

**JOURNAL OF COMMISSION PROCEEDINGS**  
**February 20, 2024**

Regular City Commission Meeting

Mayor Reeves presiding  
Commission Chambers Room 206

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

**PLEDGE OF ALLEGIANCE**

**ROLL CALL/STAFF INTRODUCTIONS:** City Commission members present: Cory Reeves, Joe McKenney, Rick Tryon, Shannon Wilson and Susan Wolff. Also present were City Manager Greg Doyon and Deputy City Manager Chuck Anderson; Public Works Director Chris Gaub; Planning and Community Development Director Brock Cherry; Finance Director Melissa Kinzler, ARPA Project Manager Sylvia Tarman, and Grant Administrator Tom Hazen; City Attorney David Dennis; Police Chief Jeff Newton; and Deputy City Clerk Darcy Dea.

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

**CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS:** Commissioner McKenney disclosed that when he was a Cascade County Tavern Association board member, the Tavern Association did make donations to the Children's Museum. Due to there being no personal gain or loss, he intends to participate in Agenda Item 13. With regard to Agenda Item 14, as a licensed realtor, he may have comments related to his expertise in the area of nuisance properties. Again, there is no personal gain or loss and he intends to participate.

Commissioner Tryon disclosed that he is employed part-time with Stray Moose Productions in Black Eagle, and it is his understanding that is one of the properties the Children's Museum has considered purchasing. He intends to vote on Agenda Item 13.

**COMMUNITY INITIATIVES**

**1. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS FROM CITY COUNTY HEALTH DEPARTMENT (CCHD).**

**Health Officer Abigail Hill** reported that, starting in March, deep dive presentations into the different programs and services provided by the CCHD to Cascade County and Great Falls residents will be provided.

Health Officer Hill reported the following:

- Flu cases have started to subside with about 35 cases each week in the month February
- RSV cases are beginning to spike, which is typical for the month of February
- Covid cases have been declining since the spike in October

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Vaccines are available at the CCHD for all of those respiratory illnesses. Vaccines aren't to prevent the disease, but to reduce hospitalizations and the severity of those diseases. The CCHD also offers several immunizations.

Syphilis cases have been on the radar at the County, State and National level. There has been a 50% increase in syphilis cases since 2022. CCHD had 63 cases last year. A concern that they are all trying to help resolve is that they are seeing more pregnant women with syphilis, which then leads to congenital syphilis if not treated. One of CCHD's strategic planning goals for this year is to host clinics to do testing and discuss treatment.

Commissioner Wilson is the City's representative on the Board of Health (BOH). As part of its five-year strategic planning process, the BOH will engage the community on what it wants to see the Health Department do to fill in the gaps.

The Health Department will also be engaging the City from a public health lens on things like transportation, sidewalks, housing, growth and development and how that impacts determinants of health. It is having those discussions with stakeholders on things that they have seen in other Montana communities that have worked, and how they can look at growth and development from a health equity standpoint.

2.

### PETITIONS AND COMMUNICATIONS

**Howard Schneider**, 68 Bend View Lane, and **Kathleen Barbo**, 15 Gopher Drive, on behalf of the Gore Hill Fire Department District, reported that multiple people have reported at their board meetings that the Great Falls Fire Department plans on taking over a portion of their district. If this rumor is true, why haven't they been notified and what is the plan? If the City took over the Gore Hill Fire Department, there would be a ripple effect on all other volunteer fire departments. They just want to make sure everybody is safe.

Mayor Reeves and City Manager Greg Doyon responded that they heard nothing of this. Manager Doyon will follow up with Fire Chief Jones.

### NEIGHBORHOOD COUNCILS

3.

#### MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

**Wayne Young**, 615 5<sup>th</sup> Avenue SW, member of Neighborhood Council 3, reported that the main topic of discussion at their November and February 14<sup>th</sup> meetings was the proposed zone change for the Bay View Apartment Project from the current R-1 zoning at 2<sup>nd</sup> Street SW and Bay Drive, to M-2 zoning to allow for the Bay View Apartment project.

Based on all the feedback from the citizens that live in the area, along with negative feedback that occurred at the February 13, 2024 Planning Advisory Board/Zoning Commission meeting, the Council voted 5-0 to recommend to the City Commission not to approve the zoning change. When this matter comes before the City Commission for consideration, the Council humbly requests that the concerns from citizens living in the area be examined, and that the Commission vote against the

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zoning change. Some of the points of concern include: increased traffic, lack of a comprehensive traffic study, no sidewalks in the area, narrow boulevard, lack of adequate parking, increased use of on-street parking creating additional hazards, noise increase, altering the landscape of the quiet neighborhood, possible negative impact to property values, no property value impact study completed, potential lack of water supply due to increased demand, adequate drainage, potential increase in crime.

Mr. Young further commented that there is a lack of evidence that there is an apartment shortage in Great Falls. Also, any further increase in contractors and personnel for the Sentinel project will have housing provided for them. Even if there is an influx of population, this neighborhood is not well suited for this kind of large complex. There are also concerns about different land uses after rezoning.

During the November and February meetings, the Council received over 100 signed letters with phone numbers and addresses from citizens living in the neighborhood who oppose the zoning change. The zoning change would not be a win for the people who live in this neighborhood.

### **BOARDS AND COMMISSIONS**

#### **4. DESIGNATE CITY COMMISSION REPRESENTATIVE TO THE POLICY COORDINATING COMMITTEE FOR TRANSPORTATION PLANNING.**

Planning and Community Development Director Brock Cherry reported that this item is a request for a member of the Commission to fulfill a role pertaining to the City's transportation planning efforts and future strategies. The Policy Coordinating Committee is ultimately responsible for overseeing transportation planning within the Great Falls Metropolitan Area.

Mayor Reeves requested additional time for the Commission members to consider this appointment.

City Manager Doyon responded that additional information about the job detail will be provided for Commission consideration at the next meeting.

#### **5. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Commissioner Wolff reported that she serves on the Airport Authority Board. At last month's board meeting, it was reported that they had 181,000 boardings for 2023, and that is higher than pre-Covid.

### **CITY MANAGER**

#### **6. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

City Manager Greg Doyon made the following announcements:

- The City is seeking members to serve on the Parking Advisory Committee. Citizen interest applications can be found on the City's website.

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- The Animal Shelter was awarded a \$5,000 grant from Best Friends Animal Society for sharing data related to animal welfare and well-being in Cascade County. The money will be used for enhancing care, food and kennels at the Shelter.
- Deputy City Manager Chuck Anderson is the City's liaison on the Montana Defense Alliance that recently held its annual meeting. He expressed appreciation to the Alliance for advocating for the Montana Air National Guard, Malmstrom Air Force Base and general homeland security units, and the attendance of several Commission members.
- Planning and Community Development Director Brock Cherry will be the keynote speaker tomorrow at the Great Falls Area Chamber of Commerce luncheon. Director Cherry will discuss the Growth Management Plan for the City.
- The Great Falls Bulldogs were undefeated this year and won the State championship. His two daughters were recognized for their efforts.

### **CONSENT AGENDA.**

7. Minutes, February 6, 2024, City Commission Meeting.
8. Total Expenditures of \$4,844,347 for the period of January 18, 2024 through February 7, 2024, to include claims over \$25,000, in the amount of \$4,038,309.
9. Contracts List.
10. Approve the cancellation of City of Great Falls checks that remain outstanding and unpaid for a period of one (1) year or longer as authorized by § 7-6-4303, MCA, and authorize redistribution to the General Fund and the Municipal Court Unclaimed Restitution Fund.
11. Approve a Professional Services Agreement in the amount not to exceed \$272,700 to Advanced Engineering and Environmental Services, for engineering services associated with Lift Station 4 Upgrades and Replacement, and authorize the City Manager to execute the agreement documents.  
**OF 1817.2**
12. Set the public hearing for the FY2024 Business Improvement District Budget Amendment for March 5, 2024.

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

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

Hearing none, Mayor Reeves called for the vote.

Motion carried 5-0.

### **PUBLIC HEARINGS**

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13. **CHILDREN'S MUSEUM OF MONTANA (CMOM) LEASE - #22 RAILROAD SQUARE (a/k/a ZELLERBACH BUILDING, T20N R3E S11).**

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

City Manager Greg Doyon reported that the recommended action is that the Commission approve a lease agreement with the CMOM for the property located at #22 Railroad Square, that essentially amounts to a one (1) year renewal with a one (1) year administrative extension option. The CMOM has leased the property, formerly known as the Zellerbach Building, since September of 1997.

On December 2, 2003, the City Commission approved a lease agreement for 15-years with an automatic five (5) year renewal. On January 2, 2019, the Commission approved a lease agreement for the renewal period through November 20, 2023.

The last renewal term allowed the CMOM to accomplish a few important things. It provided CMOM with five-years to search for, locate, and occupy an alternative location, as it was indicated the City was looking at that space for its needs. The Zellerbach Building is needed to provide additional office space for City administration and uses. Use of the building makes sense as the City already owns it and it is adjacent to the City's Administrative Center and campus. He noted that there hasn't been any formal studies on what it would take to occupy the space to renovate it.

For background information, he shared that he has been looking for additional space since he has been here for administrative units of the City. Specifically, for legal, Court, and Planning and Community Development. More recently, the need for converting space in the Civic Center became more pressing with Court needs. There was a proposed renovation of the Court in the basement. That proposal didn't find favor with the Court or the Commission, and staff was directed to look at the Missouri Room. Previously, the Missouri Room had been off limits to expand into for additional space needs until the prior Commission. An invitation for bids is out for that project. There were also concerns of occupying the basement due to some flooding events that occurred. On top of that, there was another Municipal Court Judge elected. The two judges are in the same small, cramped office in the basement. While moving the Municipal Court to the Missouri Room may address court space needs in the immediate future, it would be more optimum long term for the criminal and civil divisions of the Legal department to be in one space. With the Missouri room being converted into two court rooms, it makes sense that the Legal department, in the future, be moved under one unit to Planning and Community Development.

The City will need to somehow reclaim the downstairs court space for meeting space and IT training needs, which will be eliminated with expansion of Court up to the Missouri Room. Conceptually, the thought is to eventually move Planning and Community Development out of this building and into the Zellerbach Building, unless there is a more affordable option that comes available to the City to explore.

The highlights of the Lease Agreement include a one (1) year term effective December 1, 2023. The lease may be administratively extended for an additional one (1) year, in the event the CMOM has not relocated. The current lease payment is \$1 annually. After the first two (2) years, the City Commission will annually consider and review the Lease for another year. After two years, the Commission may consider market rate lease adjustments, or other modifications, at its sole

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discretion. CMOM will still be required to pay all utility costs, maintenance and repairs of the building and its systems.

Manager Doyon introduced CMOM Executive Director Sherrie Neff and noted that she was previously provided a copy of the Lease Agreement. His understanding is that CMOM has explored some other options, and Ms. Neff is available for questions.

Mayor Reeves asked Sherry Neff if she had additional information to report.

**CMOM Executive Director Sherrie Neff** expressed appreciation to the Commission for considering an extension of the Lease Agreement. Through Covid and other situations, CMOM has not been able to move. They are looking at the Stray Moose building in Black Eagle and working their way through the process. If everything goes well, CMOM will have a new home. She appreciates the Commission giving CMOM time to work through the process.

Mayor Reeves asked if the Commissioners had any questions of staff.

Commissioner Wolff inquired who decides what the maintenance and repair needs are.

Manager Doyon responded that it is loosely defined in the Lease Agreement. He would characterize it as basic maintenance. If there was need for a major repair, like a failed roof, the City would have to work through that since it owns the building.

Mayor Reeves asked if there were any comments from the public in support of or in opposition to the Children's Museum of Montana Lease of #22 Railroad Square.

Hearing none, Mayor Reeves closed the public hearing and asked the will of the Commission.

**Commissioner Wolff moved, seconded by Commissioner Tryon, that the City Commission approve a Lease Agreement with the Children's Museum of Montana for the property located at #22 Railroad Square.**

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

Commissioner Wilson commented that, as a former EPA tag advisor, she follows the Black Eagle tag activities. They are starting to work on operable unit two, which includes the Stray Moose area, that is being considered by the CMOM. They have quite a challenge to meet the requirements to be able to occupy the building. She asked the Commission to be patient because it is going to take them a while to work through it. If CMOM is really serious about this property, they do have some challenges ahead with it.

Commissioner McKenney commented that this is a challenging situation for the City and CMOM. Our local government needs to expand, and it certainly makes sense to expand the local government

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campus into a building the City owns. Times have changed, and the City needs that space back for its local government operations.

It is also very challenging for the CMOM, especially economically. CMOM has been leasing this space for \$1. Their new space is not going to be a dollar. The City has done its best expressing that local government or local taxpayers need this space. Hopefully, the CMOM understands that the Commission is going above and beyond to help them move at a pace that they can.

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

Motion carried 5-0.

14. **RESOLUTION 10533, DECLARING CERTAIN PROPERTY LOCATED AT 613 9<sup>TH</sup> AVENUE SOUTH, LOT 11, BLOCK 498, GREAT FALLS ORIGINAL TOWNSITE, A NUISANCE, ORDER THE NUISANCE BE ABATED, AND AUTHORIZE CITY STAFF TO FORCE ABATEMENT IF NECESSARY.**

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

Planning and Community Development Director Brock Cherry reported that code enforcement actions are complaint driven. One full-time employee is responsible for code enforcement set forth in the summary section of the agenda report. It is always the goal early on to try to remedy the situation. Staff never wants to get it to this level.

The time frame concerning this item is very important. The City first received complaints starting in 2019. Multiple departments have come to the table in order to find a remedy for this situation. The Code Enforcement Officer has had the aid of the Legal Department and Police Department.

This action includes a property owner who has chosen not to interact with City staff in any way for almost five years. City staff have done their due diligence in making sure that the City is not interfering with any due process that the property owner has.

Director Cherry reviewed pictures of the property that included non-compliant vehicles, rubbish, boarded up windows and doors. The City had secured a warrant to enter the property, but were unable to enter the property due to so much rubbish and debris that they couldn't conduct a thorough search. There is reason to believe that not only is this a source of blight and something unfortunate for the surrounding neighborhood, but there could be safety issues as well for whoever is inhabiting that property.

The requested action is that the Commission move forward with the abatement process.

Mayor Reeves asked if the Commissioners had any questions of staff.

Commissioner Tryon inquired if someone was actually living in the dwelling.

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Director Cherry responded that he doesn't believe there is any sort of long term tenant, but he can't account for any transient activity that may be happening.

Mayor Reeves asked if there were any comments from the public in support of Resolution 10533.

**Jeff Joy**, 609 9<sup>th</sup> Avenue South, commented that he has owned and lived at the property next door to the nuisance property since 1999. Out of all the years that the Wellings have lived at that property, he has never witnessed them perform any maintenance to improve or upkeep that property. It has been years now since they have all left and moved out. Over all those years, he personally ran off many transients coming onto the property and rummaging through things.

He described a police involved incident in 2021 or 2022 that involved a person on that property fighting with the officer. The point being that, not only is this property unbelievably bad and terrible looking to the neighborhood around it, but it is dangerous because it attracts transients who are lawless and don't care. He has since moved from 609 9<sup>th</sup> Avenue South, but he can't sell the property because he is at risk of not being able to sell it at actual marketable value due to the nuisance property next door. Mr. Joy urged the Commission's adoption of Resolution 10533.

Mayor Reeves asked if there were any comments from the public in opposition to Resolution 10533.

Hearing none, Mayor Reeves closed the public hearing and asked the will of the Commission.

**Commissioner Wolff moved, seconded by Commissioner Tryon, that the City Commission adopt Resolution 10533.**

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

Commissioner Tryon inquired about next steps.

Director Cherry responded that staff will begin to review what is necessary in order to remedy the issue. The City may have to look at utilizing the private sector in order to fix the issues. A lien will be placed on the property for City monies used to remedy this property.

Commissioner Wolff commented that she drove by the property and it truly is in need of a lot of work and abatement.

Deputy City Attorney Rachel Taylor added that, if the Resolution is adopted, the property owner will have 10-days to start abatement and be completed within 30-days. The City will send the property owner a copy of the resolution, and the resolution will be recorded.

Mayor Reeves received clarification that the owner moving one vehicle, for example, is not sufficient.

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Commissioner McKenney inquired of Mr. Joy if he lived in the house next door to the nuisance property.

Mr. Joy clarified that he owns the property and currently rents the property to family members.

Commissioner McKenney inquired of Mr. Joy if people were currently living at, or coming and going from, the nuisance property.

Mr. Joy responded that he has witnessed people showing up at the property late at night from the alley. He cannot say for sure if someone is currently in there. At the advice of the Code Enforcement Officer, he has never gone onto the property. He does know that the Code Enforcement Officer and other City staff have put up boards on the doorways. In the last several days those boards have all been removed like people are trying to come and go through there. Or, he wouldn't be surprised if it was property owner James Welling Jr. or his uncle or father coming and going because, every once in a while, he will see some new junk or stuff in the backyard that shows up in the middle of the night, or maybe they will stop by to pick up something.

Commissioner McKenney inquired next steps after staff enters the property to make a determination of risk of life or damage.

Deputy City Attorney Taylor clarified that by adoption of the resolution the Commission is declaring the property a nuisance. The property owner then gets a chance to abate that nuisance himself. If he fails to do so, the City will perform the abatement to clean up that property, to attempt to remove the blight from the area, and then secure that property so there are no more transients going back and forth. Before that time, if the City does need to execute that abatement itself, staff will obtain another warrant from the court, post that warrant on the property 24-hours giving notice the abatement is happening.

Commissioner Tryon received clarification that individuals on the small works roster will commonly perform this sort of work when it comes to abating problem properties.

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

Motion carried 5-0.

### OLD BUSINESS

#### 15. **GREAT FALLS POLICE DEPARTMENT EVIDENCE BUILDING EXPANSION. OF 1684.3**

ARPA Project Manager Sylvia Tarman reported that, as discussed at the last meeting, City staff have been working with the Police Department and BSpark Architecture over the last two years to complete a design for a new evidence storage facility for the Police Department. The design was completed in November 2023, and the project was put out for bid in mid-December. Bids were opened January 23, 2024. The bid was broken up into a base bid plus contingency for the

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construction of the facility, with 2 Additional Alternates. Wadsworth Builders and James Talcott Construction provided bids for the project. Upon reviewing the bids after the bid opening, City staff noticed that Wadsworth did not include their contingency total, Line 2a, in their overall base bid total, Line 1.

## Wadsworth Builders Bid

requirements of the Work, hereby agrees to furnish all material, labor, equipment and services, including all scheduled allowances, necessary to complete the construction of the above-named project for the stipulated sum of:

1. THREE MILLION TWO HUNDRED FIFTY THOUSAND Dollars (\$ 3,250,000.00)
2. MISCELLANEOUS ITEMS: Provide a contingency line item for miscellaneous items in the amount of 2.5% of the Base Bid Price and INCLUDED as part of the Base Bid Price offered above.
  - a. The amount for miscellaneous items is:  
EIGHTY ONE THOUSAND TWO HUNDRED FIFTY Dollars (\$ 81,250.00).

ADDITIVE ALTERNATE #1: Provide and install dumbwaiter per Drawings and Specifications

1. ONE HUNDRED TWENTY SEVEN THOUSAND Dollars (\$ 127,700.00).  
SEVEN HUNDRED

ADDITIVE ALTERNATE #2: Provide perimeter fence, man gate and cantilever vehicle gates with operators per Drawings and Specifications.

1. EIGHTY FIVE THOUSAND EIGHT HUNDRED Dollars (\$ 85,800.00).

## Talcott Construction Bid

requirements of the Work, hereby agrees to furnish all material, labor, equipment and services, including all scheduled allowances, necessary to complete the construction of the above-named project for the stipulated sum of:

1. Three million, three hundred thousand, five hundred Dollars (\$ 3,300,500).
2. MISCELLANEOUS ITEMS: Provide a contingency line item for miscellaneous items in the amount of 2.5% of the Base Bid Price and INCLUDED as part of the Base Bid Price offered above.
  - a. The amount for miscellaneous items is:  
Eighty thousand five hundred Dollars (\$ 80,500).

ADDITIVE ALTERNATE #1: Provide and install dumbwaiter per Drawings and Specifications

1. One hundred sixty four thousand Dollars (\$ 164,000).

ADDITIVE ALTERNATE #2: Provide perimeter fence, man gate and cantilever vehicle gates with operators per Drawings and Specifications.

1. One hundred and four thousand Dollars (\$ 104,000).

This discrepancy was very apparent on the face of the bid, and by doing a simple calculation, one can see that \$81,250.00 is exactly 2.5% of \$3,250,000.00. Therefore, Wadsworth's base bid, or Line 1, should have been \$3,331,250.00. Upon discovering this error, City Staff called both Wadsworth and Talcott representatives to confirm what the intent of the bid was. Talcott's representative confirmed their intended bid was as presented. Wadsworth's representative confirmed that they had made an error and had not added Line 2a to Line 1, and their combined base bid should have read \$3,331,250.00. All the numbers were presented on the face of the bid, and the mistake became apparent upon review. No new information was presented or included. Staff simply evaluated the numbers that were presented on the face of the bid, and confirmed the intent of the bidder. Correcting clear irregularities and clerical mistakes is a well-established practice in the construction industry and staff believes is an appropriate use in this case.

After correcting for the discrepancy, Wadsworth's base bid price was higher than Talcott's base bid. However, after assessing the corrected bids and the City's allocated budget, City staff decided to move forward with the base bid and the 2 Additional Alternatives. Therefore, Wadsworth emerged as the apparent low bidder. In this case, whether the bid was corrected or not, the City is able to move forward with all proposed options, so Wadsworth still would have been the low bidder after inclusion of the add-on bid amounts. The adjustment of Wadsworth's bid did not materially affect the result of the bid.

After careful consideration and in-depth research into the governing rules and regulations applicable to this process, staff is confident that both original bids are responsible and responsive, and therefore should be considered as corrected. As the City has the allocated budget to complete the base bid and both Additional Alternatives, the apparent low bidder in this process is Wadsworth Construction. City staff recommend award of the contract to Wadsworth. Brad Talcott, through his attorney Max Davis, has filed a formal complaint about awarding the bid to Wadsworth.

City Attorney David Dennis reported that the Commission heard a little bit about this dispute during the work session, and he is assuming that Mr. Talcott and his attorney will be explaining their side of the situation here tonight as well. In brief, the City received a protest from Mr. Talcott, two letters

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from his attorney, and multiple communications from Mr. Talcott. Their position is that the City cannot consider Wadsworth's bid because it is non-responsive. In other words, their claim is that since the bid did not comply with the material terms of the bid document, that it is non-responsive and has to be thrown out. The assertion would be that, because they didn't add line 2a, as is instructed there, back into their base bid number to come up with a base bid number plus contingency, that technically it didn't comply.

It is a complicated legal scheme that governs bidding like this, but it can also be simplified. There is federal law, state law, laws that apply to municipalities, and there is case law. This situation comes down to one issue, and that is whether staff had the ability to waive the irregularity or informality in the bid, or the variance in the completion or presentation of the bid by Wadsworth. That question comes down to essentially whether or not the change is material, whether the difference or the correction or the mistake was material. Material is defined as: A variance is material when it gives a bidder a substantial advantage or benefit not enjoyed by other bidders. This is truly the question that is being looked at tonight. It is whether the presentation of Wadsworth's bid and staff's clarification of their bid, gave Wadsworth a substantial advantage over Talcott.

City Attorney Dennis pointed out that, in a letter received from Mr. Davis, he cites the *Martel* case that actually spells out this particular test for materiality. Paraphrasing, it states, deviations and irregularities which do not give one bidder a substantial advantage over other bidders are types of irregularities that can be waived by public officers. That was actually done in that case.

The issue before the Commission is whether or not the variance made any difference or gave Wadsworth an advantage in actually bidding this contract. Any way you slice it, it doesn't change the outcome of the bid process here. With the two additional alternatives being added on, Wadsworth's bid was lower. No matter how Wadsworth answered the question that was posed by staff, they still had the lowest bid. The bottom line is they still had the lower bid. That is the position of staff that it is not a material variance from the bid documents. That said, the Commission has before it the ability to take any action it wants. The Commission can award the contract to Talcott, award the contract to Wadsworth, or reject all bids and readvertise.

**Commissioner Tryon moved, seconded by Commissioner McKenney, that the City Commission award a contract in the amount of \$3,544,750 to Wadsworth Builders Company, Inc. for the Great Falls Police Department Evidence Building Expansion Project utilizing American Rescue Plan Act funds, and authorize the City Manager to execute the contract documents.**

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

**Max Davis**, Attorney for James Talcott Construction, incorporated by reference the comments he made at the work session. Talcott strenuously disagrees with the conclusion of City staff. A responsive bid under Montana law means that it conforms in all material respects to the invitation for bids or requests for proposals. The Wadsworth bid did not. Attorney Dennis referred to the 1983 case of *Martel Construction vs. Montana State Board of Examiners* as set forth in his February 14<sup>th</sup> letter. The Court said, yes, irregularities can be waived. However, the Supreme Court said the agency could only waive irregularities which are immaterial. He has not heard Mr. Dennis or Ms. Tarman say \$81,000 is an immaterial variance. That is the gist of the disagreement. At the end of

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the day, when the Wadsworth bid was corrected by City staff, it is about \$24,000 under the Talcott bid. It is the position of James Talcott Construction that bid did not conform in all material respects to the invitation for bids. Wadsworth goofed. The goof is material, and the bid should not be considered. On behalf of James Talcott Construction, he opposed Commissioner Tryon's motion.

There being no further comments, Mayor Reeves asked if there was any discussion amongst the Commissioners.

Commissioner Wolff commented that she really struggled with this one because Wadsworth and Talcott both have had projects with the City, and both are well known builders and contractors in the city. She thoroughly respects staff. But, she does struggle with the fact that the original bid was not done correctly. In her work life things need to be done correctly, especially in a bidding environment. She will be voting no on this.

Commissioner Wilson commented that she struggled with it too. She would be inclined to have the project be re-bid since it was done incorrectly the first time. Talcott Construction has done a lot of good things in the community and so has Wadsworth. She has great respect for both of them, and she also trusts City staff.

Commissioner Tryon commented that the bottom line is, if Ms. Tarman did not make the attempt to contact and clarify, then he thinks there is a real problem. If she did, then he is inclined to vote for the motion.

ARPA Project Manager Tarman clarified that bids are opened in a public environment. Both parties came to the bid opening and the bids were read out loud. As soon as she went back to her desk with the documents and looked at the numbers, something wasn't quite right. She ran the math, and the numbers didn't add up the way that she would expect them to. At that point, she placed a phone call to Talcott's representative and reiterated their bid numbers, commented that the numbers add up the way that they look like they should, inquired if that is what they intended, and was responded to in the affirmative.

She then called Wadsworth's representative and stated their bid numbers look a little off. She asked that they explain to her what the intent was. They were on their way back to their office and said they would look at the numbers and get back to her and confirm what happened. About 10 minutes later, they called and said, yes, we goofed. We did not add line 2a to line 1. The number should be \$3,331,250.

That process did happen immediately after the bid opening.

Commissioner Tryon commented that he wasn't sure re-bidding would be the fair way to go now that everybody knows what the numbers are. But, it is an option. He inquired the time involved if the project was rebid.

ARPA Project Manager Tarman responded approximately three weeks to rebid the project.

Commissioner Tryon inquired how that would affect the project. His priority is getting the evidence building done. He hates that they are in this situation.

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ARPA Project Manager Tarman responded, as far as ARPA timelines, their biggest concern is getting the project obligated, which means the project has to be under contract by December of this year. The only thing that might suffer is some of their lead times on equipment. But, given supply chain issues none of that is guaranteed. It would throw a little bit of a roadblock into the project, but it wouldn't be insurmountable.

Commissioner Tryon asked staff to address the environment they are in now with the numbers out there in the public domain. He commented that he was taken aback and didn't appreciate the City being threatened with a lawsuit if the contract wasn't awarded to Talcott. The City could find itself in the same situation with Wadsworth. The City Attorney addressed the fact that no matter how you cut the numbers, Wadsworth's numbers were lower. He will be voting in favor of the motion based on the clarification he received and based on the fact that the numbers are lower. His responsibility is what is best for the taxpayers of Great Falls.

City Attorney Dennis responded, practically speaking, re-bidding the project probably is not the best situation for either contractor. But, it is within the discretion of the Commission to do that.

With regard to the threatened lawsuit, City Attorney Dennis commented that the City could get sued regardless of any action took here today. He read from a 2022 case that describes the burden that a plaintiff would have in bringing a lawsuit against the commission in making a discretionary action like this one, where you're awarding a public contract.

“When a party challenges the award of a public contract, a claim for relief accrues under the following circumstances:

(1) The plaintiff must timely assert its claim as an aggrieved taxpayer. (2) The claim must seek a remedy that will protect the rights of the aggrieved taxpayer from the potential harm that will occur. (3) The plaintiff must then show that the process by which the public works contract was awarded resulted from an abuse of discretion, i.e. the municipality's discretionary decision was tainted by an act of bad faith, fraud, corruption, or was otherwise arbitrary in some manner.”

Mayor Reeves concurred with Commissioner Tryon's comments. He will be supporting the motion based on facts that staff presented, and the case law. If he heard staff correctly, the Commission is compliant with State and Federal law, policies and procedures, and case law.

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

Motion carried 3-2 (Commissioners Wilson and Wolff dissenting).

### **NEW BUSINESS**

#### **16. CIVIC CENTER PARTIAL HVAC RENOVATIONS, CHANGE ORDER #1 OF 1750.2.**

ARPA Project Manager Sylvia Tarman reported that the Civic Center Partial HVAC Renovations project includes upgrades to the HVAC system throughout the Civic Center to increase efficiency and operability. The project went out for bid in October of 2022, and bids were opened March 8,

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2023. The construction contract was awarded to Wadsworth Builders in April 2023. Since the project was awarded, significant changes have been proposed for the Missouri Room, and the HVAC design had to be changed to accommodate the new Municipal Court footprint.

This change represents a significant design change for the proposed HVAC systems in that part of the building. The changes include sizing down and adding HVAC units, re-aligning mechanical ducting and hydronic piping, re-aligning electrical wiring and panels, as well as additional mechanical penetrations and curbing through the roof at the north end of the building. This change order also includes some scope reductions in other areas, as City staff and Cushing decided that the units planned for the Mansfield Theater and Lobby area would likely not be needed, as the hallway units installed last year are performing very well and keep that area comfortable as is.

This change order includes all of the known HVAC work for the current Court design. City staff and Cushing Terrell thought it would be most beneficial and cost effective to complete all of the HVAC work under the current contract, rather than try to include separate HVAC work in the Court construction project.

This project is being funded with American Rescue Plan Act (ARPA) funds. This change order will increase the project funding by \$65,971.22, for a new contract total \$1,192,671.22. Staff is expecting this change to take care of the needed HVAC work for the Court project, and therefore is expecting the Court project budget to come in under the estimated total ARPA budget. Staff will work with the design and construction personnel to mitigate any cost impacts this may have on the overall ARPA allocation. Staff is still tracking to keep within our allocated ARPA budget for all projects thus far.

City staff and Cushing Terrell have reviewed the proposed changes and are confident this proposal satisfies the needed changes to incorporate the new Municipal Court footprint into the Missouri Room space. Therefore, staff recommends that the Commission award Change Order #1, in the amount of \$65,971.22 to Wadsworth Builders to complete the necessary work for the Civic Center Partial HVAC Renovations project.

**Commissioner Wolff moved, seconded by Commissioner Wilson, that the City Commission approve Change Order #1 for the Civic Center Partial HVAC Renovations Project in the amount of \$65,971.22 for Wadsworth Builders utilizing American Rescue Plan Act funds, and authorize the City Manager to execute the contract documents.**

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

Commissioner Wilson inquired how the City was sitting with ARPA funds.

ARPA Project Manager Tarman responded that, based on the current projects that are contracted with allocated ARPA budgets, about \$65,000 remains under the City's total ARPA allocation. That amount may fluctuate with the GFPD and Court projects.

Commissioner Wilson inquired if there was a contingency fund.

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ARPA Project Manager Tarman commented that contingencies have been built in to the last projects. Other projects that require change orders are being managed by scope reductions in other areas to enable the rest of the projects to be completed.

Commissioner Wolff noted the deducts in the agenda report, and she expressed appreciation to ARPA Project Manager Tarman for keeping track and all the work she is doing.

ARPA Project Manager Tarman added that the hallway units that were installed for the HR project have performed really well. Based on that and discussions with the architect, two more units are planned for the hallway on the north end of the building.

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

Motion carried 5-0.

**17. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING AGREEMENT WITH THE GREAT FALLS PARK AND RECREATION DEPARTMENT FOR THE PURCHASE OF FOUR (4) MOTION TREK POOL LIFTS FOR THE ELECTRIC CITY WATER PARK.**

Grant Administrator Tom Hazen reported that this agreement will finance the purchase of four lifts to assist individuals with mobility limitations entering and exiting the Aquatics facility. This project is an appropriate use of CDBG funds, which increases the capabilities of the Park and Recreation Department, and has received a full endorsement of reviewing City Staff.

The authorizing statute of the Community Development Block Grant (CDBG) program requires that every funded activity must meet one of three national objectives. Of the three, providing a benefit to low and moderate income (LMI) persons is often referred to as the “primary” national objective of CDBG. There are four categories of activities that the Department of Housing and Urban Development (HUD) has identified as addressing this objective. The Limited Clientele Services category applies to this project.

Activities in the Limited Clientele category benefit specific groups of people rather than every individual. These groups may include the homeless, the elderly, or, in the case of this particular project, the disabled. These groups are “generally presumed to be LMI” by HUD. Projects designed to offer training and/or employment support to these groups will be eligible activities. Additionally, and appropriate to the project at hand, the removal of public facility architectural barriers to the mobility of elderly persons or the severely disabled will be allowable expenses.

This project will purchase four chairs that are designed to provide access to public swimming facilities to disabled individuals that are unable to enter pools without assistance. This will satisfy not only CDBG eligibility requirements but will also allow Great Falls aquatic facilities to maintain compliance with Americans with Disabilities Act requirements.

This application has been reviewed by the City Grant Committee and unanimously approved.

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For these reasons, the recommended action is that the Commission approve the agreement allocating \$23,396.00 to the Great Falls Park and Recreation Department for the purchase of four Motion Trek Pool Lifts.

**Commissioner Wolff moved, seconded by Commissioner Tryon, that the City Commission approve the CDBG Funding Agreement in the amount of \$23,396 to the Park and Recreation Department for the purchase of four (4) Motion Trek Pool Lifts.**

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

Motion carried 5-0.

### **18. AMENDMENT TO HOME INVESTMENT PARTNERSHIP FUNDING AGREEMENT TO SUPPORT RENOVATION OF THE BAATZ BUILDING AT 402 2<sup>ND</sup> AVENUE SOUTH.**

Grant Administrator Tom Hazen reported that the Baatz Building Project is a project that has been discussed previously in this setting. On May 16, 2023, the City Commission unanimously approved two funding agreements totaling \$2,150,000.45 of HOME and HOME ARP allocations to the rehabilitation of the property located at 400 2nd Avenue South. This redevelopment will convert a vacant structure into 24 permanent supportive housing units.

This project is an exceptionally complicated undertaking. The Baatz project is being spearheaded by the partnership of NeighborWorks Great Falls (NWGF) and Homeword, a housing services Non-Profit located in Missoula. There are 13 unique funding sources contributing to this project from Local, State, and Federal Sources. Meeting each of the unique pre-qualifying requirements and ensuring that these entities were harmonious took a significant amount of time.

NWGF submitted the first application for HOME funding to the City in January of 2022. That application was not acted on for a variety of reasons including Environmental Compliance considerations, aligning other financial considerations, and awaiting the City's Amended Action Plan for utilization of its HOME-ARP allocation. An updated application was submitted in October of 2022 and, as previously noted, ultimately approved in May of 2023.

This project has experienced the same cost increases due to supply shortages, inflation, and other considerations that many of the City's own capital improvement projects have witnessed. The Baatz project budget as compiled in 2022 reflected a total project cost of \$11,489,247.00. Updated to today's numbers to include external factors, that total cost has risen to \$13,850,528.00, an increase of \$2,381,280.00.

NWGF requests increasing the original HOME allocation of \$1,277,495.00 to \$2,500,000.00 to account for a portion of this increase. It should be noted that NWGF is not asking the City alone to cover the entirety of the budget increase. The organization has secured increased allocations from other funding sources and has committed to ongoing pursuit of additional funding opportunities as they present themselves.

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The City currently has sufficient HOME funds to accommodate this request. HOME funds, unlike CDBG, are not currently subject to a timeliness requirement. However, if the Government adopted such a measure the City's current balance of funds would be considered "Newly Untimely" if measured by the same metrics as CDBG. Once spent, this increased award would sufficiently reduce the City's balance of HOME funds to a compliant figure with these standards.

The project has also been unanimously approved by the City's grant committee. As this is an award that has been previously approved by the City Commission, funds a project that benefits the Great Falls community, and contributes to Great Falls usage of federal funds in a timely manner, staff requests that this award be approved.

**Commissioner Wilson moved, seconded by Commissioner McKenney, that the City Commission approve the amendment to the HOME Funding Agreement increasing funding to NeighborWorks Great Falls for the renovation of the Baatz building from \$1,277,495 to \$2,500,000.**

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

**Sherrie Arey**, NeighborWorks Great Falls Executive Director, commented that the Baatz Block project will create 25 permanent supportive apartments by renovating a historic 1913 building in the downtown area which has suffered from chronic vacancy and blight for many years.

Permanent supportive housing combines affordable housing assistance with voluntary support services to address the needs of people who are experiencing homelessness. The service providers that they have MOU's with to help provide those services are Opportunities, Inc. and Many Rivers Whole Health, in conjunction with the Continuum of Care group in Great Falls. They also have a variety of funders and are continuing to look for funds for other amenities and furnishings for the building.

The redevelopment of this building will benefit the Great Falls community in multiple ways. First, it's adapting and reusing a space that is vacant, boarded up and causing blight in the community. Second, the direct result of a permanent supportive housing model is safe, stable housing essential for health. An ever growing body of research has documented that housing combined with supportive services can lead to improved overall health and lower public costs associated with the use of crisis services.

NWGF budget, which was created in 2021, has been updated a variety of times. This increase can be attributed to the ongoing construction challenges, including mechanical, electrical, plumbing and materials availability and cost volatility. These combined factors have resulted in budget increases. NWGF has worked diligently with contractor Guy Tobacco. They found different ways to adjust and save. Bids came in \$2 million over budget. They worked with those contractors to help bring those bids down. This Amendment will assure the longevity of this project, and includes adding back security systems, cameras, intercoms, security doors, durable finishes and windows, and a complete first floor replacement.

She expressed appreciation to City staff and for the Commission's support. NWGF looks forward to bringing this project to fruition around this time next year.

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**Jake Clark**, Great Falls Development Alliance (GFDA), commented that housing is needed at all levels, and this is a level that doesn't exist in our community currently. This is the first permanent supportive housing project in our community. GFDA is deeply committed to this project, both financially and otherwise. It's very mission bound for GFDA. He urged the Commission to remain committed to it as well.

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

Commissioner Tryon commented that he supports the Baatz project. He questioned if there were other HOME or HOME ARP funding opportunities for other projects that would be impacted by this increased allocation.

Grant Administrator Hazen responded that, at this time, this is the one project that has been proposed to the City for HOME funding. HOME is a little bit different from CDBG in that it is more limited to who can access those funds and put them into play.

Commissioner Tryon commented that the costs have escalated by about \$2,200,000. He inquired the other funding sources to make up the difference.

NWGF Executive Director Arey responded they were very lucky to have Guy Tabacco reevaluating the bids, and smaller grants to help in different areas. They are trying to continue to keep this project without any debt. The sustainability is going to be critical for the support services. The funding received will offset the individual's costs, and rents received will go back to operations of the building and not debt service. About \$130,000 has been committed from other funding sources to fill the gap. There is also a contingency with the hope of not having too many more surprises.

Commissioner Tryon inquired if some of the other 13 entities involved would be contributing to the funding.

NWGF Executive Director Arey responded that most of those other entities are through similar contracts. NWGF did approach the County for more ARPA funds, but the County is tapped out on ARPA funds. The guarantors on this project are NWGF and Homeward. So, at the end of the day, any amount of costs that are left is theirs to pay.

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

Motion carried 5-0.

### **ORDINANCES/RESOLUTIONS**

#### **CITY COMMISSION**

#### **19. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Commissioner Wilson commented that she is an officer for the BFW in Black Eagle and American Legion in downtown Great Falls. Three or four years ago they took on a project and collected 3,000 signatures to request the State and Federal Governments put a long term nursing/assisted living home in the Great Falls area for Veterans.

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There are three Veterans homes in the state: Columbia Falls is 213 miles away, Butte is 160 miles away, and Glendive is 350 miles away. There are over 100,000 Veterans in this state, and just over 30,000 in North Central Montana. It is a hardship for families to visit their loved ones in those facilities so far away.

Copies of the petitions were sent to our congressional delegation, Governor Gianforte, and Mayor Kelly. They followed up by testifying at the Veterans Affairs Interim Committee. Commissioner McKenney also testified how Great Falls needs a long-term care facility for our Veterans.

One of the members of that Committee brought forward HB 264, which provided the funds for a study to determine the need for a care facility for our Veterans in this area. She, along with several other American Legion members attended the Governor's signing of that bill.

Cards asking people to participate in the survey were mailed out to Montana Veterans titled "Your long term independence. Let's plan on it." There are about 42,000 Veterans in the state that are enrolled in VA healthcare. She knows of Veterans in the healthcare system that have not received the cards. There is a short timeline to get this study done. The card says the survey closes Monday, April 8<sup>th</sup>, but that date has been extended to the end of May.

The first step in getting a facility here is to get as many Veterans in this area to participate in this study. Spouses and partners of Veterans can answer the survey. Friends and caretakers, on behalf of the Veteran, and relatives such as adult children can participate in the survey. She urged those people to complete the on-line survey at [Veteransurvey.mt.gov](http://Veteransurvey.mt.gov).

Mayor Reeves suggested Commissioner Wilson also reach out to the local media to help get the word out.

### **20. COMMISSION INITIATIVES.**

Commissioner Tryon requested consensus to move forward with a formal request to the Great Falls Public Library Board of Trustees to enter into a discussion/negotiation surrounding the 1993 management agreement between the City and the Library Board. The 1993 agreement is outdated. He believes an updated, new agreement should be negotiated that would be a better arrangement for all parties involved.

Commissioner McKenney agreed with Commissioner Tryon. He added that the community recently passed a levy for the Library which tells him the community wants an exciting and modern Library. The current agreement really does not meet the needs between the City and the Library to bring the Library forward the way he thinks the community is expecting or of the goals of the Library Trustees or its supporters. It does seem appropriate that this is the time to look at renegotiating an agreement.

Mayor Reeves concurred with Commissioner Tryon.

Commissioner Wilson commented that she does not have any problems with looking at the agreement, but she is not inclined to go against the will of the voters on the Library issue.

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Commissioner Wolff would like to know who is going to be involved in those conversations. It is a time to really discuss what the future will look like because whatever was happening in 1993 is not what is happening now. The Library is a very dynamic place and the services they are providing are very different. This gives the Library Trustees and the Library Director an opportunity to have an agreement that better reflects what the goals and the mission of the Library are today and into the future.

City Manager Doyon commented that, the first question would be whether the Trustees want to sit down and have that conversation as well. If that is in the affirmative, then he suggested a limited group to see what issues are out on the table. Because of the public interest with this, there is going to have to be progress communicated at Commission meetings as they work their way through it. The agreement is certainly dated. He thinks that there are other models that could be looked at. He thinks it is difficult for the Library Director to answer to two bosses. He suggested a Commissioner and staff person report back, if the Trustees are willing to enter into that conversation.

Library Director Susie McIntyre commented that the next Library Board agenda could be amended if the Library Board wanted to add a discussion about this proposal and how they would like to move forward.

### ADJOURNMENT

There being no further business to come before the Commission, **Commissioner Tryon moved, seconded by Mayor Reeves, to adjourn the regular meeting of February 20, 2024, at 8:58 p.m.**

Motion carried 5-0.

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Mayor Cory Reeves

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Deputy City Clerk Darcy Dea

**Minutes Approved: March 5, 2024**