



**Item:** Ordinance 3097 to assign City Zoning to AgriTech Park Addition

**From:** Mike Haynes, AICP, Director of Planning and Community Development

**Initiated By:** Great Falls Development Authority

**Presented By:** Mike Haynes, AICP, Director of Planning and Community Development

**Action Requested:** City Commission accept Ordinance 3097 on first reading and set a public hearing for January 15, 2013.

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (accept/deny) Ordinance 3097 on first reading and set a public hearing for January 15, 2013.”

2. Mayor calls for a second, discussion, public comment, and calls the vote.

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**Recommendation:** At the conclusion of a public hearing held on December 11, 2012, the Planning Advisory Board/Zoning Commission conditionally approved the Final Plat of AgriTech Park Addition and recommended that the City Commission assign a zoning classification of PUD – Planned Unit Development to the 10 lots in the subdivision. Public Notice for the Planning Advisory Board/Zoning Commission Public Hearing was published in the *Great Falls Tribune* on November 25, 2012.

**Background:** The applicant, Great Falls Development Authority (GFDA), applied for annexation of ±196.549-acres, initial zoning of I-2 Heavy industrial district, which was later modified to PUD – Planned Unit Development, and a major plat, which subdivides the property into 10 lots, in May, 2012. AgriTech Park Addition is a proposed rail-served heavy industrial park with an emphasis on value-added processing of agricultural products. The subject property is generally located north of 18th Avenue North, both east and west of 67th Street North. The property comprises ±196.549 acres, of which ±193.684 are proposed as industrial lots and ±2.865 is the right-of-way of 67th Street North. The project is speculative; the types of industrial uses and specific businesses that may opt to locate in the AgriTech Park are unknown.

The project began through the City’s approval process with a meeting before the Planning Advisory Board/Zoning Commission on July 10, 2012. Mike Haynes, Planning and Community Development Director, entered the staff report into the record and presented an overview of the project to the board. He outlined the process that led up to the Planning Board public hearing,

described the general area and zoning districts, the proposed project and the specific requests for annexation, initial zoning and the preliminary plat with the conditions of approval proposed by staff.

At the public hearing, Brett Doney, GFDA, spoke about the importance of economic development and jobs, and the need for “shovel-ready” heavy industrial rail-served lots. He requested the entire subject property be zoned I-2 and proposed revisions to the conditions of approval recommended by staff.

After listening to testimony from proponents and opponents of the project, the Planning Advisory Board voted 8-0 to recommend the City Commission approve annexation and the preliminary plat of the property. The Zoning Commission voted 6-2 to recommend City Commission approve an initial zoning of I-2 Heavy Industrial on the entire property. Board Chairman, Bill Roberts, directed Planning and Public Works staff to meet with the applicant team to try to resolve differences over the conditions of approval drafted by staff. That meeting was held the next day. For complete information on the presentations and public comment, see the staff report and/or the video of the July 10, 2012, Planning Advisory Board public hearing at [www.greatfallsmt.net](http://www.greatfallsmt.net).

The City Commission approved the Preliminary Plat of AgriTech Park, at a non-public hearing, on August 7, 2012. Again, Director Haynes presented an overview of the project and outlined the process for the project. He explained that City Commission should approve the Preliminary Plat if found to be in conformance with local subdivision regulations and the review criteria in State statute (76-3-608(3) MCA). For complete information on the presentations and public comment, see the staff report and/or the video of the August 7, 2012, City Commission meeting at [www.greatfallsmt.net](http://www.greatfallsmt.net)

On August 28, 2012 the Planning Advisory Board recommended that City Commission approve the Final Plat of AgriTech Park Addition.

On September 4, 2012, City Commission accepted Ordinance 3097 on first reading to assign I-2 (Heavy Industrial) zoning to AgriTech Park Addition, and set a public hearing on October 2, 2012 to consider annexation, establishment of City zoning, and Final Plat for AgriTech Park Addition. Notice of Public Hearing before the City Commission was published in the *Great Falls Tribune* on September 16, 2012, for the October 2, 2012 public hearing.

At the October 2, 2012 public hearing, City Commission heard a presentation from city staff and the applicant and listened to proponents and opponents of the project. City Commissioners then proceeded to discuss balancing the desire for economic development with environmental protections, expressing concerns regarding development east of 67<sup>th</sup> Street North (proposed Lots 9 and 10), potential impacts and costs of stormwater runoff on Whitmore Ravine, development of proposed Lot 8, establishment of development standards to protect adjacent land, the appraised value of the land for the proposed AgriTech Park, and the need for creation of a Tax Increment Financing (TIF) District. City Commission expressed a desire to hear options for moving forward and voted 4-1 to table consideration until the first City Commission meeting in November, 2012.

At the City Commission work session on October 16, 2012, city staff presented a series of options available to the City Commission to move the process forward. Interim City Attorney, Dave Nielsen, expressed his concerns regarding the legal description of the property, enforcement of voluntary Codes, Covenants and Restriction's proposed by the Applicant, and whether conditions of approval in the Annexation Agreement could be enforced on end-users given the proposed I-2 zoning and given the way land would be transferred from the current property owner to the industrial end-users. Mike Haynes, Director of Planning and Community Development, suggested concerns regarding enforcement could be resolved by zoning the subject property PUD – Planned Unit Development and thereby having a zoning ordinance that would be enforceable in the same way as standard zoning regulations. It was agreed that the final plat would be revised and considered at a future meeting. City Commissioners gave staff general direction on options they might want to consider on November 7, 2012.

At the November 7, 2012 meeting, staff presented alternative motions based upon the general direction received from the City Commission. The first options were to either approve the Annexation, Annexation Agreement and an initial zoning of I-2 (as requested by the Applicant) or deny the Annexation request. Other options were that the City Commission remand the matter back to the Planning Advisory Board/Zoning Commission to consider PUD zoning and a revised final plat either for all 10 lots, or for 8 lots if concerns persisted regarding development east of 67th Street. Remanding the matter back to the Zoning Commission would allow the advisory board to make a recommendation on PUD zoning and Final Plat and for a new public hearing before the City Commission to be set, legally noticed and held. City Commission adopted Resolution 9993 to annex the ±196.549-acre subject property into the city and remanded all other matters back to the Planning Advisory Board/Zoning Commission with direction that the Board consider a revised Annexation Agreement and Final Plat, and an Ordinance zoning the subject property PUD – Planned Unit Development with all conditions of approval, and development standards proposed, or agreed to, by the Applicant included in, or referenced in, the Zoning Ordinance. Commissioner Bronson stated that this was “to put the City in the driver’s seat” in making development standards enforceable by the City.

Attached for reference are the Zoning Map and Aerial Photo. In addition, staff has included updated exhibits for the Final Plat, Proposed PUD Ordinance and the Updated Annexation Agreement. All other exhibits have been removed, but can be found with previous staff reports at [www.greatfallsmt.net](http://www.greatfallsmt.net).

### Project Description

The proposed 10-lot AgriTech Park project includes Lots 1-8, which are located on the west side of 67th Street North, and Lots 9-10, which are located east of 67th Street North (see Exhibit D-Updated Final Plat). The Applicant proposes to bring water and sewer to serve the project from the west and to extend the existing rail spur, that now runs south of and parallel to 18th Avenue North to just east of 52nd Street North, east to serve the project. The rail extension would cross 18th Avenue North northeast through the subject property, crossing 67th Street and then running south between proposed Lots 9 and 10.

That portion of the subject property lying west of 67th Street North is undeveloped and used for dry-land farming, and has County I-2 (Heavy Industrial) zoning. That portion of the subject property lying east of 67th Street North is undeveloped and used for dry-land farming and has County AG (Agricultural) zoning (see Exhibit A-Zoning Map).

South of the subject property is the “American Agri-Tech Addition” that has I-2 Heavy Industrial zoning in the city but remains undeveloped and used for dry-land farming. This property provides contiguity with the City of Great Falls municipal boundary and has been slated for development of an ethanol plant (now advanced bio-fuels plant) since the early 1990s.

Adjacent to, and north of, the subject property is Giant Springs State Park comprised of state-owned (Fish Wildlife and Parks - FWP) land and PPL land managed by FWP. West of the subject property is largely undeveloped property owned by water-bottler Source Giant Springs with some industrial uses beyond that (north of 18th Avenue North and west of 52nd Street North). East of the subject property is more undeveloped land owned by the Loy Trust, with Whitmore Ravine running generally south to north through that property and out-falling into the Missouri River (see Exhibit B-Aerial Photo).

There are eight proposed development sites east of 67th Street North, with proposed Lots 1 and 8 on the north side of the proposed rail line extension and proposed Lots 2-7 on the south side. Proposed development on Lots 1 and 8 are of particular concern due to their location closest to, and overlooking, the Missouri River, the River’s Edge Trail, the Rainbow Dam and Lewis and Clark Overlooks, and Giant Springs State Park. In addition, these lots present the greatest challenges for development because both lots have at least a 40-foot elevation change as the land slopes off to Giant Springs State Park and the Missouri River. FWP supports development of the AgriTech Park project, but only with “adequate and effective protections for Giant Springs State Park”.

A cost-effective solution to protect the viewshed from the river corridor and to ease concerns regarding stormwater runoff is to provide a provision for open space buffers along the northern boundary of Lots 1 and 8. The Applicant is proposing a 150-foot no-build zone from the northern property line, adjacent to State of Montana property. In addition, the developer has agreed to limit building heights for an additional 450 feet beyond the no-build zone in order to help mitigate the effects of development on the adjacent properties (see Exhibit F-Updated Annexation Agreement).

Development on Lots 2-7 is less of a concern in terms of the viewshed, but concerns remain with regard to the potential impacts of industrial development on adjacent and nearby properties including noise, light pollution, dust, litter, drainage, etc. (see Exhibit C - Findings of Fact). In order to assure some of these impacts are mitigated, City Commission has requested the property be zoned PUD-Planned Unit Development, and a Zoning Ordinance be established to outline the mitigation criteria, which will be enforceable by the City. The proposed PUD zoning for the subject property will be based on the City’s I-2 Heavy industrial district, but will include modifications to mitigate some impacts of development and allow the City to enforce regulations (see Exhibit E-PUD Zoning Ordinance 3097).

Proposed development sites east of 67th Street North are Lots 9 and 10. This ±26 acre property comprises about 13 percent of the overall subject property and has AG (Agricultural) zoning in Cascade County. Cascade County Commissioners declined to rezone this property to I-2 (Heavy Industrial), and they maintain that industrial development in this area is not appropriate for the following reasons: (1) its proximity to the River’s Edge Trail and Missouri River Recreational Corridor; (2) its proximity to Malmstrom AFB housing; and, (3) most importantly, its proximity

to, and impact on, Whitmore Ravine, which has experienced significant erosion and represents a serious environmental problem that will cost an estimated 10 million dollars to resolve. The City Commission has taken these issues under consideration in determining the required PUD zoning for the subject property. In addition, the applicant's engineers have been working with the Public Works Department and are in agreement on the required improvements and stormwater systems for the project. These agreements are part of the Updated Annexation Agreement, which is attached as Exhibit F and will require final approval by City Commission.

The Great Falls Development Authority gave a presentation to Neighborhood Council #4 on August 25, 2011. There were no comments from Council 4 at that time. Patty Cadwell, Neighborhood and Youth Council Coordinator, provided updated application information to Council #4 on June 27, 2012.

Cascade County Commissioners and Montana State Parks have provided letters of concern regarding the project. Over time, the Planning and Community Development Department has received letters and emails, and fielded questions about this proposed project from various environmental, recreational and preservation groups, as well as concerned individual citizens. These public comments are on file at the Planning and Community Development Office.

**Concurrences:** Various City Departments and the County have been involved in the review process over time.

**Fiscal Impact:** The applicant intends to establish a TIF District that encompasses the project (and the Advanced Biofuels project if that proceeds). That would result in the tax increment generated by the project, or a portion thereof, being directed back into the district for the time the TIF District is in existence.

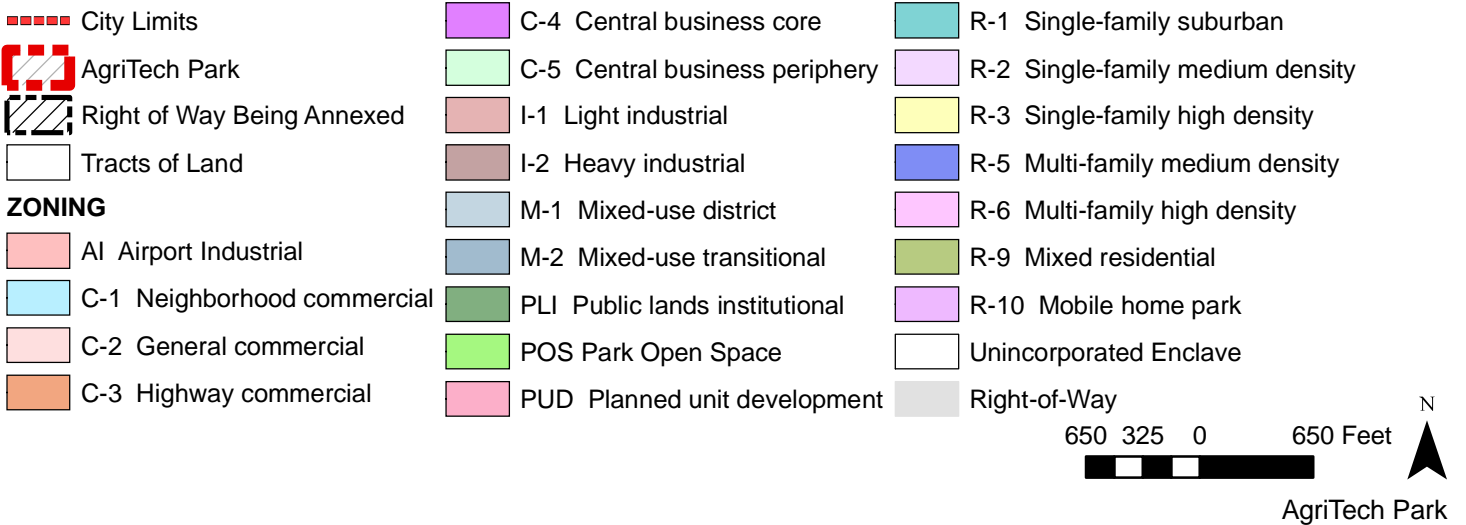
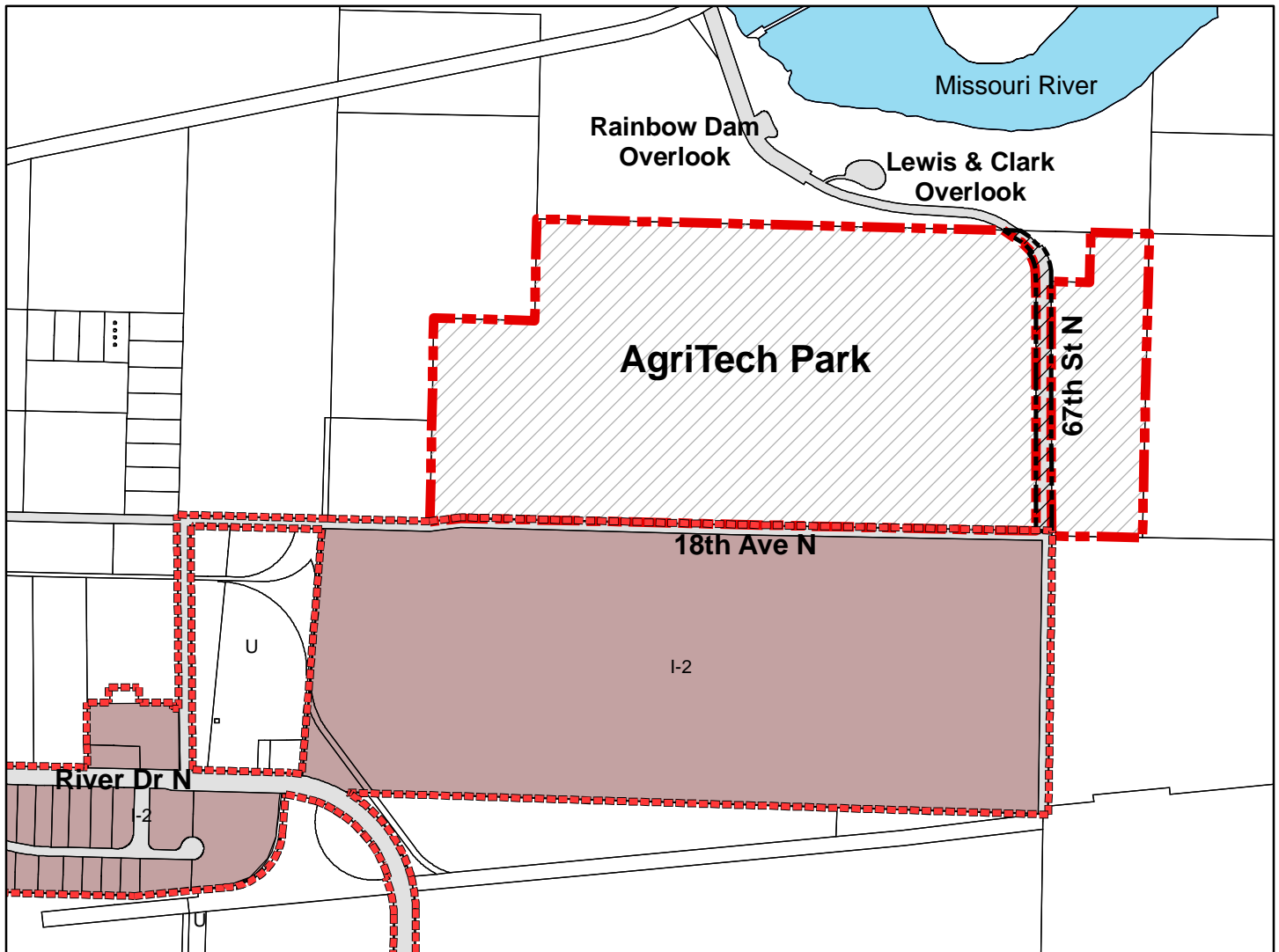
**Alternatives:** The City Commission could deny acceptance of Ordinance 3097 on first reading and not set the public hearing. However, such action would deny the applicant due process and consideration of a public hearing, as provided for in City Code and State Statute.

**Attachments/Exhibits:**

- A. Zoning Map
- B. Aerial Photo
- C. Findings of Fact
- D. Final Plat
- E. PUD Zoning Ordinance 3097
- F. Updated Annexation Agreement

Cc: Jim Rearden, Public Works Director  
Dave Dobbs, City Engineer  
Patty Cadwell, Neighborhood & Youth Council Coordinator  
Randall McCamley, Fire Chief  
Susan Conell, Cascade County, [sconell@cascadecountymt.gov](mailto:sconell@cascadecountymt.gov)  
Great Falls Development Authority, Brett Doney, [bdoney@gfdevelopment.org](mailto:bdoney@gfdevelopment.org)  
John Juras, TD&H Engineering, [john.juras@tdhengineering.com](mailto:john.juras@tdhengineering.com)

# Exhibit A Zoning Map





# Exhibit B Aerial Map



- City Limits
- AgriTech Park
- Right of Way Being Annexed
- Tracts of Land



AgriTech Park

## Exhibit C

### Findings of Fact (Prepared in Response to 76-3-608(3) MCA)

#### **PRIMARY REVIEW CRITERIA**

**Effect on Agriculture:** The subject property is currently being utilized for dry-land crop production. Annexation zoning and subdivision of the subject property will take ±196.549 acres out of agricultural production. No effects on agricultural water user facilities have been identified for this project. The subdivider does not anticipate any impacts to the downstream irrigation water users with this subdivision.

#### **Effect on Local Services:**

Water/Sewer - Access to municipal infrastructure and public services is available in the vicinity of the subject property. The Applicant has already constructed a portion of the required 16-inch water main and submitted plans for sewer mains to the Department of Public Works. The construction of this infrastructure is being done at the Applicant's risk. The City will be required to maintain new sewer and water infrastructure as a part of this application. Public Works has recommended conditions requiring that infrastructure for each lot be reviewed before development to ensure the infrastructure meets the demands and requirements for each specific development.

Streets - The Applicant is required to provide a 2-inch overlay of 18th Avenue North within 2 years of annexation and required to bring 67th Avenue North to a standard similar to 18th Avenue North at such time as development is proposed on Lots 7-10. The Applicant is not required to provide the standard curb and gutter as a part of this application. The City will ultimately be responsible to maintain the portion of 67th Street North being annexed as a part of this application.

Stormwater - The City Engineer is requiring the development to restrict off-site flows to predevelopment levels by developing retaining and detaining systems on each lot, which will be reviewed by the City's Public Works Department. In addition, the Applicant will be responsible, as a condition of the subdivision, to mitigate all downstream impacts caused by the development.

Police/Fire - The subdivision will receive law enforcement and fire protection service from the City of Great Falls. The nearest fire station is ±3.2 miles from the subdivision site. The Fire Department has issued a memo expressing concerns that emergency response times may not meet the Applicant's expectations given the location of the proposed project. The Applicant is working with the Fire Department to update a Memorandum of Understanding related to fire protection services for the subdivision. Providing these services to the proposed development will be an increased cost to the City.

Parks/Trails - Per Montana Code Annotated 76-21-621(3)(b), park dedication is not required for subdivisions into parcels that are all nonresidential, therefore no parkland or payment in lieu of parkland is required. River's Edge Trail and Giant Springs State Park are in close proximity to the subject property. The Applicant should mitigate adverse impacts to these parks/trails.

**Effect on the Natural Environment:** The Applicant has not provided enough information related to soils or the water quality or quantity of surface or ground water for staff to be sure there are no adverse effects to said features. As a condition of approval, the developer will also prepare and adhere to a professional study to determine if the proposed stormwater detention and/or retention ponds and other drainage measures will have any impacts on the subsurface water table, and



potentially the exiting overlooks and drainages on surrounding properties. The study shall include the impact of the water from the proposed stormwater systems flowing through the adjacent Fish, Wildlife and Parks property and Whitmore Ravine and how it will impact erodible soils in the existing coulees that are proposed for use as overflow stormwater drainage. Further, the owner shall remedy damage to downstream property caused by stormwater run-off from the subdivision at no cost to the City.

The subdivision is located in close proximity to the Missouri River, River's Edge Trail and Lewis and Clark and Rainbow Dam Overlooks and Lots 1 and 8 are of particular concern due to their prominence above these features.

The Applicant is proposing a 150-foot buffer along the northern boundary of the subdivision where it abuts PPL Montana or Montana Fish & Wildlife property that precludes the construction of any buildings. In addition the City is requiring building height restrictions as follows:

| Distance from North Property Line (where subdivision abuts PPL Montana or State of Montana Property) | Maximum Building Height                   |
|--|---|
| 0 ft – 150 ft  | No building zone                          |
| 150 ft – 300 ft  | 50 feet                                   |
| 300 ft – 450 ft  | 100 feet                                  |
| 450 ft – 600 ft  | 150 feet                                  |
| 600 ft +   | Limited by federal/local regulations only |

**Effect on Wildlife and Wildlife Habitat:** The historical use of the property for agricultural purposes has limited the potential for development of significant areas of mature vegetation. No known endangered species or critical game ranges have been identified on the proposed subdivision. The subdivision is located close to the Missouri River in an area that is habitat for a large number of resident and migrating bird species. The Department of Fish, Wildlife & Parks has identified potential impacts including concerns for stormwater controls, noise, light, motor vehicle traffic, litter and visual impacts that the subdivision may cause to the adjacent State Park and associated wildlife and wildlife habitat. The Applicant will be required to provide covenants for the developer/owners of AgriTech Park that address issues related to litter, no-building zones, down lighting, color scheme and signage. A professional study shall be completed to determine impacts of stormwater run-off and mitigation techniques to manage said impacts of the proposed development on the adjacent State Park.

**Effect on Public Health and Safety:** Based on available information, the subdivision is not subject to abnormal potential natural hazards such as flooding, wildfire, snow or rockslides, nor potential man-made hazards such as high-pressure gas lines, high traffic volumes, or mining activity. The subdivision does have high voltage power lines that run from the southeast corner

to the northeast corner of the site. The Applicant will be required to demonstrate they have provided the necessary easements and proper safety measures to ensure the public health and safety from this hazard.

#### REQUIREMENTS OF MONTANA SUBDIVISION AND PLATTING ACT, UNIFORM STANDARDS FOR MONUMENTATION, AND LOCAL SUBDIVISION REGULATIONS

The subdivision meets the requirements of the Montana Subdivision and Platting Act and the surveying requirements specified in the Uniform Standards for Monumentation, and conforms to the design standards specified in the local subdivision regulations. The local government has complied with the subdivision review and approval procedures set forth in the local subdivision regulations.

#### EASEMENT FOR UTILITIES

The Applicant is to provide necessary utility easements to accommodate water mains, sanitary sewer mains, railroad, stormwater drainage and conveyances and private utilities to serve all lots in the subdivision.

#### LEGAL AND PHYSICAL ACCESS

Legal and physical access to the subdivision is provided by 18th Avenue North and 67th Street North. The City of Great Falls maintains 18th Avenue North as a public right-of-way. As a part of this application, 67th Street North is being annexed and will be dedicated and improved to provide access to each lot adjacent to 67th Street North.

A PLAT OF THE AGRITECH PARK ADDITION

A TRACT OF LAND LOCATED IN LOTS 8 & 9, THE SW1/4, AND THE SE1/4 OF SECTION 34, T21N, R4E, P.M.M., CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA

LAND OWNERS: JOHN R. LOY TRUST B ETAL, CASCADE COUNTY

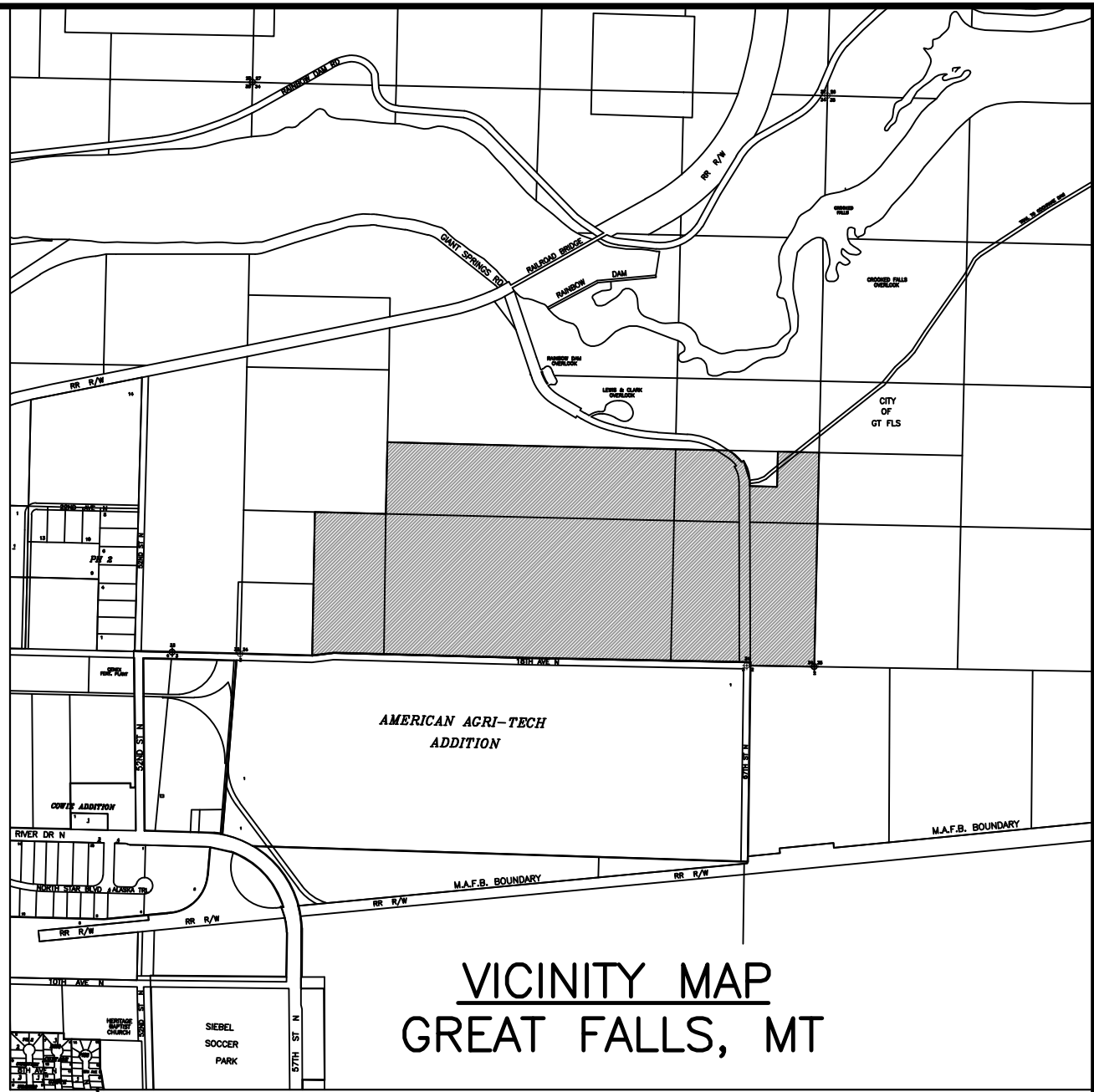
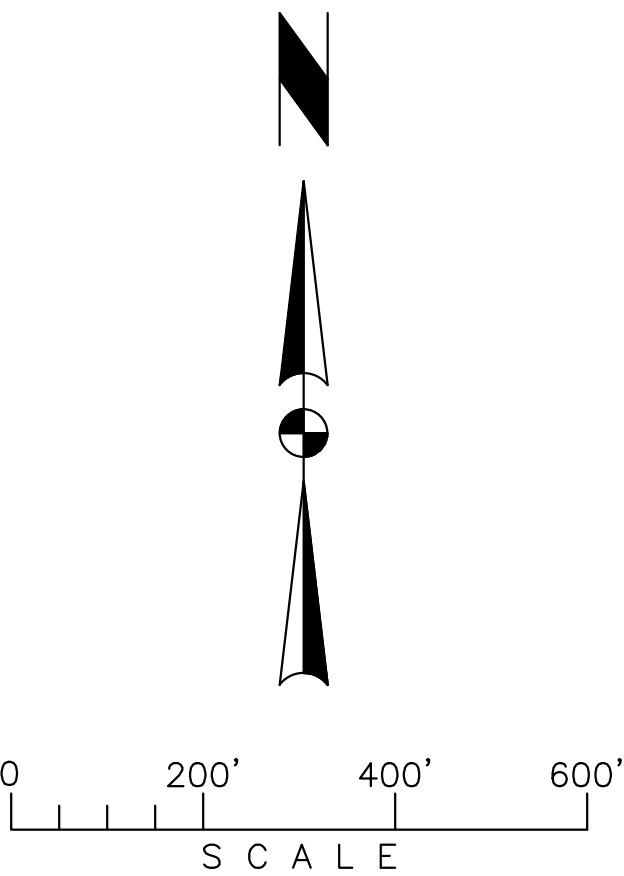
LEGEND

- SUBDIVISION BOUNDARY  
FOUND PROPERTY MONUMENT  
FOUND SECTION CORNER  
FOUND QUARTER CORNER  
NOT FOUND SECTION CORNER  
5/8" SET SECTION CORNER  
5/8" REBAR & 2" ALUM CAP  
SET PROPERTY MONUMENT  
5/8" REBAR & 15625LS YPC  
EASEMENT LINE  
LOT LINE  
SECTION LINE  
FIELD MEASUREMENT (F)  
PLATTED MEASUREMENT (P)  
GENERAL LAND OFFICE (GLO)

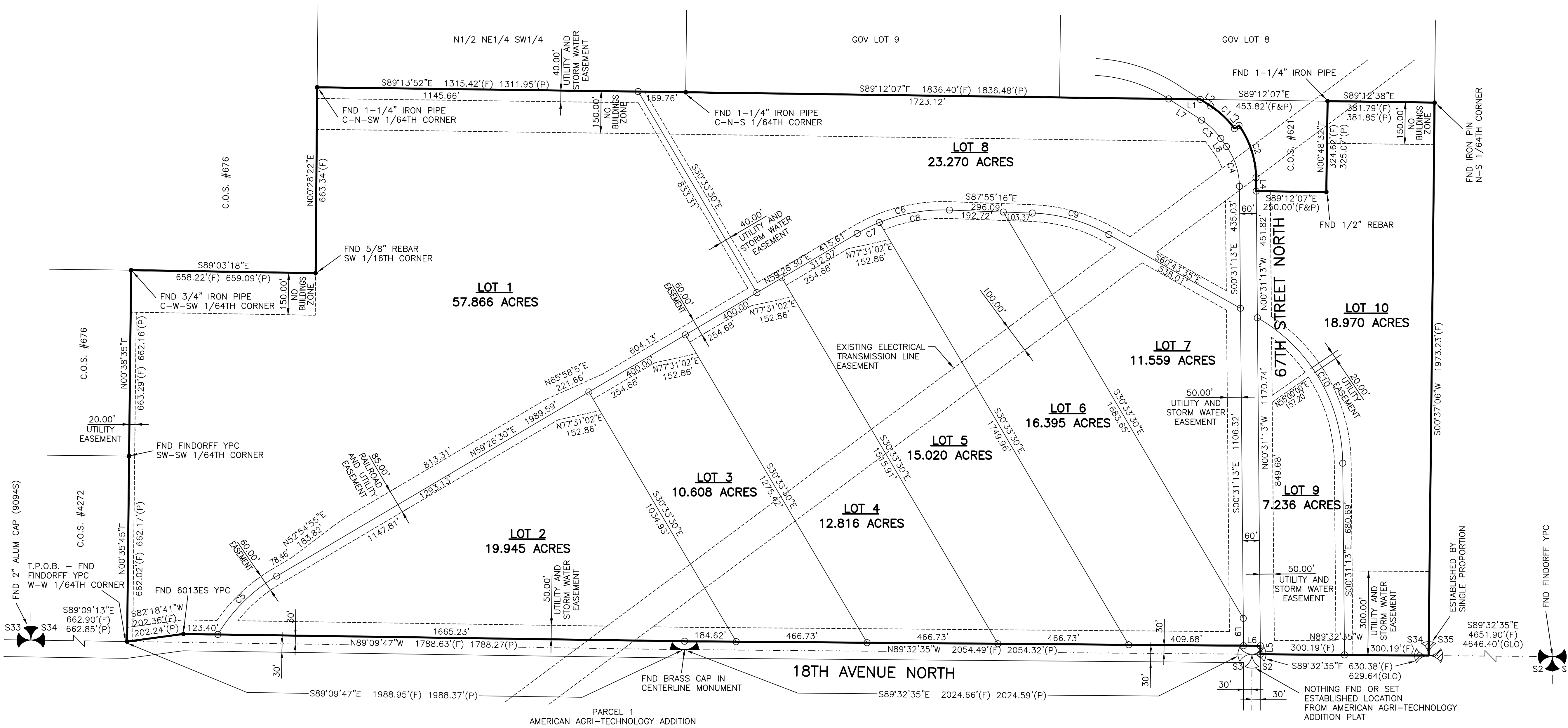
AREA OF LOTS = 193.684 ACRES  
AREA OF DEDICATED R/W = 2.865 ACRES  
TOTAL AREA = 196.549 ACRES

| LINE | BEARING     | DISTANCE |
|------|-------------|----------|
| L1   | S89°12'07"E | 113.28'  |
| L2   | S57°13'07"E | 43.86'   |
| L3   | N54°38'53"E | 20.00'   |
| L4   | S00°43'07"E | 47.88'   |
| L5   | N00°08'18"E | 30.00'   |
| L6   | N89°32'35"W | 60.01'   |
| L7   | S57°13'07"E | 139.94'  |
| L8   | S35°21'07"E | 35.04'   |
| L9   | S00°31'13"E | 97.68'   |

| CURVE | RADIUS  | DELTA ANGLE | ARC LENGTH | CHORD BEARING | CHORD LENGTH |
|-------|---------|-------------|------------|---------------|--------------|
| C1    | 309.16' | 21°52'00"   | 117.99'    | N48°17'07"W   | 117.27'      |
| C2    | 329.16' | 34°38'00"   | 198.97'    | N18°02'07"W   | 195.95'      |
| C3    | 249.16' | 21°52'00"   | 95.09'     | S46°17'07"E   | 94.51'       |
| C4    | 250.00' | 34°49'54"   | 151.98'    | S17°56'10"E   | 149.65'      |
| C5    | 603.80' | 28°19'45"   | 298.54'    | N45°16'37"E   | 295.51'      |
| C6    | 603.80' | 32°38'14"   | 343.94'    | N75°45'37"E   | 339.31'      |
| C7    | 603.80' | 08°22'25"   | 88.24'     | N63°37'42"E   | 88.16'       |
| C8    | 603.80' | 24°15'50"   | 255.70'    | N79°56'50"E   | 253.79'      |
| C9    | 603.80' | 27°11'41"   | 286.58'    | S74°19'25"E   | 283.90'      |
| C10   | 603.80' | 59°46'11"   | 1313.95'   | S30°24'18"E   | 601.70'      |



VICINITY MAP  
GREAT FALLS, MT



BASIS OF BEARING: GEODETIC NORTH ESTABLISHED WITH SURVEY QUALITY GPS  
PURPOSE OF SURVEY: TO CREATE A MAJOR SUBDIVISION

**THOMAS, DEAN & HOSKINS, INC.**  
ENGINEERING CONSULTANTS  
GREAT FALLS—BOZEMAN—KALISPELL—HELENA  
SPOKANE  
LEWISTON

DRAWN BY: DRK  
SURVEYED BY: DRK  
DATE: 2-27-12  
JOB NO. 11-079  
QUALITY CHECK: JJP  
FIELDBOOK

MONTANA  
WASHINGTON  
IDAHO

A PLAT OF THE AGRITECH PARK ADDITION

A TRACT OF LAND LOCATED IN LOTS 8 & 9, THE SW1/4, AND THE SE1/4 OF SECTION 34, T21N, R4E, P.M.M., CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA

LAND OWNERS: JOHN R. LOY TRUST B ETAL, CASCADE COUNTY

CERTIFICATE OF DEDICATION

We, the undersigned property owners, do hereby certify that we have caused to be surveyed, subdivided, and platted into lots, blocks, streets, and easements as shown by this plat hereunto included, the following described tract of land to wit:

A tract of land located in Government Lots 8 & 9, the Southwest Quarter, and the Southeast Quarter of Section 34, Township 21 North, Range 4 East, P.M.M., City of Great Falls, Cascade County, Montana and being more particularly described as follows:

Beginning at the Southwest corner of said Section 34; thence South 89°09'13" East along the Southerly line of said Section 34 and being the Northerly right-of-way of 18th Avenue North, a distance of 662.90 feet to the W-W 1/64th corner of said Section 34 and being the True Point of Beginning; thence North 00°35'45" East along the Easterly line of Certificate of Survey No. 4272, a distance of 662.02 feet to the SW-SW 1/64th corner of said Section 34; thence North 00°38'35" East along the Easterly line of Certificate of Survey No. 676, a distance of 663.29 feet to the C-W-SW 1/64th corner of said Section 34; thence South 89°03'18" East along the Southerly line of Certificate of Survey No. 676, a distance of 653.22 feet to the SW 1/16th corner of said Section 34; thence North 00°28'22" East along the Easterly line of Certificate of Survey No. 676, a distance of 663.34 feet to the C-N-SW 1/64th corner of said Section 34; thence South 89°13'52" East along the 1/64th line of said Section 34, a distance of 1315.42 feet to the C-N-S 1/64th corner of said Section 34; thence South 89°12'07" East along the 1/64th line of said Section 34, a distance of 1836.40 feet to the Easterly right-of-way of 67th Street North and being the Westerly line of Certificate of Survey No. 621; thence South 57°13'07" East along said Easterly right-of-way, a distance of 43.86 feet; thence along said Easterly right-of-way on a tangent curve to the right, having a Chord Bearing of South 46°17'07" East, a Chord Length of 117.27 feet, a Radius of 309.16 feet, a Delta Angle of 21°52'00", and an Arc Length of 117.99 feet; thence North 54°38'53" East along said Easterly right-of-way, a distance of 20.00 feet; thence along said Easterly right-of-way on a non-tangent curve to the right, having a Chord Bearing of South 18°02'07" East, a Chord Length of 195.95 feet, a Radius of 329.16 feet, a Delta Angle of 34°38'00", and an Arc Length of 198.97 feet; thence South 00°43'07" East along the said Easterly right-of-way, a distance of 47.88 feet; thence South 89°12'07" East along the Southerly line of Certificate of Survey No. 621, a distance of 250.00 feet; thence North 00°48'32" East along the Easterly line of Certificate of Survey No. 621, a distance of 324.62 feet to the 1/64th line of said Section 34; thence South 89°12'38" East along the 1/64th line of said Section 34, a distance of 381.79 feet to the N-S 1/64th corner of said Section 34; thence South 00°37'06" West along the Easterly line of said Section 34, a distance of 1973.23 feet to the Southeast corner of said Section 34; thence North 89°32'35" West along the Southerly line of said Section 34, a distance of 600.38 feet to the Easterly line of 67th Street North; thence North 00°08'18" East along said Easterly right-of-way, a distance of 30.00 feet; thence North 89°32'35" West along the Northerly right-of-way of 18th Avenue North, a distance of 2054.49 feet; thence North 89°09'47" West along said Northerly right-of-way, a distance of 1788.63 feet; thence South 82°18'41" West along said Northerly right-of-way, a distance of 202.36 feet to the True Point of Beginning and containing 196.549 acres.

The above described tract of land is to be known and designated as the AGRITECH PARK ADDITION, City of Great Falls, Cascade County, Montana, and the lands included in all streets and avenues shown on said plat are hereby granted and donated to the use of the public forever. The undersigned hereby also grants and donates unto the City of Great Falls all of the area shown as utility easements to allow for the non-exclusive use of the City and other firms, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, television, water, sewer or storm drain services to the public or to the private owners of the lots, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under, and across each as designated on this plat as "Utility Easement," to have and to hold forever.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_

RODGER DONEY, Trustee  
John R. Loy Trust B

State of Montana )  
: ss  
County of Cascade)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned, a Notary Public for the State of Montana, personally appeared, Rodger Doney, known to me to be the person who executed the Certificate of Dedication. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)  
Notary Public for the State of Montana  
Residing at Great Falls, Montana  
My commission expires \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_

HELENE DONEY, Trustee  
Carolyn B. Loy Trust

State of Montana )  
: ss  
County of Cascade)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned, a Notary Public for the State of Montana, personally appeared, Helene Doney, known to me to be the person who executed the Certificate of Dedication. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)  
Notary Public for the State of Montana  
Residing at Great Falls, Montana  
My commission expires \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_

COUNTY OF CASCADE, MONTANA

Printed Name \_\_\_\_\_

State of Montana )  
: ss  
County of Cascade)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned, a Notary Public for the State of Montana, personally appeared, \_\_\_\_\_, known to me to be the person who executed the Certificate of Dedication. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)  
Notary Public for the State of Montana  
Residing at Great Falls, Montana  
My commission expires \_\_\_\_\_

CERTIFICATE OF GREAT FALLS PLANNING BOARD

We, the undersigned, \_\_\_\_\_, President of the City Planning Board of the City of Great Falls, Cascade County, Montana, and \_\_\_\_\_, Secretary of said City Planning Board, do hereby certify that the accompanying plat of the AGRITECH PARK ADDITION, has been submitted to the said City Planning Board for examination by them, and was found by them to conform to law, and was approved at their regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
President, Great Falls Planning Board

\_\_\_\_\_  
Secretary, Great Falls Planning Board

CERTIFICATE OF CITY COMMISSION

I, Gregory T. Doyon, City Manager of the City of Great Falls, Montana, do hereby certify that the accompanying plat of the AGRITECH PARK ADDITION, was duly examined and approved by the City Commission of the City of Great Falls, at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
City Manager, City of Great Falls, Montana

CERTIFICATE OF PUBLIC SERVICE DIRECTOR

I, Jim Reardon, Public Service Director for City of Great Falls, Montana, do hereby certify that I have examined the accompanying plat of the AGRITECH PARK ADDITION, and the survey it represents, and find the same conforms to regulations governing the platting of lands, and to presently platted adjacent land, as near as circumstances will permit, and I hereby approve the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_

\_\_\_\_\_  
Public Works Director, City of Great Falls, Montana

CERTIFICATE DISPENSING WITH PARK OR PLAYGROUND

I, Gregory T. Doyon, City Manager for the City of Great Falls, Montana, do hereby certify that since the accompanying plat of the AGRITECH PARK ADDITION is a subdivision into parcels that are all nonresidential, the City Commission of the City of Great Falls, Montana, in accordance with Section 76-3-621(3)(c), M.C.A., dispensed with any park or playground requirements, during its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_

\_\_\_\_\_  
City Manager, City of Great Falls, Montana

CERTIFICATE OF AVAILABILITY OF MUNICIPAL SERVICES

I, Gregory T. Doyon, City Manager for the City of Great Falls, Montana, do hereby certify 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 said facilities of the City of Great Falls, Montana, and this certificate is made pursuant to Section 76-4-124, M.C.A., thereby permitting the Clerk and Recorder of Cascade County, Montana, to record the accompanying plat.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_.

\_\_\_\_\_  
City Manager -- City of Great Falls, Montana

CERTIFICATE OF COUNTY TREASURER

I, Jamie Bailey, County Treasurer of Cascade County, Montana, do hereby certify that I have examined the records covering the areas included in the accompanying plat of the AGRITECH PARK ADDITION, and find that taxes in same have been paid for the last five years.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_

\_\_\_\_\_  
County Treasurer, Cascade County, Montana

CERTIFICATE OF SURVEYOR

I, the undersigned, Daniel R. Kenczka, Professional Land Surveyor, Montana Registration No. 15625LS, do hereby certify that I supervised the survey of this AGRITECH PARK ADDITION, and platted same as shown on the accompanying plat and as described in accordance with the provisions of the Montana Subdivision and Platting Act, Sections 76-3-101 through 76-3-614, M.C.A., and Cascade County.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_

\_\_\_\_\_  
Daniel R. Kenczka, Montana Reg. No. 15625LS



**Exhibit E**

**ORDINANCE 3097**

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF PUD PLANNED UNIT DEVELOPMENT DISTRICT TO AGRITECH PARK ADDITION, LOCATED IN LOTS 8 & 9 IN THE SW1/4 & THE SE1/4 SECTION 34, TOWNSHIP 21 NORTH, RANGE 4 EAST, P.M.M., CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA

\* \* \* \* \*

WHEREAS, The Great Falls City Commission took action to annex the property known as AgriTech Park Addition located in Lots 8 & 9 in the SW1/4 & the SE1/4 Section 34, Township 21 North, Range 4 East, P.M.M., City of Great Falls, Cascade County, Montana, herein referred to as subject property, on November 7, 2012; and,

WHEREAS, the Great Falls City Commission at said meeting requested that the subject property be assigned a zoning classification of PUD Planned unit development; and,

WHEREAS, the applicant, Great Falls Development Authority, has agreed to petition the City of Great Falls to rezone said property, to PUD Planned unit development district classification; and,

WHEREAS, notice of assigning said zoning classification to said property, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 15<sup>th</sup> day of January, 2013, before final passage of said Ordinance herein; and,

WHEREAS, the approval of said zoning classification is subject to the developer fulfilling the conditions of approval listed in the Planning Advisory Board / Zoning Commission agenda report dated December 11, 2012, which include:

The underlying zoning for the Planned unit development shall be I-2 Heavy Industrial and development standards shall be those prescribed in Title 17, City Code, for I-2 zoning, except:

- 1) Helipads and Motor Vehicle Graveyards shall be prohibited uses.
- 2) Lot coverage for all 10 lots shall be limited a maximum of 70%.
- 3) A 50 foot building setback from all public rights-of-way shall apply to all 10 lots, also depicted as a “utility and storm water easement” on the final plat.
- 4) Where the north boundary line of the subdivision abuts State of Montana or PPL Montana property, building heights shall be limited to the following:

- 0 feet- 150 feet – “no buildings zone” as depicted on the final plat



- 150 feet- 300 feet – maximum 50 foot height limit
  - 300 feet-450- feet – maximum 100 foot height limit
  - 450 feet-600 feet – maximum 150 foot height limit
  - 600+ feet – maximum height limited only by federal/local regulations
- 5) Prior to start of construction, end-users shall prepare a Litter and Dust Control Plan for site construction and operations. End-users shall provide copies of Litter and Dust Control Plan to City for review and approval and shall follow litter and dust control provisions.
  - 6) Whenever it is commercially reasonable to do so, all exterior lighting shall be dark-sky friendly.
  - 7) Whenever it is commercially reasonable to do so, paint colors will match or be consistent with the natural surroundings of the subdivision.
  - 8) Freestanding signage shall be limited to monument signs no more than 12 feet in height and have a consistent design theme throughout the subdivision.
  - 9) Permanent outdoor storage shall be substantially screened from view from adjacent rights-of-way by landscaping (trees and other plant materials), and/or fences/walls. If screening is to consist of chain link fence with slats or sheet metal fencing, then trees must be planted along outside of fence line at a minimum 50 foot spacing.
  - 10) Any areas in the 150 foot “no buildings zone” disturbed by construction or development shall be replanted with native plant species. Whenever it is commercially reasonable to do so, any site landscaping shall use native plant species.
  - 11) The developer shall donate \$250 per acre at closing to Recreational Trails, Inc. for trail maintenance the first time each lot is sold in the subdivision.
  - 12) The developer shall be bound by the terms of the Annexation Agreement with regard to provision of public improvements including, but not limited to, rail and roadway improvements, stormwater management, and water and sewer infrastructure.
  - 13) End-users shall be bound by the terms of the Annexation Agreement with regard to provision of all on-site improvements.

and,

WHEREAS, following said public hearing, it was found and decided that the said rezoning 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 classification of said AgriTech Park Addition located in Lots 8 & 9 in the SW1/4 & the SE1/4 Section 34, Township 21 North, Range 4 East, P.M.M., City of Great Falls, Cascade County, Montana, be designated as PUD Planned unit development district, subject to the above listed conditions being fulfilled by the applicant.

Section 3. This ordinance 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 plat of AgriTech Park Addition located in Lots 8 & 9 in the SW1/4 & the SE1/4 Section 34, Township 21 North, Range 4 East, P.M.M., City of Great Falls, Cascade County, Montana, whichever event shall occur later.

APPROVED by the City Commission of the City of Great Falls, Montana on first reading December 18, 2012.

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Michael J. Winters, Mayor

ATTEST:

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Lisa Kunz, City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

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David L. Nielsen, Interim City Attorney

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

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do certify that I did post as required by law and as prescribed and directed by the City Commission, Ordinance 3097 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

(CITY SEAL)

---

Lisa Kunz, City Clerk

**Exhibit F**

**ANNEXATION AND DEVELOPMENT  
AGREEMENT FOR  
AGRITECH PARK ADDITION,  
LOCATED IN LOTS 8 & 9 IN THE  
SW1/4 & THE SE1/4 SECTION 34,  
TOWNSHIP 21 NORTH, RANGE 4 EAST,  
CASCADE COUNTY, MONTANA**

1. PREFACE

The following is an Annexation Agreement dated and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, between Great Falls AgriTech Park, LLC, a wholly owned subsidiary of GREAT FALLS DEVELOPMENT AUTHORITY, hereinafter referred to as “Great Falls AgriTech Park, LLC” and ROGER DONEY A/K/A ROGER L. DONEY, AS TRUSTEE OF TRUST B UNDER THE LAST WILL AND TESTAMENT OF JOHN R. LOY AND AS CO-TRUSTEE OF THE CAROLYN B. LOY TRUST UNDER WILL AND HELENE L. DONEY A/K/A HELENE DONEY AS CO-TRUSTEE OF THE CAROLYN B. LOY TRUST UNDER WILL, hereinafter referred to as “Trustees”, (Great Falls AgriTech Park, LLC and Trustees are hereinafter cumulatively referred to as “Owner”), and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as “City,” regarding the requirements for annexation to the corporate limits of the City and development of AgriTech Park Addition located in Lots 8 & 9 in the SW1/4 & the SE1/4 Section 34, Township 21 North, Range 4 East, P.M.M., City of Great Falls, Cascade County, Montana, hereinafter referred to as “Subdivision.”

2. SUPPORTING DOCUMENTS

- A. The Subdivision Plat of AgriTech Park Addition, prepared for the Owner, and filed in the office of the Clerk and Recorder of Cascade County, Montana, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
- B. Engineering drawings, specifications, reports and cost estimates prepared for the Subdivision, consisting of documents for, but not limited to, rail

service, sanitary sewer mains, lift station, water mains, storm drainage improvements, and paving, and conduit for street crossings for wiring for potential future public roadway lighting facilities. Said drawings and specifications are on file in the City Engineer's office.

- C. In compliance with Mont. Code Ann. 76-3-507(2)(b), the Owners shall provide financial surety on an incremental plan wherein the costs of installation of public improvements necessary to serve each lot within the Subdivision are provided for prior to the development thereof.
- D. Legal documents, including any articles of incorporation, bylaws, covenants, and declarations of ownership, property maintenance association, establishing and outlining responsibilities of the Owners within Subdivision, shall be filed in the Clerk and Recorder's Office of Cascade County, Montana.

### 3. AMENDMENTS

Minor changes to engineering documents and such revisions to the engineering drawings as are deemed appropriate and necessary by City's Engineer and City's Public Works Department and which do not materially affect the hereinabove mentioned Subdivision, can be made as follows:

- A. The proposed revision will be submitted to City's Public Works Department for review and, if approved, the City Engineer or Public Works Director will sign and adequately annotate the change.
- B. The annotated revision becomes a part of this Agreement upon City's Public Works Department approval.
- C. Changes during construction shall be made by change order approved by City's Public Works Department.
- D. "As Built" reproducible drawings shall be supplied to City's Engineer upon completion of the construction.
- E. All amendments to this Agreement, except as allowable above in this section, shall be in writing and approved by City and Owner.

### 4. UNFORESEEN POTENTIALITIES

It is mutually recognized, understood and agreed by City and Owner that subsequent to the date of this Agreement, events may occur and actions may be taken which are unforeseen by either or both parties hereto. Therefore, the parties may, by mutual subsequent agreement, modify the terms, conditions and covenants of this Agreement.

### 5. FEES AND CHARGES

- A. Except as otherwise set forth below, prior to annexation of Subdivision, Owner shall, pay the following fees:

- a. Major Plat Fee \$ 800.00
- b. Final Plat Fee \$ 300.00



|   |  |    |           |
|---|--|----|-----------|
| c.  | Zoning Application Fee   | \$ | 700.00    |
| d   | Annexation Application Fee   | \$ | 100.00    |
| e.  | Annexation Agreement Fee   | \$ | 200.00    |
| f.  | Resolution of Annexation Fee   | \$ | 100.00    |
| g.  | Storm Sewer Fee (\$250/acre 196.549 acres<br>per plat)                       | \$ | 49,137.25 |
| h.  | Recording fees for Agreement and<br>Resolution<br>(\$11 per page x 18 Pages) | \$ | 198.00    |
| Total fees made payable to City of Great<br>Falls |  | \$ | 51,535.25 |

- B. The Storm Sewer Fee of \$250 per acre (196.549 acres x \$250 = \$49,137.25) shall be assessed as lots are sold based on the area of each lot and shall be payable by the Owner at closing on the sale of each individual lot.
- C. Owner shall reimburse City for its expenses incurred in testing and acceptance of public utilities to serve Subdivision at the rates charged by City for said work at the time performed.
- D. Water tapping, water connection, sewer service tapping, and sewer connection fees will be assessed at the time of installation.
- E. The absence of any fee from this Agreement lawfully charged by the City in connection with construction activity associated with Subdivision shall not constitute a waiver by the City.

6. CITY ACCEPTANCE AND ZONING

City hereby accepts and approves the Subdivision, and will approve Lots contained therein for incorporation by annexation into the corporate limits of the City of Great Falls, Montana as PUD Planned Unit Development zoning classification, consistent with Ordinance 3074, filed of record at the City of Great Falls City Clerk's office.

It is hereby understood that the preceding language regarding zoning of said Subdivision does not preclude City from reclassifying said lots if an area wide reclassification is undertaken, in which event City agrees to reclassify said lots as a conforming use.

7. RESTRICTIONS ON DEVELOPMENT OF LOTS IN SUBDIVISION

- A. Owner hereby agrees to develop a rail-served heavy industrial Subdivision. There is no Phasing Plan for the Subdivision. In the event that lots are not developed in sequential order, as would be expected in a typical Subdivision, then infrastructure improvements to serve the intermediate lots shall be completed in conjunction with the lot being developed.
- B. Owner hereby agrees not to place or erect any structure requiring water and/or sanitary sewer service upon Lots 7 through 10 or attempt to further subdivide

the area defined by Lots 7 through 10 until contracts are executed for improving 67<sup>th</sup> Street North as described in Paragraph 2B above or as deemed necessary by the Public Works Department.

- C. As plans for infrastructure associated with all the undeveloped Lots in the Subdivision have presently not been formalized, Owner hereby agrees not to place or erect any structure or improvement and or infrastructure upon a lot within the Subdivision, or attempt to further subdivide the area defined by said Subdivision until plans for the necessary infrastructure have been reviewed and approved by City's Public Works Department.
- D. Building permits for structures on each Lot shall not be issued until the contracts for installation of the infrastructure improvements have been executed. Owner acknowledges that City will not permit the occupancy of any structure in Subdivision until all infrastructure serving said Lot of Subdivision have been installed, tested and accepted by City, which acceptance will not be unreasonably withheld by City.

## 8. IMPROVEMENT SCHEDULE

### A. WATER

Owner agrees to execute contracts within two (2) years of the date of this Agreement, to complete the installation of the water main improvements to serve Lots 1 through 4 of the Subdivision, according to plans referenced in Paragraph 2B above and filed in the City Engineer's office and in accordance with standards of City. This includes but is not limited to water main extension from its existing location in River Drive North, north to 18<sup>th</sup> Avenue North then east to the easternmost property line of proposed Lot 4. Water infrastructure shall consist of a 16" transmission main. Additional distribution mains may be required to serve the domestic and fire flow demands of each individual lot prior to development. Additionally, upon written approval from the City Public Works Director, City may grant extensions of the two-year completion date as deemed appropriate.

Owner further agrees to execute contracts for the installation of all water main improvements to serve each individual Lot before any building permits will be issued for any Lot or as deemed necessary by the Public Works Department.

Owner further agrees to complete water distribution improvements in accordance with City and State of Montana DEQ Circular 1 standards, specifications, and other requirements.

Owner has submitted water main extension plans to the Public Works Department for Subdivision. Approval of these plans by the Public Works Department in no way obligates the City to annex Subdivision. If design and

construction of said water main is completed before final approval of annexation for Subdivision it is at the Owners risk.

#### B. SEWER

Owner agrees to execute contracts within two (2) years of the date of this Agreement, to complete the installation of the sanitary sewer main improvements to serve Lots 1 through 4 of the Subdivision, according to plans referenced in Paragraph 2B above and filed in the City Engineer's office and in accordance with standards of City. This includes but is not limited to construction of a sewer system that is adequately designed to serve Lots 1-10 and approved by the Public Works Department and sanitary sewer main extension from its existing location in east of River Drive North north to 18<sup>th</sup> Avenue North then east to the easternmost property line of proposed Lot 4.

City agrees to allow Owner to provide temporary wastewater connections to Lots 2 through 4 according to plans referenced in Paragraph 2B above and filed in the City Engineer's office so that development of those lots can proceed prior to installation of the permanent wastewater lift station. Lot 1 shall permanently be on a private individual lift station. Owner agrees to include terms in the Lot 2 through 4 purchase agreements requiring Lot purchasers to remove the temporary sewer connections and to permanently connect to the gravity sewer located north of 18<sup>th</sup> Avenue North within 6 months of permanent wastewater lift station becoming operational. Said temporary connections may be abandoned in place once permanent connection is completed.

Contracting for completion of the wastewater lift station and other wastewater gravity and force mains must be completed before any development occurs on Lots 5, 6, 7, 8, 9 or 10 in accordance with standards of City and State of Montana Circular DEQ 2 standards, specifications and other requirements.

Owner has submitted sewer main extension and lift station plans to the Public Works Department for Subdivision. Approval of these plans by the Public Works Department in no way obligates the City to annex Subdivision. If design and construction of said sewer main is completed before final approval of annexation for Subdivision, it is at the Owners risk.

#### C. ROADWAYS

##### 18<sup>TH</sup> AVENUE NORTH

Owner agrees to execute contracts within two (2) years of the date of this Agreement, for the required improvements to 18<sup>th</sup> Avenue North adjacent to the Subdivision including a 2-inch overlay from the existing location of the 5-inch asphalt thickness as determined by the Public Works Department

to the eastern edge of Lot 4. Improvements shall be in accordance with plans referenced in Paragraph 2B above and filed in the City Engineer's office and in accordance with standards of City. Additionally, upon written approval from the City Public Works Director, City may grant extensions of the two-year completion date as deemed appropriate.

Owner further agrees to execute contracts for the improvements to 18<sup>th</sup> Avenue North to serve Lots 5 and 6 before issuance of building permits for those Lots or as mutually agreed between the Owner and the Public Works Department. In addition the Owner agrees to the following:

i. BICYCLE LANE

Owner agrees to stripe and sign a bicycle lane onto the existing 6 foot wide paved shoulder of 18<sup>th</sup> Avenue North as determined by the Public Works Department to accommodate bicycle traffic in the area. Installation of this improvement shall occur at the same time as the above described improvements to 18<sup>th</sup> Avenue North.

67<sup>TH</sup> STREET NORTH

Before issuance of building permits for Lots 7 through 10 Owner agrees to execute contracts for the required improvements to 67<sup>th</sup> Street North adjacent to the corresponding Lots of the Subdivision. 67<sup>th</sup> Street North shall include a geotextile, 12-inch thickness gravel subbase, 3-inch thickness crushed gravel and 5-inch thickness asphalt cement concrete. The width of the pavement shall be 36 feet. 67<sup>th</sup> Street North shall be built according to plans referenced in Paragraph 2B above and filed in the City Engineer's office and in accordance with standards of City. In addition the Owner agrees to the following:

i. BICYCLE LANE

Owner agrees to install a 6 foot wide paved bicycle lane on the east and west sides of 67<sup>th</sup> Street North to accommodate bicycle traffic in the area. Installation of this improvement shall occur at the same time as the above described improvements to 67<sup>th</sup> Street North.

D. RAIL LINE IMPROVEMENTS

Owner agrees to, prior to receiving a certificate of occupancy for any lot in the subdivision, complete the installation of the rail line improvements to serve Lot 1 of the Subdivision, according to plans referenced in Paragraph 2B above and filed in the City Engineer's office and in accordance with standards of City. This includes but is not limited to rail line extension from its existing location west of 52<sup>nd</sup> Street North east through the proposed American

AgriTech Addition then northeast across 18<sup>th</sup> Avenue North into project and extend to the most eastern edge of proposed Lot 1. Modifications to the approved rail line layout shall be made in writing per Paragraph 3 above.

Owner agrees all rail crossings of public rights-of-way should include signalization, including safe and controlled crossings for bicyclists and pedestrians. Any new rail crossings shall be in the form of an easement across public right-of-way, or other instrument acceptable to the City of Great Falls, and no financial obligation relating to the easement (construction, preparation of documents, recording, etc.) shall be due or provided by the City of Great Falls. Owner agrees that it is the Owner's or successors responsibility to maintain rail, railroad crossings and easements which cross 18<sup>th</sup> Avenue North and 67<sup>th</sup> Street North and further agrees that the City will have no maintenance or operation responsibility related to any railroad crossings necessary for rail to serve Subdivision.

The City's Public Works Department shall grant, subject to review, proposed easements across 18<sup>th</sup> Avenue North and 67<sup>th</sup> Street North as may be necessary or convenient for rail and other private utilities and the City shall be provided with copies of all plans for installed rail and utilities.

Owner further agrees to execute contracts for the installation of all rail line improvements to serve Lots 5, 6, 7, 8, 9 or 10 before building permits will be issued for Lots 5, 6, 7, 8, 9 or 10 or as deemed necessary by the Public Works Department.

#### E. MASTER DRAINAGE PLAN

Owner agrees to prepare and adhere to a professional study to determine if the proposed storm water retention pond(s) and other proposed measures at Subdivision will have any impacts on the subsurface water table, and potentially the existing improvements and drainages on surrounding properties. In addition, the study should include the impact of the water from the proposed storm water systems flowing through the adjacent State of Montana property and Whitmore Ravine and how it will impact erodible soils in the existing coulees that are proposed for use of overflow storm water drainage. Said study shall be submitted, reviewed and approved by the City Public Works Department prior to final approval of Subdivision by City Commission. Owner further agrees to be responsible for and to mitigate any negative impacts including negative impacts on any natural drainages that may arise as a part of said study.



Owner further agrees to reserve adequate land as required by a professionally prepared stormwater/drainage study and/or determined by the Public Works Department for storm water controls.

F. **STORM DRAINAGE REQUIREMENTS FOR EACH LOT**

Owner hereby agrees to prepare plans and design reports, and construct improvements in accordance with the City's Storm Drain Design Manual, which does not obligate the City to any improvement or maintenance responsibilities, prior to the development of each Lot. Said drainage plan shall be submitted, reviewed and approved by the City Public Works Department prior to City issuing a building permit for each Lot in the Subdivision. The drainage plan may require an agreement with upstream and or downstream contributor land owner(s) for permanent use of existing pond facilities, as well as repairs and future maintenance to these pond facilities.

Owner agrees that the lot buyers will be required to detain storm water on their lots as follows. Storm water detention requirements must meet City's Storm Drainage Design Manual requirements except that the design storm to be used for determining maximum outflow rates will be the Great Falls 2 Year, 2 Hour storm applied to the pre-development condition. Owner further agrees to provide drainage easements on the Final Plat for each Lot in the subdivision.

Each Lot buyer shall be responsible for and provide reasonable mitigation for any downstream impacts that may result from surface runoff from Subdivision, and this shall be a covenant running with the land.

9. **STORM DRAINAGE DISTRICT**

Owner hereby agrees to waive right to protest any future area wide storm drainage district for storm drainage facilities to pay a proportionate share of any future storm drainage improvements which service Subdivision that may be installed with or without a area wide storm drainage district. The term "area wide" as used herein, means any area larger than that covered by Subdivision, which is a contributor to the storm drainage demand of which Subdivision is a part.

10. **OFFSITE SEWER IMPROVEMENTS**

The parties agree that the existing availability of existing sewage collection system downstream of the development is at least 1.5 cfs (cubic feet per second) understanding that this may increase or decrease due to changing demands of other sewage contributors. Owner shall provide a proportional share of upsizing costs for segments of the NE Interceptor if peak hourly Subdivision flows exceed 1.5 cfs. Tax Increment Financing funds, if available, can be considered to fund upsizing costs

11. INFRASTRUCTURE EASEMENTS

Owner hereby agrees to provide to City, prior to Owner receiving service from said infrastructure, reasonable appropriate easements to accommodate said infrastructure to serve Subdivision. Owner further agrees to provide, when reasonably deemed necessary by City, any additional easements within the Subdivision to accommodate future infrastructure, with the location of said easements to be determined mutually between Owner and City.

12. EASEMENT AGREEMENTS FOR INFRASTRUCTURE TO SERVE DEVELOPMENT FROM ADJACENT LAND OWNERS

Owner hereby agrees to provide City with a copy of all easement agreements between Owner and adjacent property owners for all utility easements necessary to install improvements, including rail service, sanitary sewer mains and water mains to serve Subdivision prior to approval of the final plat of Subdivision, and prior to any infrastructure construction. Storm Drainage easements to serve Subdivision shall be secured prior to issuance of building permits.

The City hereby grants Owner, and/or Owners shall retain, easements permitting the planned railroad to cross 18<sup>th</sup> Avenue North and 67<sup>th</sup> Street North at the most appropriate and convenient location to be fixed and established by Owner in approximately the location depicted on Exhibit A, subject to review and approval by the City's Public Works Department. These easements shall be further documented and defined in a document to be prepared, executed and recorded within a reasonable time after the execution of this Agreement.

The parties further understand and agree that Owner shall retain the necessary and convenient easements and accesses over and across the future improvement of 67<sup>th</sup> Street North, including but not limited to all necessary and convenient easements for the installation of railroad crossings and private utilities, which are subject to review and approval by the City's Public Works Department. Any existing easements which may continue in effect after annexation shall be made subject to the terms and provisions of this Agreement and the easements, grants and reservations described herein.

13. TRANSPORTATION FACILITIES

Owner agrees to prepare a traffic impact analysis in compliance with City Code before construction of a project that would result in a cumulative traffic generation, from all tenants in the subdivision, of 250 or more peak hour trip ends.

Owner further agrees that each lot shall have adequate turn-around room for all anticipated traffic. In addition, the city of Great Falls and Owner shall work with Cascade County to prohibit truck traffic on Giant Springs Road, north of 67<sup>th</sup> Street North.

14. FUTURE INFRASTRUCTURE FACILITIES

Owner hereby agrees to waive right to protest any future area wide special improvement district for infrastructure to pay a proportionate share of any future infrastructure improvements which service Subdivision that may be installed with or without an area wide special improvement district. The term “area wide” as used herein, means any area larger than that covered by Subdivision, which is a contributor to the infrastructure demand of which Subdivision is a part.

15. REQUIRED UPSIZING OF IMPROVEMENTS

Owner agrees to install any oversized infrastructure improvements as determined by the City’s Public Works Department. City agrees to reimburse the Owner for the over sizing cost of any infrastructure within (30) day of its acceptance of the installation and appropriate billing; including provisions for adequate information and documentation supporting said costs. These costs to the City shall be eligible for funding from the proposed TIFD if expansion of said district should occur.

16. REIMBURSEMENT AGREEMENT

The infrastructure and improvements will be designed, installed or constructed by the Owner hereunder, including public water, sewer, paving, roadway improvements, and storm drain, may exceed the capacity necessary for the development and may benefit other property and other property owners (“Beneficial Improvements”). All costs associated with the Beneficial Improvements which are satisfied by Owner with funds from non-public sources (“Private Improvement Funds”) shall be allocated among all parties benefitting from the Beneficial Improvements in proportion to the benefit each receives which shall be measured based on usage, frontage, burden or such other commercially reasonable means of allocation. City Agrees to assess and collect from each third party benefitting from the Beneficial Improvements their proportional share of the Private Improvement Funds using all lawful means available to the City (“Reimbursement Funds”). The City shall collect the Reimbursement Funds at or prior to the approval of any subdivision, annexation or grant of building permits for each parcel of property benefitting from the Beneficial Improvements. All Reimbursement Funds shall be remitted to Owner upon collection by the City.

Owner shall provide City with its actual cost of the installation of the hereinabove mentioned “Beneficial Improvements” within twelve (12) months after approval and acceptance thereof by City. In the event of Owner’s failure to provide City with said cost data, City shall not be obliged to undertake collection of the reimbursement provided for herein, and the responsibility for collection thereof shall be that of Owner, its heirs, successors and assigns. Failure of Owner to provide City with said cost data for reimbursement as herein required shall in no way alter the

obligation of any other party to make reimbursement as provided for herein, said failure affecting only City's obligation to assist in collection thereof

17. MAINTENANCE DISTRICTS

Owner waives its right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to rail, fire hydrant, street maintenance and Special Lighting Maintenance Districts and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to lots in Subdivision.

18. SOIL AND/OR GROUNDWATER CONDITIONS

The owner of the property in the Subdivision shall indemnify, hold harmless and defend the City of Great Falls, its officers, agents, servants and employees and assigns from and against all claims, debts, liabilities, obligations and costs including reasonable attorney fees, that arise from, result from or relate to adverse soil or groundwater conditions on the owner's property in the Subdivision. This indemnity obligation runs with the land. Upon the transfer of ownership of the property in the Subdivision, the prior owner's (whether the Owner that made this annexation agreement or a subsequent owner) indemnity obligation for adverse soil or adverse groundwater conditions for the transferred property is released and the indemnity obligation runs to the new owner of the property. Only the owner of the parcel of property with the adverse conditions at the time the City incurs the claim, debt, liability, obligation or cost is obligated to indemnify and no owner of property in the Subdivision is obligated to indemnify for adverse conditions on property owned by someone else.

This indemnification by the owner of the property in the Subdivision shall apply unless such damage or injury results from the negligence, gross negligence or willful misconduct of the City.

19. WAIVER OF PROTEST OF ANNEXATION

Owner does hereby waive any and all statutory procedure notice on right of protest to annexation of Subdivision, as provided for by State law.

20. ANNEXATION PREREQUISITES

Subdivision is contiguous to City; is not included within the boundary of any other incorporated municipality; and is not a part of any fire district existing or organized under any of the provisions of Chapter 33, Title 7, of the Montana Code Annotated. Subdivision, upon annexation to City and completion of the contemplated public water system to serve Subdivision, will be provided fire protection services by City comparable to that provided other incorporated properties.

21. PUBLIC ROADWAY LIGHTING

In connection with the lawful implementation of any future Special Lighting Maintenance Districts for public roadway lighting facilities that service Subdivision, Owner agrees to pay for proportionate share of the costs associated with roadway lighting which service Subdivision that may be installed with or without a Special Lighting Maintenance District.

22. BINDING EFFECT

The provisions, covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns; and any and all parties claiming by, through, or under them, shall be taken to agree and covenant with each of the parties to the Agreement, their devisees, heirs, successors and assigns, to conform to the provisions, covenants and terms of this Agreement.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day, month and year first hereinabove written.

**CITY OF GREAT FALLS**  
A Municipal Corporation of the State of Montana

---

Gregory T. Doyon, City Manager

ATTEST:

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Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

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David L. Nielsen, Interim City Attorney

Great Falls AgriTech Park, LLC, Inc.

By: [Signature]  
Great Falls Development Authority  
Brett M. Doney, President

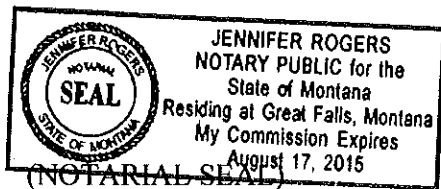
State of Montana )

:SS.

County of Cascade

On this 14th day of September, in the year A. D. Two thousand and twelve, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Brett M. Doney whose name is subscribed to the instrument within and acknowledged to me that (s)he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Jennifer Rogers  
Notary Signature  
Jennifer Rogers  
Notary Signature Printed  
Notary Public for the State of Montana  
Residing at Great Falls, Montana  
My commission expires Aug. 17, 2015

Roger L. Doney  
ROGER DONEY A/K/A ROGER L. DONEY,

as Trustee of Trust B under the Last Will and Testament of John R. Loy and as Co-Trustee of the Carolyn B. Loy Trust under Will

Helene L. Doney

HELENE L. DONEY A/K/A HELENE DONEY,  
as Co-trustee of the Carolyn B. Loy Trust under Will

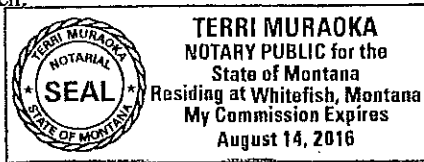
State of MONTANA)

:SS.

County of FLATHEAD

On this 31<sup>st</sup> day of OCTOBER, in the year A. D. Two thousand and twelve, before me, the undersigned, a Notary Public for the State of MONTANA, personally appeared ROGER DONEY whose name is subscribed to the instrument within and acknowledged to me that (s)he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



(NOTARIAL SEAL)

Terri Muraoka

Notary Signature

TERRI MURAOKA

Notary Signature Printed

Notary Public for the State of MONTANA

Residing at WHITEFISH

My commission expires 8/14, 2012

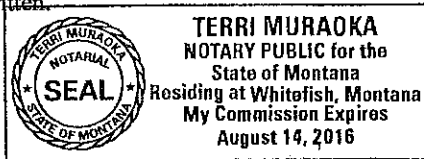
State of MONTANA)

:SS.

County of FLATHEAD

On this 31<sup>st</sup> day of OCTOBER, in the year A. D. Two thousand and eleven, before me, the undersigned, a Notary Public for the State of MONTANA, personally appeared HELENE L. DONEY whose name is subscribed to the instrument within and acknowledged to me that (s)he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



(NOTARIAL SEAL)

Terri Muraoka

Notary Signature

TERRI MURAOKA

Notary Signature Printed

Notary Public for the State of MONTANA

Residing at WHITEFISH

My commission expires 8/14, 2012