the Grantee and Franchise Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchise Authority and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Franchise Authority may grant a renewal thereof. The Grantee and Franchise Authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act. A reproduction of Section 626 of the Cable Act as such existed as of the effective date of the Cable Act is attached hereto as Schedule 1 and incorporated herein by this reference.

**4.4. Conditions of Sale.** Except to the extent expressly required by federal or state law, if a renewal or extension of Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchise Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

Grantee and Franchise Authority agree that in the case of a lawful revocation of the Franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchise Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchise Authority, Grantee and Franchise Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its Cable System during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchise Authority or the Grantee. Notwithstanding anything to the contrary set forth in Section 4.4, neither Franchise Authority nor Grantee shall be required to violate federal or state law.

**4.5. Transfer of Franchise.** Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate without the prior consent of the Franchise Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the franchise or Cable System in order to secure indebtedness.

**SECTION V**  
**Compliance and Monitoring**

5.1. **Testing for Compliance.** The Franchise Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchise Authority. Except in emergency circumstances, the Franchise Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Grantee upon Grantee's request.

5.2. **Books and Records.** The Grantee shall provide an annual report, if requested, an audited report (if available) showing annual gross revenues received during the preceding year.

**SECTION VI**  
**Insurance, Indemnification, and Bonds or Other Surety**

6.1. **Insurance Requirements.** Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Said insurance shall designate the Franchise Authority as additional insured. Such insurance shall be noncancelable except upon thirty (30) days prior written notice to the Franchise Authority.

6.2. **Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the Franchise Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including but not limited to, reasonable attorney's fees and costs.

6.3. **Bonds and other Surety.** Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchise Authority acknowledges that the legal, financial, and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchise Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the subscriber



in the form of increased rates for Cable Services. In order to minimize such costs, the Franchise Authority agrees to required bonds and other surety only in such amounts and during such times as there is a reasonable demonstrated need thereof. The Franchise Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000 conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchise Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

## SECTION 7

### Enforcement and termination of Franchise

7.1. **Notice of Violation.** In the event that the Franchise Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the allege noncompliance.

7.2. **Grantee's Right to Respond.** Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1 to (a) respond to the Franchise Authority contesting the assertion of noncompliance, or (b) to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchise Authority of the steps being taken and the projected date that they will be completed.

7.3. **Public Hearing.** In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedure set forth in Section 7.2 or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 7.1, the Franchise Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchise Authority which is scheduled at a time which is no less than five (5) business days therefrom. The Franchise Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

7.4. **Enforcement.** Subject to applicable federal and state law, in the event the Franchise Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchise Authority may:

- a) Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchise Authority

reasonably determines is necessary to remedy the default;

- b) Commence an action at law for monetary damages or seek other equitable relief;
- c) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or
- d) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchise Authority to enforce prompt compliance.

**7.5. Acts of God.** The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

## **SECTION 8**

### **Unauthorized reception**

**8.1. Misdemeanor.** In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of the Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any means of receiving Cable Service or other services provided thereto. Subject to applicable federal and state law, the Franchise Authority shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which will enforce the intent of this Section 8.1

## **SECTION 9**

### **Miscellaneous Provisions**

**9.1. Documents Incorporated and Made a Part Hereof.** The following documents shall be incorporated herein by this reference, and in the case of a conflict or ambiguity between or among them, the document of latest date shall govern:

- a) Any enabling ordinance in existence as of the date hereof; and

- b) Any proposal submitted by Grantee pursuant to a Franchise renewal procedure, as amended and supplemented during the Franchise renewal negotiation process;
- c) Any franchise agreement between Grantee and Franchise Authority reflecting the renewal of the Franchise, if any.

9.2. **Preemption.** If the FCC, or any other federal or state body or agency shall now hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchise Authority, the jurisdiction of the Franchise Authority shall cease and no longer exist.

9.3 **Legislative Acts.** In the event the FCC, federal or state government enacts any law which significantly alters the Cable Act, and given the consent of one or more parties to this agreement, then negotiations may be reopened to consider those changes by the new legislation.

9.4. **Actions of Franchise Authority.** In any action by the Franchise Authority or representative thereof, mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

9.5. **Notice.** Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchise Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchise Authority shall be addressed as follows:

City Manager  
City of Great Falls  
P.O. Box 5021  
Great Falls, MT 59403

The notices or responses to the Grantee shall be addressed as follows:

TCI Cablevision of Great Falls, Inc.  
P.O. Box 6410  
Great Falls, MT 59406


with a copy to: TCI Cablevision of Great Falls, Inc.  
Attention: Legal Department  
Terrace Tower II  
5619 DTC Parkway  
Englewood, CO 80111


Franchise Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.


9.6. **Descriptive Headings.** The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

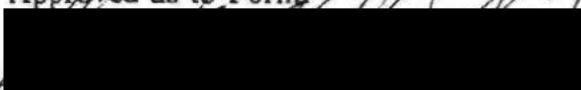
9.7. **Severability.** If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any Section sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

Accepted this 24 day of May, 1992, subject to applicable Federal, State and local laws by:

  
John W. Lawton, City Manager

  
TCI Cablevision of Great Falls, Inc.  
DAVID M. REYNOLDS - JP/CGG

Attest:  
  
Peggy I. Lamberson, City Clerk

Approved as to Form:  
  
David V. Gliko, City Attorney

STATE OF WASHINGTON

County of King  
City of Bellvue

)  
: ss.  
)

On this 19 day of May, 1992, before me, a Notary Public in and for the State of WA, personally appeared David M Reynolds known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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



Notary Public  
Residing Bellvue  
My Commission Expires 8/20/93

(NOTARIAL SEAL)



**Item:** Comprehensive Annual Financial Report (CAFR) and Audit Report, FY 2018-2019.

**From:** Melissa Kinzler, Finance Director

**Initiated By:** State Statutes; General Accepted Accounting Practices

**Presented By:** Melissa Kinzler, Finance Director

**Action Requested:** Accept Comprehensive Annual Financial Report and Independent Auditor's Report.

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**Suggested Motion:**

1. Commissioner moves:

"I move that the City Commission (accept/deny) the FY 2018-2019 CAFR, the Required Client Communication Letter and the City's response to the Required Client Communication Letter, and authorize staff to submit the related reports to other government agencies and financial institutions as necessary."

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

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**Staff Recommendation:** Staff recommends the City Commission accept the FY 2018–2019 CAFR, the Required Client Communication Letter recommendations as presented, and the City's response to the Required Client Communication letter and authorize staff to submit the related reports to other government agencies and financial institutions as necessary.

**Background:** The City's Audit Committee met on December 10, 2019. The City's Audit Committee received a copy of the FY 2018-2019 CAFR, the Independent Auditor's report, and a brief summary of the FY 2018-2019 audit. The Required Client Communication Letter was reviewed by the audit committee. There was one current recommendation and no prior recommendations with the Required Client Communication Letter. The Required Client Communication Letter comments on any internal control recommendations related to the operations of the City that would adversely affect the City's ability to record, process, summarize, and report financial data. The attached document notes that the auditors have one recommendation for FY 2018-2019, and there were no prior year comments from FY 2017-2018.

The City's Audit Committee is comprised of one City Commissioner, the Mayor, two citizens, the City Manager, and the Finance Director.

The FY 2018-2019 CAFR will be submitted to the Government Finance Officers Association's (GFOA) Certificate of Achievement Program for review. The prior year's CAFR was submitted and subsequently awarded the Certificate of Achievement for Excellence in Financial Reporting. The City has received this certification every year since FY 1993-1994. It is anticipated the FY 2018-2019 CAFR will meet requirements to receive the certification as well, since all comments and recommendations made by GFOA for improvement of presentation were implemented in the FY 2018-2019 CAFR.

This is the first year of a three year audit contract with Anderson ZurMuehlen & Co., P.C. Anderson ZurMuehlen & Co., P.C. were awarded the audit contract for Fiscal 2019, 2020, and 2021 at the March 5, 2019 City Commission meeting. This is the fourth year Anderson ZurMuehlen & Company has audited the City of Great Falls. The audit contract is between Anderson ZurMuehlen & Co., P.C., the City of Great Falls, and the Montana Department of Administration, Local Government Services Bureau.

**Alternatives:** If the CAFR is not accepted, the City will not be able to file the required reports by the six month end of year deadline, as required by state statute and bond covenants.

**Concurrences:** The City's Audit Committee recommends approval of the FY 2018-2019 CAFR, the required Client Communication Letter and the City's response to the Required Client Communication Letter, and authorizes staff to submit the reports to other governmental and financial agencies as required.

The CAFR document is a 200+ page bound document and is available in the Finance Department, Civic Center Room 104 or in the City's Website at <https://greatfallsmt.net/finance/2019-comprehensive-annual-financial-report-cafr>.

**Attachments/Exhibits:**

- Required Client Communication Letter
- Required Client Communication Letter - Redacted
- Response to Required Client Communication Letter

To the Honorable Mayor,  
City Commissioners and City Manager  
City of Great Falls, Montana

We have audited the financial statements of the governmental activities, the business-type activities, the discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Great Falls, Montana (the City) for the year ended June 30, 2019. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, *Government Auditing Standards*, and the Uniform Guidance, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated July 29, 2019. Professional standards also require that we communicate to you the following information related to our audit.

*Qualitative Aspects of Accounting Practices*

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the City are described in Note 1 to the financial statements. During 2019, the City adopted the following new accounting standards:

- GASB Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*

We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were: (i) depreciation expense, which is based on management's estimate of useful lives of capital assets; (ii) the liability for the other post-employment benefits which is based on an actuarial study; and (iii) the liability for net pension costs which is based on actuarial studies of the respective plans. We evaluated the key factors and assumptions used to develop these estimates and determined that they are reasonable in relation to the financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the financial statements were: (i) the Employee Benefit Plans disclosure in Note 9; (ii) the Multiple-Employer Defined Benefit Pension Plans disclosure in Note 10; and (iii) the Other Post Employment Benefit disclosures in Note 11 to the financial statements.

The financial statement disclosures are neutral, consistent, and clear.



*Difficulties Encountered in Performing the Audit*

We encountered no significant difficulties in dealing with management in performing and completing our audit.

*Corrected and Uncorrected Misstatements*

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. We noted no such adjustments.

*Disagreements with Management*

For purposes of this letter, a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

*Management Representations*

We have requested certain representations from management that are included in the management representation letter dated December 10, 2019.

*Management Consultations with Other Independent Accountants*

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

*Other Audit Findings or Issues*

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

We noted there was a violation of a bond covenant of the Sanitation Revenue Bond, Series 2016, in regards to debt service coverage. See finding #2019-001 in the Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.

Other Matters

We applied certain limited procedures to the management's discussion and analysis, actuarial valuation of postretirement benefits, the schedule of the City's proportionate share of the net pension liability, schedule of the City's retirement systems contributions, schedule of the City's additional pension contributions and the budgetary comparison schedules, which are required supplementary information (RSI) that supplements the basic financial statements.

Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

We were engaged to report on the combining and individual non-major fund financial statements, and the schedule of expenditures of federal awards, which accompany the financial statements but are not RSI. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

We were not engaged to report on the introductory or statistical sections, which accompany the financial statements but are not RSI. We did not audit or perform other procedures on this other information and we do not express an opinion or provide any assurance on it.

#### On the Horizon

As part of our responsibility as your independent auditor, we attempt to bring to your attention observations and suggestions to assist you in managing the continued growth in the Entity. In the past year, there were several accounting standards finalized by the Governmental Accounting Standards Board (GASB). The following describes those upcoming accounting standard changes that will have the most effect on how the City will report its activity.

#### *Accounting for Leases*

In June 2017, GASB issued Statement No. 87, *Leases*. This standard will be effective for fiscal years beginning after December 15, 2019, thus will be effective for the City in fiscal year 2021, with early application encouraged. Early planning for this new standard will help with implementation.

The new standard provides a new definition of a lease, that being a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified by the contract for a period of time in an exchange-like transaction. The standard applies a right-of-use (ROU) model that requires a lessee to record an intangible ROU asset and a lease liability on the balance sheet for all leases longer than 12 months. Leases will be classified under a single model for accounting based on the principle that leases are a financing of the right to use the underlying asset, thus all leases will be classified as finance leases and no operating lease classification.

This new treatment could take many of your current leases that can be considered operating, and require that they be added to your balance sheet as both an asset and a liability. Only those leases noted above that have a maximum possible lease term of 12 months or less can be considered a "short-term lease," and not required to be recorded on the City's balance sheet.

Restriction on Use

This information is intended solely for the use of the City Commissioners and management of the City and is not intended to be and should not be used by anyone other than these specified parties.



Great Falls, Montana  
December 10, 2019

**CITY OF GREAT FALLS, MONTANA**  
Financial and Compliance Audit  
For the Year Ended June 30, 2019

**RESPONSE TO INDEPENDENT AUDITORS' REQUIRED CLIENT COMMUNICATION LETTER:**

**CURRENT COMMENTS AND RECOMMENDATIONS**

We noted there was a violation of a bond covenant of the Sanitation Revenue Bond, Series 2016, in regards to debt service coverage. See finding #2019-001 in the Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.

**Recommendation:**

The City should increase sanitation rates in fiscal year 2020, in order to meet the required debt service coverage of 125%.

**City response:**

The City has scheduled a City Commission work session on January 21, 2020 to discuss an increase in sanitation rates. In the Fiscal Year 2020 Adopted Budget an increase of 5% was approved. The budgeted increase once adopted will be sufficient to meet the required debt service coverage of 125%.

**PRIOR YEAR COMMENTS AND THEIR CURRENT STATUS**

There were no prior year comments.



**Item:** Fire Station Plumbing System Upgrades, OF 1727.5  
**From:** Public Works- Engineering Division  
**Initiated By:** Fire Department  
**Presented By:** Steve Hester, Fire Chief  
**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) the construction contract in the amount of \$149,750.00 to Copper Creek Construction for the Fire Station Plumbing Upgrades total base bid amount, and authorize the City Manager to execute the construction contract 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 contract award.

### **Summary:**

In late 2017, City personnel discussed moving forward on several fire station building improvements. As a result of these discussions, various fire station kitchen and restroom remodels were planned. During the initial stages of these planned remodels, it was discovered that the sewer pipes under the floor drains had deteriorated and failed in several project locations. These discoveries prompted an investigation of the sewer drainage plumbing at all of the Fire Stations and additional problems were found.

This project will repair the sewer drain problems that were found at Stations No. 1, 2 and 4.

Station 1- 105 9<sup>th</sup> Street South

Station 2- 731 6<sup>th</sup> Street NW

Station 4- 1800 Fox Farm Road

### **Background:**

#### Purpose

The primary objective of the project is to restore under floor sewer drains to proper function. Once the project is complete, other anticipated restroom and kitchen remodels can begin.

#### Workload Impacts

Design phase engineering and plans and specifications were completed by the City's consultant, Falls Mechanical. The City Engineering and Fire Department staff will perform project administration and inspection.

Project Work Scope

The project scope includes replacement of sewer drain lines at Fire Stations No. 1, 2 and 4. This includes new cleanouts, plumbing lines and floor repair.

Significant Impacts

The contract provisions substantiate that full station operation be maintained during construction. Temporary shower, bathroom and lavatory facilities will be provided to fire personnel during construction.

Evaluation and Selection Process

Three (3) bids were received on December 4, 2019 with the bid prices ranging from \$191,159.00 to \$149,750.00. Copper Creek Construction submitted the low bid.

Conclusion

City staff recommends awarding the contract to Copper Creek Construction in the amount of \$149,750.00

**Fiscal Impact:**

The attached bid tabulation summarizes bids that were received. The Fire Department budget is programmed to fund this project.

**Alternatives:** The City Commission could vote to deny award of the construction contract and re-bid or cancel the project.

**Attachments/Exhibits:**

OF 1727.5 Long Form Bid Tab

OF 1727.5 Vicinity Map

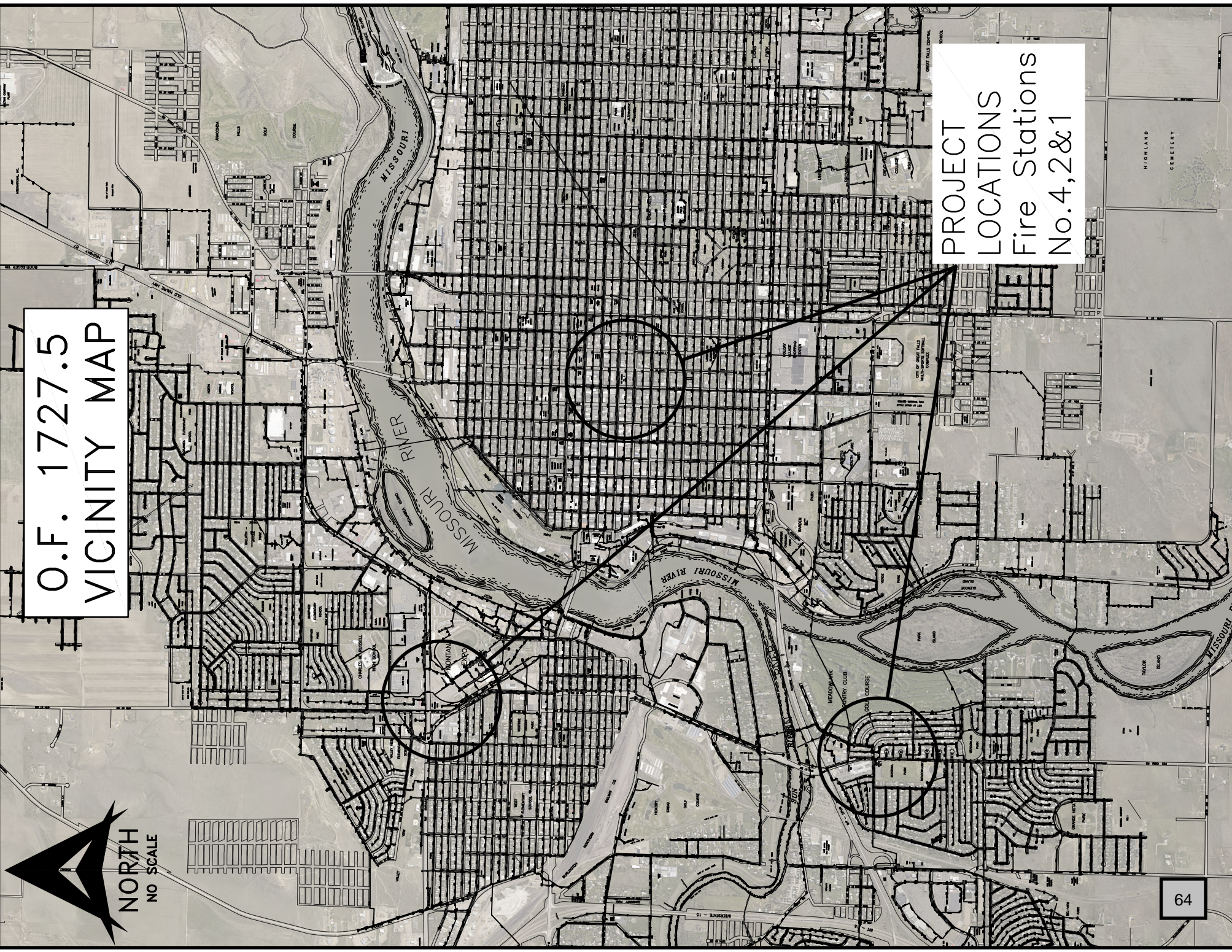
**Bid Results**

<b>Project:</b>		Fire Station Plumbing Upgrades: OF 1727.5							O.L. 1727.5
<b>Date:</b>		4-Dec-19							
<b>Time:</b>		3:00 PM							
<b>Engineer's Estimate:</b>		Not including abatement & trailer rental costs. Add 40k & 10K Misc. cost (50k total) to number at right ---->					\$101,993	With Additional Costs ---->	\$151,993
Contractor	Addendums Acknowledged	10% Security	Certificate Of Non-Segregated Facilities	Certificate of Compliance w/ Insurance Requirements	Base Bid Amount	Misc. Amount	Total Base Bid	Alternate 1 Amount	Total Base + Alternate Bid
Central Plumbing & Heating	1, 2 & 3	Yes	Yes	Yes	\$181,159	\$10,000	\$191,159	\$8,300	\$199,459
Copper Creek	1, 2 & 3	Yes	Yes	Yes	\$139,750	\$10,000	\$149,750	\$16,100	\$165,850
AT Klemens	1, 2 & 3	Yes	Yes	Yes	\$161,560	\$10,000	\$171,560	\$12,400	\$183,960

O.F. 1727.5  
VICINITY MAP



PROJECT  
LOCATIONS  
Fire Stations  
No. 4, 2 & 1







**Item:** Construction Contract Award: Central Montana Agriculture and Technology Park (CMATP) TIF Phase III Storm Drain Project, O.F. 1658.1

**From:** Engineering Division

**Initiated By:** Public Works Department

**Presented By:** Jim Rearden, 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 \$1,366,871.00 to MRTE, Inc., for the Central Montana Agriculture and Technology Park (CMATP) TIF Phase III Storm Drain project, and authorize the City Manager to execute the construction contract 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:**

As part of the Capital Improvement Plan for the Central Montana Agri-Tech Park (CMATP) the City has been working with Thomas Dean & Hoskins, Inc. (TD&H) to complete the final design and contract documents for the storm drainage network across the CMATP. The proposed alignment will begin on the east side of Highway 87 and extend to a point east of Black Eagle Road. In general, the proposed storm drain will follow the existing natural drainage. Storm water will initially enter the storm drain near the culvert at Highway 87 and inlet structures along the alignment will capture additional runoff and bypass flow. The proposed storm drain will convey the storm water to the east. Wherever possible, the new storm drain will parallel existing utilities and minimize utility crossings and encumbrance to the land. The storm drainage system will serve the entire CMATP development and properties east of Black Eagle Road. The system will help protect properties from damage and serve future developments. Future extensions can serve several hundred acres to the west and north of the current CMATP.

**Background:**

Workload Impacts:

Design phase engineering plans and specifications were completed by TD&H with assistance from City Engineering staff and the City Utilities Division. City Engineering staff will provide construction phase engineering services and project inspection.

Project Work Scope:

Work to be performed under this contract includes the following: Remove and replace asphalt pavement and base course gravel; install geotextile separation fabric; install PVC storm drain piping; install Reinforced Concrete Pipe or Steel Reinforced Polyethylene storm drain piping; install culvert; install storm drain manholes; install storm drain inlets; connect to existing detention pond outlet pipes; relocate gas service; install concrete impact basin; construct biofiltration swale; construct new approach and gravel road; restore disturbed pavement markings; seed and fertilize; restore wetlands, drainage channels and other ground.

Evaluation and Selection Process:

Six bids were received on December 4, 2019 ranging from \$1,366,871.00 to \$1,813,960.00. MRTE, Inc., submitted the low bid.

Conclusion:

City staff recommends awarding the contract to MRTE, Inc., in the amount of \$1,366,871.00.

**Fiscal Impact:**

The attached bid tabulation summarizes bids that were received. During tonight’s meeting the Commission is being asked to approve Resolution 10325 authorizing the expenditure of \$1,100,000 in CMATP TIF funds; and adoption of Resolution 10318 authorizing debt issuance from the Department of Natural Resources and Conservation (DNRC) Water Pollution Control State Revolving Loan Program for storm drain system upgrades in the TIF District in the amount of \$1,500,000.

**Alternatives:**

The City Commission could vote to deny award of the construction contract and re-bid or cancel the project.

**Concurrences:**

City Engineering staff, City Street Division and Utilities Division recommends award of the bid.

**Attachments/Exhibits:**

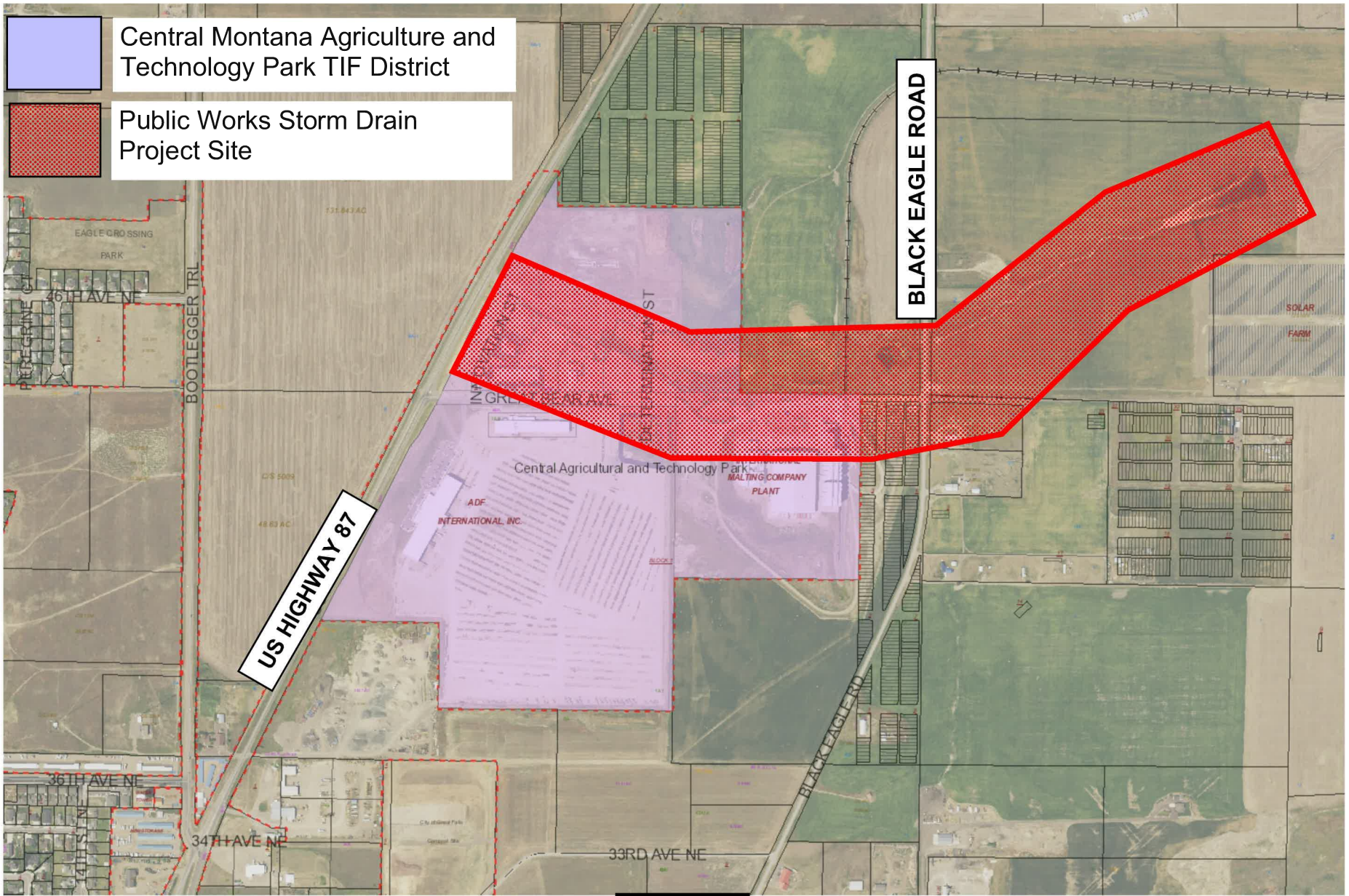
- Bid tabulation
- Vicinity Map
- Authorization to Award Letter from DEQ

**SHORT FORM BID TAB FOR:** CMATP TIF Phase III Storm Drain O.F. No. 1658.1

**BID OPENING:** December 4, 2019 3:00pm

CONTRACTOR NAME & ADDRESS	ADDEND REC'D			Non- segregated Facilities/ Insurance Compliance		BID SEC. 10%	DBE/ Debarment Cert		LIC. NO.	TOTAL BID SCHEDULE A	TOTAL BID SCHEDULE B
	1	2	3								
United Materials of Great Falls, Inc. 2100 9 <sup>th</sup> Ave N Great Falls, MT 59401	X	X	X	X	X	X	X	X	5498	\$1,402,232.00	
Ed Boland Construction 4701 North Start Blvd Great Falls, MT 59405											
Western Municipal Construction, Inc. 5855 Elysian Road Billings, MT 59101	X	X	X	X	X	X	X	X	13329	\$1,813,960.00	
Central Excavation 3701 River Drive North Great Falls, MT 59405	X	X	X	X	X	X	X	X	4443	\$1,378,463.00	
COP Construction, LLC 242 S 64 West Billings, MT 59106	X	X	X	X	X	X	X (1)	X	55440	\$1,709,991.00	
MRTE, Inc. PO Box 538 Black Eagle, MT 59414	X	X	X	X	X	X	X	X	36769		\$1,366,871.00
Williams Civil Construction, Inc. 1120 24 <sup>th</sup> St. S Great Falls, MT 59405	X	X	X	X	X	X			158949	\$1,492,685.00	

(1)COP Construction's DBE forms were not found during the bid opening; they were included with the bid as discovered while preparing the bid tabulations.



The City of Great Falls uses the most current and complete data available. However, GIS data and product accuracy may vary. GIS data and products may be developed from sources of differing accuracy, accurate only at certain scales, based on modeling or interpretation, incomplete while being created or revised, etc. The City of Great Falls reserves the right to correct, update, modify, or replace, GIS products without notification. The City of Great Falls cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. Using GIS data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may neither assert any proprietary rights to this information nor represent it to anyone as other than City Government-produced information. The City of Great Falls shall not be liable for any activity involving this information with respect to lost profits, lost savings or any other damages



December 5, 2019

Russell Brewer, PE  
City of Great Falls  
2 Park Drive South  
Great Falls, MT 59403

Re: Great Falls CMATP Storm Water Improvements Project, Authorization to Award,  
WPCSRF Project #C305183

Dear Russell:

This letter acknowledges receipt on December 5, 2019 of the bid tabulation, bid bond, request to award letter and supporting documents for the above-referenced project.

You may consider this letter an authorization to award construction contract to MRTE Inc., the low responsive, responsible bidder. The total bid amount for the base bid was \$1,366,871.00 of which all portions are eligible for SRF loan assistance.

This authorization to award is also provided contingent upon the adoption of a bond resolution that signifies the borrower is eligible and authorized to borrow loan funds from the Montana State Revolving Fund.

Construction may now begin at your convenience. Please provide us with a copy of the executed contract documents as described in the enclosed DEQ Policy Statement No. 9 dated September 18, 2002 included with this letter.

The borrower must forward copies of subcontracts and purchase agreements/orders, which the project contractor(s) and the architectural and engineering firm(s) execute with Minority and Women Business Enterprise (MBE/WBE) firms, to the undersigned project officer. If additional MBE/WBE subcontractors or purchases are made after work has begun, this information is required and should be forwarded to the project officer within 15 days of their execution.


The contract documents require all contractors maintain adequate fire and extended coverage (where appropriate), worker's compensation, public liability and property damage, and "all risk" builders risk insurance (including blasting where appropriate) during the construction phase of the contract. Please send copies of insurance certificates and performance and payment bonds. Also assure that contractor's wage determinations are properly posted at the construction site. Wage interviews need to be performed periodically during construction to verify the use of proper Federal wage rates. We encourage performance of a wage interview within the first two

weeks of construction and again near the end at a minimum for each contractor on the project.

We will monitor construction progress for compliance with approved plans and specifications and loan conditions and wish to attend the preconstruction conference. Please advise me as soon as the preconstruction conference is scheduled. I look forward to working with the City of Great Falls to ensure a good project outcome and am here to help answer any questions you or your staff may have with respect to recordkeeping or other issues related to the SRF.

If any questions arise please call me at 444-7343.

Sincerely,



Terry Campbell, P.E.  
Environmental Engineer  
Engineering Bureau

Enc: Policy Statement No. 9

Cc: Camille Johnson, PE, TD&H, Great Falls, MT (email)  
Anna Miller, DNRC (email)

## POLICY STATEMENT NO. 9

**TO:** State Revolving Fund (SRF) Loan Borrowers and Consultants

**FROM:** Water Pollution Control State Revolving Fund (WPC SRF)  
Engineering Bureau  
Water Quality Division

**DATE:** September 18, 2002

**SUBJECT:** Executed Contract Documents for SRF Projects

### Purpose

This policy statement is intended to ensure that all necessary executed contract documents for State Revolving Fund (SRF) loan projects are submitted to this office.

### Discussion

A review of contract documents is made to ensure compliance with approved project specifications, and the applicable laws and regulations. The documents are to be submitted for inclusion in the approved specifications following award of the contract and prior to the initiation of construction. One (1) copy of the following executed documents should be submitted to the Technical and Financial Assistance Bureau, WPCSRF Program Staff:

1. Executed Agreement
2. Notice to Proceed
3. Workers Compensation and Insurance Certificates including:
  - a) Fire and extended coverage (if appropriate)
  - b) Public liability and property damage
  - c) All risk builders (including blasting where appropriate)
4. Performance and Payment Bonds

Further, copies of subcontracts and purchase agreements/orders signed with Minority and Women Business Enterprise (MBE/WBE) firms should be forwarded to the Engineering Bureau within 15 days of award of contract. If additional subcontracts or purchases are made after work has begun, the information should also be forwarded.



**Item:** Resolution 10325 relating to a Central Montana Agriculture and Technology Park (CMATP) TIF Funding Application from the City of Great Falls Public Works Department for \$1,100,000; and Resolution 10318, a Resolution relating to an additional request for \$1,500,000 of Tax Increment Industrial Infrastructure Revenue Bonds from the DNRC Water Pollution Control State Revolving Loan Program, Series 2020; Authorizing the Issuance and Fixing the Terms and Conditions Thereof

**From:** Alaina Mattimiro, Planner I, Planning and Community Development

**Initiated By:** City of Great Falls Public Works Department

**Presented By:** Craig Raymond, CBO, Director, Planning and Community Development

**Action Requested:** Adoption of Resolutions 10325 and 10318

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 10325.”

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

and:

2. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 10318.”

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

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**Staff Recommendation:** Staff recommends adoption of Resolution 10325 authorizing the expenditure of \$1,100,000 in CMATP TIF funds; and adoption of Resolution 10318 authorizing debt issuance from the Department of Natural Resources and Conservation (DNRC) Water Pollution Control State Revolving Loan Program for storm drain system upgrades in the TIF District in the amount of \$1,500,000.

**Background:** The Central Montana Agriculture and Technology Park (CMATP) Tax Increment Financing (TIF) District was adopted by the Great Falls City Commission in 2005 and expanded in 2007 to encompass property east of US Highway 87 and west of Black Eagle Road. The boundary of the TIF



District includes Lots, 1A, 2, 3 and 5, Block 1 of the International Malting Company LLC Addition. Within the district is the Malteurop Barley Malting facility, ADF International Steel Fabrication, T&K Performance LLC, and Cargill research laboratories. The purpose of creating the CMATP TIF district was to provide needed infrastructure to attract and encourage the location of secondary value-added industries to strengthen and diversify the community's existing economic base. The City of Great Falls Public Works Department has applied for TIF funds in this district in the past, including projects improving roadway paving, sewer mains, and storm drains.

As part of the Capital Improvement Plan for the TIF District, the City has been working with Thomas Dean & Hoskins, Inc. (TD&H) to complete the final design and contract documents to construct a storm drainage network across the CMATP. The proposed alignment will begin on the east side of Highway 87 and extend to a point east of Black Eagle Road. In general, the proposed storm drain will follow the existing natural drainage. Storm water will initially enter the storm drain near the culvert at Highway 87. Additionally, newly installed inlet structures along the alignment will capture additional runoff and bypass flow. The proposed storm drain will convey the storm water to the east. Wherever possible, the new storm drain will parallel existing utilities and minimize utility crossings and encumbrance to the land. The storm drainage system will serve the entire CMATP development and properties east of Black Eagle Road. The system will help protect properties from damage and serve future developments. Future extensions can serve several hundred acres to the north and east of the current CMATP.

On November 12, 2019, the City of Great Falls Planning Advisory Board adopted a motion to recommend that the City Commission approve the \$1,100,000 of TIF funds. In addition to this request, the City Commission is being asked to consider a request for \$1,500,000 of Tax Increment Industrial Infrastructure Revenue Bonds from the DNRC Water Pollution Control State Revolving Loan Program, Series 2020. The State of Montana's Revolving Loan Program was established in 1989. Originally, the Program was oriented towards providing funds for communities to address major wastewater projects. However, in more recent years, the purpose of the Program was expanded to allow for communities to receive matching funds for larger storm water projects. Because the estimated total project cost is approximately \$2,600,000, it is necessary for the City to utilize both local TIF funds as well as the State's Loan Program to execute the project. As noted in the Fiscal Impact section of this agenda report, the CMATP TIF District receives sufficient annual funding to support debt financing through the State's Program.

If this request is approved, the construction for the storm drain is anticipated to begin in 2020.

### **Review Criteria:**

#### ***Preliminary Findings***

After thorough review and evaluation of the Project, City staff has determined:

- No persons will be displaced from their housing by the Project or the infrastructure improvements.
- The Project and the infrastructure improvements substantially satisfy the review criteria of the funding application process and meet the purpose and goals of the State Law, the District and Plan.
- The infrastructure improvements constitute public improvements in accordance with the Act.
- A sound and adequate financial program exists for the financing of the infrastructure improvements.

### ***Montana Code Annotated (MCA) TIF Regulations***

The creation and administration of TIF Districts are governed by State Law. According to Montana Code Annotated (MCA) (7-15-4288), tax increment can only be used for the following purposes: The tax increment may be used by the local government to pay for the following costs of or incurred in connection with an urban renewal plan or targeted economic development district comprehensive plan:

1. land acquisition;
2. demolition and removal of structures;
3. relocation of occupants;
4. the acquisition construction, and improvement of public improvements or infrastructure, including streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunication lines, rail lines, rail spurs, bridges, publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
5. costs incurred in connection with the redevelopment activities allowed under 7-15-4233;
6. acquisition of infrastructure-deficient areas or portions of areas;
7. administrative costs associated with the management of the urban renewal area or targeted economic development district;
8. assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the local government itself at its fair value;
9. the compilation and analysis of pertinent information required to adequately determine the needs of the urban renewal area or targeted economic development district;
10. the connection of the urban renewal area or targeted economic district to existing infrastructure outside the area or district;
11. the provision of direct assistance to secondary value-adding industries to assist in meeting their infrastructure and land needs within the area or district; and
12. the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

### ***City of Great Falls TIF Review Criteria***

In order for the City Commission to approve any TIF funding request, the request must meet the criteria recommended in the Industrial District Plan, as well as be eligible for TIF participation in accordance with MCA guidelines noted in this report. To aid in this determination, the City of Great Falls' Tax Increment application process established twelve specific criteria to assess the merits of projects against the Plan. Those criteria are:

- 1) Public Infrastructure Improvements – Public infrastructure improvements have the benefit of improving and impacting an entire district. Each district may have its own Capital Improvement Plan, which may include things such as roadway improvements, storm drains, sewer and waterlines, railroads, etc.

**Staff Analysis** – Staff finds the proposed improvement will clearly benefit and positively impact the entire CMATP TIF District. By funding this infrastructure improvement, the City will be providing support to existing private business owners within the TIF, and relieving them of the burden of completing the project themselves. The CMATP Expanded TIFID Plan also calls out for the need to support additional infrastructure development, specifically storm water.

2) Economic Stimulus – The amount of economic activity to be generated within a district through the development is assessed, as well as the leverage ratio of public to private investment. In general, the maximum limit of any one development is 10% of the construction/rehabilitation costs, exclusive of acquisition costs. Projects demonstrating extraordinary benefit to Districts or the community may, at the discretion of City Commission, receive additional TIF assistance for eligible items. All applications should contain credible, measurable information substantiating the project’s economic stimulus in the District and the community.

**Staff Analysis** – The construction of a new storm drain is a standalone public infrastructure project, and will benefit not only the existing development, but will provide support for future industrial employers as well. Currently, there are several vacant lots within this District, and this improvement will make future development more feasible by reducing initial infrastructure costs.

3) Tax Generation – The increase in taxable value due to the new district development, including construction/rehabilitation, as estimated by the County Assessor’s office to determine tax increment generation.

**Staff Analysis** – With the improvement of storm water infrastructure, future development within the CMATP TIF District will continue to become more feasible and create additional assessed property tax valuation for the District.

4) Employment Generation – Total employment generated by the district development is assessed in terms of permanent and part-time jobs, and construction jobs.

**Staff Analysis** – Currently, the existing businesses in this TIF district employ hundreds of people, and the construction of a new storm drain project will only continue to support further development, and will generate more jobs. There will also be several jobs supported during the construction process and storm drain installation.

5) Elimination of Blight – The development’s direct and indirect impact on the physical and fiscal deterioration within the appropriate district and the community, as identified in the appropriate district plan.

**Staff Analysis** – The purpose of an industrial TIF district is not the elimination of blight. This criterion is not applicable within the CMATP TIF district.

6) Special or Unique Opportunities – The extent to which the district’s development represents a unique opportunity, meets a special need, or addresses specific district or community goals. The restoration of a historic property or the provisions of an unmet community need is an example of special or unique opportunities.

**Staff Analysis** – Staff finds that this storm drainage improvement project meets a specific need within the area by addressing the amount of surface erosion due to storm water runoff. Despite an existing drainage swale, updates to the conveyance and detention systems are needed in order to support future development. The construction of a new storm drain will also offer the opportunity to protect current and future properties, as well as lay the groundwork for future extensions.

- 7) Impact Assessment – The extent of both positive and negative environmental impacts, appropriateness of the developer’s project design, and impact on existing businesses or residents.

**Staff Analysis** – Currently there is surface erosion existing within this area as well as on properties downstream from the TIF. As the CMATP continues to develop, the amount of storm water runoff will continue to increase, and will have the potential of creating further issues. With the construction of a new storm drain system, the amount of surface erosion will be significantly reduced. This creates a direct positive environmental impact, not just within the TIF District, but the area to the east and north of the current CMATP boundaries.

- 8) Financial Assistance – Other forms of financing available to the Applicant, Lender participation, industrial development revenue bonds, and state and federal grant monies, for example are examined to assess the need for TIF assistance.

**Staff Analysis** – This request for TIF funds is being used to leverage a bond through a State Revolving Fund loan for the remaining cost of construction.

- 9) Development’s Feasibility – A determination of feasibility is made on the strength of the Applicant’s demonstration of market demand for the development in the district and is contained primarily on the pro forma and financing commitments.

**Staff Analysis** – The City of Great Falls Public Works Department has been a long-standing successful project manager within the city and its TIF districts. This storm water improvement project, if funded, will be carried out in a safe, efficient, and responsible manner.

- 10) Developer Ability to Perform – An assessment of the Applicant’s capability to undertake the relative complexities of the development based on past performance on similar projects.

**Staff Analysis** – The applicant has completed numerous projects within the city and in multiple TIF districts, and has successfully demonstrated their capability in completing this project.

- 11) Timely Compensation – The feasibility of completing the development according to the Applicant’s development schedule.

**Staff Analysis** – Staff believes that the applicant will be able to meet the development schedule as noted within the application.

- 12) Payment of Taxes – All property taxes, special improvement district assessments and other assessments on the project property must be paid to date.

**Staff Analysis** – There are currently no outstanding tax issues within the district.

**Fiscal Impact:** The current balance for the Central Montana Agriculture Technology Park TIF District is \$1,122,657.36. There are outstanding project balances for the storm drain design (\$57,931), as well as internal service charges (\$13,076). The CMATP TIF District is getting approximately \$315,000 in tax increment this year. The District is capable of supporting the debt issuance. This debt issuance will expand the District for an additional 20 years.

**Alternatives:** The City Commission may deny the TIF funding request, and the City Commission may deny passage of the debt issuance and approval of funding. This would result in the Storm Drain improvements not being completed and the District expiring on May 1, 2020.

**Concurrences:** The Applicant's request for TIF funding has been reviewed by the City's Finance and Legal Departments, as well as the City's outside legal counsel from Dorsey & Whitney LLP. The Finance Department, Public Works, and Planning and Community Development have worked together with bond counsel and the State of Montana DNRC to complete the financing for the much needed Storm Drain project.

**Attachments/Exhibits:**

TIF Application  
Map

Resolution No. 10325  
Exhibit A – CMATP TIF Plan  
Resolution No. 10318

**City of Great Falls**  
**Public Works/Engineering**

**DATE:** October 18, 2019

**TO:** Great Falls City Planning Board

**FROM:** Jim Young, P.E., Interim City Engineer

**RE:** Central Montana Agriculture and Technology Park (CMATP) TIF Phase III Storm Drain, O.F. 1658.1

Enclosed is an Application for Tax Increment Funding to fund the final engineering design, permit documentation, and construction of public storm drainage improvement costs associated with the referenced project.

The City has been working with Thomas Dean & Hoskins, Inc (TD&H) to complete the final design and contract documents for public storm drainage improvements that will serve the CMATP and other surrounding areas draining to the CMATP. The proposed project will begin along the east side of Highway 87 and extend to a point east of Black Eagle Road (see attached map). In general, the storm drain will follow the existing natural drainage and discharge to a natural drainage draining to the east. The new storm drainage system will serve the entire Central Montana Agri-Tech Park (CMATP) development along with properties located to the west of Highway 87 and east of Black Eagle Road. The system will help protect properties from damage and serve future developments. Future extensions will serve several hundred acres of land to the west and north of the current CMATP.

The next step of the project includes finalization of the plans, specifications, bid documents, permits and right-of-way. That will be immediately followed by the public bidding process. City Engineering Division will perform administrative duties and continue to coordinate the consultant's activities. The estimated cost of the construction phase of the project is \$2,750,000.

Sincerely,



Jim Young, PE, Interim City Engineer  
(406) 771-1258

Attachments: TIF Application  
TIF Application Supplemental  
CMATP Storm Drain Location Map

**CITY OF GREAT FALLS**



**TAX INCREMENT FINANCING  
(TIF)**

**APPLICATION FOR FUNDS**

**CITY OF GREAT FALLS  
TAX INCREMENT FINANCING  
(TIF) APPLICATION FOR FUNDS**

Project Name: CMATP TIF PHASE III - STORM DRAIN

Date Submitted: October 18, 2019

Name of TIF District: Central Montana Agri-Tech Park

**APPLICANT INFORMATION**

Name: City of Great Falls Public Works Department

Address: 1025 25<sup>th</sup> Avenue North East, P.O. Box 5021, Great Falls, MT 59403

Telephone: 406-771-1258 (James Young, P.E., Interim City Engineer)

**DEVELOPMENT INFORMATION**

1. Building Address: Adjacent to Malteurop, 2800 Great Bear Ave, Great Falls, MT 59404
2. Legal Description: Parcel A: The SE1/4NE1/4 of Section 30, T21N, R4E, P.M.M., Cascade County, Montana

Parcel B: Lot 12 of the Great Bear No. 2 Subdivision - Phase II, located in the NE1/4 of Section 30, T21N, R4E, P.M.M., City of Great Falls, Cascade County, Montana

Parcel C: Lot 4 of the Great Bear No. 2 Subdivision - Phase I, located in the NW1/4 of Section 30, T21N, R4E, P.M.M., City of Great Falls, Cascade County, Montana

3. Ownership: Parcel A: International Malting Company, LLC. Cc/ Malteurop North America  
Address: 2800 Great Bear Ave, Great Falls, MT 59404

Ownership: Parcel B: Dali, LLC.  
Address: P.O. Box 443, Holualoa, HI 96725

Ownership: Parcel C: Blum Holdings, LLC.  
Address: P.O. Box 2013, Great Falls, MT 59403

4. If property is not owned by the Applicant, list leasehold interest: *(Attach evidentiary materials).*  
Name: As the design and alignment of the storm drain is finalized the City of Great Falls will enter negotiations with landowners for easement access.

Address: See Above

5. Existing/Proposed Businesses: Malteurop Barely Malting Facility, ADF International Steel Fabrication, T&K Performance LLC diesel truck repairs and sales, Cargill research laboratories.  
Business Description: See Above



6. Employment: Existing FTE Jobs: Malteurop employs approximately 50 people. ADF employs approximately 200-900 people. T&K Performance LLC. employs 2-5 FTE, Cargil employs Xx-Yy FTE.

New Permanent FTE Jobs created by project: No New jobs will be created. Construction FTE jobs: The storm drain installation will employ approximately 8 people during design and construction.

7. Architectural/Engineering Firm: City Public Works Engineering Division will manage the project. TDH Engineering has been retained to complete the design and develop the construction plans.

Address: 1025 25<sup>th</sup> Avenue North East, P.O. Box 5021, Great Falls, Montana 59403

Representative: 406-771-1258 (James Young, P.E., Interim City Engineer)

8. Please provide a description of the Total Project Development (attach a narrative explanation).

**Currently, storm water flows along a natural drainage swale located in the developing industrial park. As the CMATP continues to develop, the amount of storm water runoff will increase, posing a risk to property and to the natural drainage features. East of Black Eagle Road, the existing drainage swale is already experiencing substantial amounts of erosion. Updates to the conveyance and detention systems are required in order to support future development in the area.**

**In general, the proposed storm drain will follow the existing natural drainage. Storm water will initially enter the storm drain near the culvert at Highway 87 and inlet structures along the alignment will capture additional runoff. The proposed storm drain will convey the storm water to the east. Following the existing drainage minimizes the length of inlet lateral piping and allows the pipe depth to be at a practical level. Wherever possible, the new storm drain will parallel existing utilities and minimize utility crossings.**

**The storm drainage system will serve the entire Central Montana Agri-Tech Park (CMATP) development and properties east of Black Eagle Road. The system will help protect properties from damage and serve future developments. Future extensions can serve several hundred acres to the west and north of the current CMATP. The storm drain system will be designed by a consultant. City Engineering Division will perform administrative duties and coordinate the consultant's activities.**

9. Please provide rehabilitation/construction plans (attach schematics, site and landscaping plans).

**See Attached map for the project.**

10. What is the development schedule or estimated completion date for the Total Project Development? The Total Project Development is best defined as the entire development, not just the TIF improvements (please include project phasing if appropriate).

**We anticipate the final design, environmental permit applications, and construction documents to be completed by October 27, 2019. Pending funding construction is anticipated to begin Winter 2019/Spring 2020.**

11. Do you plan on asking for any other tax abatements, grants, tax credits or other forms of relief? If so, what type?

No

12. Please describe your funding needs and the anticipated timing schedule for your identified Eligible TIF Activities (example: *I will be fronting the costs of all identified TIF improvements and would like to be reimbursed incrementally as TIF funds become available; I am interested in utilizing bond financing to complete the identified project improvements and would like to be reimbursed with TIF funds as they become available, I need TIF funds immediately to complete the identified TIF improvements, etc.*)

**We are requesting that the 1.1 million dollars currently in the TIF be made immediately available to advertise and award the construction project. We also request approval to pursue a State Revolving Fund loan against the TIF to fund the remaining 1.65 million dollars for construction of the project.**

13. Please indicate the amount of Public Infrastructure Need and the amount of Public Infrastructure being requested to be financed by the TIF District.

**This application for tax increment funding requests \$1,100,000.00 of the project costs for construction, and administration be provided by tax increment funds. The application also requests approval to bond the remaining \$1,650,000.00 through a State Revolving Fund loan.**

**TOTAL PROJECT DEVELOPMENT COSTS**

*The total project development cost is the cost to develop the entire project/site, and should include the cost of the TIF improvements.*

**Land and Site Preparation Improvements** (Itemized)

- 1. \_\_\_\_\_ \$ \_\_\_\_\_
- 2. \_\_\_\_\_ \$ \_\_\_\_\_
- 3. \_\_\_\_\_ \$ \_\_\_\_\_
- 4. \_\_\_\_\_ \$ \_\_\_\_\_
- 5. \_\_\_\_\_ \$ \_\_\_\_\_

**Subtotal**

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

**Construction/Rehabilitation Costs** (Use general construction trade divisions)

*(Total value of improvements)*

- 1. Construction of Storm Drain \$ 2,750,000.00
- 2. \_\_\_\_\_ \$ \_\_\_\_\_
- 3. \_\_\_\_\_ \$ \_\_\_\_\_
- 4. \_\_\_\_\_ \$ \_\_\_\_\_
- 5. \_\_\_\_\_ \$ \_\_\_\_\_
- 6. \_\_\_\_\_ \$ \_\_\_\_\_
- 7. \_\_\_\_\_ \$ \_\_\_\_\_

**Subtotal**

\$ 2,750,000.00

**Equipment Costs**

*(Total value of equipment)*

- 1. \_\_\_\_\_ \$ \_\_\_\_\_
- 2. \_\_\_\_\_ \$ \_\_\_\_\_
- 3. \_\_\_\_\_ \$ \_\_\_\_\_
- 4. \_\_\_\_\_ \$ \_\_\_\_\_
- 5. \_\_\_\_\_ \$ \_\_\_\_\_

**Subtotal \$** \_\_\_\_\_

**Total Project Development Costs \$** 2,750,000.00

**ELIGIBLE TIF ACTIVITIES**

**Land Acquisition**

	Total	Amount Requested from TIF	Timing for Funds
1.	_____	_____	_____

**Demolition & Removal of Structures**

1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
<b>Subtotal</b>	<b>_____</b>	<b>_____</b>	<b>_____</b>

**Relocation of Occupants**

1.	_____	_____	_____
----	-------	-------	-------

**Public Improvements**

*(acquisitions, construction and improvement of infrastructure which includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewers, sewer lines, storm sewers, etc.)*

1.	Storm Drain _____	\$1,100,000 _____	December 2020 _____
2.	_____	_____	_____
3.	_____	_____	_____
<b>Subtotal</b>	<b>_____</b>	<b>_____</b>	<b>_____</b>

**Fees (associated with eligible activities)**

*(A&E design/supervision, permits & other fees)*

1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

**CERTIFICATION**

I (we), James Rearden and James Young \_\_\_\_\_ (please print),  
certify that the statements and estimates within this Application as well as any and all documentation  
submitted as attachments to this Application or under separate cover are true and correct to the best of my  
(our) knowledge and belief.

Signature \_\_\_\_\_

Title Director of Public Works

Address City of Great Falls, P.O. Box 5021, Great Falls, MT 59403-5021

Date October 18, 2019

Signature \_\_\_\_\_

Title Interim City Engineer

Address City of Great Falls, P.O. Box 5021, Great Falls, MT 59403-5021

Date October 18, 2019

## Central Montana Agri-Tech Park (CMATP) – Criteria for Review

### Storm Drain

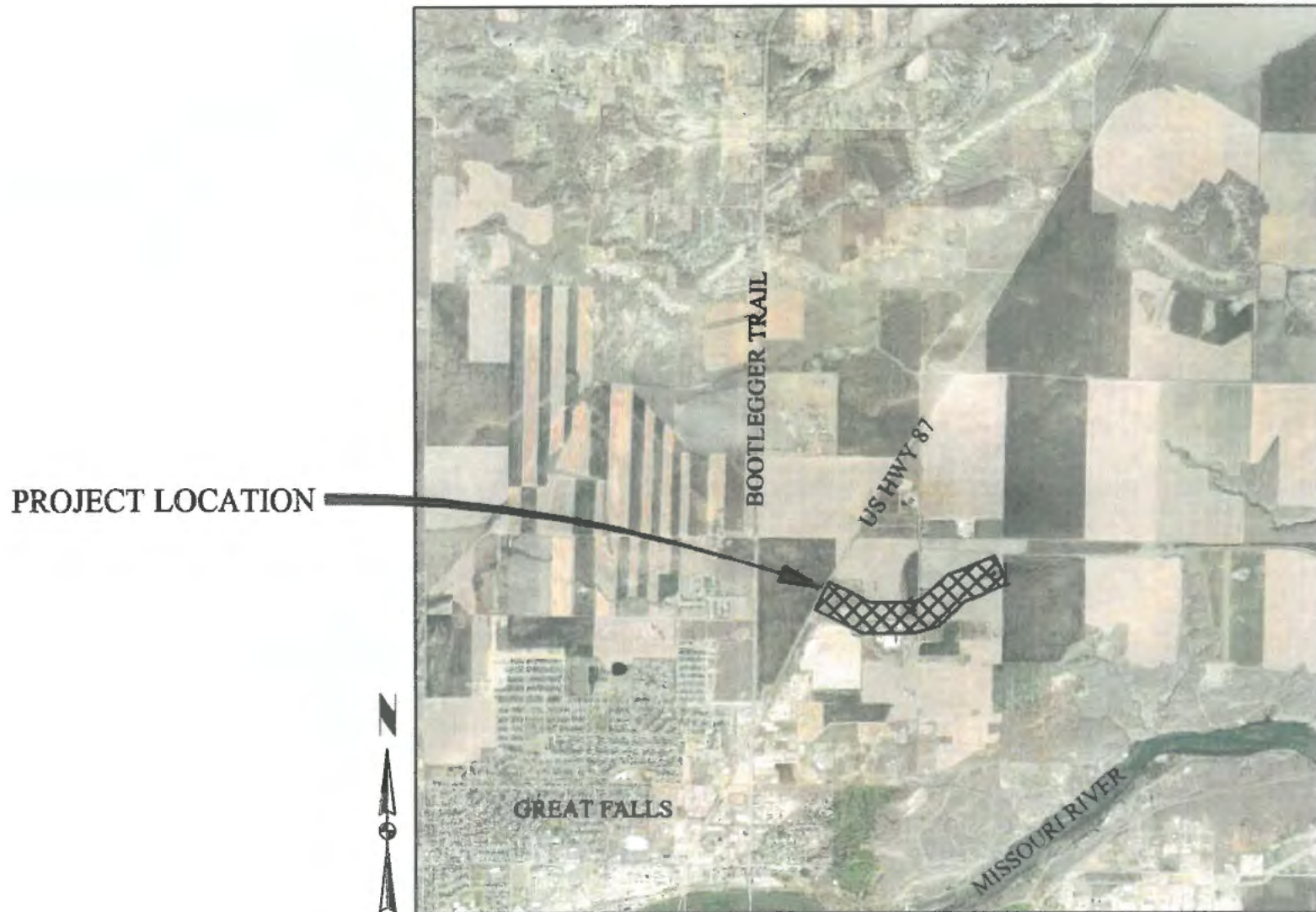
1. Public Infrastructure Improvements – The storm sewer main will immediately benefit the CMATP by providing drainage facilities that will reduce surface erosion.
2. Economic Stimulus – The total estimated cost of Construction Project, regulatory permitting and SRF funding assistance is approximately \$2,750,000.

The storm sewer main can/will serve a much broader area than just the CMATP.

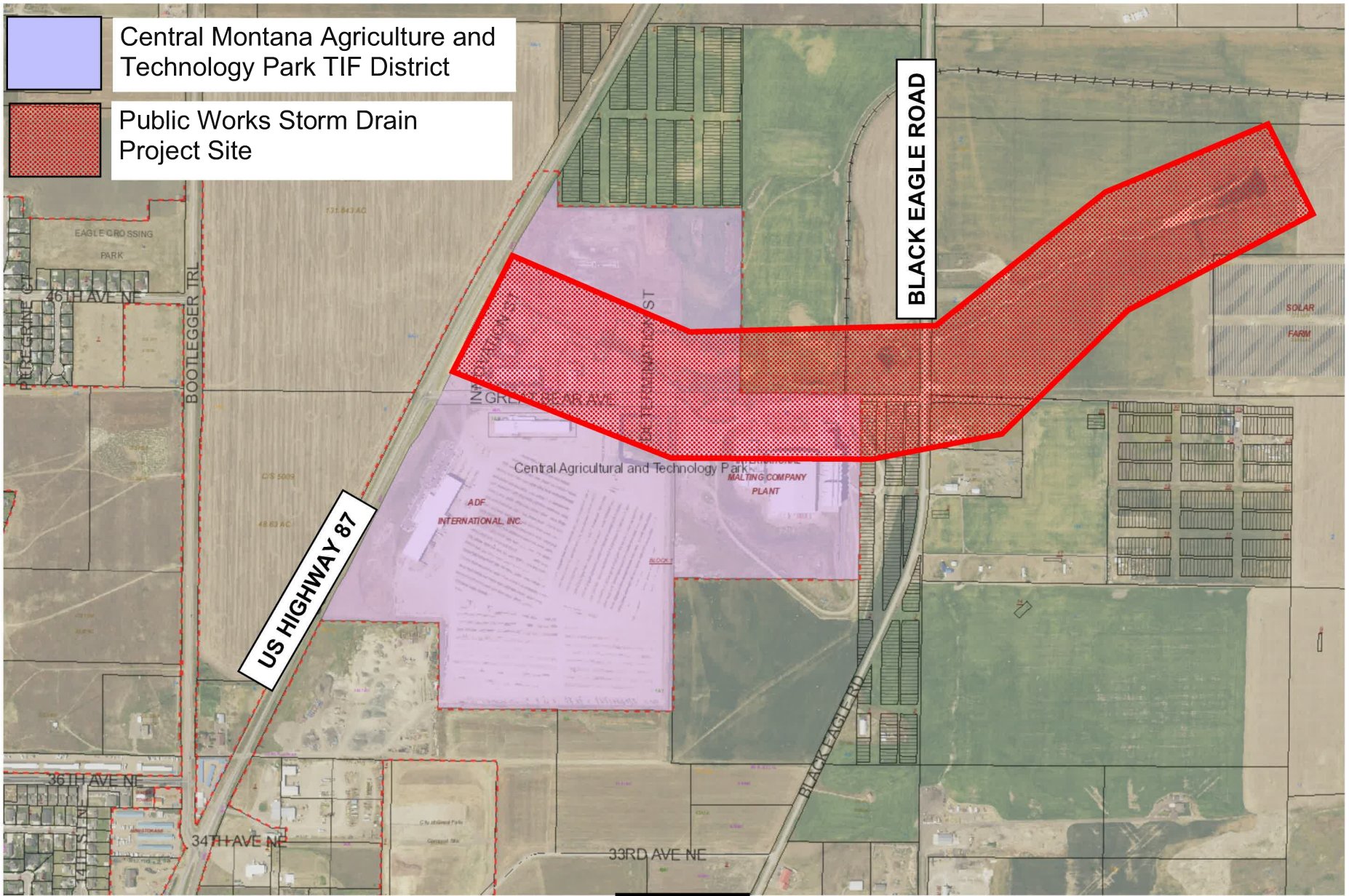
3. Tax Generation – As the CMATP grows additional taxable value will be generated.
4. Employment Generation – Malteurop employs approximately 50 people. ADF employs approximately 200-900 people. T&K Performance LLC. employs 5-10 FTE, Cargil employs 10-20 FTE. As the area grows more high paying jobs will be supported by this improvement. The storm drain installation will employ approximately 8 people during design and construction.
5. Elimination of Blight – As the area continues to develop, the amount of storm water runoff will increase, posing a risk to property and to the natural drainage features. The existing drainage swale is already experiencing substantial amounts of erosion. The system will help protect properties from damage and serve future developments. The additional high paying jobs created may indirectly have a positive impact on blight in the community.
6. Special or Unique Opportunities – This infrastructure improvement is critical to the industrial park and surrounding areas. Great Falls has a minimum amount of “shovel ready” lands zoned I-2 Heavy Industrial. Attracting higher paying jobs in appropriate locations is the goal of the City, and this project advances this and related goals.
7. Impact Assessment – This project is compatible with the cities growth plan. The community has supported industrial development in this area. The location is some distance from existing or planned residential areas. Sound engineering and design standards in place ensure that environmental impacts will be minimized.
8. Financial Assistance – No other financial resources have been identified.

9. Development's Feasibility –The CMATP is expanding and will generate more storm runoff as the area grows due to increased impervious area. The proposed storm drain system will help convey increased storm water runoff in a safe, efficient, and environmentally responsible manner as the area continues to develop.
10. Developer Ability to Perform – The applicant (City of Great Falls Engineering Division) successfully handles from 30-50 projects annually with a total value of \$10,000,000 and \$20,000,000. We are committed to successfully delivering this project.
11. Timely Completion – It is critical that the Construction portion of the project be awarded by January 2020 so that financing for the construction portion of the project can be obtained.
12. Payment of Taxes – Not applicable

Central Montana Agriculture and Technology Park (CMATP) TIF Phase III Storm Drain, O.F. 1658.1







The City of Great Falls uses the most current and complete data available. However, GIS data and product accuracy may vary. GIS data and products may be developed from sources of differing accuracy, accurate only at certain scales, based on modeling or interpretation, incomplete while being created or revised, etc. The City of Great Falls reserves the right to correct, update, modify, or replace, GIS products without notification. The City of Great Falls cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. Using GIS data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may neither assert any proprietary rights to this information nor represent it to anyone as other than City Government-produced information. The City of Great Falls shall not be liable for any activity involving this information with respect to lost profits, lost savings or any other damages

RESOLUTION 10325

A RESOLUTION TO AUTHORIZE THE EXPENDITURE OF \$1.1 MILLION OF FUNDS FROM THE CENTRAL MONTANA AGRICULTURE AND TECHNOLOGY PARK TAX INCREMENT FINANCE DISTRICT TO THE CITY PUBLIC WORKS DEPARTMENT TO CONSTRUCT A STORM DRAIN SYSTEM UPGRADE PROJECT

\* \* \* \* \*

WHEREAS, the City of Great Falls Central Montana Agriculture and Technology Park was adopted in 2005 as an Industrial Tax Increment Financing District; and,

WHEREAS, the Central Montana Agriculture and Technology Park Tax Increment Finance District was created to attract and encourage the location of secondary value-adding industries; and,

WHEREAS, there is a need for public storm water infrastructure improvements within the TIF District in order to support current and future development; and

WHEREAS, there are areas both within and downstream from the Central Montana Agriculture and Technology Park Tax Increment Finance District that experience surface erosion due to storm water runoff; and

WHEREAS, City of Great Falls Public Works Department's proposed storm drain project will address current surface erosion issues and provide drainage infrastructure to support further private development within the TIF district.

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

Section 1. Approval. The City Commission hereby approves the expenditure of the requested Tax Increment Financing District funds as requested by the City of Great Falls in the amount of \$1,100,000.

Section 2. Findings. Based on representations made to the City Commission to date and taking into consideration all comments received, including those made at a properly noticed Planning Advisory Board meeting duly held on November 12, 2019, the City Commission does hereby make the following findings, determinations, and declarations regarding the Central Montana Agriculture and Technology Park Tax Increment Financing District, which is hereinafter referred to as the District:

- (a) no persons will be displaced from their housing by the Project or the Infrastructure Improvements;
- (b) the Project and the Infrastructure Improvements substantially satisfy the review criteria of the funding application process and meet the purpose and goals of the Act, the District and Plan;
- (c) the Plan, to include the Project and the Infrastructure Improvements, conforms to the comprehensive plan or parts thereof for the City as a whole;
- (d) the Infrastructure Improvements constitute public improvements in accordance with the Act;
- (e) the Plan, to include the Project and the Infrastructure Improvements, will afford maximum opportunity, consistent with the sound needs of the City, as a whole, for the rehabilitation or redevelopment of the District by private enterprise; and
- (f) a sound and adequate financial program exists for the financing of the Infrastructure Improvements, as more particularly in Section 3 hereof.

Section 3. District Plan. A plan describing existing infrastructure, existing infrastructure deficiencies, and development activities to be undertaken within the District is attached as “Exhibit A.”

Section 4. Effective Date. This Resolution shall be in full force and effect upon passage and adoption by the City Commission.

Section 5. Conflict with Other Ordinances and Resolutions. All parts of ordinances and resolutions in conflict herewith are hereby repealed.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on this 17<sup>th</sup> day of December 2019.

\_\_\_\_\_  
Bob Kelly, Mayor

ATTEST:

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

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
Sara Sexe, City Attorney

State of Montana    )  
County of Cascade  : ss  
City of Great Falls )

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do certify that I did post as required by law and as prescribed and directed by the Commission, Resolution 10325 in two conspicuous places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;  
On the Great Falls City website

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

(CITY SEAL)



# Central Montana Agricultural & Technology Park Expanded Tax Increment Financing Industrial District Plan City of Great Falls, Montana

## 1. INTRODUCTION AND OVERVIEW

The City of Great Falls is committed to fostering the development of secondary, value adding industries, including manufacturing businesses in order to sustain and grow its economy over time. To this end, the City created the Central Montana Agricultural and Technology Park Tax Increment Financing Industrial District (TIFID) on May 17, 2005 per City Ordinance 2911. The base taxable value of the District was established as the taxable value of all real and personal property within the boundaries of the district as of January 1, 2005.

The District boundaries were expanded in December of 2007 (Ordinance 2996) in order to support potential investment in energy generation facilities. Even with this expansion, however, the current district is not large enough to support any additional industrial development and a second boundary adjustment is necessary to accommodate potential growth. This boundary adjustment would enable the City to address critical



Figure 1. Central Montana Agriculture and Technology Park

infrastructure deficiencies to recruit new value adding industry and support the growth and retention of existing manufacturing businesses.

The 2005 Great Falls Growth Policy sets forth a series of goals in support of future economic development including the following:

- Diversify the base economy.
- Enhance, strengthen, and expand the existing economic base.

Further, the Growth Policy specifically points to the need to encourage “value added” manufacturing businesses in both agriculture and non-agriculture sectors. Public investments in infrastructure in the expanded Central Montana Agriculture and Technology Park TIFID, in support of value adding industry, will include road improvements, sewer and water main extension and storm drainage improvements, enabling the City to meet these critical goals.

Tax Increment Financing will be a key component in a comprehensive funding strategy to address these infrastructure needs and will enable the City of Great Falls to leverage other local, state and federal dollars to achieve its goals.

### The City of Great Falls

The population of Great Falls (2011 Census Estimate) is 58,950, showing a slight increase since the 2010 Census, when the population was 58,505 and an increase of over 3% since the 2000 census. The median income for Great Falls in 2011 adjusted dollars is \$42,105, below the state's median of \$44,392 and well below the federal median, which is \$51,484. 27,041 persons are in the Great Falls' civilian labor force including 768 in manufacturing. (American Community Survey 3-year estimate, 2009-2011) According to the Bureau of Labor Statistics, the estimated unemployment rate as of December, 2012 is 5.1%.

Great Falls is located in Cascade County, which is in north-central Montana. The County is bordered on the west by the Rocky Mountains, to the southeast by the Little Belt and Highwood Mountains. Nearly eighty years after the Lewis and Clark Expedition first explored the "great falls of the Missouri" in 1805, Paris Gibson visited the area and envisioned a prosperous community along the mighty river. Within a few years, Gibson and other early settlers designed and built an attractive, well-planned community with broad, tree-lined streets and over 800 acres of parkland. More settlers arrived in Great Falls in the 1890s to join in the growing development of mining, logging, farming, ranching, and hydroelectric power.

During the first half of the 20th century, Great Falls grew into a more diverse, urbanized community. As natural resource-based economic activity declined, it was replaced by the military, manufacturing and service sectors. Today, the qualities that first brought settlers to Great Falls continue to attract new residents, businesses and visitors to the beauty, resources, opportunities, and quality of life offered here (Great Falls Growth Policy).

### History of Industrial Development in Great Falls

In its early years, industrial development in the City of Great Falls was generally located along the Missouri River and rail lines within the downtown core, in close proximity to the City's residential neighborhoods. Through the 19th and 20th centuries, as transportation and industrial technologies advanced, industrial development gradually moved towards the outlying areas of the City. These areas typically provided convenient highway and rail access, as well as separation from incompatible residential and retail land uses around the core.

The 2005 Great Falls Growth Policy indicates that approximately 1,868 acres (3.1%) of the City is used for industrial activities. The Growth Policy favors future industrial development to be in the form of industrial park or other campus like patterns, in locations with ease of access by multiple types of transportation, limited environmental impacts and the potential for generating related growth.

Central Montana Agriculture and Technology Park Expanded Tax Increment Financing Industrial District

The City of Great Falls intends to expand the Central Montana Agriculture and Technology Park Tax Increment Financing Industrial District. The base year for the purposes of measuring any incremental value in the new portion of the District will be 2013 and the base value will be calculated as of January 1, 2013.

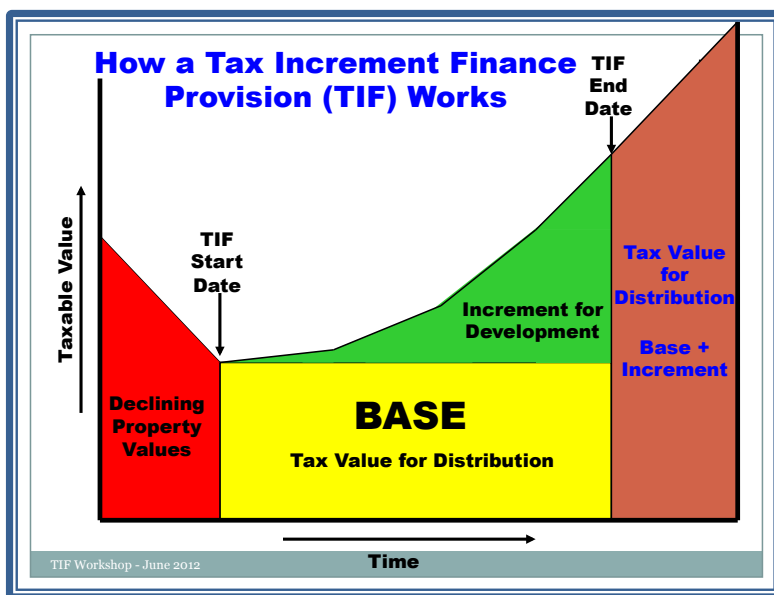


Figure 2. Schematic of Tax Increment Financing

Tax increment financing is a mechanism that allows communities to use new tax dollars resulting from increasing taxable value for reinvestment within the geographic area in which they are derived for a period of 15 years, or up to 40 years if the incremental taxes were pledged to the repayment of a bond. (Figure 2.) Until 1989, tax increments could only be used for rehabilitation efforts within urban renewal areas, which were usually blighted central business districts.

In 1989, the Montana Legislature amended the Montana Urban Renewal Law to enable municipalities to create special industrial districts which could employ tax increment financing to assist in the development and retention of secondary, value-adding industries. In doing so, the Legislature noted that the State of Montana wishes to encourage secondary, value-adding industrial manufacturing that uses Montana timber, mineral, oil and gas, coal and agricultural resources in the production of goods in the state. The legislation recognized that secondary, value-adding industries, in order to be competitive in today's world economy, require expensive infrastructure that is beyond the means of most Montana communities. Senate Bill 472 resulted in Section 7-15-4299 Montana Code Annotated (MCA), originally codified in 1989 and amended in 2007. This law enables communities to assist in industrial development in areas that are deemed to be infrastructure deficient. Tax increment financing may now be used for improvements as defined in 7-15-4288 MCA.

In March of 2008, the Montana Department of Revenue, under its administrative rule making authority, more specifically defined “secondary industries” as those that use mechanical or chemical processes to transform materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual. These industries engage in the:

- Processing of raw materials, such as minerals, ore, oil, gas, coal, agricultural products, and forestry products; or
- Processing of semi-finished products that are used by the industry as a raw material in further manufacturing.

"Value-added" is defined as an increase in the worth of the raw or semi-finished product that results from a mechanical or chemical transformation and may not be attributable to a mere increase in existing production.

In order to make use of this innovative economic development strategy, the City of Great Falls must adopt an industrial development plan that addresses both the existing and new areas of the District, which defines the specific geographic area within which the tax increment will be measured and reinvested. Further, the plan must outline those activities that the local government intends to undertake in order to successfully develop (or retain) value-adding industrial activity.

## 2. DISTRICT DESCRIPTION

The expanded TIFID, in its entirety, encompasses an area that is located at the northern edge of the City of Great Falls. The area is surrounded by agricultural land and is bounded by US Highway 87 on the west. The existing portion of the District is home to the Malteurop.



Figure 3. Malteurop

### Legal Description

The expansion of the Central Montana District will require an amendment to the TIFID district, which will extend the boundaries of existing district to include:

Lot 1A, Block 1, of the Correctional Plat of the First Amendment to the International Malting Company, LLC Addition. This parcel is 100.00 acres in size according to official plat.



The new district boundary will be described as follows:

All of Lots 2, 4, & 5, Block 1, of the International Malting Company, LLC Addition ...and...All of Lot 1A, Block 1, of the Correctional Plat of the First Amendment to the International Malting Company, LLC Addition, totaling 200.22 acres in size.

This entire district is located in Section 30, Township 21 North, Range 4 East.

Metes and bounds description for the Revised Boundaries of Central Montana Agricultural and Technology Park Tax Increment Industrial District (TIF)

Property situated in Section 30, Township 21 North, Range 4 East, of the Principal Meridian Montana, Cascade County, Montana, described as follows:

Commencing at the East Quarter Corner of said Section 30; thence N89°28'41"W along the east-west mid-section line of said Section 30, a distance of 453.39 feet to the Northwest Corner of the First Broadway Addition to North Great Falls according to the official map on file in the records of Cascade County and Point of Beginning of the industrial tax increment district herein described: thence S00°37'48"W along the west line of said First Broadway Addition to North Great Falls, a distance of 1325.50 feet; thence N89°35'17"W, a distance of 1321.42 feet; thence S00°40'34"W, a distance of 949.63 feet; thence S89°37'42"W, a distance of 1673.41 feet; thence N00°03'09"E, a distance of 615.04 feet; thence N89°48'16"W, a distance of 850.56 feet to the southeasterly right-of-way of US Highway 87, Project Number FAP 149-F (3), according to the as-built right-of-way plans on file in the records of the Montana Department of Transportation; thence northeasterly along said right of way, N25°41'35"E, a distance of 243.87 feet; thence continuing along said right of way, N30°55'54"E, a distance of 131.85 feet; thence continuing along said right of way, N25°44'38"E, a distance of 1017.80 feet; thence continuing along said right of way, N37°01'29"E, a distance of 100.44 feet; thence continuing along said right of way, N28°18'36"E, a distance of 260.81 feet; thence continuing along said right of way, N26°35'47"E, a distance of 452.20 feet; thence continuing along said right of way along a curve with a radius of R=11,400.00 feet for a length of 852.19 feet; thence continuing along said right of way, N30°52'46"E, a distance of 599.71 feet; thence S00°43'23"W, a distance of 253.56 feet; thence S89°33'37"E, a distance of 1322.31 feet; thence S00°47'26"W, a distance of 1322.76 feet; thence S89°28'41"E, a distance of 867.34 feet to the true point of beginning.

All Parcels and Geocodes to be included in the expanded Central Montana Agriculture and Technology Park TIFID

Lot 1A, Block 1, Correctional Plat of the First Amendment to the International Malting Company, LLC Addition  
County Parcel Number 1029650

Geocode: 02-3139-30-4-03-05-0000

Owner - ADF International, Inc.

Lot 2, Block 1, International Malting Company, LLC Addition

County Parcel Number 1029655

International Malting Company, LLC Addition

Geocode: 02-3139-30-4-03-09-0000

Owner - International Malting Company LLC

Lot 4, Block 1, International Malting Company, LLC Addition

County Parcel Number 1029670

Geocode: 02 3139-30-4-03-03-0000

Owner - DALI LLC

Lot 5, Block 1, International Malting Company, LLC Addition

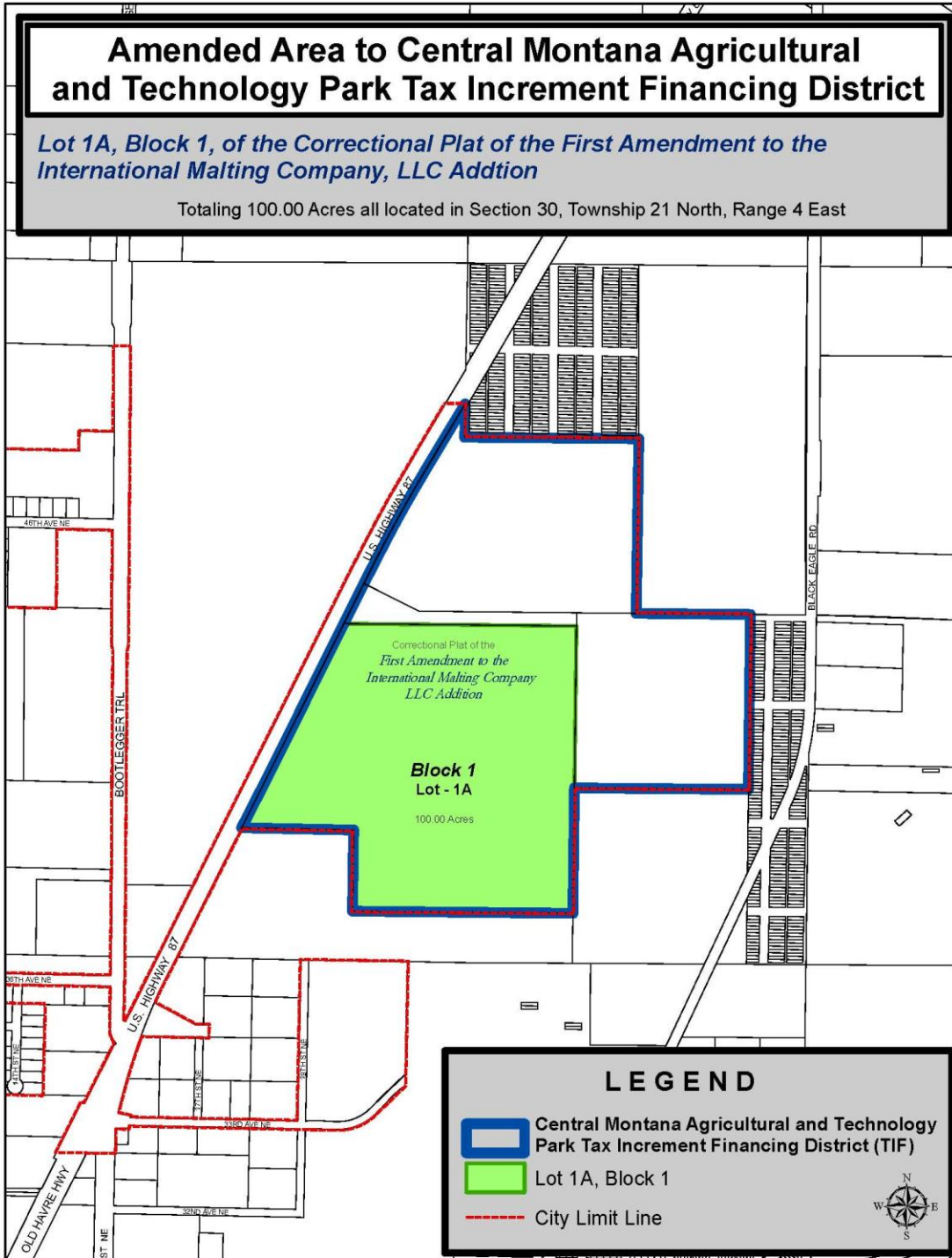
County Parcel Number 1029675

Geocode: 02-3139-30-4-03-01-0000

Owner - DALI LLC

Map of the TIF Industrial District

The following map shows the existing Central Montana Agricultural and Technology Park and the proposed addition.



### 3. GOALS OF THE CENTRAL MONTANA AGRICULTURE AND TECHNOLOGY PARK TIFID

#### Considerations:

- In preparing the 2005 Great Falls Growth Policy, the staff solicited input and recommendations related to economic development from business people, residents and Neighborhood Council members. Comments received call for a “sustainable” economy that strengthens the community without degrading the high quality of life in the area. Citizens stressed that the overall economic development goal is to establish and expand those sectors of the economy that will employ people in high-paying jobs, support families, and enhance the community. They noted that, in planning for economic growth, industries that can both offer high-paying jobs and enhance the quality of life in the community should be pursued.
- Great Falls is fortunate to be home to many natural amenities and features, none more spectacular than the Missouri River corridor. Industrial development along the river has the potential to negatively impact the beauty of and access to the river currently enjoyed by the citizens of Great Falls. Therefore the City will continue to direct industrial development to specific locations on the urban fringe to protect and enhance the pristine environment along the river and the City’s residential neighborhoods.
- The City of Great Falls is surrounded by prime agricultural land capable of producing large quantities of consistently high quality grains and livestock, critical to the area’s economic base.

Based on these critical considerations, the goals of the Central Montana Agriculture and Technology Park Tax Increment Financing Industrial District are:

- To foster economic vitality in the City of Great Falls and increase employment opportunities through infrastructure development in support of secondary value-adding industry
- To provide support for industries that preserve the quality of life for all residents
- To help assure that industrial development activities reflect the City of Great Falls’ commitment to the stewardship of its agricultural and natural resources including the Missouri River Corridor and associated restoration, interpretive, recreation and conservation programs currently underway
- To encourage secondary, value adding industries that take advantage of the area’s vast agricultural resources
- To facilitate the investment in a site suitable for industrial development based on its proximity to both rail and highway transportation infrastructure.

#### 4. INFRASTRUCTURE ANALYSIS – STATEMENT OF INFRASTRUCTURE DEFICIENCY

As noted above, the development of secondary, value-adding industries in the Central Montana Agriculture and Technology Park TIFID will require water and sewer services, transportation upgrades, stormwater collection and treatment and other improvements, depending on the types of industries that locate in the District. A review of the existing infrastructure reveals the following deficiencies:

**Roads** – As development occurs and traffic increases, access roadways should be paved to reduce dust and frequency of roadway maintenance. Egress routes for the heavy, wide loads should be constructed, based on carefully crafted designs that prevent roadway degradation or damage to any drainage facilities, ensure adequate turning radii, and alleviate any potential safety concerns.

**Water and Sewer** – There is an existing water transmission main located along the access roadway to Malteurop. There is an existing sanitary sewer trunk main and sewage lift station located on the east side of the Malteurop property adjacent to Black Eagle Road. An extension of the sewer main from this existing lift station, along the north side of the Malteurop property to the northeast corner of the proposed site for ADF, a Canadian steel fabrication company will be required.

**Utilities** – Telephone, cable, natural gas, fiber optic and electricity are available to the property. However, with the exception of electricity, these services will need to undergo significant upgrade to accommodate District uses. Although these utilities are present, most of the property is not served. Therefore, in addition to upsizing current utility infrastructure, extensions of these facilities may be required to serve individual needs.

**Stormwater** – The Public Works Department is in the process of reviewing site requirements for stormwater discharge, storage, and conveyances and on-and off-site improvements. The review will consider upstream and downstream properties and future storm drain extensions will be part of the review. As properties are developed, storm water infrastructure requirements will be more accurately determined.

#### **General Improvements**

Additional infrastructure and public services deficiencies will be identified over time. For example, emergency services buildings and equipment, site security, transloading and cargo facilities, parking lots, and other improvements and services may be required. 7-15-4288 MCA provides an extensive list of eligible items that may be paid for with tax increment dollars.

## 5. INDUSTRIAL DEVELOPMENT ACTIVITIES TO BE UNDERTAKEN

The City of Great Falls will work with other public entities and private developers to establish an industrial and economic development framework to enable it to target and recruit secondary, value-adding industries. Targeted industries will likely include agri-processing, as Great Falls has a significant competitive advantage over other markets. The City's location within the Golden Triangle region of north-central Montana provides access to a wide-variety of consistently high-quality wheat, barley and other small grains.

Additionally, the proximity to a variety of energy sources, rail transportation and a major highway network enhances the City's potential for general manufacturing, energy generation, steel fabrication and other value adding industries.

### Identification of secondary, value-adding industries

A list of industries that could be targeted for development or expansion within the expanded Central Montana Agriculture and Technology Park TIFID is presented in Table 1, by North American Industry Classification System (NAICS) code.

<b>NAICS Code</b>	<b>Industry</b>
<b>236210 Industrial Building Construction</b>	This industry comprises establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of industrial buildings (except warehouses). The construction of selected additional structures, whose production processes are similar to those for industrial buildings (e.g., incinerators, cement plants, blast furnaces, and similar non-building structures), is included in this industry. Included in this industry are industrial building general contractors, industrial building for-sale builders, industrial building design-build firms, and industrial building construction management firms.
<b>Sector 23237 Heavy and Civil Engineering Construction</b>	<p>The Heavy and Civil Engineering Construction subsector comprises establishments whose primary activity is the construction of entire engineering projects (e.g., highways and dams), and specialty trade contractors, whose primary activity is the production of a specific component for such projects. Specialty trade contractors in Heavy and Civil Engineering Construction generally are performing activities that are specific to heavy and civil engineering construction projects and are not normally performed on buildings. The work performed may include new work, additions, alterations, or maintenance and repairs.</p> <p>Specialty trade activities are classified in this subsector if the skills and equipment present are specific to heavy or civil engineering construction projects. For example, specialized equipment is needed to paint lines on highways. This equipment is not normally used in building applications so the activity is classified in this subsector. Traffic signal installation, while specific to highways, uses much of the same skills and equipment that are needed for electrical work in building projects and is therefore classified in Subsector 238, Specialty Trade Contractors.</p>

	<p>Construction projects involving water resources (e.g., dredging and land drainage) and projects involving open space improvement (e.g., parks and trails) are included in this subsector. Establishments whose primary activity is the subdivision of land into individual building lots usually perform various additional site-improvement activities (e.g., road building and utility line installation) and are included in this subsector.</p> <p>Establishments in this subsector are classified based on the types of structures that they construct. This classification reflects variations in the requirements of the underlying production processes.</p>
<b>32311 Prefabricated Metal Building and Component Manufacturing</b>	This U.S. industry comprises establishments primarily engaged in manufacturing prefabricated metal buildings, panels, and sections.
<b>332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers</b>	This U.S. industry comprises establishments primarily engaged in one or more of the following: (1) enameling, lacquering, and varnishing metals and metal products; (2) hot dip galvanizing metals and metal products; (3) engraving, chasing, or etching metals and metal products (except jewelry; personal goods carried on or about the person, such as compacts and cigarette cases; precious metal products (except precious plated flatware and other plated ware); and printing plates); (4) powder coating metals and metal products; and (5) providing other metal surfacing services for the trade. Included in this industry are establishments that perform these processes on other materials, such as plastics, in addition to metals.
<b>3112 Grain and Oilseed Milling 311224 Soybean and Other Oilseed Processing</b>	This U.S. industry comprises establishments primarily engaged in crushing oilseeds and tree nuts, such as soybeans, cottonseeds, linseeds, peanuts, and sunflower seeds. Examples of products produced in these establishments are oilseed oils, cakes, meals, and protein isolates and concentrates.
<b>325193 Ethyl Alcohol Manufacturing</b>	This U.S. industry comprises establishments primarily engaged in manufacturing nonpotable ethyl alcohol.
<b>221117 Biomass Electric Power Generation</b>	This U.S. industry comprises establishments primarily engaged in operating biomass electric power generation facilities. These facilities use biomass (e.g., wood, waste, alcohol fuels) to produce electric energy. The electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems.
<b>221112 Fossil Fuel Electric Power Generation</b>	This U.S. industry comprises establishments primarily engaged in operating fossil fuel powered electric power generation facilities. These facilities use fossil fuels, such as coal, oil, or gas, in internal combustion or combustion turbine conventional steam process to produce electric energy. The electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems.

Further research and analysis will be required to determine which of these industries can be actively recruited based on market conditions and the Central Montana Agriculture and Technology Park's site's unique position in the market place. Issues such as energy costs related to operations and transportation, distance from markets and overall industry trends, as well as infrastructure requirements will help determine industries to be targeted.

### Capital Improvements Planning and Implementation

The City of Great Falls will undertake the necessary planning required to more particularly identify the infrastructure required to support the development of targeted secondary, value-adding industries. This planning effort will address necessary capital improvements and the associated costs. Infrastructure design and development could include roads and other transportation infrastructure such as rail lines, pedestrian ways, sewage pre-treatment, sewer lines, water wells and mains, utilities, street lighting, communication infrastructure such as cell towers and additional fiber cable and buildings.

### TIFID Program Criteria

The City of Great Falls will use tax increment financing in conjunction with other funding mechanisms to support the development of secondary value-adding industry within the Central Montana Agriculture and Technology Park. Infrastructure projects selected for funding will be required to meet certain criteria, based on the goals of this TIFID Plan. Suggested eligibility criteria for reviewing both city-initiated and industry-initiated requests for public infrastructure improvements projects might include the following:

1. The project must be located within the authorized TIFID area.
2. Any developer who wishes to apply for tax increment assistance for the construction of public infrastructure will be asked to enter into an assessment agreement with the local government. An assessment agreement is a document which obligates the developer to pay all property tax obligations for the period during which the tax increment is being used to assist the developer, but no longer than the authorized life of the tax increment provision of the TIFID in which the development is located. This obligation remains in effect, even in the event that the developer closes or moves its facilities. Further, depending on the nature of the assistance, the developer may have to agree to continue to pay taxes at least at the property tax rate which was in effect at the time the agreement is executed, regardless of changes in the tax rate by the State of Montana.



3. Specific criteria which will be used to evaluate applications for assistance will include but are not limited to:
  - a. Job Creation – Developments will be evaluated based upon the number of direct jobs created. Advantage will be given to developments where the wages and benefits for the jobs meet or exceed the current average Great Falls Per Capita Personal Income.
  - b. Taxable Valuation – In most cases, developers who contribute more to the community’s tax base will be eligible for greater assistance.
  - c. Value-adding – Developers must be engaged in “secondary industries”, defined as those industries that use mechanical or chemical processes to transform materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual. Those developers who make use of Montana’s mineral, agricultural, energy and timber resources will receive preferential treatment compared to those who do not.
  - d. Leverage-Ratios – Tax increment funds may not be used to finance the entire cost of development. Those investments of tax increment financing which result in a larger infusion of private or other public capital will receive preferential treatment compared to those that result in smaller infusion of private or other public capital.

Each project will be analyzed individually to determine the amount of financial assistance available based upon the factors stated above. Final criteria will be approved by the Great Falls City Commission and employed by the staff in reviewing project proposals.

### Financing

Once targeted industries and required capital improvements have been more clearly identified, the next step will be to develop the mechanisms to implement the overall TIFID program. Given that private industrial development will generate the property taxes necessary to finance a portion of the infrastructure development, recruitment and infrastructure development must occur hand in hand. It is possible that construction of public infrastructure will be financed through the sale of Tax Increment Bonds in combination with other state and federal funding programs. Tax increment financing mechanisms can include:

- Tax Increment Bonds – Tax increment revenues would be pledged to pay bond principal and interest annually. The size and term of the bond would depend on tax increment revenues available from private sector taxpayers within the TIFID. While Montana law provides that tax increment districts may only be authorized for 15 years, the time period may be extended to coincide with the term of a tax increment bond, but no longer than an additional 25 years. As noted above, it may be necessary for the private taxpayer(s) to enter into an agreement with the City of Great Falls to assure, for the term of the bond, the annual payment of all property taxes due or an equivalent amount if the taxpayer no longer holds property in the district. The amount of tax increment realized each year must be enough to cover all bond payments due, as well as an adequate reserve.
- Annual Tax Increment Appropriations – The City may finance smaller public infrastructure improvements from its annual tax increment receipts by appropriation. Funds available each year would be determined by the size of the annual increment and any prior commitments (such as bond debt service requirements and administrative costs).
- Tax Increment Financing Revolving Loans – The Montana TIF statutes provide for the establishment of loan programs, whereby TIF funds may be loaned for the construction of private infrastructure or other activities in support of the goals of the TIF district. As principal and interest payments are made, the funds may be loaned again, even after the TIF District sunsets.
- Conventional Financing – The City may borrow funds from commercial lending institutions in order to finance public infrastructure improvements. Annual tax increment revenues will pay principal and interest on the loan. A conventional loan agreement will not, however, extend the authorized 15 year time period for a TIFID.

Per 7-15-4291 MCA, The City of Great Falls may enter into agreements with the other affected taxing bodies to remit to such taxing bodies any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 MCA or pledged to the payment of the principal of premiums, if any, and interest on bonds.

### Industry Recruitment

Once the District is established, local staff and resources and/or consultant services could be used to assist in the development of business plans, market studies and general research to recruit secondary, value-adding industries to the TIFID. Once the District starts generating revenue, TIFID funds may be directed to these activities as well.

### Partnership Development

The TIFID program will rely on cooperative efforts among the City of Great Falls, TIFID property owners, and economic development organizations to achieve its goal of fostering industrial development. In many cases, these cooperative partners will work jointly on market analyses, business recruitment and capital improvements planning. Also, as noted above, it will be necessary to work with other local, state and federal entities in providing additional financing and matching funds to build industrial infrastructure in the TIFID. Potential partnerships can be forged using a variety of programs and funding mechanisms. A sampling of these includes:

### **Programs**

- The Treasure State Endowment Program (Montana)
- Community Development Block Grant (U.S. Department of Urban Development)
- The Montana Intercap Program
- Economic Development Administration (U.S. Department of Commerce)
- *Water, Wastewater and Solid Waste Action Coordinating Team* (a group of professionals from state, federal, and non-profit organizations that finance, regulate, or provide technical assistance for community water and wastewater systems)
- Community Transportation Enhancement Program – Under 23 USC 133 (d) (2) (Federal Code), 10 percent of the Surface Transportation Program monies are awarded to each state for transportation enhancements.

### **Funding Mechanisms**

- Local mill levies for transportation infrastructure (7-14-4101 MCA)
- Transportation Improvement Authority (7-14-1001, MCA)
- Special Improvement Districts (7-12-4101 MCA)
- Debt Financing – Counties can make use of various kinds of debt financing to fund industrial development projects. These include general obligation bonds, special improvement district bonds and revenue bonds as well as Tax Increment Financing Bonds.
- State Fuel Tax (15-70-101MCA)

## **6. PROGRAM ADMINISTRATION**

In the near term, the Central Montana Agriculture and Technology Park TIFID will be managed directly by the City of Great Falls. No later than April of each year the City Commission, in conjunction with staff, will prepare an annual TIFID budget and work plan for the following fiscal year (July 1<sup>st</sup> to June 30<sup>th</sup>). Each annual work plan will include the following elements:

- Anticipated Increment Revenue for the Year
- Project Priorities and Associated Costs
- Financing Strategies Anticipated
  - Direct Increment Revenue
  - Debt Financing
  - Other Sources of Funding
- Administrative Budget including staff and consulting services

The City Commissioners will review the work plan and determine whether any changes are necessary before setting the budget. Once the budget is set, City staff will be responsible for:

- Developing financing strategies
- Working to maintain the Tax Increment Financing Accounts
- Working with City staff, property owners and developers to identify public infrastructure projects for the future
- Reviewing proposed infrastructure development projects for the future
- Following all local government procurement rules with respect to:
  - Preparing bid and proposal requests
  - Reviewing proposals from engineers, contractors and other vendors
  - Making recommendations to the City Commission regarding contractor selection
- Monitoring projects
- Conducting market analyses, engineering studies and project feasibility analyses

The City Commission may consider the formation of a TIFID Advisory Board to work with the Commission in preparing annual budget and work plans, and in TIFID related economic development activities. The Advisory Board would be comprised of five to seven members, including one member of the City Commission. Meeting schedules, agendas and board governance would be jointly decided by the members and the Commission, and in accordance with Montana’s open meeting laws. Each member of the Advisory Board would serve for two years and may be reappointed. The first appointees to the Advisory Board would be appointed in the following manner, to provide for staggered terms:

- Two to three members for one year
- Two members for two years
- One to two member for three years

Following this initial appointment schedule, all Board members would be appointed for a term of two years.

## **7. PLAN AMENDMENTS**

The plan provides flexibility to accommodate a variety of approaches. However, changes over time may necessitate more formal amendments to the Industrial District Plan. If required, amendments will be made by ordinance.

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Great Falls, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 10318, entitled: "RESOLUTION RELATING TO \$1,500,000 TAX INCREMENT INDUSTRIAL INFRASTRUCTURE REVENUE BONDS (CENTRAL MONTANA AGRICULTURE AND TECHNOLOGY PARK TAX INCREMENT FINANCING DISTRICT) (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), SERIES 2020; AUTHORIZING THE SALE AND PRESCRIBING THE FORMS AND TERMS THEREOF AND THE SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Commission of the City at a regular meeting on December 17, 2019 and that the meeting was duly held by the City Commission and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Commission Members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_ day of December, 2019.

(SEAL)

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

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[Not a part of this Resolution; for convenience of reference only.]

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RESOLUTION NO. 10318

RESOLUTION RELATING TO \$1,500,000 TAX INCREMENT INDUSTRIAL INFRASTRUCTURE REVENUE BONDS (CENTRAL MONTANA AGRICULTURE AND TECHNOLOGY PARK TAX INCREMENT FINANCING DISTRICT) (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), SERIES 2020; AUTHORIZING THE SALE AND PRESCRIBING THE FORMS AND TERMS THEREOF AND THE SECURITY THEREFOR

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

Section 1. Definitions, Authorizations and Findings.

1.01. Definitions. The terms defined in this Section 1.01 shall for all purposes of this Resolution have the meanings herein specified, unless the context clearly otherwise requires:

Act means Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as it existed on December 31, 2012.

Additional Bonds means any Bonds issued pursuant to Sections 7.01 through 7.03.

Administrative Expense Surcharge means, with respect to the Series 2020 Bond, the surcharge by that name charged by the DNRC to the City at the rate of 0.25% per annum, payable by the City on the Interest Payment Dates for the Series 2020 Bond.

Authorized DNRC Officer means the Director or Deputy Director of the DNRC, and, when used with reference to an act or document, also means any other individual authorized by resolution of the DNRC to perform such act or sign such document. If authorized by the DNRC, an Authorized DNRC Officer may delegate all or a portion of his authority as an Authorized DNRC Officer to another individual, and such individual shall be deemed an Authorized DNRC Officer for purposes of exercising such authority.

Bond Account means the account so designated in the Tax Increment Debt Service Account.

Bond Counsel means any firm of nationally recognized bond counsel experienced in matters relating to tax-exempt financing, selected by the City; provided that so long as the Series 2020 Bond is Outstanding, such Bond Counsel shall be reasonably acceptable to the DNRC.

Bond Register means the register maintained for the purpose of registering the ownership, transfer and exchange of the Bonds of any series.

Bonds means the Series 2020 Bond and any Additional Bonds.

Business Day means, with respect to the Bonds of any series, any day other than a Saturday, Sunday or other day on which the Registrar for such series of Bonds is not open for business.

City means the City of Great Falls, Montana, or its successors.

Clean Water Act means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended, and all regulations, rules and interpretations issued by the EPA thereunder.

Closing means the date of delivery of the Series 2020 Bond to the DNRC.

Code means the Internal Revenue Code of 1986, as amended.

Collateral Documents means, with respect to the Series 2020 Bond, any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the City under this Resolution and the Series 2020 Bond. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Resolution shall be without effect.

Commission means the City Commission of the City or any successor governing body thereof.

Committed Amount means the amount of the 2020 Loan committed to be lent by the DNRC to the City pursuant to Section 5.01 of this Supplemental Resolution, as such amount may be reduced pursuant to Sections 4.02 and 4.04 of this Resolution.

Construction Account means the account so designated in the Tax Increment Capital Project Account.

Debt means, without duplication, (1) indebtedness of the City for borrowed money or for the deferred purchase price of property or services; (2) the obligation of the City as lessee under leases which should be recorded as capital leases under generally accepted accounting principles; and (3) obligations of the City under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (1) or (2) above.

Department of Revenue means the State of Montana Department of Revenue, an agency of the State, or any successor to its powers, duties and obligations.

DEQ means the Department of Environmental Quality of the State of Montana, an agency of the State, or any successor to its powers, duties and obligations under the State Act or the EPA Agreements.

District means the City's Central Montana Agriculture and Technology Park Tax Increment Financing District created and established pursuant to the Act and the Ordinance, as such district may be enlarged or reduced in accordance with the Act and this Resolution.

DNRC means the Department of Natural Resources and Conservation of the State of Montana, an agency of the State, and any successor to its powers, duties and obligations under the State Act.

EPA means the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Clean Water Act.

EPA Agreements means all capitalization grant agreements and other written agreements between the DEQ and the EPA concerning the Program.

EPA Capitalization Grant means a grant of funds to the State by the EPA under Title VI of the Clean Water Act and any grant made available by the EPA for deposit in the Revolving Fund pursuant to Section 205(m) of the Clean Water Act.

Fiscal Year means the period commencing on the first day of July of any year and ending on the last day of June of the next calendar year, or any other twelve-month period authorized by law and specified by this Commission as the City's Fiscal Year.

Government Obligations means direct obligations of, or obligations the principal of and the interest on which are fully and unconditionally guaranteed as to payment by, the United States of America.

Governmental Unit means governmental unit as such term is used in Section 145(a) of the Code.

Indenture means, with respect to the Series 2020 Bond, the Indenture of Trust, dated as of June 1, 1991, between the Board of Examiners of the State and the Trustee, as such may be supplemented or amended from time to time in accordance with the provisions thereof, pursuant to which, among other things, the State Bonds are to be or have been issued.

Independent means, when used with respect to any specified Person, such a Person who (i) is in fact independent; (ii) does not have any direct financial interest or any material indirect financial interest in the City, other than the payment to be received under a contract for services to be performed by such Person; and (iii) is not connected with the City as an officer, employee, promoter, trustee, partner, director, underwriter or person performing similar functions. Whenever it is herein provided that any Independent Person's opinion or certificate shall be furnished, such Person shall be appointed by the City and such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning hereof.

Interest Account means the subaccount so designated in the Bond Account.

Interest Payment Date means the Stated Maturity of an installment of interest on any of the Bonds.

Loan Loss Reserve Surcharge means, with respect to the Series 2020 Bond, the surcharge by that name charged by the DNRC to the City at the rate of 0.25% per annum, payable by the City on the Interest Payment Dates for the Series 2020 Bond.

Opinion of Bond Counsel means a written opinion of Bond Counsel.

Ordinance means Ordinance No. 2911, duly adopted on May 17, 2005, as amended and supplemented by Ordinance Nos. 2996 and 3106, duly adopted on December 4, 2007 and May 7, 2013, respectively, and as it may be further amended or supplemented from time to time in accordance with the Act.

Original Purchaser means, with respect to any series of Bonds, the Person who purchases such series of Bonds from the City when first issued. The Original Purchaser of the Series 2020 Bond is the DNRC.

Outstanding means, with reference to Bonds, as of the date of determination, all Bonds issued and delivered under this Resolution except:

(i) Bonds cancelled by the City or delivered to the City cancelled or for cancellation;

(ii) Bonds and portions of Bonds for whose payment or redemption money or Government Obligations (as provided in Section 13.04) shall have been theretofore deposited in escrow for the Owners of such Bonds; provided, however, that if such Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to this Resolution or irrevocable instructions to call such Bonds for redemption at a stated Redemption Date shall have been given by the City; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been issued and delivered pursuant to this Resolution;

provided, however, that in determining whether the Owners of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the City shall be disregarded and deemed not to be Outstanding.

Owner means, with respect to any Bond, the Person in whose name such Bond is registered in the Bond Register.

Payment Date means, with respect to the Series 2020 Bond, each January 1 and July 1 during the term of the Series 2020 Bond, which are both Interest Payment Dates and Principal Payment Dates for the Series 2020 Bond.

Person means any Private Person or Public Entity.

Private Person means an individual, corporation, partnership, association, joint venture, limited liability company, limited liability partnership, joint stock company, trust or unincorporated organization, except a Public Entity.

Plan means the City's Central Montana Agriculture and Technology Park Expanded Tax Increment Financing Industrial District Plan adopted by the Commission on May 7, 2013, as it may be amended or supplemented from time to time in accordance with the Act.

Principal and Interest Requirements means, with respect to any Bonds and for any Fiscal Year or other specified period, the amount required to pay the principal of and interest on such Bonds during such Fiscal Year or other period, determined on the assumption that each Serial Bond is to be paid on its Stated Maturity and each Term Bond is to be paid on the Sinking Fund Payment Dates according to the mandatory redemption requirements established for such Term Bond by the applicable section of this Resolution or any Supplemental Resolution.

Principal Payment Date means the Stated Maturity of principal of any Serial Bond and the Sinking Fund Payment Date for any Term Bond.

Program means the Water Pollution Control State Revolving Loan Program established by the State Act.

Project means the 2020 Project and any other industrial infrastructure development project undertaken under the Act in or for the benefit of the District, the costs of which are to be paid, in whole or in part, from the proceeds of Bonds.

Public Entity means a State agency, municipality, city, county, school district, political or administrative subdivision of State government, irrigation district, county water and sewer district or other public body established by State law.

Recycled Money means payments and prepayments of principal of loans made under the Program, and any other amounts transferred to the Principal Subaccount in the Revenue Subaccount in the State Allocation Account (as such terms are defined in the Indenture).

Redemption Date when used with respect to any Bond to be redeemed means the date on which it is to be redeemed.

Redemption Price when used with respect to any Bond to be redeemed means the price at which it is to be redeemed.

Registrar means the Person, if any, appointed by the City to act as bond registrar, transfer agent and paying agent for a series of Bonds. With respect to the Series 2020 Bond, the Registrar shall be appointed as set forth in Section 3.03.

Regulations means the Treasury Regulations promulgated under the Code.

Reserve Account means the account so designated in the Tax Increment Debt Service Account.

Reserve Requirement means, as of the date of calculation, an amount equal to one-half the maximum aggregate Principal and Interest Requirements on Outstanding Bonds for the then current or any future Fiscal Year.

Resolution means this Resolution No. 10318 as originally adopted or as it may from time to time be amended or supplemented pursuant to the applicable provisions hereof.

Revolving Fund means the Water Pollution Control Revolving Fund established pursuant to Section 75-5-1106 of the State Act.

Serial Bonds means Bonds which are not Term Bonds.

Series 2020 Bond means the City's Tax Increment Industrial Infrastructure Revenue Bonds (Central Montana Agriculture and Technology Park Tax Increment Financing District) (DNRC Water Pollution Control State Revolving Loan Program), Series 2020, issued in the maximum principal amount of \$1,500,000.

Sinking Fund Account means the subaccount so designated in the Bond Account.

Sinking Fund Payment Date means a date set forth in any applicable provision of this Resolution or a Supplemental Resolution for the making of a mandatory principal payment for the redemption of a Term Bond.

State means the State of Montana.

State Act means Montana Code Annotated, Title 75, Part 5, Chapter 11, as amended from time to time.

State Bonds means the State's General Obligation Bonds (Water Pollution Control State Revolving Fund Program), issued pursuant to the Indenture. In the event the State Bonds are refunded, all references in this Resolution to State Bonds shall be deemed to refer to the refunding bonds and any bonds of the State on a parity with such refunding bonds (together, the "Refunding Bonds") or, in the case of a crossover refunding, to the State Bonds and such Refunding Bonds. In the event the State Bonds are refunded by an issue of bonds other than State Bonds, all references in this Resolution to the State Bonds shall be deemed to refer to such other bonds or, in the case of a crossover refunding, both the State Bonds and such other bonds.

Stated Maturity when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond as the fixed date on which principal of such Bond or such installment of interest is due and payable.

Subordinate Obligations means any bonds, notes or obligations of the City issued on a subordinate basis to the Bonds as to the Tax Increment pursuant to Section 7.04.

Supplemental Resolution means any resolution supplemental to this Resolution adopted pursuant to Section 12.

Tax Increment means the amount received by the City pursuant to the Act from the extension of levies of Taxes (expressed in mills) against the incremental taxable value (as defined in the Act) of all Taxable Property, and shall include all payments in lieu of Taxes attributable to the incremental taxable value and all payments received by the City designated as replacement revenues for lost Tax Increment, as provided in Section 10.08.

Tax Increment Accounts means the accounts established pursuant to Section 8.

Tax Increment Capital Project Account means the account so designated in the Tax Increment Accounts.

Tax Increment Debt Service Account means the account so designated in the Tax Increment Accounts.

Tax Increment Development Account means the account so designated in the Tax Increment Accounts.

Taxable Property means all real and personal property located in the District and subject to Taxes, including land, improvements and equipment.

Taxes means all taxes levied on an ad valorem basis by any Taxing Body against the Taxable Property (exclusive of the six mill levy for university purposes levied by the State), and shall include all payments in lieu of taxes received by the City with respect to Taxable Property.

Taxing Body means the City; the County of Cascade, Montana; the countywide school districts; the Great Falls High School and Elementary School Districts; the State; and any other political subdivision or governmental unit which may hereafter levy Taxes against property within the District.

Term Bond means any Bond for the payment of the principal of which mandatory principal payments are required by this Resolution or Supplemental Resolution to be made at times and in amounts sufficient to redeem all or a portion of such Bond prior to its Stated Maturity.

Trustee means U.S. Bank National Association, in Seattle, Washington, or any successor trustee under the Indenture.

2020 Loan means the loan made to the City by the DNRC pursuant to the Series 2020 Bond to provide funds to pay a portion of the costs of a 2020 Project under the Program.

2020 Project means the facilities, improvements and activities financed in part with proceeds of the Series 2020 Bond, as more particularly described in Appendix A hereto.

1.02. Rules of Construction. Unless the context otherwise requires or except as otherwise expressly provided:

(a) All references in this Resolution to designated sections and other subdivisions are to the designated sections and other subdivisions of this Resolution as originally adopted.

(b) The words “herein,” “hereof” and “hereunder” and other words of similar import without reference to any particular section or subdivision refer to this Resolution as a whole and not to any particular section or other subdivision unless the context clearly indicates otherwise.



(c) The terms defined in this Resolution include the plural as well as the singular.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles applicable to governmental entities.

(e) All computations provided herein shall be made in accordance with generally accepted accounting principles applicable to governmental entities consistently applied.

(f) “Or” is not intended to be exclusive, but is intended to contemplate or encompass one or more or all of the terms or alternatives conjoined.

1.03. Appendices. Attached to this Resolution and hereby made a part hereof are the following Appendices:

- (a) Appendix A: Description of and Estimated Budget for the 2020 Project
- (b) Appendix B: Form of Series 2020 Bond
- (c) Appendix C: Collateral Documents
- (d) Appendix D: Debt Service Schedule

1.04. Authorization. Under the provisions of the Act, the City is authorized to create industrial districts, undertake industrial infrastructure projects therein, provide for the segregation and collection of tax increment with respect to taxes collected in such areas, issue its bonds to pay the costs of such projects and to refund bonds previously issued under the Act and pledge to the repayment of the bonds the tax increment and other revenues derived from projects undertaken within the industrial district. In 2013, the State legislature enacted Senate Bill 239 (“SB 239”), which made various changes to Montana Code Annotated, Title 7, Chapter 15, Part 42, including repealing the authority of municipalities to create industrial districts, effective July 1, 2013. However, Section 25 of SB 239 provides that industrial districts established under the Act may continue to operate and to issue bonds under the Act as it existed on December 31, 2012, except that the municipality may not amend the plan or boundaries of the district or expand in any manner the projects contained in the plan without providing notice to and receiving the approval of the Department of Revenue. Since the effective date of SB 239, the City has not amended the Plan or the boundaries of the District or expanded the projects contained in the Plan.

1.05. Prior City Actions. Pursuant to the Act, the City adopted Ordinance No. 2911 on May 17, 2005, establishing the District. Subsequently, the City adopted Ordinance Nos. 2996 and 3106 on December 4, 2007 and May 7, 2013, respectively, expanding the boundaries of the District in accordance with the Act. Pursuant to the Act and the Ordinance, the City has adopted the Plan, which includes a tax increment financing provision. The goal of the District is the development of secondary, value adding industries. The Plan identifies the development of infrastructure, including storm drain improvements, in order to encourage the growth and

retention of secondary, value-adding industries. The City Commission has determined to undertake the design, engineering, construction and installation of a stormwater management system in the District (as further described in Appendix A hereto, the “2020 Project”) as an industrial infrastructure development project under the Act and the Plan, and has determined to finance a portion of the costs of the 2020 Project using Tax Increment. The City has applied to the DNRC for the 2020 Loan, and the City understands that the DNRC intends to fund the 2020 Loan in part, directly or indirectly, with proceeds of State Bonds, in part, directly or indirectly, with funds provided by an EPA Capitalization Grant, and, if necessary, with Recycled Money.

1.06. Estimate of Tax Increment. The City estimates that Tax Increment from the District will be at least \$322,754 per year (based on \$322,754 in Tax Increment received by the City in Fiscal Year 2019). The maximum Principal and Interest Requirements on the Series 2020 Bond is expected to be \$96,225.00, as set forth on Appendix D hereto. Based on the foregoing, the City hereby determines that there will be adequate Tax Increment from the District to pay principal and interest on the Series 2020 Bond. There are no other bonds or other obligations of the City payable from Tax Increment.

1.07. Findings and Determinations. It is hereby found, determined and declared by this Commission as follows:

(a) The 2020 Project is an industrial infrastructure project under the Act and the Plan and is located within the District;

(b) The undertaking, acquisition and construction of the 2020 Project will provide necessary public infrastructure as identified in the Plan, will encourage growth and retention of secondary value adding industries and will be consistent with and promote the objectives and policies of the City and the District;

(c) The District conforms to the comprehensive plan of the City;

(d) A sound and adequate financial program exists for the financing of the 2020 Project;

(e) The Tax Increment to be received by the City from the District, as set forth in Section 1.06, is reasonably estimated to be sufficient to pay the Principal and Interest Requirements on the Series 2020 Bond when due; and

(f) It is in the best interests of the City and its residents to cause the 2020 Project to be undertaken and completed and to issue and sell the Series 2020 Bond as provided in this Resolution.

## Section 2. The Bonds.

2.01. General Title. The general title of the Bonds of all series shall be “Tax Increment Industrial Infrastructure Revenue Bonds (Central Montana Agriculture and Technology Park Tax Increment Financing District),” with appropriate additions for refunding or Subordinate Obligations and to distinguish Bonds of each series from Bonds of other series.

2.02. General Limitations; Issuable in Series. The aggregate principal amount of Bonds that may be authenticated and delivered and Outstanding under this Resolution is not limited, except as provided in Section 7 and except as may be limited by law.

The Bonds may be issued in series as from time to time authorized by the City.

The Bonds are special, limited obligations of the City. The Bonds are not general obligations of the City and neither the general credit nor the taxing power of the City, Cascade County or the State is pledged to the payment of the Bonds or the interest thereon. Principal of, premium, if any, and interest on the Bonds (except to the extent expressly payable out of proceeds of the Bonds) are payable solely from the Tax Increment or other sources which may be pledged to the payment of any series of Bonds. Cascade County and the State shall in no event be liable for the payment of the principal of, premium, if any, or interest on the Bonds or the performance of any pledge of any kind whatsoever that may be undertaken by the City with respect thereto. Neither this Resolution, the Bonds, nor any of the agreements or obligations of the City contained herein or therein shall be construed to constitute an indebtedness of the City, Cascade County or the State within the meaning of any constitutional or statutory provisions whatsoever.

If any Stated Maturity, Redemption Date or Sinking Fund Payment Date shall be on a day which is not a Business Day, then payment of principal of, premium, if any, or interest due on such day may be made on the next succeeding Business Day, with the same force and effect as if made on such Stated Maturity, Redemption Date or Sinking Fund Payment Date (whether or not such next succeeding Business Day occurs in a succeeding month), and no interest shall accrue for the intervening period.

2.03. Terms of a Particular Series. Each series of Bonds (other than the Series 2020 Bond, as to which specific provision is made in Section 3) shall be created by a Supplemental Resolution and pursuant to Section 7. The City may, at the time of the creation of any series of Bonds or at any time thereafter make, and the Bonds of that series may also contain, provision for a sinking, amortization, improvement or other analogous fund. All Bonds of the same series shall be substantially identical except as to denomination and the differences specified herein or in a Supplemental Resolution between interest rates, Stated Maturities and redemption provisions.

2.04. Form and Denominations. The form of the Bonds (other than the Series 2020 Bond, as to which specific provision is made in Section 3) shall be established by the Supplemental Resolution creating such series.

The Bonds of any series shall be issuable as fully registered Bonds, in such denominations as shall be provided in the Supplemental Resolution creating such series (other than the Series 2020 Bond, as to which specific provision is made in Section 3). In the absence of any such provision with respect to the Bonds of any particular series, Bonds shall be in denominations of \$5,000 or any integral multiple thereof, of single Stated Maturities.

2.05. Execution and Delivery. Each Bond shall be executed on behalf of the City by the officials of the City specified in a Supplemental Resolution (other than the Series 2020 Bond, as

to which specific provision is made in Section 3). The signature of any official may be facsimile, if permitted by applicable law. Bonds bearing the manual or facsimile signatures of individuals who were at any time the proper officials of the City shall bind the City, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the delivery of such Bonds or did not hold such offices at the date of such Bonds.

At any time and from time to time, the City may deliver Bonds executed by the proper officers of the City to the Registrar for authentication, and the Registrar shall authenticate and deliver such Bonds as specified in a Supplemental Resolution (other than the Series 2020 Bond, as to which specific provision is made in Section 3).

### Section 3. Series 2020 Bond.

3.01. Issuance and Sale of the Series 2020 Bond. The Commission has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the City to issue the Series 2020 Bond to evidence the 2020 Loan. The Series 2020 Bond is issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-15-4322.

3.02. Terms. The Series 2020 Bond shall be in the maximum principal amount equal to the original Committed Amount of the 2020 Loan, shall be issued as a single, fully registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the 2020 Loan. The principal of and interest on the Series 2020 Bond shall be payable on the same dates and in the same amounts on which principal and interest of the 2020 Loan are payable. Advances of principal of the Series 2020 Bond shall be deemed made when advances of the 2020 Loan are made under Section 5.01, and such advances shall be payable in accordance with Schedule B to the Series 2020 Bond, as it may be revised by the DNRC from time to time in accordance with Section 5.01.

The City may prepay the Series 2020 Bond, in whole or in part, only upon the terms and conditions under which it can prepay the 2020 Loan under Section 6.03.

3.03. Negotiability, Transfer and Registration. The Series 2020 Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Series 2020 Bond shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1539 Eleventh Avenue, Helena, Montana 59620 or such other place as may be designated by the DNRC in writing and delivered to the City. The Series 2020 Bond shall be negotiable, subject to the provisions for registration and transfer contained in this Section 3.03. No transfer of the Series 2020 Bond shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Series 2020 Bond, and (2) the Fiscal Services Director of the City, as registrar (the "Registrar"), has duly noted the transfer on the Series 2020 Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The City shall be entitled to deem and treat the Person in whose name the Series 2020 Bond is registered as the absolute owner of the Series 2020 Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to

satisfy and discharge the City's liability upon such Bond to the extent of the sum or sums so paid.

3.04. Execution and Delivery. The City Manager and the Fiscal Services Director are hereby authorized, on behalf of the City, to provide for the issuance of the Series 2020 Bond. The Series 2020 Bond shall be executed on behalf of the City by the manual signatures of the Mayor, City Manager, Fiscal Services Director, and City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2020 Bond. The Series 2020 Bond shall be sealed with the corporate seal of the City. In the event that any of the officers who have signed the Series 2020 Bond cease to be officers of the City before the Series 2020 Bond is issued or delivered, their signatures shall remain binding upon the City. Conversely, the Series 2020 Bond may be signed by an authorized official who did not hold such office on the date of adoption of this Resolution. At Closing, the Series 2020 Bond shall be delivered to the DNRC, or its attorney or legal representative.

3.05. Form. The Series 2020 Bond shall be prepared in substantially the form attached as Appendix B.

#### Section 4. Use of 2020 Loan Proceeds; the 2020 Project.

4.01. Use of 2020 Loan Proceeds. The City shall apply the proceeds of the 2020 Loan from the DNRC solely as follows:

(a) The City shall apply the proceeds of the 2020 Loan solely to the financing, refinancing or reimbursement of the costs of the 2020 Project as set forth in Appendix A hereto and this Section 4.01. The 2020 Loan will be disbursed in accordance with Section 5 hereof and Article VII of the Indenture. If the 2020 Project has not been completed prior to Closing, the City shall, as quickly as reasonably possible, complete the 2020 Project and expend proceeds of the Series 2020 Bond to pay the costs of completing the 2020 Project.

(b) No portion of the proceeds of the 2020 Loan shall be used to reimburse the City for costs paid prior to the date of adoption of this Resolution of the 2020 Project the construction or acquisition of which occurred or began earlier than March 7, 1985. In addition, if any proceeds of the 2020 Loan are to be used to reimburse the City for 2020 Project costs paid prior to the date of adoption of this Resolution, the City shall have complied with Section 1.150-2 of the Regulations.

(c) Any Debt to be refinanced with proceeds of the 2020 Loan was incurred after March 7, 1985 for the 2020 Project the construction or acquisition of which began after March 7, 1985. No proceeds of the 2020 Loan shall be used for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation unless the DNRC has received an Opinion of Bond Counsel, satisfactory to it, to the effect that such refinancing will not adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

4.02. The 2020 Project. Set forth in Appendix A hereto is a description of the 2020 Project, which describes the property that has been or is to be acquired, installed, constructed or improved and the other activities, if any, to be funded from the 2020 Loan (the 2020 Project may consist of more than one facility or activity), along with an estimated budget therefor. The 2020 Project may be changed and the description thereof in Appendix A hereto may be amended from time to time by the City but only after delivery to the DNRC of the following:

(a) A certificate of the City setting forth the amendment to Appendix A hereto and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the 2020 Project, an increase or decrease in the amount of 2020 Loan proceeds which will be required to complete the 2020 Project and whether the change will materially accelerate or delay the construction schedule for the 2020 Project;

(b) A written consent to such change in the 2020 Project by an Authorized DNRC Officer; and

(c) An Opinion or Opinions of Bond Counsel stating that the 2020 Project, as constituted after such amendment, is, and was at the time the State Bonds were issued, eligible for financing under the State Act and is, and was at the time the Series 2020 Bond was issued, eligible for financing under the Act, such amendment will not violate the State Act or the Act and such amendment will not adversely affect the exclusion of interest on the State Bonds or the Series 2020 Bond from gross income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of facility to be constructed or activity to be financed.

The City acknowledges and agrees that an increase in the principal amount of the 2020 Loan may be made only upon an application to the DEQ, the DNRC and the Trustee, in such form as the DEQ shall specify, which is approved by the DEQ and the DNRC, in their sole and absolute discretion, and adoption by the governing body of the City of a resolution amendatory of or supplementary to this Resolution authorizing the additional loan and delivery of written certifications by officers of the City to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in this Resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application or thereafter. The City acknowledges and agrees that neither the DEQ, the DNRC, the Trustee nor any of their agents, employees or representatives shall have any liability to the City and have made no representations to the City as to the sufficiency of the 2020 Loan to pay costs of the 2020 Project or as to the availability of additional funds under the Program to increase the principal amount of the 2020 Loan.

4.03. 2020 Project Representations and Covenants. The City hereby represents to and covenants with the DNRC that:

(a) all construction of the 2020 Project has complied and will comply with all federal and State standards, including, without limitation, EPA regulations and standards;

(b) all future construction of the 2020 Project will be done only pursuant to fixed price construction contracts. The City shall obtain a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the City's, the DNRC's and the DEQ's satisfaction;

(c) all future construction will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ;

(d) the iron and steel products used in the 2020 Project comply with the "Buy American" requirements of Section 436 of H.R. 3547, "Consolidated Appropriations Act, 2014," as those requirements are further interpreted by applicable EPA guidance;

(e) all laborers and mechanics employed by contractors and subcontractors on the 2020 Project have been and will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code;

(f) the 2020 Project is a project of the type permitted to be financed under the State Act, the Act and the Program and Title VI of the Clean Water Act; and

(g) the City will undertake the 2020 Project promptly after the Closing and will cause the 2020 Project to be completed as promptly as practicable with all reasonable dispatch, except only as completion may be delayed by a cause or event not reasonably within the control of the City; it is estimated by the City that the 2020 Project will be substantially completed by September 30, 2020.

#### 4.04. Completion or Cancellation or Reduction of Costs of the 2020 Project.

(a) Upon completion of the 2020 Project, the City shall deliver to the DNRC a certificate stating that the 2020 Project is complete, stating the amount, if any, of the undisbursed Committed Amount and releasing the amount, if any, of the undisbursed Committed Amount. If Appendix A hereto describes two or more separate projects as making up the 2020 Project, a separate completion certificate shall be delivered for each.

(b) If all or any portion of the 2020 Project is cancelled or cut back or its costs are reduced or for any other reason the City will not require the full Committed Amount, the City shall promptly notify the DNRC in writing of such fact and release the amount of the Committed Amount that will not be needed.

Section 5. The 2020 Loan.

5.01. The 2020 Loan; Disbursement of Loan. The DNRC has agreed to lend to the City, from time to time as the requirements of this Section 5.01 are met, an amount up to \$1,500,000 (the “Committed Amount”) for the purposes of financing, refinancing or reimbursing the City for all or a portion of the costs of the 2020 Project and paying costs of issuance of the Series 2020 Bond; *provided* the DNRC shall not be required to loan any proceeds of the State Bonds to the City after 360 days following the Closing. The Committed Amount may be reduced as provided in Sections 4.02 and 4.04. The 2020 Loan shall be disbursed as provided in this Section 5.01. The DNRC intends to disburse the 2020 Loan through the Trustee.

(a) In consideration of the issuance of the Series 2020 Bond by the City, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the 2020 Loan upon receipt of the following documents:

(i) an Opinion of Bond Counsel as to the validity and enforceability of the Series 2020 Bond and the security therefor and stating in effect that interest on the Series 2020 Bond is not includable in gross income of the owner thereof for purposes of federal income taxation, in form and substance satisfactory to the DNRC;

(ii) the Series 2020 Bond, fully executed and authenticated;

(iii) a certified copy of this Resolution;

(iv) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the 2020 Loan;

(v) if all or part of the 2020 Loan is being made to refinance a Project or reimburse the City for the costs of the 2020 Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (i) above, (A) that the acquisition or construction of the 2020 Project was begun no earlier than March 7, 1985 or the debt was incurred no earlier than March 7, 1985, (B) of the City’s title to the 2020 Project, and (C) of the costs of such Project and that such costs have been paid by the City;

(vi) the items required by the Indenture for the portion of the 2020 Loan to be disbursed at Closing; and

(vii) such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in (i) above may require (including any necessary arbitrage rebate instructions).

(b) In order to obtain a disbursement of a portion of the 2020 Loan to pay costs of the 2020 Project, the City shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The City may obtain disbursements only for costs which have



been legally incurred and are due and payable. All 2020 Loan disbursements will be made to the City only upon proof that cost was incurred.

(c) For refinancings, a disbursement schedule complying with the requirements of the Clean Water Act shall be established by the DNRC and the City at Closing.

(d) If all or a portion of the 2020 Loan is made to reimburse the City for 2020 Project costs paid by it prior to Closing, the City shall present at Closing the items required by Section 5.01(b) relating to such costs. The Trustee shall disburse such amounts to the City pursuant to a disbursement schedule complying with the requirements of the Clean Water Act established by the DNRC and the City at the Closing.

(e) Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the 2020 Loan any faster or to any greater extent than it has available EPA Capitalization Grants, State Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do “overmatching” pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The City acknowledges that if 2020 Project costs are incurred faster than the City projected at Closing, there may be delays in making 2020 Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its commercially reasonable efforts to obtain an acceleration of such schedule if necessary.

(f) Upon making each 2020 Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2020 Bond.

(g) The City agrees that it will deposit in the Reserve Account upon receipt thereof, either on the Closing of the 2020 Loan or upon any disbursement date, any proceeds of the 2020 Loan borrowed for the purpose of increasing the balance in the Reserve Account to the Reserve Requirement. The City further acknowledges and agrees that any portion of the 2020 Loan representing capitalized interest shall be advanced only on Interest Payment Dates and shall be transferred by the Trustee on the Interest Payment Date directly to the Interest Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2020 Bond and interest thereon shall accrue only from the date of transfer.

5.02. Commencement of Loan Term. The City’s obligations under this Resolution and the Collateral Documents with respect to the Series 2020 Bond shall commence on the date hereof unless otherwise provided in this Resolution. However, the obligation to make payments under Section 6 shall commence only upon the first disbursement by the Trustee of 2020 Loan proceeds.

5.03. Termination of 2020 Loan. The City’s obligations under this Resolution and the Collateral Documents with respect to the Series 2020 Bond shall terminate upon payment in full

of all amounts due under the Series 2020 Bond; provided, however, that the covenants and obligations provided in Sections 9.04 and 11.04 shall survive any such payment or termination.

5.04. Loan Closing Submissions. On or prior to the Closing, the City will have delivered to the DNRC and the Trustee the closing submissions required by Section 7.05 of the Indenture.

Section 6. Repayment of 2020 Loan.

6.01. Repayment of 2020 Loan. The City shall repay the amounts lent to it pursuant to Section 5.01 hereof, plus interest on the unpaid amounts lent at the rate of two percent (2.00%) per annum, in semiannual payments of principal and interest. In addition, the City shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge, each at the rate of twenty-five hundredths of one percent (0.25%) per annum on the outstanding principal amount of the 2020 Loan. For purposes of this Resolution and the Program, the term “interest on the 2020 Loan” shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The City shall pay all principal, interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge in lawful money of the United States of America to the DNRC. Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

The loan repayments required by this Section 6.01 and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge shall be due on each January 1 and July 1 (the “Payment Dates”), as follows:

- (1) interest and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the outstanding principal balance of the 2020 Loan shall be payable on each January 1 and July 1, as set forth in Appendix D hereto; and
- (2) the principal of the 2020 Loan shall be repayable on each Payment Date, as set forth in Appendix D hereto, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at a rate of 2.50% per annum.

The payments of principal of and interest and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2020 Loan shall be due on the Payment Dates specified above and as set forth in Schedule B to the Series 2020 Bond, as such Schedule B shall be modified from time to time as provided below. The portion of each such payment consisting of principal, the portion consisting of interest and the amount of each Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2020 Bond. Upon each disbursement of 2020 Loan amounts to the City pursuant to Section 5.01 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the Series 2020 Bond under “Advances” and the total amount advanced under Section 5.01, including such disbursement, under “Total Amount Advanced.”

Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. Once the completion certificate for the 2020 Project has been delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2020 Bond in accordance with this

Section 6.01, and the Trustee shall send a copy of such Schedule B to the City within one month after delivery of the completion certificate.

Past-due payments of principal and interest and the Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

Any payment of principal, interest or the Administrative Expense Surcharge and Loan Loss Reserve Surcharge under this Section 6.01 shall also be credited against the same payment obligation under the Series 2020 Bond.

6.02. Additional Payments. The City shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds, including proceeds of the 2020 Loan, if the City so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the 2020 Loan, the Collateral Documents and the Series 2020 Bond, including, but not limited to:

- (a) the cost of reproducing this Resolution, the Collateral Documents and the Series 2020 Bond;
- (b) the fees and disbursements of Bond Counsel and other counsel utilized by the DNRC and the Trustee in connection with the 2020 Loan, this Resolution, the Collateral Documents and the Series 2020 Bond and the enforcement thereof; and
- (c) all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2020 Bond, whether or not the Series 2020 Bond is then Outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2020 Bond, the Collateral Documents and this Resolution and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

6.03. Prepayments. The City may not prepay all or any part of the outstanding principal amount of the Series 2020 Bond unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no principal, interest, Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2020 Bond is prepaid in part pursuant to this Section 6.03, such prepayments shall be applied to principal payments in inverse order of maturity.

6.04. Obligations of City Unconditional. The obligations of the City to make the 2020 Loan payments required by this Resolution and the Series 2020 Bond and to perform its other agreements contained in this Resolution with respect to the 2020 Loan, the Series 2020 Bond and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The City (a) shall not suspend or discontinue any payments provided for in this Resolution with respect to the 2020 Loan and the Series 2020 Bond, (b) shall perform all its other agreements in this Resolution with respect to the 2020 Loan, the Series 2020 Bond and the Collateral Documents and (c) shall not terminate this Resolution with respect to the 2020

Loan, the Series 2020 Bond or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the 2020 Project, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Resolution. Provided, however, if the 2020 Loan is not made and no funds are disbursed to the City, this Resolution may be terminated with respect to the 2020 Loan and the Series 2020 Bond.

6.05. Limited Liability. All payments of principal of and interest on the 2020 Loan and other payment obligations of the City in this Resolution with respect to the 2020 Loan and the Series 2020 Bond shall be special, limited obligations of the City payable solely out of the Tax Increment or out of the Tax Increment Debt Service Account and shall not be payable out of any other funds or revenues of the City. The obligations of the City under this Resolution with respect to the 2020 Loan and the Series 2020 Bond shall never constitute an indebtedness of the City within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. The taxing powers of the City are not pledged to pay principal of or interest on the 2020 Loan or the Series 2020 Bond, and no funds or property of the City other than the Tax Increment are pledged to pay principal of or interest on the 2020 Loan or the Series 2020 Bond.

#### Section 7. Additional Bonds.

7.01. General Provisions. Additional Bonds may at any time and from time to time be issued, sold and delivered by the City but only upon compliance with the conditions of Sections 7.02 or 7.03, whichever may be applicable, and upon filing with the City Clerk the following:

(a) A Supplemental Resolution authorizing the issuance and creating the designated series of Additional Bonds and the sale thereof to the purchaser or purchasers named therein for the purchase price set forth therein;

(b) A certificate executed by the City Manager and Fiscal Services Director stating that upon the issuance of the Additional Bonds, no default hereunder has occurred and is continuing which would not be cured upon the issuance of the Additional Bonds and application of the proceeds thereof; and

(c) An Opinion of Bond Counsel stating that:

(i) all conditions precedent provided for in this Resolution relating to the issuance and delivery of such Additional Bonds have been complied with, including any conditions precedent specified in this Section 7.01; and

(ii) the series of Additional Bonds when issued and delivered by the City will be valid and binding special, limited obligations of the City in accordance with their terms and entitled to the benefits of and secured by this Resolution.

Any Additional Bonds shall be dated, shall bear interest at a rate or rates not exceeding the maximum rate, if any, permitted by law, shall have Stated Maturities and may be subject to redemption at such times and prices and on such terms and conditions, all as may be provided by the Supplemental Resolution authorizing their issuance. All Additional Bonds issued pursuant to Sections 7.02 and 7.03 shall be payable and secured ratably and equally and on a parity as to both principal and interest with the Series 2020 Bond and any Additional Bonds theretofore issued.

7.02. Additional Bonds To Pay the Cost of Projects. Additional Bonds may be issued for the purpose of providing funds, in an aggregate amount sufficient with any other funds available and committed therefor to pay the cost of one or more Projects and any expenses in connection with such financing.

Prior to the execution and delivery of any Additional Bonds under this Section 7.02, there shall be filed with the City Clerk:

(a) A certificate executed by the City Manager and Fiscal Services Director stating: (i) the estimated cost of the Projects being financed thereby, including an allowance for contingencies and all fees, expenses and financing costs, (ii) the amount, if any, which will be required to be deposited to the credit of the Reserve Account in connection with the issuance of the Additional Bonds, (iii) the amount, if any, which will be required to be credited to the Bond Account to pay interest on the Additional Bonds prior to collection of Tax Increment pledged thereto, (iv) the amount of Tax Increment received by the City in the last completed Fiscal Year, (v) the amount of the maximum Principal and Interest Requirements on the Outstanding Bonds and the Additional Bonds proposed to be issued for any future Fiscal Year during the term of the Outstanding Bonds and the Additional Bonds proposed to be issued, and (vi) that the principal amount of such Additional Bonds is sufficient, with other available funds of the City, to provide for the payment of all estimated costs of Projects and credits to the Reserve Account and Bond Account as set forth above.

(b) For so long as the Series 2020 Bond is Outstanding, the written consent of the DNRC;

(c) For so long as the Series 2020 Bond is Outstanding, a certificate executed by the City Manager and Fiscal Services Director stating that:

(i) the Tax Increment received by the City in the last completed Fiscal Year was equal to at least 130% of the maximum Principal and Interest Requirements for any future Fiscal Year (during the term of the Outstanding Bonds) with respect to Outstanding Bonds and the Additional Bonds proposed to be issued, and

(ii) the Tax Increment received in the last completed Fiscal Year, adjusted as provided in this Section 7.02(c), were, and the Tax Increment estimated to be received in the next succeeding three Fiscal Years, adjusted as provided in this Section 7.02(c), are estimated to be, equal to at least 140% of the

maximum Principal and Interest Requirements on all then Outstanding Bonds and the Additional Bonds proposed to be issued.

For this purpose, the Tax Increment received by the City in the last completed Fiscal Year may be adjusted by adding any increase in Tax Increment which would have resulted from applying the tax rates effective for the last completed Fiscal Year to the value, as determined by certification of the county assessor or Department of Revenue, of any projects which have been completed in the District before the date of issuance of the Additional Bonds and the taxable value of which as so completed are not included in the “actual taxable value” of the District.

In estimating the Tax Increment to be received in any future Fiscal Year, the City shall assume that:

- (A) 90% of the taxes levied in the District will be collected in any Fiscal Year;
- (B) no taxes delinquent in a prior Fiscal Year will be collected in any subsequent Fiscal Year; and
- (C) there will be no increase in the Tax Increment to be received in any future Fiscal Year resulting from:
  - (1) the projected inflation in property values or projected increases in tax levies;
  - (2) the completion of improvements to real property which are under construction at the time of the issuance of the Additional Bonds unless (x) the improvements are substantially completed at the time of the issuance of the Additional Bonds, (y) officers of the City certify that they reasonably believe that the improvements will be completed within the period for which the estimate is to be made, and (z) the City assumes the taxable value of the development upon completion to be 66 2/3% of the estimated taxable valuation of such development;
  - (3) the completion of an improvement to real estate for which construction has not commenced or is not substantially completed at the time of the issuance of the Additional Bonds unless (x) the City has entered into an agreement with the Person undertaking the improvement wherein the Person agrees to complete the improvement in accordance with a described plan and within the period for which the estimate is to be made and to pay and satisfactorily secure to the City, in the event the improvement is not completed in accordance with the

described plan, the difference between the estimated Tax Increment to be derived from such improvement and the actual Tax Increment derived therefrom (adjusted upwards to reflect reductions in the mill rates from those assumed in the estimate); (y) the officers of the City certify that they reasonably believe that the improvements will be completed within the period for which the estimate is to be made; and (z) the City assumes the taxable value of the development upon completion to be 66 2/3% of the estimated taxable valuation of such development; or

(4) improvements to be completed later than the end of the second full Fiscal Year following the issuance of the Additional Bonds;

(iii) provided that the conditions in this Section 7.02(c) may be waived by the DNRC if it determines that there is adequate security for the payment of the Series 2020 Bond based on other terms, conditions, and limitations it imposes in its discretion, in which case the City shall comply with paragraph (d) below.

(d) If the Series 2020 Bond is no longer outstanding, a certificate executed by the City Manager and Fiscal Services Director stating that:

(i) the Tax Increment received by the City in the last completed Fiscal Year was equal to at least 125% of the maximum Principal and Interest Requirements for any future calendar year (during the term of the Outstanding Bonds) with respect to Outstanding Bonds and the Additional Bonds proposed to be issued; or

(ii) the Tax Increment received by the City in the last completed Fiscal Year, adjusted as provided in Section 7.02(d)(iii), was equal to at least 125% of the maximum Principal and Interest Requirements for any future calendar year (during the term of the Outstanding Bonds) with respect to the Outstanding Bonds and the Additional Bonds proposed to be issued.

(iii) For the purpose of calculating the adjustment referenced in Section 7.02(d)(ii), the Tax Increment received by the City in the last completed Fiscal Year may be adjusted by adding 90% of any increase in Tax Increment which would have resulted from applying the aggregate tax rates of the Taxing Bodies effective for the last completed Fiscal Year to then-current taxable value of the District as of the date of calculation, as estimated by the Fiscal Services Director, based on information from the Department of Revenue, including any projects completed or underway in the District, the taxable values of which are not yet included in the actual taxable value (as defined in the Act) of the District.

The Commission shall approve and confirm the findings and estimates set forth in the above-described certificates in the Supplemental Resolution authorizing the issuance of the Additional Bonds.

7.03. Additional Bonds for Refunding Purposes. Additional Bonds may be issued under this Section 7.03, at one time or from time to time, subject to the conditions provided in Section 7.01 and this Section 7.03, for the purpose of providing funds, with any other funds available and committed therefor, for paying at, or redeeming prior to, their Stated Maturities any Outstanding Bonds, including the payment of any redemption premium thereon and interest which will accrue on such Bonds to any Redemption Date or the Stated Maturities thereof, and any expenses in connection with such financing. Such Additional Bonds shall be designated substantially as the Bonds to be refunded, with the addition of the term “refunding.”

Prior to the execution and delivery of any Additional Bonds under this Section 7.03, there shall be filed with the City Clerk:

(i) such documents as shall be required to show that provisions have been duly made in accordance with this Resolution for the defeasance of all of the Outstanding Bonds to be refunded; and

(ii) a certificate of the Fiscal Services Director to the effect that (a) the proceeds (excluding accrued interest but including any premium) of the Additional Bonds plus any moneys to be withdrawn from the Bond Account for such purpose, together with any other funds deposited for such purpose, will be not less than an amount sufficient to pay the principal of, redemption premium, if any, and interest on the Outstanding Bonds to be refunded, or (b) from such proceeds there shall be deposited in trust, Government Obligations which do not permit the redemption thereof at the option of the issuer, the principal of and the interest on which when due and payable (or redeemable at the option of the holder thereof) will provide, together with any other moneys which shall have been deposited in trust irrevocably for such purpose, but without reinvestment, sufficient moneys to pay such principal, redemption premium and interest.

If Additional Bonds are issued to refund Subordinate Obligations issued pursuant to Section 7.04, the conditions for the issuance of Additional Bonds pursuant to Section 7.02 must be satisfied in lieu of this Section 7.03.

7.04. Subordinate Obligations. Except as provided in Sections 7.01, 7.02 and 7.03, no other bonds, notes or other evidence of indebtedness of the City will be issued under or secured by the provisions of this Resolution, and no bonds, notes or other evidence of indebtedness will be made payable from the Bond Account, unless the pledge and appropriation of Tax Increment for the payment and security of such bonds, notes or other evidence of indebtedness is expressly subordinated to the pledge and appropriation made for the benefit and security of the Series 2020 Bond and all Additional Bonds issued and to be issued under and secured by this Resolution in accordance with Sections 7.01, 7.02 and 7.03. In the event of the issuance of any such Subordinate Obligations, the principal, premium, if any, and interest thereon will be made payable from one or more additional accounts created within the Tax Increment Accounts for that purpose, and the balance of funds at any time on hand in any such accounts shall be



available and shall be transferred whenever needed to meet the current requirements of the Bond Account and Reserve Account set forth in Sections 8.04 and 8.05.

Section 8. The Tax Increment Accounts.

8.01. Bond Proceeds and Tax Increment Pledged and Appropriated. The City hereby establishes on its books and records three accounts designated as the Tax Increment Capital Project Account, the Tax Increment Debt Service Account and the Tax Increment Development Account (collectively, the “Tax Increment Accounts”). The Tax Increment Accounts shall be maintained as separate and special bookkeeping accounts on the official books and records of the City until all Bonds have been fully paid, or the City’s obligation with reference to all Bonds has been discharged as provided in this Resolution.

All proceeds of Bonds and all other funds hereafter received or appropriated for purposes of the Projects are appropriated to the Tax Increment Accounts (except amounts otherwise appropriated in a Supplemental Resolution or received from Additional Bonds issued to refund Outstanding Bonds pursuant to Section 7.03). All Tax Increment is irrevocably pledged and appropriated and shall be credited as received to the Tax Increment Debt Service Account. Outstanding Bonds shall be secured by a first pledge of and lien on all of the Tax Increment and all other moneys from time to time in the Tax Increment Accounts in the manner and to the extent provided in this Section 8. The City shall not issue any obligation or security superior to or on a parity with the Series 2020 Bond, payable or secured, in whole or in part, from or by the Tax Increment other than Additional Bonds issued pursuant to Sections 7.01, 7.02 or 7.03, until all of the Bonds have been paid or discharged as provided herein. The Tax Increment Accounts shall be subdivided into separate accounts as designated and described in Sections 8.03 to 8.06.

8.02. Tax Increment Receipts. All Tax Increment received by the City and credited to the Tax Increment Debt Service Account, as required in Section 8.01, shall be credited as received as follows: (a) first, to the Interest Account, until the balance on hand in the Interest Account is at least equal to all interest on Bonds due and payable from the Interest Account within the next six full calendar months; (b) second, after any credit to the Interest Account required by the preceding clause, to the Sinking Fund Account, until the balance on hand in the Sinking Fund Account is at least equal to all principal of and premium, if any, on Bonds due and payable from the Sinking Fund Account (including amounts due and payable on a Sinking Fund Payment Date) within the next twelve full calendar months; (c) third, after any credit to the Interest Account or the Sinking Fund Account required by the preceding clauses, to the Reserve Account until the balance on hand in the Reserve Account is equal to the Reserve Requirement; and (d) fourth, after any credit to the Interest Account, the Sinking Fund Account or the Reserve Account required by the preceding clauses, to the Tax Increment Development Account.

8.03. Construction Account. For each Project there shall be a separate Construction Account within the Tax Increment Capital Project Account, to be used only to pay allowed costs as incurred, which under accepted accounting principles are costs of the particular Project, including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accruing on Bonds during the period of construction of a Project financed thereby and for a period of time thereafter authorized by the

Act and deemed necessary by this Commission, if and to the extent that the Interest Account is not sufficient for payment of such interest, reimbursement of any loans or advances made from other City funds, and all other expenses incurred in connection with the acquisition, construction and financing of the Project. To the Construction Account shall be credited as received all proceeds of Bonds issued to finance such Project, except amounts otherwise appropriated in a Supplemental Resolution or received from Additional Bonds issued to refund Outstanding Bonds pursuant to Section 7.03 and all other funds appropriated by the City for the Project, and all income received from the investment of the Construction Account. Upon completion of any Project and payment of the cost thereof, the City may transfer any money then remaining in the Construction Account for that Project to the Interest Account.

8.04. Bond Account. The Bond Account is hereby established as a special account within the Tax Increment Debt Service Account. There are hereby established within the Bond Account two separate subaccounts, designated as the Interest Account and the Sinking Fund Account.

(a) Interest Account. There shall be credited to the Interest Account the following amounts: (i) any amount specified in any Supplemental Resolution to be credited to the Interest Account; and (ii) from the Tax Increment as received by the City, the amount specified in clause (a) of Section 8.02.

On or before each Interest Payment Date, the City shall withdraw from the Interest Account an amount sufficient to pay the interest coming due on the Bonds on such Interest Payment Date, and shall use such amount to pay, or make provision with the Registrar for the payment of, interest on the Bonds on such Interest Payment Date.

If on any Interest Payment Date the balance in the Interest Account is not sufficient to pay the total amount of interest due on such Interest Payment Date, the City shall transfer any money then on hand in the Tax Increment Development Account, the Reserve Account or the Sinking Fund Account, in the order listed and in an amount equal to such deficiency, to the Interest Account.

All income derived from the investment of amounts in the Interest Account shall be credited as received to the Interest Account.

(b) Sinking Fund Account. There shall be credited to the Sinking Fund Account the following amounts: (i) any amount specified in a Supplemental Resolution to be credited to the Sinking Fund Account; and (ii) from the Tax Increment as received by the City, the amount specified in clause (b) of Section 8.02.

Amounts on hand in the Sinking Fund Account shall be used on any Interest Payment Date to make up a deficiency in the Interest Account, if and to the extent required by the third paragraph of subsection (a) hereof.

On or before each Principal Payment Date, the City shall withdraw from the Sinking Fund Account an amount sufficient to pay the principal due on the Bonds on such Principal Payment Date, and shall use such amount to pay, or make provision with the Registrar for the payment of, principal of the Bonds on such Principal Payment Date.

If on any Principal Payment Date the balance in the Sinking Fund Account is not sufficient to pay the total amount of principal due on such Principal Payment Date, the City shall transfer any money then on hand in the Tax Increment Development Account or the Reserve Account, in the order listed and in an amount equal to such deficiency, to the Sinking Fund Account.

All income derived from the investment of amounts in the Sinking Fund Account shall be credited as received to the Sinking Fund Account.

8.05. Reserve Account. The Reserve Account is hereby established as a special account within the Tax Increment Debt Service Account. There shall be credited to the Reserve Account the following amounts: (i) on the date of Closing from funds the City has on hand and available therefor, an amount equal to one half of the Principal and Interest Requirements on the Bonds (which is expected to be \$48,113); (ii) any amount specified in any Supplemental Resolution to be credited to the Reserve Account; (iii) from the Tax Increment as received by the City, the amount specified in clause (c) of Section 8.02; and (iv) any other amounts appropriated from time to time to the Reserve Account.

If on any Interest Payment Date or on any Principal Payment Date there shall exist, after the transfers thereto of any money then on hand in the Tax Increment Development Account a deficiency in the Interest Account or Sinking Fund Account, the City shall transfer from the Reserve Account to such account an amount equal to such deficiency.

All income derived from the investment of amounts in the Reserve Account shall be credited as received to the Reserve Account until such time as the balance in the Reserve Account is equal to the Reserve Requirement, and thereafter all such investment income as received shall be transferred to the Sinking Fund Account.

Money in the Reserve Account shall be used only to pay when due principal of, premium, if any, and interest on Outstanding Bonds when the balance on hand in the Bond Account is insufficient therefor; provided that on any date when the balance then on hand in the Bond Account allocable to a series of Bonds, plus the balance then on hand in the Reserve Account allocable to the series of Bonds, is sufficient with other money available to pay or discharge all Outstanding Bonds of that series and the interest accrued thereon in full, and the balance thereafter on hand in the Reserve Account will be at least equal to the Reserve Requirement for all Outstanding Bonds not to be discharged, it may be used for that purpose.

If at any time the balance in the Reserve Account exceeds the Reserve Requirement, the City shall transfer such excess to the Sinking Fund Account.

8.06. Tax Increment Development Account. There shall be credited to the Tax Increment Development Account any and all Tax Increment remaining after the required credits to the Bond Account and Reserve Account and any investment income and other moneys in any of the accounts within the Tax Increment Accounts in excess of the requirements of said accounts and which the City determines in its discretion to transfer to the Tax Increment Development Account. Money from time to time on hand in the Tax Increment Development

Account shall be transferred to the Bond Account and Reserve Account as provided by Sections 8.04 and 8.05 and may be used for any of the following purposes and not otherwise:

- (a) to be transferred to the Construction Account to pay costs authorized to be paid therefrom;
- (b) to pay costs incurred in connection with industrial infrastructure development projects (as defined in the Act) within the District as authorized by the Act and approved by the Commission (including to repay any loans or advances therefor made from other City funds);
- (c) to pay administrative costs of the City and the District as authorized by the Act (including to repay any loans or advances therefor made from other City funds);
- (d) to pay, redeem, discharge or otherwise secure Subordinate Obligations in accordance with the provisions of this Resolution or any Supplemental Resolution;
- (e) to purchase Bonds on the open market;
- (f) to redeem or discharge Bonds prior to their Stated Maturities in accordance with this Resolution or any Supplemental Resolution;
- (g) to make payments of arbitrage rebate to the United States of America pursuant to Section 148(f) of the Code in respect of any series of Bonds; and
- (h) to pay other Taxing Bodies a portion of the annual Tax Increment received by the City, pursuant to an agreement with respect thereto as authorized by the Act; provided, however, no such agreement shall require or permit the City to remit to any other Taxing Bodies any portion of the annual Tax Increment received in a Fiscal Year and on deposit in the Tax Increment Development Account unless (1) the balance in the Reserve Account as of the date of the remittance is not less than the Reserve Requirement; and (2) there is no default under the provisions of this Resolution as evidenced by a certificate of the Fiscal Services Director filed with the City Clerk as of the date of remittance.

8.07. Investments. The Fiscal Services Director shall cause all moneys from time to time in the Tax Increment Accounts to be deposited as received with one or more depository banks duly qualified in accordance with the provisions of Montana Code Annotated, Section 7-6-201, as amended, and shall cause the balances in such accounts, except any part thereof covered by federal deposit insurance, to be secured by the pledge of bonds or securities of the kinds required by law, and no money shall at any time be withdrawn from such deposit accounts except for the purposes of the Tax Increment Accounts as defined and authorized by this Resolution. The funds to the credit of the several accounts within the Tax Increment Accounts may be commingled in one or more deposit accounts. The balance on hand in any of the accounts of the Tax Increment Accounts may at any time be invested and reinvested in Qualified Investments as provided below, maturing and bearing interest payable at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; provided that the Reserve Account and Tax Increment Development Account shall be

invested in Qualified Investments maturing not later than five years from the date of investment. Income from the investment of the moneys in the various accounts shall be credited thereto. Subject to the provisions of law now or hereafter controlling investment of such funds, money on hand in any of the accounts of the Tax Increment Accounts may be invested in any of the following (“Qualified Investments”):

- (a) direct obligations of or obligations guaranteed by the United States of America;
- (b) bank time deposits or certificates of deposit secured by obligations and securities described in clause (a) above; and
- (c) the short-term investment pool administered by the Board of Investments of the State or any successor investment pool created pursuant to State law.

Section 9. Representations, Warranties and Covenants of the City With Respect to the Series 2020 Bond. The representations, warranties and covenants of the City in this Section 9 are solely for the benefit of the DNRC and may be supplemented, amended, modified or waived with the consent of the DNRC in its sole discretion.

9.01. Representations and Warranties. The City represents and warrants to the DNRC as of the date hereof as follows:

- (a) Organization and Authority. The City:
  - (i) is duly organized and validly existing as a municipal corporation and political subdivision of the State;
  - (ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the 2020 Project and to carry on its current activities with respect to the District and the 2020 Project, to adopt this Resolution, to issue the Series 2020 Bond and to enter into the Collateral Documents and to carry out and consummate all transactions contemplated by this Resolution, the Series 2020 Bond and the Collateral Documents;
  - (iii) is a Governmental Unit and a Public Entity; and
  - (iv) has taken all proper action to authorize the execution, delivery and performance of its obligations under this Resolution, the Series 2020 Bond and the Collateral Documents and the incurrence of the debt evidenced by the Series 2020 Bond.
- (b) Litigation. There is no litigation or proceeding pending, or to the knowledge of the City threatened, against or affecting the City in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the City, or the ability of the City to make all payments and otherwise perform its

obligations under this Resolution, the Series 2020 Bond and the Collateral Documents, or the financial condition of the City, or the transactions contemplated by this Resolution, the Series 2020 Bond and the Collateral Documents or the validity and enforceability of this Resolution, the Series 2020 Bond and the Collateral Documents. No referendum petition has been filed with respect to any resolution or other action of the City relating to the 2020 Project, the Series 2020 Bond or any Collateral Documents.

(c) Borrowing Legal and Authorized. The adoption of this Resolution, the execution and delivery of the Series 2020 Bond and the Collateral Documents and the consummation of the transactions provided for in this Resolution, the Series 2020 Bond and the Collateral Documents and compliance by the City with the provisions of this Resolution, the Series 2020 Bond and the Collateral Documents:

(i) are within the powers of the City and have been duly authorized by all necessary action on the part of the City; and

(ii) do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the City pursuant to any resolution, indenture, loan agreement or other agreement or instrument (other than this Resolution and any Collateral Documents) to which the City is a party or by which the City or its property may be bound, nor will such action result in any violation of the provisions of the charter or similar document, if applicable, of the City or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the City, its properties or operations are subject.

(d) No Defaults. No event has occurred and no condition exists that constitutes a default under this Resolution or the Collateral Documents. The City is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the City with the terms hereof or of the Series 2020 Bond and the Collateral Documents.

(e) Governmental Consent. The City has obtained or made all permits, findings and approvals required to the date of adoption of this Resolution by any governmental body or officer for the making and performance by the City of its obligations under this Resolution, the Series 2020 Bond and the Collateral Documents or with respect to the 2020 Project, the financing or refinancing thereof or the reimbursement of the City for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the City as a condition to adopting this Resolution, issuing the Series 2020 Bond or entering into the Collateral Documents and the performance of the City's obligations hereunder and thereunder.

(f) Binding Obligation. This Resolution, the Series 2020 Bond and the Collateral Documents are the valid and binding special, limited obligations of the City, enforceable against the City in accordance with their terms except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

(g) Full Disclosure. There is no fact that the City has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the City can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the District, the City's status as a Public Entity and Governmental Unit, its ability to own and operate the 2020 Project in the manner it is currently operated or the City's ability to perform its obligations under this Resolution, the Series 2020 Bond and the Collateral Documents and to pledge the Tax Increment to the payment of the Series 2020 Bond.

(h) Compliance With Law. The City:

(A) is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the District or its status as a Public Entity and Governmental Unit; and

(B) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the 2020 Project and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the 2020 Project and the operation thereof, which failure to obtain might materially and adversely affect the ability of the City to conduct the operation of the 2020 Project as presently conducted or the condition (financial or otherwise) of the 2020 Project or the City's ability to perform its obligations under this Resolution, the Series 2020 Bond and the Collateral Documents.

9.02. Covenants With Respect to Series 2020 Bond. During the time that the Series 2020 Bond is Outstanding, the City covenants and agrees with the DNRC as follows:

(a) Insurance. The City at all times shall keep and maintain with respect to the 2020 Project property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by State law, against such risks and in such amounts, and with such deductible provisions, as are customary in the State in the case of entities of the same size and type as the City and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. Nothing herein shall be construed to prohibit or preclude the City from self-insuring or participating in a self-insurance program in compliance with the provisions of State law. All such insurance policies shall name the DNRC as an additional insured to the extent permissible under such policies.

Each policy must provide that it cannot be cancelled by the insurer without giving the City and the DNRC 30 days' prior written notice. The City shall give the DNRC prompt notice of each insurance policy it obtains or maintains to comply with this paragraph (a) and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. Such notice shall specifically note any adverse change as being an adverse change.

(b) Right of Inspection and Notice of Change of Location. The DNRC, the DEQ and the EPA and their designated agents shall have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the City for the purpose of inspecting any or all books and records of the City relating to the District.

(c) Further Assurance. The City shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under this Resolution, the Series 2020 Bond and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under this Resolution, the Series 2020 Bond and the Collateral Documents.

(d) Maintenance of Security, if Any; Recordation of Interest.

(i) The City shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Resolution and the Collateral Documents so long as any amount is owing under this Resolution or the Series 2020 Bond.

(ii) The City shall forthwith, after the execution and delivery of the Series 2020 Bond and thereafter from time to time, cause this Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by this Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection.

(iii) Except to the extent it is exempt therefrom, the City shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph (ii) above, and



all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2020 Bond and the Collateral Documents and the documents described in subparagraph (ii) above.

(e) Financial Information. The City agrees that for each Fiscal Year it shall furnish to the DNRC and the DEQ, promptly when available:

(A) the preliminary budget for the District, with items for the 2020 Project shown separately; and

(B) when adopted, the final budget for the District, with items for the 2020 Project shown separately.

The City will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the District, the Tax Increment received, and the segregation and application of the Tax Increment in accordance with this Resolution, in such reasonable detail as may be determined by the City in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same Fiscal Year as that utilized by the City. The City shall, within 365 days after the close of each Fiscal Year, cause to be prepared and supply to the DNRC a financial report with respect to the District for such Fiscal Year. The report shall be prepared at the direction of the Fiscal Services Director in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the Fiscal Services Director to be included therein, shall include the following:

(i) A statement or statements showing in detail of the income and expenditures of the District for the Fiscal Year;

(ii) A balance sheet as of the end of the Fiscal Year;

(iii) The amount on hand in the Tax Increment Accounts at the end of the Fiscal Year;

(iv) the actual taxable value, the base taxable value and the incremental taxable value (each as defined in the Act) of the District; and

(v) A determination that the report shows full compliance by the City with the provisions of this Resolution during the Fiscal Year covered thereby, including maintenance of the required balance in the Reserve Account.

The City shall also have prepared and supplied to the DNRC and the DEQ, within 365 days of the close of each Fiscal Year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial

statements and records of the District. The audit report shall include an analysis of the City's compliance with the provisions of this Resolution.

(f) Project Accounts. The City shall maintain 2020 Project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets, as required by Section 602(b)(9) of the Clean Water Act.

(g) Records. After reasonable notice from the EPA or the DNRC, the City shall make available to the EPA or the DNRC such records as the EPA or the DNRC reasonably requires to review and determine compliance with Title VI of the Clean Water Act, as provided in Section 606(e) of the Clean Water Act.

(h) Compliance with Clean Water Act. The City has complied and shall comply with all conditions and requirements of the Clean Water Act pertaining to the 2020 Loan and the 2020 Project.

(i) Program Covenant. The City agrees that neither it nor any "related person" to the City (within the meaning of Section 147(a)(2) of the Code) shall, whether pursuant to a formal or informal arrangement, acquire State Bonds in an amount related to the amount of the Series 2020 Bond.

9.03. Tax-Exempt Status of State Bonds. During the time that the Series 2020 Bond remains Outstanding, the City covenants and agrees with the DNRC as follows:

(a) The City will not use or permit to be used any of the proceeds of the Series 2020 Bond or any other funds of the City, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(b) The City agrees that it will not enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the 2020 Loan or the portion of the 2020 Loan derived directly or indirectly from proceeds of the State Bonds.

(c) The City shall not use or permit the use of the 2020 Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this paragraph (c), use as a member of the general public shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

(d) Any portion of a 2020 Project financed with proceeds of a 2020 Loan was acquired by and is now and shall, during the term of the Series 2020 Bond in respect of such 2020 Project, be owned by the City and not by any other Person. Notwithstanding the previous sentence, the City may transfer such 2020 Project or a portion thereof to

another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted hereunder and if such organization agrees with the DNRC to comply with Sections 9.02(g), 9.02(h) and 9.04 hereof and if the DNRC receives an opinion of Bond Counsel to the effect that such transfer will not violate the State Act or the Clean Water Act or adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation. In addition, except as otherwise provided in this Resolution or in any Collateral Documents, the City may sell or otherwise dispose of any portion of a 2020 Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the City or beneficial to the general public or necessary to carry out the purposes of the Clean Water Act.

(e) The City shall comply with the arbitrage rebate requirements of Section 148 of the Code (the “Arbitrage Rebate Instructions”), if any, delivered to it by the DNRC at the time of delivery to the DNRC of such Series 2020 Bond. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds (except State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

(f) The City agrees that during the term of the 2020 Loan it will not contract with or permit any Private Person to manage the 2020 Project or any portion thereof except according to a written management contract and upon delivery to the DNRC of an opinion of Bond Counsel to the effect that the execution and delivery of such management contract will not violate the State Act or the Clean Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation.

(g) The City shall not lease all or any portion of a 2020 Project to any Person other than a nonexempt person which agrees in writing with the City and the State not to cause any default to occur under this Resolution, provided the City may lease all or any portion of a 2020 Project to a nonexempt person pursuant to a lease which in the opinion of Bond Counsel delivered to the DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(h) The City shall not change the use or nature of all or any portion of a 2020 Project (i) if such change will violate the Clean Water Act, or (ii) so long as the State Bonds are outstanding unless, in the opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

9.04. Indemnification of DNRC and DEQ. The City shall, to the extent permitted by law, indemnify and save harmless the DNRC and the DEQ and their officers, employees and agents (each an “Indemnified Party” or, collectively, the “Indemnified Parties”) against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of the acts or omissions of the City or its employees,

officers, agents, contractors, subcontractors, or consultants in connection with or with regard or in any way relating to the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the 2020 Project. The City shall, to the extent permitted by law, also indemnify and save harmless the Indemnified Parties against and from all costs, reasonable attorneys' fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of such claim or demand, the City shall, upon notice from an Indemnified Party, defend such proceeding on behalf of the Indemnified Party. Notwithstanding the foregoing, the City shall not be obligated to indemnify an Indemnified Party or any of its officers, employees or agents or hold any of them harmless against or from or in respect of any claim, damage, demand, expense, liability or loss arising from the intentional or willful misconduct or gross negligence of the Indemnified Parties.

9.05. Continuing Disclosure. The City understands and acknowledges that the DNRC acquired the Series 2020 Bond under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The City covenants and agrees that, so long as the Series 2020 Bond is Outstanding, upon written request of the DNRC from time to time, the City will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the City prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under State law, as in effect from time to time (such financial statements to relate to a Fiscal Year or any period therein for which they are customarily prepared by the City, and, if for a Fiscal Year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The City will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the Fiscal Services Director to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

#### Section 10. Other Covenants of the City.

10.01. Punctual Payment. The City will duly and punctually pay or cause to be paid the principal of, premium, if any, and interest on the Bonds in accordance with the terms of this Resolution and any applicable Supplemental Resolution and of the Bonds, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Resolution and all Supplemental Resolutions and of the Bonds. Nothing herein contained shall prevent the City from making advances of its own moneys however derived to any of the uses or purposes referred to herein, nor shall be deemed or constitute a pledge or appropriation of funds or assets of the City other than those expressly pledged or appropriated hereby. The City further covenants that it will promptly deposit or cause to be deposited all Tax Increment it receives into the Tax Increment Debt Service Account, as set forth in Section 8.02.

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

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

10.04. Books and Accounts; Financial Statements. The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the Tax Increment and the Tax Increment Debt Service Account and the Tax Increment Development Account. Such books of record and accounts shall be at all times during business hours subject to the inspection of the Owners of not less than ten percent (10%) of the principal amount of Outstanding Bonds, or their representatives authorized in writing.

10.05. Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Resolution, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Resolution.

10.06. Amendment of Ordinance. Except to authorize additional Projects, the City will not amend or modify the Ordinance or reduce the size of the District if an effect thereof will be to materially and adversely affect the security of the Outstanding Bonds.

10.07. Adjustment of Base Taxable Value. The City shall not adjust the “base taxable value” of the District pursuant to Section 7-15-4287 of the Act so long as any Bonds are Outstanding.

10.08. Pledge of Replacement Revenues. In the event the Constitution or laws of the State are amended to abolish or substantially reduce or eliminate real or personal property taxation and State law then or thereafter provides to the City an alternate or supplemental source or sources of revenue specifically to replace or supplement reduced or eliminated Tax Increment, then the City pledges, and covenants to appropriate annually, subject to the limitations of then applicable law, to the Bond Account from such alternate or supplemental revenues an amount that will, with money on hand in the Bond Account or available and to be transferred to the Bond Account during such Fiscal Year, be sufficient to pay the principal of, premium, if any, and interest on the Outstanding Bonds payable in that Fiscal Year.

10.09. Owners’ Rights. No Owner of any Bond issued and secured under the provisions of this Resolution shall have the right to institute any proceeding, judicial or otherwise, for the

enforcement of the covenants herein contained, without the written concurrence of the Owners of not less than 25% in aggregate principal amount of all Outstanding Bonds; but the Owners of such aggregate principal amount of Outstanding Bonds may, either at law or in equity, by suit, action or other proceedings, protect and enforce the rights of all Owners of Bonds and compel the performance of any and all of the covenants required herein to be performed by the City and its officers and employees. The Owners of a majority in aggregate principal amount of all Outstanding Bonds shall have the right to direct the time, method and place of conducting any proceedings for any remedy available to the Owners or the exercise of any power conferred on them, and the right to waive a default in the performance of any such covenant, and its consequences, except a default in the payment of the principal of or interest on any Bond when due. Nothing herein shall impair the absolute and unconditional right of the Owner of each Bond to receive payment of the principal of and interest on any Bond as such principal and interest respectively become due, and to institute suit for the enforcement of any such payment. In the event of default in any such payment, any court having jurisdiction of the action may appoint a receiver to administer the Tax Increment Accounts and to collect and segregate and apply the Tax Increment and any other revenues pledged thereto as provided by this Resolution or any Supplemental Resolution and the Act.

#### Section 11. Tax Covenants and Certifications With Respect to Series 2020 Bond.

11.01. Use of 2020 Project. The 2020 Project is and will be owned and operated by the City. No user of the 2020 Project is granted any concession, license or special arrangement with respect to the 2020 Project. The City shall not enter into any lease, use or other agreement or arrangement with any non-governmental Person relating to the use of the 2020 Project or security for the payment of the Series 2020 Bond which might cause the Series 2020 Bond to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 the Code. No “impermissible agreement” as defined in Section 1.141-4(e)(4)(ii) of the Regulations, has been or will be entered into by the Commission in respect of the Tax Increment or otherwise to secure the Series 2020 Bond.

11.02. General Covenant. The City covenants and agrees with the Owners from time to time of the Series 2020 Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2020 Bond to become includable in gross income for federal income tax purposes under the Code and applicable Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2020 Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

11.03. Arbitrage Certification. The Mayor, City Manager, Fiscal Services Director and City Clerk, being the officers of the City charged with the responsibility for issuing the Series 2020 Bond pursuant to this Resolution, are authorized and directed to execute and deliver to the Original Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2020 Bond, it is reasonably expected that the proceeds of the Series 2020 Bond will not be used in a manner that would cause the Series 2020 Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

11.04. Arbitrage Rebate. The City acknowledges that the Series 2020 Bond is subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Regulations to preserve the exclusion of interest on the Series 2020 Bond from gross income for federal income tax purposes, unless the Series 2020 Bond qualifies for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Series 2020 Bond (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Fiscal Services Director is hereby authorized and directed to execute a Rebate Certificate with respect to the Series 2020 Bond, substantially in the form to be prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

11.05. Information Reporting. The City shall file with the Secretary of the Treasury, not later than May 15, 2020, a statement concerning the Series 2020 Bond containing the information required by Section 149(e) of the Code.

## Section 12. Supplemental Resolutions.

12.01. General. The City reserves the right to adopt Supplemental Resolutions to this Resolution from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or of making such provisions with regard to matters or questions arising hereunder as the City may deem necessary or desirable and not inconsistent with this Resolution, and which shall not adversely affect the interests of the Owners of Bonds issued hereunder, or for the purpose of adding to the covenants and agreements herein contained, or to the Tax Increment herein pledged, other covenants and agreements thereafter to be observed and additional revenues or income thereafter appropriated to the Tax Increment Accounts, or for the purpose of surrendering any right or power herein reserved to or conferred upon the City, or for the purpose of authorizing the creation and issuance of a series of Additional Bonds, as provided in and subject to the conditions and requirements of Section 7. Any such Supplemental Resolution may be adopted without the consent of the Owner of any of the Bonds issued hereunder.

12.02. Consent of Owners. With the consent of the Owners of a majority in principal amount of Outstanding Bonds affected thereby as provided in Section 12.04, the City may from time to time and at any time adopt a Supplemental Resolution for the purpose of amending this Resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof or of any Supplemental Resolution, except that no Supplemental Resolution shall be adopted at any time without the consent of the Owners of all Outstanding Bonds affected thereby, if it would extend the time of payment of interest thereon, would reduce the amount of the principal thereof or redemption premium thereon, would give to any Bond or Bonds any privilege over any other Bond or Bonds (except for the privilege accorded Bonds over Subordinate Obligations), would reduce the sources of Tax Increment or other revenues or income appropriated to the Tax Increment Accounts, or would reduce the percentage in principal amount of such Bonds required to authorize or consent to any such Supplemental Resolution.

12.03. Notice. Notice of a Supplemental Resolution to be adopted pursuant to Section 12.02 shall be mailed by first-class mail, postage prepaid, to the Owners of all Outstanding Bonds at their addresses appearing in the Bond Register and shall become effective only upon the filing of written consents with the City Clerk, signed by the Owners of the requisite aggregate principal amount of Outstanding Bonds affected thereby. Any written consent to the Supplemental Resolution may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by Owners thereof in person or by agent duly appointed in writing, and shall become effective when delivered to the City Clerk. Any consent by the Owner of any Bond shall bind that Owner and every future Owner of the same Bond with respect to any Supplemental Resolution adopted by the City pursuant to such consent; provided that any Owner may revoke his consent with reference to any Bond by written notice received by the City Clerk before the Supplemental Resolution has become effective. In the event that unrevoked consents of the Owners of the requisite aggregate principal amount of Bonds have not been received by the City Clerk within one year after the publication of notice of the Supplemental Resolution, the Supplemental Resolution and all consents theretofore received shall be of no further force and effect.

12.04. Manner of Consent. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the City if made in the manner provided in this Section 12.04. The fact and date of the execution by any Person of any such consent may be proved by the affidavit of a witness of such execution or by the certification of any notary public or other officer authorized by law to take acknowledgment of deeds, certifying that the Person signing it acknowledged to him the execution thereof. The fact and date of execution of any such consent may also be proved in any other manner which the City may deem sufficient; but the City may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable. The ownership of any Bonds shall be proved by the Bond Register.

### Section 13. Defeasance or Discharge.

13.01. General. When the liability of the City on all Bonds issued under and secured by this Resolution and all interest thereon has been discharged as provided in this Section 10, all pledges, covenants and other rights granted by this Resolution to the Owners of such Bonds shall cease.

13.02. Maturity. The City may discharge its liability with reference to all Bonds and interest thereon which are due on any date by depositing with the Registrar on or before the date a sum sufficient for the payment thereof in full; or if any Bond or interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

13.03. Redemption. The City may also discharge its liability with reference to any Bonds which are called for redemption on any date in accordance with their terms, by depositing with the Registrar on or before that date an amount equal to the principal, premium, if any, and interest which are then due thereon; provided that notice of such redemption has been duly given or irrevocably provided for as provided in this Resolution.



13.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to any Bond subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or Government Obligations which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal, premium, if any, and interest to become due on such Bond at its Stated Maturity or, if such Bond is prepayable and notice of redemption thereof has been given or irrevocably provided for as provided in this Resolution, to such earlier Redemption Date.

Section 14. Certification of Proceedings. The officers of the City are hereby authorized and directed to prepare and furnish to the Original Purchaser and to Dorsey & Whitney LLP, Bond Counsel, certified copies of all proceedings and records of the City, and such other affidavits, certificates and information as may be required to show the facts relating to the legality and marketability of the Series 2020 Bond as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the City as to the facts recited therein.

Section 15. Repeals and Effective Date.

15.01. Repeal. All provisions of other resolutions and other actions and proceedings of the City and this Commission that are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

15.02. Effective Date. This Resolution shall take effect immediately upon its passage and adoption by this Commission.

Passed and adopted by the City Commission of the City of Great Falls, Montana, on this 17th day of December, 2019.

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Bob Kelly, Mayor

Attest:

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Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT:

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Sara R. Sexe, City Attorney

APPENDIX A

DESCRIPTION OF 2020 PROJECT

The 2020 Project consists of design, engineering, construction and installation of a storm water management system within the District.

ESTIMATED BUDGET FOR 2020 PROJECT

Costs	Series 2020 Bond	City of Great Falls	Total
Loan Reserves		\$ 48,113	\$ 48,113
Land Acquisition		10,000	10,000
Preliminary Engineering	\$ 142,695	125,000	267,695
Construction	1,357,305	177,695	1,400,000
TOTAL	\$1,500,000	\$225,808	\$1,725,808

APPENDIX B

[FORM OF SERIES 2020 BOND]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF CASCADE

**CITY OF GREAT FALLS, MONTANA**

TAX INCREMENT INDUSTRIAL INFRASTRUCTURE REVENUE BOND  
(CENTRAL MONTANA AGRICULTURE AND TECHNOLOGY PARK  
TAX INCREMENT FINANCING DISTRICT) (DNRC WATER POLLUTION CONTROL  
STATE REVOLVING LOAN PROGRAM), SERIES 2020

No. R-1

\$1,500,000

FOR VALUE RECEIVED, THE CITY OF GREAT FALLS, MONTANA (the “City”), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the “DNRC”), or its registered assigns, solely from the Bond Account of its Tax Increment Debt Service Fund, the principal amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000), or such lesser amount as may be advanced hereunder, with interest at the rate of 2.00% per annum on the unpaid balance until paid. In addition, the City shall pay, solely from said source, an Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond, each at the rate of twenty-five hundredths of one percent (0.25%) per annum. Principal, interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1, commencing [\_\_\_\_], 20[\_\_\_]. Each installment shall reflect interest and surcharges at an aggregate rate of two and one-half of one percent (2.50%) per annum and shall be in the amount set forth opposite its due date in Schedule B hereto under “Total Loan Payment.” The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of Loan amounts to the City, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under “Advances” and the total amount advanced, including such disbursement, under “Total Amount Advanced.” The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Resolution authorizing this Bond. Past-due payments of principal, interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond Register, in lawful money of the United States of America.

This Bond is one of an issue of Tax Increment Industrial Infrastructure Revenue Bonds of the City authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$1,500,000 (the “Series 2020 Bond”). The Series 2020 Bond is issued to finance costs of construction of certain industrial infrastructure within the Central Montana Agriculture and Technology Park Tax Increment Financing District (the “District”), thereby assisting activities in the public interest and for the public welfare of the City. The Series 2020 Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana, particularly Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as it existed on December 31, 2012 (the “Act”), and ordinances and resolutions duly adopted by the governing body of the City, including Resolution No. 10318, adopted by the City Commission of the City on December 17, 2019 (the “Resolution”). Terms used with initial capital letters but not defined herein have the meanings given them in the Resolution. The Series 2020 Bond is issuable only as a single, fully registered bond.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2020 Bond has been issued, the Tax Increment pledged and appropriated for the payment and security thereof, the conditions upon which Additional Bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2020 Bond (collectively, the “Bonds”) or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the City, and the rights of the owners of the Series 2020 Bond.

The City may prepay the principal of the Series 2020 Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no principal, interest, Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2020 Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

**The Bonds are not general obligations of the City and the City’s general credit and taxing powers are not pledged to the payment of the Bonds or the interest thereon. The Bonds are payable solely from the Tax Increment pledged for the payment thereof and shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitations.**

The City may deem and treat the person in whose name this Series 2020 Bond is registered as the absolute owner hereof, whether this Series 2020 Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the City shall not be affected by any notice to the contrary. The Series 2020 Bond may be transferred as hereinafter provided.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of Montana and ordinances and resolutions of the City to be done, to exist, to happen and to be performed in order to make this Series 2020 Bond a valid and binding special, limited obligation of the City in accordance with its terms have been done, do exist, have happened and have been performed as so required; that this Series 2020 Bond has been issued by the City in connection with an industrial infrastructure project (as defined in the Act);

that the City, in and by the Resolution, has validly made and entered into covenants and agreements with and for the benefit of the Owners from time to time of all Bonds issued thereunder, including covenants that it will pledge, appropriate and credit the Tax Increment derived from the District to the Tax Increment Debt Service Fund of the City to the extent and as provided in the Resolution; that Additional Bonds may be issued and made payable from the Tax Increment Debt Service Fund on a parity with the Series 2020 Bond upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Tax Increment unless the lien thereof shall be expressly made subordinate to the lien of the Series 2020 Bond on the Tax Increment; that all provisions for the security of the Owners of the Bonds as set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that the issuance of the Series 2020 Bond does not cause the obligations of the City to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Great Falls, Montana, by its governing body, has caused this Bond to be executed by the signatures of its Mayor, City Manager, Fiscal Services Director, and City Clerk, and has caused the official seal of the City to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_ day of \_\_\_\_\_, 2020.

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Mayor

(SEAL)

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City Manager

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Fiscal Services Director

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City Clerk

**REGISTRATION AND TRANSFER**

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the Fiscal Services Director of the City, as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The City shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond to the extent of the sum or sums so paid.

**REGISTER**

The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of the City of Great Falls, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

Date of Registration	Name and Address of Registered Holder	Signature of Fiscal Services Director
_____, 2020	Department of Natural Resources and Conservation 1539 Eleventh Avenue Helena, MT 59620	

**THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER**

The Fiscal Services Director of the City of Great Falls, Montana, acting as Bond Registrar, has transferred, on the books of the City, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

Date of Transfer	Name of New Registered Holder	Signature of Bond Registrar
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM OF ASSIGNMENT

For value received, this Bond is hereby transferred and assigned by the undersigned holder, without recourse, to \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

By:

\_\_\_\_\_

(Authorized Signature)

For:

\_\_\_\_\_

(Holder)



SCHEDULE A

SCHEDULE OF AMOUNTS ADVANCED

Date	Advances	Total Amount Advanced	Notation Made By

SCHEDULE B

<u>Date</u>	<u>Administrative Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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APPENDIX C

COLLATERAL DOCUMENTS

[None]

# APPENDIX D

## DEBT SERVICE SCHEDULE<sup>1</sup>

Preliminary Schedule

**STATE OF MONTANA  
GENERAL OBLIGATION BONDS  
WASTEWATER  
(REVOLVING FUND PROGRAM)**

BORROWER: Great Falls - Storm water TIF

PROJECT NAME:	FINAL LOAN PAYMENT:	1/1/2040
LOAN COMMITMENT: \$1,500,000	# OF LOAN PAYMENTS:	40
LOAN AMOUNT: 1,500,000	PROJECT NUMBER:	
INTEREST RATE: 2.50%	DATE OF FUNDING:	2/5/2020

PAYMENT DUE	LOAN LOSS RESERVE	ADM EXPENSE SURCHARGE	INTEREST PAYMENT	PRINCIPAL PAYMENT	O/S LOAN BALANCE	TOTAL AMOUNT OF PAYMENT	
1 7/1/2020	1,520.83	1,520.83	12,166.67	29,000.00	1,471,000.00	\$44,208.33	
2 1/1/2021	1,838.75	1,838.75	14,710.00	30,000.00	1,441,000.00	\$48,387.50	\$ 92,595.83
3 7/1/2021	1,801.25	1,801.25	14,410.00	30,000.00	1,411,000.00	\$48,012.50	
4 1/1/2022	1,763.75	1,763.75	14,110.00	30,000.00	1,381,000.00	\$47,637.50	\$ 95,650.00
5 7/1/2022	1,726.25	1,726.25	13,810.00	31,000.00	1,350,000.00	\$48,262.50	
6 1/1/2023	1,687.50	1,687.50	13,500.00	31,000.00	1,319,000.00	\$47,875.00	\$ 96,137.50
7 7/1/2023	1,648.75	1,648.75	13,190.00	31,000.00	1,288,000.00	\$47,487.50	
8 1/1/2024	1,610.00	1,610.00	12,880.00	32,000.00	1,256,000.00	\$48,100.00	\$ 95,587.50
9 7/1/2024	1,570.00	1,570.00	12,560.00	32,000.00	1,224,000.00	\$47,700.00	
10 1/1/2025	1,530.00	1,530.00	12,240.00	33,000.00	1,191,000.00	\$48,300.00	\$ 96,000.00
11 7/1/2025	1,488.75	1,488.75	11,910.00	33,000.00	1,158,000.00	\$47,887.50	
12 1/1/2026	1,447.50	1,447.50	11,580.00	33,000.00	1,125,000.00	\$47,475.00	\$ 95,362.50
13 7/1/2026	1,406.25	1,406.25	11,250.00	34,000.00	1,091,000.00	\$48,062.50	
14 1/1/2027	1,363.75	1,363.75	10,910.00	34,000.00	1,057,000.00	\$47,637.50	\$ 95,700.00
15 7/1/2027	1,321.25	1,321.25	10,570.00	35,000.00	1,022,000.00	\$48,212.50	
16 1/1/2028	1,277.50	1,277.50	10,220.00	35,000.00	987,000.00	\$47,775.00	\$ 95,987.50
17 7/1/2028	1,233.75	1,233.75	9,870.00	36,000.00	951,000.00	\$48,337.50	
18 1/1/2029	1,188.75	1,188.75	9,510.00	36,000.00	915,000.00	\$47,887.50	\$ 96,225.00
19 7/1/2029	1,143.75	1,143.75	9,150.00	36,000.00	879,000.00	\$47,437.50	
20 1/1/2030	1,098.75	1,098.75	8,790.00	37,000.00	842,000.00	\$47,987.50	\$ 95,425.00
21 7/1/2030	1,052.50	1,052.50	8,420.00	37,000.00	805,000.00	\$47,525.00	
22 1/1/2031	1,006.25	1,006.25	8,050.00	38,000.00	767,000.00	\$48,062.50	\$ 95,587.50
23 7/1/2031	958.75	958.75	7,670.00	38,000.00	729,000.00	\$47,587.50	
24 1/1/2032	911.25	911.25	7,290.00	39,000.00	690,000.00	\$48,112.50	\$ 95,700.00
25 7/1/2032	862.50	862.50	6,900.00	39,000.00	651,000.00	\$47,625.00	
26 1/1/2033	813.75	813.75	6,510.00	40,000.00	611,000.00	\$48,137.50	\$ 95,762.50
27 7/1/2033	763.75	763.75	6,110.00	40,000.00	571,000.00	\$47,637.50	
28 1/1/2034	713.75	713.75	5,710.00	41,000.00	530,000.00	\$48,137.50	\$ 95,775.00
29 7/1/2034	662.50	662.50	5,300.00	41,000.00	489,000.00	\$47,625.00	
30 1/1/2035	611.25	611.25	4,890.00	42,000.00	447,000.00	\$48,112.50	\$ 95,737.50
31 7/1/2035	558.75	558.75	4,470.00	42,000.00	405,000.00	\$47,587.50	
32 1/1/2036	506.25	506.25	4,050.00	43,000.00	362,000.00	\$48,062.50	\$ 95,650.00
33 7/1/2036	452.50	452.50	3,620.00	43,000.00	319,000.00	\$47,525.00	
34 1/1/2037	398.75	398.75	3,190.00	44,000.00	275,000.00	\$47,987.50	\$ 95,512.50
35 7/1/2037	343.75	343.75	2,750.00	44,000.00	231,000.00	\$47,437.50	
36 1/1/2038	288.75	288.75	2,310.00	45,000.00	186,000.00	\$47,887.50	\$ 95,325.00
37 7/1/2038	232.50	232.50	1,860.00	46,000.00	140,000.00	\$48,325.00	
38 1/1/2039	175.00	175.00	1,400.00	46,000.00	94,000.00	\$47,750.00	\$ 96,075.00
39 7/1/2039	117.50	117.50	940.00	47,000.00	47,000.00	\$48,175.00	
40 1/1/2040	58.75	58.75	470.00	47,000.00	0.00	\$47,587.50	\$ 95,762.50
	41,155.83	41,155.83	329,246.67	1,500,000.00		1,911,558.33	1,911,558.33
						1,911,558.33	

<sup>1</sup> Proposed Debt Service Schedule, which shall be revised if the Closing does not occur on February 5, 2020.



**Item:** Resolution 10323, “A Resolution Declaring that the Great Falls Planning Advisory Board and Zoning Commission Shall Consist of Seven (7) Members.”

**From:** Legal Department

**Initiated By:** Planning and Community Development

**Presented By:** Joseph Cik, Assistant City Attorney

**Action Requested:** Adopt Resolution 10323.

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 10323.”

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

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**Staff Recommendation:**

The City Commission adopt Resolution 10323.

**Background:**

On multiple occasions over the last several years the Great Falls Planning Advisory Board and Zoning Commission (the Board) has had problems convening a quorum of its current membership. Additionally, one member has recently resigned from the Board, and an additional member will term off the Board at the end of 2019.

To address these issues, and to provide flexibility when it comes to Board membership, the City Commission adopted Ordinance 3205 on October 1, 2019. Ordinance 3205 amended the Official Code of the City of Great Falls (OCCGF) § 17.12.1.040 pertaining to the Board’s membership. Previously, OCCGF § 17.12.1.040 provided that the Board would consist of nine members. With the adoption of Ordinance 3205, the Board now may consist of between seven and nine members. The number of members cannot be lower than seven to be consistent with State law. The Resolution under consideration would set the number of Board members at seven.

At its regularly scheduled meeting December 10, 2019 the Board voted to recommend that the City Commission adopt the resolution under consideration. If adopted, Resolution 10323 will become effective January 1, 2020.

**Alternatives:**

The Commission could deny Resolution 10323.

**Concurrences:**

City Manager's Office

Planning and Community Development

City Clerk's Office

**Attachments/Exhibits:**

Resolution 10323

**RESOLUTION NO. 10323**

**A RESOLUTION DECLARING THAT THE GREAT FALLS  
PLANNING ADVISORY BOARD AND ZONING  
COMMISSION SHALL CONSIST OF SEVEN (7) MEMBERS.**

\*\*\*\*\*

**WHEREAS**, the Great Falls City Commission adopted Ordinance 3205 October 1, 2019 amending portions of the Great Falls Land Development Code; and

**WHEREAS**, Ordinance 3205 amended the Title 17, Chapter 12, of the Official Code of the City of Great Falls pertaining to Administrative and Enforcement Bodies; and

**WHEREAS**, Ordinance 3205 established that the Great Falls Planning Advisory Board and Zoning Commission shall consist of between seven (7) and (9) members; and

**WHEREAS**, the City Commission wishes to officially establish the number of members of the subject Board and cure problems establishing a quorum of the subject Board; and

**WHEREAS**, the Great Falls Planning Advisory Board and Zoning Commission voted to recommend that the City Commission adopt Resolution 10323 on December 10, 2019.

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

- 1) The Great Falls Planning Advisory Board and Zoning Commission shall consist of seven (7) members; and
- 2) This Resolution is effective January 1, 2020.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, December 17, 2019.

\_\_\_\_\_  
Bob Kelly, Mayor

ATTEST:

(CITY SEAL)

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

APPROVED FOR LEGAL CONTENT:

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Joseph Cik, Assistant City Attorney





**Item:** Resolution 10326, related to the Great Falls Development Authority Application to the Big Sky Economic Development Trust Fund Program, Montana Department of Commerce, for a planning grant, to assist planning efforts by the Big Sky Country National Heritage Area, Inc.

**From:** Great Falls Development Authority/City-County Historic Preservation Advisory Commission (HPAC)

**Initiated By:** Great Falls Development Authority/City-County Historic Preservation Advisory Commission (HPAC)

**Presented By:** Commissioner Bronson

**Action Requested:** Adopt Resolution 10326.

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (Adopt or deny) Resolution 10326.”

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

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**Background:** In January 2015, the City-County Historic Preservation Advisory Commission helped sponsor a two-day program promoting the concept of heritage tourism and economic development in Great Falls. Based on a presentation at that event by a representative of the Yuma Crossing National Heritage Area, a group of local citizens embarked on a plan to seek a National Heritage Area (NHA) designation from Congress, to promote heritage-related tourism and economic development in north-central Montana. The group formed a non-profit corporation, now known as Big Sky Country National Heritage Area, Inc., (BSCNHA) to pursue these goals. BSCNHA is a 501(c)(3) tax-exempt organization.

Over the past four years, BSCNHA has raised funds from private sources to finance a feasibility study, to ascertain the appropriateness of an NHA designation for the region consisting of Cascade County and a small portion of Chouteau County bounded by the Missouri River, through Fort Benton to Loma. This study will be reviewed by the National Park Service, and the agency’s recommendation will be passed on to Congress. Major funding for this study was obtained from Northwestern Energy and British Petroleum/ARCO. The study will be completed in early January 2020.

BSCNHA representatives have been engaging with the Park Service and with the Montana Congressional delegation in advance of what is expected to be a favorable recommendation from the Park Service. Although Congressional action is likely another 2 years in the making, BSCNHA has been advised to

consider developing the next step in the process, which is essentially a business plan for management of projects in the designated area. Attached as Exhibit A to this Agenda Report is a summary of what is entailed in such a plan; this summary was prepared by national consultants working with BSCNHA on the current feasibility study.

Very recently, BSCNHA was advised by the Great Falls Development Authority that the corporation may be eligible for a Big Sky Trust Fund grant, from the Montana Department of Commerce, for partial funding of the management plan. GFDA has offered to prepare the application and administer the grant, if the application is accepted. The process being pursued here is similar to that involved with past applications to the Department of Commerce, including the First Call Resolution [FCR] grant application approved by the City Commission in 2016. Department of Commerce policy requires a local government to approve the grant request, even though the City will not be involved in administration. No City resources are required for the grant.

Past Commissions have been advised of the nature of this project and its progress. Mayor Kelly has been asked to speak at BSCNHA-sponsored events about the importance of a designation to heritage tourism and economic development in the region.

**Fiscal Impact:** None.

**Alternatives:** The City Commission could choose to deny Resolution 10326.

**Attachments/Exhibits:**

Exhibit A to Agenda Report – Narrative provided by BSCNHA  
Resolution 10326

## *EXHIBIT A:*

### **National Heritage Area Management Plan**

National Heritage Area legislation typically requires the development of a “management plan” within three years of designation. National Heritage Area management plans include long-range policies, goals, strategies, and actions concerning historic preservation, cultural conservation, natural and recreational resource enhancement, education and interpretation, community revitalization, heritage tourism, and economic development; an implementation plan with short, mid and long-range actions and performance goals; an interpretive plan; and a business plan for the heritage area coordinating entity.

Business plans are included as a stand-alone chapter of the overall management plan, and identify an organization's purpose, intended audience, services and/or products; how, where and to whom an organization will provide services and/or products; and why an organization will be able to attract funding and from whom.

### **Preparing to Plan**

Following the steps suggested by the National Park Service for developing a management plan for National Heritage Areas, Nancy Morgan (Point Heritage Development Consulting, LLC) and August Carlino will assist the Big Sky Country National Heritage Area, Inc. and its regional collaborators in developing a plan of action that will delineate all the needs to be completed for a National Heritage Area management plan. The proposed scope of work is as follows:

- **Develop a plan of action**—Review and work with NPS guidelines for management action planning, and apply those guidelines to delineate tasks necessary for Big Sky Country NHA and its partners to accomplish management planning.
- **Evaluate intersection of NHA Feasibility Study and other planning efforts**—Big Sky Country NHA is currently finalizing a National Heritage Area feasibility study. As part of the study process, additional plans and studies undertaken in the region were identified. Morgan and Carlino will evaluate these planning documents to see where they intersect with the feasibility study and what groundwork they lay for the management plan.
- **Advance organizational development and board governance**—Assist Big Sky Country NHA in restructuring in order to become a National Heritage Area Coordinating Entity.

RESOLUTION NO. 10326

**A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, RELATING TO THE GREAT FALLS DEVELOPMENT AUTHORITY APPLICATION TO THE BIG SKY ECONOMIC DEVELOPMENT TRUST FUND PROGRAM ADMINISTERED BY THE STATE OF MONTANA DEPARTMENT OF COMMERCE, FOR A PLANNING GRANT FOR BIG SKY COUNTRY NATIONAL HERITAGE AREA, INC.**

WHEREAS, the Great Falls Development Authority is committed to facilitating economic diversification in the City and the region; and

WHEREAS, the City Commission, in its stated Vision and Goals, is committed to managing growth to preserve our resources, environment, and sense of community; strengthening and diversifying the local economy to provide job opportunities; forming partnerships with other governments and organizations to make better use of public resources in providing services, and providing leisure and recreational opportunities which add to our quality of life; and

WHEREAS, Big Sky Country National Heritage Area, a Montana-based, non-profit corporation, has been working for the past four years to support designation of a National Heritage Area in the immediate region, which would promote historic preservation, cultural conservation, natural and recreational resource enhancement, education and interpretation, community revitalization, heritage tourism, and economic development; and

WHEREAS, the City Commission has determined that Big Sky Country National Heritage Area, Inc., has the potential to meet these goals, which are consistent with the City Commission's Vision and Goals; and

WHEREAS, the Montana Department of Commerce administers the Big Sky Economic Development Trust Fund Planning Grant program, which is a state-funded program to assist entities like Big Sky Country National Heritage Area, Inc., especially with the development of a management or business plan for its project; and

WHEREAS, the City Commission hereby authorizes and appoints the Great Falls Development Authority to administer, on behalf of the City of Great Falls in all aspects of the Planning Grant, and provide administrative support and other responsibility for the management and appropriate reporting to the Montana Department of Commerce.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Great Falls, Montana, that the City submit an application, on behalf of the Great Falls Development Authority, to assist Big Sky Country National Heritage Area, Inc., obtain a planning grant and manage all aspects of the grant.

PASSED AND ADOPTED by the City Commission of the City of Great Falls,

Montana, this 17<sup>th</sup> day of December, 2019.

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Bob Kelly, Mayor

ATTEST:

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City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

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Joseph Cik, Assistant City Attorney