



**Planning Advisory Board/Zoning Commission
Agenda
2 Park Drive South, Great Falls, MT
Commission Chambers, Civic Center
November 12, 2019
3:00 PM**

OPENING MEETING

1. Call to Order 3:00 P.M.
2. Roll Call - Board Introductions

**Peter Fontana- Chair
Michael Wedekind- Vice Chair
Dave Bertelsen
Kelly Buschmeyer
Anthony Houtz
Tory Mills
Charles Pankratz
Samantha Shinaberger**

3. Recognition of Staff
4. Approval of Meeting Minutes - September 24, 2019

BOARD ACTIONS REQUIRING PUBLIC HEARING

BOARD ACTIONS NOT REQUIRING PUBLIC HEARING

5. Central Montana Agriculture and Technology Park (CMATP) TIF Funding Application
6. Section 5303 Federal Transit Administration Funding Contracts with the Montana Department of Transportation and the Great Falls Transit District.

COMMUNICATIONS

7. Next Meeting Agenda - Tuesday, December 10, 2019
8. Board discussion regarding reducing membership from nine members to seven members
9. 2020 Election of Officers

PUBLIC COMMENT

ADJOURNMENT

**MINUTES OF THE MEETING
OF THE
GREAT FALLS PLANNING ADVISORY BOARD/ZONING COMMISSION
September 24, 2019**

CALL TO ORDER

The regular meeting of the Great Falls Planning Advisory Board/Zoning Commission was called to order by Chair Pete Fontana at 3:28 p.m. in the Commission Chambers of the Civic Center.

ROLL CALL & ATTENDANCE

Planning Board Members present:

Pete Fontana, Chair
Michael Wedekind, Vice Chair
Tory Mills
Charles Pankratz
Samantha Shinaberger

Planning Board Members absent:

Dave Bertelsen
Kelly Buschmeyer
Anthony Houtz
Patrick VanWorth

Planning Staff Members present:

Craig Raymond, Director P&CD
Tom Micuda, Deputy Director P&CD
Erin Borland, Planner III
Lonnie Hill, Planner I
Alaina Mattimiro, Planner I

Other Staff present:

Joseph Cik, Assistant City Attorney
Darcy Dea, Deputy City Clerk
Jamie Nygard, Sr. Administrative Assistant

Mr. Raymond affirmed a quorum of the Board was present, and introduced the new Sr. Administrative Assistant, for Planning and Community Development, Jamie Nygard.

MINUTES

Chair Pete Fontana asked if there were any comments or corrections to the minutes of the meeting held on July 9, 2019. Seeing none, Mr. Wedekind moved to approve the minutes. Ms. Shinaberger seconded, and all being in favor, the minutes were approved.

BOARD ACTIONS REQUIRING PUBLIC HEARING

ANNEXATION OF FINLAY’S SUPPLEMENTAL TO PROSPECT PARK ADDITION LOTS 4-6, BLOCK 10 AND THE ADJOINING RIGHT OF WAY OF 15TH STREET SOUTH AND 22ND ALLEY SOUTH; ESTABLISHING THE CITY ZONING CLASSIFICATION OF R-3 SINGLE FAMILY HIGH DENSITY UPON THE DESCRIBED PROPERTIES; AND AN AMENDED PLAT TO AGGREGATE SIX LOTS

Erin Borland, Planner III, explained the request for the annexation by first giving a background of the property. She explained that it was a unique property as it has six lots with three lots being in the city limits and three lots outside of the city limits. The home on the property is hooked up to City water, but not hooked up to City sewer. It does have an existing septic tank. Ms. Borland explained that per code, if you annex a property, you also need to annex the right of way. She also explained that when an applicant wishes to aggregate more than five lots, the aggregation request must be heard by the local government body. The owner would like to aggregate all six lots together. The three lots that are in the city limits are already zoned R-3, Single-family High Density, so the three lots to be annexed into the city would also be zoned R-3. Due to the lack of a sewer main in the area, the applicant proposes to keep the existing septic system until it fails. She stated that the adjoining right-of-way of 21st Avenue South, 15th Street South and 22nd Alley South are unimproved City streets and alleys. Ms. Borland did state that there would be no negative impact to services for the area.

Mr. Wedekind did inquire as to why the lots are so small. Ms. Borland responded that this is an old county subdivision. The lots are 25’x125’. She stated as we get requests like this one, we are trying to bring these lots into conformance.

Mr. Wedekind did also inquire as to whether or not it has been made clear, as to what “failure” means in regards to the septic system. Ms. Borland did say that they have talked with the owners as well as the potential buyers and Public Works. Since it is a newer septic tank, it hopefully will last awhile. If the sewer main is installed out there, they could hook on at any time, but they are not required, until the septic fails. Mr. Wedekind wanted to know if when the City comes in and installs the main, if we can require them to hook up to it. It would be clearer to the owners. Ms. Borland said that they could clarify it in the draft agreement, with Public Works. Mr. Fontana stated that it is not unusual for us to have agreements like this. Mr. Micuda also stated that 6 months ago or so that we did allow the annexation up on Skyline Dr. to keep their septic systems, until failure, even though the sewer main was closer.

Mr. Fontana asked if the applicant was represented and wanted to speak on their behalf. The applicant was present but chose not to speak.

PUBLIC COMMENT

There were no proponents or opponents of the project.

BOARD DISCUSSION AND ACTION

MOTION I: That the Planning Advisory Board recommend the City Commission approve the annexation of the Subject Properties as legally described in the Staff report, and the accompanying Findings of Fact/Basis of Decision, subject to the Conditions of Approval being fulfilled by the applicants.

Made by: Mr. Pankratz
Second: Mr. Wedekind
VOTE: All in favor, the motion carried.

MOTION II: That the Zoning Commission recommend the City Commission adopt an ordinance to assign a zoning designation of R3 Single-family High Density upon the Subject Properties as legally described in the Staff Report, after annexation of same.

Made by: Ms. Shinaberger
Second: Mr. Mills
VOTE: All in favor, the motion carried.

MOTION III: That the Planning Advisory Board recommend the City Commission approve the amended plat aggregating the subject properties as legally described in the Staff Report, and the accompanying Findings of Fact/Basis of Decision, subject to the Conditions of Approval being fulfilled by the applicant.

Made by: Mr. Mills
Second: Ms. Shinaberger
VOTE: All in favor, the motion carried.

BOARD ACTIONS NOT REQUIRING PUBLIC HEARING

BUFFALO CROSSING TIF FUNDING APPLICATION

Mr. Micuda first reviewed that the applicant is Holman Grain and the location is 1 Bay Dr. The goals of this project are a new riverfront development to include mixed use and multi-story buildings as well as limited on-site parking and an off-site parking lot. In addition there is an existing building on the site, the barrel vault building, and one of the goals has been to renovate the building into a good activity site. Mr. Micuda also did give some history on the Plat. The preliminary subdivision plat, for six lots was approved in March of 2018. The final plat went through in July 2018. Mr. Micuda showed a proposed site plan and explained that the plat has already been approved, but what we are here for today is to make a recommendation to the City Commission that the project is in line with the TIF Plan for West Bank and in line with the City's comprehensive plan. The question for the Board and the City Commission is does the City -want to provide public funding support for the project, in addition to the private equity that is being put forward.

Mr. Micuda did include the whole TIF plan for review. He stated that the key plan objectives are to improve public infrastructure in the TIF district, improve pedestrian and vehicular infrastructure, support thoughtful, well-designed private development activity, utilize the river as a development amenity, and preserve historic and cultural resources. In all respects, the project complies with these goals.

The request that we received from Holman Grain is for reimbursement for two phases of work. The first one is for the demolition of off-site buildings and loading dock on Lot 1 and relocation of overhead utility lines. The second one is for sidewalk and boulevard landscaping on Bay Drive and the Rivers Edge Trail connector construction work. There will be engineering fees for both phases. For the first phase, the cost that they are requesting is \$242,000. Mr. Micuda did go over the plan for reimbursement. Upon proper documentation of completed work, the City would reimburse approximately \$242,000 after the reimbursement payment to West Bank Inc. and after the City's TIF account receives its fund payment in December. For the second phase, the applicant must obtain Certificate of Occupancy for Lot 1. Upon the completion of work, the City would reimburse approximately \$108,600, most likely after the City receives its mid-year TIF account payment in 2020. The total project investment upon full development is \$18.9 million.

Mr. Micuda explained that City staff and legal counsel from Dorsey & Whitney, LLP have met extensively over the past few months to review the TIF application and draft a Development Agreement. He stated that after thorough review and evaluation of the project and infrastructure improvements, City staff has determined that no persons will be displaced from their housing by the project or the infrastructure improvements. Also the project and the infrastructure improvements substantially satisfy the review criteria of the funding application process and meet the purpose and goals of State Law, and the District Plan. And finally, the Plan, as modified to include the project and the infrastructure improvements, conforms to the comprehensive plan (or parts thereof) for the City as a whole. He did hit on what he thought were the key points. All TIF funding requests are required to conform to the state law as well as the local requirements for how the City evaluates TIF's. The first point Mr. Micuda addressed was the Public Infrastructure Improvements. He stated that staff finds that the proposed improvements, including the overhead power lines, the installation sidewalks and landscaping within the right-of-way, and trail access improvement, are all eligible for TIF funding. Mr. Micuda said the second thing that was looked at was the Economic Stimulus. The property has long been an under-utilized area along the riverfront. By utilizing TIF funds to help defray costs, the project has a better opportunity to generate the most economic development benefit. Mr. Micuda said that the City also looked at Employment Generation. Currently, the properties at Buffalo Crossing generate no employment opportunities for the district. Once development occurs, each of the six lots will have retail/office uses that will create permanent and part-time jobs. Elimination of Blight was also a criterion. Buffalo Crossing includes the Holman Barrel Vault building that was required to be secured in order for the structure not to be considered a nuisance. The development of Buffalo Crossing will allow the barrel building to be adaptively re-used. Lastly, Impact Assessment was reviewed. This project will have a positive impact on existing businesses and residents because it will draw more people to the area, enhance the Bay Drive streetscape, and provide better access to the River's Edge Trail and leverage the Missouri River.

Mr. Fontana did ask if the TIF requests come un-redacted to the board. Mr. Micuda said that there was a discussion between the applicant and the City first, to see if they would even qualify. Mr. Fontana also asked what the available amount are funds are in the TIF. Mr. Raymond stated that there is about \$350,000.00. Every six months we get new increment deposits and it will be increasing. Mr. Fontana asked if there was an expiration date for the TIF as well, and Mr. Raymond said that there is, but it will be extended because of the likelihood of bonding. Mr. Fontana also asked about the crosswalk and what it is going to look like. Mr. Micuda addressed that we haven't discussed what will be done in the right-of-way on Bay Dr., but the pathway itself will be wider than normal and as the project moves forward and we see the activity, then the design of the crossing can be addressed for improvements. Mr. Pankratz asked about the repayment plan and if there is a limit as to how much someone can request. Micuda noted that the

applicant requested more than was available. Ms. Shinaberger did ask about traffic and how people will be able to access the property easily. Mr. Micuda said that they knew traffic was not going to be ideal, so as the project builds out, motorists are going to be in a situation where they are going to have to adjust their driving habits to access the property.

APPLICANT COMMENT

Lyle Meeks, Holman Grain, 6125 Upper Highwood Creek Rd, Highwood, MT, stated that the cost estimates for this project that he is requesting is over half for Northwestern Energy, to bury the overhead electrical transmission line.

MOTION: That the Planning Advisory Board recommend the City Commission approve the expenditure of \$350,000 of West Bank Urban Renewal Tax Increment Financing District funds to assist with public infrastructure improvements associated with development of the Buffalo Crossing subdivision.

Made by: Ms. Shinaberger
Second: Mr. Wedekind
VOTE: All in favor, the motion carried.

COMMUNICATIONS

Ms. Borland discussed how moving forward, we are looking at going paperless for the distribution of Board member packets. The email that came out this time, looked a little different as there was a link to click on that took all members to the packet. If you are interested in only receiving the electronic version of your Board packets, there will be an email that will come out from Ms. Borland and Ms. Nygard on instructions.

Next Meeting Agenda – Tuesday, October 8, 2019

Mr. Micuda noted that no cases were ready for the October 8 meeting. Mr. Fontana requested that the Board discuss reducing the number of Planning Board members to seven as a result of attendance problems. Mr. Raymond indicated that this item would be placed on a future agenda.

Petitions & Applications Received:

- None

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further business, Chair Pete Fontana adjourned the meeting at 4:32 p.m.

CHAIR

SECRETARY



Agenda #: _____
Commission Meeting Date: _____

**CITY OF GREAT FALLS
PLANNING ADVISORY BOARD / ZONING COMMISSION AGENDA REPORT**

Item: Central Montana Agriculture and Technology Park (CMATP) TIF Funding Application.

From: City of Great Falls Public Works Department

Presented By: Alaina Mattimiro, Planner I, Planning and Community Development

Action Requested: Recommendation to the City Commission to approve an application for Central Montana Agriculture and Technology Park (CMATP) Tax Increment Financing District funds for a City public storm drainage project.

Suggested Motion:

1. Board Member moves:

“I move that the Planning Advisory Board recommend the City Commission (approve/deny) the City of Great Falls Public Works Department request for Central Montana Agriculture and Technology Park Tax Increment Financing District funds to assist with public storm drainage improvements.”

2. Chairperson calls for a second, discussion, and calls for the vote.

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, and it 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.

The City of Great Falls Public Works Department is requesting \$1,100,000 in TIF funds, and will in turn pursue a State Revolving Fund loan against the TIF to fund the remaining \$1,650,000 for construction of the project.

Analysis:

TIF Application

The applicant, the City of Great Falls Public Works Department, has submitted an application requesting TIF funds to address the following improvements to the CMATP district:

- 1) Construction of Storm Drainage Improvements – The applicant is seeking TIF funds to construct a new storm drain system.

If this request is approved, the construction for the storm drain is anticipated to begin Winter 2019 and Spring 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 Planning Advisory Board and eventually 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 the need for infrastructure development, specifically storm water, a need which this project will satisfy.

- 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 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 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 substantial surface erosion existing within this area. 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, creating 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 will be 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 longstanding 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.

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.

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 is getting approximately \$315,000 in tax increment this year.

Staff Recommendation:

Staff recommends approval of the proposed TIF funding request based on the findings of the required criteria.

Alternatives:

The Planning Advisory Board/Zoning Commission could recommend denial of the TIF funding request to the City Commission, in which case alternative findings would need to be provided.

Attachments/Exhibits:

- TIF Application
- Map
- CMATP TIF Plan

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**

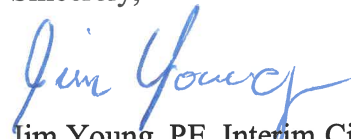
RE: **Central Montana Agriculture and Technology Park (CMATP) TIF Phase III Storm Drain, O.F. 1658.1**

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 25th 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 25th 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.	_____	_____	_____
Subtotal	_____	_____	_____

Relocation of Occupants

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


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

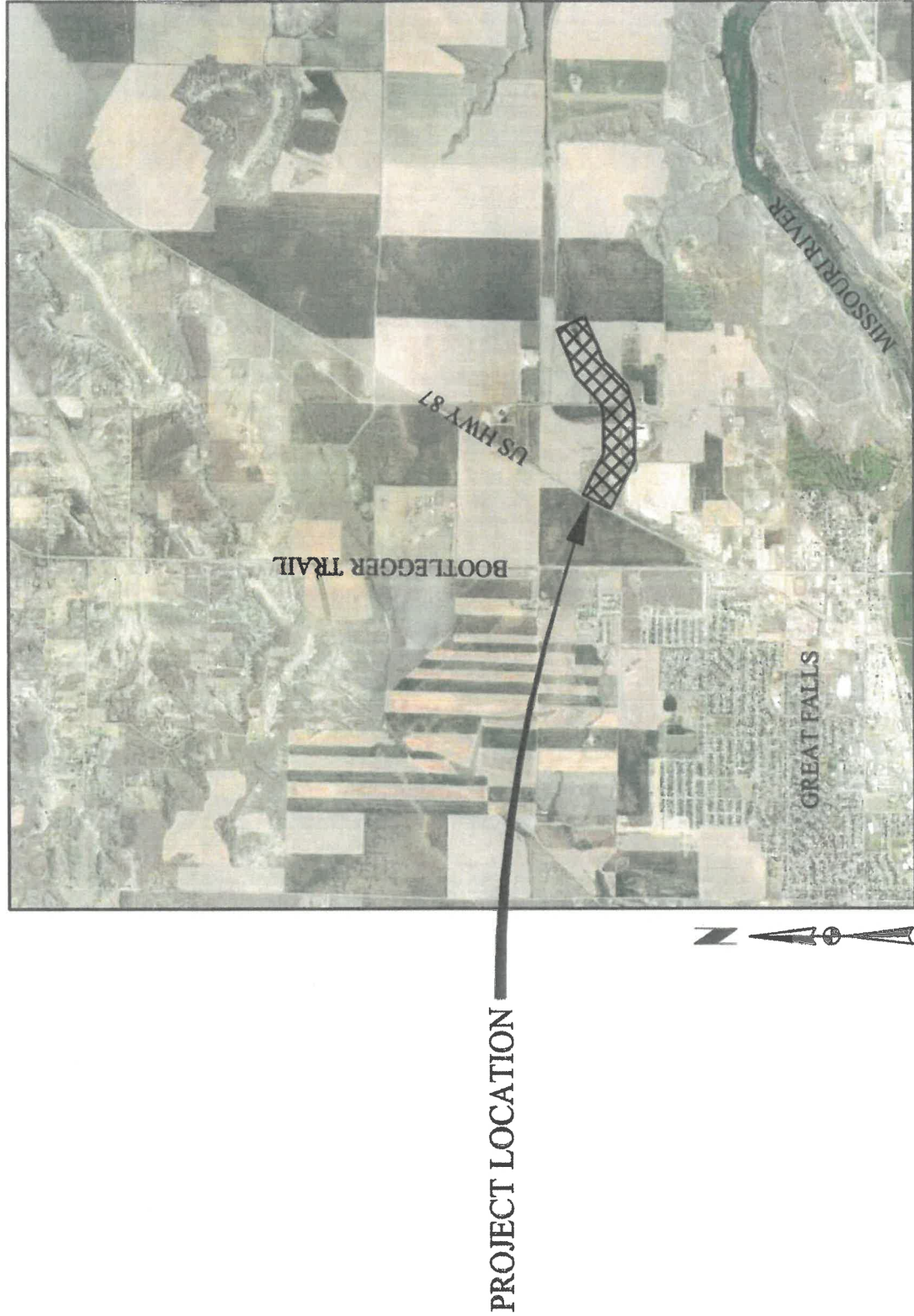
Storm Drain

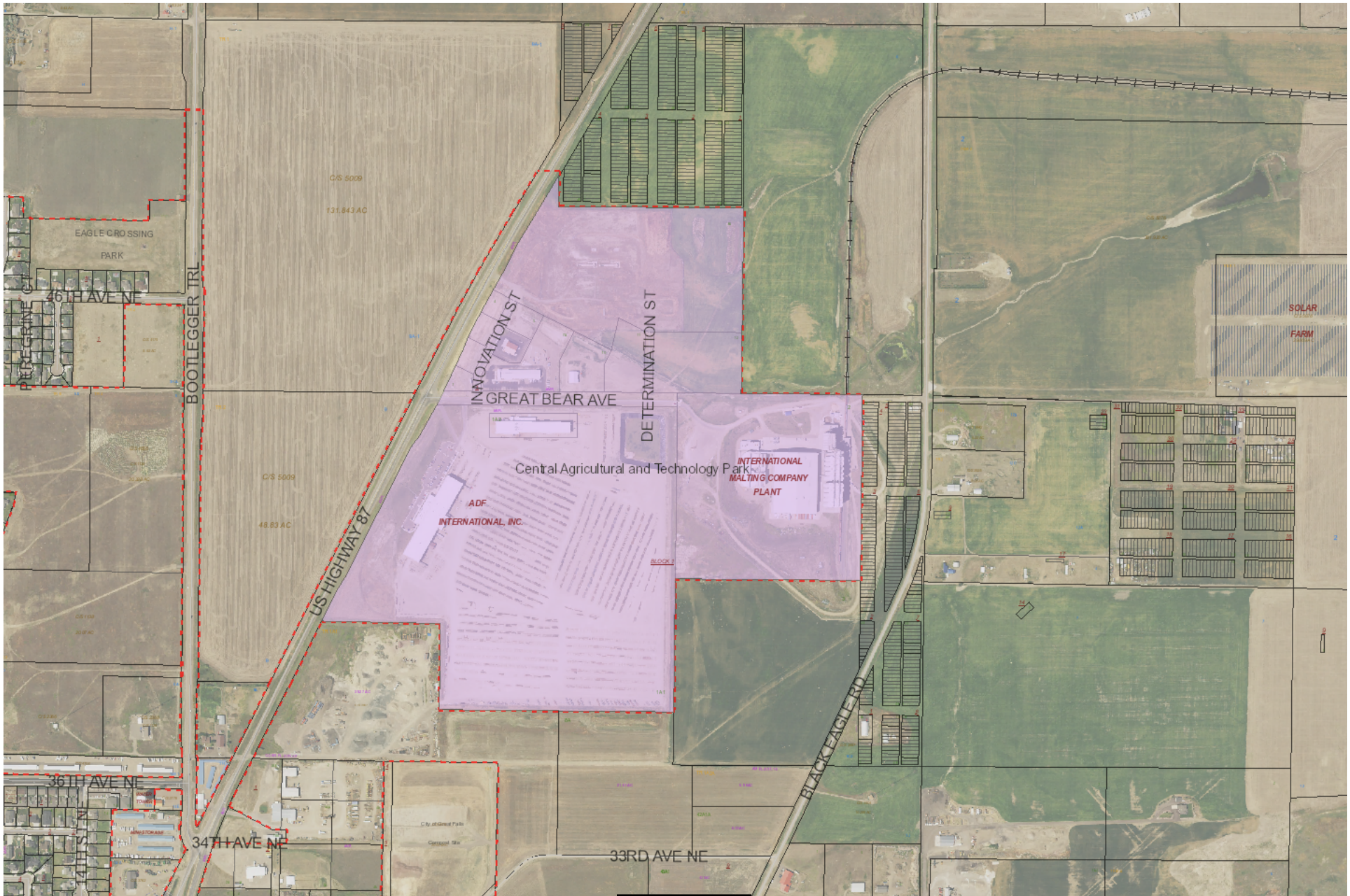
1. Public Infrastructure Improvements – The storm sewer main will immediately benefit the CMATP by providing drainage facilities that will reduce surface erosion.
2. Economic Stimulus – The total estimated cost of Construction Project, regulatory permitting and SRF funding assistance is approximately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





1,335 ft



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



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.

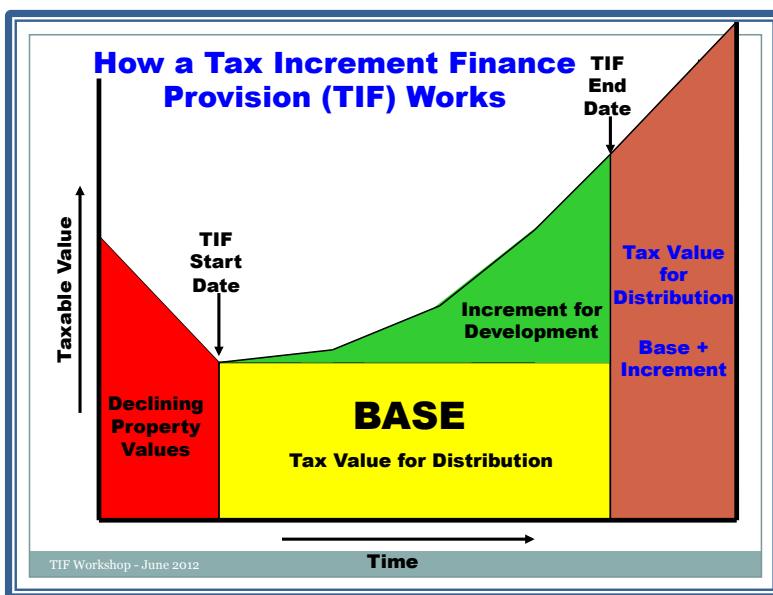


Figure 2. Schematic of Tax Increment Financing

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

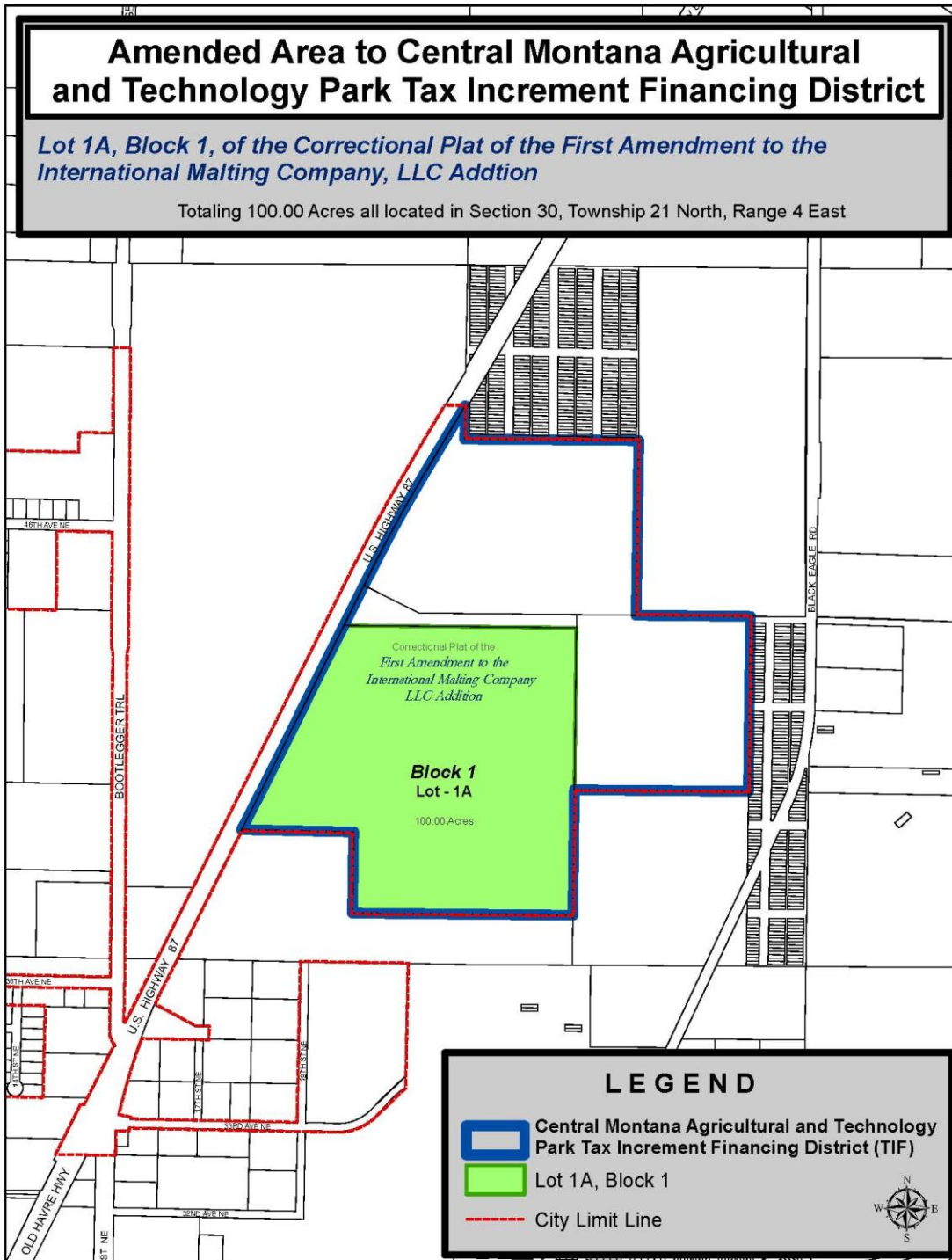
County Parcel Number 1029675

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.

NAICS Code	Industry
236210 Industrial Building Construction	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.
Sector 23237 Heavy and Civil Engineering Construction	<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>
32311 Prefabricated Metal Building and Component Manufacturing	This U.S. industry comprises establishments primarily engaged in manufacturing prefabricated metal buildings, panels, and sections.
332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers	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.
3112 Grain and Oilseed Milling 311224 Soybean and Other Oilseed Processing	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.
325193 Ethyl Alcohol Manufacturing	This U.S. industry comprises establishments primarily engaged in manufacturing nonpotable ethyl alcohol.
221117 Biomass Electric Power Generation	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.
221112 Fossil Fuel Electric Power Generation	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 1st to June 30th). 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.



Agenda #: _____
Board Meeting Date: Nov. 12, 2019

CITY OF GREAT FALLS
PLANNING ADVISORY BOARD / ZONING COMMISSION AGENDA REPORT

Item: Section 5303 Federal Transit Administration Funding Contracts with the Montana Department of Transportation and the Great Falls Transit District.

Initiated By: Montana Department of Transportation

Presented By: Andrew Finch, Senior Planner

Action Requested: Approve funding contracts.

Suggested Motion:

1. Board Member moves:

“I move that the Planning Advisory Board approve the Section 5303 Contracts with the Montana Department of Transportation and the Great Falls Transit District.”

2. Chair calls for a second, discussion, and calls for the vote.

Overview

Annually, the Planning Advisory Board enters into contracts with the Montana Department of Transportation (MDT) and the Great Falls Transit District (GFTD) to receive and pass on Federal transit planning funds, referred to as “Section 5303 Contracts” (referencing the source of federal funding). The subject contracts are attached to this report for consideration by the Board.

Background

As part of its responsibilities as staff for the Great Falls Metropolitan Planning Organization (MPO), the Planning & Community Development Department annually prepares a Unified Planning Work Program (UPWP) to identify planning-related work activities to be undertaken by the Department and the Great Falls Transit District for the 2019 (current) Federal Fiscal Year (FFY).

On September 11, 2018, the Planning Advisory Board approved the FFY 2019 Unified Planning Work Program (UPWP). Along with identifying work activities to be performed by the Planning & Community Development Department and the Great Falls Transit District, the UPWP also identifies funding sources and the funding levels proposed for each work activity, including transit-related funding and work.

In accordance with the UPWP, the MDT will provide up to \$116,202 in Federal Transit Administration (FTA) “Section 5303” funds for local transit planning activities. Because the MPO is the entity that will “receive” the funds, the Planning & Community Development Department will receive and then “pass through” the FTA funds to the Great Falls Transit District for their planning activities, on a reimbursement basis. In accordance with the UPWP, the Transit District will use these funds to prepare transit related planning reports, programs, and documentation to support its transit operations and to address Federal

transit planning needs and requirements. The non-Federal match of \$29,050 will be provided by the Great Falls Transit District.

The Transit District will use the planning funds for Administration (\$19,055), Service Planning and Assessment (\$64,397), Service Enhancement (\$13,390), and Americans with Disabilities Act (ADA) Implementation (\$48,410).

To formalize the funding commitments and ensure the recipient (Planning Advisory Board) and sub-recipient (GFTD) adhere to federal requirements, the Planning Advisory Board is being asked to enter into two "Section 5303 Contracts" - one between MDT and the Planning Advisory Board, and the other between the Planning Advisory Board and GFTD. The contracts are attached for Board review and action.

Staff Recommendation:

It is recommended that the Planning Advisory Board approve the Section 5303 Contracts for the current fiscal year.

Alternatives:

The Planning Advisory Board could elect to not approve the Contracts, but this would deny the Transit District its planning funds.

Attachments:

- 1) Section 5303 Planning Contract
- 2) Section 5303 Contract for Pass-through of Funds to the Great Falls Planning District

SECTION 5303 PLANNING CONTRACT #111003
CFDA #20.505 – Metropolitan Transportation Planning and State and Non-Metropolitan Planning and Research

This contract is entered into between the State of Montana, DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, 2701 Prospect Avenue, PO Box 201001, Helena, Montana (State) and the Great Falls Planning Advisory Board (Sub-recipient), P. O. Box 5021, Great Falls, Montana 59403-5021. DUNS # 060267093 for the Sub-recipient. Liaison for the State is Carol Strizich, Multimodal Bureau Chief. Liaison for the sub-recipient is Jim Hegelson.

The State, having been allocated grant monies of \$457,912 from the Federal Transit Administration (FTA) under FAIN #MT200010 through Section 5303 of the Federal Transit Act for the Federal Fiscal Year of 2019 (October 1, 2018 – September 30, 2019), as amended, and desiring to assist the sub-recipient, enters into the following contract with sub-recipient. Actual award is contingent upon the availability of FTA funding

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract provides assistance to the Sub-recipient to evaluate, select and monitor technical study projects and transportation planning projects proposed by local metropolitan planning organizations or public bodies and agencies.

SECTION 1.2 Scope of Project. The Sub-recipient shall undertake and complete the Project as described in the Sub-recipient's Unified Planning Work Program (UPWP), hereby incorporated by reference, as already filed with and approved by the State.

SECTION 1.3 Period of Performance. This Contract will be effective from October 1, 2019 to September 30, 2020. Pre-award authority to incur project costs is and subject to the conditions and requirements contained therein.

SECTION 1.4 Costs of Project and Payment Terms. The total cost of the Project shall be \$145,252. The cost of the project shall be shared as follows:

80 Percent Federal and IDC	\$116,202
20 Percent Local Match and IDC	\$ 29,050
	\$145,252

It is understood and agreed between the parties that:

Section 17-1-106, MCA, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as calculated by 2 CFR Part 200, Appendix VII. MDT's current indirect cost (IDC) rate is 10.41% for fiscal year 2020 (July 1, 2019 to June 30, 2020). In accordance with this statute, local agencies receiving Federal Transit Administration (FTA) funding are not subject to IDC on these funds and will be absorbed by the State. All federal funds are still subject to the current IDC rate. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project].

The Sub-recipient agrees to provide matching funds to assure payment of Project costs. Sub-recipient shall provide these funds when necessary to meet Project costs. The Sub-recipient will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State. State will make grant payments to Sub-recipient based upon the State's receipt and approval of reports and invoices submitted by the Sub-recipient.

SECTION 1.5 Travel Requests. The State must give prior written approval for the Sub-recipient to use any Section 5303 funds to attend courses, workshops, conferences and similar activities. Reimbursement for both in-state and out-of-state travel will be at rates prescribed in 2-18-501, M.C.A., *et seq.*

SECTION 1.6 Budget Changes. The Sub-recipient shall submit to the State for prior approval any changes in a work element resulting in a cost increase or decrease over 10%. The Sub-recipient shall indicate the task and amount of the overrun. The Sub-recipient shall notify the State through quarterly reports of any changes in work elements resulting in a cost increase or decrease of 10% or less. However, the federal share of the overall Section 5303 budget will not be exceeded.

The State must authorize any transfer of funds between or among UPWP tasks within the approved budget. The Sub-recipient shall indicate from which tasks federal funding will be transferred to offset the task over expended.

SECTION 1.7 Reporting. Sub-recipient shall advise the State in writing of Project progress at such times and in such manner as the State and FTA may require, but not less than on a quarterly basis.

ARTICLE 2. TERMS AND CONDITIONS

SECTION 2.1 Default. Nonperformance by the sub-recipient of any obligation imposed by this Contract, including noncompliance with the federal assurances, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the sub-recipient. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the sub-recipient thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of the sub-recipient's default, and offer the sub-recipient an opportunity to explain its nonperformance. If the State finds that the sub-recipient has a reasonable excuse for nonperformance, which is beyond the control of the sub-recipient, the State may set up a new work schedule and allow the completion of this Contract. In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract to the time of termination. Sub-recipient shall account for any Project property in its possession.

SECTION 2.3 Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 2.4 Venue. In the event of litigation concerning this Agreement, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

SECTION 2.5 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 2.6 Assignment and Subcontracting. Sub-recipient shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate sub-recipient in any manner with any third party with respect to sub-recipient's rights and responsibilities under this Agreement, without the prior written concurrence of the State.

SECTION 2.7 Subcontracts. Sub-recipient shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the sub-recipient shall include the all the provisions from this contract in any advertisement or invitation to bid for any procurement under this Agreement.

SECTION 2.8 Statement of Financial Assistance. This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation and the Federal Transit Administration.

SECTION 2.09 Indemnification. The sub-recipient shall indemnify, defend, and hold harmless the State of Montana, Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

SECTION 2.10 Access and Retention of Records. The sub-recipient agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. The sub-recipient agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement taken by the State of Montana or a third party.

SECTION 2.11 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 2.12 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 2.13 Severability and Integration. If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 2.14 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

ARTICLE 3. FEDERAL REQUIREMENTS

SECTION 3.1 FTA Master Agreement. The sub-recipient understands this contract includes requirements specifically prescribed by Federal law or regulation and does not encompass all Federal laws, regulations, and directives that may apply to the sub-recipient or its project. A comprehensive list of those Federal laws, regulations and directives is contained in the current FTA Master Agreement MA(22) at the FTA website: <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-master-agreement-fiscal-year-2019> The clauses in this contract have been streamlined to highlight the most prevalent regulations that govern this award, however additional Federal laws, regulations and directives contained in the Master Agreement will apply. The sub-recipient's signature upon this document acknowledges they have read and understand the Master Agreement

The sub-recipient also agrees to include FTA Master Agreement requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

SECTION 3.2 Prohibited Interest. No employee, officer, board member or agent of the sub-recipient shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award. The sub-recipient's employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of sub-agreements.

SECTION 3.3 Ineligible Bidders. Bidders or Suppliers whose names appear on the US Comptroller General's List located at <https://www.sam.gov/portal/public/SAM/> of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this agreement. Submission of a bid by any bidder constitutes certification that the bidder or any subcontractor or suppliers to the bidder, on this proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FTA that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.4 False or Fraudulent Statements or Claims. Sub-recipient acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the sub-recipient the penalties of 18 USC 1001, 31 USC 3801, as may be deemed by FTA to be appropriate.

SECTION 3.5 Debarment and Suspension. Sub-recipient shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Non-procurement)," 49 CFR Part 29, and otherwise comply with the requirements of those regulations a list of debarred entities is located at <https://www.sam.gov/portal/public/SAM/>.

SECTION 3.6 No State or Federal Obligations to Third Parties. State shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without the specific written consent of the State and FTA. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.7 Non-Discrimination Notice. Sub-recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, Title 42 USC Chapter 76 Section 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. The Sub-recipient also agrees to comply with the requirements of 49 USC 5301(d), 29 USC 794, the Americans with Disabilities Act, as amended (42 USC 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 USC 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws. The attached notice is incorporated herein by reference see Exhibit I.

SECTION 3.8 Disability Accommodation. The State of Montana's Department of Transportation is committed to operating all of its programs and services without regard to disability in accordance with all applicable State of Montana statutes and federal statutes (Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, The Civil Rights Restoration Act of 1973, Title II and III of the Americans with Disabilities Act). The Montana Department of Transportation does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need aids, alternative document formats or services for effective communications or other disability-related accommodations in the programs and services offered are invited to make their needs and preferences known to the MDT ADA Coordinator. Any person who believes he or she may have been discriminated against on the basis of disability may contact the Montana Department of Transportation, Office of Civil Rights and file a formal complaint.

SECTION 3.9 Federal Changes. Sub-recipient shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the State and FTA, as they may be amended or promulgated from time to time during the term of this contract. Sub-recipient's failure to so comply shall constitute a material breach of this contract.

SECTION 3.10 Settlement of Third Party Contract Disputes or Breaches. The term “third-party contract,” as used in this Agreement, is defined as a contract between the sub-recipient and its subcontractor in which the sub-recipient has procured a good and/or service commercially from the subcontractor. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts. FTA retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the sub-recipient shall avail itself of all legal rights available under any third party contract. The sub-recipient shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FTA reserves the right to concur in any compromise or settlement of the sub-recipient's claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FTA permits otherwise.

SECTION 3.11 Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein withstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The sub-recipient shall not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FTA terms and conditions.

SECTION 3.12 Compliance with Laws. Some of the clauses contained in this Contract are not governed solely by Federal law, but are significantly affected by State law. The laws and regulations cited in this Contract are not all-inclusive of those which may apply to the successful completion of this Contract. The sub-recipient understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this Contract, and that sub-recipient is solely responsible for its lawful compliance with all laws and regulations, including those attached hereto as Exhibit I.

SECTION 3.13 Drug and Alcohol Compliance. The Sub-recipient shall comply with USDOT Federal Transit Administration drug and alcohol rules as established in the “Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit,” set forth in 49 CFR Part 40, and Part 655; Drug-Free Workplace act. Sub-recipient understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.1.

SECTION 3.14 Privacy Act. Sub-recipient agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC § 552a. Among other things, the sub-recipient agrees to obtain the express consent of the Federal Government before the sub-recipient or its employees operate a system of records on behalf of the Federal Government. The sub-recipient understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

SECTION 3.15 Single Audit Act. Sub-recipient may be subject to the audit requirements of 2 CFR 200 Subpart F if the audit threshold in 2 CFR 200.501 of \$750,000 is met. An audit must be conducted in compliance with 2 CFR 200 Subpart F if required. The audit must be completed and the data collection form and reporting package submitted to the Federal Audit Clearinghouse within the earlier of 30 calendar days after the receipt of the auditor's report(s) or nine months after the end of the audit period. For local governments and school districts, the Subrecipient will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau. All other Subrecipients such as Tribal Communities and Non-Profit Organizations will provide the report to the State of Montana, Department of Transportation, Audit Services if audit findings are discovered.

The SUB-RECIPIENT warrants that it has the lawful authority to enter this Agreement, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this Agreement, and that the undersigned signatory for sub-recipient has been lawfully delegated the authority to sign this Agreement on behalf of sub-recipient.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

**STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION**

By: _____
Lynn Zanto, Administrator
MDT-Rail, Transit and Planning Division

Date: _____ 20__

GREAT FALLS PLANNING BOARD

By: _____

Printed Name: _____

Title: _____

Date: _____ 20__

APPROVED FOR CIVIL RIGHTS CONTENT

By: Atti Schwinder

Date: 09 25 2019

Office of Civil Rights

SUB-RECIPIENT ATTORNEY (optional)

By: _____

Date: _____ 20__

APPROVED FOR LEGAL CONTENT

By: Carol Groll Morris

Date: 9/24 2019

MDT Legal Services

**EXHIBIT I
MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation, gender identity,
age, disability, & Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital
status, pregnancy, childbirth, or medical
conditions related to pregnancy or childbirth,
religion/ creed, social origin or condition,
genetic information, sex, sexual orientation,
gender identification or expression, national
origin, ancestry, age, disability mental or
physical, political or religious affiliations or
ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

- iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement, the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

**SECTION 5303 CONTRACT
FOR PASS-THROUGH OF FUNDS TO THE
GREAT FALLS TRANSIT DISTRICT**

THIS Contract is made this _____ day of _____, 2019, by the GREAT FALLS PLANNING ADVISORY BOARD, P. O. Box 5021, Great Falls, Montana, (Planning Board) and the GREAT FALLS TRANSIT DISTRICT, P. O. Box 2353, Great Falls, Montana (Sub-recipient). Liaison for the Planning Board is the Senior Transportation Planner. Liaison for the Sub-recipient is the General Manager.

The Planning Board, having received federal grant monies as a sub-recipient from the Federal Transit Administration (FTA) through Section 5303 of the Federal Transit Act and through a Section 5303 Contract with the Montana Department of Transportation (State or MDT), enters into the following Contract with the Sub-recipient to pass-through said grant monies. Actual award is contingent upon the availability of FTA funding.

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract passes through federal assistance via the State to the Planning Board to the Sub-recipient to evaluate, select and monitor technical study projects and transportation planning projects proposed by local metropolitan planning organizations or public bodies and agencies.

SECTION 1.2 Scope of Project. The Sub-recipient shall undertake and complete the Project as described in the Great Falls Unified Planning Work Program (UPWP), hereby incorporated by reference, as already filed with and approved by the State.

SECTION 1.3 Period of Performance. This Contract will be effective during the same time period as the Section 5303 Contract between the Planning Board and the State, which is October 1, 2019 to September 30, 2020. Pre-award authority to incur project costs is subject to the conditions and requirements contained herein.

SECTION 1.4 Costs of Project and Payment Terms. The total cost of the Project shall be \$145,252. The cost of the Project shall be shared as follows:

Federal and IDC (80%)	\$116,202
Local Match and IDC (20%)	<u>\$ 29,050</u>
	\$145,252

It is understood and agreed between the parties that:

Section 17-1-106, MCA, requires any state agency, including the Montana Department of Transportation, which receives non-general funds, to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined

annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as calculated by 2 CFR Part 200, Appendix VII. MDT's current indirect cost (IDC) rate is 10.41% for fiscal year 2020 (July 1, 2019 to June 30, 2020). In accordance with this statute, local agencies receiving Federal Transit Administration (FTA) funding are not subject to IDC on these funds and will be absorbed by the State. All federal funds are still subject to the current IDC rate. [Note: if this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project]

The Sub-recipient agrees to provide matching funds to assure payment of Project costs. Sub-recipient shall provide these funds when necessary to meet Project costs. The Sub-recipient will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State via the Planning Board. The State will make grant payments to the City, and the City to the Sub-recipient, based upon the State's receipt and approval of reports and invoices submitted by the Sub-recipient.

SECTION 1.5 Travel Requests. The State must give prior written approval for the Sub-recipient to use any Section 5303 funds to attend courses, workshops, conferences, and similar activities. Reimbursement for both in-state and out-of-state travel will be at the rates prescribed in 2-18-501, M.C.A., *et seq.*

SECTION 1.6 Budget Changes. The Sub-recipient shall submit to the State, via the Planning Board, for prior approval, any changes in a work element resulting in a cost increase or decrease over 10%. The Sub-recipient shall indicate the task and amount of the overrun. The Sub-recipient shall notify the Planning Board through quarterly reports of any changes in work elements resulting in a cost increase or decrease of 10% or less. However, the federal share of the overall Section 5303 budget will not be exceeded.

The State, via the Planning Board, must authorize any transfer of funds between or among UPWP tasks within the approved budget. The Sub-recipient shall indicate from which tasks federal funding will be transferred to offset the task over-expended.

SECTION 1.7 Reporting. Sub-recipient shall advise the Planning Board in writing of Project progress at such times and in such manner at the State and FTA may require, but not less than on a quarterly basis.

ARTICLE 2. TERMS AND CONDITIONS

SECTION 2.1 Default. Nonperformance by the Sub-recipient of any obligation imposed by this Contract, including noncompliance with the federal assurances, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the Planning Board by serving a notice of termination on the Sub-recipient. Termination may occur for either convenience or default, or if terminated by the State. If termination is for convenience, the notice shall give the Sub-recipient thirty days to wind down its activities under this Contract. If

termination occurs due to default, the notice shall state the nature of the Sub-recipient's default, and offer the Sub-recipient an opportunity to explain its nonperformance. If the Planning Board finds that the Sub-recipient has a reasonable excuse for nonperformance, which is beyond the control of the Sub-recipient, the Planning Board, in consultation with and if concurred by the State, may set up a new work schedule and allow the completion of this Contract.

In any termination, the Planning Board will make its contractual pass-through payments proportionate to the work properly performed in accordance with this Contract to the time of termination, if such payments are provided by the State. Sub-recipient shall account for any Project property in its possession.

SECTION 2.3 Litigation. Controversy arising from this Contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 2.4 Venue. In the event of litigation concerning this Contract, venue shall be in the Eighth Judicial District of the State of Montana, Cascade County, unless the State requires said venue to be in the First Judicial District of the State of Montana, Lewis & Clark County.

SECTION 2.5 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 2.6 Assignment and Subcontracting. The Sub-recipient shall not assign any portion of the work to be performed under this Contract, or execute any contract, amendment or change order thereto, or obligate Sub-recipient in any manner with any third party with respect to Sub-recipient's rights and responsibilities under this Contract, without the prior written concurrence of the Planning Board and the State.

SECTION 2.7 Subcontracts. The Sub-recipient shall include in all subcontracts entered into pursuant to this Contract a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the Sub-recipient shall include all the provisions from this contract in any advertisement or invitation to bid for any procurement under this Contract.

SECTION 2.8 Statement of Financial Assistance. This Contract is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation, and the Federal Transit Administration, as well as an agreement between the Planning Board and the State.

SECTION 2.9 Indemnification. The Sub-recipient shall indemnify, defend, and hold harmless the Planning Board, the City of Great Falls, the State of Montana Department of Transportation, and their employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

**EXHIBIT I
MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation, gender identity,
age, disability, & Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/ creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

- iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement, the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.