



# City Commission Agenda

for

## October 2, 2007

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**Please Note:** The City Commission agenda format allows citizens to speak on each issue prior to Commission discussion. We encourage your participation. Please keep your remarks concise and to the topic under consideration.

**CALL TO ORDER:** 7:00 P.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**NEIGHBORHOOD COUNCILS**

1. Miscellaneous reports and announcements.

**PUBLIC HEARINGS**

2. Res. 9694, Cost Recovery for Hazardous Sidewalk, 325 1<sup>st</sup> Avenue North. Action: Conduct public hearing and adopt or deny Res. 9694. **(Presented by: Jim Rearden)**
3. Res. 9695, Cost Recovery for Hazardous Sidewalk, between 11<sup>th</sup> and 12<sup>th</sup> Street South on 1<sup>st</sup> Avenue South. Action: Conduct public hearing and adopt or deny Res. 9695. **(Presented by: Jim Rearden)**

**OLD BUSINESS**

**NEW BUSINESS**

4. Assignment and Assumption Agreement with Electric City Power, Inc. Action: Approve or deny Agreement. **(Presented by: Coleen Balzarini)**
5. Wholesale Power Contract Between Southern Montana Electric and the City of Great Falls. Action: Approve or deny contract. **(Presented by: Coleen Balzarini)**

**ORDINANCES/RESOLUTIONS**

6. Lot 5, Block 1, International Malting Company, LLC Addition and the abutting segment of U.S. Highway 87. **(Presented by: Ben Rangel)**
  - A. Res. 9696, Intent to Annex. Annexes said property. Action: Adopt Res. 9696 and set public hearing for November 6, 2007.
  - B. Ord. 2985, Establish City Zoning classification of I-2 Heavy Industrial District to Lot 5. Action: Accept Ord. 2985 on first reading and set public hearing for November 6, 2007.
7. Ord. 2982, Establish City Zoning Upon Lot 6A, Beebe Tracts, Cascade County (Big Sky Miniature Golf) addressed as 5000 2<sup>nd</sup> Avenue North. Establishes zoning classification of C-2 General

commercial district. Action: Accept Ord. 2982 on first reading and set public hearing for November 6, 2007. **(Presented by: Ben Rangel)**

8. Ord. 2983, Establish City Zoning Upon the Minor Plat of Castle Pines Phase IV. Assigns zoning classification of R-3 Single-family high density district. Action: Accept Ord. 2983 on first reading and set public hearing for November 6, 2007. **(Presented by: Ben Rangel)**
9. Ord. 2986, Establish City Zoning Upon Marks T and 1A, Section 15, Township 20 North, Range 3 East, Cascade County, addressed as 1400 14<sup>th</sup> Street Southwest. Assigns zoning classification of R-1 Single-family suburban district to property. Action: Accept Ord. 2986 on first reading and set public hearing for November 6, 2007. **(Presented by: Ben Rangel)**
10. Ord. 2987, Establish City Zoning Upon Mark I, Section 15, Township 20 North, Range 3 East, addressed as 1420 14<sup>th</sup> Avenue Southwest. Assigns zoning classification of R-1 Single-family suburban district to property. Action: Accept Ord. 2987 on first reading and set public hearing for November 6, 2007. **(Presented by: Ben Rangel)**
11. Ord. 2988, Establish City Zoning Upon Marks J and J1, Section 15, Township 20 North, Range 3 East, P.M.M., addressed as 1500 and 1508 14<sup>th</sup> Street Southwest. Assigns city zoning classification of R-1 Single-family suburban district to Mark J and assigns zoning classification of C-2 General commercial district to Mark J1. Action: Accept Ord. 2988 on first reading and set public hearing for November 6, 2007. **(Presented by: Ben Rangel)**
12. Ord. 2989, Establish City Zoning Upon Marks 7D and 7M, Section 9, Township 20 North, Range 4 East, P.M.M. John's Mobile Home Court along 2<sup>nd</sup> Avenue North. Assigns city zoning classification of R-10 Mobile Home Park District. Action: Accept Ord. 2989 on first reading and set public hearing for November 6, 2007. **(Presented by: Ben Rangel)**
13. Ord. 2990, Establish City Zoning Upon Lots 19 & 19B, Park Highway Garden Tracts, addressed as 2201 Vaughn Road. Assigns zoning classification of M-2 Mixed-use transitional district. Action: Accept Ord. 2990 on first reading and set public hearing for November 6, 2007. **(Presented by: Ben Rangel)**
14. Ord. 2991, Establish City Zoning Upon Mark 11A, Section 3, Township 20 North, Range 3 East, addressed as 1001 and 1011 Northwest Bypass. Assigns city zoning classification of C-2 General commercial district to property. Action: Accept Ord. 2991 on first reading and set public hearing for November 6, 2007. **(Presented by: Ben Rangel)**

**CONSENT AGENDA** *The Consent Agenda is made up of routine day-to-day items that require Commission action. Items may be pulled from the Consent Agenda for separate discussion/vote by any Commissioner.*

15. Minutes, September 18, 2007, Commission meeting.
16. Total Expenditures of \$2,208,447 for the period of September 14-26, 2007, to include claims over \$5000, in the amount of \$1,970,910.

17. Contracts list.
18. Grant list.
19. Correct public hearing date to October 16, 2007, for Justice Assistance Grant.
20. Set public hearing for October 16, 2007, on Res. 9678, Cost Recovery at 826 2<sup>nd</sup> Avenue South.
21. Set public hearing for October 16, 2007, on Res. 9703, Cost Recovery at 1416 4<sup>th</sup> Avenue North.
22. Approve Change Order No. SI-2 and SII-2 to Talcott Construction for the Mitchell, Jaycee and Water Tower Pools Renovation in the reduced amount of \$153,208.
23. Approve Addendum for the Municipal Golf Course Concessions Contract with Michelle Kazda, K & M, Inc.
24. Approve Engineering Services Agreement with Thomas Dean and Hoskins, Inc. in the amount of \$64,111 for the Bay Drive Trail Phase II CTEP Project.

Action: Approve Consent Agenda or remove items for further discussion and approve remaining items.

#### **BOARDS & COMMISSIONS**

25. Miscellaneous reports and announcements.

#### **CITY MANAGER**

26. Miscellaneous reports and announcements.

#### **CITY COMMISSION**

27. Miscellaneous reports and announcements.

#### **PETITIONS AND COMMUNICATIONS** *(Please keep your remarks to a maximum of 5 minutes)*

28. Miscellaneous reports and announcements.

#### **MOTION TO ADJOURN**

AGENDA REPORT

DATE October 2, 2007

ITEM: RESOLUTION 9694, COST RECOVERY FOR HAZARDOUS SIDEWALK,  
Great Falls Original Townsite Lot 9 Block 309 (325 1<sup>st</sup> Avenue North)

INITIATED BY: PUBLIC WORKS DEPARTMENT / ENGINEERING DIVISION

ACTION REQUESTED: CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION  
9694

PRESENTED BY: JIM REARDEN, PUBLIC WORKS DIRECTOR

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**RECOMMENDATION:** It is recommended that the City Commission after closing the public hearing, adopt Resolution 9694 and assess the total charges of \$1,700.78 against the property with interest and penalties on the unpaid balance.

**MOTION:** “I move to adopt Resolution 9694.”

**SYNOPSIS:** Great Falls Municipal Code 12.28.120 and State Statute Montana Code Annotated, sections 7-14-4109, 7-14-4110, 7-12-4169, and 7-12-4181 authorize the City to condemn sidewalks that become dangerous to public safety. These codes allow for the repair and collection of repair costs from property owners.

**BACKGROUND:** The City Engineering Office received a complaint of a tripping hazard at 325 1<sup>st</sup> Avenue North, owned by Michael Hanson, on July 5, 2006. A pedestrian was walking, tripped, and fell at the above address. She was concerned that she had re-injured her back after recently having back surgery.

A subsequent inspection found 514 square feet of sidewalk adjacent to this property to be heaved, cracked and broken.

The owner of the property was notified of the hazardous situation at least twice with the final notice sent by certified mail. The owner contracted with The Concrete Doctor to mudjack 359 square feet of the sidewalk, but neglected to have the remainder removed and replaced with new concrete. Engineering Staff then received three bids to repair the remaining sidewalk. The purpose of this action is to recover the cost of the repairs.

The owner of the property, Michael Hanson was issued a “Notice of Public Hearing” on September 19, 2007 to inform him of the public hearing set before the City Commission at 7:00 PM on October 2, 2007.

The following is a list of actions and events Staff took to eliminate the hazard:

<u>Action</u>	<u>Date</u>
• Initial complaint received by staff	July 5, 2006
• Initial inspection of property, photographs taken	July 5, 2006
• Initial 30-day repair notice mailed	July 5, 2006
• 30-day follow-up inspection (no repairs made)	September 5, 2006
• Second notice sent that repairs will be made and billed to property owner within 30 days after date of certified notice.	September 5, 2006
• Signed confirmation received from USPS	September 6, 2006
• Request for bids	September 6, 2006
• Award bid to lowest bidder	September 10, 2006
• Contractor started repairs	September 14, 2006
• Contractor finished repairs	September 19, 2006
• Final inspection for completion of work	September 20, 2006

The following is a list of costs incurred in making the repairs:

• Removal and Replacement of 155 sf of 4” Sidewalk	\$ 1,240.00
• Inspector, 4.5 hours at \$ 45.00 per hour	\$ 202.50
• City Engineer, 1 hour at \$ 65.00 per hour	\$ 65.00
• Administrative, 3 hours at \$ 30.00 per hour	\$ 90.00
• Publishing of Legal Ad (Notice of Public Hearing)	\$ 50.00
• Recording fee, 2 of pages at \$ 7.00 each	\$ 14.00
• Permit Fee	\$ 30.00
• Certified mail	\$ 9.28
Total Costs Incurred	\$ 1,700.78

cc: Coleen Balzarini, Fiscal Services Director  
Kelly Audet, Risk Manager  
Judy Burg, Fiscal Services Tax/SID

**RESOLUTION NO. 9694**

**A RESOLUTION ASSESSING THE COSTS INCURRED FOR THE REPAIR OF DANGEROUS SIDEWALK AGAINST SAID PROPERTY LOCATED AT Great Falls Original Townsite Lot 9 Block 309, ADDRESSED AS 325 1<sup>st</sup> Avenue North, GREAT FALLS, CASCADE COUNTY, MONTANA.**

WHEREAS, the owners of the said property located at Great Falls Original Townsite Lot 9 Block 309, addressed as 325 1<sup>st</sup> Avenue North, Great Falls, Montana was issued a notice to repair sidewalk;

WHEREAS, after due notice the property owner did not repair the sidewalk;

WHEREAS, City staff hired a contractor to repair the sidewalk;

WHEREAS, contractor completed removal and replacement of dangerous sidewalk;

And WHEREAS, the City Commission set October 2, 2007 for this hearing, to show cause why the property owner should not be held liable for the costs incurred in repairing of said property in keeping with MCA 7-12-4177 and MCA 7-12-4178.

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

The amount of \$ 1,700.78 for repairing sidewalk incurred in the repair of dangerous sidewalk on Great Falls Original Township Lot 9 Block 309, described at 325 1<sup>st</sup> Avenue North, Great Falls, Cascade County, Montana, be assessed against the property itself, with interest and penalties on the unpaid balance. MCA 7-14-4109; 7-14-4110; 7-12-4169 and 7-12-4181; Chapter 12.28.120 of the Great Falls Municipal Code.

PASSED by the Commission of the City of Great Falls, Montana, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, LISA KUNZ, City Clerk of the city of Great Falls, Montana, do hereby certify that the foregoing Resolution   9694   was placed on its final passage and adoption, and was passed and adopted by the City Commission and said City at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, and approved by the Mayor of City on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_

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

(SEAL OF CITY)

AGENDA REPORT

DATE October 2, 2007

**ITEM:** RESOLUTION 9695, COST RECOVERY FOR HAZARDOUS SIDEWALK, Great Falls First Addition to the Original Townsite, North 103 feet of Lot 1 Block 378 (1100 1<sup>st</sup> Avenue South, Great Falls, MT)

**INITIATED BY:** PUBLIC WORKS DEPARTMENT / ENGINEERING DIVISION

**ACTION REQUESTED:** CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION 9695.

**PRESENTED BY:** JIM REARDEN, PUBLIC WORKS DIRECTOR

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**RECOMMENDATION:** It is recommended that the City Commission after closing the public hearing, adopt Resolution 9695 and assess the total charges of \$1,003.28 against the property with interest and penalties on the unpaid balance.

**MOTION:** “I move to adopt Resolution 9695.”

**SYNOPSIS:** Great Falls Municipal Code Chapter 12.28.120 and State Statute Montana Code Annotated, sections 7-14-4109, 7-14-4110, 7-12-4169 and 7-12-4181 authorize the City to condemn sidewalks that become dangerous to public safety, and allows for the repair and collection of repair costs from property owners.

**BACKGROUND:** The City Engineering Office received an email from the City’s Risk Specialist that a tripping and falling incident had occurred between 11<sup>th</sup> and 12<sup>th</sup> Street South on 1<sup>st</sup> Avenue South on May 1, 2006. The email noted that a sign reading Antiques was in front of the address.

Upon inspection, it was determined that the address was 1100 1<sup>st</sup> Avenue South. The property is owned by William O’Neil, and 25 square feet of sidewalk adjacent to this property was heaved, cracked and broken.

The owner of the property was notified of the hazardous situation at least twice with the final notice sent by certified mail. On May 4, the City received a letter from the property owner stating that a tree had fallen, damaging his house and he included a bill for \$7,886.40 for repairs. This claim was forwarded to the City’s Risk Specialist.

On July 6, 2006, a follow up inspection was performed. The hazardous concrete had not been removed and replaced.

The owner of the property, William O’Neil was issued a “Notice of Public Hearing” on September 19, 2007 to inform him of the public hearing set before the City Commission at 7:00 PM on October 2, 2007.



The following is a list of actions and events Staff took to eliminate the hazard:

<u>Action</u>	<u>Date</u>
• Initial complaint received by staff	May 1, 2006
• Initial inspection of property, photographs taken	May 1, 2006
• Initial 30-day repair notice mailed	May 1, 2006
• 30-day follow-up inspection (no repairs made)	June 6, 2006
• Second notice sent that repairs will be made and billed to property owner within 30 days after date of certified notice.	June 7, 2006
• Signed confirmation received from USPS	Letter was refused/returned June 23, 2006
• Request for bids	August 21, 2006
• Award bid to lowest bidder	September 13, 2006
• Contractor started repairs	September 18, 2006
• Contractor finished repairs	September 19, 2006
• Final inspection for completion of work	September 19, 2006

The following is a list of costs incurred in making the repairs:

• Removal and Replacement of 25 sf of 4" Sidewalk	\$ 475.00
• Inspector, 6 hours at \$ 45.00 per hour	\$ 270.00
• City Engineer, 1 hour at \$ 65.00 per hour	\$ 65.00
• Administrative, 3 hours at \$ 30.00 per hour	\$ 90.00
• Publishing of Legal Ad (Notice of Public Hearing)	\$ 50.00
• Recording fee, 2 of pages at \$ 7.00 each	\$ 14.00
• Permit Fee	\$ 30.00
• Certified mail	\$ 9.28
 Total Costs Incurred	 \$ 1,003.28

cc: Coleen Balzarini, Fiscal Services Director  
Kelly Audet, Risk Manager  
Judy Burg, Fiscal Services Tax/SID

**RESOLUTION NO. 9695**

**A RESOLUTION ASSESSING THE COSTS INCURRED FOR THE REPAIR OF DANGEROUS SIDEWALK AGAINST SAID PROPERTY LOCATED AT Great Falls First Addition to the Original Townsite, North 103 feet of Lot 1 Block 378, ADDRESSED AS 1100 1<sup>st</sup> Avenue South, GREAT FALLS, CASCADE COUNTY, MONTANA.**

WHEREAS, the owners of the said property located at Great Falls First Addition to the Original Townsite, North 103 feet of Lot 1 Block 378, addressed as 1100 1<sup>st</sup> Avenue South, Great Falls, Montana was issued a notice to repair sidewalk;

WHEREAS, after due notice the property owner did not repair the sidewalk;

WHEREAS, City staff hired a contractor to repair the sidewalk;

WHEREAS, contractor completed removal and replacement of dangerous sidewalk;

And WHEREAS, the City Commission set October 2, 2007 for this hearing, to show cause why the property owner should not be held liable for the costs incurred in repairing of said property in keeping with MCA 7-12-4177 and MCA 7-12-4178.

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

The amount of \$ 1,003.28 for repairing sidewalk incurred in the repair of dangerous sidewalk on Great Falls First Addition to the Original Townsite, North 103 feet of Lot 1 Block 378, described at 1100 1<sup>st</sup> Avenue South, Great Falls, Cascade County, Montana, be assessed against the property itself, with interest and penalties on the unpaid balance. MCA 7-14-4109; 7-14-4110; 7-12-4169 and 7-12-4181; Chapter 12.28.120 of the Great Falls Municipal Code.

PASSED by the Commission of the City of Great Falls, Montana, on the \_\_\_\_\_ day of \_\_\_\_\_ 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, LISA KUNZ, City Clerk of the city of Great Falls, Montana, do hereby certify that the foregoing Resolution   9695   was placed on its final passage and adoption, and was passed and adopted by the City Commission and said City at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, and approved by the Mayor of City on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_

\_\_\_\_\_

Lisa Kunz, City Clerk

(SEAL OF CITY)

CITY OF GREAT FALLS, MONTANA

AGENDA # 4

AGENDA REPORT

DATE October 2, 2007

ITEM Assignment and Assumption Agreement between Electric City Power, Inc. and the City of Great Falls

INITIATED BY City of Great Falls and Electric City Power, Inc.

ACTION REQUESTED Approve Assignment and Assumption Agreement between Electric City Power, Inc. and the City of Great Falls and Authorize the City Manager to Execute the Agreement

PREPARED BY Martha Cappis, Operations Supervisor

PRESENTED BY Coleen Balzarini, Fiscal Services Director

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**RECOMMENDATION:** It is recommended that the City Commission approve the Assignment and Assumption Agreement with Electric City Power, Inc.

**MOTION:** I move the City Commission approve the Assignment and Assumption Agreement between Electric City Power, Inc and the City of Great Falls, and authorize the City Manager to execute the agreement.

**SYNOPSIS:** Approval of this agreement transfers and assigns all of the City's rights, title, and interest in the existing power supply contracts, and customer contracts to the non-profit utility, Electric City Power, Inc.

**BACKGROUND:** On November 1, 2005, the City created and organized a nonprofit corporation under Ordinance 2925, known as "Electric City Power, Inc." to own, operate and take all other actions necessary or desirable in connection with the municipal electric utility of the City, including the provision of electricity supply services to consumers and others located within or outside of the City. The City has been operating under this scenario, and this agreement formalizes the transactions. The City is a member of Southern Montana Electric Co-operative (SME), not Electric City Power, Inc. The City will retain its membership and all of the electricity it receives from SME will be passed through to Electric City Power, Inc. and its customers.

Electric City Power, Inc. will continue with all aspects of the City's electric utility operations including the purchase of electricity in wholesale markets and the distribution of that electricity to serve its own needs, the needs of other governmental users, large commercial users, and to small commercial and residential customers in our Pilot program.

As previously outlined in Electric City Power, Inc.'s creation ordinance, articles, and by-laws, the ultimate authority for ratemaking, and the appointment and removal of the governing board members lies with the elected City Commission.

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
BETWEEN  
THE CITY OF GREAT FALLS AND ELECTRIC CITY POWER, INC.**

This Assignment and Assumption Agreement (the “*Agreement*”) is made as of the date this Agreement is executed and delivered as provided below, between the City of Great Falls, Montana (“*Seller*” or the “*City*”) and Electric City Power, Inc., a Montana nonprofit corporation (“*Buyer*” or “*Electric City*”), each a “*Party*” and, collectively, the “*Parties*” to this Agreement.

**RECITALS**

The circumstances and facts under which this Agreement is made and executed are as follows:

1. The City authorized the organization of Electric City as an instrumentality of the City pursuant to the provisions of the Montana Nonprofit Corporation Act, Title 31, Chapter 2, Montana Code Annotated, as amended, to own, construct, finance, operate and maintain the properties, facilities, rights and interests comprising the City’s municipal electric utility established pursuant to Section 5.20.030, OCCGF, and to provide reliable electricity supply services to consumers within and outside of the boundaries of the City at stable, cost-based rates, all for and on behalf of the City.

2. Electric City has previously been licensed by the Montana Public Service Commission as an “electricity supplier” under the Electric Utility Restructuring and Customer Choice Act, Title 69, Chapter 8, Montana Code Annotated, as amended (the “*Customer Choice Act*”), with the authority to provide electricity supply services to certain classes of electricity consumers within the State.

3. Electric City has entered into certain power supply agreements with retail customers to provide electricity service on a long-term basis.

4. The City is a member of Southern Montana Electric Generation & Transmission Cooperative, Inc., (“*SME*”), a rural electric cooperative organized and doing business under the provisions of Title 35, Chapter 18 of the Montana Code Annotated, which maintains certain portfolio power supply resources in order to provide reliable, cost-based electricity service to the City and its other member customers.

5. Effective on or about October \_\_\_\_, 2007, the City and SME have entered into a Wholesale Power Contract through which the City has agreed to purchase electricity sufficient to meet Electric City’s full requirements as a licensed electricity supplier (the “*SME Contract*”), for the purpose of providing electricity supply for Electric City’s retail customers.

6. The Parties desire to enter into this Agreement through which all of the City’s right, title, and interest in and to the SME Contract is assigned to Electric City and

Electric City agrees to assume all of the City's duties under the SME Contract, all as more fully provided herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises of the parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. *Assignment.* The Seller hereby assigns, transfers and conveys to the Buyer the rights, benefits and privileges of the Seller under the SME Contract.

2. *Assumption.* For and in consideration of the assignment hereunder, the Buyer hereby accepts the foregoing assignment and hereby assumes all of Seller's rights, obligations, interests and liabilities under the SME Contract to the same extent as though it had originally been named as a party thereto and agrees to observe, perform and fulfill all the terms and conditions of the SME Contract.

3. *Seller's Administrative Fees.* For and in consideration of the City's administrative overhead, time, investments, and ancillary services relating to the SME Contract and its role as a member of SME, Buyer hereby agrees to pay to the City an administrative fee of up to three percent (3%) of the total electricity supply and transmission charges from SME under the SME Contract.

4. *Indemnification.* Buyer hereby agrees to defend, indemnify and hold harmless seller and its elected and appointed officials, employees, agents and representatives from and against all claims, demands, obligations, losses, liabilities, damages, recoveries and deficiencies, including interest, penalties and reasonable attorneys' fees, costs and expenses arising out of, resulting from or related in any way whatsoever to the obligations under the SME Contract assumed by Buyer herein, other than those obligations arising prior to the date hereof resulting from Seller's gross negligence or willful misconduct.

5. *Remedies.* Any rights and remedies arising under this Agreement are cumulative with all other rights and remedies available at law or equity and each Party reserves all of its rights and remedies available in law or equity unless otherwise expressly provided in this Agreement.

6. *Financing Provisions.* The Parties hereby agree that Buyer may pledge its rights and interests under the Agreement to secure such financing as Buyer may deem appropriate and that any indenture trustee for or any receiver in connection with such financing shall be deemed a third-party beneficiary of this Agreement.

7. *Interlocal Cooperation.* The Parties intend that this Agreement constitute an interlocal contract between public agencies authorized by the Interlocal Cooperation Act, Title 7, Chapter 11, Part 1, MCA (the "*Interlocal Act*"). In furtherance of the foregoing, each of the Parties finds, determines and declares as follows:

- (i) it is a "public agency" within the meaning of the Interlocal Act;

(ii) the purpose of this Agreement is to enable Buyer to satisfy its duties to supply electricity supply to its retail customers under its authority as a licensed electricity supplier;

(iii) this Agreement has been authorized and approved by the governing body of each Party and outlines fully the purposes, powers, rights, obligations and responsibilities of the Parties;

(iv) the terms and provisions of this Agreement specify the matters required by Section 7-11-105 of the Interlocal Act, *provided* that (A) no separate legal entity is created by this Agreement, and (B) each Party shall be separately responsible for its administration, budgeting, financing and performance of this Agreement and for its reports and payment of retirement system contributions pursuant to Section 19-2-506; and

(v) this Agreement shall be filed with (A) the county clerk and recorder of the county or counties where the Parties are situated and (B) the Montana Secretary of State.

8. *General Provisions.* This Agreement and the obligations of Buyer and Seller hereunder: (i) shall be binding upon and inure to the benefit of Buyer and Seller and their respective successors and assigns; (ii) shall be governed by and construed in accordance with the laws of the State of Montana; (iii) may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith. Buyer and Seller agree further to execute any and all other assignments, documents, certificates and other instruments as may at any time be deemed reasonably necessary to further evidence or consummate this Agreement.

9. *Counterparts.* This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as follows:

**CITY OF GREAT FALLS, MONTANA**

By: \_\_\_\_\_

Name:

Title:

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

**ELECTRIC CITY POWER, INC.**

By: \_\_\_\_\_

Name: Coleen Balzarini

Title: Executive Director

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



CITY OF GREAT FALLS, MONTANA

AGENDA # 5

AGENDA REPORT

DATE October 2, 2007

ITEM Wholesale Power Contract Between Southern Montana Electric and the City of Great Falls

INITIATED BY Long-Term Stable Electric Supply Needs For the Customers of Electric City Power, Inc.

ACTION REQUESTED Approve Wholesale Power Contract between Southern Montana Electric and the City of Great Falls and Authorize the City Manager to Execute the Contract

PREPARED BY Martha Cappis, Operations Supervisor

PRESENTED BY Coleen Balzarini, Fiscal Services Director

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**RECOMMENDATION:** It is recommended that the City Commission approve the Wholesale Power Contract.

**MOTION:** I move the City Commission approve the Wholesale Power Contract with Southern Montana Electric and authorize the City Manager to execute the contract.

**SYNOPSIS:** This contract will allow SME and ECPI to continue working together to meet the growing power supply requirements of current and new customers, into the future whether or not the City or ECPI participate in the Highwood Generation Station as an owner.

**BACKGROUND:** Southern Montana Electric G&T ("SME") has been successfully securing favorable long-term electricity contracts on behalf of the City of Great Falls since September, 2004. The City in turn has been able to provide a reliable and cost effective supply of electricity to its twelve customers, including both commercial and industrial businesses. The existing agreement between the City and SME has a term through 2011. In the event Highwood Generation Station is not built, SME will continue to secure additional power from third-party suppliers as necessary to supply its members, including the City. This contract was written by Dorsey & Whitney, bond counsel for the City, with extensive review by the City's entire finance team, as well as the City's outside consultants. This contract was also presented to the Electric City Power, Inc Board on October 1, 2007.

**WHOLESALE POWER CONTRACT BETWEEN  
SOUTHERN MONTANA ELECTRIC AND THE CITY OF GREAT FALLS**

THIS AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 (as amended, this "Agreement"), by and between **SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.** ("SME" or "Southern Montana"), a corporation organized and existing under the laws of the State of Montana, with its principal place of business at 3521 Gabel Road\_ - Suite #5, Billings, Montana 59102, and the **CITY OF GREAT FALLS** ("City"), an incorporated city with its principal place of business at City Hall, 2 Park Drive South, Great Falls, Montana, 59401.

**RECITALS**

WHEREAS, SME is a rural electrical cooperative organized under the provisions of Title 35, Chapter 18 of the Montana Code Annotated for the purposes of purchasing and reselling, generating, and distributing electrical power to its members;

WHEREAS, the City is a member of SME;

WHEREAS, the City Commission of the City has organized and created Electric City Power, Inc., a Montana nonprofit corporation ("ECP"), as an instrumentality of the City in order to secure and provide reliable and economic supplies of electricity to its commercial and industrial customers, and ECP has obtained a license under Montana law to supply electricity to certain commercial and industrial customers (but ECP is not licensed to operate an electrical distribution system);

WHEREAS, the City has determined that it needs to enter into this Agreement with SME to meet the power requirements of ECP's customers whether or not the City or ECP participate in the Highwood Generating Station as an owner;

WHEREAS, ECP has entered into power supply agreements with certain commercial and industrial customers as identified (along with each customer's projected load and meter and delivery points) on Exhibit A attached hereto;

WHEREAS, on or about the effective date hereof, the City and ECP have entered into a Assignment and Assumption Agreement (the "Electric City Power Contract") under which the City has agreed to assign to ECP and ECP has assumed all of the City's rights to receive the electric energy and related transmission and ancillary services purchased by it from SME under this Agreement to permit ECP to meet its obligations to its commercial and industrial customers;

WHEREAS, SME is currently purchasing electric energy and related transmission services for the purpose of, among other things, supplying wholesale electric energy to its members, including the City;

WHEREAS, for the purpose of acquiring quantities of electric energy and related services for the supply of the City's power requirements, SME has entered into a number of power purchase agreements with PPL Montana, LLC (hereinafter "PPL"), a Delaware limited liability company by and through PPL Energy Plus, LLC, its authorized agent with principal business office at 303 North Broadway, Suite 400, Billings, Montana, 59101 (the "Existing PPL Supply Contracts");

WHEREAS, SME has previously executed the following agreements with the City with respect to its power requirements (collectively, the "Existing Contracts"): (1) September 29, 2004 WHOLESAL POWER CONTRACT; (2) October 22, 2004 AGREEMENT; (3) October 18, 2005 AGREEMENT, ADDENDUM #1; (4) November 8, 2006, AGREEMENT, ADDENDUM #2; and (5) July 17, 2007 AGREEMENT

REGARDING SECURITY FOR POWER PURCHASES FOR THE CITY OF GREAT FALLS;

WHEREAS, SME is undertaking the development of a coal-fired electric generating facility to be located in Cascade County, Montana near the City of Great Falls, which facility will be known as the Highwood Generating Station (“HGS”);

WHEREAS, the City, through EPC, desires to be an equity participant in the HGS if it can secure financing satisfactory to the Rural Utilities Service (“RUS”) and in such time as to not delay SME’s financing and construction of HGS;

WHEREAS, if the City, through ECP, is an equity participant, the HGS will be sized at approximately 250 Megawatts net and ECP will own an undivided ownership interest in, and will be entitled to fifteen percent (15%) of the net output from, HGS on and after it begins commercial operation;

WHEREAS, if the City, through ECP, is not an equity participant in the HGS, the HGS will be sized at approximately 213 to 215 Megawatts net and will be owned and financed solely by SME, primarily by a loan guaranteed through the RUS;

WHEREAS, the Parties anticipate the HGS may not begin commercial operation prior to the second quarter of 2012;

WHEREAS, in connection with its equity participation in the HGS, the parties anticipate that SME, the City and ECP will negotiate and enter into a Coordination and Integration Agreement (if entered into, the “CIA”) providing for the coordinated financing of the HGS and providing that ECP will assign its ownership interest in HGS to SME and that SME will, in turn, make the output of ECP’s ownership interest in HGS,

together with certain other power supply sources, available to ECP and the City so that ECP may meet its commitments to its commercial and industrial customers;

WHEREAS, SME has long-term wholesale power contracts to provide the electric power requirements of its other five members, some or all of which are borrowers of RUS;

WHEREAS, in order to secure a long-term supply of electrical power for the customers of ECP, the City desires a long-term wholesale power contract to satisfy its power and transmission requirements;

WHEREAS, the estimated commercial operation of the HGS is at least 35 years and financing will be for approximately that period;

WHEREAS, SME will continue to enter into power purchase agreements with third-party power suppliers to supply the needs of its members, including the City, until such time as the HGS begins commercial operation;

WHEREAS, after the HGS begins commercial operation SME will continue to secure additional power from third-party suppliers as necessary to supply its members, including the City, with power requirements which exceed the output of the HGS and SME will also provide its members (including the City) with power requirements during outages affecting the HGS, spinning reserves, ancillary services, firming resources, and similar services;

WHEREAS, SME has entered into a contract agreement for electric service with the United States, acting through the Department of Energy, Bonneville Power Administration Power Business Line (hereinafter referred to as Bonneville PBL), and the Western Area Power Administration (hereinafter referred to as "Western") which

includes quantities of electric energy and related services available to its member cooperatives; and

WHEREAS, SME has entered into a contract agreement for Network Integrated Transmission Services with the United States, acting through the Department of Energy, Bonneville Power Administration Transmission Business Line (hereinafter referred to as Bonneville TBL);

WHEREAS, SME has entered into a contract agreement for Network Integrated Transmission Services with NorthWestern Energy;

NOW, THEREFORE, in consideration of the mutual undertakings herein, the Parties agree as follows:

1. GENERAL:

(A) Purchase and Sale of Requirements. SME shall sell and deliver to the City and the City shall purchase and receive from SME all electric energy and related transmission and ancillary services which the City and ECP shall require to meet the electricity requirements of ECP's customers, including the customers of ECP identified on Exhibit A hereto and any additional electric service customers with whom ECP may hereafter enter into power supply agreements pursuant to Section 1(C) (collectively, the "Customers"). This provision shall not preclude the City or ECP from (i) purchasing electric power and related transmission and ancillary services from the Western in the event the City or ECP obtains an allocation of preference power from Western, or (ii) operating a co-generation facility at the City's Wastewater Treatment Facility, provided that all such purchases are made through SME and subject to the terms provide in Section 22.

(B) Assignment to ECP. Pursuant to the Electric City Contract, (i) the City has assigned to ECP all of the City's rights to receive the electric energy and related transmission and ancillary services purchased by the City from SME under this Agreement for the purpose of permitting ECP to serve ECP's Customers, and (ii) ECP has accepted and assumed all of the City's rights and obligations under this Agreement. The assignment does not relieve the City of the obligations it has to SME under this contract except to the extent those obligations are in fact fulfilled by ECP.

(C) Additional ECP Customers. ECP shall be entitled to enter into power supply agreements with additional customers (in addition to those identified on Exhibit A), so long as the additional customer's load requirements can reasonably be expected to be met from ECP's share of the HGS (if ECP participates as an owner of an undivided interest in HGS) and from other power supply sources available to SME to provide service to the City and ECP.

(D) Limitation on Recourse to the City. SME and the City agree that the City is not pledging any of its revenues or assets to performance of its obligations under this Agreement other than the revenues, rights and assets of the City which are held solely for the purpose of operating its electric supply business (including the revenues and rights of the City under the Electric City Contract). The obligations of the City under this Agreement and SME's rights and remedies against the City shall be limited to (i) the payments received by the City from ECP, (ii) the rights of the City to receive payments from ECP under the Electric City Contract, (iii) the City's equity ownership in ECP, and (iv) any cash reserves or letters of credit or other security provided by the City or ECP in connection with this Agreement.

(E) Nondiscrimination. In meeting the power requirements of the City and ECP's Customers, SME will treat alike each of SME's cooperative members, on the one hand, and the City and ECP, on the other hand, under substantially similar conditions, except to the extent that any such discrimination (i) will not have a material adverse effect on the City or ECP or ECP's Customers or the use of HGS by the City or ECP, and (ii) is otherwise (A) permitted by the terms of this Agreement or (B) is consistent with Prudent Utility Practices; provided further that this provision does not preclude, and allows, SME to treat the City and SME's cooperative members differently with respect to the power supply sources SME utilizes to serve the City and ECP, on the one hand, and SME's cooperative members, on the other hand, and the resulting price for such power; for example, this provision does apply to SME's allocation from Western which will flow through SME only to the cooperative members. "Prudent Utility Practices" means the practices, methods, standards and procedures that (a) are generally accepted and followed by generation and transmission cooperatives and, in the event HGS becomes operational, owners and operators of coal-fired power projects of technology, complexity and size similar to the HGS, and which (b) would be expected by owners and operators of such projects, at the particular time in question and in the exercise of reasonable judgment in light of facts or circumstances then known or that reasonably should have been known, to accomplish the desired results and goals, including such goals as efficiency, reliability, economy and profitability, in a manner consistent with all applicable laws, safety and environmental protection, provided however that the term Prudent Utility Practices is not intended to be limited to the optimum practice or method to the exclusion of all others,



but rather is intended to encompass a spectrum of reasonable and prudent practices, methods, standards and procedures.

2. ELECTRIC CHARACTERISTICS: Electric power and energy to be furnished hereunder shall be alternating current, three phase, sixty cycle.

3. COORDINATION OF INTERCONNECTIONS & SWITCHING: In the event that ECP or the City acquires distribution facilities, the City agrees that, as a safety measure, it will comply with (and will cause ECP to comply with) reasonable safety measures adopted by SME in the operation of such distribution facilities.

4. DELIVERY POINTS: Delivery points, delivery voltage, metering voltage, and special conditions of power and energy delivered, or scheduled for delivery, for the City and ECP's Customers shall be as shown on Exhibit B attached hereto and made a part hereof. In the event ECP enters into contracts with additional Customers as contemplated in Section 1(C), Exhibit B will be amended to reflect the delivery points, delivery voltage, metering voltage, and special conditions applicable to such additional Customers.

5. CONTRACT DEMAND: The estimated contract demand for the City and ECP's Customers at each point of delivery shall be as specified in Exhibit B attached hereto and made a part hereof (where contract demand refers to the amount of power the Customers have a right or obligation to purchase from ECP). On or before the 1<sup>st</sup> day of April of each year the City shall submit a revised Exhibit B to SME setting forth the estimated maximum number of kilowatts the City and ECP's Customers will require at the respective point(s) of delivery for the following five (5) calendar years. SME shall notify the City in writing as soon as practical after it receives the proposed revision from

the City whether it accepts the proposed revision and any changes SME may suggest or concerns SME may have with respect to the proposed revision, and SME and the City shall each use good faith efforts to agree on the proposed revision at least 90 days prior to the beginning of the next calendar year. If the City and SME agree on a revision to Exhibit B, the revised Exhibit B shall be substituted for the Exhibit B then in effect.

6. SUBSTATION: Unless distribution services are otherwise provided by NorthWestern Energy or other utilities, the City or ECP shall install, own, and maintain (or cause to be installed, owned and maintained) the necessary substation equipment at the points of connection and shall own and maintain (or arrange for) switching and protective equipment which may be reasonably necessary to enable the City and ECP's Customers to take and use electric power and energy hereunder and to protect the system of SME or SME's suppliers. Meters and metering equipment shall be furnished and maintained or caused to be furnished and maintained by the City or ECP, unless otherwise provided by NorthWestern Energy or such other utilities.

7. RATES:

(A) For wholesale electricity supplies previously secured for and furnished to the City by SME as set forth in the Existing Contracts, the following rates apply:

(i). THIRTY-SIX DOLLARS (\$36) per megawatt hour ("mWh") for the 5 megawatt (mW) flat block of power secured for the City from PPL for delivery during the term October 1, 2004 through December 31, 2008. In addition, the City shall pay SME an additional \$5.70 per mWh in the form of a credit against SME's future raw water purchases from the City. SME's monthly billing

statements to the City shall reflect the monthly amount of the water credit. The water credit shall apply to this block of power only.

(ii) FORTY-FOUR DOLLARS AND FIFTEEN CENTS (\$44.15) per mWh for the shaped blocks of power secured for the City from PPL on August 3, 2005, consisting of the following: (a) 6 mWh on-peak and 5 mWh off-peak for delivery during the term September 1, 2005 through June 30, 2006 and (b) 10 mWh on-peak and 8 mWh off-peak for delivery during the term of July 1, 2006 through September 30, 2011.

(iii) FIFTY-TWO DOLLARS AND EIGHTY CENTS (\$52.80) per mWh for a 7 mW flat block of power secured for the City from PPL for delivery during the term January 1, 2007 through December 31, 2008.

(iv) FORTY-SEVEN DOLLARS AND FORTY-FIVE CENTS (\$47.45) per mWh for a 12 mW flat block of power secured for the City from PPL for delivery during the term January 1, 2009 through March 31, 2011.

In addition to the amounts set forth in the sub-paragraphs (i) through (iv), the city shall pay SME an additional 2% for administrative, scheduling, and other services provided by SME. SME will provide separate billing records and invoices to the City for each of the above enumerated blocks of power.

(B) For wholesale electricity supplies purchased after the date of this Agreement, to satisfy the City's requirements until such time as the HGS begins commercial operation, the rates applicable to such electricity supplies shall be the actual cost incurred by SME for the power plus an additional 2% for administrative, scheduling, and other services provided by SME. SME shall purchase such wholesale electricity

supplies only at the request of and in consultation with the City. At the request of the City, SME shall use its best efforts to obtain and submit to the City for approval indicative pricing proposals from third parties to supply the City's requirements at the best available prices. Upon approval of a proposal by the City, SME shall enter into a contract securing the power, provided that the form of the contract has been approved by the City. The price for these purchases will be set at the time the third party purchase is executed.

(C) When the HGS begins commercial operation, rates shall be determined as follows:

(i) If the City, through ECP, owns a percentage undivided interest in the HGS, then the City's price of power for its percentage share of the output of the HGS shall be a corresponding percentage of the total cost of operating the HGS and delivery of power to the point of delivery (where the total operating cost is determined based on reasonable and equitable methods of allocation of the actual costs incurred by SME as the operator of the HGS), including (a) the costs of operating the transmission facilities which are part of the HGS (from the HGS to the interconnection with Northwestern Energy), plus (b) the costs of acquiring and managing necessary firming resources, ancillary services and supplemental power supply sources, plus (c) amounts as may be equitably determined by the SME Board of Trustees and applicable to all SME Members as necessary to establish reserves and other such financial devices which benefit in an equitable manner all of the SME Members including the City, plus (d) SME's administrative and general expenses which are appropriately attributed to the

operation of the HGS; but in any event excluding (e) SME's debt service expense and charges allocable to SME's financing. In the event that the City's electricity supply requirements exceed its percentage share of the output of the HGS, then the price of the additional supply will be the cost SME incurs for the additional power on a pass-through cost basis plus 2% for administrative, scheduling, and other services provided by SME.

(ii) If the City, through ECP, is not a percentage owner of an undivided interest in the HGS, then the City's price of power shall be the cost SME incurs for the power provided by SME to the City on a pass-through basis plus 2% for administrative, scheduling, and other services provided by SME. To the extent of availability, SME agrees to first make available to the City all electricity generated by the HGS that is in excess of the demands of SME's member cooperatives and other contractual obligation made to secure operating and spinning reserves as well as contracts made in advance of the request by ECP to purchase capacity from HGS, at a price based on the cost of operating the HGS together with a reasonable charge reflecting an allocated share of SME's debt service requirements including revenues necessary to meet RUS' requirements for an appropriate Times Interest Earned Ratio (TIER) and a 2% charge for administrative, scheduling, and other services provided by SME. When the power generated by the HGS and made available to the City is insufficient to meet the City's demands, then SME shall purchase power from third-party suppliers to fulfill the City's demands at a price based on the pass-through cost of such purchased power plus a 2% charge for administrative, scheduling, and other

services provided by SME. In this event, SME shall purchase such blocks of power at the request of and in consultation with the City. At the request of the City, SME shall use its best efforts to obtain and submit to the City for approval bids from third parties to supply the City's requirements at the best available prices. Upon approval of a proposal by the City, SME shall enter into a contract securing the power, provided that the form of the contract has been approved by the City.

(D) The City shall provide all letters of credit and other security required by any third-party supplier of power purchased by SME to meet the City's requirements.

8. METER READING AND PAYMENT OF BILLS: SME shall read or cause to be read each meter on approximately the same date each month. Electric energy and related services furnished hereunder shall be paid for by the City at the offices of SME monthly within ten (10) days after the bill therefore is mailed. If the City shall fail to pay any such bill within such ten-day period, SME may discontinue delivery of electric energy and related services hereunder upon fifteen (15) days' written notice to the City of its intention to do so. SME shall timely pay for all wholesale electric energy, transmission services and other incurred costs in accordance with the provisions of contracts between SME and providers of said energy and related services.

9. METER TESTING AND BILLING ADJUSTMENT:

(A) SME shall without charge to the City inspect and/or test metering equipment or cause metering equipment to be inspected and/or tested at least once each year and at any reasonable time upon request therefore by the City. Any metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced.

Should any meter fail to register, the electric demand and energy delivered during such period of failure to register shall, for billing purposes, be that amount determined to be appropriate pursuant to the meter testing and billing adjustment provisions of the contract between SME and the United States, between SME and NorthWestern Energy, between SME and PPL, whichever contract(s) is (are) applicable to said metering equipment failure.

If any of the inspections and/or tests provided for herein disclose an error exceeding two percent (2%), corrections based upon the inaccuracy found shall be made pursuant to the meter testing and billing adjustment provisions of the contract between SME and the United States, and/or between SME and NorthWestern Energy or PPL, whichever contract(s) is (are) applicable to said inaccuracy. Any correction in billing resulting from such correction in meter records shall be made in the next monthly bill rendered by SME to the City and such correction when made shall constitute full adjustment of any claim between the parties hereto arising out of such failure or inaccuracy of metering equipment.

(B) SME shall notify the City or arrange notification in advance of the time of any City requested meter test so that a representative of such City may be present at such meter test.

10. ADJUSTMENTS FOR FRACTIONAL BILLING PERIOD: For a fractional part of a billing period at the beginning or end of service, and for fractional periods due to withdrawals of service, the applicable charges for demand or capacity, for kilowatt hour blocks of energy, and/or for a minimum bill shall each be proportionately adjusted in the ratio that the number of hours that electric service is furnished to the City

in such fractional billing period bears to the total number of hours in the billing period involved.

11. RIGHT OF ACCESS: In the event the City or ECP acquires any distribution facilities, the City hereby agrees that Southern Montana, and its authorized agents, contractors, or employees, may enter City's or ECP's distribution facilities, including its substations, at all reasonable times, provided proper advance arrangements have been made with the City. All activities of Southern Montana and its authorized agents, contractors, or employees, shall be performed so as not to interfere with the operation and maintenance of the facilities of the City or ECP.

12. INDEMNIFICATION: Subject to the limitation on recourse to the City contained in Section 1(D), in the event the City or ECP acquires any distribution facilities, the City hereby agrees to indemnify and hold harmless Southern Montana, and its authorized agents, contractors, and employees, from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the wrongful act or omission of the City or ECP or their agents or employees acting within the scope of their employment, except to the extent caused by the negligence or willful misconduct of the indemnified party.

13. CONTINUITY OF SERVICE: SME shall use reasonable diligence to provide a constant and uninterrupted supply of electric energy and related services hereunder. If the supply of electric energy and related services shall fail or be interrupted, or become defective through an act of God or of the public enemy, or



because of accident, labor dispute, or any other cause beyond the control of Southern Montana, SME shall not be liable therefore or for damages caused thereby.

14. CONSERVATION AND RENEWABLE ENERGY PROGRAM:

(A) The Parties acknowledge that the City does not currently have a conservation commitment, but the Parties also agree that the City shall develop and implement a conservation and renewable energy program (hereinafter referred to as the “program”), as may hereafter be required by any governmental authority (hereinafter referred to as the “agency”) with jurisdiction over SME or the City.

(B) Southern Montana, with the guidance and assistance of the agency, will assist the City in development of a program which will qualify under the agency’s guidelines or requirements.

(C) The City will develop a program and will submit said program in timely fashion to the agency for review and approval in accordance with the agency’s guidelines or requirements.

(D) If the City does not obtain the approval of its program by the agency or if such approval has been revoked, the net monetary cost resulting therefrom or any penalty imposed on SME by the agency will be passed through and imposed on the City.

15. TRANSFER OF INTEREST IN CONTRACT BY CITY: No voluntary transfer of this contract or of the rights of the City hereunder shall be made without the written approval of Southern Montana. In the event the City is a percentage owner of an undivided interest in the HGS, this provision shall be modified to allow for those assignments specified by the parties in their HGS ownership agreements.

16. MISCELLANEOUS:

(A) Substation Charges. City agrees to reimburse SME for any expenses incurred for materials, labor, and replacement parts, if any, in maintaining and repairing voltage regulators, by-pass switches, and other related equipment installed to provide or maintain service to the City in substations of the Western and/or NorthWestern Energy and/or PPL and to the extent that charges therefore may be made to SME by the Western and/or NorthWestern Energy, and/or PPL, and have been mutually agreed to in advance by the City and Southern Montana.

(B) Entire Agreement. This Agreement represents the complete agreement of the Parties and supersedes and replaces all prior agreements and understandings of the Parties, whether written or oral.

(C) Severability. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall not be affected. With respect to any provision held invalid or unenforceable, the Parties shall amend or modify this Agreement as necessary to effect as closely as possible the Parties' original intent.

17. WAIVERS: Any waiver at any time by either party hereto if its rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any subsequent default or matter.

18. TERMINATION OF EXISTING CONTRACTS: This Agreement supersedes and replaces the Existing Contracts. All rights and liabilities of the Parties arising under the Existing Contracts prior to the date of this Agreement or relating to periods prior to the date of this Agreement shall be and are hereby preserved and shall be governed by the provisions of the Existing Contracts.

19. TERM AND EARLY TERMINATION:

(A) Term. This Agreement shall become effective on the date specified in the first sentence of this Agreement and (unless terminated early pursuant to Section 19(B)) shall remain in effect through the 31st day of December, 2048, and shall thereafter continue in full force and effect until it is terminated by either party's giving to the other not less than twelve (12) months written notice of its intention to terminate.

(B) Early Termination Upon Member Termination Event. This Agreement will terminate early, prior to the end of the initial term, upon the occurrence of a Member Termination Event, effective on the date on which the Member Termination Event is deemed to be effective. For this purpose, a "Member Termination Event" means the occurrence of one or more of the following events:

(a) Receipt of written notice by SME from ECP to SME to the effect that this Agreement will terminate on an effective date not less than 60 days no more than 180 days after the date of the notice, following a final decision of the courts of Montana or the United States, or other body having jurisdiction over the issue, determining that this Agreement is void or unenforceable or that SME otherwise lacks the legal authority to provide electricity supply and transmission services to the City; or

(b) Receipt by SME of written notice from the City or ECP to the effect that this Agreement will terminate on an effective date not less than 60 days no more than 180 days after the date of the notice, following a final decision of the courts of Montana or the United States, or other body having jurisdiction over the issue, determining that the City cannot be a voting member of SME;

provided, however, no Member Termination Event will be deemed to occur if SME and the City mutually agree upon an alternative arrangement acceptable to SME and the City prior to the date the Membership Termination Event is effective.

20. SPECIFIC PERFORMANCE AVAILABLE: Southern Montana and the City agree that (i) if the City shall fail to comply with any provision of the Wholesale Power Contract, Southern Montana, or the Administrator of RUS, if the Administrator so elects, shall have the right to enforce the obligations of the City under the provisions of this Agreement, and (ii) if SME shall fail to comply with any provisions of this Agreement, the City, or the Administrator of RUS, if the Administrator so elects, shall have the right to enforce the obligations of SME under the provisions of this Agreement. Such enforcement may be by instituting all necessary actions at law or suits in equity, including, without limitation suits for specific performance. Such rights of the Administrator to enforce the provisions of this Agreement are in addition to and shall not limit the rights which the Administrator shall otherwise have pursuant to any financing agreement it may have with SME. RUS shall not, under any circumstances, assume or be bound to the obligations of SME or City under this Agreement except to the extent the Government shall agree in writing to accept and be bound by any such obligation in whole or in part.

21 COUNTERPARTS AND DUPLICATE ORIGINALS: This Agreement may be simultaneously executed and delivered in two or more counterparts and/or duplicates, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

22. COGEN FACILITY: The City may operate a cogeneration facility at its Wastewater Treatment Facility. It shall sell power generated by the Cogen Facility to SWE on terms mutually agreed by the Parties. SME will resell that power back to the City at the same price subject to terms and conditions established by the Board for the resale, including an administrative fee for administration and scheduling.

23. FUTURE AMENDMENTS, INCLUDING AMENDMENTS REQUIRED BY HGS FINANCING

This Agreement may be amended in writing signed by both parties. The parties recognize that in the event the City is an equity participant in the HGS the agreements made in connection with the financing and ownership of the City's and SME's respective shares of the HGS, including but not limited to any Ownership Agreement and any Coordination and Integration Agreement, may contain terms which will require the parties to supplement, modify and amend this Agreement to comport with those agreements.

24. FURTHER RIGHTS OF THE PARTIES:

The rights and remedies set forth in this Agreement are cumulative with all other rights and remedies available at law or equity and each Party reserves all of its rights and remedies available in law or equity unless otherwise expressly provided in this Agreement.

EXECUTED the day and year first hereinabove written.

Southern Montana Electric Generation and Transmission  
Cooperative, Inc.

**DRAFT**

By: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Vice-President

The City of Great Falls, Montana

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MONTANA     )  
  :ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the President and Vice-President of Southern Montana Electric Generation and Transmission Cooperative, Inc., a Montana corporation, each known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same, on behalf of said corporation, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first hereinabove written.

(Notarial Seal)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF MONTANA     )  
  :ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and the \_\_\_\_\_ of The City of Great Falls, Montana, an incorporated city, each known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same, on behalf of the city, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first hereinabove written.

(Notarial Seal)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**A G E N D A   R E P O R T**

**DATE** October 2, 2007

**ITEM** Resolution 9696, Intent to Annex, and Ordinance 2985 to Establish City Zoning for Lot 5, Block 1, International Malting Company, LLC Addition

**INITIATED BY** Montana Megawatts I LLC, (Montgomery Energy) Property Owner

**ACTION REQUESTED** Commission Adopt Resolution 9696, which sets Public Hearing for November 6, 2007, and Accept Ordinance 2985 on First Reading and Set Hearing

**PREPARED BY** Bill Walters, Senior Planner

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

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**RECOMMENDATION:**

The City Planning Board has recommended the City Commission annex Lot 5, Block 1, International Malting Company, LLC Addition and the abutting segment of U.S. Highway 87, and the City Zoning Commission has recommended a zoning classification of I-2 Heavy industrial district be assigned to same.

**MOTIONS** (Each motion to be separately considered):

“I move the City Commission adopt Resolution 9696.”

and

“I move the City Commission accept Ordinance 2985 on first reading and set a public hearing for November 6, 2007, to consider adoption of Ordinance 2985.”

**SYNOPSIS:**

Resolution 9696 sets a public hearing for November 6, 2007, to consider annexation of Lot 5, Block 1, International Malting Company, LLC Addition and the abutting segment of U.S. Highway 87. Ordinance 2985 assigns a zoning classification of I-2 Heavy Industrial district to subject Lot 5 upon annexation to the City.

**BACKGROUND:**

Montana Megawatts I LLC, has submitted applications regarding the following:

- 1) Annexation to the City of Lot 5, Block 1, International Malting Company, LLC Addition, in Section 30, Township 21 North, Range 4 East, Cascade County, Montana.
- 2) Rezoning the above described Lot 5 from the current County “I-1” Industrial District to the City zoning classification of I-2 Heavy industrial district upon annexation to the City;

Subject Lot 5 totaling 54.86 acres is located between U.S. Highway 87 and the malt processing plant north of Black Eagle. The applicant intends to complete construction and activate a natural gas electric generator on the site. Also proposed to be annexed is the abutting right-of-way for U.S. Highway 87.

For additional information, please refer to the Vicinity/Zoning Map attached to Resolution 9696 as Exhibit “A”.

Lot 5 currently has access directly from U.S. Highway 87. There have been discussions with the applicant about providing access via an on-site driveway that would connect to the existing roadway paralleling the south boundary of Lot 5 and which also serves the malt processing plant. This existing access to U.S. Highway 87 was established with the intent to serve multiple proposed users in the area. The Montana



Department of Transportation is currently designing improvements to U.S. Highway 87, including turn lanes. Improvements are anticipated in 2009-10.

A main to provide potable water is proposed to be extended into the development site from the existing City main paralleling the south boundary of subject Lot 5. A sanitary sewer main will be extended westerly from the existing City sanitary sewer main near Black Eagle Road. Storm water retention areas are proposed within Lot 5. Operation of the energy power plant will require a significant amount of raw water that will be pumped and piped from the Missouri River.

#### Zoning Analysis:

Subject Lot 5 is presently zoned in the County as "I-1" Light Industrial District. It is proposed Lot 5 be zoned I-2 Heavy industrial district upon annexation to the City. Section 76-2-304 Montana Code Annotated lists criteria and guidelines which must be considered in conjunction with rezoning and establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Subject Lot 5 is essentially surrounded by dry land grain fields with the exception of U.S. Highway 87 bordering its west boundary and the barley malt plant located immediately to the southeast on a 40-acre tract which is presently within the City and zoned I-2 Heavy industrial district.

The overall area, in which subject Lot 5 is located, is being promoted as an extended industrial complex, with the existing malt plant being the first and most prevalent operation supported by the recent extension of City water and sewer services and a spur connection to the BNSF Railroad.

Goals of the Economic Element of the Great Falls Growth Policy include:

- Enhance, strengthen, and expand the existing economic base.
- Attract new businesses and support expansion of existing businesses that tend to raise the median income level.
- Encourage businesses and industries that will utilize existing infrastructure.

Annexation of subject property will enhance health, safety and welfare through application of City Codes and provision of municipal services.

The proposed industrial zoning classification is consistent with recent rezonings in the area including both incorporated and unincorporated properties. The proposed natural gas electric generating plant will have the capability to serve both existing and future industrial operations in the vicinity. Therefore, staff concludes the above-cited criteria are substantially met.

The Planning Board/Zoning Commission conducted a public hearing on the applications on August 14, 2007. Mr. Taylor Cheek of Montgomery Energy, Mr. Brett Doney, president of the Great Falls Development Authority, and Mr. Lyle Meeks of NCI Engineering all spoke in support of the project and annexation. The applications have not generated any opposition to date. At the conclusion of the public hearing, the Planning Board passed a motion recommending the City Commission approve the annexation of Lot 5, Block 1,

International Malting Company, LLC Addition, and the abutting portion of U.S. Highway 87 subject to the following conditions being fulfilled by the applicant:

- 1) An annexation agreement shall be prepared containing terms and conditions for annexation/rezoning of subject lot including agreement by the applicant:
  - a) to design and install, within two years of the date of annexation of subject Lot 5, the public water and sanitary sewer mains necessary to serve the development on the property;
  - b) to relocate, when deemed necessary by City, the primary access for Lot 5 from U.S. Highway 87 to the existing roadway paralleling the south boundary of the lot; and
  - c) to adhere to a parking and landscaping plan to be submitted for approval either in advance of or through the building permit application process; and
- 2) All applicable fees owed as a condition of annexation approval shall be paid prior to consideration of the annexation by the City Commission, including:
  - a) resolution of annexation fee \$100.00
  - b) storm sewer fee (\$250/acre x 54.86 acres) \$13,715.00
  - c) recording fees for annexation documents (\$11 per page x 10 pages) \$110.00

The Zoning Commission, at the conclusion of the public hearing, unanimously passed a motion recommending the City Commission assign a zoning classification of I-2 Heavy industrial district to Lot 5, Block 1, International Malting Company, LLC Addition, being annexed to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider a final annexation resolution and annexation agreement, simultaneously with Ordinance 2985.

Attach: Resolution 9696 with Vicinity/Zoning Map  
Ordinance 2985

Cc: Taylor Cheek, Montgomery Energy Partners LP, 1250 Capital of Texas Hwy. South Bldg. 3, Ste.  
400, Austin TX 78746

RESOLUTION 9696

A RESOLUTION OF INTENTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, TO EXTEND THE BOUNDARIES OF SAID CITY TO INCLUDE LOT 5, BLOCK 1, INTERNATIONAL MALTING COMPANY, LLC ADDITION, IN SECTION 30, TOWNSHIP 21 NORTH, RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA AND THE ABUTTING SEGMENT OF U.S. HIGHWAY 87, DIRECTING NOTICE TO BE GIVEN BY THE CITY CLERK AS PROVIDED BY LAW.

\* \* \* \* \*

WHEREAS, the City of Great Falls is a city incorporated under the laws of the State of Montana, and having a population of more than ten thousand (10,000) is a city of the first class; and,

WHEREAS, there is contiguous to said City, but without the boundaries thereof, certain tracts of land described as follows:

◆ Lot 5, Block 1, International Malting Company, LLC Addition, in Section 30, Township 21 North, Range 4 East, P.M.M., Cascade County, Montana, and containing 54.86 acres; and

◆ A Parcel of land being portions of U.S. Highway 87, Federal Aid Project No. 149-D(3) according to right-of-way plans in the records of the Montana Department of Transportation, said Parcel being situated in the Northwest Quarter (NW 1/4) of Section 30, in Township 21 North, Range 4 East of the Principle Meridian Montana, Cascade County, Montana, described as follows:

COMMENCING at the Southwest Corner of said Section 30;

THENCE S88°55'00"E along the south line of said Section 30, a distance of 407.16 feet (407.50 feet recorded) to the centerline of said U.S. Highway 87, at Station 67+57.29 (67+76.25 recorded);

THENCE N26°36'03"E (N26°35'47"E recorded) along said centerline, a distance of 3194.81 feet to Station 99+52.10 (99+52.99 recorded), which is the intersection of said centerline with a southerly line of said Lot 5, extended westerly and the POINT OF BEGINNING of the Parcel herein described;

THENCE N63°24'13"W along said southerly line extended, a distance of 70.00 feet to the northwesterly right-of-way line of said U.S. Highway 87;

THENCE along said northwesterly right-of-way on the following 3 courses:

THENCE N26°36'03"E (N26°35'47"E recorded) a distance of 113.21 feet (112.31 feet recorded) to the Point of Curvature of a circular curve to the right, with a radius point which bears S63°23'57"W (S63°24'13"E recorded) a distance of 11535.48 feet, said point being at Station 100+65.30, 70.00 feet left of centerline;

THENCE along last said curve, through a central angle of 4°16'48" an arc distance of 861.72 feet to the Point of Tangency of said curve at Station 109+21.79 (109+22.0 recorded). 70.00 feet left of centerline;

THENCE N30°52'51"E a distance of 822.86 feet to the north-south midsection line of said Section 30 at a point 70.00 feet left of centerline, from which point the Quarter Section Corner to said Section 30 and Section 19 bears N00°43'23"E a distance of 808.41 feet;

THENCE leaving said northwesterly right-of-way and along said midsection line, S00°43'23"W a distance of 139.34 feet to the intersection of said midsection line with said highway centerline at Station 116+24.17;

THENCE continuing along said midsection line, S00°43'23"W a distance of 119.43 feet to the southeasterly right-of-way of said U.S. Highway 87 at 60.00 feet right of centerline and the Northwest Corner of said Lot 5, from which point the Center Quarter Section corner of said Section 30 bears S00°43'23"W a distance of 1574.55 feet (1574.42 feet recorded);

THENCE along said southeasterly right-of-way and along the westerly boundary of Lot 5, on the following 3 courses:

THENCE S30°52'51"W (S30°52'46"W recorded) a distance of 599.12 feet (599.71 feet recorded) to the Point of Curvature of a circular curve to the left, with a radius point which bears S59°07'09"E a distance of 11405.48 feet, at Station 109+21.79 (109+22.0 recorded), 60.00 feet right of centerline;

THENCE along said curve, through a central angle of 4°16'48" (4°16'59" recorded) an arc distance of 852.01 feet (852.19 feet recorded) to the Point of Tangency at Station 100+65.30, 60.00 feet right of centerline;

THENCE S26°36'03"W (S26°35'47"W recorded) a distance of 113.20 feet (112.31 feet recorded) to a southwest corner of said Lot 5;

THENCE leaving said southeasterly right-of-way, along a southerly line of said Lot 5 extended westerly, N63°24'13"W a distance of 60.00 feet to the POINT OF BEGINNING of the Parcel herein described;

CONTAINING in all 218,538 square feet or 5.017 acres.

generally as shown on the vicinity map exhibit attached hereto marked Exhibit "A" and by this reference made a part hereof, and according to the minor subdivision plat of International Malting company, LLC Addition; and,

WHEREAS, Section 7-2-4402, Montana Code Annotated, provides that whenever any land contiguous to a municipality is owned by the state of Montana or a political subdivision of the state, such land may be incorporated and included in the municipality to which it is contiguous; and,

WHEREAS, Section 7-2-4601, Montana Code Annotated, provides that whenever the owners of real property contiguous to any incorporated city of the first class petition to have said property made a part of the municipal corporation, such lands may be embraced within the corporate limits thereof and the boundaries of such city of the first class extended so as to include the same.

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

That in its judgment it will be to the best interest of said City of Great Falls and the inhabitants thereof, that the boundaries of said City of Great Falls shall be extended so as to include: "LOT 5, BLOCK 1, INTERNATIONAL MALTING COMPANY, LLC ADDITION, IN SECTION 30, TOWNSHIP 21 NORTH, RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA AND THE ABUTTING SEGMENT OF U.S. HIGHWAY 87."

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION: That Tuesday, the 6<sup>th</sup> day of November, 2007, at 7:00 P.M., in the Commission Chambers at the Great Falls Civic Center, Great Falls, Montana, be and the same is hereby set as the time and place for a public hearing at which time the Great Falls City Commission shall hear all persons and all things relative to the proposed annexation of "LOT 5, BLOCK 1, INTERNATIONAL MALTING COMPANY, LLC ADDITION, IN SECTION 30, TOWNSHIP 21 NORTH, RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA AND THE ABUTTING SEGMENT OF U.S. HIGHWAY 87."

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that the City Clerk of said City shall, at the aforesaid public hearing before the said City Commission

and after expiration of a twenty (20) day period following the first publication of notice of passage of this Resolution, lay before the City Commission all communications in writing by her so received pertaining to said annexation.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on this 2nd day of October, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF CITY)

Approved for Legal Content:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution 9696 was placed on its final passage and approved by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 2nd day of October, 2007.

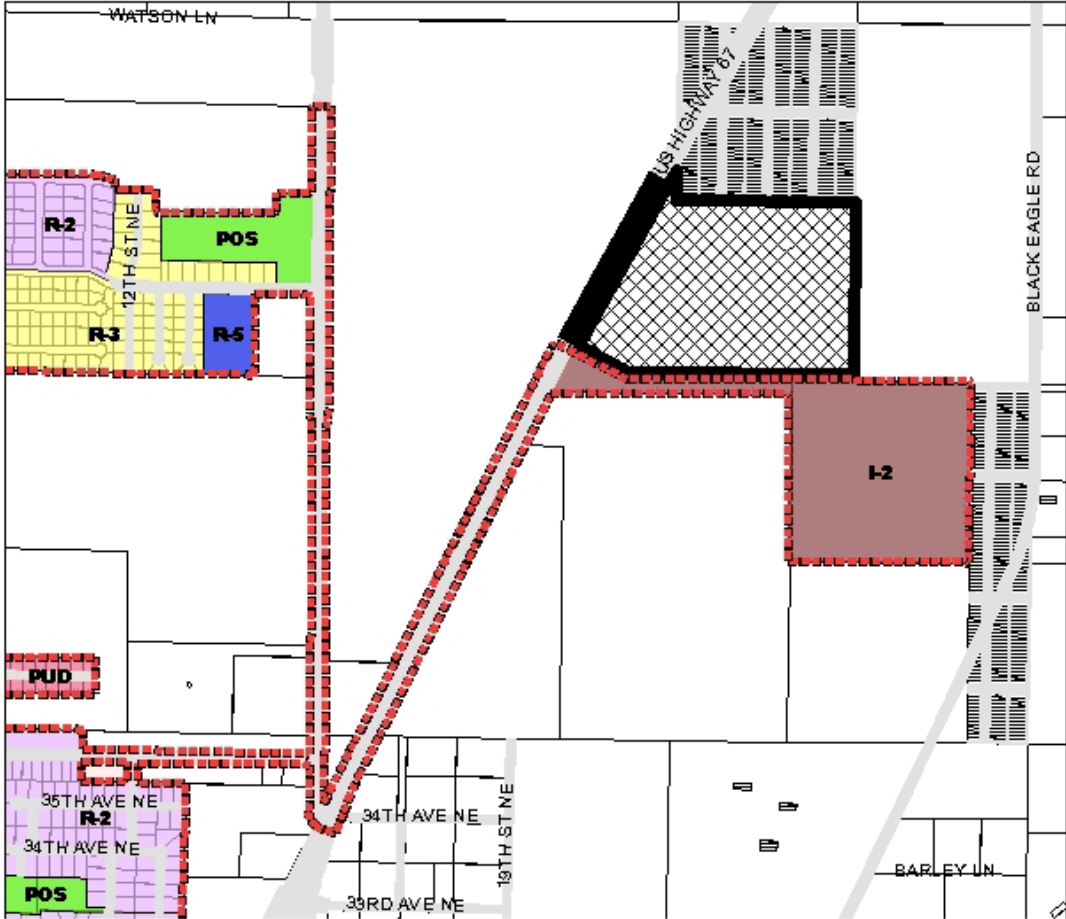
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 2nd day of October, 2007.

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

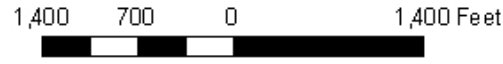
(SEAL OF CITY)

# EXHIBIT "A"

## VICINITY/ZONING MAP



- LOT 5, BLOCK 1 INTERNATIONAL MALTING COMPANY, LLC ADDITION REQUESTED TO BE ANNEXED AND ZONED "I-2" HEAVY INDUSTRIAL DISTRICT
  - PORTION OF U.S. HIGHWAY 87 PROPOSED TO BE ANNEXED
  - EXISTING CITY LIMITS
- |                                  |                              |                             |
|----------------------------------|------------------------------|-----------------------------|
| R-2 Single-family medium density | POS Parks and Open Space     | U Unincorporated enclave    |
| R-3 Single-family high density   | PUD Planned unit development | Tracts of land outside City |
| R-5 Multi-family medium density  | I-2 Heavy industrial         |                             |



ORDINANCE 2985

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF I-2 HEAVY INDUSTRIAL DISTRICT TO INTERNATIONAL MALTING COMPANY, LLC ADDITION, IN SECTION 30, TOWNSHIP 21 NORTH, RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, Montana Megawatts I LLC, the owner of Lot 5, Block 1, International Malting Company, LLC Addition, located in Section 30, Township 21 North, Range 4 East, P.M.M., Cascade County, Montana, has petitioned the City of Great Falls to annex said Lot 5; and,

WHEREAS, Montana Megawatts I LLC has petitioned said Lot 5 be assigned a City zoning classification of I-2 Heavy industrial district, upon annexation to City; and,

WHEREAS, notice of assigning a zoning classification of I-2 Heavy industrial district, to said Lot 5, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6th day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein requested zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Lot 5, Block 1, International Malting Company, LLC Addition, be designated as I-2 Heavy industrial district classification.

Section 3. This ordinance shall be in full force and effect either thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Lot 5, Block 1, International Malting Company, LLC Addition, into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6th day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF CITY)



APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2985 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana at a meeting thereof held on the 6th day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City on this 6th day of November, 2007.

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

(SEAL OF CITY)

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

Lisa Kunz, being first duly sworn, deposes and says: That on the 6th day of November, 2007, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk she did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2985 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library

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

(SEAL OF CITY)

**A G E N D A   R E P O R T**

**DATE** October 2, 2007

**ITEM** Ordinance 2982 to Establish City Zoning Upon Lot 6A, Beebe Tracts, Cascade County  
(Big Sky Miniature Golf)

**INITIATED BY** Rodney & Rose Borger, Applicants

**ACTION REQUESTED** Commission Accept Ordinance 2982 on First Reading & Set Hearing

**PREPARED BY** Charles Sheets, Planner I

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

- - - - -

**RECOMMENDATION:**

The City Zoning Commission has recommended the City Commission assign a zoning classification of C-2 General commercial district, to Lot 6A, Beebe Tracts, Cascade County, upon annexation to the City.

**MOTION:**

“I move the City Commission accept Ordinance 2982 on first reading and set a public hearing for November 6, 2007, to consider adoption of Ordinance 2982.”

**SYNOPSIS:**

Ordinance 2982 assigns a zoning classification of C-2 General commercial district, to Lot 6A, Beebe Tracts, Cascade County, upon annexation to the City.

**BACKGROUND:**

Said lot is addressed as 5000 2<sup>nd</sup> Avenue North and is currently occupied by Big Sky Miniature Golf. The Borger’s have a “Contact for Deed” to purchase the property from Thomas D. Bleskin and Daniel D. Bleskin.

Find attached a Vicinity/Zoning Map.

The property is currently serviced by a well for water and septic tank for sanitation. The applicants have plans to expand customer concessions. The City-County Health Department has informed the applicants they need to either expand the existing drain field or connect to City services. The applicants have chosen to petition for annexation in order to receive City water and sewer services.

Access to the property is from 2<sup>nd</sup> Avenue North. A City water main exists along the north side of 2<sup>nd</sup> Avenue North and a service line will be pushed or directionally drilled under the right-of-way. A sanitary sewer main exists 215 feet to the west, on a parcel owned by others. The applicant has obtained a utility easement from the abutting owners to install the sewer main across the property to service said Lot 6A. The City will become a party to the utility easement after the annexation of the property is considered on November 6<sup>th</sup>.

Due to the lack of an adequately sized water main on the south side of 2<sup>nd</sup> Avenue North to provide fire flow to hydrants, and the lack of curb and gutter along the avenue, the applicants have agreed to waive their right to protest paying their proportionate share of the cost to install the water main, hydrants, paving, curb, gutter and curb cut approaches when deemed necessary by the City.

As a condition of annexation, the City will require the applicants to allow the City Building and Fire Officials to inspect the on-site structures to identify any health and life safety items that may be in violation of Building, Plumbing, Electrical, Mechanical, or Fire Safety Codes. If any are found, the applicants will be given a time frame to correct noted violations.

Surface drainage from the lot flows southeasterly to the open area at the southern boundary of the property.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Subject property is currently zoned B-2 General Business in the County and bordered on the north by 2<sup>nd</sup> Avenue North, which also serves a variety of the commercial businesses between 42<sup>nd</sup> Street North and 57<sup>th</sup> Street North.

The City has the capability and capacity to provide necessary public services. Staff concludes the existing miniature golf business will be enhanced through the application of City Codes and provision of municipal services. Staff concludes the above cited criteria are substantially met.

The Zoning Commission at the conclusion of a public hearing held August 14, 2007 passed a motion recommending the City Commission assign a zoning classification of C-2 General commercial district to subject Lot 6A, upon annexation to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider a resolution annexing Lot 6A, Beebe Tracts, Cascade County, simultaneously with Ordinance 2982.

Attach: Ordinance 2982  
Vicinity/Zoning Map

Cc: Rodney & Rose Borger, 4408 14<sup>th</sup> Ave S, Great Falls MT 59405  
NCI Engineering, Lyle Meeks, P.O. Box 6350, Great Falls, 59406

ORDINANCE 2982

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF C-2 GENERAL COMMERCIAL DISTRICT TO LOT 6A, BEEBE TRACTS, IN NE¼, SECTION 9, TOWNSHIP 20 NORTH, RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, Rodney and Rose Borger have executed a Contact for Deed to purchase Lot 6A, Beebe Tracts, located in the NE¼ of Section 9, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana; and,

WHEREAS, Rodney and Rose Borger have petitioned the City of Great Falls to annex Lot 6A, Beebe Tracts; and,

WHEREAS, Rodney and Rose Borger have petitioned said Lot 6A, Beebe Tracts, be assigned a City zoning classification of C-2 General commercial district, upon annexation to City; and,

WHEREAS, Rodney and Rose Borger operate a miniature golf enterprise upon Lot 6A, Beebe Tracts, which is permitted in the C-2 General commercial district; and,

WHEREAS, notice of assigning a zoning classification of C-2 General commercial district to said Lot 6A, Beebe Tracts, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6<sup>th</sup> day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein requested zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Lot 6A, Beebe Tracts, be designated as C-2 General commercial district classification.

Section 3. The zoning being assigned by this ordinance for Lot 6A, Beebe Tracts, shall be in full force and effect thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing said Lot 6A, Beebe Tracts, into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2982 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6<sup>th</sup> day of November, 2007 and approved by the Mayor of said City on the 6<sup>th</sup> day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6<sup>th</sup> day of November, 2007.

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

(SEAL OF CITY)

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

I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6<sup>th</sup> day of November, 2007 and prior thereto, I was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2982 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

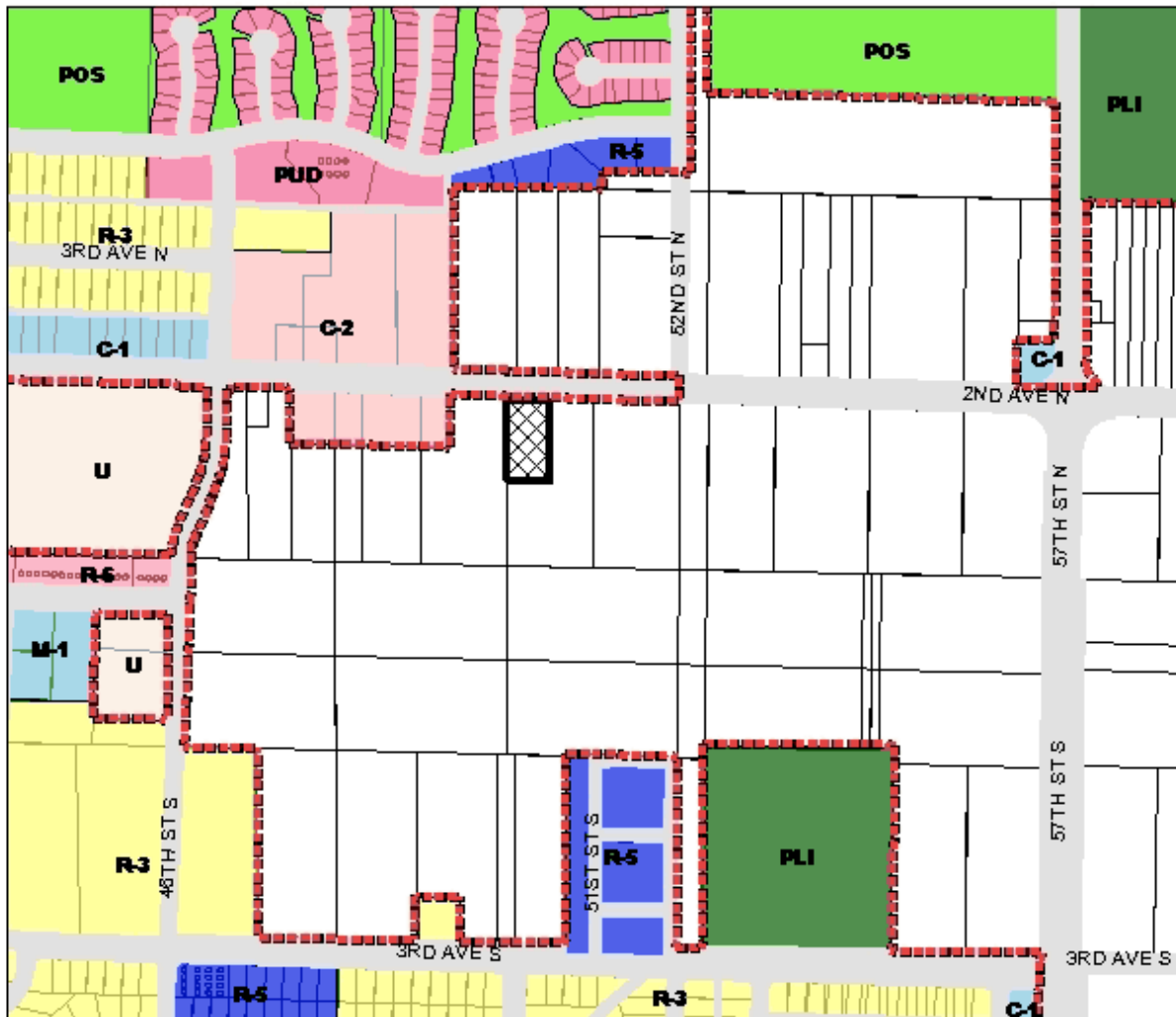
On the Bulletin Board, first floor, Civic Center Building;  
On the Bulletin Board, first floor, Cascade County Court House;  
On the Bulletin Board, Great Falls Public Library














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

(SEAL OF CITY)

# EXHIBIT "A"

## VICINITY/ZONING MAP



- |   |  |
|---|--|
|  | LOT 6A, BEEBE TRACTS REQUESTED TO BE ANNEXED TO THE CITY AND BE ASSIGNED A CITY ZONING CLASSIFICATION OF "C-2" GENERAL COMMERCIAL DISTRICT |
|  | City Limits  |
|  | R-3 Single-family high density   |
|  | R-5 Multi-family medium density  |
|  | R-6 Multi-family high density  |
|  | C-1 Neighborhood commercial  |
|  | C-2 General commercial   |
|  | M-1 Mixed-use district   |
|  | PLI Public Lands and Institutional   |
|  | POS Parks and Open Space   |
|  | PUD Planned unit development   |
|  | U Unincorporated enclave   |
|  | Tracts of land outside City  |



**A G E N D A   R E P O R T**

**DATE** October 2, 2007

**ITEM** Ordinance 2983 to Establish City Zoning Upon the Minor Plat of Castle Pines Phase IV

**INITIATED BY** Harold Poulsen, Property Owner and Developer

**ACTION REQUESTED** Commission Accept Ordinance 2983 on First Reading and Set Hearing

**PREPARED BY** Charles Sheets, Planner I

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

- - - - -

**RECOMMENDATION:**

The City Zoning Commission has recommended the City Commission assign a zoning classification of R-3 Single-family high density district, to the Minor Plat of Castle Pines Phase IV, upon annexation to the City.

**MOTION:**

“I move the City Commission accept Ordinance 2983 on first reading and set a public hearing for November 6, 2007, to consider adoption of Ordinance 2983.”

**SYNOPSIS:**

Ordinance 2983 assigns a zoning classification of R-3 Single-family high density district to the Minor Plat of Castle Pines Phase IV, upon annexation of same to City. The proposed development consists of 5 single-family residential lots located along 27<sup>th</sup> Avenue South in the vicinity of 15<sup>th</sup> Street South.

**BACKGROUND:**

Lots within said minor plat will be sold by the developer to others to build single-family residences. Access to the lots in the subdivision will be from 15<sup>th</sup> Street South and 27<sup>th</sup> Avenue South. Roadways abutting and within the subdivision have already been improved to City standards with paving, curb and gutter. Water and sewer mains have been installed as part of Castle Pines Phase III.

Based on land contours, the area generally slopes to the northwest. The Master Plan Agreement which accompanied Castle Pines Phase I indicates the developer of Phase I and the City participated jointly in the construction of a surface drainage control facility (south of the Multi-Sports Complex) and storm drain piping in 13th Street South to serve the area being developed as Castle Pines Subdivision. City storm sewer mains were installed in previous phases of Castle Pines Subdivision.

Please refer to the attached Vicinity/Zoning Map.

According to the Master Plan Agreement, the developer of Castle Pines Phase I paid to the City \$12,261 in lieu of dedicating park land for the area covered by the original master plan for Castle Pines Subdivision. Castle Pines Phase IV is included within that original master plan area.

An Off-Site Improvement Trust Fund was established in conjunction with Castle Pines Phase I wherein as each lot is sold a monetary amount is deposited in the trust fund to assist in the eventual improvement of 13<sup>th</sup> Street South and 24<sup>th</sup> Avenue South, including water main installation and providing a secondary water source to the Castle Pines area.

It is anticipated the planned single-family residential use of the property will be compatible with neighboring uses.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Subject property borders Castle Pines Phase III, which is being developed as a single-family residential subdivision. The Minor Plat of Castle Pines Phase IV generally adheres to a conceptual plan that was prepared in 1995 for the area, in conjunction with Castle Pines Phase I.

The Zoning Commission on July 11, 2006 recommended assigning a zoning classification of R-3 Single-family high density to the Minor Plat of Castle Pines Phase IV, upon annexation to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider an annexation resolution, an annexation agreement and the Minor Plat for Castle Pines Phase IV, simultaneously with Ordinance 2983.

Attach: Ordinance 2983  
Vicinity/Zoning Map

Cc: Harold Poulsen, P O Box 1376  
Woith Engineering, 1725 41<sup>st</sup> St S



ORDINANCE 2983

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF R-3 SINGLE-FAMILY HIGH DENSITY DISTRICT TO MINOR PLAT OF CASTLE PINES PHASE IV, IN SECTION 19, TOWNSHIP 20 NORTH, RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, Harold Poulsen is the owner of record of Minor Plat of Castle Pines Phase IV, in Section 19, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana; and,

WHEREAS, Harold Poulsen has petitioned the City of Great Falls to annex Minor Plat of Castle Pines Phase IV; and,

WHEREAS, Harold Poulsen has petitioned said Minor Plat of Castle Pines Phase IV, be assigned a City zoning classification of R-3 Single-family high density district, upon annexation to City; and,

WHEREAS, notice of assigning a zoning classification of R-3 Single-family high density district, to Minor Plat of Castle Pines Phase IV, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6<sup>th</sup> day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein requested zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Minor Plat of Castle Pines Phase IV, be designated as R-3 Single-family high density district classification.

Section 3. The zoning being assigned by this ordinance for Minor Plat of Castle Pines Phase IV shall be in full force and effect thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Minor Plat of Castle Pines Phase IV, into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

---

David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2983 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6<sup>th</sup> day of November, 2007 and approved by the Mayor of said City on the 6<sup>th</sup> day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6<sup>th</sup> day of November, 2007.

---

Lisa Kunz, City Clerk

(SEAL OF CITY)

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

I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6<sup>th</sup> day of November, 2007 and prior thereto, I was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2983 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;  
On the Bulletin Board, first floor, Cascade County Court House;  
On the Bulletin Board, Great Falls Public Library

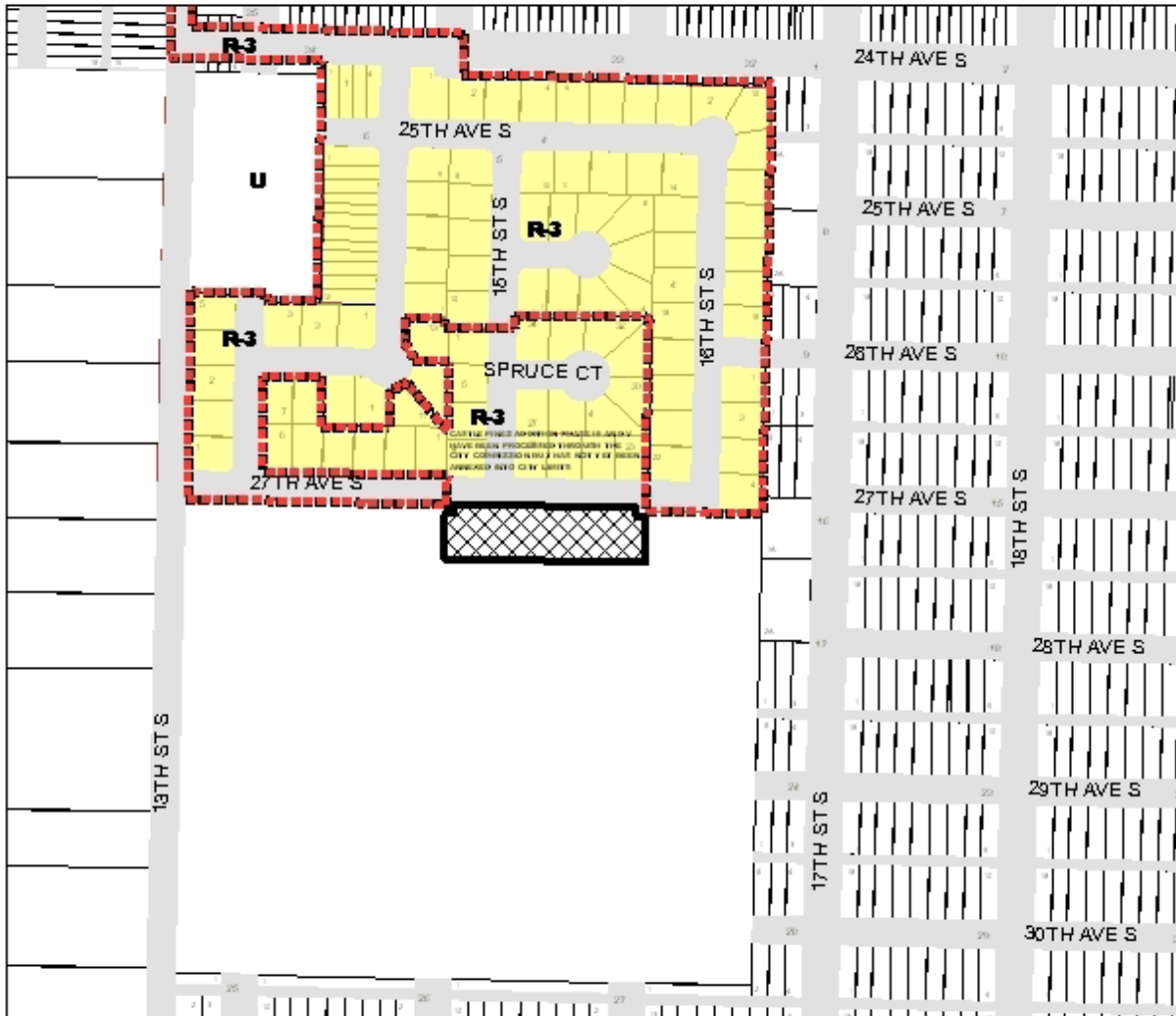
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Lisa Kunz, City Clerk




(SEAL OF CITY)

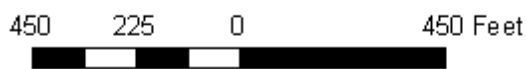
# EXHIBIT "A"

# VICINITY/ZONING MAP



 MINOR PLAT OF CASTLE PINES PHASE IV TO BE ANNEXED TO THE CITY AND BE ASSIGNED A CITY ZONING CLASSIFICATION OF "R-3" SINGLE-FAMILY HIGH DENSITY

 City Limits  R-3 Single-family high density  Tracts of land outside City



**MINOR PLAT OF  
CASTLE PINES PHASE IV  
AN ADDITION TO THE CITY OF GREAT FALLS  
A SUBDIVISION LOCATED IN G.L.O. LOT 1 OF SECTION 19,  
T20N, R4E, P.M., MT, CASCADE COUNTY, MONTANA**



**LEGEND**

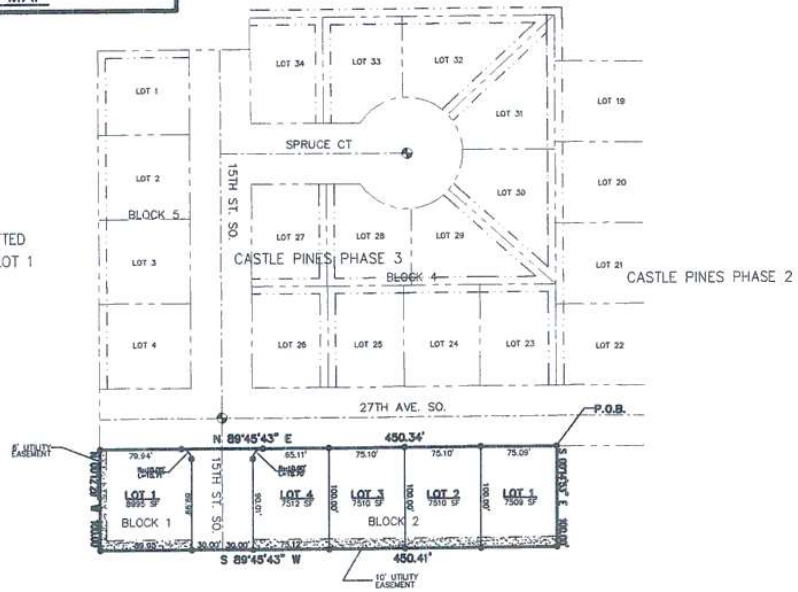
- CURRENT ADDITION BOUNDARY
- CURRENT ADDITION LOT LINES
- CENTERLINE
- - - EXISTING PROPERTY LINE
- UTILITY EASEMENT
- STREET MONUMENT
- P.O.B.
- SF
- SET IRON PIN AND CAP
- FOUND IRON PIN

**AREAS**

STREETS - 6,000 SF = 0.14 ACRES  
 LOTS - 36,037.5 SF = 0.80 ACRES  
 TOTAL AREA - 42,037.5 SF = 1.04 ACRES

SCALE: 1" = 50'

UNPLATTED  
G.L.O. LOT 1



UNPLATTED G.L.O. LOT 1

**CERTIFICATE OF DEDICATION**

We, the undersigned property owner, do hereby certify that we have caused to be surveyed and plotted on this plat, blocks, streets and avenues as shown by the attached plat, the tract of land to be known as the MINOR PLAT OF CASTLE PINES PHASE 4 an addition to the City of Great Falls, a subdivision in G.L.O. Lot 1 of Section 19, T20N, R4E, P.M., Cascade County, Montana, more fully described as follows:

Beginning at the Southeast corner of Castle Pines Phase 3 an addition to the City of Great Falls, Montana as filed in the office of the Clerk and Recorder of Cascade County, Montana, thence 200°14'43"E, 100.00 feet, thence 100°46'47", 450.41 feet, thence 100°22'07", 100.00 feet to the southern right of way of 27th Avenue South, thence 100°40'42", 450.34 feet along said right of way to the POINT OF BEGINNING, containing 1.04 acres.

The above described tract of land is to be known and designated as the MINOR PLAT OF CASTLE PINES PHASE 4 an addition to the City of Great Falls, Cascade County, Montana, and the land included in it, except the areas shown on said plat are hereby granted and devoted to the use of the public forever.

**HAROLD POISSON**

STATE OF MONTANA: 155  
 County of Cascade: 1

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public, in and for the State of Montana, personally appeared, HAROLD POISSON, known to me to be the person who executed the foregoing Certificate of Dedication and he acknowledged to me that he executed the same.

SEAL

NOTARY PUBLIC, State of Montana  
 Residing in Great Falls, Montana  
 My Commission Expires: \_\_\_\_\_

**CERTIFICATE OF SURVEY**

I, DALE E. SCHEFFER, Professional Engineer and Land Surveyor, Montana Reg. No. 10065, do hereby certify that on June, 2001, I supervised the survey of the tract of land shown on the attached MINOR PLAT OF CASTLE PINES PHASE 4, an addition to the City of Great Falls, Cascade County, Montana, as described in the Certificate of Dedication, and that the survey was made in accordance with the provisions of Title 76, Chapter 3, Part 4-M.C.A.

SEAL

**DALE E. SCHEFFER, P.E.L.S.**  
 Montana Reg. No. 10065

**CERTIFICATE OF GREAT FALLS PLANNING BOARD**

We, the undersigned, WILLIAM O. BRIDGEMAN, President of the said Great Falls Planning Board, Great Falls, Cascade County, Montana, and BENJAMIN M. FANGEL, Secretary of said Great Falls Planning Board, do hereby certify that the accompanying MINOR PLAT OF CASTLE PINES PHASE 4 an addition to the City of Great Falls, Cascade County, Montana, has been submitted to the said Great Falls City Planning Board for examination by them and was found by them to conform to law and was approved at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

ATTEST:

WILLIAM O. BRIDGEMAN, President, Great Falls Planning Board      BENJAMIN M. FANGEL, Secretary, Great Falls Planning Board

**CERTIFICATE OF PUBLIC SERVICE DIRECTOR**

I, JIM BEARDON, Public Service Director for the City of Great Falls, Montana, do hereby certify that I have examined the accompanying MINOR PLAT OF CASTLE PINES PHASE 4 an addition to the City of Great Falls, Cascade County, Montana, and the survey that it represents, and I find the same conforms to the regulations governing the platting of land and to presently platted adjacent land, as near as circumstances will permit and do hereby approve the same on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

JIM BEARDON, Public Service Director, City of Great Falls

**CERTIFICATE OF CITY COMMISSION**

I, JOHN W. LAWTON, City Manager of the City of Great Falls, Cascade County, Montana, do hereby certify that this MINOR PLAT OF CASTLE PINES PHASE 4 an addition to the City of Great Falls, Cascade County, Montana, has been examined and approved by the Commission of the City of Great Falls at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

JOHN W. LAWTON, City Manager, City of Great Falls, Montana

**CERTIFICATE OF AVAILABILITY OF MEMORIAL SERVICES**

I, JOHN W. LAWTON, City Manager of the City of Great Falls, Cascade County, Montana, do hereby certify that the City Commission of the City of Great Falls, Montana, found that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available to the above described property, namely, the residents of the City of Great Falls, Cascade County, Montana, and that this certificate is made pursuant to Section 76-124, M.C.A., thereby permitting the Clerk and Recorder of Cascade County, Montana to record the accompanying minor plat, dated on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

JOHN W. LAWTON, City Manager, City of Great Falls, Montana

**CERTIFICATE DEPENDING WITH PARK OR RECREATION**

I, JOHN W. LAWTON, City Manager of the City of Great Falls, Cascade County, Montana, do hereby certify that the City Commission of the City of Great Falls, Montana, found that no cash donation or dedication of any park or playground is required upon the platting of the MINOR PLAT OF CASTLE PINES PHASE 4 an addition to the City of Great Falls, Cascade County, Montana, in accordance with Section 76-345, (2) (b), M.C.A., effective \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

JOHN W. LAWTON, City Manager, City of Great Falls, Montana

**CERTIFICATE OF COUNTY TREASURER**

I, JESS ANDERSON, County Treasurer of Cascade County, Montana, do hereby certify that I have examined the records regarding the amount included in the accompanying PLAT OF CASTLE PINES PHASE 4 an addition to the City of Great Falls, Cascade County, Montana, and find that the taxes on the same have been paid for the last five years. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

JESS ANDERSON, Cascade County Treasurer



**WORTH ENGINEERING, INC.**  
 ENGINEERS & SURVEYORS  
 P.O. BOX 788, GREAT FALLS, MONTANA 59403

1

**A G E N D A   R E P O R T**

**DATE** October 2, 2007

**ITEM** Ordinance 2986 to Establish City Zoning Upon Marks T and IA, Section 15, Township 20 North, Range 3 East, Cascade County, Montana (Casey and Lisa Schearer, Owners)

**INITIATED BY** City Commission

**ACTION REQUESTED** Commission Accept Ordinance 2986 on First Reading & Set Hearing

**PREPARED BY** Charles Sheets, Planner I

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

- - - - -

**RECOMMENDATION:**

The City Zoning Commission has recommended the City Commission assign a zoning classification of R-1 Single-family suburban district upon Marks T and IA, Section 15, Township 20 North, Range 3 East, Cascade County, Montana, upon annexation to the City.

**MOTION:**

“I move the City Commission accept Ordinance 2986 on first reading and set a public hearing for November 6, to consider adoption of Ordinance 2986.”

**SYNOPSIS:**

Ordinance 2986 assigns a zoning classification of R-1 Single-family suburban district upon Marks T and IA, Section 15, Township 20 North, Range 3 East, Cascade County, upon annexation of same to City.

**BACKGROUND:**

Marks T and IA are presently occupied by a single-family residence, addressed as 1400 14<sup>th</sup> Street Southwest. The parcel receives water and sewer services from the City.

Please refer to the attached Vicinity/Zoning Map.

On February 21, 2006 the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits. The City Commission has decided to annex parcels receiving water and/or sewer services to create a more coherent and consistent City boundary and to provide services more effectively to everyone in the City. It is also a matter of fairness to current City residents to make sure that those who use City services share the burden of paying for them equitably.

Pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of a parcel located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995). Accordingly, the City Commission intends to apply this authority via Ordinance 2930.

The property owners have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Marks T and IA are presently zoned in the County as "R-1" Suburban Residential District. As the neighborhood along the west side of 14<sup>th</sup> Street Southwest is predominately residential, with larger lots, it is recommended subject Marks T and IA, be zoned R-1 Single-family suburban district, upon annexation to the City.

In summary, designating subject property for residential use is consistent with its long term and abutting uses. Therefore, staff concludes all of the above criteria are substantially met.

The Zoning Commission at the conclusion of a public hearing held August 28, 2007 passed a motion recommending the City Commission assign a zoning classification of R-1 Single-family suburban district upon Marks T and IA, upon annexation to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider a resolution annexing Marks T and IA, simultaneously with Ordinance 2986.

Attach: Ordinance 2986  
Vicinity/Zoning Map

Cc: Casey and Lisa Schearer, 1400 14<sup>th</sup> St SW, Great Falls MT 59404

ORDINANCE 2986

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF R-1 SINGLE-FAMILY SUBURBAN DISTRICT TO MARKS T AND IA, IN SECTION 15, TOWNSHIP 20 NORTH, RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, on February 21, 2006, the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits; and,

WHEREAS, pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995); and,

WHEREAS, Casey and Lisa Schearer, property owners of record, have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930; and,

WHEREAS, notice of assigning a zoning classification of R-1 Single-family suburban district, to Marks T and IA, in Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6<sup>th</sup> day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein described zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Marks T and IA, in Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, be designated as R-1 Single-family suburban district.

Section 3. This ordinance shall be in full force and effect either thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Marks T and IA, in Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2986 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6<sup>th</sup> day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6<sup>th</sup> day of November, 2007.

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

(SEAL OF CITY)

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

I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6<sup>th</sup> day of November, 2007, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2986 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

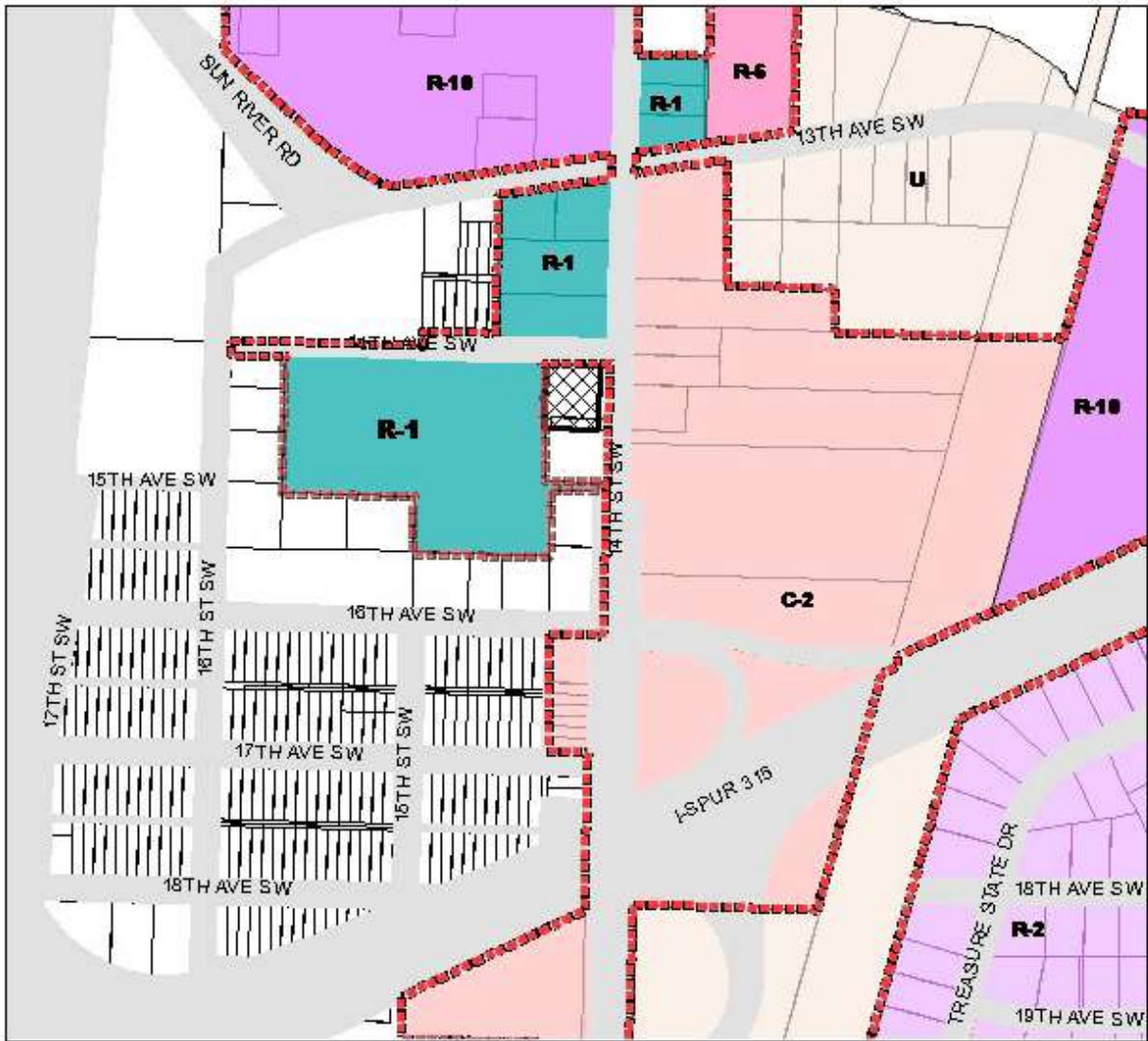
- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library


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









(SEAL OF CITY)

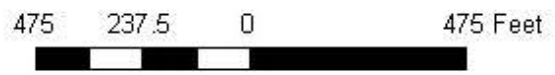


# VICINITY/ZONING MAP



 MARK T AND 1A, SEC 15, T20N, R3E, CASCADE COUNTY, MONTANA PROPOSED TO BE ANNEXED INTO THE CITY OF GREAT FALLS AND ASSIGNED A ZONING CLASSIFICATION OF R-1 SINGLE-FAMILY SUBURBAN

- |  |   |
|--|---|
|  City Limits                      |  R-10 Mobile home park       |
|  R-1 Single-family suburban       |  C-2 General commercial      |
|  R-2 Single-family medium density |  U Unincorporated enclaves   |
|  R-6 Multi-family high density    |  Tracts of land outside City |



**A G E N D A   R E P O R T**

**DATE** October 2, 2007

**ITEM** Ordinance 2987 to Establish City Zoning Upon Mark I, Section 15, Township 20 North, Range 3 East, Cascade County, Montana (Steven & Kelley Grubb, Owners)

**INITIATED BY** City Commission

**ACTION REQUESTED** Commission Accept Ordinance 2987 on First Reading & Set Hearing

**PREPARED BY** Charles Sheets, Planner I

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

- - - - -

**RECOMMENDATION:**

The City Zoning Commission has recommended the City Commission assign a zoning classification of R-1 Single-family suburban district to Mark I, Section 15, Township 20 North, Range 3 East, Cascade County, Montana, upon annexation to the City.

**MOTION:**

“I move the City Commission accept Ordinance 2987 on first reading and set a public hearing for November 6, 2007, to consider adoption of Ordinance 2987.”

**SYNOPSIS:**

Ordinance 2987 assigns a zoning classification of R-1 Single-family suburban district to Mark I, Section 15, Township 20 North, Range 3 East, Cascade County, upon annexation of same to City.

**BACKGROUND:**

Mark I is presently occupied by a single-family residence, addressed as 1420 14<sup>th</sup> Street Southwest. The parcel receives water and sewer services from the City.

Please refer to the attached Vicinity/Zoning Map.

On February 21, 2006 the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits. The City Commission has decided to annex parcels receiving water and/or sewer services to create a more coherent and consistent City boundary and to provide services more effectively to everyone in the City. It is also a matter of fairness to current City residents to make sure that those who use City services share the burden of paying for them equitably.

Pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of a parcel located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995). Accordingly, the City Commission intends to apply this authority via Ordinance 2930.

The property owners have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Mark I is presently zoned in the County as "R-1" Suburban Residential District. As the neighborhood along the west side of 14<sup>th</sup> Street Southwest is predominately residential with larger lots, it is recommended subject Mark I, be zoned R-1 Single-family suburban district, upon annexation to the City.

In summary, designating subject property as residential use is consistent with the long term and abutting uses. Therefore, staff concludes all of the above criteria are substantially met.

The Zoning Commission at the conclusion of a public hearing held August 28, 2007 passed a motion recommending the City Commission assign a zoning classification of R-1 Single-family suburban district to Mark I, upon annexation to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider a resolution annexing Mark I, simultaneously with Ordinance 2987.

Attach: Ordinance 2987  
Vicinity/Zoning Map

Cc: Steven and Kelley Grubb, 1420 14<sup>th</sup> St SW, Great Falls MT 59404

ORDINANCE 2987

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF R-1 SINGLE-FAMILY SUBURBAN DISTRICT TO MARK I, IN SECTION 15, TOWNSHIP 20 NORTH, RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, on February 21, 2006, the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits; and,

WHEREAS, pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995); and,

WHEREAS, Steven and Kelley Grubb, property owners of record, have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930; and,

WHEREAS, notice of assigning a zoning classification of R-1 Single-family suburban district, to Mark I, Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6<sup>th</sup> day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein described zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Mark I, Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, be designated as R-1 Single-family suburban district.

Section 3. This ordinance shall be in full force and effect either thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Mark I, Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2987 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6<sup>th</sup> day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6<sup>th</sup> day of November, 2007.

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

(SEAL OF CITY)

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

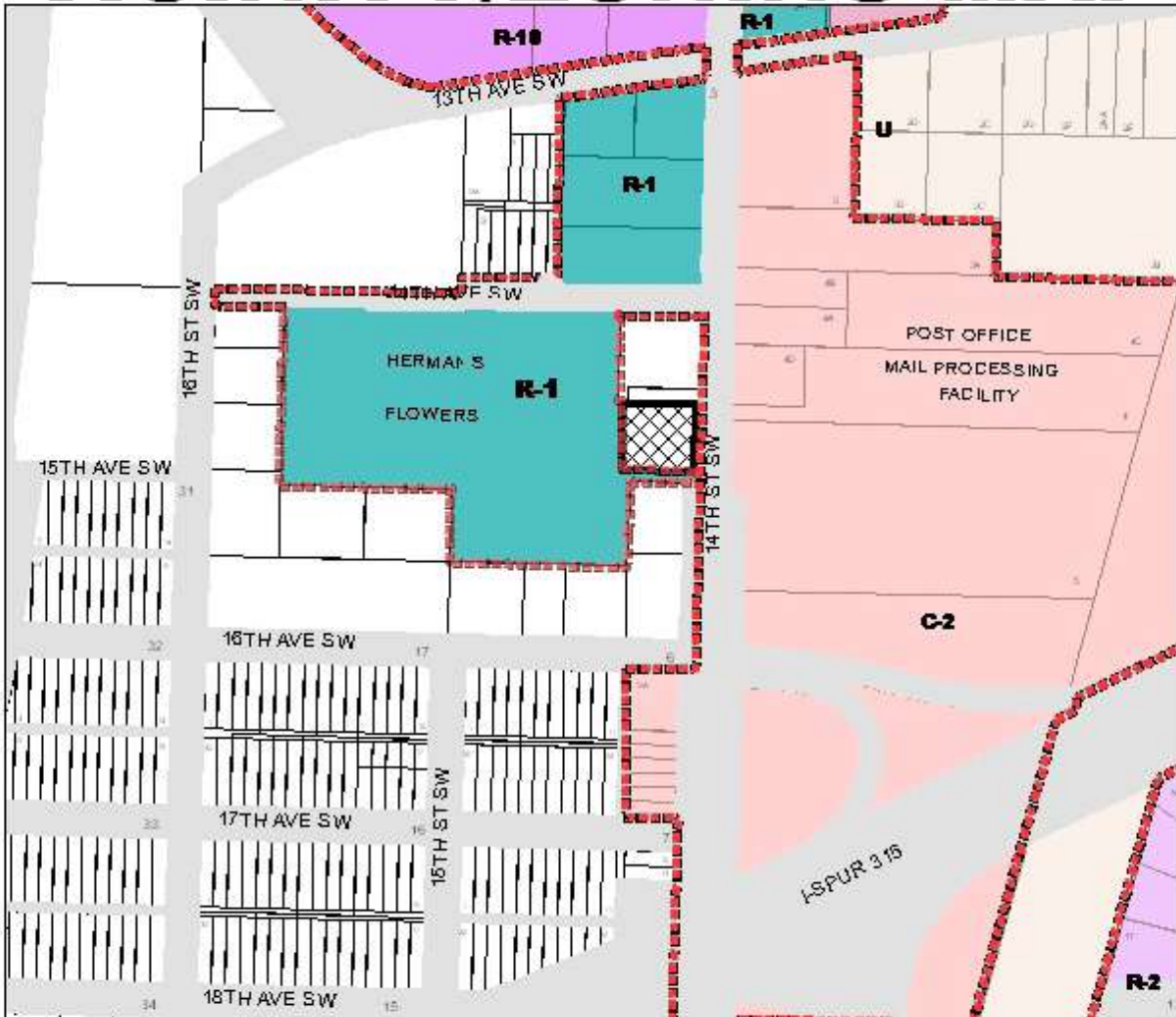
I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6<sup>th</sup> day of November, 2007, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2987 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:


- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library









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

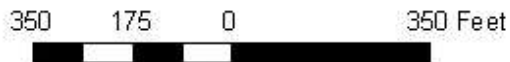
(SEAL OF CITY)

# VICINITY/ZONING MAP



 MARK I, SECTION 15, TOWNSHIP 20 NORTH, RANGE 3 EAST, CASCADE COUNTY MONTANA, PROPOSED TO BE ANNEXED TO THE CITY OF GREAT FALLS AND ASSIGNED A CITY ZONING CLASSIFICATION OF R-1 SINGLE-FAMILY SUBURBAN DISTRICT

- |  |   |   |
|--|---|---|
|  City Limits                      |  R-6 Multi-family high density |  U Unincorporated            |
|  R-1 Single-family suburban       |  R-10 Mobile home park         |  Tracts of land outside City |
|  R-2 Single-family medium density |  C-2 General commercial        |   |



**A G E N D A   R E P O R T**

**DATE** October 2, 2007

**ITEM** Ordinance 2988 to Establish City Zoning Upon Marks J and J1, Section 15, Township 20 North, Range 3 East, P.M.M. Cascade County, Montana (Eric & Lori Ellingson, Owners)

**INITIATED BY** City Commission

**ACTION REQUESTED** Commission Accept Ordinance 2988 on First Reading & Set Hearing

**PREPARED BY** Charles Sheets, Planner I

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

- - - - -

**RECOMMENDATION:**

The City Zoning Commission has recommended the City Commission assign a City zoning classification of R-1 Single-family suburban district to Mark J and assign a City zoning classification of C-2 General commercial district to Mark J1, upon annexation to the City.

**MOTION:**

“I move the City Commission accept Ordinance 2988 on first reading and set a public hearing for November 6, 2007, to consider adoption of Ordinance 2988.”

**SYNOPSIS:**

Ordinances 2988 assigns a zoning classification of R-1 Single-family suburban district to Mark J and assigns a zoning classification of C-2 General commercial district to Mark J1, upon annexation of same to City.

**BACKGROUND:**

Mark J is presently occupied by a single-family residence and addressed as 1500 14<sup>th</sup> Street Southwest. Mark J1 is presently occupied by a general service warehouse business and addressed as 1508 14<sup>th</sup> Street Southwest. The subject parcels receive water and sewer services from the City.

Please refer to the attached Vicinity/Zoning Map.

On February 21, 2006 the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits. The City Commission has decided to annex parcels receiving water and/or sewer services to create a more coherent and consistent City boundary and to provide services more effectively to everyone in the City. It is also a matter of fairness to current City residents to make sure that those who use City services share the burden of paying for them equitably.

Pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of a parcel located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995). Accordingly, the City Commission intends to apply this authority via Ordinance 2930.

The property owners have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Marks J and J1 are presently zoned in the County as "R-1" Suburban Residential District. As the neighborhood to the north and west of Mark J is predominately residential with larger lots, it is recommended subject Mark J be zoned R-1 Single-family suburban district upon annexation to the City. Considering the existing land use of general service warehouse business and the neighboring incorporated parcels are zoned C-2 General commercial district, it is recommended subject Mark J1 be zoned C-2 General commercial district, upon annexation to the City.

In summary, designating subject Mark J for residential use and Mark J1 for business use is consistent with existing uses on subject parcels and existing zoning on abutting properties. Therefore, staff concludes all of the above stated criteria are substantially met.

During the Planning Board/Zoning Commission public hearing held August 28, 2007, an opponent of assigning a C-2 General commercial district to Mark J1 voiced concerns that the property being commercially zoned would aggravate the already heavy traffic congestion at Exit 0 and the citizens headed to Market Place. However, it was pointed out in the hearing that assigning a residential zoning classification to the already established general service warehouse business would make it nonconforming at the location. As well, having a residential zoning classification on Mark J1 would indicate the best use of the parcel, should the nonconforming use cease to exist, would be residential. Staff stated it could not foresee anyone wanting to construct a single-family residence on such a busy intersection.

The Zoning Commission at the conclusion of the public hearing held August 28, 2007 passed a motion recommending the City Commission assign a zoning classification of R-1 Single-family suburban district to Mark J and assign a zoning classification of C-2 General commercial district to Mark J1, upon annexation to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider a resolution annexing Marks J and J1, simultaneously with Ordinance 2988.

Attach: Ordinance 2988  
Vicinity/Zoning Map

Cc: Eric & Lori Ellingson, 1500 14<sup>th</sup> St SW, Great Falls MT 59404



ORDINANCE 2988

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF R-1 SINGLE-FAMILY SUBURBAN DISTRICT TO MARK J, SECTION 15, TOWNSHIP 20 NORTH, RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA AND A ZONING CLASSIFICATION OF C-2 GENERAL COMMERCIAL DISTRICT TO MARK J1, SECTION 15, TOWNSHIP 20 NORTH, RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, on February 21, 2006, the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits; and,

WHEREAS, pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995); and,

WHEREAS, Eric and Lori Ellingson, property owners of record, have provided written consent to annex said properties into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930; and,

WHEREAS, notice of assigning a zoning classification of R-1 Single-family suburban district to Mark J and assigning a zoning classification of C-2 General commercial district to Mark J1, both in Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, was published in the Great Falls Tribune advising that a public hearing on these zoning designations would be held on the 6<sup>th</sup> day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designations be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein described zoning designations will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Mark J, in Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, be designated as R-1 Single-family suburban district.

Section 3. That the zoning of Mark J1, in Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, be designated as C-2 General commercial district.

Section 4. This ordinance shall be in full force and effect either thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Marks J and J1, in Section 15, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2988 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6<sup>th</sup> day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6<sup>th</sup> day of November, 2007.

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

(SEAL OF CITY)

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

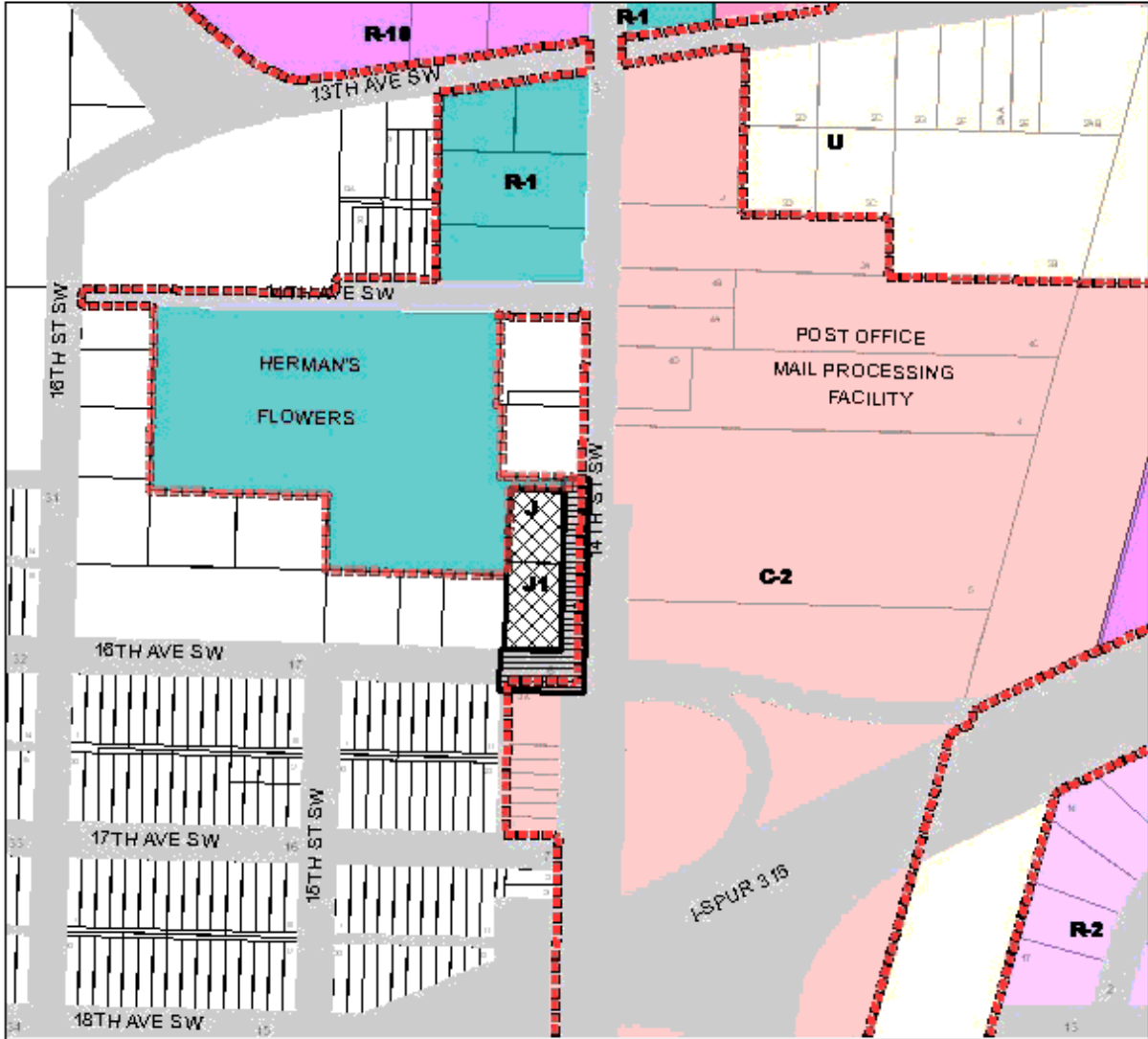
I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6<sup>th</sup> day of November, 2007, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2988 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:


- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library


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









(SEAL OF CITY)

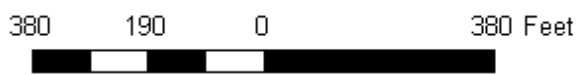
# VICINITY/ZONING MAP



 MARKS J & J1, SEC 15, T20N, R3E, CASCADE COUNTY, MONTANA PROPOSED TO BE ANNEXED INTO THE CITY OF GREAT FALLS AND ASSIGNED A ZONING CLASSIFICATION OF R-1 SINGLE-FAMILY SUBURBAN AND C-2 GENERAL COMMERCIAL DISTRICT, RESPECTIVELY

 ABUTTING SEGMENT OF 14TH STREET SOUTHWEST AND 16TH AVENUE SOUTHWEST BEING ANNEXED INTO THE CITY IN ACCORDANCE WITH 7-2-4211, MCA REGARDING INCLUSION OF ROADS AND RIGHTS-OF-WAY IN ANNEXATIONS

-  City Limits
-  R-6 Multi-family high density
-  U Unincorporated enclave
-  R-1 Single-family suburban
-  R-10 Mobile home park
-  Tracts of land outside City
-  R-2 Single-family medium density
-  C-2 General commercial



**A G E N D A   R E P O R T**

**DATE** October 2, 2007

**ITEM** Ordinance 2989 to Establish City Zoning Upon Marks 7D and 7M, Section 9, Township 20 North, Range 4 East, P.M.M. (John’s Mobile Home Court)

**INITIATED BY** City Commission

**ACTION REQUESTED** Commission Accept Ordinance 2989 on First Reading & Set Hearing

**PREPARED BY** Charles Sheets, Planner I

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

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**RECOMMENDATION:**

The City Zoning Commission has recommended the City Commission assign a zoning classification of R-10 Mobile home park district, to Marks 7D and 7M, Section 9, Township 20 North, Range 4 East, P.M.M. Cascade County, Montana, upon annexation to the City.

**MOTION:**

“I move the City Commission accept Ordinance 2989 on first reading and set a public hearing for November 6, 2007, to consider adoption of Ordinance 2989.”

**SYNOPSIS:**

Ordinance 2989 assigns a zoning classification of R-10 Mobile home park district, to Marks 7D and 7M, Section 9, Township 20 North, Range 4 East, P.M.M. Cascade County, Montana, upon annexation to the City.

**BACKGROUND:**

Marks 7D and 7M, which are primarily being used as a mobile home court along 2<sup>nd</sup> Avenue North, are presently outside the City Limits. The parcels receive water and sewer services from the City.

Please refer to the attached Vicinity/Zoning Map.

On February 21, 2006 the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits. The City Commission has decided to annex parcels receiving water and/or sewer services to create a more coherent and consistent City boundary and to provide services more effectively to everyone in the City. It is also a matter of fairness to current City residents to make sure that those who use City services share the cost of paying for them equitably.

Pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995). Accordingly, the City Commission intends to apply this authority via Ordinance 2930.

The property owners have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Marks 7D and 7M are presently zoned in the County as "B-2" General Business District. Although the property contains a mixture of uses, it predominately has been used as a mobile home court for many years and the Montana Department of Revenue taxes the property as such. Therefore, it is recommended subject property be zoned R-10 Mobile home park district, upon annexation to the City.

In summary, designating subject property as a mobile home court is consistent with its long term and predominate use. Therefore, staff concludes all of the above criteria are substantially met.

The Zoning Commission at the conclusion of a public hearing held August 28, 2007 passed a motion recommending the City Commission assign a zoning classification of R-10 Mobile home park district to Marks 7D and 7M, upon annexation to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider an annexation resolution for Marks 7D and 7M, simultaneously with Ordinance 2989.

Attach: Ordinance 2989  
Vicinity/Zoning Map

Cc: Charles & Judith Ferguson, 4200 2<sup>nd</sup> Ave N, Great Falls, MT 59405

ORDINANCE 2989

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF R-10 MOBILE HOME PARK DISTRICT UPON MARKS 7D AND 7M, SECTION 9, TOWNSHIP 20 NORTH, RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, on February 21, 2006, the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits; and,

WHEREAS, pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995); and,

WHEREAS, Charles & Judith Ferguson, property owners of record, have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930; and,

WHEREAS, notice of assigning a zoning classification of R-10 Mobile home park district upon Marks 7D and 7M, Section 9, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6<sup>th</sup> day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein described zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Marks 7D and 7M, Section 9, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana, be designated as R-10 Mobile home park district.

Section 3. This ordinance shall be in full force and effect either thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Mark 7D and 7M, Section 9, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana, into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2989 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6<sup>th</sup> day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6<sup>th</sup> day of November, 2007.

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

(SEAL OF CITY)

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

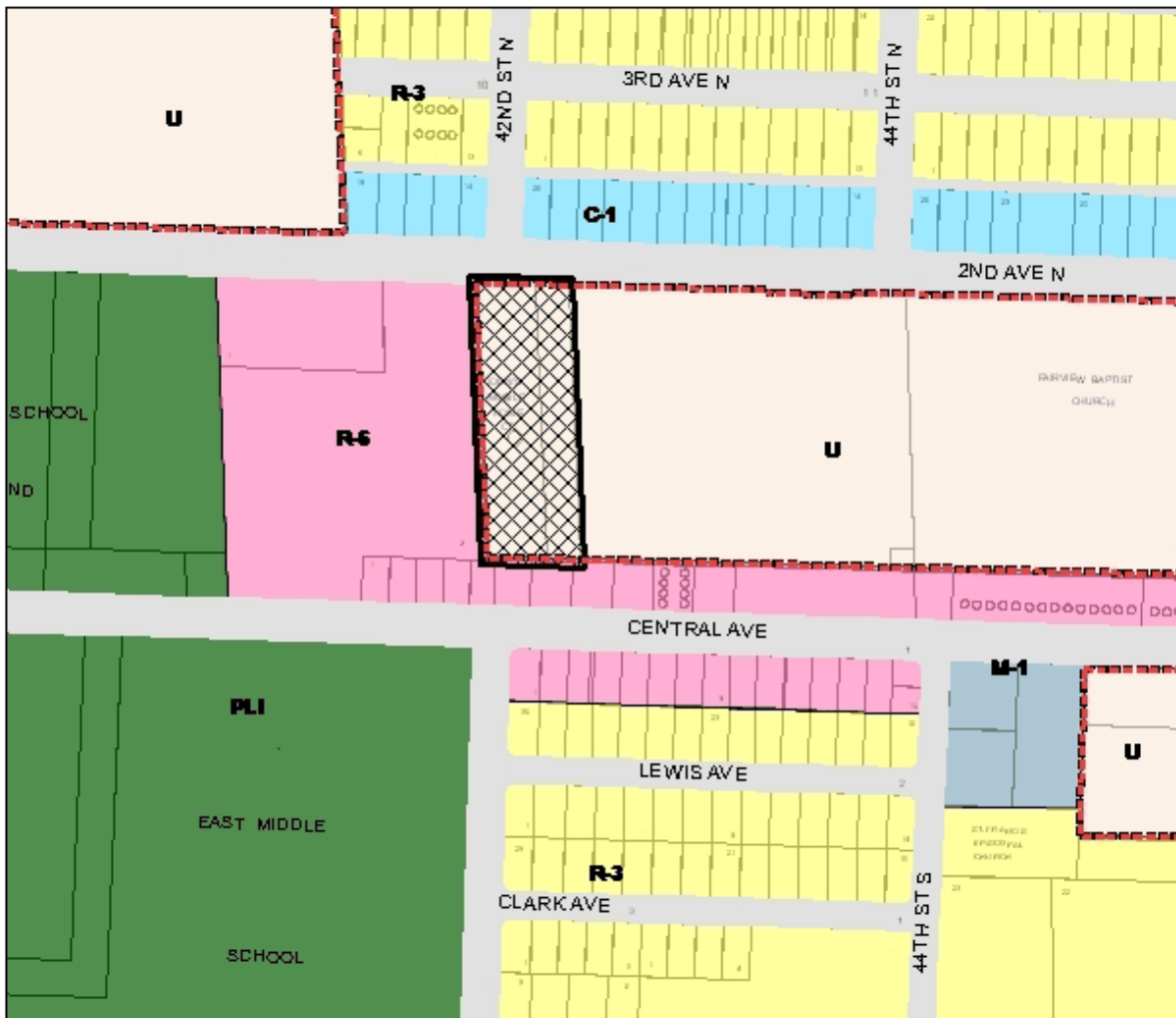
I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6<sup>th</sup> day of November, 2007, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2989 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:


- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library


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

(SEAL OF CITY)


# VICINITY/ZONING MAP





 MARKS 7D & 7M, SEC 9, T20N, R4E, CASCADE COUNTY, MONTANA PROPOSED TO BE ANNEXED INTO THE CITY OF GREAT FALLS AND ASSIGNED A ZONING CLASSIFICATION OF R-10 MOBILE HOME PARK DISTRICT


 City Limits


 M-1 Mixed-use district

 R-3 Single-family high density

 PLI Public Lands and Institutional

 R-6 Multi-family high density

 U Unincorporated enclave

 C-1 Neighborhood commercial

440 220 0 440 Feet





**A G E N D A   R E P O R T**

**DATE** October 2, 2007

**ITEM** Ordinance 2990 to Establish City Zoning Upon Lots 19 & 19B, Park Highway Garden Tracts, Cascade County, Montana (Tolan Distributing)

**INITIATED BY** City Commission

**ACTION REQUESTED** Commission Accept Ordinance 2990 on First Reading & Set Hearing

**PREPARED BY** Charles Sheets, Planner I

**APPROVED & PRESENTED BY** Benjamin Rangel, Planning Director

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**RECOMMENDATION:**

The City Zoning Commission has recommended the City Commission assign a zoning classification of M-2 Mixed-use transitional district to Lots 19 & 19B, Park Highway Garden Tracts, Section 4, Township 20 North, Range 3 East, Cascade County, Montana, upon annexation to the City.

**MOTION:**

“I move the City Commission accept Ordinance 2990 on first reading and set a public hearing for November 6, 2007, to consider adoption of Ordinance 2990.”

**SYNOPSIS:**

Ordinance 2990 assigns a zoning classification of M-2 Mixed-use transitional district to Lots 19 & 19B, Park Highway Garden Tracts, Cascade County, Montana, upon annexation of same to City.

**BACKGROUND:**

Lots 19 & 19B, Park Highway Garden Tracts are presently occupied by a bulk gasoline and oil sales business and a single-family residence, all addressed as 2201 Vaughn Road. The parcels receive water and sewer services from the City. Jack and Virginia Tolan have a “Contract for Deed” to purchase the property from the estate of Adeline E. Wells.

Please refer to the attached Vicinity/Zoning Map.

On February 21, 2006 the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits. The City Commission has decided to annex parcels receiving water and/or sewer services to create a more coherent and consistent City boundary and to provide services more effectively to everyone in the City. It is also a matter of fairness to current City residents to make sure that those who use City services share the cost of paying for them equitably.

Pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995). Accordingly, the City Commission intends to apply this authority via Ordinance 2930.

The property owners have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Lots 19 and 19B, Park Highway Garden Tracts are presently zoned in the County as "I-1" Light Industrial District. In that the incorporated properties to the east are zoned M-2 Mixed-use transitional district, and the district is intended to promote a transition over time to a predominately mixed land use pattern, it is recommended subject properties be zoned M-2 Mixed-use transitional district upon annexation to the City. Because of changing economic conditions and other factors, some current uses do not represent the highest and best use, given other more suitable areas. Current industrial uses and warehouses are not considered nonconforming. As such, current industrial uses and warehouses existing at the time the City Land Development Code was adopted are allowed to expand or to be re-established, if damaged, provided development and appearance standards under the purview of the Design Review Board are met.

In summary, designating subject properties for mixed uses is consistent with existing uses on the property and the existing zoning on the abutting incorporated properties. Therefore, staff concludes all of the above stated criteria are substantially met.

The Zoning Commission at the conclusion of a public hearing held August 28, 2007 passed a motion recommending the City Commission assign a zoning classification of M-2 Mixed-use transitional district to Lots 19 & 19B, Park Highway Garden Tracts, Cascade County, Montana, upon annexation to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider an annexation resolution for Lots 19 & 19B, Park Highway Garden Tracts, Cascade County, Montana, simultaneously with Ordinance 2990.

Attach: Ordinance 2990  
Vicinity/Zoning Map

Cc: Jack and Virginia Tolan, P.O. Box 2923, Great Falls, MT 59403  
Terry and Patricia Payne, 501 Pattee Canyon Dr, Missoula MT 59803

ORDINANCE 2990

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF M-2 MIXED-USE TRANSITIONAL DISTRICT TO LOTS 19 & 19B, PARK HIGHWAY GARDEN TRACTS, SECTION 4, TOWNSHIP 20 NORTH, RANGE 3 EAST, CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, on February 21, 2006, the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits; and,

WHEREAS, pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995); and,

WHEREAS, the representatives of the estate of Adeline E. Wells and the purchasers, Jack and Virginia Tolan, have provided written consent to annex said properties into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930; and,

WHEREAS, notice of assigning a zoning classification of M-2 Mixed-use transitional district upon Lots 19 & 19B, Park Highway Garden Tracts, Section 4, Township 20 North, Range 3 East, Cascade County, Montana, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6<sup>th</sup> day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein described zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Lots 19 & 19B, Park Highway Garden Tracts, Section 4, Township 20 North, Range 3 East, Cascade County, Montana, be designated as M-2 Mixed-use transitional district.

Section 3. This ordinance shall be in full force and effect either thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Lots 19 & 19B, Park Highway Garden Tracts, Section 4, Township 20 North, Range 3 East, Cascade County, Montana, upon annexation to the City, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2990 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6<sup>th</sup> day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6<sup>th</sup> day of November, 2007.

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

(SEAL OF CITY)

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

I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6<sup>th</sup> day of November, 2007, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2990 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library

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

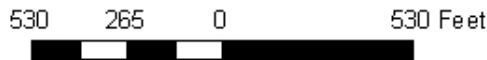
(SEAL OF CITY)

# EXHIBIT "A"

## VICINITY/ZONING MAP



- LOT 19 & 19B, PARK HIGHWAY GARDEN TRACTS PROPOSED TO BE ANNEXED TO THE CITY AND BE ASSIGNED A CITY ZONING CLASSIFICATION OF "M-2" MIXED-USE TRANSITIONAL DISTRICT
- ABUTTING SEGMENT OF 21ST STREET NORTHWEST BEING ANNEXED INTO THE CITY IN ACCORDANCE WITH 7-2-4211, MCA AND BE ASSIGNED A CITY ZONING
- City Limits
- M-2 Mixed-use transitional
- I-2 Heavy industrial
- R-1 Single-family suburban
- POS Parks and Open Space
- U Unincorporated
- R-3 Single-family high density
- I-1 Light industrial
- Tracts of land outside City



AGENDA REPORT

DATE October 2, 2007

ITEM Ordinance 2991 to Establish City Zoning Upon Mark 11A, Section 3, Township 20 North, Range 3 East, Cascade County, Montana (Eagles Nest Homes and Bohl)

INITIATED BY City Commission

ACTION REQUESTED Commission Accept Ordinance 2991 on First Reading & Set Hearing

PREPARED BY Charles Sheets, Planner I

APPROVED & PRESENTED BY Benjamin Rangel, Planning Director

- - - - -

**RECOMMENDATION:**

The City Zoning Commission has recommended the City Commission assign a zoning classification of C-2 General commercial district to Mark 11A, Section 3, Township 20 North, Range 3 East, Cascade County, Montana, upon annexation to the City.

**MOTION:**

“I move the City Commission accept Ordinance 2991 on first reading and set a public hearing for November 6, 2007, to consider adoption of Ordinance 2991.”

**SYNOPSIS:**

Ordinance 2991 assigns a zoning classification of C-2 General commercial district to Mark 11A, Section 3, Township 20 North, Range 3 East, Cascade County, Montana, upon annexation of same to City.

**BACKGROUND:**

Mark 11A is presently occupied by a log home sales and construction office (Eagles Nest Log Homes) and a single-family residence addressed as 1001 and 1011 Northwest Bypass, respectively. The parcel receives water and sewer services from the City.

Please refer to the attached Vicinity/Zoning Map.

On February 21, 2006 the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits. The City Commission has decided to annex parcels receiving water and/or sewer services to create a more coherent and consistent City boundary and to provide services more effectively to everyone in the City. It is also a matter of fairness to current City residents to make sure that those who use City services share the cost of paying for them equitably.

Pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995). Accordingly, the City Commission intends to apply this authority via Ordinance 2930.

The property owners have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Mark 11A is presently zoned in the County as “I-1” Light Industrial District. In that access to the parcel is from the Northwest Bypass and the other incorporated properties along the north side of the Northwest Bypass are zoned C-2 General commercial district, which allows “General service” uses like log home sales, construction offices, and single-family residences, it is recommended subject property be zoned C-2 General commercial district upon annexation to the City.

In summary, designating subject property for commercial use is consistent with other incorporated properties abutting the north side of the involved segment of the Northwest Bypass. Therefore, staff concludes all of the above stated criteria are substantially met.

The Zoning Commission at the conclusion of a public hearing held August 28, 2007 passed a motion recommending the City Commission assign a zoning classification of C-2 General commercial district to Mark 11A, upon annexation to the City.

It is anticipated the City Commission, following the public hearing on November 6, will consider an annexation resolution for Mark 11A, simultaneously with Ordinance 2991.

Attach: Ordinance 2991  
Vicinity/Zoning Map

Cc: Andrew & Mildred Bohl, 1011 NW BYP, Great Falls MT 59401

ORDINANCE 2991

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF C-2 GENERAL COMMERCIAL DISTRICT TO MARK 11A, SECTION 3, TOWNSHIP 20 NORTH, RANGE 3 EAST, CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, on February 21, 2006, the Great Falls City Commission adopted Ordinance 2930 regarding the annexation of parcels that receive water and/or sewer services and are currently outside the City limits; and,

WHEREAS, pursuant to 69-7-201, MCA, it is the opinion of the Montana Attorney General that a City may require the annexation of parcels located outside the city limits receiving water and/or sewer services as a condition for the continuation of such utility services to said parcels, 46 Op. Atty. Gen. No. 12 (1995); and,

WHEREAS, Andrew and Mildred Bohl, property owners of record, have provided written consent to annex said property into the City of Great Falls, as a condition for the continuation of City water and sewer services in accordance with City Ordinance 2930; and,

WHEREAS, notice of assigning a zoning classification of C-2 General commercial district upon Mark 11A, Section 3, Township 20 North, Range 3 East, Cascade County, Montana, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6<sup>th</sup> day of November, 2007, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein described zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Mark 11A, Section 3, Township 20 North, Range 3 East, Cascade County, Montana, be designated as C-2 General commercial district.

Section 3. This ordinance shall be in full force and effect either thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Mark 11A, Section 3, Township 20 North, Range 3 East, Cascade County, Montana, upon annexation to the City, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 6<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

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

(SEAL OF THE CITY)



APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2991 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6<sup>th</sup> day of November, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6<sup>th</sup> day of November, 2007.

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

(SEAL OF CITY)

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

I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6<sup>th</sup> day of November, 2007, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2991 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

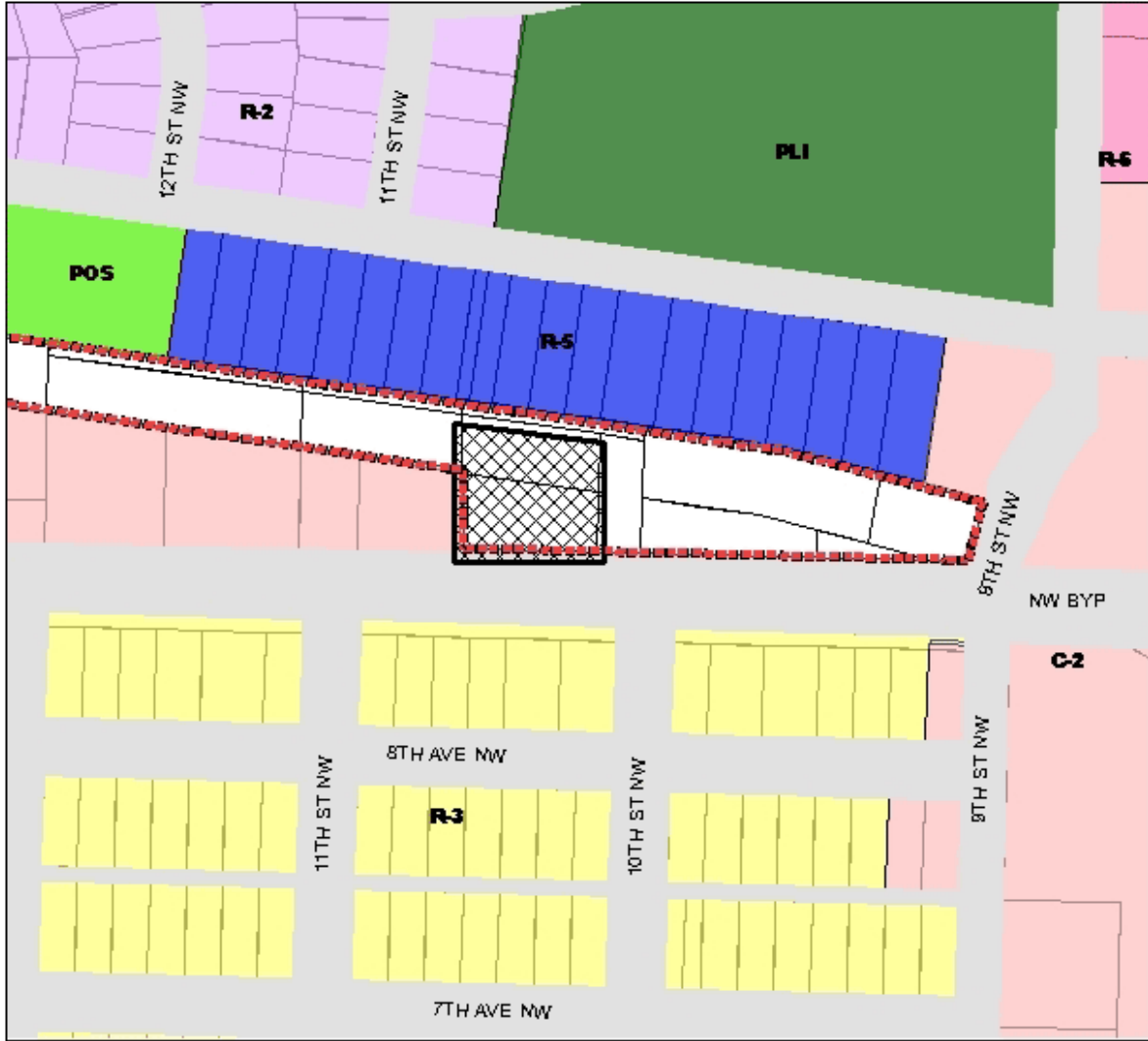
- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library

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











(SEAL OF CITY)

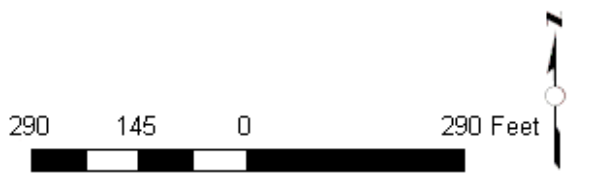
EXHIBIT "A"

# VICINITY/ZONING MAP



 MARK 11A, SEC 3, T20N, R3E, CASCADE COUNTY, MONTANA PROPOSED TO BE ANNEXED INTO THE CITY OF GREAT FALLS AND ASSIGNED A ZONING CLASSIFICATION OF C-2 GENERAL COMMERCIAL DISTRICT

- |  |   |  |
|--|---|--|
|  City Limits                      |  R-5 Multi-family medium density |  PLI Public Lands and Institutional |
|  R-2 Single-family medium density |  R-6 Multi-family high density   |  POS Parks and Open Space           |
|  R-3 Single-family high density   |  C-2 General commercial          |  U Unincorporated enclaves          |
|  |   |  Tracts of land outside City        |



Regular City Commission Meeting

Mayor Stebbins presiding

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

**PLEDGE OF ALLEGIANCE**

**ROLL CALL:** City Commissioners present: Dona Stebbins, Sandy Hinz, Diane Jovick-Kuntz, Bill Beecher and John Rosenbaum. Also present were the Assistant City Manager, City Attorney, Directors of Community Development, Park and Recreation, Public Works, Library, Planning and Fiscal Services, and the Police Chief, Fire Chief, and City Clerk.

**PRESENTATION:** Welcome – Russian delegation.

**PROCLAMATIONS:** Mayor Stebbins read proclamations for Constitution Week and American Heritage Indian Day.

**NEIGHBORHOOD COUNCILS**

1. There were no reports or announcements from Neighborhood Council representatives.

**PUBLIC HEARINGS**

**Res. 9682 and Ord. 2979, annexation and zoning for Meadowlark Addition No. 5. Adopted.**

- 2A. **RESOLUTION 9682 ANNEXES MEADOWLARK ADDITION NO. 5, CONSISTING OF 20 SINGLE-FAMILY RESIDENTIAL LOTS LOCATED SOUTHWEST OF GRANDE VISTA PARK.**
- 2B. **ORDINANCE 2979, ASSIGNS ZONING CLASSIFICATION OF R-3 SINGLE-FAMILY, HIGH-DENSITY DISTRICT.**

Planning Director Ben Rangel reported that property owner and developer, Tom Skovron, proposes to develop a 20 unit single family residential subdivision, titled Meadowlark Addition No. 5. The subdivision is located in southwest Great Falls and is more specifically located southwest of Grande Vista Park and immediately east of Flood Road. Mr. Skovron's overall proposal includes the referenced subdivision, its annexation and the establishment of City zoning.

On August 21st, the Commission set public hearing for this evening. After conducting a joint public hearing, Mr. Rangel requested the Commission adopt Resolution 9682, which would annex the subdivision and to adopt Ordinance 2979, which would assign a zoning classification of R-3 single family residential, and to approve the final plat and annexation agreement.

The City Planning Board/Zoning Commission unanimously recommends Commission approval.

Mayor Stebbins declared the public hearing open. No one spoke in favor of or opposition to Resolution 9682 and Ordinance 2979.

Mayor Stebbins declared the public hearing closed and asked for the direction of the City Commission.

**Commissioner Jovick-Kuntz moved, seconded by Commissioner Hinz, that the City Commission adopt Resolution 9682 and approve the Final Plat and Annexation Agreement.**

Motion carried 5-0.

**Commissioner Hinz moved, seconded by Commissioners Beecher and Jovick-Kuntz, that the City Commission adopt Ordinance 2979.**

Motion carried 5-0.

**Res. 9687 and Ord. 2981, annexation and zoning for Flying J Travel Plaza Addition, Phase II. Adopted.**

**3A. RESOLUTION 9687 ANNEXES FLYING J TRAVEL PLAZA ADDITION, PHASE II.**

**3B. ORDINANCE 2981, ASSIGNS ZONING CLASSIFICATION OF C-2 GENERAL COMMERCIAL DISTRICT.**

Planning Director Ben Rangel reported that the Great Falls Community Ice Foundation is the owner and developer of property being platted as Flying J Travel Plaza Addition, Phase II. The property is located on top of Gore Hill, just south of the Flying J Truck Stop. The Ice Foundation is currently building an ice arena on the site. The Foundation's overall proposal includes the referenced subdivision, its annexation and the establishment of City zoning.

On August 21st, the Commission set public hearing for this evening. After conducting a joint public hearing, Mr. Rangel requested the Commission adopt Resolution 9687, which would annex the subdivision and to adopt Ordinance 2981, which would assign a zoning classification of C-2 general commercial, and to approve the minor plat, the Findings of Fact and annexation agreement.

The City Planning Board/Zoning Commission unanimously recommends Commission approval.

Mayor Stebbins declared the public hearing open. Speaking in favor of Resolution 9687 and Ordinance 2981 was:

**Andrea Hedges**, P.O. Box 2869, President of the Great Falls Community Ice Foundation, thanked the Commissioners and City staff for the attention given to this project.

No one spoke in opposition to Resolution 9687 and Ordinance 2981.

Mayor Stebbins declared the public hearing closed and asked for the direction of the City Commission

Commissioner Beecher moved, seconded by Commissioner Jovick-Kuntz, that the City Commission adopt Resolution 9687 and approve the Minor Plat, Findings of Fact and Annexation.

Motion carried 5-0.

**Commissioner Rosenbaum moved, seconded by Commissioner Hinz, that the City Commission adopt Ordinance 2981.**

Motion carried 5-0.

Commissioner Rosenbaum thanked the Ice Area members and all volunteers, and stated it was a community effort for a great cause.

**Ord. 2980, Prairie Ridge Estates Subdivision, revised Final Plat and Development Agreement. Adopted.**

**4. ORDINANCE 2980, PRAIRIE RIDGE ESTATES SUBDIVISION, FORMERLY PROCESSED AS UPPER RIVER ROAD ESTATES SUBDIVISION, CONSISTING OF 20 SINGLE-FAMILY RESIDENTIAL LOTS AND ONE LOT WHEREIN 12 RESIDENTIAL CONDOMINIUMS UNITS ARE PROPOSED.**

Planning Director Ben Rangel reported that Gene Thayer is the owner and developer of property located near the corner of Upper River Road and 40<sup>th</sup> Avenue South. Mr. Thayer proposes 20 single-family homes and 12 residential condominiums in an area previously processed as Upper River Road Estates Subdivision, now to be referred to as Prairie Ridge Estates Subdivision. The final plat also includes an adjoining lot in Southridge First Addition and a portion of property described by Certificate of Survey. Mr. Thayer proposes to rezone the properties within the new subdivision. The property was previously annexed into the City as a part of the Upper/Lower River Road Water and Sewer District, Phase 1 project.

On August 21st, the Commission set public hearing for this evening. After conducting the public hearing, Mr. Rangel requested the Commission approve the final plat and development agreement and to adopt Ordinance 2980, as amended, which would rezone the subdivision from R-1 single family residential to PUD planned unit development.

The City Planning Board/Zoning Commission unanimously recommends Commission approval.

Mayor Stebbins declared the public hearing open. No one spoke in favor of or opposition to Ordinance 2980.

Mayor Stebbins declared the public hearing closed and asked for the direction of the City Commission.

**Commissioner Hinz moved, seconded by Commissioners Rosenbaum and Beecher, that the City Commission adopt Ordinance 2980 as amended.**

Motion carried 5-0.

**Res. 9681, To Levy and Assess Special Maintenance Lighting Districts. Adopted.**

**5. RESOLUTION 9681, TO LEVY AND ASSESS SPECIAL MAINTENANCE LIGHTING DISTRICTS.**

Fiscal Services Director Coleen Balzarini reported that this is an annual resolution that she asks the Commission to hold a public hearing on and then adopt. It allows the City to assess the cost for lighting all the street lighting districts throughout the City. There are in excess of 10,000 lights and the anticipated annual assessment bill will be approximately \$1,100,000.

Mayor Stebbins declared the public hearing open. No one spoke in favor of Resolution 9681. Speaking in opposition to Resolution 9681 was:

**Stuart Lewin**, 615 3<sup>rd</sup> Avenue North, stated that he tried to determine whether or not the cost to the City for this lighting district is reasonable compared to what it was, and compared to what it will be, because we are now involved with SME. The staff has not made it clear what those numbers really mean. Mr. Lewin asked that before the Commissioners approve the assessment for these lights with SME power, find out what it is costing compared to what it was costing.

Mayor Stebbins declared the public hearing closed and asked for the direction of the City Commission

**Commissioner Rosenbaum moved, seconded by Commissioner Beecher, that the City Commission adopt Resolution 9681.**

Commissioner Rosenbaum requested that Ms. Balzarini clarify that this doesn't have anything to do with what Mr. Lewin thought it had something to do with.

Fiscal Services Director Coleen Balzarini stated that, first of all, she is not aware of any inquiries from the public with regard to any street lighting maintenance districts. Ms. Balzarini reported that in fiscal year 2004/2005 when the City first started serving its own electricity needs, the street lighting assessment dropped from \$1,183,000 to \$1,117,000. Since then, in fiscal year 2007/2008, the City had added additional street lighting districts and the cost had gone up. It is now up to \$1,180,000. With inflation and power being provided, the costs are still less than in fiscal year 2003/2004

to serve the lighting district.

Motion carried 5-0.

### OLD BUSINESS

**Ord. 2972, Amending  
OCCGF 13, Chapter 2,  
Section 070(C)  
Permitting the Extension  
of Utility Services Beyond  
City Limits.  
Adopted.**

**6. ORDINANCE 2972, AMENDING OCCGF 13, CHAPTER 2,  
SECTION 070(C) PERMITTING THE EXTENSION OF  
UTILITY SERVICES BEYOND CITY LIMITS.**

Assistant City Manager Cheryl Patton reported that Ordinance 2972 would permit the extension of the City's utility services beyond City limits where there are uniquely exceptional circumstances that are not conducive to immediate annexation; and, where the City utility system has the capacity to serve such extension; and, where appropriate, the party requesting services provides an engineering analysis demonstrating the feasibility of the extension; and, where the developer or land owner enters into a contract with the City based on 16 conditional criteria that would include but not be limited to: a written consent to annexation on the City's initiative; and, payment for the costs of such extension, service fees and fees in lieu of taxes; and, agreement to be bound by the rules and regulations of the City's utility system.

On September 4<sup>th</sup> the City Commission conducted a public hearing on Ordinance 2972 and all persons wishing to address this issue were allowed the opportunity to speak. After closing the public hearing, the City Commission tabled the ordinance and requested additional information from staff.

Staff has provided copies of the ordinances from Billings, Missoula, Helena and Bozeman as was requested. Also, with your agenda materials is a response from the City Manager and Planning Director to a number of questions raised by various speakers during the public hearing. This memorandum has also been posted on the City's website since last Friday.

Ms. Patton reported that staff recommended the City Commission remove Ordinance 2972 from the table and approve the Ordinance as was presented on September 4<sup>th</sup> with the 16 criteria that would need to be met before the City could consider an agreement relative to a specific piece of property requesting utility service outside the City limits.

Mayor Stebbins asked for the direction of the City Commission

**Commissioner Beecher moved, seconded by Commissioner Hinz, that the City Commission remove Ordinance 2972 from the table.**

Motion carried 5-0.

**Commissioner Rosenbaum moved, seconded by Commissioners Beecher and Jovick-Kuntz, that the City Commission adopt Ordinance 2972.**

Commissioner Hinz commented that she struggled a little bit with this. But, because each project has to be considered by the City Commission at the time, separately and, in all respects, meet all 16 criteria, she is comfortable that the sitting City Commission can make the right decision. She is supporting this as another development tool that could come in handy at some point.

Motion carried 5-0.

## **NEW BUSINESS**

### **ORDINANCES/RESOLUTIONS**

**Ord. 2984, Establish City Zoning Upon Lots 1A and 10A, Block 14, Finlay's Supplement to Prospect Park Addition. Accepted on first reading and set public hearing for October 16, 2007.**

**7. ORDINANCE 2984, ESTABLISH CITY ZONING UPON LOTS 1A AND 10A, BLOCK 14, FINLAY'S SUPPLEMENT TO PROSPECT PARK ADDITION.**

Planning Director Ben Rangel reported that Michael & Tammy Gittins and Earl & Helen Burow are the owners of property near 19<sup>th</sup> Street and 21<sup>st</sup> Avenue South. This year, the City installed a water main in a portion of 21<sup>st</sup> Avenue South near these properties. These property owners would like to annex their lots to receive water services. Mr. Rangel requested the Commission accept Ordinance 2984 on first reading and to set public hearing for October 16<sup>th</sup> to consider assignment of City zoning. At that time the Commission will also be asked to approve the annexation of their lots.

**Commissioner Jovick-Kuntz moved, seconded by Commissioner Beecher, that the City Commission accept Ordinance 2984 on first reading, and set public hearing for October 16, 2007.**

Motion carried 5-0.

**Res. 9691, Intent to Create Special Improvement Lighting District, City-Owned Residential Lighting No. 1310. Accepted on first reading and set public hearing for October 16, 2007.**

**8. RESOLUTION 9691, INTENT TO CREATE SPECIAL IMPROVEMENT LIGHTING DISTRICT, CITY-OWNED RESIDENTIAL LIGHTING NO. 1310.**

Fiscal Services Director Coleen Balzarini reported that the developer of Meadowlark Addition No. 5 has requested that the City begin the process to create a special lighting district for the installation of twelve 100 watt, high powered sodium street lights on 17 foot fiberglass poles.

**Commissioner Rosenbaum moved, seconded by Commissioners Hinz and Jovick-Kuntz, that the City Commission adopt Resolution 9691,**



**and set public hearing for October 16, 2007.**

Mayor Stebbins asked if there were any members of the audience that would like to make a comment.

**Stuart Lewin**, 615 3<sup>rd</sup> Avenue North, stated that the City should not be creating special lighting districts when it is not clear what the cost is because of the relationship with SME.

Motion carried 5-0.

**Res. 9693, Set Mobile Home Park License Fees. Adopted.**

**9. RESOLUTION 9693, SET MOBILE HOME PARK LICENSE FEES.**

Community Development Director Mike Rattray reported that this resolution will reinstate the mobile home licensing fees that were inadvertently omitted upon adoption of the City's land development code. This does not constitute any fee increase.

**Commissioner Hinz moved, seconded by Commissioner Rosenbaum, that the City Commission adopt Resolution 9693.**

Motion carried 5-0.

**Consent Agenda. Approved as printed.**

**CONSENT AGENDA**

10. Minutes, September 4, 2007, Commission meeting.
11. Total Expenditures of \$1,293,189 for the period of August 31<sup>st</sup> through September 18, 2007, to include claims over \$5,000, in the amount of \$1,150,318.
12. Contracts list.
13. Set public hearing for October 20, 2007, on the Justice Assistance Grant recommendation.
14. Set public hearing for October 2, 2007, on Res. 9694, Cost Recovery for Hazardous Sidewalk at 325 1<sup>st</sup> Avenue North.
15. Set public hearing for October 2, 2007, on Res. 9695, Cost Recovery for Hazardous Sidewalk at 1100 1<sup>st</sup> Avenue South.
16. Approve short term construction loan to Great Falls Port Authority in an amount not to exceed \$491,372 related to the final phase of Centene facility construction.
17. Approve final payment to Shumaker Trucking and Excavating and the State Miscellaneous Tax Division in the amount of \$12,484.34 for the 25<sup>th</sup> Avenue Northeast Water Main Extension. OF 1442.
18. Approve final payment to United Materials of Great Falls, Inc. and the State Miscellaneous Tax Division in the amount of \$3,624.07 for the Morony Natatorium Parking Lot. OF 1393.3.
19. Approve construction contract award for the 2007 Community Development Block Grant Sidewalk Replacement Program to Kuglin Construction in the amount of \$62,286. OF 1507.2.

20. Award bid for 25 In-Car Video Camera Systems to ICOP Digital Incorporated in the amount of \$126,400.
21. Approve amended plat of Lot 13A, Block 1, Riverside Townhomes Addition which subdivides property located along the east bank of the Missouri River into two lots.

**Commissioner Beecher moved, seconded by Commissioners Hinz and Jovick-Kuntz, that the City Commission approve the Consent Agenda as presented.**

Mayor Stebbins inquired if there was any comment from the public regarding the consent agenda.

**Richard Liebert**, 289 Boston Coulee Road, inquired if Item 21 was cleared through the Planning Board.

Planning Director Ben Rangel answered that it processed through the Planning Board on Tuesday of last week.

Motion carried 5-0.

#### **BOARDS & COMMISSIONS**

##### **22. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

#### **CITY MANAGER**

##### **23. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

#### **CITY COMMISSION**

##### **24. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Stebbins commented that she had coffee with the Russian delegation this morning and it was delightful to have a chance to visit with them and ask what they thought of our city. They thought it was terribly small. They are all from large, 800,000 plus, cities.

#### **PETITIONS AND COMMUNICATIONS**

##### **25. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Stebbins opened the meeting to Petitions and Communications.

**Free Speech. Criminal investigation.**

**25A. Rick Valois**, 1606 Adams Blvd., stated he prefaced his remarks that, unless he is in violation of an ordinance or a state law, he will never allow himself to have hands put on him and removed. He will invoke citizens arrest procedures if that ever happens. This is about free speech. Mr. Valois

stated he is a working guy and lives by the golden rule. In his work, he meets a lot of people. Over the last several months he has heard concerns from citizens in the course of his work. Mr. Valois said that people perceive a lack of accountability in this administration. He strongly believes a criminal investigation should begin on this administration, Great Falls Police Department and the animal foundation.

**Ord. 2972. Growth Policy.**

**25B. Claire Baiz**, 105 6<sup>th</sup> Street North, stated she is a Great Falls native and 2007 Great Falls Business Woman of the Year. She stated that she is opposed to Ordinance 2972 because it violates the growth policy. Ms. Baiz stated she has a degree in history and political science. Ms. Baiz read a portion of the Great Falls growth policy. She stated that Ordinance 2972 is an attempt to tailor the rules to a particularly poorly chosen industry, and opined that this is dangerous politics and bad business. She stated that the citizens of Great Falls want to put a stop to the coal plant. Ms. Baiz then read a portion of AG Opinion 23 with regard to the Planned Community Development Act of 1973. She asked for an answer, for the record, can a property owner agree to future annexation to get approval for something, even if the annexation is not legally allowed. Ms. Baiz then read a portion of the Ordinance 2972. She asked if Highwood Generating Station is such a good idea, why weren't the people given a voice in the first place. She stated that she understands it is common practice for our City Manager to sign some documents before they come to a final vote of the City Commission. On May 30<sup>th</sup> John Lawton signed contracts regarding Ordinance 2972, six days before the City Commission voted to approve those contracts. Common practice or not, Ms. Baiz asked the Commission to consider how bad this looks from the outside looking in.

**Ord. 2972.**

**25C. Andrea Deligdish**, 3016 Central, made comments regarding Ordinance 2972 and inquired if the City goes ahead with this project, at what point is there going to be a public hearing about the different businesses that are going to request an extension of utility services beyond city limits. Ms. Deligdish stated that she read the 16 points and it is not clear to her if there is going to be a public hearing or if the Commission approves the projects without a public hearing.

Assistant City Manager Cheryl Patton responded that, normally, contracts do not require a public hearing. However, the Commission allows for comment on an agenda item not previously discussed.

Ms. Deligdish asked how will the public comment on it before the Commission approves it.

Ms. Patton answered that each project would develop a contract and that contract for that specific project would come before the City Commission for approval. It would be on the formal agenda and people would have an opportunity to comment before it is voted on.

Ms. Deligdish stated that spot zoning makes a mess.

**Free Speech. HGS.**

**25D. Larry Kralj**, 210 24<sup>th</sup> Avenue South, stated that he has his watch and he will let the Commission know when his five minutes are up. Mr. Kralj stated that, since it is Constitution Week, he will not be removed or arrested by any plain clothed policeman that might be lurking in the audience, and that he will stay here and claim his five minutes of free speech. Mr. Kralj stated that it makes him sick to see people on this administration singing praises of the Constitution while conducting one of the most tyrannical government policies that he has ever seen. Mr. Kralj stated that no one in Great Falls wants the coal plant, the Commission took away their right to vote on it, limited comments to three minutes, and was upset that a person was hauled off when they didn't like what she had to say. Mr. Kralj opined that the citizens are outraged on how this is being pushed through.

**Ord. 2972. HGS.**

**25E. Kathy Gessaman**, 1006 36<sup>th</sup> Avenue N.E., stated that she is disappointed with the action taken by the Commission this evening. Mrs. Gessaman stated that she sent an email to the Commissioners and the Mayor and hand-delivered a hard copy to the City's secretary. To date, she has not received a response. She stated that she is not sure how citizens can have an impact on the City's policies when no one on the Commission or the Mayor will talk to them or have a dialogue. Mrs. Gessaman stated that good points were submitted on how to make Ordinance 2972 better, and would like the Commission to work with the non-elected, nine member City Planning Advisory Board. She stated they all want the best for this community; that the environment be healthy; and, that the citizens won't be contaminated by unnecessary coal plants. Mrs. Gessaman opined that it is unnecessary in this day and age.

**Ord. 2972.**

**25F. Richard Liebert**, 289 Boston Coulee Road, stated that democracy is the worst form of government, but it is far better than the alternatives. Mr. Liebert wants to know why the Planning Board was not involved in the development of Ordinance 2972, because it is everything about annexation, services, and growth policy. Mr. Liebert thought they should be involved in any application for any business outside of the City boundaries.

Planning Director Ben Rangel responded that Ordinance 2972 deals with the OCCGF Title 13, which involves utility extensions, and is the section dealing with service areas by which the City would provide sewer and water services. In all intents and purposes, that section is a section of City Code that does not routinely involve the City Planning Board in regard to reviewing issues with them dealing with utility extensions that do not involve annexation. In terms of the growth policy and issues of review of proposals from developers or individuals interested in receiving City utilities, but not annexing under this particular provision, are issues that have been brought up by others, per se, it is not a planning issue. The growth policies that are being dealt with, the zoning ordinances, the subdivision regulations and so forth that are applicable to these types of properties beyond the City limits, are properties governed by

the County planning operations. This ordinance is relying upon the planning requirements that are in place in the county areas that the properties requesting City services would be subject to, would need to meet those requirements. If they do, their next interest is to receive City services. Then this is, in essence, a request for provision of utilities. The planning issues and growth policy issues would be applied in the county where the properties are under county planning and jurisdiction. The City of Great Falls does not have jurisdiction regarding planning beyond the city limits.

Mr. Liebert said planning means development and growth. Mr. Liebert stated that maybe the City/County Planning Board needs to be formed together to deal with these issues. He said the Montana Constitution, Article 2, Section 9, the public's right to know, goes hand in hand with the First Amendment.

HGS.

**25G. Oly Stimac, Jr.**, 57 Country Lane, stated that he disagrees that the whole City doesn't want the Highwood station. He wants it. The workers that he represents want it. They can't be here to talk for themselves because they have to work out of town to make a living. It was industry that bought his family to this country, and hopefully it will be industry that brings his brothers back to this community. He stands in support of the Highwood station. He applauds SME for signing the project labor agreement with the local union so that it is built with Great Falls labor.

HGS.

**25H. Homer Friholtz**, Box 211, Gildford, stated he doesn't understand that it is just a handful of people that want this generating thing. Chouteau County, Big Sandy, Fort Benton, and Rocky Boy Reservation have signed against it. Mr. Friholtz stated that there is too much cancer. Mr. Gregori said in the paper yesterday that this plant is going to be built. Mr. Friholtz said, "I am telling Mr. Gregori it is not going to be built."

HGS.

**25I. George Golie**, 316 20<sup>th</sup> Avenue South, stated that he is the business manager for the Local 400 of the Operating Engineers Union. Mr. Golie said that membership supports the Highwood Generating Station. He thanked the Commissioners for supporting the ordinance change.

ECP. HGS.

**25J. John Hubbard**, 615 7<sup>th</sup> Avenue South, stated that, apparently, he lives in hell. Mr. Hubbard said the Great Falls tax payers are paying the piper for Electric City Power. He said it looks like a bunch of bad decisions have been made. Mr. Hubbard said he read the Supreme Court's Decision and read it to the County Commissioners. He said the Supreme Court has told the EPA to curb this behavior. It is against the Clear Air Act.

HGS.

**25K. Sandra Dimauro**, 4215 7<sup>th</sup> Avenue North, stated that clean renewable energy is critical to the health and prosperity of the City. Ms. Dimauro stated that the coal plant means the production of toxic pollutants, and that there is no such thing as clean coal. There is no method today that will mitigate the pollutants created by the coal fired plant. She stated that we have a moral obligation not to add to the environmental consequences of pollution, and the

citizens will have to live with the results of the Commission's decision.

**HGS.**

**25L. Carol Fisher**, 500 53<sup>rd</sup> Street South, stated she is confused now that Ordinance 2972 has passed. She inquired if the Commission is going to go back and re-do the utilities to the coal plant that was already approved before the ordinance was passed. Also, she doesn't see how the City is going to save money with all the money that is going to be invested in the coal plant. Ms. Fisher that that, doing the math, she doesn't see the logical sense for the coal plant.

**HGS. City Manager.**

**25M. Stuart Lewin**, 615 3<sup>rd</sup> Avenue North, stated he can see that being a commissioner is not an easy job. He stated that it reminds him of rearranging the deck chairs on the Titanic. Mr. Lewin stated that it isn't so much about the coal plant as it is the process, and opined that the process has completely broken down. He stated that the Commission didn't question enough the City Manager when they voted him in, and one thing leads to another. The decision about where to build will be made by the County growth policy plan. Mr. Lewin stated that he wrote the Commission a letter this summer telling them that it was a big mistake to decide who the new City Manager will be until after the people had a right to vote and decide who will sit in these chairs. Mr. Lewin stated that the Commission continues on listening to the doubletalk of the City Manager.

**HGS. SME. ECP.**

**25N. Larry Rezendes**, 2208 1<sup>st</sup> Avenue North, stated that he appreciates what the union representatives had to say. He doesn't think it is correct for those who have said no one supports the Highwood Generating Station. People that support the plant are those who, understandably, have a need to raise families and earn a living. But, they are being influenced by the economic short term to the detriment of what the long term implications of this plant are. Mr. Rezendes opined that 1.3 million dollars is owed to SME, for contracts getting the benefit for under priced power. Mr. Rezendes opined that the City Commissioners have been remiss in allowing the approach to sell power by ECP. Extension of utility services to the plant is another way the City has gone about providing resources in a way around what should be done in accordance with normal protocol and procedure.

**Thanked Commissioners  
for Ice Arena project.  
City Manager.**

**25O. Martin Triplet**, 625 Carol Drive, thanked the Commissioners for the Flying J project and believes the kids will reap the benefits of the hockey rink. Mr. Triplet stated that the people elected the Commissioners. The voters made a decision when they elected this Commission and they should make their decision on a new City Manager. That is what the Commission was elected to do. Mr. Triplet said it is time to get that process started and John Lawton gave plenty of notice.

**HGS.**

**25P. Vickie Friholtz**, Gildford, stated that coal fired generators are a thing of the past. More laws are coming out regulating them and more people are condemning them. Ms. Friholtz said the Commission should go with the health of the people, which is more important than coal fired generating.

HGS.

**25Q. Ken Thornton**, 31 Paradise Lane, stated that he read in the paper today that Tim Gregori said we are going to capture the carbon, take the Air Force's carbon and put it in the same pipe and sequester it. Mr. Thornton said he inquired how much this project will cost. Mr. Thornton said there is no agreement that the federal government will pay for sequestration. There are 1,100 other plants that will be fighting for money. There is nothing about this plant that makes it perfect for a carbon capture sequestration project. The other plants will be competing. Mr. Thornton said the predicted costs need to be added into what the power can be sold for. Mr. Thornton said there is no way to tell what is down the road 30 years from now, and requested the Commission reconsider their decision.

Ord. 2972.

**25R. Mary Jaraczski**, Great Falls attorney, stated she is here on behalf of SME, and wanted to share comments regarding Ordinance 2972. Ms. Jaraczski stated there was discussion regarding the City and the County growth policies. She stated that it is strictly a policy and not a mandate. A policy is a document intended to guide the Commission as a decision maker. It is not a document that directs the Commission's decision. Both policies provide for, as an objective, the City and the County to grow economically. There were also comments regarding the Planning Department and their role in Ordinance 2972. The Planning Department deals with land use. Ordinance 2972 concerns itself with a provision of services. It is two separate things. Ms. Jaraczski commended the Commission for looking at the other ordinances and making its own ordinance the best it can be. Ordinance 2972 on its face does not per se only apply to the Highwood Generating Station. Ordinance 2972 provides a benefit to the City and County in general.

HGS.

**25S. Tim Gregori**, General Manager of Southern Montana Electric Generation and Transmission Cooperative stated that, over the course of the past few years, this project has demanded a great deal of Commission time. Mr. Gregori stated that earlier this evening we heard a presentation on the commemoration of the institution of the Constitution of the United States. He said one thing we may have lost sight of over the past few years is we should be thankful to rise up and speak for and against issues that we feel strongly about. As we exercise those rights as Americans, we should treat each other with respect when we address one another. Mr. Gregori thanked the Commission for the integrity and dignity that he had seen them exercise in their duties and responsibilities. Mr. Gregori said it has not been easy for the Commissioners to sit on the peripheral edges of this project and take the abuse they had to take. He stated there is a process in place for people to voice their feelings on the project. There have been multiple hearings and comment periods on every phase of the project. He would hope that the people would use the process as was intended, and funnel those comments at the appropriate time.

HGS.

**25T. Ron Gessaman**, 1006 36<sup>th</sup> Avenue N.E., commented that he liked seeing the agenda on the screen that he suggested. Mr. Gessaman stated that

he has had difficulty about the implications of Ordinance 2972 and not given the courtesy of a response. He does not feel that it represents the best possible ordinance we could have on the service area. Regarding the Highwood Generating Station, Mr. Gessaman stated that it has split the community. Mr. Gessaman said on February 6, 2007, he asked for details from Mr. Lawton regarding the representation that the process to be used for the Highwood Generating Station is the absolute latest technology and wanted to see articles from engineering journals, and has not received a response. Mr. Gessaman stated that he works for Sasol, the largest coal to liquid generation facility in the world. Carbon is a valuable commodity to a coal to liquid plant, so he is not sure why they would send it over in a pipe to Mr. Gregori's plant. Mr. Gessaman commented on the memo provided with regard to questions on Ordinance 2972 and opined that it is a smokescreen. There is nothing mentioned about the Tischler Bise studies, or Commissioner Jovick-Kuntz's request for the City Attorney to address the legal issues of the Attorney General.

**SME.**

**25U. Randy Boysen**, 1009 35<sup>th</sup> Avenue N.E., stated that he is a consulting accountant for SME and would like to clarify items that he read and heard in regards to a 1.4 million deposit. As an accountant for SME, some of the assigned responsibilities that he had been given over a course of time were to see that SME meets all of its obligations with regard to any power supply contracts. Certain suppliers of power require guarantees. In one particular case, a letter of credit. This is in no way, shape or form any type of method for SME to request repayment on any type of debt at this time. It is not a debt repayment. It is a deposit that supports the letter of credit. Mr. Boysen said it isn't any different than paying your landlord. If you don't pay your rent, there goes your deposit.

**SME.**

**25V. Ed McKnight**, 906 3<sup>rd</sup> Avenue North, read findings that he received from Coleen Balzarini. Mr. McKnight gave an example of the transmission rate between SME and NorthWestern and opined that the City is not saving any money on the lighting district and is losing money. Mr. McKnight said there was an estimate that the City is into this investment 3.5 million dollars now, and the amount of money being paid on the initial loan is more than \$100,000. He stated the City is losing hundreds of thousands of dollars on the buying and selling of electricity, all in an attempt to theoretically save \$70,000 per year.

**25W. Eric Brokl**, 1013 10<sup>th</sup> Avenue S.W., stated that he came here as a student of the University of Great Falls for a government class, and stated he is in awe of this whole process. He stated that he can't believe that the Commissioners can sit there with unhappy people and be calm and stoic and not react. He applauds that. There is no way to agree with everybody. He stated that he wants them to realize that the loudest voice they hear is not always the voice of the populus. He stated that he is against the Highwood Generating Station with what little he knows about it. He said, however, if you are looking down the road, none of us could know what is going to



happen and we can't predict the future. He thinks that the Commission is doing what is in their heart and mind. Since the Commissioners are elected, he believes they will do the right thing and that is why they are here. And as far as the City Manager, he believes that the Commission will do the right thing and pick the right person. He stated that he will come more to the meetings, and that it wasn't as educational as he thought it would be, but was good viewing.

### **ADJOURNMENT**

There being no further business to come before the Commission, **Commissioner Hinz moved, seconded by Commissioners Beecher and Rosenbaum that the regular meeting of September 18, 2007, be adjourned at 9:00 o'clock p.m.**

Motion carried 5-0.

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Mayor Stebbins

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City Clerk

**ITEM:** \$5000 Report  
 Budget or Contract Claims in Excess of \$5000

**PRESENTED BY:** City Controller

**ACTION REQUESTED:** Approval With Consent Agenda

APPROVAL: \_\_\_\_\_

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

MASTER ACCOUNT CHECK RUN FOR 9-19-07	637,324.21
MASTER ACCOUNT CHECK RUN FOR 9-26-07	1,385,339.70
MUNICIPAL COURT ACCOUNT CHECK RUN FOR SEPTEMBER 14, 2007	58,266.46
MUNICIPAL COURT ACCOUNT CHECK RUN FOR SEPTEMBER 21, 2007	5,055.00
WIRE TRANSFERS FROM SEPTEMBER 19, 2007	44,260.56
WIRE TRANSFERS FROM SEPTEMBER 26, 2007	<u>78,201.44</u>
<b>TOTAL: \$</b>	<b><u>2,208,447.37</u></b>

**GENERAL FUND**

<b>POLICE</b>		
ENERGY WEST	AUGUST SPLIT CHARGES	132.44
<b>FIRE</b>		
ENERGY WEST	AUGUST SPLIT CHARGES	1,321.97
GASES PLUS	FF HELMETS (SPLIT)	6,070.39
<b>PARK &amp; RECREATION</b>		
ENERGY WEST	AUGUST SPLIT CHARGES	633.80

**SPECIAL REVENUE FUND**

<b>LIGHTING DISTRICT</b>		
NORTHWESTERN ENERGY	SEPTEMBER CHARGES	71,521.50
<b>911 SPECIAL REVENUE</b>		
GRABAR VOICE & DATA	FINAL PAY 48 CHANNEL NICE CALL	17,155.00
<b>FIRE SPECIAL</b>		
GASES PLUS	FF HELMETS (SPLIT)	9,909.05
<b>STREET DISTRICT</b>		
MONTANA REFINING CO	ASPHALT	6,611.25
GREAT FALLS REDI-MIX INC	ASPHALTIC CONCRETE MATERIAL	65,548.56

**SPECIAL REVENUE FUND CONTINUED**

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**LIBRARY**

ENERGY WEST AUGUST SPLIT CHARGES 140.74

**FEDERAL BLOCK GRANTS**

GINNATY PLUMBING & HEATING WATER HEATER AUGUSTUS APTS 8,258.00

**HOME GRANTS**

NEIGHBORWORKS DRAWDOWNS #770501 AND #770603 78,186.21

**ECONOMIC REVOLVING**

ENERGY WEST AUGUST SPLIT CHARGES 23.51  
 CAPITOL DECISIONS INC JUNE & JULY RETAINER 17,600.00

**CAPITAL PROJECTS**

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**GENERAL CAPITAL**

JAMES TALCOTT CONSTRUCTION INC PMT #2 OF #1501 POOL RENOVATION 89,817.75  
 INTERSTATE ENGINEERING INC PMT #3 OF 1501 POOLS 16,353.18  
 AT KLEMENS & SONS PMT #1 OF 1480.2 EAGLE FALLS ROOF 46,728.74  
 UNITED MATERIALS PMT #2 OF 1494.1 SUNNYSIDE WATER 153,450.00

**ENTERPRISE FUNDS**

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**WATER**

ENERGY WEST AUGUST SPLIT CHARGES 831.24  
 THATCHER CO PMT #6 LIQUID ALUMINUM SULFATE 15,641.71  
 DANA KEPNER CO DM, ECR & PMM METERS 20,550.00  
 DPC INDUSTRIES INC CHLORINE AND AMMONIA 10,907.98  
 SHUMAKER TRUCKING & EXCAVATING OF #1442 25TH AVE NE WATER MAIN 12,359.50  
 SHUMAKER TRUCKING & EXCAVATING PMT# 1 OF #1492.1 MOUNT OLIVET 115,535.06  
 THATCHER CO PMT #7 LIQUID ALUMINUM SULFATE 11,985.06  
 EASTSIDE ELECTRIC MOTORS 900 HP CHALMERS MOTOR 900 RPM 22,133.00  
 UNITED MATERIALS PMT #2 OF 1494.1 SUNNYSIDE WATER 71,361.74

**SEWER**

VEOLIA WATER NORTH AMERICA OPERATIONS & MAINTENANCE 518,970.08  
 NCI ENGINEERING PMT #1 OF 1374.5 LIFT STATION 41,167.50

**SANITATION**

ENERGY WEST AUGUST SPLIT CHARGES 104.05  
 MONTANA WASTE SYSTEMS AUGUST CHARGES 86,118.19

**SAFETY SERVICES**

ENERGY WEST AUGUST SPLIT CHARGES 33.11

**GOLF COURSES**

ENERGY WEST AUGUST SPLIT CHARGES 94.24  
 MEADOWLARK COUNTRY CLUB GREENS FEES FOR TOURNAMENT 5,410.00

**ENTERPRISE FUNDS CONTINUED**

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**SWIM POOLS**

ENERGY WEST AUGUST SPLIT CHARGES 4,358.44

**RECREATION**

ENERGY WEST AUGUST SPLIT CHARGES 235.28

**CIVIC CENTER**

RIVER'S EDGE TRAIL PROCEEDS BREWS/CONTRACT 08-06 24,776.40

**INTERNAL SERVICES FUND**

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**HEALTH INSURANCE**

BLUE CROSS/BLUE SHIELD OF MT GROUP & HMO CLAIMS 9-11 THRU 9-17 44,260.56  
BLUE CROSS/BLUE SHIELD OF MT BCBS ADMIN & REINS FEES 40,997.29  
BLUE CROSS/BLUE SHIELD OF MT GROUP & HMO CLAIMS 9-18 THRU 9-24 78,201.44

**INFORMATION TECHNOLOGY**

IBM CORP/PACIFIC SOFTWARE SERVER, SOFTWARE MAIN. GFPD 141,322.75

**CENTRAL GARAGE**

MOUNTAIN VIEW CO-OP DIESEL FUEL 57,695.43

**PUBLIC WORKS**

ENERGY WEST AUGUST SPLIT CHARGES 518.73

**FACILITY SERVICES**

ENERGY WEST AUGUST SPLIT CHARGES 367.31

**BLANKET PURCHASE ORDERS**

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**MUNICIPAL COURT**

CITY OF GREAT FALLS FINES AND FORFEITURES 55,511.46

**CLAIMS OVER \$5000 TOTAL:** \$ 1,970,909.64

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

**AGENDA: 17  
DATE: October 2, 2007**

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

**PRESENTED BY:** Lisa Kunz, City Clerk

**ACTION REQUESTED:** Ratification of Contracts through the Consent Agenda

**MAYOR'S SIGNATURE:** \_\_\_\_\_

**CONTRACT LIST**

	<b>DEPARTMENT</b>	<b>OTHER PARTY (PERSON OR ENTITY)</b>	<b>PERIOD</b>	<b>FUND</b>	<b>AMOUNT</b>	<b>PURPOSE</b>
<b>A</b>	Planning and Community Development	Montana Department of Transportation (MDOT)	Current	CTEP Funds and match funds from account # 67115115118219	Project \$84,188 CTEP Funds \$72,891 Local Match \$11,297	Approve Project Agreement with MDT for CTEP Project Civic Center Restoration-GTF O.F. 1525
<b>B</b>	Public Works /Engineering	Gus & Jacks Tire Shop	August 2007	N/A	N/A	Water Main Easement for O.F. 1522

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

**AGENDA: 18  
DATE: 10/02/07**

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

**PRESENTED BY:** Lisa Kunz, City Clerk

**ACTION REQUESTED:** Ratification of Grants through the Consent Agenda

**MAYOR’S SIGNATURE:** \_\_\_\_\_

**GRANTS**

	<b>DEPARTMENT</b>	<b>OTHER PARTY (PERSON OR ENTITY)</b>	<b>PERIOD</b>	<b>FUND</b>	<b>AMOUNT</b>	<b>PURPOSE</b>
<b>A</b>	Police Department	Board of Crime Control Department of Justice State of Montana	10/01/2007 through 09/30/2009	Grant #06-C01- 82348-Great Falls P.D./Malmstrom Air Force Base/Cascade County	\$600,000	Continuation of 2006/2007 grant award for Underage Drinking Laws Discretionary

CITY OF GREAT FALLS, MONTANA

AGENDA# 19

A G E N D A R E P O R T

DATE: October 2, 2007

**ITEM** Correct public hearing date for Justice Assistance Grant

**INITIATED BY** Police Department.

**ACTION REQUESTED** Correct date for public comment on the recommended use of the Justice Assistance Grant (JAG) for 2007.

**PRESENTED BY** Chief of Police, Cloyd Grove.

**RECOMMENDATION:**

For the City Commission to change the date for the public hearing to receive public comment on staff's recommendation to expend the funds to purchase Mobile Data Terminals and related equipment for the Great Falls Police Department and the Cascade County Sheriff's Office. On September 18, 2007 the City Commission inadvertently set public hearing for October 20, 2007 when it should be been set for October 16, 2007.

**MOTION:**

I move that the City Commission correct the date from October 20, 2007 to October 16, 2007 for the public hearing on the Justice Assistance Grant.

**A G E N D A R E P O R T**

**DATE:** October 2, 2007

**ITEM** Res. 9678, Cost Recovery, N 1/2 of E 85' of L6 & N 1/2 of L7, B410, GF Original Townsite

**INITIATED BY** Community Development Department

**ACTION REQUESTED** Set Public Hearing for October 16, 2007

**PREPARED BY** Jay Parrott, Building Inspector

**REVIEWED & APPROVED BY** Mike Rattray, Community Development Director

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**RECOMMENDATION:**

Staff recommends the City Commission set October 16<sup>th</sup>, 2007, at 7:00 P.M. for a public hearing to assess costs for razing and clean-up of the condemned property located at N 1/2 of the E 85' of Lot 6 and N 1/2 of Lot 7, Block 410, Great Falls Original Addition, Great Falls, Cascade County, Montana more commonly known as 826 2<sup>nd</sup> Avenue South and that the charge shall be assessed against the property.

A public hearing for assessing said costs is mandated by the Official Codes for the City of Great Falls, Nuisance Abatement Code, Chapter 8, Section 8.49.070.

**MOTION:**

I move a public hearing be set for October 16, 2007, at 7:00 P.M., on Resolution 9678.

**SYNOPSIS:**

The record owner: Daniel G. Mullins and the mail to person Robert Mullins of the property located on the N 1/2 of the E 85' of Lot 6 and the N 1/2 of Lot 7, Block 410, Great Falls Original Addition, Great Falls, Cascade County, Montana, were issued a notice of hearing before the City Commission of Great Falls to appear at 7:00 P.M., October 16, 2007. The hearing is to show cause why the owner(s) of the property should not be held liable for the costs incurred in razing and clean-up of the structure known as 826 2<sup>nd</sup> Avenue South.

**BACKGROUND:**

Staff has taken the following action:

<u>Action</u>	<u>Date</u>
• Complaint to GFPD	01-07-07
• Search warrant served	01-24-07



- Initial inspection of property 01-24-07
- Condemned with sixty-day notice mailed 01-25-07
- Appeal denied 03-15-07
- Razing completed and approval by staff 06-01-07

Cost for cleanup as follows:

Asbestos sampling & testing by <i>City of Great Falls</i> staff	\$ 150.00
Pre-asbestos cleaning by <i>Wayne Riley Construction</i>	\$ 300.00
Removal of asbestos by <i>Quality Urethane</i>	\$ 2,000.00
Administrative Fee	\$ 260.00
Ownership and encumbrance report by <i>Stewart Title</i>	\$ 110.00
Recording Fees	\$ 24.00
Publishing Legal Ad (TRIBUNE)	\$ 35.00
Razing Fee	\$ 49.00
Demolition & cleanup by <i>Liggett Construction</i>	<u>\$ 6,200.00</u>
TOTAL COSTS INCURRED	<u>\$ 9,128.00</u>

Resolution 9678 would allow staff to assess the razing cost against the property itself.

RESOLUTION 9678

A RESOLUTION ASSESSING THE COSTS INCURRED IN RAZING AND CLEANING OF THE PROPERTY LOCATED ON THE NORTH ½ OF EAST 85 FEET OF LOT 6 AND NORTH ½ OF LOT 7, BLOCK 410, GREAT FALLS ORIGINAL ADDITION, GREAT FALLS, CASCADE COUNTY, MONTANA, ADDRESSED AS 826 2<sup>nd</sup> AVENUE SOUTH, AGAINST SAID PROPERTY.

WHEREAS, the record owner: Daniel G. Mullins and the contact person Robert Mullins, of the property located on the N ½ of East 85' Lot 6 and N ½ of Lot 7, Block 410, Great Falls Original Addition, Great Falls, Montana, was issued a notice to raze the structure.

WHEREAS, after due notice the property owner did not raze the structure.

WHEREAS, staff hired a contractor to raze the structure and clean the property.

WHEREAS, the contractor completed razing & cleanup with staff approving the work.

WHEREAS, the City Commission set October 16, 2007, at 7:00 p.m. for this hearing, to show cause why the property owner should not be held liable for the costs incurred in razing and cleanup of said property.

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

The amount of \$ 9,128.00 for razing and cleanup costs incurred in the abatement of a nuisance at N ½ of East 85' of Lot 6 and N ½ of Lot 7, Block 410, Great Falls Original Addition, Great Falls, Montana, described as 826 2<sup>nd</sup> Avenue South, be assessed against the property itself, with interest and penalties on the unpaid balance.

PASSED by the Commission of the City of Great Falls, Montana, on the 16th of October 2007.

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Dona R. Stebbins, Mayor

ATTEST:

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Lisa Kunz, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

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David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify the foregoing Resolution 9678 was placed on its final passage and adoption, and was passed and adopted by the City Commission of said City at a Regular Meeting thereof held on the 16<sup>th</sup> day of October, 2007, and approved by the Mayor of said City, on the 16<sup>th</sup> day of October, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City, this 16<sup>th</sup> day of October, 2007.

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Lisa Kunz, City Clerk

**NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the City Commission will hold a public hearing on October 16, 2007, at 7:00 p.m., in the Commission Chamber of the Civic Center for assessing razing and cleanup costs on the following property in the amount set forth:

826 2<sup>nd</sup> Avenue South . . . . . \$ 9,128.00

Any person interested or affected by the proposed charge may file written protests or objections, containing the description of the property and the grounds for such protest or objections, with the Clerk's office prior to the time set for the hearing.

BY ORDER OF THE CITY COMMISSION

Lisa Kunz, City Clerk

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OFFICE USE ONLY

Publication Date: October 6, 2007

cc: Account # 451-7121-572-3599  
Lisa Kunz, City Clerk  
Itemized Account  
Owner: Daniel G. Mullins  
PO Box 1288  
Craigsville WV 26205  
Post on Property  
Property File

## ITEMIZED ACCOUNT FOR RECOVERY OF ABATEMENT COSTS

The following expenses were incurred during the razing and cleanup of property located on the N ½ of the East 85' of Lot 6 and N ½ of Lot 7, Block 410, Great Falls Original Addition, Great Falls, Montana, more commonly known as 826 2<sup>nd</sup> Avenue South.

Asbestos sampling & testing by <i>City of Great Fall</i> staff	\$ 150.00
Pre-asbestos cleaning by <i>Wayne Riley Construction</i>	\$ 300.00
Removal of asbestos by <i>Quality Urethane</i>	\$ 2,000.00
Administrative Fee	\$ 260.00
Ownership and encumbrance report by <i>Stewart Title</i>	\$ 110.00
Recording Fee	\$ 24.00
Publishing – Legal Ad	\$ 35.00
Razing Fee	\$ 49.00
Demolition & cleanup by <i>Liggett Construction</i>	<u>\$ 6,200.00</u>
TOTAL EXPENSES INCURRED	<u>\$ 9,128.00</u>

A G E N D A R E P O R T

DATE: October 2, 2007

ITEM Res. 9703, Cost Recovery, L5, B236, GF 1<sup>st</sup> Add., 1416 4<sup>th</sup> Ave. N.

INITIATED BY Community Development Department

ACTION REQUESTED Set Public Hearing for October 16, 2007

PREPARED BY Jay Parrott, Building Inspector

REVIEWED & APPROVED BY Mike Rattray, Community Development Director

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**RECOMMENDATION:**

Staff recommends the City Commission set October 16, 2007, at 7:00 P.M. for a public hearing to assess costs for razing and clean-up of the condemned property located at Lot 5, Block 236, Great Falls 1<sup>st</sup> Addition, Great Falls, Cascade County, Montana and that the charge shall be assessed against the property.

A public hearing for assessing said costs is mandated by the Official Codes for the City of Great Falls, Nuisance Abatement Code, Chapter 8, Section 8.49.070.

**MOTION:**

I move a public hearing be set for October 16, 2007, at 7:00 P.M., on Resolution 9703.

**SYNOPSIS:**

The owner, Andrew T. Austad, of the property on Lot 5, Block 236, Great Falls First Addition, Great Falls, Cascade County, Montana, was issued a notice of hearing before the City Commission of Great Falls to appear at 7:00 P.M., October 16, 2007. The hearing is to show cause why the owner of the property should not be held liable for the costs incurred in razing and clean-up of the structure known as 1416 4<sup>th</sup> Avenue North.

**BACKGROUND:**

Staff has taken the following action:

<u>Action</u>	<u>Date</u>
• Initial inspection of property	05-14-07
• Structure(s) condemned with: Sixty-day notice mailed Appeal form mailed	05-15-07

- Razing started by contractor 09-11-07
- Razing completed and approval by staff 09-18-07

Cost for cleanup as follows:

Administrative Fee	\$ 260.00
Ownership and encumbrance report by <i>Stewart Title</i>	\$ 110.00
Recording Fees	\$ 24.00
Publishing Legal Ad (TRIBUNE)	\$ 35.00
Razing Fee	\$ 49.00
Demolition & cleanup by <i>John Gordon Construction</i>	<u>\$ 5,345.00</u>
<b>TOTAL COSTS INCURRED</b>	<u><b>\$ 5,823.00</b></u>

Resolution 9703 would allow staff to assess the razing cost against the property itself.

RESOLUTION 9703

A RESOLUTION ASSESSING THE COSTS INCURRED IN RAZING AND CLEANING OF THE PROPERTY LOCATED AT LOT 5, BLOCK 236, GREAT FALLS FIRST ADDITION, GREAT FALLS, CASCADE COUNTY, MONTANA, ADDRESSED AS 1416 4 AVENUE NORTH, AGAINST SAID PROPERTY.

WHEREAS, the owner: Andrew T. Austad, of the property located at Lot 5, Block 236, Great Falls First Addition, Great Falls, Montana, 1416 4<sup>th</sup> Avenue North was issued a notice to raze the structure.

WHEREAS, after due notice the property owner did not raze the structure.

WHEREAS, staff hired a contractor to raze the structure and clean the property.

WHEREAS, the contractor completed razing & cleanup with staff approving the work.

WHEREAS, the City Commission set October 16, 2007, at 7:00 p.m. for this hearing, to show cause why the property owner should not be held liable for the costs incurred in razing and cleanup of said property.

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

The amount of \$ 5,823.00 for razing and cleanup costs incurred in the abatement of a nuisance at Lot 5, Block 236, Great Falls First Addition, Great Falls, Montana, described as 1416 4<sup>th</sup> Avenue North, be assessed against the property itself, with interest and penalties on the unpaid balance.

PASSED by the Commission of the City of Great Falls, Montana, on this 16 day of October, 2007.



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Dona R. Stebbins, Mayor

ATTEST:

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Lisa Kunz, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

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David V. Gliko, City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify the foregoing Resolution 9703 was placed on its final passage and adoption, and was passed and adopted by the City Commission of said City at a Regular Meeting thereof held on the 16 day of October 2007, and approved by the Mayor of said City, on the 16 day of October, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City, this 16 day of October, 2007.

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Lisa Kunz, City Clerk

**NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the City Commission will hold a public hearing on October 16, 2007, at 7:00 p.m., in the Commission Chamber of the Civic Center for assessing razing and cleanup costs on the following property in the amount set forth:

1416 4<sup>th</sup> Avenue North . . . . . \$ 5,823.00

Any person interested or affected by the proposed charge may file written protests or objections, containing the description of the property and the grounds for such protest or objections, with the Clerk's office prior to the time set for the hearing.

BY ORDER OF THE CITY COMMISSION

Lisa Kunz, City Clerk

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OFFICE USE ONLY

Publication Date: October 6, 2007

cc: Account # 451-7121-572-3599  
Lisa Kunz, City Clerk  
Itemized Account  
Owner: Andrew T. Austad  
PO Box 693  
Fairfield MT 59436-0693  
Post on Property  
Property File

## ITEMIZED ACCOUNT FOR RECOVERY OF ABATEMENT COSTS

The following expenses were incurred during the razing and cleanup of property at Lot 5, Block 236, Great Falls First Addition, Great Falls, Montana, more commonly known as 1416 4<sup>th</sup> Avenue North.

Administrative Fee	\$ 260.00
Ownership and encumbrance report by <i>Stewart Title</i>	\$ 110.00
Recording Fee	\$ 24.00
Publishing – Legal Ad	\$ 35.00
Razing Fee	\$ 49.00
Demolition & cleanup by <i>John Gordon Construction</i>	<u>\$ 5,345.00</u>
TOTAL EXPENSES INCURRED	<u>\$ 5,823.00</u>

AGENDA REPORT

DATE October 2, 2007

ITEM Change Orders SI-2 and SII-2: Mitchell, Jaycee and Water Tower Pools Rehabilitation, O.F. 1501

INITIATED BY Park & Recreation Department

ACTION REQUESTED Approve Change Orders SI-2 and SII-2

PREPARED BY Patty Rearden, Deputy Park & Recreation Director

PRESENTED BY Jim Sullivan, Park & Recreation Director

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**RECOMMENDATION:**

Staff recommends approval of Change Orders No. SI-2 and SII-2 to Talcott Construction for Mitchell, Jaycee and Water Tower Pool Renovation, O.F. 1501.

**MOTION:**

“I move the City Commission approve Change Orders SI-2 and SII-2 to Talcott Construction for a net deduction of \$153,208 for Mitchell, Jaycee and Water Tower Pool Rehabilitation, O.F. 1501, and authorize the City Manager to execute the documents.”

**SYNOPSIS:**

On June 5, 2007 and August 7, 2007 the City Commission awarded contracts to James Talcott Construction, Inc. in the amounts of \$1,453,165.00 and \$1,083,985.00 for the renovation of Jaycee and Water Tower Pools and for renovation of Mitchell Pool, respectively. Change Order No. SI-1 for a credit of \$96,100 for Mitchell Pool and Change Order No. SII-1 for a credit of \$46,800.00 for Jaycee and Water Tower Pools were approved on August 7, 2007.

Change Orders No. SI-2 and No. SII-2 remove the installation of PVC membrane liners from the contract and adds modifications to the Jaycee and Water Tower bathhouses. The reduction in scope of work results in deductions in the amounts of \$53,500.00 and \$99,708.00, respectively for the Mitchell Pool contract and for Jaycee and Water Tower Pools contract.

**BACKGROUND:**

The community swimming pools were built and/or renovated in the 1960s. The pools systems and infrastructures have deteriorated over time and the City was faced with significant capital and maintenance issues. The “rehabilitation project” was estimated to cost just under \$2.3 million.

A General Obligation Bond in the amount of \$2,270,000 for a ten-year term was placed on the November 7, 2006 ballot. The General Obligation Bond passed with 15,158 voting to approve the bonds and 5,648 voting against approval. At the December 5, 2006 City Commission Meeting, the Commission approved Resolution #9627 to establish compliance with reimbursement bond regulations under the Internal Revenue Code. On December 19, 2006, the City Commission approved the Professional Services Agreement with Interstate Engineering, Inc., in the amount of \$217,500 for the Rehabilitation of the Mitchell, Water Tower and Jaycee Pools, O. F. 1501.

The decision was also made to pursue funding and construction of spray parks/splash decks for the community. It was determined that the best locations for the spray parks, were Jaycee and Water Tower Pools, creating a complex and expanded entertainment for the community. Although funding is different for the two projects, for efficiency and cost savings, both projects were bid together and are being constructed at the same time.

After approval of Change Orders SI-2 and SII-2, a contract will be issued to Membrane Concepts, LLC (who was the low bidder to the pool contractor) in the total amount of \$144,430.00. Membrane Concepts' bid was \$37,960 for the Water Tower pool liner, \$37,960 for the Jaycee pool liner, and \$68,510 for the Mitchell Pool liner. This change does not affect the quality or scheduling of the liner installation, it simply eliminates the contractors' mark up on this item. Membrane Concepts, LLC will provide the same bonds and insurance as the general contractor. The advertisement for the liner installation was the same as the original contract, that being advertised in the Great Falls paper as well as regional and national builders exchanges. Changing Talcott's scope of work and contracting the liner work directly results in a net decrease in the overall construction budget of \$8,778.00.

Attachments: Change Order No. SI-2 and SII-2 (Not available online; on file in City Clerk's Office)

A G E N D A R E P O R T

DATE October 2, 2007

ITEM Approve Addendum for Municipal Golf Course Concessions Contract

INITIATED BY Park & Recreation Department

ACTION REQUESTED Approve Addendum for Golf Course Concessions Contract

PREPARED BY Patty Rearden, Deputy Park & Recreation Director

PRESENTED BY Jim Sullivan, Park & Recreation Director

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**RECOMMENDATION:**

Staff recommends approval of the Addendum for the Municipal Golf Course Concessions Contract with Michelle Kazda, K & M, Inc. to provide concession services at Eagle Falls Golf Club and Anaconda Hills Golf Course.

**MOTION:**

“I move the City Commission approve the Addendum for the Municipal Golf Course Concessions Contract with K & M, Inc. to provide concession services at Eagle Falls Golf Club and Anaconda Hills Golf Course, and approve the City Manager to execute the addendum.”

**SYNOPSIS:**

Requests for proposals for concessions services were advertised in the Great Falls Tribune and mailed to twenty-eight (28) prospective bidders. Bids were opened on January 10, 2005, with only one bidder responding. The contract was awarded to Michelle Kazda (K & M, Inc.) by the City Commission on February 1, 2005 for three golf seasons, 2005-2007. K & M has provided good service to the golf courses and staff recommends a one year extension of the contract.

**BACKGROUND:**

The City has had a contract with K & M, Inc. for concessions at Eagle Falls Golf Club and Anaconda Hills Golf Course since 1997. K & M, Inc. has offered a high quality concession for the past 11 years and has made an effort to keep menu prices down.

The Golf Advisory Board approved the concession agreement at their September 24, 2007 meeting.

**MUNICIPAL GOLF COURSE CONCESSIONS  
CONTRACT ADDENDUM**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2007, by and between the City of Great Falls, Montana, a municipal corporation, hereinafter referred to as "City", Michelle Kazda, and d/b/a K & M, Inc., hereinafter referred to as "Concessionaire".

WHEREAS, the Concessionaire has provided excellent service to the golfing public for the previous eleven (11) years; and

WHEREAS, a one (1) year extension is mutually beneficial;

NOW THEREFORE, the parties mutually agree as follows:

1. The City, at its sole discretion, grants a one (1) year extension of the golf course concession contract agreement. In consideration therefore the Concessionaire shall pay the City the following rental:

2008 season: 12% of gross sales or \$39,600.00, whichever is greater.

2. All other conditions and covenants of the contract agreement will not be affected by this addendum.

**IN WITNESS WHEREOF**, the parties hereto have caused their hands and seal to be fixed the day and year hereinabove written.

ATTEST:

CITY OF GREAT FALLS

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

\_\_\_\_\_  
John Lawton, City Manager

REVIEWED AS TO FORM:

\_\_\_\_\_  
Concessionaire

\_\_\_\_\_  
David V. Gliko, City Attorney

SEAL OF CITY

AGENDA REPORT

DATE October 2, 2007

ITEM Engineering Services Agreement for Bay Drive Trail Phase II CTEP Project O.F. 1126.9

INITIATED BY Planning Department

ACTION REQUESTED Approve Agreement

PREPARED & PRESENTED BY Andrew Finch, Senior Planner

REVIEWED & APPROVED BY Benjamin Rangel, Planning Director

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**RECOMMENDATION:**

It is recommended the City Commission approve the engineering services agreement with Thomas Dean and Hoskins, Inc. for an extension to River’s Edge Trail adjacent to the Missouri River and under the Central Avenue West and Weissman Bridges.

**MOTION:**

“I move the City Commission approve the engineering services agreement with Thomas Dean and Hoskins, Inc. in the amount of \$64,111 and authorize the City Manager to execute the agreement.”

**SYNOPSIS:**

Under the Community Transportation Enhancement Program (CTEP), funds were allocated for River’s Edge Trail improvements. Delta Engineering, P.C. was hired in 2005 to provide engineering services including pre-design and design. With design about 35% complete, Delta Engineering went out of business. Approximately \$31,520 remained on Delta’s \$43,788 contract. Thomas Dean and Hoskins (TD&H) would be hired under this contract to finalize the design. Since funds for construction have been secured through a subsequent CTEP approval in 2006, TD&H’s contract would also include construction phase engineering services.

**BACKGROUND:**

In 2004, the City Commission allocated Community Transportation Enhancement Program funds to River’s Edge Trail for further improvements. The general scope of work is to construct a bicycle/pedestrian trail along the west bank of the Missouri River and generally parallel to Bay Drive, connecting to another CTEP project on the south. This project is the second phase of plans to link River’s Edge Trail to southwest area neighborhoods and destinations. The long-term objective is to link River’s Edge Trail from the west end of the Weissman Bicycle/Pedestrian Bridge to the bicycle/pedestrian facilities located along the east side of 6<sup>th</sup> Street SW. The project will consist of a 10-foot paved trail and trail structure adjacent to the Missouri River and under the Central Avenue West and Weissman Bridges.

Delta Engineering, P.C. was hired in 2005 to design the trail. However, Delta Engineering ceased to exist in late 2006, and was unable to complete the project. And, in 2006, the City Commission also approved funding for construction of the bridge, including construction-phase services to be performed by a consultant. Under this new contract, TD&H would finalize the design, prepare an updated cost estimate, and perform construction-phase services. Construction is expected in 2008, and Planning Staff will administer the consultant agreement.

**FINANCIAL IMPACT:**

The funds for this contract will come from reserve Community Transportation Enhancement Program (CTEP) funds and Recreational Trails, Inc. (RTI). The CTEP portion will be \$55,507, with matching dollars provided by Recreational Trails, Inc. in the amount of \$8,604. There will be no financial impact to the City.

Attach: Professional Services Agreement

cc (w/o attachment): Doug Wicks, Recreational Trails, Inc.; John Juras, TD&H, Inc.



## CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **City of Great Falls**, Cascade County, Montana, from now on referred to as the “**Local Agency**”, and **Thomas, Dean and Hoskins, Inc.**, from now on referred to as the “**Consultant**”, whose principal office is located at 1200 25<sup>th</sup> Street South, Great Falls, Montana 59405.

The **Montana Department of Transportation**, herein referred to as the “**MDT**”, has approved the proposed Local Agency’s enhancement project funded under Montana’s federal-aid Community Transportation Enhancement Program (CTEP) and the Local Agency desires to employ the Consultant to furnish certain specific services of an engineering nature as described below; and,

The Consultant agrees to provide such services in accordance with the conditions provided and to carry out all the duties and obligations imposed by the Agreement; and,

The parties agree as follows, subject to the terms, conditions, and provisions and in consideration of the mutual covenants contained herein, the Consultant agrees to perform for the Local Agency, and the Local Agency agrees to accept from the Consultant, the following services: pre-design, design and construction engineering.

The project development includes evaluations, surveys, environmental research and documentation, design for a construction contract, and any other specified items, except as explicitly stated otherwise. Federal-aid project **STPE 5229(66), BAY DRIVE BIKE/PED PATH II - GTF, CONTROL NO. 5555** is located adjacent to Bay Drive, along the west bank of the Missouri River in Great Falls.

This project will involve design of all elements needed to construct a 10 foot wide bicycle/pedestrian trail approximately 1,800 feet in length, between the north end of Federal-aid project STPE 5299(61), Bay Drive Bike/Ped Path-GTF, Control No. 5050 (Phase 1) and the existing trail system just north of the Weissman Bridge. The project will consist of asphalt, concrete, and elevated concrete tri-deck trail segments. All work will be in accordance with current design standards and ADA requirements.

All referenced documents are current and updated as of the date of this Agreement. In addition, the Consultant may obtain copies of all manuals, guidelines, and other MDT documents from MDT’s Community Transportation Enhancement Program Office. The Consultant may be charged for copies of documents.

### ARTICLE I SCOPE OF WORK

#### SECTION 1 - STANDARD OF CARE

The Consultant’s performance of all services, obligations, and responsibilities under this Agreement will be in a manner that is consistent with that degree of care and skill ordinarily exercised by members of the engineering profession currently practicing under similar circumstances.

#### SECTION 2 - GENERAL

The Consultant, in performance of all work called for under this Agreement, will furnish all services for pre-design and design engineering. The Consultant must become familiar with the written standard practices before beginning any of the work on this Project. All work required under this Consultant Services Agreement must be performed by the Consultant in accordance with these standard practices and any special requirements contained in this document. Specific project scope is outlined in Section 4 of this Article.

### SECTION 3 - PROJECT DEVELOPMENT AND DESIGN

The Consultant will develop the project, conduct all necessary surveys, evaluations, and analyses, perform designs, and prepare project manuals for a transportation enhancement project.

Development of the Project will be in accordance with MDT's CTEP Guidelines. The Consultant's work will be performed in accordance with the most current version of the following books or manuals, as applicable. MDT specific CADD (microstation) and other software requirements do not apply to work performed under this Agreement.

MDT CTEP Guidelines

Appendix CTEP Guidelines of CSA

Montana Road Design Manual

Montana Bridge Design Manual

Hydraulics Manual

Survey Manual

Right-of-Way Manual

Traffic Manual

Construction Manual

AASHTO Standard Specifications for Highway Bridges

Montana Detailed Drawings

Project Development Procedures

Montana Standard Specifications for Road and Bridge Construction

Consultant Users Manual & Activity Descriptions

Manual on Uniform Traffic Control Devices (MUTCD)

American Society for Testing and Materials (ASTM)

Montana Materials Manual of Test Procedures

MDT CADD Standards Manual

Approach Standards for Montana Highways

Public Involvement Handbook

AASHTO Guide for the Development of Bicycle Facilities

AASHTO Guide Specification for Design of Pedestrian Bridges

Montana Public Works Standard Specifications

### SECTION 4 – SPECIFIC PROJECT SCOPE

The Consultant will perform the services itemized in Exhibit "D", as attached and by this reference made a part of this Agreement.

### SECTION 5 - REPORTS

- A. The Consultant will prepare the minutes for all meetings involved with the Project and will provide a copy of each to the Local Agency.
- B. The Consultant will identify and justify all exceptions to design standards (see Art. I, Sec. 3) that are found to be necessary during the design of the Project. The justification must include economic analysis. The Consultant will submit a Design Exception Request to the Local Agency for approval by the MDT.

### SECTION 6 - OBLIGATIONS OF THE LOCAL AGENCY TO THE CONSULTANT

In addition to the obligations of the Local Agency to the Consultant listed elsewhere in this agreement, the Local Agency will:

- A. As far as possible cooperate with the Consultant in making necessary arrangements with public officials and with such individuals as the Consultant may need to contact for advice, counsel, and information.

- B. Provide timely approvals of the Consultant's formal submittals in writing in all instances. If verbal approvals are first given in the interest of progressing the work, the Local Agency shall confirm such verbal approvals in writing at the earliest possible time.
- C. The Consultant must provide to the Local Agency a list of the information needed by the Consultant for rendering the services required under this Agreement. The Local Agency will provide the Consultant such information as is available to the Local Agency and the Local Agency's consultants and contractors. If materials prepared by the Local Agency or its consultants or contractors are incomplete or erroneous, the Local Agency will compensate the Consultant for any work required to correct them. Information generated by sources other than the Local Agency, MDT or their consultants or contractors may be utilized by the Consultant, but the Local Agency and MDT assumes no liability for its accuracy or completeness.
- D. Furnish copies of the Local Agency's existing as-built construction and right-of-way plans (as available).
- E. The Local Agency will not reuse or make or permit to be made any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The Local Agency shall make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.
- F. Give prompt written notice to the Consultant of any development that affects the scope or time of performance of the Consultant's services, or any defect or nonconformance in the Consultant's services or in the work of any subconsultant.

#### SECTION 7 - CONFERENCES, PROGRESS REPORTS, AND LIAISON

- A. Conferences will be held as necessary between representatives of the Local Agency and the Consultant to review and discuss progress and any matters pertinent to any phase of work. Additional compensation will not be made for those conferences.
- B. The Consultant will be responsible to and will report to *Andrew Finch* the Local Agency's liaison, for payment, submission of information, etc. All submittals will be made through *John Juras*, who will be the Consultant's liaison.
- C. Requests for visits to the site or at the office of the Consultant may be made by the Local Agency, representatives of the MDT, Federal Highway Administration, or the Consultant in conjunction with any other party or parties for the purpose of review or inspection of the work.
- D. The Consultant will furnish to the Local Agency a brief narrative progress report on the first day of each month showing the status of the work on the Project. The report will cover all phases of work accomplished during the period of the report and show the percentage of work completed for each phase of the Project. Mention should be made of any matters that may have adversely affected the progress of the work.
- E. The Consultant, upon Local Agency's direction, will confer with public agencies, including planning authorities, giving consideration to suggestions and plans of such agencies.
- F. The Consultant will submit to the Local Agency the professional history, classification, and salary of each person to be assigned to the Project. The Local Agency will reserve the right to approve all such personnel and will so inform the Consultant of such approval in writing.

#### SECTION 8 - PERSONNEL

The Consultant must have in its employ a registered Professional Engineer in the State of Montana.

#### SECTION 9 - ENDORSEMENTS

The Consultant will furnish professional stamps, statements, or other suitable means to signify responsible endorsement of work.

**ARTICLE II  
TIME OF BEGINNING AND COMPLETION**

**SECTION 1 - PROJECT COMPLETION TIME**

- A. The Consultant agrees to start work on the professional services outlined in Article I of this Consultant Services Agreement within **ten (10)** days after receipt of written notice to proceed from the Local Agency.
- B. Design phase services will be completed no later than 6 months after notice to proceed is given.
- C. **Except as provided below, all work as specified in Article I of this Agreement must be completed by December 1, 2008.**
- D. If during the Project development, the Consultant becomes aware of circumstances that have or may have an adverse affect on the scheduled completion of any or all phases of the Project, or that the Consultant will be unable to meet any schedule deadlines or submittal dates, the consultant will immediately notify the Local Agency in writing. The Local Agency and the Consultant will together take the steps necessary to maintain the Project on schedule. The Project completion schedule will be adjusted only if necessary.
- E. The Consultant is not responsible for delays caused by factors beyond the Consultant's control, including delays because of strikes, lockouts, work slowdowns, or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Local Agency to furnish timely information or approve or disapprove of the Consultant's services or work product promptly, or delays caused by faulty performance by the Local Agency.
- F. The Consultant submits the final contract plans package to the Local Agency and MDT for review. The Consultant will make any revisions to the plans that are required as a result of this review.
- G. Any alteration in the time schedule under Article II, Section 1C, shall be subject to the provisions of Article II, Section 2B.

**SECTION 2 - CHANGES**

- A. If the Local Agency determines it to be necessary in the execution of the work to make any alteration that will increase the scope of work outlined in this Agreement, the time limits specified herein will be adjusted as provided in Article II, Section 2B.
- B. If additional work is requested by the Local Agency or delays beyond the control of the Consultant prevent completion of the services to be performed under this Agreement in the time specified, the Local Agency will grant an equitable adjustment of the Agreement amount and/or time for performance for all affected phases of the work. The Consultant shall provide a written request for an adjustment within **ten (10)** days from the date the Consultant receives notice of the reasons for the requested adjustment.

**ARTICLE III  
PAYMENT**

**SECTION 1 - PAYMENT FOR SERVICES**

This Agreement will be administered on a cost plus fixed fee basis. The salaries, overhead rate, salary additive rate, and other compensatory rates, as included in the Consultant's cost proposal (Exhibit "E"), will remain fixed through May 31, 2008. Work performed after that date will continue to be billed on the cost plus fixed fee basis but will be billed at Consultant's current rate schedule.

**SECTION 2 - DEFINITIONS**

- A. Payroll Costs
  - 1. Payroll costs shall be defined as the actual salaries and fringe benefit cost of all personnel working on the Project. The Local Agency agrees to pay such actual payroll items as Social Security, Unemployment Compensation, excise and payroll taxes, employees'

compensation insurance, sick leave, vacation, holiday pay and employees' retirement, employee medical and disability insurance, in addition to actual salaries. The Local Agency agrees to reimburse the Consultant for overtime at the rate of one and one-half (1½) times the hourly rate paid each employee. Requests for authorization of overtime will require prior written approval of the Local Agency.

2. Overtime is all hours worked in excess of forty (40) hours per week.
3. The hourly rate for salaried employees shall be determined from their annual salary divided by two thousand eighty (2080) hours.

**B. General Administrative Overhead**

General administrative overhead of the Consultant is applicable to the payroll costs described in Paragraph A. Payroll Costs. Such overhead may include, but not be limited to, the following: administrative, clerical, and unallocated labor; employee bonuses and incentive awards; general travel expenses; depreciation; dues and subscriptions; computer and equipment expenses; equipment rental; freight; general business insurance; employee travel accident and life insurance; legal and accounting; office, drafting room, and laboratory supplies; professional society fees; recruiting; rent; building and equipment repairs and maintenance; taxes and licenses; telephone and telegraph (except toll charges specifically related to each individual project); general travel and employee relocation; utilities and janitorial services; and office miscellaneous expenses. Specifically excluded are bad debts and interest on borrowed capital.

**C. Out-of-Pocket and Subcontract Costs**

1. Out-of-Pocket expenses directly related to the Project shall be reimbursed at cost. They will include all travel and subsistence. All out-of-pocket costs shall require approval of the Local Agency. It must not include regular office expenses such as rent, light, normal equipment, and similar expenses. It will include the cost of printing.
2. Subcontractor charges directly related to the Project shall be reimbursed at cost. All subcontract costs shall require approval of the Local Agency.

**D. Payment of Services**

Payment will be made on the basis of and in accordance with the following schedules:

1. The Consultant will be reimbursed for the actual payroll costs as set forth in Article III, Section 2, Paragraph A, for the time such employees are directly utilized on work necessary to fulfill the terms of this Agreement. To this amount will be added the general administrative overhead costs as set forth in Article III, Section 2, Paragraph B.
2. The Consultant shall be reimbursed for actual out-of-pocket expenses and subcontract costs as specified in Article III, Section 2, Paragraph C.
3. The Consultant will be paid a lump sum fixed fee not to exceed Six Thousand Two Hundred Thirty-Seven dollars and zero cents (\$6,237).
4. The total payment to the Consultant (including the lump sum fixed fee) for the work covered under this Agreement will not exceed Sixty-Four Thousand One Hundred Eleven dollars and zero cents (\$64,111), as specified in the consultant's cost proposal, attached as Exhibit "E", which by reference, is hereby made a part of this Agreement.
5. All costs related to this project are to be in conformance with 48 CFR 31.2 of the Code of Federal Regulations.

**E. Partial and Final Payments**

Partial payments of the foregoing will be made at monthly intervals as the work progresses, based upon certified invoices received, compatible with current practices and acceptable to the Local Agency. Payments will be based upon the estimated percentage of completion of work. ***Every request for payment must include one original of the certified invoice, along with one original of the progress report.***

Whenever the Consultant completes the work in accordance with the terms of the Agreement, the Local Agency's Liaison will certify to the completion and recommend to the Local Agency that final acceptance be made. The Local Agency will notify the Consultant that acceptance has been made.

The Local Agency reserves the right to withhold payment of the Consultant's final payment until any and all just claims filed with the Local Agency against the Agreement have been settled. Accomplishment of an affidavit on the final claim by the Consultant shall constitute full acceptance by the Consultant of the total amount shown as the entire amount due the Consultant under the agreement.

F. Consultant's Cost Proposal

The attached Consultant's Cost Proposal, Exhibit "E", by this reference is made a part of this Agreement. If this document conflicts with the Agreement, the Agreement will govern.

SECTION 3 - INSPECTION AND AUDIT

All books, papers, records, payrolls, vouchers, and invoices relating to costs and expenditures incurred as to the performance of the services specified in Article I by the Consultant or any of its subcontractors shall be made available to the Local Agency, MDT, the Legislative Auditor and Legislative Fiscal Analyst, the Federal Highway Administration or their authorized representatives, for audit and review, at the Consultant's respective offices, at all reasonable times during the Agreement period and for three years from the date of final MDT payment.

SECTION 4 - TYPE OF CONTRACT

The Consultant agrees that this is a Consultant Services Agreement and that the Consultant is an independent contractor and not an employee of the Local Agency or MDT. It is further understood by the Consultant that no deductions from the payments under this Agreement for federal or state income tax, FICA (social security), retirement, or other reasons will be withheld by the Local Agency or MDT.

**ARTICLE IV  
MISCELLANEOUS PROVISIONS**

SECTION 1 - TERMINATION OR ABANDONMENT

The Local Agency may terminate this Agreement at any time upon **fifteen (15)** days written notice to the Consultant, for any of the following:

- A. Due to unforeseen circumstances it is possible that it could be in the best public interest to abandon, reduce, or change the Project covered by this Agreement. If the Local Agency believes that is appropriate, this Consultant Agreement will be terminated.
- B. Due to adverse weather, flood, earthquake, etc., or any other condition or conditions beyond the control of the Local Agency and/or Consultant, which may adversely affect the work to be performed, this Agreement may be terminated by the Local Agency.
- C. Due to a change in the scope, character, or complexity of all or any part of the work under this Agreement, the Local Agency may decide that it is in the best public interest to terminate this Agreement.
- D. Should the services of the Consultant prove unsatisfactory or because of the failure of the Consultant to perform its work with due diligence or to complete the required services or any part of it within the time limits specified, this Agreement may be terminated.

In any such case, however, the Consultant shall be paid the reasonable value of such services rendered up to the time of termination. The reasonable value of such services shall be based on the method of payment as defined in the Agreement. The approved percentage of completion will be determined by mutual agreement between the Local Agency and the Consultant.

SECTION 2 - GENERAL COMPLIANCE WITH LAWS

- A. The Consultant will observe and comply with existing laws, ordinances, and regulations.
- B. The Consultant agrees to indemnify and hold harmless the Local Agency, state and MDT, their officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Consultant's non-

negligent/ negligent but wrongful acts, errors, or omissions arising out of services performed, or in any way resulting from a non-negligent but wrongful act, error, or omission of the Consultant and/or its agents, employees, subcontractors, or its representatives under this Agreement.

- C. The Local Agency agrees to indemnify and hold harmless the Consultant from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Local Agency's non-negligent but wrongful acts, errors, or omissions arising out of services performed, or in any way resulting from a non-negligent/ negligent but wrongful act, error, or omission of the Local Agency and/or its agents or employees under this agreement.
- D. Furnish copies of the Local Agency's existing as-built construction and right-of-way plans (as available).
- E. The Local Agency will not reuse or make or permit to be made any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The Local Agency shall make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.

### SECTION 3 - OWNERSHIP OF DOCUMENTS

Upon completion of services or termination of this Agreement, all drawings, map originals, survey notes, field books, calculations, reports, and all data used will become the property of the Local Agency.

Following the Local Agency's acceptance of such documents, the Consultant will be indemnified, defended, and held harmless only for any changes or revisions to the plans and related documents that the Consultant prepares under this Agreement that are made without Consultant's knowledge and written consent.

### SECTION 4 - SUBCONTRACTING, ASSIGNMENT OR TRANSFER

The subcontracting, assignment, or transfer of any part of this Agreement, except as shown in the Consultant's proposal, is prohibited unless prior written approval is obtained from the Local Agency.

Subcontracts that exceed \$10,000 in cost will contain all required provisions of the prime agreement.

### SECTION 5 - CHANGES OF WORK

If, during the term of the Agreement, additional services are required, other than those services specified above, or major changes in the work become necessary or desirable, the Local Agency may make written request to the Consultant to perform such services or make such changes. If the Consultant is of the opinion that any work it has been requested to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant will promptly notify the Local Agency in writing prior to performing such work. If the Local Agency agrees that such work does constitute extra work, the Consultant shall be reimbursed on a mutually agreed basis, and additional time for completion of the Agreement shall be given. Before such work is undertaken, the Consultant and the Local Agency will, by mutual written agreement, determine the scope of the work and the cost thereof.

Compensation will be determined before the operations begin and as soon as circumstances permit. If a mutual agreement is not reached in negotiations for an increase in such work, the Local Agency will use other methods to accomplish the work.

### SECTION 6 - MEETINGS AND PRESENTATIONS

The Consultant and its subcontractors, when directed by the Local Agency, will attend and make appropriate presentations at meetings conducted for the purpose of discussing with the public or local, state, and federal officials the effect and objectives of the proposed Project or other matters pertaining to the Project.

The Consultant will prepare exhibits and visual aids necessary to clarify the proposed Project to the participants of the meetings.

#### SECTION 7 - ACCURACY OF WORK

The Consultant will make necessary revisions or corrections resulting from errors and omissions on the part of the Consultant without additional compensation (see Article I, Sec.1).

If any errors are made by the Consultant in any phase of its work under this Agreement that may require additional field or office work, the Consultant will be promptly notified in writing and will be required to perform such additional work as may be necessary to correct these errors without undue delay and without additional cost to the Local Agency. Acceptance of its work will not relieve the Consultant of the responsibility for subsequent correction of any such errors and the clarification of any known ambiguities.

Construction problems or conflicts arising as a result of design or plan errors or omissions will be considered the Consultant's responsibility. The Local Agency will be responsible for any unreasonable interpretation it makes of the Consultant's design, drawings, and plans. The Consultant will be notified of all such errors and omissions and will meet with Local Agency representatives to assist in determining corrective action at no cost to the Local Agency. If design errors are found to be a cause of the construction problem or conflict, the Consultant will have the opportunity to be involved in discussions to determine the desired corrective action. Following discussions between the Local Agency and the Consultant, the Local Agency will provide the Consultant with its written demand letter for the total costs of the corrective action.

The Consultant agrees to provide proof of errors and omissions insurance coverage not less than **One-Half Million Dollars (\$500,000)** for the entire period of the Project for which consultant services are required under this Agreement.

#### SECTION 8 - VENUE

In the event of litigation, venue shall be the 8<sup>th</sup> Judicial District in and for the County of Cascade, State of Montana, and the Agreement shall be interpreted according to the laws of Montana.

#### SECTION 9 - NONDISCRIMINATION

Reference is made to Exhibit "C", which by this reference is hereby made a part of this Agreement.

#### SECTION 10 - CERTIFICATION

The parties to this Agreement have each executed a certification. The certification of the Consultant, labeled Exhibit "A", is attached and by this reference made a part of this Agreement. The certification of the Local Agency, labeled Exhibit "B", is attached and by this reference made a part of this Agreement.

#### SECTION 11 - DBE GOAL

The Consultant will make all reasonable efforts to utilize the MDT's currently certified DBE firms for applicable subcontracting services that are necessary. The Appendix CTEP Guidelines of Consultant Services Agreement contains instructions for accessing the current Internet listing of MDT's certified DBE firms. The MDT Compliance Specialist will be contacted at (406) 444-6337, should subcontracting opportunities arise.

**Each invoice submitted in accordance with Article III, Section 2E, must state the established DBE goal for the project and the current and cumulative amounts expended to date towards that goal.**

#### SECTION 12 – WORKERS' COMPENSATION COVERAGE

The Consultant agrees to provide proof that it has a policy for Workers' Compensation Insurance or proof that it has elected to be exempt from such coverage and its election has been approved by the Department of Labor and Industry. The Consultant agrees to maintain Workers' Compensation Coverage for the entire period of this Agreement.



**SECTION 13 - CONSULTANT'S PLANS RESPONSIBILITY**

The Consultant will be responsible for the quality of the final plans package (see Article I, Sec. 1), as the Local Agency will not make a detailed check of the plans. The Consultant will stamp and sign the title sheet of the final contract plans package. The Consultant's name will be shown on all plan sheets of the Project. If Specialty Plans are involved (for example, Bridge Plans, Sewer/Water Plans prepared for a city and included into the Local Agency's plan package, or similar plans), the Consultant will stamp and sign each page of the plans.

The final plans package will be assembled and shall take on the form of a Project Manual and drawings as defined in the CTEP Guidelines.

**SECTION 14 - ENTIRE AGREEMENT & MODIFICATIONS**

This Agreement, including the documents referenced or attached here, is the entire agreement of the parties. Any modification requires a written amendment signed by authorized representatives of both parties.

**SECTION 15 – THIRD PARTY BENEFICIARIES**

This Agreement is not intended to create anyone as a third party beneficiary or to authorize anyone not a party to the Agreement to maintain an action for damages pursuant to the terms or provisions of this Agreement.

**SECTION 16 - CONFIDENTIALITY OF INFORMATION**

The Consultant understands that the information contained in and created by this Agreement will be part of the public bidding process, and that it must remain confidential between the Consultant and the Local Agency until the Project has been awarded. Failure by the Consultant or its employees to keep that information confidential will be considered a breach of this Agreement, and may require the Local Agency to have another consultant rework the work product of this Agreement, potentially delaying the Project and costing the Local Agency additional funds. Such an act by the Consultant will be a violation of Article IV, Sec. 2, and subject all persons or parties involved to possible debarment under ARM Sec. 18.d.101 *et seq.*

IN WITNESS, the parties involved have sealed this Agreement by their signatures.

APPROVED FOR  
THOMAS, DEAN AND HOSKINS, INC.

APPROVED FOR  
THE CITY OF GREAT FALLS

By: \_\_\_\_\_  
Dave Zahller, President

By: \_\_\_\_\_  
John W. Lawton, City Manager

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

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

ATTEST:

ATTEST:

By: \_\_\_\_\_

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

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

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

FEDERAL EMPLOYER'S I.D. NO.

APPROVED FOR LEGAL CONTENT

81-0295283

By: \_\_\_\_\_  
David V. Gliko, City Attorney

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

EXHIBIT "A"  
CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of Thomas Dean and Hoskins, whose address is 1200 25<sup>th</sup> Street South, Great Falls, Montana 59405 and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:
  - (a) has employed or retained for commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
  - (b) has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or,
  - (c) has paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; with no exceptions.
  
2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:
  - (a) is currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency or any agency of any state government;
  - (b) has, within a three-year period preceding this Agreement, been convicted of or had a civil judgement rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2(b) of this certification;
  - (d) has had one or more public transactions terminated for cause or default within a three-year period preceding this Agreement.
  
3. That to the best of my knowledge and belief:
  - (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the City of Great Falls, State of Montana, Department of Transportation, and the Federal Highway Administration, in connection with this Agreement involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dave Zahller, President  
Thomas Dean and Hoskins, Inc.

EXHIBIT "B"  
CERTIFICATE OF THE CITY OF GREAT FALLS

I hereby certify that I am the City Manager of the City of Great Falls, Montana, and that the above consulting firm, or his representatives, has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- (a) employ or retain, or agree to employ or retain, any firm or person; or
- (b) pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished the Montana Department of Transportation and Federal Highway Administration in connection with this Agreement involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
John W. Lawton, City Manager  
City of Great Falls

EXHIBIT "C"  
**NOTICE TO CONSULTANTS**

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

**A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

- (1) Compliance with Regulations: The Consultant shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even though only State funding is here involved.
- (2) Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: Consultant will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Local Agency, MDT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Agency, MDT or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Local Agency or MDT may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) withholding payments to the Consultant under the Agreement until the Consultant complies, and/or
  - (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: Consultant will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant will take such action with respect to any subcontract or procurement as the Local Agency, MDT or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant is sued or is threatened with litigation by a

subconsultant or supplier as a result of such direction, the Consultant may request the Local Agency to enter into the litigation to protect the interests of the Local Agency or State, and, in addition, the Consultant or the Local Agency may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, Consultant agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) Consultant will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) Consultant will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Consultant will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Consultant. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Consultant."**
- (3) All video recordings produced and created under the Agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR 26.**

Each Agreement the Local Agency signs with a Consultant (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: **"The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant 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."**

## **EXHIBIT “D” SCOPE OF WORK**

**Project Title:** Bay Drive Bike/Ped Path II - GTF; Great Falls, Montana

**Location:** Adjacent to Bay Drive, along the west bank of the Missouri River in Great Falls.

### **General Project Description:**

This project is the continuation of Consulting Services provided by John Juras, P.E., through Delta Engineering, P.C. to the City of Great Falls. Continuing consulting services will be provided by Thomas, Dean, and Hoskins, Inc. with John Juras, P.E. as Project Manager. A Design Report and 35% complete Construction Plans have previously been submitted to the City of Great Falls.

This project is the second phase of plans to link River’s Edge Trail to southwest area neighborhoods and destinations. The long-term objective is to link River’s Edge Trail from the west end of the Weissman Bicycle/Pedestrian Bridge to the bicycle/pedestrian facilities located along the east side of 6<sup>th</sup> St. SW. This will include several project phases and will include developing on and off-street facilities between 6<sup>th</sup> St. SW and the south end of Garden Home Park, and an off-street ADA accessible trail following along the westside of the Missouri River, paralleling Bay Drive and passing under the BNSF railroad bridge, 1<sup>st</sup> Ave. N. Bridge and Weissman Trail Bridge to connect with the existing trail system.

This project will include the design of a 1,800’ long segment of the trail between the north end of Phase 1 and the existing trail system just north of the Weissman Bridge. The project will include design of an elevated trail segment on a city easement along the east side of the Holman property and design of underpasses of the 1<sup>st</sup> Ave. N. and Weissman Trail Bridges.

When all phases of the Bay Drive Trail are completed, bike and pedestrian travel on the existing trail system will be extended to west side neighborhoods, parks and destinations, and to existing bike/pedestrian facilities along 6<sup>th</sup> St. SW.

The preferred alignment for this trail segment is on city-owned land, a narrow city-owned easement and on MDT right-of-way associated with the 1<sup>st</sup> Ave. N. Bridge. The easement segment is mostly the steep west bank of the river between waterline and top of bank. Neither excavating or notching the trail into the bank, or adding a fill section that encroaches on the river is considered viable options. An elevated trail section that causes minimal disruption to the existing bank is preferred.

A storm-water out-fall under the west end of the 1<sup>st</sup> Ave. N. Bridge has been abandoned, flows being bypassed to a new out-fall just north of the Weissman Bridge. The new out-fall was sited far enough north of the bridge to facilitate a future trail alignment to emerge from the bridge underpass and proceed over the top of the out-fall pipe to make connection with the existing trail system.

The project will complete the engineering and design of an ADA accessible trail segment that is integral to the bike/pedestrian system in Great Falls. While the design phase of this project is underway, trail advocates will continue to seek additional funding to complete construction of the rest of this key trail segment.

The design component of this project will involve topographic, property line/right-of-way and geotechnical surveys and design, and the development of plans and cost estimates for the 1,800’ long trail segment. The segment has opportunities and challenges. Current thinking is that the project will



consist of (from south to north) 780' of asphalt trail, 700' of elevated boardwalk, 180' concrete underpass section and 140' of asphalt trail. Concrete trail supports have been designed and the contractor can construct either cast in place column & spread footing supports or drilled caisson supports. The chosen consultant will incorporate the supports into the final design. Decking will be precast concrete tri-deck.

It is anticipated that the 180' concrete underpass section will require construction of a small embankment underneath the 1<sup>st</sup> Ave. N and Weissman bridges. The feasibility of constructing the trail segment north of the underpass section has been investigated. The trail segment must pass under the Weissman Bridge with sufficient vertical clearance and then rise to pass over the large concrete storm-water out-fall. The calculated maximum grade for this segment is 4.5%, within ADA grade guidelines.

Construction in the Missouri River floodway will require sensitive and creative design, careful attention to permitting, mitigation of impacts to the river and erosion control. Because the underpass embankment will slightly encroach on the river channel, floodplain permitting will include an analysis of the effect of the trail on flood elevations. This has been done for the piers. The transition from the concrete underpass section to the boardwalk will include a 12' x 15' landing just south of the 1<sup>st</sup> Ave. N. Bridge sufficient to connect to a stairway which will extend up to the existing sidewalk on the south side of the bridge.

An existing storm drain crosses the proposed trail alignment near the south end of the Holman property and discharges to the Missouri River. This 42" diameter storm drain will be replaced between the river and the edge of Bay Drive with 48" storm drain pipe as an enhancement to the trail project. The termination of the storm drain will be extended farther east to line up with the adjacent river bank. Once the storm drain is extended, the existing step back in the river bank will be filled to allow at-grade construction of the trail at this point. Appropriate slope stabilization materials will be utilized to match the steepness of adjacent river bank side slopes. Construction plans detailing the storm drain extension will be incorporated into the same package as the remainder of the trail work except that the drawings will be organized to easily split the storm drain related work from the remainder of the package if splitting the work out becomes necessary.

The design component of this project will involve selecting and incorporating design alternatives that will result in construction of this key trail segment that will serve the community for generations to come.

### **Specific Work Elements:**

- **Preliminary Design Phase. Items shown in *italics* below have been completed previously.**

- 1) *Conduct an on-site field review/pre-design meeting with Trails Working Group members, as appropriate.*
- 2) *Research, collect and assemble engineering data*
  - a) *Control Location and Topography Survey Data*
  - b) *Utility/Property/Roadway Locations and Easements*
  - c) *Environmental Data*
  - d) *Geotechnical Data*
  - e) *Trails Working Group and Other Community Input*
- 3) *Submit Pre-design Report*

- a) *Report Findings*
  - b) *Design Recommendations (Trail Section, Alignment, Materials, Environmental Considerations, Public Requests, Other)*
  - c) *Preliminary Construction Cost Estimate*
  - d) *Construction Sequencing*
  - e) *Identify any Engineering, Construction and Funding Problems*
  - f) *Utility Conflicts Including Electric, Telephone, Gas, Cable TV, or others*
  - g) *Prepare 35% construction drawings*
- 4) Coordination and Project Management
    - a) All design aspects of the project will be coordinated with the Trails Working Group.
    - b) Perform Project Management tasks
  - 5) Submit Preliminary Plans and Specifications
    - a) Prepare and submit seven (7) sets of the preliminary plans, profiles and typical sections several weeks prior to the scheduled Plan-In-Hand meeting for cursory review and comment by the Trails Working Group.
  - 6) Conduct a Plan-In-Hand Meeting with Trails Working Group
  - 7) Submit Environmental Documentation
    - a) Contact appropriate local, State and Federal agencies for input into the project. Based on these contacts, prepare the environmental checklist and a request for categorical exclusion, which the City Planning Staff will submit, to MDT. No cultural resource survey or Section 106 historical compliance is required.
  - 8) Submit Draft Project Manual and Cost Estimate
    - a) Prepare two sets of the draft project manual and construction cost estimate for City Planning staff and Recreational Trails, Inc. review.
- **Final Design Phase.**
    - 1) Submit Permits/Legal Documents
      - a) Prepare any permits that may be required for construction of the project. The existing trail Easement along Holman's property will be revised by the Consultant to reflect the actual trail alignment and submitted to the City for review and signature.
    - 2) Submit Final Plans/Specifications/Project Manual
      - a) Respond to review comments on drafts and coordinate final draft design with Trails Working Group.
      - b) Complete the final draft design, specifications, project manual, and cost estimate, including all corrections and comments by the City Planning Staff and the Trails Working Group from the Plan-In-Hand review and subsequent coordination.
      - c) Submit to the City Planning Staff six (6) sets of the final draft plans, specifications and project manual, including a construction cost estimate (signed, sealed, and dated) for Recreational Trails, Inc. (1), Planning Staff (1), MDT/Helena (2), MDT/GF (1), and FHWA (1) final review.

- d) After MDT comments, if any, are addressed, submit to the City Planning Staff six (6) numbered sets of the final plans, specifications and project manual, including a construction cost estimate (signed, sealed, and dated) for Recreational Trails, Inc. (1), Planning Staff (1), MDT/Helena (1), MDT/GF (1), FHWA (1) and City Clerk (1) use and records.
- e) Prepare sufficient sets of the final project manual, including plans, specifications, contractor agreement, standard Federal/State forms, bidder information, etc. for provision to potential bidders.

- **Bidding Phase**

- 1) Bid Advertising
  - Advertising to be done by and cost to be borne by City
  - Conduct Pre-Bid Conference
  - Distribute bid package, respond to questions, and issue approved addenda
- 2) Bid Opening
  - Conduct Bid Opening
  - Review Bids
  - Make Award Recommendation

- **Construction Engineering Services**

- 1) Conduct Pre-Construction Conference and prepare minutes
- 2) Provide four (4) sets of Construction Plans and Specifications to Contractor
- 3) Provide Construction Surveying
  - Provide offset stakes , with cut/fill to finish grade, for centerline of trail at all PC, PT, PI, VPC, VPI, VPT and on tangents no greater than 50 feet apart. One time only, contractor pays for replacement of offset stakes.
- 4) Provide Project Representative including part-time inspection or site visits.
  - At a minimum, Project Representative would visit the project daily or coordinate with the Contractor daily whenever work is in progress for inspection and coordination of additional testing and inspection. A daily diary of site visits, conditions, conversations with contractor, weather notes, etc. will be kept.
- 5) Review and Approve Submittal and Shop Drawings
- 6) Perform Quality Control Testing
  - Standard Proctor analysis of subgrade soils and crushed gravel
  - Nuclear density of Subgrade, Base Course, Pavement

- Strength of Concrete
  - Marshall extraction of asphalt mix
- 7) Review and Process Contractor Payment Claims. Submit with recommendations to City Planning.
  - 8) Facilitate coordination meetings with Contractor and Trails Working Group, as needed.
  - 9) Prepare and Submit Reproducible "As-built" Drawings
  - 10) Prepare and Process Work Directives and Change Orders. Submit to City Planning.
  - 11) Perform final inspection for substantial completion with contractor and City Planning. Prepare "punch list" of outstanding items.
  - 12) Perform final inspection and project closeout with Trails Working Group.
  - 13) Participate in warranty inspection at 1 year with contractor and Trails Working Group and/or City Planning, prepare punch list of warranty items.

**EXHIBIT E  
COST PROPOSAL**

<b>PROJECT:</b> Bay Drive Bike/Ped Path II - GTF	<b>DATE:</b> 09/17/07
<b>CONSULTANT:</b> TD&H	<b>EST. PREPARED BY:</b> JPJ

<b>PRELIMINARY DESIGN PHASE ACTIVITIES</b>									
Activity	Tasks	Total Hours	Principal	Senior Engineer	Structural Engineer	Design Engineer	CADD Tech.	Survey Crew	Clerc.
1		0							
2	Tasks correspond to Scope of Work Items	0							
3		0							
4		29	1	24	2				2
5		164	2	26	24	16	80	4	12
6		12	1	6	4				1
7		42		16		16	8		2
8		48	2	18	4		18		6
		0							
<b>SUBTOTAL (HOURS)</b>		<b>295</b>	<b>6</b>	<b>90</b>	<b>34</b>	<b>32</b>	<b>106</b>	<b>4</b>	<b>23</b>

<b>DESIGN PHASE ACTIVITIES</b>									
Activity	Tasks	Total Hours	Principal	Senior Engineer	Structural Engineer	Design Engineer	CADD Tech.	Survey Crew	Clerc.
		0							
1	Tasks correspond to Scope of Work Items	34	2	22		4	6		
2a		11		6	4				1
2b		43	1	14	8	4	12		4
2c		16		6			4		6
2d		30		16	2		8		4
2e		6		2					4
<b>SUBTOTAL (HOURS)</b>		<b>140</b>	<b>3</b>	<b>66</b>	<b>14</b>	<b>8</b>	<b>30</b>	<b>0</b>	<b>19</b>
Hourly Rate			0	0	0	0	0	0	0
Cost Subtotal		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

<b>PRE-DESIGN AND DESIGN PHASE COST SUMMARY</b>								
<b>PROJECT: BAY DRIVE BIKE/PED PATH II- GTF</b>				<b>DATE:</b>				
<b>CONTROL NO: 5555</b>		<b>EST. PREPARED BY: JPJ</b>		<b>WORK: PREDESIGN, DESIGN</b>				
		Hours	Rate				Extension	
Principal		9	44.71				402.39	
Senior Engineer		156	30.87				4,815.72	
Structural Engineer		48	35.37				1,697.76	
Design Engineer		40	21.92				876.80	
CADD		136	17.70				2,407.20	
Survey Crew		4	41.55				166.20	
Clerical		42	14.25				598.50	
<b>TOTAL HOURS</b>		<b>435</b>						
<b>GENERAL OVERHEAD @</b>		<b>1.563</b>		<b>LABOR SUBTOTAL</b>			<b>\$10,965</b>	
				<b>OVERHEAD SUBTOTAL</b>			<b>\$17,138</b>	
							<b>\$28,102</b>	
<b>DIRECT NONLABOR</b>								
Miscellaneous (Blue-line prints, mylars, multilith paper, telephone, postage, misc. equipment rental, maps, photos, survey mpls., display boards, etc.)	<b>(LUMP SUM)</b>							1,200.00
Computer	176	Hours	10	Per Hour			1,760.00	
Nuclear Densometer Rental	0	Days	50	Per Day			0.00	
Mileage	45	Miles	0.6	Per Mile			27.00	
Total Station Rental	1	Days	110	Per Day			110.00	
Subconsultant		Invoice	1	No Mark-up			0.00	
							0.00	
							0.00	
<b>TOTAL DIRECT NONLABOR</b>							<b>\$3,097</b>	
<b>RECAPITULATION</b>								
Total Labor/ Overhead							28,102	
Total Direct NonLabor							3,097	
Profit							12% 3372	
<b>TOTAL ESTIMATED DESIGN COST</b>							<b>\$34,571</b>	