



**Item:** Addendum No. 1 to Dali, LLC Development Agreement  
**From:** Jennifer Reichelt, Deputy City Manager  
**Presented By:** Jennifer Reichelt, Deputy City Manager  
**Action Requested:** Approve Addendum No. 1 to Dali, LLC Development Agreement

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission approve/not approve Addendum No. 1 to the Dali, LLC Development Agreement.”

2. Mayor requests a second to the motion, Commission discussion, public comment, and calls for the vote.

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**Summary:** In May 2015 the City Commission approved a development agreement for infrastructure improvements within the Central Montana Agricultural & Technology Park Tax Increment Financing Industrial District (CMATP TIFID) with Joe Stanek of Dali, LLC, in an amount equal to 50% of the actual costs of the infrastructure improvements, up to \$191,653.

To date, Mr. Stanek has submitted receipts and been reimbursed for \$188,699.45 in eligible Tax Increment Financing (TIF) expenses. At this time he is requesting to amend his original TIF request to include reimbursement for engineering inspection fees and sewer fees; both eligible TIF expenses. Dali was charged \$28,731 in engineering inspection fees and contributed \$88,708 to extend the sewer main to his property.

The addendum states that the City agrees to reimburse Dali for costs of the inspection fees in an amount equal to \$14,365.50 (representing 50% of the actual cost of the inspection fees) and that the developer will be responsible for paying all remaining costs of the inspection fees (\$14,365.50).

The addendum also states that the City agrees to reimburse Dali for costs associated with sewer improvements in an amount equal \$44,354.00 (representing 50% of the actual cost of the sewer improvements).

There is adequate funding available in the CMATP TIFID. Currently, there is \$416,405.77 in the account with another \$143,544.77 expected to be received before the end of the year.

**Background:** In November 2014, Joe Stanek of Dali, LLC submitted a TIF application for funding from the CMATP TIFID. In his TIF application, Stanek requested that TIF funds be used to construct the dedicated public right-of-way, Innovation Street, including paving, curb and gutter, install the required boulevard landscaping and irrigation, extend the water main along the length of Innovation Street and to install gas and electric.

The Dali, LLC TIF application and associated development agreement was approved by the Planning Advisory Board in April 2015 and by the City Commission in May 2015. The development agreement was for an amount equal to 50% of the actual costs of the Infrastructure Improvements, up to \$191,653.

The project is now complete and 11 of the 12 lots in the Great Bear Subdivision No. 2 - Phase I & II have the necessary infrastructure and services available for new development, increasing their marketability. These lots can fulfill the needs of small industrial businesses.

The project is completed and Dali has submitted the appropriate receipts and been reimbursed for \$188,699.45 in eligible Tax Increment Financing (TIF) expenses. At this time he is requesting to amend his original TIF request to include reimbursement for engineering inspection fees and sewer fees; both eligible TIF expenses. Dali was charged \$28,731 in engineering inspection fees and contributed \$88,708 to extend the sewer main to his property.

If the addendum is approved, Dali would be reimbursed, for costs of the inspection fees in an amount equal to \$14,365.50 (representing 50% of the actual cost of the inspection fees). He would still be responsible for paying the remaining \$14,365.50 in inspection fees.

If approved, Stanek would be reimbursed \$44,354 for costs associated with sewer improvements. This is 50% of the total amount he contributed towards the project.

**Fiscal Impact:** The approval of the addendum will have no impact on the City's General Fund.

Staff will transfer \$14,365.50 from the Central Montana Agricultural & Technology Park Tax Increment Financing Industrial District account (2312.00.104.43590) to Engineering's Revenue Account (6070.31.521.34372).

A check for \$44,354 will be issued from the Central Montana Agricultural & Technology Park Tax Increment Financing Industrial District account (2312.00.104.43590) to Dali, LLC directly.

**Concurrences:** Representatives from the City Planning & Community Development Department, City Fiscal Services, City Administration and City Public Works Department concur in the request for additional TIF funding.

**Alternatives:** The Commission could choose to not approve this addendum.

**Attachments/Exhibits:**

Addendum No. 1 to Dali, LLC Development Agreement  
Dali, LLC Development Agreement

## ADDENDUM NO. 1 TO DEVELOPMENT AGREEMENT

THIS ADDENDUM NO. 1 TO DEVELOPMENT AGREEMENT is dated as of [\_\_\_\_], 2016, between the CITY OF GREAT FALLS, a municipal corporation of the State of Montana (the “**City**”) and DALI, LLC, a Washington limited liability company, licensed to do business in the State of Montana (the “**Developer**”).

### WITNESSETH:

WHEREAS, the City and the Developer entered into a Development Agreement dated as of July 21, 2015 (the “**Development Agreement**”) pursuant to which the City agreed to reimburse the Developer for costs of Infrastructure Improvements (as defined in the Development Agreement) in the City’s Central Montana Agriculture and Technology Park Tax Increment Financing Industrial District (the “**District**”) out of tax increment (as defined in the Act) of the District; and

WHEREAS, the Developer has requested that the City pay for or reimburse the Developer for costs of City engineering inspection fees related to the original Infrastructure Improvements (the “**Inspection Fees**”); and

WHEREAS, the Developer has also requested that the City to reimburse the Developer for costs of the installation and construction of sanitary sewer main improvements which constituted a portion of the City’s 2013 sewer improvement project in the District and were billed to the Developer (the “**Sewer Improvements**”); and

WHEREAS, the City has determined that it is appropriate to pay for or reimburse the Developer for a portion of the costs of the Inspection Fees and Sewer Improvements with tax increment (as defined in the Act) of the District.

NOW THEREFORE, the City and the Developer, each in consideration of the representations, covenants and agreements of the other, as set forth herein, mutually represent, covenant and agree as follows:

#### Section 1. Reimbursement

1.1. Inspection Fees. The Inspection Fees shall constitute “Infrastructure Improvements” under the Development Agreement and be subject to all of the Developer’s representations, warranties, covenants and agreements contained in the Development Agreement with respect thereto. The City agrees to reimburse the Developer for costs of the Inspection Fees in an amount equal to \$14,365.50 (representing 50% of the actual cost of the Inspection Fees). The Developer shall be responsible for paying all remaining costs of the Inspection Fees. Such reimbursement obligation of the City shall be subject to the satisfaction of the conditions for

reimbursement of Infrastructure Improvements as set forth in Section 3 of the Development Agreement.

1.2. Sewer Improvements. The City agrees to reimburse the Developer for costs of the Sewer Improvements in an amount equal \$44,354.00 (representing 50% of the actual cost of the Sewer Improvements).

Section 2. General Provisions.

2.1 Defined Terms. Capitalized terms used herein but not otherwise defined shall have the respective meanings given such terms in the Development Agreement.

2.2 Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF GREAT FALLS, MONTANA

[SEAL]

By \_\_\_\_\_  
Gregory T. Doyon, City Manager

Attest:

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

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
Sara Sexe, City Attorney

STATE OF MONTANA     )  
  : ss.  
County of Cascade         )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by Gregory T. Doyon, Lisa Kunz and Sara Sexe, as the City Manager, City Clerk and City Attorney of the City of Great Falls, Montana, respectively.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana

(Notarial Seal)

Residing at \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_

DALI, LLC

\_\_\_\_\_  
Name:  
Title:

STATE OF MONTANA     )  
                                      : ss.  
County of Cascade        )

                  This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_ of Dali, LLC, on behalf of said limited liability company.

(Notarial Seal)

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

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is dated as of [May 19], 2015, among the CITY OF GREAT FALLS, a municipal corporation of the State of Montana (the "City") and DALI, LLC, a Washington limited liability company, licensed to do business in the State of Montana (the "Developer").

### WITNESSETH:

WHEREAS, under the provisions of the Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), an industrial district may be established so that an issuer of bonds may undertake industrial infrastructure projects therein, provide for the segregation and collection of tax increment with respect to taxes collected in such district, issue its bonds to pay the costs of such projects or redeem such bonds that paid the costs of such projects, and pledge to the repayment of the bonds all or a portion of the tax increment derived from the industrial district; and

WHEREAS, the City Commission, pursuant to Ordinance No. 2911, duly adopted on May 17, 2005, as amended and supplemented by Ordinance No. 3106, duly adopted on May 7, 2013 (as such may be further amended or supplemented in accordance with the Act, the "Ordinance"), created an industrial district known as the Central Montana Agriculture and Technology Park Tax Increment Financing Industrial District (the "District") and adopted the Central Montana Agricultural and Technology Park Expanded Tax Increment Financing Industrial District Plan (the "Plan") containing a tax increment financing provision; and

WHEREAS, the Developer plans to develop twelve lots in the District for industrial use, known as Great Bear Subdivision No. 2 - Phase I & II (the "Project"), as further described in an Amended Application for City of Great Falls Tax Increment Financing (TIF) Application for Funds dated [11/18], 2014 and attached hereto as Exhibit A (the "Application"); and

WHEREAS, in connection with the Project, the Developer has requested tax increment financing assistance with respect to certain infrastructure improvements associated with the Project, consisting of the design, construction and installation of road, natural gas, water main, electrical, fiber optic, landscaping and irrigation improvements, as further described in the Application (the "Infrastructure Improvements"); and

WHEREAS, the City has determined that it is appropriate to reimburse the Developer for a portion of the costs of the Infrastructure Improvements with tax increment (as defined in the Act) of the District, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, the City and the Developer, each in consideration of the

**R0310027 GFA**

Total Pages: 38 R 266.00 By: mejohnson 07/31/2015 09:01:23 AM  
Cascade County, Rina Ft Moore - Clerk & Recorder





representations, covenants and agreements of the other, as set forth herein, mutually represent, covenant and agree as follows:

Section 1. Developer's Representations. The Developer hereby represents as follows:

(a) The representations and warranties of the Developer in the Application are true and correct as of the date hereof, including with respect to the total investment to be made by the Developer with respect to the Project and the Infrastructure Improvements.

(b) The Developer has good and marketable title to the land upon which the Project shall be developed (the "**Project Site**").

(c) The Developer has the financial capability or commitments to complete the Project and the Infrastructure Improvements.

Section 2. Developer's Undertakings.

2.1. Construction and Maintenance of Project. The Developer hereby agrees and commits to the City that it will diligently undertake the Project in accordance with this Agreement, the site plan submitted to the City and all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Project, including applicable Land Use Regulations and Environmental Laws and Regulations (each, as defined in Section 5.2 hereof). In furtherance of the purpose of the District, the Developer will actively seek permitted I-2 users and also the growth and retention of Secondary Industries (as defined in Section 5.2 hereof) at the Project Site.

2.2. Construction of the Infrastructure Improvements. The Developer will install, construct or otherwise provide the Infrastructure Improvements in accordance with all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the Infrastructure Improvements, including applicable Land Use Regulations and Environmental Laws and Regulations. The Developer acknowledges and agrees that the City is not responsible for installing, constructing or otherwise providing the Infrastructure Improvements. The Developer agrees to pay all costs of the Infrastructure Improvements. The Developer understands that the City is obligated to follow certain laws with respect to the expenditure of public funds, which includes tax increment (as defined in the Act) of the District. The Developer agrees that in the awarding of contracts or subcontracts for the Infrastructure Improvements that (i) it will, and it will cause its contractor to, competitively bid contracts and subcontracts for each component of the Infrastructure Improvements, (ii) its contractor and subcontractors will pay the Prevailing Wage Rates (as defined in Section 5.2 hereof) on such contracts or subcontracts related to the Infrastructure Improvements and (iii) it will, and it will cause its contractor to, give preference to the employment of bona fide residents of the State, as required by §18-2-403, MCA, and as such, term is defined by §18-2-401(1), MCA, and the Administrative Rules of the

State, including but not limited to A.R.M. 24.17.147, obliging Developer and its contractor to hire 50% bona fide Montana residents with respect to the installation and construction of the Infrastructure Improvements; and (iv) when making assignments of work, it will, and it will cause its contractor to, use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned. The Developer will provide to the City all documentation requested to verify the compliance of the Developer, contractors and subcontractors with the foregoing requirements. Failure of contractors and subcontractors to pay the Prevailing Wage Rates on the Infrastructure Improvements shall be considered a breach of this Agreement and the City shall be entitled to exercise any and all measures to assure compliance and retroactive compensation plus interest to employees not paid in accordance with this Agreement, and recovery of any penalty or fine assessed by the State attributed to any failure to pay the Prevailing Wage Rates. Additionally, the Developer acknowledges that a violation of these requirements shall result the City not being able to pay or reimburse the Developer for costs of the Infrastructure Improvements. The City acknowledges that NorthWestern Energy and Energy West are the sole source providers with respect to the natural gas and NorthWestern Energy is the sole source provider for electrical improvements comprising the Infrastructure Improvements.

2.3. Utilities. The Developer shall not interfere with, or construct any improvements over, any public street or utility easement without the prior written approval of the City. The City will use commercially reasonable efforts to provide such written approval within 15 days following the request of the Developer; provided that the Developer acknowledges that additional approvals may be required by the relevant utility companies which the City does not control. All connections to public utility lines and facilities shall be subject to approval of the City and any private utility company involved. The Developer at its own expense shall replace any public facilities or utilities damaged during the Project or the Infrastructure Improvements by the Developer, its agents or by others acting on behalf of or under the direction or control of the Developer and in accordance with all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to such public facilities and/or utilities.

2.4. Easements. To the extent that the Infrastructure Improvements are to be located on the private property, the Developer will grant to the City from time to time such easements, rights-of-way and similar licenses the City may reasonably request.

2.5. Permits; Environmental Laws. The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet all requirements of all local, State and federal laws, rules and regulations which must be obtained or met in connection with the acquisition and construction of the Project and the Infrastructure Improvements. Without limiting the foregoing, the Developer will request and obtain, or caused to be requested and obtained, from the City or other appropriate governmental authority all necessary variances, conditional use permits and zoning changes with respect to the Project and the Infrastructure Improvements. The Developer will comply in all material respects with all

Environmental Laws and Regulations (as hereinafter defined) applicable to the construction, acquisition and operation of the Project and the Infrastructure Improvements, will obtain any and all necessary environmental reviews, licenses or clearances under, and will comply in all material respects with, Environmental Laws and Regulations.

2.6. Nondiscrimination. The Developer agrees that all hiring by the Developer and its contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin, or other class protected by State and/or federal law.

Section 3. Reimbursement.

3.1. Reimbursement Obligation. Subject to the provisions of this Section 3, the City will reimburse the Developer for costs of the Infrastructure Improvements in an amount equal to the 50% of the actual cost of the Infrastructure Improvements; provided that such reimbursement amount shall not exceed \$191,653 in the aggregate. The obligation of the City to reimburse the Developer for costs of the Infrastructure Improvements will not arise until (i) the completion of the Project, including delivery to the Developer by the City Public Works Department of a letter stating that the Project has been completed and (ii) the completion and acceptance by the City of the Infrastructure Improvements and the approval by the City of the costs thereof pursuant to Section 3.2 hereof. The City's obligation to reimburse the Developer for costs of the Infrastructure Improvements will be payable solely from tax increment (as defined in the Act) of the District. Notwithstanding anything herein to the contrary, if the Developer's conditions to reimbursement set forth in this Section 3.1 and Section 3.2 hereof are not satisfied by December 31, 2016, the City shall have no obligation to reimburse the Developer for costs of the Infrastructure Improvements. Nothing in this Agreement shall prevent the Developer from applying for additional tax increment funds pursuant to one or more additional applications submitted to the City.

3.2. Reimbursement Limitations and Conditions. Reimbursement for costs of the Infrastructure Improvements will be based on actual paid invoices for incurred costs provided by the Developer. The City may reject any invoice amounts to the extent not related to Infrastructure Improvements. Notwithstanding Section 3.1, the parties agree that the City will not be required to reimburse the Developer for the Infrastructure Improvements unless:

(a) all of the representations of the Developer as set forth in Section 1 hereof are true and correct;

(b) the Developer is not in breach of any covenant or undertaking as set forth in Section 2 hereof as of the time of such reimbursement; and

(c) a certificate signed by Developer in substantially the form attached as Exhibit B hereto shall accompany any invoices or requests for reimbursement by the City (the “**Developer Requisition Form**”).

Within 30 days of receipt from Developer of a Developer Requisition Form, the City shall issue a check payable to Developer in the amount thereby requested pursuant to the terms and conditions of this Agreement or shall otherwise communicate with Developer regarding the remaining conditions to reimbursement set forth in Section 3.1 hereof and this Section 3.2 to be satisfied by Developer prior to such check being issued.

Section 4. Release and Indemnification.

(a) The Developer releases the City and the Commission members, officers, agents, servants and employees thereof (the “**Indemnified Parties**”) from, and covenants and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person arising out of or resulting from the construction, installation, operation, ownership or maintenance of the Project by the Developer or which is proximately caused by the Developer; provided that the indemnity shall not apply if and to the extent such loss or damage is caused by the gross negligence or willful misconduct of the City, its agents or employees.

(b) The Developer agrees to protect, indemnify and defend the Indemnified Parties and further agrees to hold the Indemnified Parties harmless from and against, any loss, damage, cost (including reasonable attorneys’ fees), claim, demand, suit, action or other proceeding whatsoever initiated by any Person whatsoever and arising or purportedly arising out of (i) violation by the Developer or any owner or tenant of a lot in the Project Site of any agreement or condition of this Agreement, (ii) the acquisition, construction, installation, ownership, maintenance and operation by the Developer or any owner or tenant of a lot in the Project Site, or (iii) from the presence on any portion of the Project Site, of any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any federal, State or local law, statute, code, ordinance, regulation, requirement or rule relating thereto, and also including ureaformaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Project Site to any damages, penalties, liabilities or expense of clean up under any applicable Environmental Laws and Regulations.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer, any owner or tenant of a lot in the Project Site or their respective officers, agents, servants or employees or any other person; provided that the such damage or injury is not caused by the gross negligence or willful misconduct of the City, its agents or employees.

Section 5. General Provisions.

5.1. Notices. All notices, certificates or other communications required to be given to the City or the Developer hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows or, solely with respect to the Developer, sent to the email address below:

If to the City: City of Great Falls  
P.O. Box 5021  
Great Falls, Montana 59403  
Attn: Fiscal Services Director

If to the Developer: Dali, LLC  
c/o Joe Stanek and Linda Stanek  
P.O. Box 443  
Holualoa, HI 96725  
Email: joestanek@westernamericanretail.com and  
lindastanek9@aol.com

The City and the Developer, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

5.2. Defined Terms. As used in this Agreement, the following terms shall have the following respective meanings:

**“Environmental Laws and Regulations”** means and includes the Federal Comprehensive Environmental Compensation Response and Liability Act (“CERCLA” or the “Federal Superfund Act”) as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), 42 U.S.C. §§ 9601 et seq.; the Federal Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. § 1321 et seq.; and the Clean Air Act, 42 U.S.C. §§ 7401 et seq., all as the same may be from time to time amended, and any other federal, State, county, municipal, local or other statute, code, law, ordinance, regulation, requirement or rule which may relate to or deal with human health or the environment including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, code, law or ordinance.

**“Land Use Regulations”** means all federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Project Site or the Project.

**“Prevailing Wage Rates”** means the Montana Prevailing Wage Rate for public works

projects as published from time to time by and available from the Montana Department of Labor and Industry, Research and Analysis Bureau, P.O. Box 1728, Helena, Montana 59624, telephone number (800) 541-3904.

**“Secondary Industries”** means those industries that use mechanical or chemical processes to transform materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual.

**“State”** means the State of Montana.

5.3. Assignment. This Agreement is unique between the City and the Developer and no party may assign any rights or privileges or delegate any duties or obligations under this Agreement without first obtaining the written consent of the other parties.

5.4. Binding Effect. The right and obligations set forth in this Agreement shall inure to the benefit of and shall be binding upon the City and the Developer and their respective successors and assigns.

5.5. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

5.6. Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by the City and the Developer.

5.7. Governing Law. This agreement and the legal relations between the parties hereto will be governed by and construed in accordance with the laws of the State, without giving effect to any choice of law statutes, rules, or principles.

5.8. Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

5.9. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or Sections of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the 19 day of May, 2015.



CITY OF GREAT FALLS, MONTANA

By [Signature]  
Gregory T. Doyon, City Manager

Attest:

[Signature]  
Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT:

[Signature]  
Sara Sexe, City Attorney

DALI, LLC Dali LLC

Dali LLC  
Name: S Joe Stanek  
Title: Manager

STATE OF SOUTH CAROLINA )  
  : ss.  
County Of Horry

This instrument was acknowledged before me on March 30, 2015 by S. Joe Stanek of Dali, LLC, on behalf of said limited liability company.

Teresa W. Walls  
Printed Name: Teresa W. Walls  
Notary Public for the State of  
South Carolina  
Residing at N. Myrtle Beach, Horry County  
South Carolina  
My Commission Expires: 08-04-19

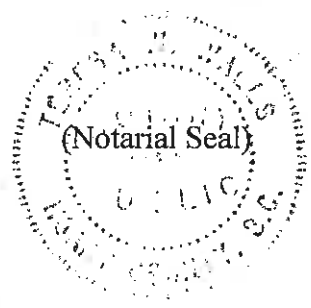




EXHIBIT A  
APPLICATION

CITY OF GREAT FALLS



TAX FINANCING INCREMENT  
(TIF)

APPLICATION FOR FUNDS

AMENDED APPLICATION FOR  
CITY OF GREAT FALLS  
TAX INCREMENT  
FINANCING (TIF)  
APPLICATION FOR FUNDS

***Project Name: Innovation Street Improvements***

***Date Submitted:*** November 18, 2014

***Name of TIF District:*** Central Montana Ag-Tech Park District

***APPLICANT INFORMATION***

Name: Dali LLC,

c/o Joe Stanek and Linda Stanek

Address: PO Box 443, Holualoa, HI 96725

joestanek@westernamericanretail.com Telephone: 1-808-756-0901

**DEVELOPMENT INFORMATION**

1. ***Building Lot Address:*** 4400, 4404, 4500, 4504, 4401, 4501 4505 Innovation Street together with Lots 9,10,11 and 12 of Great Bear Avenue (Legal common addresses are being assigned to Lots 9-12 along Great Bear Ave. (See attached plat map)
2. ***Legal:*** Lots 1-7, Phase 2 Part 1 of the Great Bear Subdivision. All lots have been legally created (See attached). Innovation Street is defined in the attached TD and H Engineering Plans and part of the City Street System inside the TIF District.
3. ***Description:*** Flat, Vacant Land north of the new ADF Plant. Zoned inside the City as I-2 Heavy Industrial. Formerly the Montgomery Energy/NW Energy Formerly Lots 4 & 5, Block 1, of the International Malting Company, LLC Addition, located in Section 30, T21N, R4E, P.M.M., Cascade County, MT.
4. ***Ownership:*** Dali, LLC is the owner of the lots adjacent to Innovation Street which is owned by the City and is unimproved. The street right-of-way for Innovation is 60 feet wide.

**5. Proposed Businesses:** Small specialty industrial and agricultural businesses that serve specific needs and services.

**6. Employment/New Permanent Jobs Created by Project:** Such businesses employ 3-5 employees, on average, and with 12 Lots, DALI anticipates the permanent creation of 36 – 60 permanent jobs.

**7. Engineering Firm Employed:**

TD and H Engineers, Great Falls, MT

**Construction:**

Central Excavation

### **8. Description of Total Development**

The Great Bear Innovation Street project, Lots 1-7, together with the newly subdivided Lots 8-12 along Great Bear Avenue, are developed primarily for the small industrial business owner who will employ 3-5 people, on average. This hopefully will fulfill the need for small contractor yards in the Great Falls community. Presently there is a substantial shortage of these 1-2 Industrial lots in the market.

All 12 lots have been fully sub-divided and all land needed by the City has been dedicated. The project lies within the Central Montana Ag Tech Park and is part of the Tax Increment District.

**9. Construction Plans** See attached plans and specs

The street, Innovation, has been fully engineered by TD and H with those plans and specifications approved and accepted by Public Works. The project is ready for construction. The sewer line and a portion of the power has been designed and installed and paid for by DALI.

### **10. Development Schedule**

Spring, 2015

**11. Amount of Public Infrastructure Need and Proportion of Infrastructure Financed by TIF?**

**\$383,306** See Eligible Funds and Project Financing Pages

## ELIGIBLE ACTIVITIES

***Land Acquisition:*** Completed and Donated by Owner

***Demolition and Removal of Structures*** None Required

***Relocation of Occupants:*** None Required

### ***Eligible Public Improvements***

Innovation Street Improvements (See attached plans and specs.)	\$296,792
Natural Gas Installation (See attached NW gas bid)	\$ 21,999
3 Phase Power NW Energy (see attached bid)	\$ 54,652
Fiber Optic by 3 Rivers (estimated)	\$ 8,000
Landscaping Right-Of-Way	\$20,000
Engineering (estimated)	\$25,000

***TOTAL ELIGIBLE ACTIVITIES***

***\$ 426,443***

***See MCA 7-15-4208***

***Value of Land and Site Improvements Presently:***

1. Value of Land:	
Current Taxable Value	\$400,000
2. Innovation Street	\$277,509
(See itemized bid attached Bid by Central)	
3. Sewer	\$ 77,000
(Paid by Owner)	
4. Natural Gas	\$ 0
5. Power Lots 9-12	\$ 30,000
(Paid by Owner)	
6. Engineering	\$25,000
(Paid by Owner)	
<b><i>Total of Value of Land</i></b>	<b><i>\$805,509</i></b>

## PROJECT FINANCING

### *Developer Contribution*

Land \$400,000

Engineering \$ 25,000

Land Donated for Right-of-Ways \$ 95,000

(Includes :

Great Bear Ave 100 foot ROW

Innovation Street 60 foot ROW

Determination Street 60 foot ROW)

Landscaping \$ 3000

NW Energy Power Installation

(Installed into Lots 9 -12 \$ 30,000

Sewer \$ 77,000

Down Stream Storm Water Contribution \$ 31,000

(East of Black Eagle RD)

***Total Developer Contribution*** **\$659,000 CASH**

***Total TIF Money Needed*** **\$383,306**

(See attached Eligible Activities)

### ***Lender Commitments***

Letter of Credit guaranteed by Owner

And Washington Trust Bank **\$ 383,306**



### ***Estimated Value of Building Improvements***

(Improvements based on the typical fully developed industrial lots with North Park used as a comparable project.)

Lot 1, Innovation Street	0.75 Acres:	\$225,000
Lot 2, Innovation Street	0.66 Acres	\$198,000
Lot 3, Innovation Street	0.69 Acres	\$207,000
Lot 4, Innovation Street	0.61 Acres	\$183,000
Lot 5, Innovation Street	0.95 Acres	\$285,000
Lot 6, Innovation Street	1.01 Acres	\$303,000
Lot 7, Innovation Street	1.13 Acres	\$334,000
Lot 8 See attached map	32.69 Acres	\$5,200,000
Lot 9 Great Bear Ave.	2.42 Acres	\$700,000
Lot 10, Great Bear Ave	2.73 Acres	\$715,000
Lot 11, Great Bear Ave	2.85 Acres	\$725,000
Lot 12, Great Bear Ave	6.30 Acres	\$1,503,000
<b>TOTAL VALUE OF IMPROVEMENTS:</b>		<b>\$10,578,000</b>

#### ***Total Tax Increment to City Annually***

***Formula: \$13,000 for every 1 million dollars of improvements***

***\$13,000 x 10.578 = \$137,514 Annual Tax Revenue***

**HOW WOULD YOU LIKE TO RECEIVE YOUR FUNDS?**

The owner of the property, DALI,LLC, would agree to provide a Letter of Credit or Cash to the City to construct the street known as "Innovation Street" together with gas, power and fiber optic.

Upon acceptance of this application and prior to construction, the City and DALI agree to enter into an understanding whereby the City will reimburse DALI for those agreed upon items from the Central Montana Ag Tech Park Tax Increment Fund as the fund, in general, receives its annual tax revenue. If the monies present in the account are not adequate to reimburse then the City, DALI agrees to carry the balance at 6% until all sums are retired.





# CIVIL PROPOSAL

TO: Joe Stanek  
 \_\_\_\_\_  
 \_\_\_\_\_

Project Name		Great Bear Subdivision Number 2 Phase 1	
Location	Great Falls, MT	Date	10/1/2013

We hereby propose to furnish and install all labor and material as specified below:

	Qty	Unit	Total
Phase I water system work	1	LS	
<b>Water System Subtotal =</b>			<b>\$ 93,333</b>
Install fire 3 fire hydrants per plans for phase II	3	EA	
<b>Phase II Fire Hydrants Subtotal =</b>			<b>\$ 20,180</b>
Clear and grub vegetation and topsoil for roadway install	1	LS	
Excavate roadway to subgrade elevation	3,434	SY	
Import, place and compact road base gravels and gravels for temporary gravel turn around	3,434	SY	
Concrete curb and gutter for roadway	1,455	LF	
5" asphalt pavement for roadway (MPWSS Grade B w. PG 58-28 AC Mix)	2,524	SY	
Provide and install stop sign	1	EA	
Provide and install 12" PVC Sleeves	84	LF	
Remove existing fence	1,015	LF	
<b>Roadway Improvements Subtotal =</b>			<b>\$ 183,279</b>

### EXCLUSIONS

- SURVEYING, MATERIALS TESTING OR COMPACTION TESTING (INCLUDING CONCRETE AND ASPHALT)
- CITY OF GREAT FALLS INSPECTION OR ENGINEERING FEES
- SCREENING OR PROCESSING OF NATIVE SOILS
- WINTERIZATION OF WORK, INCLUDING GROUND HEATING, AND FROST PROTECTION
- TOPSOIL PLACEMENT LANDSCAPE OR IRRIGATION
- REPLACEMENT OF EXISTING FENCE
- REMOBILIZATION, WE ARE ASSUMING THIS WORK WOULD BE DONE THIS YEAR.
- 1 % STATE TAX
- BOND
- ROCK EXCAVATION

Our total price for the above portion of work:	<b>\$ 296,792</b>
--	-------------------

Note: This proposal is based on a mutually agreed upon subcontract and schedule. Pricing is based on all base bid items being taken. Prices are subject to change if bid is broken out.

Respectfully Submitted,  
 Jesse Waldenberg  
 Estimator/ Project Manager















Is this a Residential Electric Advance?

- N/A - CIAC  
 10 YR. Residential Advance  
 5 YR. Advance

## CUSTOMER AGREEMENT

THIS AGREEMENT is made and entered into on 02/20/2015, by and between NorthWestern Energy "Company" and DALLLLC of PO BOX 443, HOLLUALOA, HI 96725, "Customer".

### I. THE COMPANY AGREES:

1. To install, operate and maintain utility facilities to provide services to the Customer at PO BOX 443, HOLLUALOA, HI 96725 in accordance with the applicable rules and regulations and at rates set by the Montana Public Service Commission (MPSC). The Company shall locate lines and facilities on right of way provided and initially prepared and cleared as necessary by Customer. The lines and facilities shall remain the Company's property.
2. To abide by the general conditions and terms described in sections III and IV.

### II. THE CUSTOMER AGREES:

1. To pay the Company an Advance (Rule 6-2) in the sum of \$ 54,652.00, USD for construction of Primary UG 3 Phase lines and facilities in accordance with the applicable MPSC Rules. Customer shall make payment prior to Company scheduling the project for a construction start date.

In accordance with the applicable MPSC Rules, if new customers are permanently connected and served by the Company from these lines before 5 years (10 years for Single Family Residential Electric Service - excluding new residential subdivision and townhouse connects) from the completion date of this project, the Company will determine what refund of the advance, if any, is due the Customer.

The total sum refunded shall not exceed the amount of the Customer's Advance for construction, nor will any refund be made after the 5 year (10 year for Single Family Residential Electric Service) refund period. Any money not refunded pursuant to the terms of this Agreement will revert to a non-refundable Contribution in Aid of Construction and become the Company's property.

2. To general conditions and terms as explained in sections III and IV.
3. Total Amount for this agreement \$ 54,652.00

### III. GENERAL CONDITIONS:

1. All terms, prices and conditions set forth in this Agreement are subject to changes or additions due to rules, regulations, ordinances, changes in scope of project, and laws that may be amended or enacted.
2. Prices set forth in this agreement are in effect for 4 months from the agreement date entered into between the customer and NorthWestern Energy.
3. The Customer shall pay the costs of moving Company facilities or making other modifications required to meet city, state, or national codes.
4. The Customer shall provide service entrance and termination points as specified by the Company's installation standards in effect at the time construction begins.
5. The Company shall establish service within a reasonable period of time after the Customer's equipment passes inspection by the state and local authorities as required by law.

6. The Company will proceed with the survey, design and construction of its facilities in a normal manner using its existing work force and material supply sources. All work is to be done during normal working hours and the Company may reschedule the work to achieve efficient workload of Company forces. Availability of materials, weather conditions, frozen ground, access, or obtaining permits from governmental agencies or railroads may cause delays beyond the Company's or the Customer's control.
7. The customer requests utilities to be installed with the understanding that ground-level is to final grade. Should changes to grade be made in the future that result in NorthWestern Energy's facilities needing to be either raised or lowered, the customer is responsible for the costs associated with this change.
8. Prior to installation of facilities, the Customer is responsible for physically marking on the property any customer-owned facilities including, but not limited to, underground sprinkling systems, septic tanks, and satellite dish cabling. NorthWestern Energy is not responsible for repairing any unmarked customer-owned facilities. The NorthWestern Energy Construction Department can be contacted with questions on how to appropriately mark customer-owned facilities.
9. If the Customer requests that electric and gas facilities be installed in frozen ground, the Customer may be responsible for additional charges for installation. The Company will notify the Customer of these charges prior to installation.
10. The Customer is responsible for the restoration of private roadway(s) and/or landscaping. The Company will make a reasonable attempt to preserve the private roadway(s) and/or landscaping, but final compaction and restoration is the Customer's responsibility.
11. MPSC rules governing gas and electric line extensions are available upon request.

#### IV. DEFINITIONS

1. CONTRIBUTION IN AID OF CONSTRUCTION

A non-refundable payment made by a Customer to pay for costs beyond the free allowance when there are no more customers expected to connect to facilities installed by this Agreement.

2. CUSTOMER ADVANCE

A refundable payment made by a customer to pay for costs beyond the free allowance when more Customers are expected to connect to facilities installed under this Agreement.

New customers that attach to existing lines with a current Advance line protection may be required to share equitably in the outstanding payment amount if connecting within 5 years (10 years for Single Family Residential Electric Service - excluding new residential subdivision and townhouse connects) from the construction date of the original line.

Or

A refundable payment made by a Customer to pay for a line extension to a new load of uncertain duration

#### V. ADDITIONAL CONDITIONS:

This contract provides customer with a three phase underground primary backbone plowed by contractor, 4 primary junction cans with stubs for future growth and bore beneath NWE Gas Transmission Line.

Additional costs will be incurred due to rocky, extremely tough or frost digging conditions, modifications by the customer or the customer requesting NorthWestern Energy to modify original design and/or unforeseen circumstances.

If trench(es) is excavated by customer, said trench(es) will be inspected by NorthWestern Energy for compliance with the guidelines for customer trenching found in the New Service Guide.

Any additional costs that have incurred will be paid prior to the installation of meter.

All property pins shall be in place and property lines marked properly with stakes or flags. Route(s) will be clear of any obstructions and/or hazards. Failure to abide by these or any other rules, which are in the NorthWestern Energy New Service guide, shall result in NorthWestern Energy rescheduling project at the time and expense of the customer(s).

Customer(s) will be responsible for the replacement of any and all concrete, asphalt and/or landscaping on or around the area excavated by NorthWestern Energy. Any gravel roadway crossings excavated by NorthWestern Energy will be restored at the responsibility of the customer.

In the event of uncontrollable circumstances, such as severe weather or uncontrollable damages, we will respond promptly to restore service, then resume our commitments without penalty.

The customer requests utilities to be installed with the guarantee that ground level is to final grade. Should changes to grade around or near NorthWestern Energy facilities occur, after this contract has been signed, that result in NorthWestern Energy facilities needing to be either raised or lowered, the customer named on this Customer Service agreement is responsible for all costs associated with this change.

It is the responsibility of the customer to leave intact any and all marking devices placed by NorthWestern Energy. Failure to do so will result in NorthWestern Energy adding additional charges to the project at the expense of the customer and will not continue project until those charges have been paid to NorthWestern Energy.

The safety of the NorthWestern Energy crewmembers takes precedence over any and all hazards placed by customer. Public safety always must take precedence over normal service.

NorthWestern Energy

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

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

DALI LLC (Customer)

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

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

Is this a Residential Electric Advance?

- N/A - CIAC  
 10 YR. Residential Advance  
 5 YR. Advance

## **CUSTOMER AGREEMENT**

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2. To abide by the general conditions and terms described in sections III and IV.

### **II. THE CUSTOMER AGREES:**

1. To pay the Company an Advance (Rule 6-2) in the sum of \$ 21,999.00 , USD for construction of Gas 2-Inch Main lines and facilities in accordance with the applicable MPSC Rules. Customer shall make payment prior to Company scheduling the project for a construction start date.

In accordance with the applicable MPSC Rules, if new customers are permanently connected and served by the Company from these lines before 5 years (10 years for Single Family Residential Electric Service - excluding new residential subdivision and townhouse connects) from the completion date of this project, the Company will determine what refund of the advance, if any, is due the Customer.

The total sum refunded shall not exceed the amount of the Customer's Advance for construction, nor will any refund be made after the 5 year (10 year for Single Family Residential Electric Service) refund period. Any money not refunded pursuant to the terms of this Agreement will revert to a non-refundable Contribution In Aid of Construction and become the Company's property.

2. To general conditions and terms as explained in sections III and IV.
3. Total Amount for this agreement \$ 21,999.00

### **III. GENERAL CONDITIONS:**

1. All terms, prices and conditions set forth in this Agreement are subject to changes or additions due to rules, regulations, ordinances, changes in scope of project, and laws that may be amended or enacted.
2. Prices set forth in this agreement are in effect for 4 months from the agreement date entered into between the customer and NorthWestern Energy.
3. The Customer shall pay the costs of moving Company facilities or making other modifications required to meet city, state, or national codes.
4. The Customer shall provide service entrance and termination points as specified by the Company's installation standards in effect at the time construction begins.
5. The Company shall establish service within a reasonable period of time after the Customer's equipment passes inspection by the state and local authorities as required by law.

6. The Company will proceed with the survey, design and construction of its facilities in a normal manner using its existing work force and material supply sources. All work is to be done during normal working hours and the Company may reschedule the work to achieve efficient workload of Company forces. Availability of materials, weather conditions, frozen ground, access, or obtaining permits from governmental agencies or railroads may cause delays beyond the Company's or the Customer's control.
7. The customer requests utilities to be installed with the understanding that ground-level is to final grade. Should changes to grade be made in the future that result in NorthWestern Energy's facilities needing to be either raised or lowered, the customer is responsible for the costs associated with this change.
8. Prior to installation of facilities, the Customer is responsible for physically marking on the property any customer-owned facilities including, but not limited to, underground sprinkling systems, septic tanks, and satellite dish cabling. NorthWestern Energy is not responsible for repairing any unmarked customer-owned facilities. The NorthWestern Energy Construction Department can be contacted with questions on how to appropriately mark customer-owned facilities.
9. If the Customer requests that electric and gas facilities be installed in frozen ground, the Customer may be responsible for additional charges for installation. The Company will notify the Customer of these charges prior to installation.
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11. MPSC rules governing gas and electric line extensions are available upon request.



#### IV. DEFINITIONS

1. CONTRIBUTION IN AID OF CONSTRUCTION

A non-refundable payment made by a Customer to pay for costs beyond the free allowance when there are no more customers expected to connect to facilities installed by this Agreement.

2. CUSTOMER ADVANCE

A refundable payment made by a customer to pay for costs beyond the free allowance when more Customers are expected to connect to facilities installed under this Agreement.

New customers that attach to existing lines with a current Advance line protection may be required to share equitably in the outstanding payment amount if connecting within 5 years (10 years for Single Family Residential Electric Service - excluding new residential subdivision and townhouse connects) from the construction date of the original line.

Or

A refundable payment made by a Customer to pay for a line extension to a new load of uncertain duration

#### V. ADDITIONAL CONDITIONS:

This contract provides customer with a plowed gas main backbone, with a bore beneath NWE Gas Transmission Line. Additional costs will be incurred due to rocky, extremely tough or frost digging conditions, modifications by the customer or the customer requesting NorthWestern Energy to modify original design and/or unforeseen circumstances.

If trench(es) is excavated by customer, said trench(es) will be inspected by NorthWestern Energy for compliance with the guidelines for customer trenching found in the New Service Guide.

Any additional costs that have incurred will be paid prior to the installation of meter.

All property pins shall be in place and property lines marked properly with stakes or flags. Route(s) will be clear of any obstructions and/or hazards. Failure to abide by these or any other rules, which are in the NorthWestern Energy New Service guide, shall result in NorthWestern Energy rescheduling project at the time and expense of the customer(s).

Customer(s) will be responsible for the replacement of any and all concrete, asphalt and/or landscaping on or around the area excavated by NorthWestern Energy. Any gravel roadway crossings excavated by NorthWestern Energy will be restored at the responsibility of the customer.

In the event of uncontrollable circumstances, such as severe weather or uncontrollable damages, we will respond promptly to restore service, then resume our commitments without penalty.

The customer requests utilities to be installed with the guarantee that ground level is to final grade. Should changes to grade around or near NorthWestern Energy facilities occur, after this contract has been signed, that result in NorthWestern Energy facilities needing to be either raised or lowered, the customer named on this Customer Service agreement is responsible for all costs associated with this change.

It is the responsibility of the customer to leave intact any and all marking devices placed by NorthWestern Energy. Failure to do so will result in NorthWestern Energy adding additional charges to the project at the expense of the customer and will not continue project until those charges have been paid to NorthWestern Energy.

The safety of the NorthWestern Energy crewmembers takes precedence over any and all hazards placed by customer. Public safety always must take precedence over normal service.

NorthWestern Energy

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

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

DALI LLC (Customer)

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

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

EXHIBIT B

DEVELOPER REQUISITION FORM

TO: City of Great Falls, Montana (the "City")  
FROM: Dali, LLC (the "Developer")  
SUBJECT: Reimbursements for Infrastructure Improvements

This represents Developer Requisition No. \_\_\_\_\_ in the total amount of \$ \_\_\_\_\_ for payment of the Infrastructure Improvements.

The undersigned, as Authorized Developer Representative, intends that this certificate will satisfy the requirements of Section 3 of the Development Agreement, dated as of [\_\_\_\_], 2015 among the City and the Developer, and does hereby certify on behalf of the Developer that:

(a) the expenditures for which reimbursement is requested are listed in summary form in the attached schedule;

(b) the amounts requested have been paid by the Developer for property or to contractors, subcontractors, materialmen, engineers, architects or other persons who will perform or have performed necessary or appropriate services or will supply or have supplied necessary or appropriate materials for the acquisition, construction, renovation, equipping and installation of the Infrastructure Improvements, as the case may be, and that, to the best of my knowledge, the fair value of such property, services, or materials is not exceeded by the amounts requested to be paid;

(c) the cost of work to be reimbursed has been competitively bid and the contractor or subcontractor has paid the Montana prevailing wage for such work;

(d) no part of the several amounts requested to be reimbursed, as stated in such certificate, has been or is the basis for the reimbursement of any money in any previous or pending request; and

(e) the reimbursement of the amounts requested will not result in a breach of any of the covenants of the Developer contained in the Agreement.

Dated: \_\_\_\_\_, 20\_\_

DALI, LLC

By: \_\_\_\_\_  
Authorized Developer Representative

Schedule to Developer Requisition No. \_\_\_\_\_

Payee

Purpose

Amount