



**Item:** Sale of City-Owned Property: Med-Tech Lot Lots 3A, 3B, 3C; 2101, 2109 and 2201 21st Avenue South.

**From:** Greg Doyon, City Manager

**Initiated By:** Great Falls College Montana State University

**Presented By:** Greg Doyon

**Action Requested:** Conduct Public Hearing for Sale of City Owned Property

---

**Public Hearing:**

1. Mayor conducts public hearing, calling three times each for opponents and proponents.
2. Mayor closes public hearing and asks the will of the Commission.

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/deny) the sale of City-owned property at 2101, 2109 and 2201 21<sup>st</sup> Avenue South (Med-Tech Lots 3A, 3B, 3C) to the Great Falls College Montana State University for a total purchase price of \$671,500.”

2. Mayor requests a second to the motion, Commission discussion, and the calls for the vote. (Approval requires a 4/5 majority.)
- 

**Summary:** In 2004, the City of Great Falls purchased 10 acres of land for the purpose of creating a subdivision that would provide office development sites compatible with existing development in that part of the city known as the “Medical District.” Utilities were extended to the site, a segment of 21<sup>st</sup> Avenue South was built connecting to 23<sup>rd</sup> Street South, and 8 lots of 1 acre+ each in size were created at a total cost to the city of about \$1.2 million. On July 18, 2006, City Commission approved the final plat for the project.

Med-Tech Lot Lots 3A, 3B, 3C are the last remaining lots for sale in the development. Sale of the lots will allow debt retirement of approximately \$104,357.55 for utility improvements and bring the real estate venture to a close.

Prior lot sales include:

Date	Lot	SF Price	Sale Price	Purchaser
September 2006	Lot 3D	4.00/sq ft	\$192,013	Social Security Building
July 2008	Lot 3F	4.25/sq ft	\$242,615	Homeland Security Building
June 2009	Lot 3G	\$4.25/ sq ft	\$195,684	Premier Care Pediatrics
June 2009	Lot 3H	\$4.25/sq ft	\$195,683	Premier Care Pediatrics
July 2012	Lot 3E	\$4.643/ sq ft	\$265,000	Bresnan Communications
<b>Total Sales</b>			<b>\$1,090,995</b>	

**Background:**

Great Falls College Montana State University (GFC MSU) contacted Planning and Community Development in September 2015 to inquire about the purchase about the City-owned property located in the Med-Tech Park. GFC MSU is seeking additional property for future expansion.

The Official Code of the City of Great Falls 3.04.080 specifies the process for selling city owned property to another government entity. The process allows direct negotiation without an appraisal or bid. The process does not waive the requirement of a fifteen day public notice, hearing and four-fifths Commission vote to approve purchase.

The State of Montana/University System land aquisition process required two independent appraisals provided in the chart below:

Lot	Kemble, Kosena & Company, Inc	Ferro Appraisal Services, Inc
Lot 3A	\$241,000	\$224,000
Lot 3B	\$241,000	\$224,000
Lot 3C	\$240,000	\$223,500

On January 27, 2016, GFC MSU proposed a bid of \$671,500, the lower appraisal. City Manager Doyon counteroffered for \$701,500 which was rejected by GFC MSU.

A notice of public hearing was placed in the *Great Falls Tribune* on March 20, 2016. GFC MSU is proposing a closing date of June 30, 2016.

**Fiscal Impact:** Proceeds from the sale will be used to retire \$104,357.55 of utility debt service on the development. The remaining proceeds will be returned to the Economic Development Fund (\$567,142.25); the original fund used to develop the Med Tech Park. At a later date, the City Manager will present proposals for use of the proceeds to address deferred capital needs.

Proposed purchase summary:

Date	Lot	SF Price	Proposed Sale Price	Proposed Purchaser
April 2016	Lot 3A	\$4.65/ sq ft	\$224,000	GF College-MSU
April 2016	Lot 3B	\$4.66/sq ft	\$224,000	GF College-MSU
April 2016	Lot 3C	\$4.66/ sq ft	\$223,500	GF College-MSU
<b><i>Total Proposed Sale Amount</i></b>			<b><i>\$671,500</i></b>	

**Alternatives:**

1. The City Commission could consider rejecting the bid and wait for other proposals.
2. The City Commission could attempt to counter the offer; which would require additional review from the Board of Regents.

**Attachments/Exhibits:**

1. Purchase and Sale Agreement
2. Subdivision Map

**STATE OF MONTANA  
DEPARTMENT OF ADMINISTRATION**

**AGREEMENT FOR  
PURCHASE AND SALE OF REAL ESTATE**

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between STATE OF MONTANA, acting by and through its Department of Administration, Architecture & Engineering Division (“**State**” or the “**Department**”) on behalf of the **Great Falls College Montana State University (“GFC MSU”)**, whose address is P.O. Box 200103, Helena, MT 59620-0103, and **City of Great Falls**, whose address is P.O. Box 5021, Great Falls, MT 59403-5021 (“**Seller**”).

WHEREAS, Seller is the owner of real property described as:

Lots 03A, 03B, and 03C of the Medical Tech Park Addition of the City of Great Falls in Section 18, Township 20 North, Range 4 East, in Cascade County, Montana, containing 3.3 acres, more or less, as the same is shown in the records of the Cascade County Clerk and Recorder’s office.

WHEREAS, Seller desires to convey this real property to GFC MSU, and GFC MSU desires to acquire the real property;

NOW, THEREFORE, in exchange for the mutual promises and covenants herein contained, and other good and valuable consideration, the mutual receipt and sufficiency of which is hereby acknowledged by Seller and the State, it is agreed as follows:

**SECTION 1 - PROPERTY**

**1.1 Conveyance.** Seller shall sell and convey to GFC MSU, and the Department on behalf of GFC MSU shall purchase and accept from Seller, all subject to the terms, reservations, and conditions of this Agreement, that real property located in Cascade County, Montana, the legal description of which is set forth above, together with the following:

- (a) All rights, tenements, hereditaments, easements, fixtures, and appurtenances owned by Seller, including, but not limited to, any rights, title and interest of Seller in and to all trees, water rights or water shares appurtenant to the above-described lands.
  
- (b) All other improvements, if any, and other items located upon or within the real property;

(c) Seller's interest in all easements, right-of-ways, and other rights appurtenant or used in connection with the above-described real property in which Seller has an interest, including but not limited to rights to adjacent streets, roads, alleys, and rights-of-way. The interests to be assigned, partially and fully as appropriate, will be identified and agreed upon between the signing of this Agreement and Closing (defined below); and

(d) All assignable permits, plans, and licenses in Seller's name, if any, utilized in connection with the real estate; and,

These lands, together with the improvements, rights and interests described above, are collectively referred to herein as **"the Property."**

## SECTION 2 - PURCHASE PRICE

**2.1 Amount.** The purchase price (the **"Purchase Price"**) to be paid by the Department to the Seller for the Property is: **\$671,500.00**. The State's obligation to complete the purchase of the Property is contingent and conditioned upon the above-described purchase price being certified as being less than or equal to the fair market value of the Property to be purchased and sold by a third-party appraisal contracted by the State and accepted by an appraisal reviewer approved by the State.

**2.2 Appraisal.** If the purchase price stated above exceeds the certified fair market value of the Property to be purchased and sold, the State shall notify the Seller in writing (Appraisal Notice) no later than 10 days following upon notice of the purchase price. The State may then seek to negotiate a lesser Purchase Price with the Seller. If the parties cannot agree on a new price within 14 days of the Appraisal Notice, this Agreement shall automatically terminate without further obligation of either party.

**2.3 Payment.** The Purchase Price shall be paid into escrow by a State wire transfer to the Closing Agent on the Closing Date as defined below.

## SECTION 3 - CLOSING

**3.1 Closing Date.** **"Closing," "Closing Date" or "Date of Closing"** as those terms are used herein, means the date upon which all documents are recorded and money paid in bankable funds to complete the purchase contemplated herein. The Date of Closing shall be as soon as practical to facilitate an orderly closing but no later than **June 30, 2016**, unless otherwise agreed in writing by the parties. Notwithstanding any other provision of this Agreement, if the transaction described in this Agreement has not closed on or prior to **June 30, 2016** for any reason, this Agreement shall terminate without any further liability of either party to the other.

**3.2 Closing.** This transaction shall be closed at a title company mutually acceptable to the parties. The parties shall deposit the necessary documents and funds with the Closing Agent sufficiently in advance of the Closing Date to facilitate an orderly closing. Seller and the

Department shall each pay one-half of the Closing Agent's fee. On or before the Closing Date, Seller shall have its title insurer provide to the Department a Closing Protection Letter to indemnify the Department and GFC MSU against loss of settlement funds due to the acts or omissions of the title company closing this transaction, including theft of settlement funds and failure to comply with written closing instructions.

#### **SECTION 4 - CONVEYANCE, TITLE INSURANCE AND POSSESSION**

**4.1 Possession.** GFC MSU is entitled to possession of the Property on the Closing Date, subject to the provisions of Section 6.2.

**4.2 Form of Deeds.** On the Closing Date, Seller shall convey title to the Property to GFC MSU by Warranty Deed, free and clear of all assessments, monetary liens or encumbrances securing the payment of money, and subject only to any other encumbrances or defects, apparent upon inspection or of record, accepted by the Department in writing and subject to Surviving Agreements pursuant to Section 6.2.

**4.3 Preliminary Commitment.**

(a) Upon the certification of the fair market value, Seller shall provide the Department with a preliminary commitment for an ALTA Standard Owner's Coverage Policy insurance ("**Preliminary Commitment**"). Seller warrants that at the Closing Date title shall be good, marketable and insurable subject only to the exceptions approved by the Department pursuant to Section 4.3(b).

(b) Within thirty (30) days of receiving the preliminary title commitment, the Department shall notify Seller in writing of any exceptions thereto which are wholly or conditionally acceptable to the Department ("**Title Notice**"). Following giving of Title Notice, if additional encumbrances affecting the Property arise (except for those permitted in Section 6.2), the Department shall have thirty (30) days from receipt thereof to review and approve these additional items. Failure of the Department to so approve in writing any exception to Seller's title shown in the Preliminary Commitment or arising thereafter shall be deemed to be a disapproval of such exception.

(c) Upon receipt of the Title Notice, Seller prior to or at the Closing Date, at its sole cost and expense, shall undertake (by the exercise of its reasonable efforts and with due diligence) to remove, eliminate, or modify any exceptions not acceptable to the Department. If Seller either cannot or will not remedy the title exception to the Department's satisfaction, and the Department and Seller are unable to negotiate an acceptable resolution to the title exception, the Department may without liability terminate this Agreement.

**4.4 Title Policy a Condition of Closing.** Closing is conditioned upon the Title Company issuing the Title Company's ALTA Standard Owner's Coverage Policy (the "**Title Insurance Policy**") insuring fee title to the Property in the name of Montana State University, Great Falls College, in the amount of the Purchase Price, subject only to (i) the printed form exceptions contained in the ALTA Standard Owner's Coverage Policy, Schedule B and (ii) such exceptions accepted by the Department ("**Permitted Exceptions**").

If the Title Company cannot issue the Title Policy effective at Closing as required above, and/or the Department determines that any new title exception not previously accepted by Department ("**New Title Exception**") is not acceptable to the Department, and Seller cannot remedy the New Title Exception to satisfy the Department, and the Department and Seller are unable to negotiate an acceptable resolution to the New Title Exception, the Department may without liability terminate this Agreement.

**4.5 Use of Purchase Price.** The Purchase Price to be paid by the Department to Seller at Closing may be used in whole or in part by Seller by and through the Closing Agent at closing to remove any liens, liabilities, or encumbrances which Seller is to have removed.

**4.6 Cost of Policy.** Seller shall pay for the Title Insurance Policy and Closing Protection Letter. The Department shall request and pay for any co-insurance policies and reinsurance certificates issued by Title Company at the Department's request.

## **SECTION 5 - THE DEPARTMENT'S RIGHTS AFTER ACCEPTANCE**

**5.1 Inspection.** The Seller has permitted the Department to enter upon the Property for the purpose of conducting environmental assessments and investigating the Property and the physical condition thereof, including, without limitation, soil, water, and air conditions, and the condition of improvements, if any, upon the Property. This and other inspections by the Department, if any, shall not be construed as estopping actions upon any warranty made under Section 8.1, herein. Seller shall also make available to the Department the following (collectively, "**Seller's Studies**"):

- (a) Seller has provided the Department with a Phase 1 Environmental Site Assessment as prepared by Maxim Technologies, dated August 27, 2004;
- (b) Copies of the following studies and due diligence materials Seller has in its possession with respect to the Property: water rights report, permits, any other environmental hazard assessments; and,
- (c) Seller shall provide disclosure on the Disclosure Statement, which is in the form attached as Exhibit A. Disclosure must be provided within sixty (60) calendar days of executing this Agreement but in no instance later than the Board Approval date in Section 5.4.

Anything contained in such materials shall be deemed disclosed to the Department and GFC MSU, and shall not constitute a breach of any representation or warranty contained herein, and the Department and GFC MSU shall take the Property subject to any and all such defects or issues raised in the Seller's Studies.

## **5.2 Department Studies.**

- (a) Department Studies and Assessments. The Department shall have the right to a reasonable due-diligence period to conduct studies, assessments, collect data, and perform analysis of the Property. This Agreement is further contingent upon, and subject to, compliance with the procedures, requirements, and discretion of the Montana Board of Regents. The Department shall be solely responsible for costs of all the Department's Studies.
- (b) Environmental Assessment. Per the Montana Environmental Protection Act, the purchase of this Property is subject to the findings of an EPA-compliant, Phase 1 Environmental Assessment. The Department shall be solely responsible for costs of all the Assessment. The Department has completed this Environmental Assessment as conducted by TD&H Engineering, dated December 2015.
- (c) Termination. If the Department determines at its sole discretion that Seller's Studies or the Department's Studies and Assessments indicate the Property is not economically desirable or is not suitable for the intended use by the Department or GFC MSU, or the Property presents risk of liability unacceptable to the Department or GFC MSU, the Department may terminate this Agreement without further obligation up to the time of Closing.

## **5.3 Subsequent Acts.**

- (a) Between the date of this Agreement and the Closing Date, Seller shall maintain the Property and keep the Property in condition at least as good as on the date of this Agreement, except as authorized by Section 6. Seller shall not remove any improvements, minerals, sand, gravel, or other item from the Property after the date of this Agreement without prior, written approval by the Department, unless otherwise authorized herein.
- (b) The parties agree to take such actions as are reasonably needed in order to implement the terms of this Agreement, both before and after Closing.

**5.4 Board Approval.** This Agreement is contingent upon further acknowledgement by the Montana University System's Board of Regents. If, on or before **June 1, 2016**, the Department has not delivered to Seller a written notice of the Montana University System's Board of Regents' acknowledgement ("**Acknowledgement Notice**") to consummate the acquisition of the Property, then the Department or Seller may terminate this Agreement by giving written notice of termination ("**Termination Notice**") to the other party. The right of termination by Seller shall not be effective if Seller receives the Acknowledgement Notice prior to Seller sending the Termination Notice.



## SECTION 6 - SELLER'S ONGOING MANAGEMENT OF PROPERTY

Between the date of this Agreement and the Closing Date, Seller has the right to manage, control and operate the Property, and has the right in its discretion to enter into the following arrangements in the ordinary course of Seller's business:

- 6.1** Agreements, leases, licenses and permits that will terminate on or before the Closing Date;
- 6.2** Agreements, leases, permits, easements and rights of way that will survive Closing (collectively, "**Surviving Agreements**") but for which there will be no adjustment of the Purchase Price:
- (a) Grant, obtain, and/or clarify easements to, from, and across the Property; and
  - (b) Enter into boundary adjustments with neighboring landowners as needed in order to address any encroachments discovered after the date of this Agreement.

Seller shall not enter into any Surviving Agreements without the Department's consent, which will not be unreasonably withheld. The Department shall have fifteen (15) days after receipt of a draft of a Surviving Agreement acceptable to Seller within which to review the Surviving Agreement and either consent to it or give Seller specific suggestions about changes to the Surviving Agreement which will make it acceptable to the Department.

## SECTION 7 - CONTINGENCIES

**7.1 Conditions.** The Department's obligations under this Agreement are conditioned and contingent upon the following:

- (a) The Department's determination in its sole discretion that it has sufficient funds and the approval for the use of funds for the Department to use to purchase the Property and to pay for all expenses for which it is responsible.
- (b) The Seller is fully aware that the Department's funding is limited by House Bill #5 of the 63<sup>rd</sup> Legislative Session and House Bill #403 of the 64<sup>th</sup> Legislative Session. The funding level authorized by the Legislature is the maximum available for all costs and expenses of any kind or nature, including but not limited to, Purchase, Closing, Studies and Assessments, etc. However, this level is further subject to the availability of proceeds within the account from which it is established (i.e. the Long-Range Building Program Fund) dedicated for the purpose of purchasing the Property.
- (c) The truth and accuracy as of the Closing Date of all representations and warranties of Seller set forth in this Agreement or in any instrument or document delivered by Seller to the Department.

- (d) The delivery by Seller to the Department on or prior to the Closing Date of all documents and instruments required by the terms of this Agreement.
- (e) The performance on or prior to Closing by Seller of all acts required under this Agreement.
- (f) The absence at Closing of any violation of any federal, state, or local law, rule, regulation or ordinance affecting the use, occupancy or condition of the Property.
- (g) The absence at Closing of any failure of Seller to comply with the order of any court, government authority or agency pertaining to the Property or the use, occupancy or condition of the Property.
- (h) The absence at Closing of any proceeding or threat of any proceeding to condemn all or any part of the Property by a proceeding in eminent domain.
- (i) Conveyance of acceptable title as provided in Section 4, and receipt of title evidence or Seller's Disclosure Statement documenting that there are no leases or rental agreement present on the Property
- (j) Approval of the Department's Studies pursuant to Section 5.2.
- (k) Approval of the acquisition of the Property by the Montana University System's Board of Regents.

**7.2 Waiver.** If any condition specified in Section 7.1 is not met at Closing, the Department may waive such condition in writing or the Department may terminate this Agreement without any further liability, both at its sole discretion. Upon such termination, any money deposited by the Department pursuant to this Agreement, together with all interest earned thereon shall be promptly returned to the Department.

## **SECTION 8 - REPRESENTATIONS AND WARRANTIES**

**8.1** Seller makes the following representations and warranties to the Department. Each of these representations and warranties is material and is relied upon by the Department. Each of the representations and warranties shall be deemed accurate through Closing and shall survive Closing for two years as stated in Section 12. As used below, "**Seller's knowledge**" means the actual knowledge of the **City of Great Falls**, without any implied duty of inquiry or constructive knowledge attributable to such individuals.

- (a) **Title.** Title to the Property is vested in Seller as of the Closing Date.

(b) **No Liabilities.** To the best of Seller's knowledge, there exists upon the Property no condition that is in material violation of any statute, ordinance, regulation or administrative or judicial order or holding, whether or not appearing in the public records that affect the Property.

(c) **Correctness.** To the best of Seller's knowledge, all information furnished by Seller to the Department with respect to the Property is accurate and truthful as of the date that any such information or reports were prepared.

(d) **Litigation.** To the best of Seller's knowledge, there is no pending or threatened litigation affecting the Property or any portion thereof, including but not limited to alleged violation of federal, state or local environmental laws. Seller has not received any notice relating to a breach or suspected breach of any environmental laws.

(e) **Condition of Property.** To the best of Seller's knowledge, Seller represents and warrants the following: the Property does not contain any underground storage tanks, surface impoundments, asbestos or asbestos-containing material, or polychlorinated biphenyls ("PCBs") or PCB-containing materials, past or present refuse dump sites, chemical storage sites, areas of heavily stained soil, or sites of known hazardous material releases except as disclosed in an Environmental Assessment, and as disclosed in Seller's Disclosure Statement; and the Property is free from the presence of hazardous waste or materials and no hazardous waste or materials have been generated, stored, released, or disposed of on or within the Property excepting those used in accordance with applicable law. The term "**hazardous waste or materials**" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now in effect, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, *et seq.* Seller has no undisclosed knowledge of any fact or condition that would materially impair the fair market value of the Property, would materially increase the cost of operating the Property or would be inconsistent with the terms of this Agreement.

**8.2 Authorization.** Seller has the right and authority to enter into this Agreement and all documents contemplated by this Agreement, to make the representations and warranties set forth herein and to perform this Agreement in accordance with its terms. Neither the execution of this Agreement nor its performance by Seller will conflict with or result in the breach of any mortgage, deed of trust, encumbrance, restriction, covenant, agreement or other undertaking whatever.

## SECTION 9 - INDEMNITY AND HOLD HARMLESS

To the fullest extent permitted by law and subject to the limitations set forth in Mont. Code Ann. §2-9-108, Seller agrees to indemnify, defend with counsel acceptable to the Department, and hold harmless the Department, its agencies, employees, officers and agents from (a) all liabilities, losses, claims, demands, damages, assessments, costs and expenses (including reasonable attorneys' and consultants' fees) of every kind ("**Liabilities**") resulting from, arising out of or relating to the

breach by Seller of any of its warranties, representations or covenants contained in this Agreement and (b) all Liabilities arising under, resulting from or arising out of any activities of Seller, its agents, employees, contractors, subcontractors, permittees, or licensees at the Property prior to or at Closing including but not limited to the use, disposal, generation, or sale of hazardous waste or materials as defined in Section 8.1(e). This indemnification shall survive the Closing until the second (2<sup>nd</sup>) anniversary of the Closing Date and delivery of the Deed as an independent obligation of Seller, and shall not be extinguished by operation of the “merger by deed” doctrine.

To the fullest extent permitted by law and subject to the limitations set forth in Mont. Code Ann. §2-9-108, Department agrees to indemnify, defend with counsel acceptable to the Seller, and hold harmless the Seller, its agencies, employees, officers and agents from (a) all liabilities, losses, claims, demands, damages, assessments, costs and expenses (including reasonable attorneys’ and consultants’ fees) of every kind (“**Liabilities**”) resulting from, arising out of or relating to the breach by Department of any of its warranties, representations or covenants contained in this Agreement and (b) all Liabilities arising under, resulting from or arising out of any activities of Department, its agents, employees, contractors, subcontractors, permittees, or licensees at the Property after Closing including but not limited to the use, disposal, generation, or sale of hazardous waste or materials as defined in Section 8.1(e). This indemnification shall survive the Closing until the second (2<sup>nd</sup>) anniversary of the Closing Date and receipt of Deed as an independent obligation of Department, and shall not be extinguished by operation of the “merger by deed” doctrine.

## **SECTION 10 - DESTRUCTION OR CONDEMNATION**

Seller shall bear the risk of loss prior to Closing. If, on or before the Closing Date, either the Property is materially damaged, or condemnation proceedings are commenced with respect to the Property, the Department shall have the right, at its sole election, by giving notice to Seller, either to terminate this Agreement or to purchase the Property in accordance with this Agreement. If the Department elects to terminate this Agreement, all rights and obligations of Seller and the Department shall terminate. If the Department elects to purchase the Property in accordance with this Agreement, the Department shall be entitled to all insurance proceeds or condemnation awards payable by reason of such damage or condemnation. If there is no insurance or inadequate insurance to cover the damage, the Department shall be entitled to a reduction in the Purchase Price equal to the fair market value of the Property destroyed or damaged. Seller shall immediately give notice to the Department upon the occurrence of any damage to the improvements on the Property or the initiation of any condemnation proceedings affecting the Property. The term “**material damage**” as used in this section means any damage or destruction which cannot be repaired or replaced within thirty (30) days.

## SECTION 11 - CLOSING AND CLOSING COSTS

Prior to or on the Closing Date, Seller and the Department shall deposit the following documents and funds in escrow, and the Closing Agent shall close the escrow in accordance with the instructions of the Department and Seller consistent with this Agreement:

### 11.1 Seller Obligations. Seller shall deposit the following:

- (a) Duly executed and acknowledged Warranty Deed conveying the Property to GFC MSU and Realty Transfer Certificates;
- (b) Written escrow instructions as required of Seller to close this transaction in accordance with this Agreement;
- (c) Written documentation of fulfillment and completion of Seller's Municipal Code Title 3, Chapter 4 – Real and Personal Property Sale, Trade, or Lease;
- (d) If Seller is a corporation or partnership, a certified resolution authorizing the execution of all documents delivered at the Closing;
- (e) Pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, a non-foreign affidavit, stating that Seller is not a foreign person and providing Seller's United States taxpayer identification number. If Seller is not able to certify that it is not a "foreign person," the Department is authorized to withhold a portion of the purchase price at closing for U. S. Income Tax purposes;
- (f) A Closing Protection Letter as described in Section 3.2 and Title Policy as described in Section 4.4;
- (g) Such other instruments or documents as may be reasonably required pursuant to the provisions hereof or as mutually agreed by Seller and the Department to be necessary to fully consummate the transaction contemplated hereby;
- (h) If a survey is required to transfer the property, Seller is responsible for contracting the required survey and any costs associated with that survey; and,
- (i) Seller shall be responsible for the following closing costs associated with the sale:
  - i. Title Commitment and Title Insurance Policy Costs; and,
  - ii. One Half (½) of Escrow Fees and Closing Costs associated with the sale.

**11.2 The Department's Obligations.** The Department shall deposit the following at Closing:

- (a) The Purchase Price;
- (b) One Half (1/2) of Escrow Fees and Closing Costs associated with the sale; and,
- (c) Such other items and documents, including, without limitation, escrow instructions as are reasonably required of the Department to close the purchase in accordance with this Agreement.

**11.3 Proration and Fees.** Unless otherwise provided in any other written agreement between the Seller and the Department, all domestic and irrigation water, sewer, utility, and any other expenses with respect to the operation of the Property shall be prorated between Seller and the Department as of the Closing Date, and to the extent information then available, such proration shall be made as of the Date of Closing. Seller is responsible for payment of all personal property taxes, if any, and all real estate taxes and assessments accruing on the Property to the Closing Date. Seller has no liability for real estate taxes and assessments accruing on the Property as of and after the Closing Date. Seller shall pay all real estate taxes and assessments and personal property taxes, if any, to the Date of Closing. If Seller has prepaid any real estate taxes, Seller may seek a refund from the appropriate county official; the Department shall have no obligation to refund or pay any such amount to Seller.

## **SECTION 12 - SURVIVAL**

The representations, warranties, indemnification and obligations (to the extent such obligations are not fully performed at Closing) contained herein are intended to be operative for two (2) years after the Closing Date in order to be fully effective and shall be deemed not to have merged in the deed. This section is not intended by the parties to affect any the warranty of title contained within any deed granted by the Grantor to the Grantee.

## **SECTION 13 - REAL ESTATE COMMISSION**

Seller shall pay any real estate commission payable in connection with this transaction. Any real estate agent or broker acting in this transaction shall be deemed to be the sole agent of Seller unless the Department has a signed Buyer's Broker agreement with the procuring broker. The Department warrants and represents that it has not used the services of any real estate broker in this transaction.

## **SECTION 14 - NOTICES**

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon personal service or receipt after deposit in the United States first class mail addressed as follows:

To Seller: City of Great Falls  
City Manager  
P.O. Box 5021  
Great Falls, MT 59403-5021

To the Department: Architecture & Engineering Division  
Department of Administration, State of Montana  
P.O. Box 200103  
Helena, MT 59620-0103

The foregoing addresses may be changed by written notice.

## SECTION 15 - MISCELLANEOUS

**15.1 Entire Agreement.** This Agreement constitutes the entire agreement between the parties. No other prior and contemporaneous negotiations, understandings and agreements, whether oral or written, shall be deemed to exist or bind any of the parties hereto.

**15.2 Binding Nature.** All rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

**15.3 Montana Law.** This Agreement shall be construed, interpreted and enforced pursuant to the laws of State of Montana. Venue shall be in Lewis & Clark County. The terms of this Agreement shall be given their ordinary meaning and shall not be presumed construed in favor of or against either party hereto.

**15.4 Time of the Essence.** Time is of the essence of this Agreement. No waiver or consent to any breach or other default in the performance of any of the terms of this Agreement shall be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition hereof. If time for performance falls on a weekend or legal holiday designated by the United States or State of Montana, performance shall be deemed to be timely rendered if so rendered on the next business day.

**15.5 Captions.** The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

**15.6 Invalidity.** If any provisions of this Agreement shall be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof. To the extent permitted and possible, the invalid, void or illegal provision shall be deemed replaced by a provision that is enforceable and comes closest to expressing the parties' intent as expressed in the invalid, void, or illegal provision. If application of this Section 15.6 materially and adversely affects the economic substance of the sale under this Agreement, then the affected party may without incurring liability terminate this Agreement, and each party shall be restored to the position it was in before the Agreement was signed.

**15.7 Counterparts.** This Agreement may be signed in counterparts, any one of which shall be deemed an original.

**15.8 Date of Agreement.** The date of this Agreement shall be the date on which the last party executes this Agreement. This date shall be inserted on the first page hereof when such date is determined.

**15.9 Good Faith.** Both parties shall act reasonably and in good faith in order to consummate this transaction, and Seller shall neither sell nor dispose of any of the Property nor cause or suffer the creation of any matter of record, or defect in the title to the Property for the purpose of avoiding its obligation to close.

**15.10 Default.** If either party defaults in the performance of any of that party's obligations under this Agreement, the non-defaulting party shall have all remedies available in law or equity, but neither party shall be liable for consequential damages.

**15.11 Assignability.** This Agreement shall not be assigned without the prior written consent of the other party.

**15.12 Advice of Counsel.** Seller acknowledges that it has had an opportunity to seek independent legal advice regarding the transaction.

**15.13 Submission.** This Agreement must be executed by Seller, and an original delivered to the Department, at the address set forth in this Agreement, to be considered by the Department. The Department shall have ten (10) days to sign this Agreement after it is signed by Seller. This Agreement shall not be binding upon the Department until signed by an authorized representative of the Department.



IN WITNESS WHEREOF, the parties have executed this Agreement the date and year set forth opposite their respective names.

**SELLER:**  
CITY OF GREAT FALLS

\_\_\_\_\_  
Bob Kelly, Mayor

ATTEST:

(Seal of the City)

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

REVIEWED FOR LEGAL CONTENT\*

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

\*By law, the City Attorney may only advise or approve contract or legal document language on behalf of the City of Great Falls, and not on behalf of other parties. Review and approval of this document was conducted solely from the legal perspective, and for the benefit, of the City of Great Falls. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.

**STATE:**

STATE OF MONTANA  
DEPARTMENT OF ADMINISTRATION

BY: \_\_\_\_\_

Date: \_\_\_\_\_, 2016

**EXHIBIT A  
STATE OF MONTANA  
DEPARTMENT OF ADMINISTRATION**

**SELLER'S PROPERTY DISCLOSURE STATEMENT**

\_\_\_\_\_ (Seller's Name), I hereby certify that as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, I am personally familiar with the certain tract or parcel of land proposed to be acquired by the State of Montana designated as:

Property Name: The real property located at and legally described as: Lots 03A, 03B, and 03C of the Medical Tech Park Addition of the City of Great Falls in Section 18, Township 20 North, Range 4 East, in Cascade County, Montana (now to be known as the Property). Seller executes this Disclosure Statement to disclose all Adverse Material Facts to the State of Montana regarding the Property. Adverse Material Facts are those that materially affect the value, structural integrity, or present a documented health risk to occupants of the Property. This Disclosure is not anticipated to serve as a representation of the condition of the Property, item of personal property or any fixture listed, unless the Seller provides information relating to it.

**I. INSTRUCTIONS:**

This Disclosure Statement should be prepared by the Seller only. The Seller should consider the Property, fixtures or items of personal property that may be present on the Property to be sold, and note, in the spaces provided, the existence and nature of any Adverse Material Facts, concerning each item. (Additional pages can be used in order to comply with this disclosure). The Seller understands that the information provided herein is intended for review by the State of Montana and that any inaccurate or false information may form the basis for a claim by the State of Montana against the Seller.

**II. DISCLOSURE:**

The Seller declares that the Seller has prepared this Disclosure Statement and any attachments and to the best of the Seller's knowledge and belief, the Disclosure Statement and attachments are true, correct, and complete.

Please use the spaces provided to describe any Adverse Material Facts affecting the Property and concerning the matters noted below or other matters. If the space provided is inadequate, please attach additional sheets.

Easements (written or unwritten): \_\_\_\_\_

Boundaries or property lines and any disputes:

\_\_\_\_\_

Encroachments or similar matters that may affect your interest in the Property including but not limited to buildings, fences,

etc: \_\_\_\_\_

Disputes, agreements, or problems regarding access to the

Property: \_\_\_\_\_

Outstanding unrecorded deed, mortgage, lease, contract, or other instrument adversely affecting the title to the property;

\_\_\_\_\_  
Evidence of any person having obtained any rights of possession or other interest in the Property adverse to my rights as the seller or the rights of the proposed purchaser, the State of Montana;

\_\_\_\_\_  
Landfills (compacted or otherwise) or dumps on or adjacent to the Property or any portion thereof:

\_\_\_\_\_  
Conservation Easements (existing or proposed):

\_\_\_\_\_  
Settling, slippage, sliding or other soil problems:

\_\_\_\_\_  
Flooding, drainage or grading problems:

\_\_\_\_\_  
Location of the Property, or portion of, in a flood plain, shoreline master plan, wetland or other environmentally sensitive area:

\_\_\_\_\_  
Septic system approval or existing septic system:

\_\_\_\_\_  
Major damage to the Property from fire, earthquakes, floods, slides, etc:

\_\_\_\_\_  
List any Water rights and private wells:

\_\_\_\_\_  
Restrictive Covenants and Deed restrictions:

\_\_\_\_\_  
Zoning violations, non-conforming uses:

Neighborhood noise problems or other nuisances:

---

Lawsuits against the Seller threatening or affecting the real property:

---

Waste dump or disposal or landfill or commercial use in the vicinity of the Property which causes smoke, smell, noise or other pollution:

---

Property Owner's association obligations (dues, lawsuits, etc.):

---

Notice of abatement or citations against the Property:

---

Underground storage tanks or class II injection wells:

---

Property leases, crop shares, mineral or hydrocarbon leases or other such agreements:

---

Mineral or hydrocarbon reservations:

---

Street, road or utility improvement planned that may affect or be assessed against the Property:

---

Zoning or land use change planned or being considered by the city or county:

---

Proposed increase in tax assessment value or property owner's association dues for the Property:

---

Environmental issues affecting the Property:

---

Any repairs or construction work done on the Property in the last six months that would entitle any person to a lien upon the premises for work or labor performed or materials furnished;

---

Noxious weeds or any other type of pests on or directly adjacent to the Property:

---

Any other adverse material conditions affecting the Property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SELLER’S ACKNOWLEDGEMENT:**

Seller certifies that the information herein is true, correct and complete to the best of the Seller's knowledge and belief as of the date signed by Seller.

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

\_\_\_\_\_  
(Name – typed, stamped, or printed)

Notary Public in and for State of Montana

Residing at \_\_\_\_\_.

My appointment expires \_\_\_\_\_.

**STATE OF MONTANA ACKNOWLEDGMENT:**

Subject Property Address: Lots 03A, 03B, and 03C of the Medical Tech Park Addition of the City of Great Falls in Section 18, Township 20 North, Range 4 East, in Cascade County, Montana, containing 3.3 acres, more or less, as the same is shown in the records of the Cascade County Clerk and Recorder’s office.,

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT**



State of Montana: \_\_\_\_\_

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

[End of Exhibit A to Agreement]

# Aerial Map



-  Medical Tech Park parcels
-  Tracts of Land

