



Item: Funding Application for Fiber Optic Cable – Central Montana Agricultural and Technology Park Tax Increment Financing Industrial District (CMATP TIFID)

From: Jennifer Reichelt, Deputy City Manager

Presented By: Jennifer Reichelt, Deputy City Manager

Action Requested: Approve Funding Application for Fiber Optic Cable from the CMATP TIFID

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (approve/not approve) the Tax Increment Financing Funding Application in the amount of \$44,334.43 and associated contract with 3 Rivers Communications for Fiber Optic Cable in the Central Montana Agricultural and Technology Park Tax Increment Financing Industrial District.”

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

Summary: At the conclusion of the regularly scheduled meeting on April 12, 2016, the Planning Advisory Board recommended that the City Commission approve the Tax Increment Financing (TIF) funding application for the installation of fiber optic cable in the Central Montana Agricultural and Technology Park Tax Increment Financing Industrial District (CMATP TIFID). City staff also recommends approval of the proposed CMATP TIFID funding request.

The Central Montana Agricultural & Technology Park Expanded Tax Increment Financing Industrial District Plan (Plan) states that the City is committed to fostering the development of secondary, value-adding industries to sustain and grow the economy over time. The Plan recognizes that the CMATP TIFID has a utilities infrastructure deficiency; it lacks telephone, cable, natural gas, fiber optic and electricity. The Plan states that although these utilities are present, most of the property is not served. This TIF request addresses the need of providing fiber optic/telecommunications in the area. 3 Rivers Communications will install fiber optic cable throughout the CMATP TIFID and will provide final engineering, order materials, obtain permits, schedule construction and complete all installation.

Background:

Tax increment financing (TIF) is a mechanism that allows communities to use new tax dollars resulting from increasing taxable value for reinvestment within the geographic area in which they are derived for a period of 15 years, or up to 40 years if the incremental taxes were pledged to the repayment of a bond. The City of Great Falls currently has five TIF districts.

The Central Montana Agriculture and Technology Park Tax Increment Financing Industrial District (CMATP TIFID) applies to property located in the northern portion of the City of Great Falls, east of U.S. Highway 87 (see Exhibit A - Boundary Map).

The City created the Central Montana Agricultural and Technology Park Tax Increment Financing Industrial District on May 17, 2005 per City Ordinance 2911. However, in May 2013 the City Commission adopted Ordinance 3106, which expanded the district. The base year for the expanded district is 2013.

The district was designed to assist in financing necessary industrial infrastructure and to encourage the attraction, growth and retention of secondary, value adding industries.

The CMATP TIFID includes the existing Malteurop barley malting plant, ADF International, Inc., (steel fabrication facility and paint shop), and land owned by Dali, LLC.

Request for TIF Funding

In March 2016, the City of Great Falls submitted a TIF application requesting to use existing TIFID funds to install fiber optic cable throughout the CMATP TIFID (Exhibit B - TIF Funding Application). The fiber optic cable will provide bandwidth as well as voice and video capabilities to the property owners in the district. The TIF application request is for \$44,334.43; the funds are needed upfront in order to pay 3 Rivers Communications.

3 Rivers Communications will install fiber throughout the CMATP TIFID. They are the sole communications provider in the area. 3 Rivers will also provide all cable and equipment maintenance to ensure minimal outages and will provide for future communication growth to this area as well. They will provide final engineering, order materials, obtain permits, and schedule construction and installation. Their work will be coordinated with the City of Great Falls.

The Plan states that the City of Great Falls is committed to fostering the development of secondary, value adding industries, including manufacturing businesses in order to sustain and grow the economy over time. The CMATP Plan recognizes that there is an infrastructure deficiency in the area of utilities including telephone, cable, natural gas, fiber optic and electricity. The Plan states that although these utilities are present, most of the property is not served. Therefore, in addition to upsizing current utility infrastructure, extensions of these facilities may be required to serve individual needs. This project addresses an identified need in the area.

City Commission approved a "Tax Increment Application Process" for considering funding

requests for tax increment assistance from TIF Districts. The process is that upon receipt of an application, city staff reviews the application and makes recommendation to the Planning Advisory Board (PAB). City Commission will consider the PAB recommendation and approve or reject the funding request along with any special terms of assistance.

Preliminary Findings

City staff and legal counsel from Dorsey & Whitney, LLP met to review the TIF Application. After thorough review and evaluation of the project and infrastructure improvements City staff has determined:

- No persons will be displaced from their housing by the Project or the infrastructure improvements.
- The Project and the infrastructure improvements substantially satisfy the review criteria of the funding application process and meet the purpose and goals of State Law, the District and Plan.
- The infrastructure improvements conforms to the comprehensive plan (or parts thereof) for the City as a whole.
- The infrastructure improvements constitute public improvements in accordance with State Law.
- A sound and adequate financial program exists for the financing of the infrastructure improvements.

Montana Code Annotated (MCA) TIF Regulations

The creation and administration of TIF Districts are governed by State Law. According to Montana Code Annotated (7-15-4288) tax increment can only be used for certain purposes as outlined in state statute. The tax increments may be used by the local government to pay the following costs of or incurred in connection with an urban renewal area or targeted economic development district as identified in the urban renewal plan or targeted economic development district comprehensive development plan:

1. land acquisition;
2. demolition and removal of structures;
3. relocation of occupants;
4. the acquisition, construction, and improvement of public improvements or infrastructure, including streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
5. costs incurred in connection with the redevelopment activities allowed under 7-15-4233;
6. acquisition of infrastructure-deficient areas or portions of areas;
7. administrative costs associated with the management of the urban renewal area or targeted economic development district;

8. assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the local government itself at its fair value;
9. the compilation and analysis of pertinent information required to adequately determine the needs of the urban renewal area or targeted economic development district;
10. the connection of the urban renewal area or targeted economic development district to existing infrastructure outside the area or district;
11. the provision of direct assistance to secondary value-adding industries to assist in meeting their infrastructure and land needs within the area or district; and
12. the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

City of Great Falls TIF Review Criteria

In order to approve TIF participation requests, the requests must be determined to meet the criteria recommended in the Plan, as well as be determined eligible for TIF participation in accordance with the MCA guidelines. To aid in this determination, the City of Great Falls' Tax Increment Application Process established twelve specific criteria to assess the merits of the project in relation to the Plan.

Those criteria are:

1. *Public Infrastructure Improvements* - Public infrastructure improvements have the benefit of improving and impacting an entire district. Each district may have its own Capital Improvement Plan, which may include things such as roadway improvements, storm drains, sewer and waterlines, railroads, etc.
2. *Economic Stimulus* - The amount of economic activity to be generated within the district through the development is assessed, as well as the leverage ratio of public to private investment. In general, the maximum limit of any one development is 10% of the construction/rehabilitation costs, exclusive of acquisition costs. Projects clearly demonstrating extraordinary benefit to Districts or the community may, at the discretion of the City Commission, receive additional TIF assistance for eligible items. All applications should contain credible, measurable information substantiating the project's economic stimulus in the District and the community.
3. *Tax Generation* - The increase in taxable value due to the new district development, including construction/rehabilitation, as estimated by the County Assessor's office to determine tax increment generation.
4. *Employment Generation* - Total employment generated by the district development as assessed in terms of new permanent and part-time jobs, and construction jobs.
5. *Elimination of Blight (applies to Urban Renewal Districts)* - The development's direct and indirect impact on the physical and fiscal deterioration within the appropriate district and the community, as identified in the appropriate district plan.

6. *Special or Unique Opportunities* - The extent to which the district's development represents a unique opportunity, meets a special need, or addresses specific district or community goals. The restoration of a historic property or the provision of an unmet community need is an example of special and unique opportunities.
7. *Impact Assessment* - The extent of both positive and negative environmental impacts, appropriateness of the development's project design, and impact on existing businesses or residents.
8. *Financial Assistance* - Other forms of financing available to the Applicant. Lender participation, industrial development revenue bonds, and state and federal grant monies, for example, are examined to assess the need for TIF assistance.
9. *Development Feasibility* - A determination of feasibility is made based on the strength of the Applicant's demonstration of market demand for the development in the district as contained primarily on the pro forma and financing commitments.
10. *Developer Ability to Perform* - An assessment of the Applicant's capability to undertake the relative complexities of the development based on past performance on similar projects.
11. *Timely Completion* - The feasibility of completing the development according to the Applicant's development schedule.
12. *Payment of Taxes* - All property taxes, special improvement district assessments and other assessments on the project property must be paid to date.

Fiscal Impact: There is currently adequate funding in the CMATP TIFID account to cover this TIF Funding Application. The current cash balance in the account is \$355,792.63 with an additional payment of \$143,544 anticipated being received in June 2016.

Concurrences: Representatives from the Planning and Community Development Department, Fiscal Services, Park and Recreation, Public Works and the Manager's Office concur on approving the TIF Application for funding.

Alternatives: The City Commission could vote to not approve the CMATP funding application for fiber optic cable.

Exhibits

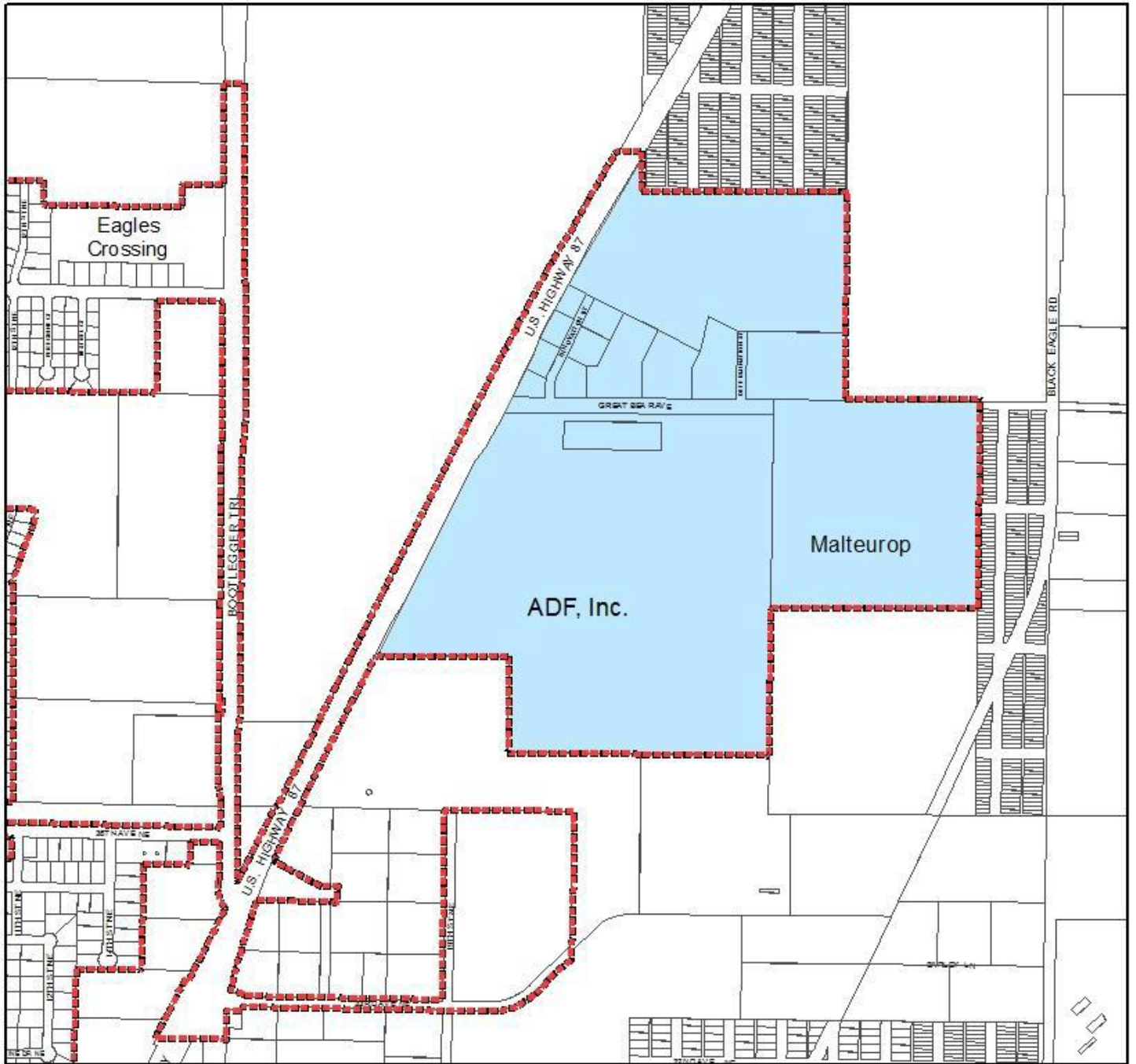
Exhibit A—CMATP Boundary Map

Exhibit B—CMATP Aerial Map

Exhibit C—TIF Application

Exhibit D—Contract with 3 Rivers

EXHIBIT A - CENTRAL MONTANA AGRICULTURAL AND TECHNOLOGY PARK TAX INCREMENT MAP



----- City Limits

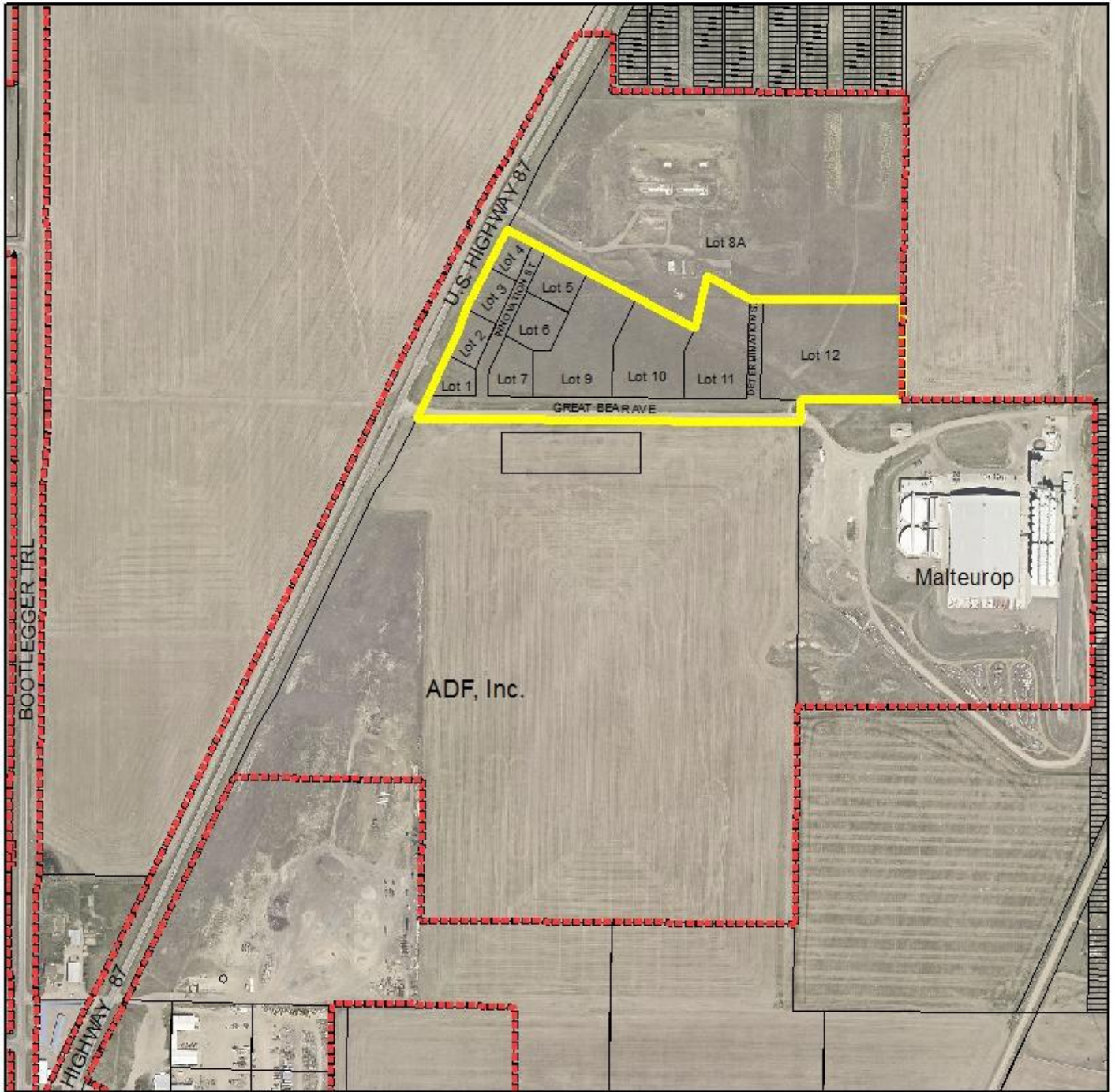
□ Tracts of Land


■ Central Montana Agricultural & Technology Park
Tax Increment Financing Industrial District


800 400 0 800 Feet



EXHIBIT B - CENTRAL MONTANA AGRICULTURAL AND TECHNOLOGY PARK TAX INCREMENT AERIAL MAP



-  City Limits
-  Area for requested TIF funded improvements
-  Tracts of Land

500 250 0 500 Feet 

Central Montana Agricultural & Technology Park
Tax Increment Financing Industrial District Application

EXHIBIT C – TIF APPLICATION

CITY OF GREAT FALLS



**TAX INCREMENT FINANCING
(TIF)**

APPLICATION FOR FUNDS

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

Project Name: Optical Fiber Installation

Date Submitted: March 2, 2016

Name of TIF District: Central Montana Agriculture and Technology Park Tax Increment Financing Industrial District (CMATP District)

APPLICANT INFORMATION

Name: David Dobbs/Jennifer Reichelt

Address: City of Great Falls, P. O. Box 5021, Great Falls, MT 59403

Telephone: 406-771-1258

DEVELOPMENT INFORMATION

1. **Building Address:** Central Montana Agriculture and Technology Park TIFID

2. **Legal Description:** Located in the northern portion of the City of Great Falls, See attached CMATP TIF Boundary Map and legal description.

3. **Ownership:** The area where the fiber will be installed is within the public right of way and easements. The City of Great Falls is entitled to easements from the owners of Lots 1A, 2, 4 and 5 as outlined in the annexation agreements for these parcels. Current owners within the district include MatltEurop, ADF and Great Bear/Joe Stanek.

4. **Architectural/Engineering Firm:** 3 Rivers Communications

Address: PO Box 429, Fairfield, MT 59436

Representative: Jason Petrillo, Jason.petrillo@3rivers.coop

5. **Please provide a description of the Total Project Development:**

3 Rivers Communications will install fiber throughout the Central Montana Agri-Tech Park TIF District. They are the sole communications provider in the area. 3 Rivers can provide unlimited bandwidth as well as voice and video capabilities. They will provide final engineering, order materials, obtain permits, and schedule construction. This will be coordinated with the City of Great Falls. 3 Rivers will also provide all cable and equipment maintenance to ensure minimal outages and will provide for future communication growth to this area as well.

The Central Montana Agricultural & Technology Park Expanded Tax Increment Financing Industrial District Plan stated that the City of Great Falls is committed to fostering the development of secondary, value adding industries, including manufacturing businesses in order to sustain and grow its economy over time. The CMATP Plan recognized that there was an infrastructure deficiency in the area of utilities including telephone, cable, natural gas, fiber optic and electricity. The Plan states that although these utilities are present, most of the property is not served. Therefore, in addition to upsizing current utility infrastructure, extensions of these facilities may be required to serve individual needs. This project addresses an identified need in the area.

6. Employment/Existing FTE Jobs:

MaltEurop currently employs 50 individuals and ADF employs 201.

7. Please provide rehabilitation/construction plans (attach schematics, site and landscaping plans).

Please see attached letter/plans from 3 Rivers Communications.

8. What is the development schedule or estimated completion date for the Total Project Development? The Total Project Development is best defined as the entire development, not just the TIF improvements (please include project phasing if appropriate).

Once approved, 3 Rivers can begin the installation as early as this spring and the project should take approximately no more than 12 weeks to complete.

9. Do you plan on asking for any other tax abatements, grants, tax credits or other forms of relief? If so, what type?

Not at this time.

10. Please describe your funding needs and the anticipated timing schedule for your identified Eligible TIF Activities (example: *I will be fronting the costs of all identified TIF improvements and would like to be reimbursed incrementally as TIF funds become available; I am interested in utilizing bond financing to complete the identified project improvements and would like to be reimbursed with TIF funds as they become available, I need TIF funds immediately to complete the identified TIF improvements, etc.*)

This application is a request for \$44,334.43 from the Central Montana Agriculture and Technology Park TIFID; the funds would be needed upfront in order to pay 3 Rivers Communications.

11. Please indicate the amount of Public Infrastructure Need and the amount of Public Infrastructure being requested to be financed by the TIF District.

This application for tax increment funding requests that 100% of the project costs be provided by available tax increment funds. There is adequate funding available in the district and all the work being completed is considered public infrastructure and is a benefit to the entire district – current and future tenants. The breakdown is as follows:

Optical Fiber Installation	
Fiber on Great Bear Site	\$21,648.46
Fiber on MaltEurop Site	\$7,034.90
Fiber on ADF Site	\$5,420.05
Fiber Total	\$34,103.41
10% Contingency	\$3,410.34
20% Admin Costs, Permits & Inspection Fees	\$6,820.68
Project Total	\$44,334.43

ELIGIBLE TIF ACTIVITIES

Land Acquisition

	Total	Amount Requested from TIF	Timing for Funds
1.			

Demolition & Removal of Structures

1.			
2.			
3.			
Subtotal			

Relocation of Occupants

1.			
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Public Improvements

(acquisitions, construction and improvement of infrastructure which includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewers, sewer lines, storm sewers, etc.)


1.	Great Bear Fiber	\$21,648.46	Up Front
2.	MaltEurop Fiber	\$7,034.90	Up Front
3.	ADF Fiber	\$5,420.05	Up Front
4.	Fiber Contingency	\$3,410	Up Front
Subtotal		\$37,513.41	Up Front

Fees (associated with eligible activities)

(A&E design/supervision, permits & other fees)

1.	Admin, Inspection Fees & Permits	\$6,820.68	At Completion
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Central Montana Agricultural and Technology Park

 Tax Increment District



*GREAT
BEAR NO. 2
ADDITION*

US HIGHWAY 89

GREAT BEAR AVE

**ADF
International
Inc**

INTERNATIONAL

**International
Malting Company
LLC**

MALTING CO. LLC

ADDITION



The new district boundary will be described as follows:

All of Lots 2, 4, & 5, Block 1, of the International Malting Company, LLC Addition ...and...All of Lot 1A, Block 1, of the Correctional Plat of the First Amendment to the International Malting Company, LLC Addition, totaling 200.22 acres in size.

This entire district is located in Section 30, Township 21 North, Range 4 East.

Metes and bounds description for the Revised Boundaries of Central Montana Agricultural and Technology Park Tax Increment Industrial District (TIF)

Property situated in Section 30, Township 21 North, Range 4 East, of the Principal Meridian Montana, Cascade County, Montana, described as follows:

Commencing at the East Quarter Corner of said Section 30; thence N89°28'41"W along the east-west mid-section line of said Section 30, a distance of 453.39 feet to the Northwest Corner of the First Broadway Addition to North Great Falls according to the official map on file in the records of Cascade County and Point of Beginning of the industrial tax increment district herein described: thence S00°37'48"W along the west line of said First Broadway Addition to North Great Falls, a distance of 1325.50 feet; thence N89°35'17"W, a distance of 1321.42 feet; thence S00°40'34"W, a distance of 949.63 feet; thence S89°37'42"W, a distance of 1673.41 feet; thence N00°03'09"E, a distance of 615.04 feet; thence N89°48'16"W, a distance of 850.56 feet to the southeasterly right-of-way of US Highway 87, Project Number FAP 149-F (3), according to the as-built right-of-way plans on file in the records of the Montana Department of Transportation; thence northeasterly along said right of way, N25°41'35"E, a distance of 243.87 feet; thence continuing along said right of way, N30°55'54"E, a distance of 131.85 feet; thence continuing along said right of way, N25°44'38"E, a distance of 1017.80 feet; thence continuing along said right of way, N37°01'29"E, a distance of 100.44 feet; thence continuing along said right of way, N28°18'36"E, a distance of 260.81 feet; thence continuing along said right of way, N26°35'47"E, a distance of 452.20 feet; thence continuing along said right of way along a curve with a radius of R=11,400.00 feet for a length of 852.19 feet; thence continuing along said right of way, N30°52'46"E, a distance of 599.71 feet; thence S00°43'23"W, a distance of 253.56 feet; thence S89°33'37"E, a distance of 1322.31 feet; thence S00°47'26"W, a distance of 1322.76 feet; thence S89°28'41"E, a distance of 867.34 feet to the true point of beginning.

All Parcels and Geocodes to be included in the expanded Central Montana Agriculture and Technology Park TIFID

Lot 1A, Block 1, Correctional Plat of the First Amendment to the International Malting Company, LLC Addition
County Parcel Number 1029650

Geocode: 02-3139-30-4-03-05-0000
Owner - ADF International, Inc.

Lot 2, Block 1, International Malting Company, LLC Addition
County Parcel Number 1029655
International Malting Company, LLC Addition
Geocode: 02-3139-30-4-03-09-0000
Owner - International Malting Company LLC

Lot 4, Block 1, International Malting Company, LLC Addition
County Parcel Number 1029670
Geocode: 02 3139-30-4-03-03-0000
Owner - DALI LLC

Lot 5, Block 1, International Malting Company, LLC Addition
County Parcel Number 1029675
Geocode: 02-3139-30-4-03-01-0000
Owner - DALI LLC

4. INFRASTRUCTURE ANALYSIS – STATEMENT OF INFRASTRUCTURE DEFICIENCY

As noted above, the development of secondary, value-adding industries in the Central Montana Agriculture and Technology Park TIFID will require water and sewer services, transportation upgrades, stormwater collection and treatment and other improvements, depending on the types of industries that locate in the District. A review of the existing infrastructure reveals the following deficiencies:

Roads – As development occurs and traffic increases, access roadways should be paved to reduce dust and frequency of roadway maintenance. Egress routes for the heavy, wide loads should be constructed, based on carefully crafted designs that prevent roadway degradation or damage to any drainage facilities, ensure adequate turning radii, and alleviate any potential safety concerns.

Water and Sewer – There is an existing water transmission main located along the access roadway to Malteurop. There is an existing sanitary sewer trunk main and sewage lift station located on the east side of the Malteurop property adjacent to Black Eagle Road. An extension of the sewer main from this existing lift station, along the north side of the Malteurop property to the northeast corner of the proposed site for ADF, a Canadian steel fabrication company will be required.

Utilities – Telephone, cable, natural gas, fiber optic and electricity are available to the property. However, with the exception of electricity, these services will need to undergo significant upgrade to accommodate District uses. Although these utilities are present, most of the property is not served. Therefore, in addition to upsizing current utility infrastructure, extensions of these facilities may be required to serve individual needs.

Stormwater – The Public Works Department is in the process of reviewing site requirements for stormwater discharge, storage, and conveyances and on-and off-site improvements. The review will consider upstream and downstream properties and future storm drain extensions will be part of the review. As properties are developed, storm water infrastructure requirements will be more accurately determined.

General Improvements

Additional infrastructure and public services deficiencies will be identified over time. For example, emergency services buildings and equipment, site security, transloading and cargo facilities, parking lots, and other improvements and services may be required. 7-15-4288 MCA provides an extensive list of eligible items that may be paid for with tax increment dollars.

January 28, 2016

Great Bear Subdivision, ADF, & Malt Europe
Dave Dobbs
City of Great Falls
PO Box 5021
Great Falls, MT 59403

RE: Fiber to Great Bear Subdivision, ADF, & Malt Europe – W.O.#21616001.

Dear Mr. Dobbs:

Your request for services to the Great Bear Commercial Subdivision, ADF, & Malt Europe located along Great Bear Ave. in Black Eagle, MT, will be a 100% non-reimbursable cost to the City of Great Falls. The cost to place fiber to the subdivision is \$34,103.41. In order for us to proceed with ordering materials, final engineering, and scheduling construction, we must receive this letter back, signed by an authorized officer and either a corporate seal or witnessed by another authorized officer and a check for \$34,103.41. This estimate is good for 90 days. If changes in your project are made that are not identified by this estimate, you will be billed for the excess at completion. The proposed cable route is contingent on private & public right of way and required permitting. If in the event right of way and/or permitting are not obtainable within a reasonable time frame, an alternate route will be selected at which time you will be notified. Consequently, 3 Rivers will provide a new cost estimate for the "new route" resulting in new approvals. This estimate is for the cost of the construction and materials only to provide service to subdivision. It is the up to each lot owner to acquire service through 3 Rivers & service order charges will apply to each owner from the hand holes placed for service.

The time frame that this will need to be completed will also have to be coordinated with 3 Rivers Telephone. Please keep in mind for your scheduling that once we receive your check and authorization we will need to complete final engineering, material orders, permits, and construction scheduling which may take several weeks or even months. An estimated completion date will be provided by 3 Rivers.

If you have any questions, please call Jason Petrillo (jason.petrillo@3rivers.coop) or myself at 800-796-4567.

Sincerely,



John Schmitt
Engineering Supervisor

Sign



Dave Dobbs

Witness _____

Name:

Title:

cc:

Justin Cleveland
Ernie Peterson
Whitney Gollehan

202 5th Street S
PO Box 429
Fairfield, MT 59436

406-467-2535
3rivers.net

EXHIBIT D – 3 RIVERS CONTRACT

**[NOT BINDING IF USED FOR AGREEMENTS FOR
PUBLIC WORKS COSTING MORE THAN \$80,000]**

PUBLIC WORKS CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY OF GREAT FALLS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 5021, Great Falls, Montana 59403, hereinafter referred to as "City," and **3 RIVERS COMMUNICATIONS**, 202 5th Street S Fairfield, MT 59436, hereinafter referred to as "Contractor."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Contractor as an independent contractor to perform for City the public works described in the Scope of Services attached hereto as **Exhibit A** and by this reference made a part hereof. "Public Work" is a construction service with a total cost in excess of \$25,000 that is for construction, heavy construction, highway construction, or remodeling work.
2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the 30th day of June, 2016. The parties may extend this Agreement in writing prior to its termination.
3. **Scope of Work:** Contractor will perform the public works in accordance with the specifications and requirements of the Scope of Services (**Exhibit A**).
4. **Payment:** City agrees to pay Contractor an amount not to exceed forty-four thousand three hundred thirty-four dollars and forty-three cents (\$44,334.43) for the public works described in the Scope of Services. This amount includes \$34,103.41 for the installation of the fiber optic telecommunications and \$10,230.68 in contingency, administration, permit and inspection fees.
 - a. After the commencement of work, the Contractor may request monthly progress payments by submitting an application for payment to the City during each successive calendar month, with a copy to the project architect or engineer. The application for payment must be made in the form provided by the City and based upon the actual or estimated percentage of work completed and materials supplied for the work prior to the date of the Application and shall be filled out and signed by the Contractor. Contractor shall attach all supporting documentation to the application, including certified payroll records and receipts, to verify that the work claimed in the application has been completed. Only one application for payment may be submitted within a calendar month.

b. Beginning with the second application for payment, each application shall also include an affidavit signed by the Contractor stating that all previous monthly progress payments received have been applied on account to discharge Contractor's obligations associated with the prior applications for payment.

c. City and its architect or engineer shall promptly review all applications for payment and, within twenty-one (21) days after receipt of each Application, determine whether a progress payment should be disapproved in whole or in part. An Application for Payment is considered to have been received when it is submitted to City's Representative and is considered approved unless prior to the expiration of the 21-day period the City or its architect or engineer provides the Contractor with a written statement containing specific items that are being disapproved. A progress payment or any portion may be disapproved upon a claim of: (1) unsatisfactory job progress; (2) failure to remedy defective construction work or materials; (3) disputed work or materials; (4) failure to comply with material provisions of this Agreement, drawings, plans, specifications for the work, or other required documents, including but not limited to, payroll certifications, insurance coverage, bonding, lien releases, warranties, material certifications, and test data; (5) failure of Contractor to make timely payment for claims including, but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties; (6) damages to the City; (7) the existence of reasonable evidence that the Agreement cannot be completed for the unpaid balance of the Agreement's Payment; and (8) Contractor's non-compliance with applicable federal, state, and local laws, rules, and ordinances.

d. The City will furnish Contractor a written statement specifying a reason for disapproval that is listed in sub-section c. above for which approval of the Application for Payment or a portion thereof is being withheld. If the City disapproves only a portion of an application for payment, the remainder of the application for payment is considered approved.

5. **Retainage:** City shall retain five percent (5%) of the total amount of compensation to be paid to the Contractor to ensure compliance with the terms and conditions of this Agreement and the timely completion of the public works project and any and all "punch list" items ("Retainage Amount"). At all times the City will retain no less than One Thousand Dollars (\$1,000) until termination of this Agreement. The Retainage Amount shall be paid to Contractor upon the City's final approval of the public works project and agreement that all work required to be performed on the public works project is complete and satisfactory to the City. This provision does not prevent the Contractor from seeking withdrawals of the Retainage Amount in excess of One Thousand Dollars (\$1,000), pursuant to the requirements of §18-1-301, MCA.

6. **Additional Services:** Any alteration or deviation from the described work that involves extra costs will be permitted only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

7. **Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

8. **Indemnification; Insurance; Bonds:**

a. To the fullest extent permitted by law, Contractor shall fully indemnify, defend, and save City, its agents, representatives, employees, and officers harmless from and against any and all claims, actions, costs, fees, losses, liabilities or damages of whatever kind or nature arising from or related to Contractor's performance of this Agreement and Contractor's work on the Construction Project or work of any subcontractor or supplier to Contractor.

b. Contractor shall maintain those insurances as may be required by City as set forth on the attached **Exhibit B**, Required Insurance Coverage, and Contractor shall provide City with proof of such insurance coverage with this Agreement. Contractor shall notify City thirty (30) days prior to the expiration of any such required insurance coverage and shall ensure such required insurance coverage is timely renewed during the term of this Agreement so that there is no lapse in coverage during Contractor's performance of this Agreement. Contractor shall further notify City within two (2) business days of Contractor's receipt of notice that any required insurance coverage will be terminated or Contractor's decision to terminate any required insurance coverage for

any reason.

c. Contractor shall maintain those security guarantees set forth on the attached **Exhibit C**, Required Bonds.

9. **Warranty**: Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the greater of a period of two (2) years from the time services are completed or any warranty described in the Scope of Services. The warranty survives the termination of this Agreement.

10. **Compliance with Laws**: Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Contractor agrees to purchase a City business license.

11. **Labor Preferences and Prevailing Wages**:

a. For purposes of prevailing wage requirements, the project under the Scope of Services is considered as Building Construction Services. The applicable Montana or Federal Prevailing Wage Rates for this type of project, as attached to this Agreement as **Exhibit D**, are incorporated herein by this reference.

b. Contractor shall post a legible statement of all wages and fringe benefits to be paid to the Contractor's employees and the frequency of such payments (i.e., hourly wage employees shall be paid weekly). Such posting shall be made in a prominent and accessible location at the site of the project and shall be made no later than the first day of work. Such posting shall be removed only upon the final completion of the Scope of Services and the termination of this Agreement.

c. In performing the terms and conditions of this Agreement and the work on the public works project, Contractor shall give preference to the employment of bona fide residents of Montana, as required by §18-2-403, MCA, and as such term is defined by §18-2-401(1), MCA, and the Administrative Rules of Montana, including but not limited to A.R.M. 24.17.147, obliging Contractor to hire 50% bona fide Montana residents, excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law. When making assignments of work, Contractor shall use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned.

d. Pursuant to §§18-2-403 and 18-2-422, MCA, Contractor shall pay wages, benefits, and expenses as set forth herein. Contractor shall pay all hourly wage employees on a weekly basis. Violation of the requirements may subject the Contractor

to the penalties set forth in §18-2-407, MCA. Contractor shall maintain payroll records and provide certified copies to the City. Contractor shall maintain such payroll records during the term of this Agreement, the course of the work on the public works project, and for a period of three (3) years following the date of final completion of the public works project and termination of this Agreement.

12. **Contractors' Gross Receipts Tax:** Contractor understands that all contractors or subcontractors working on a publicly funded project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

13. **Nondiscrimination:** Contractor agrees that all hiring by 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.

14. **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

15. **Liaison:** City's designated liaison with Contractor is David Dobbs/Jennifer Reichelt and Contractor's designated liaison with City is Jason Petrillo.

16. **Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

17. **Binding:** This Agreement and all of the covenants hereof shall inure to the benefit and be binding upon the City of Great Falls and the Contractor respectively and their partners, successors, assigns and legal representatives. Neither the City nor the Contractor shall have the right to assign, transfer or sublet their interest or obligations hereunder without written consent of the other party.

18. **Amendments:** Any amendment or modification of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of the Agreement.

IN WITNESS WHEREOF, Contractor and City have caused this Agreement to be executed and intend to be legally bound thereby as of the date set forth below.

CITY OF GREAT FALLS, MONTANA

3 RIVERS TELEPHONE INC
CONTRACTOR (Type Name Above)

By _____
Gregory T. Doyon, City Manager

By Ernest J. Peterson
Print Name ERNEST J. PETERSON
Print Title Engineer / Project Manager
Date: April 4, 2016

Date: _____

ATTEST:

Lisa Kunz, City Clerk (SEAL OF THE CITY)

*APPROVED AS TO FORM:

By _____
Sara R. 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.

Exhibit A
Scope of Services



January 28, 2016

Great Bear Subdivision, ADF, & Malt Europe
Dave Dobbs
City of Great Falls
PO Box 5021
Great Falls, MT 59405

RE: Fiber to Great Bear Subdivision, ADF, & Malt Europe – W.O.#21616001.

Dear Mr. Dobbs:

Your request for services to the Great Bear Commercial Subdivision, ADF, & Malt Europe located along Great Bear Ave. in Black Eagle, MT, will be a 100% non-reimbursable cost to the City of Great Falls. The cost to place fiber to the subdivision is \$34,103.41. In order for us to proceed with ordering materials, final engineering, and scheduling construction, we must receive this letter back, signed by an authorized officer and either a corporate seal or witnessed by another authorized officer and a check for \$34,103.41. This estimate is good for 90 days. If changes in your project are made that are not identified by this estimate, you will be billed for the excess at completion. The proposed cable route is contingent on private & public right of way and required permitting. If in the event right of way and/or permitting are not obtainable within a reasonable time frame, an alternate route will be selected at which time you will be notified. Consequently, 3 Rivers will provide a new cost estimate for the "new route" resulting in new approvals. This estimate is for the cost of the construction and materials only to provide service to subdivision. It is the up to each lot owner to acquire service through 3 Rivers & service order charges will apply to each owner from the hand holes placed for service.

The time frame that this will need to be completed will also have to be coordinated with 3 Rivers Telephone. Please keep in mind for your scheduling that once we receive your check and authorization we will need to complete final engineering, material orders, permits, and construction scheduling which may take several weeks or even months. An estimated completion date will be provided by 3 Rivers.

If you have any questions, please call Jason Petrillo (jason.petrillo@3rivers.coop) or myself at 800-796-1557.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Schmitt", is written over a horizontal line.

John Schmitt
Engineering Supervisor

Sign _____
Dave Dobbs

Witness _____

cc:

Justin Cleveland
Ernie Peterson
Whitney Gollehan

Name:
Title:

202 5th Street S
PO Box 429
Fairfield, MT 59436

406-467-2535
3rivers.net

Exhibit B

Required Insurance Coverage

Contractor shall purchase and maintain insurance coverage as set forth below. The insurance policy must name the City, (including its elected or appointed officers, officials, employees, or volunteers), as an additional insured and be written on a “primary—noncontributory basis, and on an occurrence, not a claims made basis.” Contractor will provide the City with applicable additional insured endorsement documentation substantially similar or identical to the example set forth below. Each coverage shall be obtained from an insurance company that is duly licensed and authorized to transact insurance business and write insurance within the state of Montana, with a minimum of “A.M. Best Rating” of A-, VI, as will protect the Contractor, the various acts of subcontractors, the City and its officers, employees, agents, and representatives from claims for bodily injury and/or property damage which may arise from operations and completed operations under this Agreement. All insurance coverage shall remain in effect throughout the life of this Agreement and for a minimum of one (1) year following the date of expiration of Contractor’s warranties. All insurance policies must contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to Contractor, City, and all other additional insureds to whom a certificate of insurance has been issued. All insurance documentation shall be in a form acceptable to the City.

Insurance Coverage at least in the following amounts is required:

1.	Commercial General Liability (bodily injury and property damage)	\$1,000,000 per occurrence \$2,000,000 aggregate
2.	Products and Completed Operations	\$2,000,000
3.	Automobile Liability	\$1,000,000 combined single limit
4.	Workers’ Compensation	Not less than statutory limits
5.	Employers’ Liability	\$1,000,000
6.	Professional Liability (E&O) (only if applicable)	\$1,000,000 per occurrence \$2,000,000 aggregate
7.	Builder’s Risk/Property Insurance	Equal to greater of Contractor’s compensation or full replacement (covering all work, buildings, materials and equipment, whether on site or in transit, loss due to fire, lightening, theft, vandalism, malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of laws, water damage, flood if site within a flood plain, repair or replacement costs, testing and start-up costs).

Contractor may provide applicable excess or umbrella coverage to supplement Contractor’s existing insurance coverage, if Contractor’s existing policy limits do not satisfy the coverage requirements as set forth above.

Exhibit C

Required Bonds

Contractor shall make, execute, purchase, maintain and deliver to City performance and payment bonds in an amount at least equal to the Contractor's compensation under this Agreement, conditioned that the Contractor shall faithfully perform of all of Contractor's obligations under this Agreement and pay all laborers, mechanics, subcontractors, material suppliers and all persons who supply the Contractor or Contractor's subcontractors with provisions, provender, material, or supplies for performing work on the Construction Project. All bonds must be obtained with a surety company that is duly licensed and authorized to transact business within the state of Montana and to issue bonds for the limits so required. The surety company must have a Best's Financial Strength Rating of A, as rated by the A. M. Best Co., or an equivalent rating from a similar rating service. All bonds must remain in effect throughout the life of this Agreement and for a minimum of one (1) year following the date of expiration of Contractor's warranties. A certified copy of the agent's authority to act must accompany all bonds signed by an agent. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business within the state of Montana is terminated, Contractor shall promptly notify City and shall within twenty (20) days after the event giving rise to such notification, provide another bond with another surety company, both of which shall comply with all requirements set forth herein.

Bond Types and Amounts:

- | | | |
|----|--------------------------|---|
| 1. | Performance Bond | Equal to Contractor's compensation amount |
| 2. | Labor and Materials Bond | Equal to Contractor's compensation amount |

Exhibit D

Contractor's Rates of Wages, Benefits, and Expenses

For purposes of prevailing wage requirements, this Project is considered as Building Construction Services. The applicable Montana or Federal Prevailing Wage Rates for this type of project, as included in these Contract Documents, are incorporated herein by this reference.