



**CITY OF GREAT FALLS  
COMMISSION AGENDA REPORT**

---

**Item:** Amended Annexation Agreement pertaining to City View Subdivision, legally described as Tract 2, Certificate of Survey 4705, located in the N½ NE¼ of Section 36, Township 21 North, Range 4 East, PMM, Cascade County, Montana

**From:** Galen Amy, Planner II, Planning and Community Development

**Initiated By:** Damon Carroll & Lee Janetski, Property Owner and Developer

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

**Action Requested:** City Commission approve the Annexation Agreement pertaining to City View Subdivision

---

**Suggested Motions:**

1. Commissioner moves:

“I move that the City Commission (approve/disapprove) the Annexation Agreement pertaining to City View Subdivision.”

2. Mayor calls for a second, discussion, and calls for the vote after each motion.

---

**Recommendation:** At the public hearing held on August 19, 2014, the City Commission adopted Resolution 10088 annexing the subject property, adopted Ordinance 3123 assigning City zoning of R-5 Multi-family medium density district, approved the Final Plat, and approved the Annexation Agreement for City View Subdivision. However, between the time that staff submitted the agenda packet to the City Manager's Office and the public hearing date, some points of the Annexation Agreement were clarified and/or amended, including adjustments to the final fees and charges agreed upon by the owner. The property owner signed and notarized the Agreement on August 18, 2014, but copies did not make it to the City Commission in time for the public hearing on August 19, 2014.

**Concurrences:** Representatives from the City's Public Works, Park and Recreation, and Fire Departments have been involved throughout the review and approval process for this project and are all in agreement to the terms and conditions of the amended Annexation Agreement attached.

**Fiscal Impact:** Providing services is expected to be an additional cost to the City. Increased costs may be covered by increased tax revenues from improved properties.

**Alternatives:** Denial would counter previous approval granted at the August 19, 2014 public hearing.

**Attachments:** Annexation agreement

Cc: Jim Rearden, Public Works Director  
Dave Dobbs, City Engineer  
Patty Cadwell, Neighborhood Council Coordinator  
Susan Conell, Cascade County Planning Director, sconell@cascadecountymt.gov  
Damon Carroll, owner/developer, carrollholdings@gmail.com  
Lee Janetski, owner/developer, pheasantrunbuilders@gmail.com  
Dan O'Leary, builder, signaturehomesmt@gmail.com

**AMENDED  
ANNEXATION AGREEMENT FOR  
CITY VIEW SUBDIVISION  
TRACT 2, CERTIFICATE OF SURVEY 4705,  
N1/2 NE1/4, SECTION 36, TOWNSHIP  
21 NORTH, RANGE 3 EAST, P.M.M.,  
CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between DAMON CARROLL, hereinafter 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 City, of Tract 2, Certificate of Survey 4705, in the N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M., Cascade County, Montana, hereinafter referred to as "Subject Property." The City is authorized to enter into this agreement by 17.68.010-040 of the Official Code of the City of Great Falls.

2. SUPPORTING DOCUMENTS

- A. Final plat of said Subdivision, prepared by Henen Land Surveying, and filed of record in the Clerk and Recorder's Office of Cascade County, Montana.
- B. Donation Quit Claim Deed for the transfer of ownership of Lot 1 to the City, filed of record in the Clerk and Recorder's Office of Cascade County, Montana (Document #: \_\_\_\_\_).
- C. Certificate of Survey 4705, filed of record in the Clerk and Recorder's Office of Cascade County, Montana.
- D. Final engineering drawings, specifications and cost estimates prepared by Woith Engineering, consisting of documents for storm drainage improvements, paving, and conduit for wiring for potential future public roadway lighting facilities. Said drawings and specifications are on file in the City Engineer's office.
- E. Annexation Agreement for Water Tower Park Addition, in N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, Cascade County, Montana, filed of record in the Clerk and Recorder's Office of Cascade County, Montana (RO189248 GFA). This document details requirements for improvements to 14th Street Northeast.

F. Memorandum of Understanding for Certificate of Survey of Marks 14E1 and 14X, dated October 19, 2010, filed of record in the City Clerk's Office of the City of Great Falls, which also details the extension of 14th Street Northeast.

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 Certificate of Survey, 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 time this agreement was entered into, events may occur and actions may be taken which were unforeseen by either party or both parties hereto. In this perspective, it is, therefore, agreed that the parties may by mutual subsequent written agreement modify the terms, conditions and covenants of this Agreement.

5. FEES AND CHARGES

A. Prior to annexation of the Subject Property, Owner shall pay, the following fees as provided by City policy and resolution;

- a. Storm Sewer Fee (\$250/acre x 1.816 acres) \$ 454.00
- b. Park Fee in Lieu of Land Dedication  
(24 dwelling units x 0.03 acres per dwelling  
unit = 0.72 acres (31,363.2 sf.) x 11% x \$0.35 per sf.) \$ 1,207.48
- c. Proportionate share of previously installed offsite storm  
drain improvements by the City in Skyline Heights  
Additions (\$2,934.50/acre x 1.55 acres (Lots 2-7) refer to  
Cost Estimate for Storm Drainage Improvements at  
11th St NE & 34th Ave NE – O.F. 1282.1 prepared by  
City Engineers Office 12/16/2008) \$ 4,548.47
- d. Proportionate share of 36th Ave NE roadway  
improvements abutting Lots 2-7 (50% of 35 f. wide  
standard residential street, refer to Cost Estimate

Per Lineal Foot - Standard Residential Street prepared by City Engineers Office 8/4/2014)	\$ 44,238.71
e. Proportionate share of 36th Ave NE roadway improvements abutting Lot 1 (25% of 35 ft. wide standard residential street, refer to Cost Estimate Per Lineal Foot - Standard Residential Street prepared by City Engineers Office 8/4/2014)	\$ 5,731.25
f. Proportionate share of 11th St NE roadway improvements (50% of cost estimate \$2,737.88 refer to Estimate of Probable Cost - 11th St Half-Street prepared by Woith Engineering 7/14/2014)	\$ 1,368.94
g. Proportionate share of public storm drain improvements to be installed under City contract concurrently to serve the Subject Property and surrounding area	\$ 52,316.96
h. Recording fees for Agreement and Resolution (\$11 per page x 11 pages)	\$ 121.00
i. Credit - Skyline Heights Apartments sidewalk (\$8.75/lf x 322.2 lf)	\$ (2,819.25)
<hr/> Total fees made payable to City of Great Falls	<hr/> \$ 107,167.56

These fees are in addition to the \$700 fee for establishing City zoning, \$100.00 fee for Annexation Application, \$200.00 fee for Annexation Agreement, and \$100.00 fee for Resolution, and \$1,675.00 (\$1,500 + \$25/lot times 7 lots) for the Final Plat which have been paid prior to this Annexation Agreement.

- B. A financial surety, including but not limited to a City suspense account, escrow account, or other City-approved surety, shall be established in the names of the owner and City to cover the estimated costs. At such time that the actual cost of the above referenced roadway improvements are definitely determined, amounts equal to said costs shall be transferred from the above referenced surety account to City Public Works. Upon said transfer(s), any remaining balance in the above referenced accounts shall be released to Owner.
- C. Actual construction and inspection costs for the public roadway improvements on 11th Street Northeast and the storm drain extension and storm water detention pond (described in paragraphs 5.A.f. and 5.A.g. above, and 6.C. and 6.E. below) will be tracked and compiled during the bidding and construction process. Each Party's cost share will then be determined based on the reconciliation of actual construction and inspection costs, plus five (5) percent for engineering design cost.
- D. Owner or its successors or assigns shall reimburse City for its expenses incurred for inspection, testing and acceptance of public utilities and streets to serve Subject Property at the rates charged by City for said work at the time performed.
- E. Water service tapping and water and sewer service connection fees will be assessed at the time of installation.

F. The absence of any fee from this agreement which is lawfully charged by the City in connection with construction activity associated with Subject Property shall not constitute a waiver by the City.

6. PUBLIC IMPROVEMENTS

A. 36th AVENUE NORTHEAST PUBLIC IMPROVEMENTS

Owner hereby agrees to pay for the proportionate share (50 percent) of the cost for a standard City residential street section (paving, curb & gutter, etc.) of 36th Avenue Northeast adjacent to Lots 2-7 of the Subject Property, estimated at \$44,238.71, as shown above in paragraph 5.A.d. per guidelines established in paragraph 5.B.

The Owner hereby agrees to divide with the City the proportionate share (50 percent each Party) of a standard City roadway section (paving, curb & gutter, etc.) of 36th Avenue Northeast adjacent to Lot 1 of the Subject Property, estimated at \$5,731.25 for the street improvements for each party. The Owner agrees to pay the above amount, as shown above in paragraph 5.A.e. per guidelines established in paragraph 5.B.

At time of construction, the City hereby agrees to installation of sidewalk in the public right-of-way abutting Lot 1 of the Subject Property along 36th Avenue Northeast. The owner hereby agrees to installation of the remaining portion of sidewalk in the public right-of-way abutting Lots 2-7 of the Subject Property along 36th Avenue Northeast, in accordance with Title 17 - Land Development Code of the Official Code of the City of Great Falls.

B. 14<sup>TH</sup> STREET NORTHEAST PUBLIC IMPROVEMENTS

The cost of a standard City roadway section and 8-inch water main from the existing terminus of 14<sup>th</sup> Avenue Northwest northerly to 36<sup>th</sup> Avenue Northeast in the amount of \$32,000.00 has been escrowed with the City per a previous agreement with the developers of Water Tower Park Addition for the development of said improvements.

The installation of said public improvements shall occur at no cost to Owner per a Memorandum of Understanding for Certificate of Survey for Marks 14E1 and 14X dated October 19, 2010 and filed in the City Clerk's Office.

At time of construction, Owner agrees to install the sidewalk, to serve the Subject Property, in 14<sup>th</sup> Street Northeast, in accordance with Title 17 - Land Development Code of the Official Code of the City of Great Falls and the terms of the Annexation Agreement for Water Tower Park Addition, in N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, Cascade County, Montana, filed of record in the Clerk and Recorder's Office of Cascade County, Montana (RO189248 GFA).

C. 11TH STREET NORTHEAST PUBLIC IMPROVEMENTS

The Owner hereby agrees to divide with the City the proportionate share (50 percent) of a standard City roadway section (paving, curb & gutter, etc.) of 11th Street Northeast adjacent to Lot 1 of the Subject Property, estimated at \$1,368.94 for street improvements

and design services. The owner agrees to pay the above amount, as shown above in paragraph 5.A.f. per guidelines established in paragraph 5.B.

At time of construction, the City shall install sidewalk in the public right-of-way abutting 11th Street Northeast, adjacent to Lot 1 of the Subject Property. The owner agrees to installation of the remainder portion of sidewalk in the public right-of-way abutting 11th Street Northeast, adjacent to Lot 2 abutting the Subject Property, in accordance with Title 17 - Land Development Code of the Official Code of the City of Great Falls.

D. SANITARY SEWER MAIN EXTENSION

The owner shall design and pay for the public sanitary sewer main extension east from 11th Street Northeast, or west from 14th Street Northeast, along the south side of the Subject Property in the drive aisle and establish a public utility and access easement. This main shall serve Lots 2-7 of the Subject Property.

E. STORM WATER EXTENSION & STORM WATER DETENTION POND

The Owner hereby agrees to pay the proportionate share for public storm drain improvements to be installed concurrently with subdivision of the Subject Property, estimated in the amount of \$52,316.96 (as calculated in the 11th Street NE and 36th Avenue Northeast Storm Drain Improvements Cost Estimate/Splits spread sheet prepared by City Engineers Office 07/11/2014). The owner agrees to pay the above amount, as shown above in paragraph 5.A.g. per guidelines established in paragraph 5.B.

Further, both parties agree that the estimated amount above will be reconciled using actual construction and inspection costs plus five percent (5%) for engineering design using a contributory drainage basin area method used in the 11th Street Northeast and 36th Avenue Northeast Storm Drain Improvements Cost Estimates/Splits spreadsheet dated 7/11/2014. The Owner's contributory drainage basin area is Lots 2-7 (1.55 acres) and the City's is Lot 1 public right-of-way and areas outside the Subject Property (4.04 acres).

7. OTHER REQUIRED IMPROVEMENTS

Owner further agrees, per the approved conditions of approval by City Commission, to install curbing along the south property line and establish a shared maintenance agreement between the properties for the shared drive aisle abutting the Subject Property's south property line prior to issuance of a Certificate of Occupancy by the Building Department.

8. SOIL AND/OR GROUNDWATER CONDITIONS

The owner of the Subject Property 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, fines, penalties, obligations and costs including reasonable attorney fees, that arise from, result from or relate to adverse soil or groundwater conditions on the Subject Property. This indemnity obligation runs with the land. Upon the transfer of ownership of the Subject Property, 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 as to that owner 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, fine, penalty, obligation or cost is obligated to indemnify and no owner of property is obligated to indemnify for adverse conditions on property owned by someone else.

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

9. RESTRICTIONS ON CERIFICATE OF OCCUPANCY

Certificates of Occupancy for Subject Property shall not be issued until the contracts for installation of all public improvements, except 36th Avenue Northeast, have been executed. Owner acknowledges that City will not permit the occupancy of any residential structure on Subject Property until street improvements and water and sanitary sewer mains related to Subject Property have been installed, tested and accepted by City, which acceptance will not be unreasonably withheld by City.

The City agrees that upon awarding a contract for public improvements that said contract will prioritize the construction of the utilities in 11th Street Northeast and 14th Street Northeast, storm water mains and detention pond, and public roadway improvements shall occur as listed and prior to any other associated public improvements in said contract project scope.

10. MAINTENANCE DISTRICTS

Owner hereby agrees to waive its right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant and street maintenance and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied the Subject Property.

11. FUTURE STORM DRAINAGE FACILITIES

Owner hereby agrees to waive its right to protest any future area wide special improvement district for storm drainage facilities and further agrees to pay for his proportionate share of any future storm drainage improvements that service the Subject Property 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 Subject Property, which is a contributor to the drainage sub-basin of which Subject Property is a part.

12. PUBLIC ROADWAY LIGHTING

Owner hereby agrees to waive its right to protest any future special lighting district for public roadway lighting facilities that service the Subject Property, and further agrees to pay for his proportionate share of the costs associated with roadway lighting which services the Subject Property that may be installed with or without a special lighting district.

13. WAIVER OF PROTEST OF ANNEXATION

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



14. WARRANTY, OWNERSHIP AND INSPECTION OF UTILITY AND STREET IMPROVEMENTS

- A. After the public utilities, drainage and street improvements described in Paragraph 2.B. hereof have been installed and accepted by City, the same shall be in all respects treated, owned and maintained as though the same had been constructed and installed by City. Owner or its contractor shall guarantee said improvements referenced above against defective work and materials for a period of two (2) years from date of acceptance of the completed improvements by City.
  
- B. Installation of the public utilities and street improvements described in Paragraph 2.B. hereof, shall be subject to City's infrastructure inspection policy in place at the time of installation.

15. CITY ACCEPTANCE AND ZONING

In consideration of the foregoing, City hereby accepts and approves Tract 2, Certificate of Survey 4705, in the N1/2 NE1/4, Section 36, Township 21 North, Range 3 East, P.M.M., Cascade County, Montana for incorporation by annexation into the corporate limits of the City of Great Falls, Montana, with an assigned zoning classification of R-5 Multi-family medium density district.

16. ANNEXATION PREREQUISITES

Subject Property 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 Montana Code Annotated Title 7, Chapter 33. Subject Property, upon annexation to City, will be provided fire protection services by City comparable to that provided incorporated properties.

17. DESIGN REVIEW BOARD

Owner hereby agrees to submit and obtain Design Review Board approval of the site plans and structures proposed to be constructed and/or modified on parcels within the Subject Property, including landscaping, signage, yard lighting and sight-obscuring fence or other such improvements, as required by the Design Review Board.

18. 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.

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

THE CITY OF GREAT FALLS, MONTANA

A Municipal Corporation of the State of Montana

---

Gregory T. Doyon, City Manager

ATTEST:

---

Lisa Kunz, City Clerk

(Seal of City)

APPROVED FOR LEGAL CONTENT:

---

Sara R. Sexe, City Attorney

OWNER

Damon Carroll

Damon Carroll, Property Owner

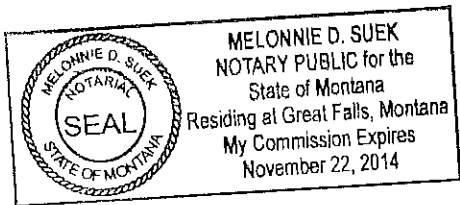
State of Montana )

:ss.

County of Cascade)

On this 18<sup>th</sup> day of August, in the year Two Thousand and Fourteen, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Damon Carroll, known to me to the persons whose names are subscribed to the instrument within and acknowledged to me that they 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)

Melonnie D. Suek  
Notary Public for the State of Montana

Melonnie D. Suek  
Notary Public for the State of Montana (Printed)  
Residing at Great Falls, mt  
My commission Expires Nov 22, 20 14