



Item: Pasta Montana Updated Lease Agreement

From: Park and Recreation Department

Initiated By: Park and Recreation Department

Presented By: Sara Sexe, City Attorney

Action Requested: Conduct Public Hearing and approve lease agreement with Pasta Montana.

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/not approve) a lease agreement of City owned property located in the Veterans’ Memorial Park to Pasta Montana.”

2. Mayor requests a second to the motion, Commission discussion, and the calls for the vote.
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Staff Recommendation: Staff recommends the City Commission approve a lease agreement of City owned property located in Veterans’ Memorial Park to Pasta Montana.

Background:

The proposed lease provides for continued occupation of a portion of Veterans’ Memorial Park, consisting of 5.222 acres, by Pasta Montana for its pasta plant and associated facilities. In July 1996, the City Commission approved a twenty year lease agreement with Pasta Montana L.L.C., thereby allowing the company to build its food manufacturing plant in Great Falls. The lease included provisions that obligated Pasta Montana to remove the improvements if it ceased operations, and also included an option to purchase the property. Annual lease payments were \$18,000 for the lease period and \$27,000 for each year of the extension term.

But for a timing oversight regarding notification by Pasta Montana of its intent to extend the agreement, the prior lease agreement would have continued for an extension period of ten years,

with the potential for two additional ten year extensions thereafter. Because of the timing issue, rather than simply extend the original agreement, City staff took the opportunity to undertake a more substantive review of the agreement, obtain expert opinion as to the reasonableness of the new lease amount, and update the agreement's terms. The result is the updated agreement attached.

1. The substantive areas in the updated document include but are not limited to:
2. Lease would carry a five year term;
3. The annual lease payments would be \$27,000. An opinion from a commercial real estate expert was given by Mark Macek, MBA, CCIM, indicating that the amount of lease terms, \$27,000 per year for the raw industrial land, was consistent with market rates;
4. There are updated insurance and indemnification provisions to include security to ensure the removal of the pasta plant and improvements at the end of the lease;
5. Expanded environmental provisions; and
6. Renewed option to purchase for appraised value at the time of the exercise of the option is in the proposed agreement, similar to the first lease agreement.

As required by Title 3, Chapter 4, OCCGF, before final consideration of a lease of City property, the City Commission shall hold a public hearing. Approval of the lease will require a four-fifths (4/5) vote of all the members of the City Commission.

Concurrences:

The Park and Recreation Advisory Board recommended approval of the Lease Agreement at its September 12, 2016 Park Board meeting.

Fiscal Impact:

Pasta Montana pays property taxes on the leased parcel. In 2015, the property taxes totaled \$5,842.85 for the land and \$380,420.65 for improvements. The revenue from the lease will be distributed in the Park and Recreation Special Revenue Fund (funds can be used for park purposes). Over the term of the lease, the total amount of lease revenue equals \$135,000.

Alternatives:

The alternative would be to deny the Lease Agreement.

Attachments/Exhibits:

Proposed updated Pasta Montana Lease Agreement

LEASE AGREEMENT

THIS AGREEMENT, made and entered into effective the 7th day of September, 2016, by and between The City of Great Falls, 2 Park Drive South, Great Falls, Montana 59401, hereinafter referred to as “Lessor” or “City”, and Pasta Montana L.L.C., a Delaware Limited Liability Company, of One Pasta Place, Great Falls, Montana 59401, hereinafter referred to as “Lessee” or “PMT”:

WITNESSETH:

That, in consideration of the covenants herein contained on the part of Lessee to be observed and performed, Lessor does hereby lease unto Lessee, and Lessee does hereby lease from Lessor, a 5.2222 acre parcel of land, hereinafter “Lot”, located on a portion of Veterans’ Memorial Park, Great Falls, Montana, upon which PMT has built and maintained a commercial building, and more particularly described as follows on Exhibit A attached hereto.

NOW, THEREFORE, it is hereby agreed by the parties as follows:

1. **Term.** The term of this Lease Agreement shall be for a period of five (5) years, commencing on the 19th day of October, 2016, and ending on the 18th day of October, 2021.
2. **Rental.**
 - a. Lessee shall pay Lessor as yearly rental for the leased premises, the amount of \$27,000 payable on October 19th, 2016 and on the nineteenth day of October of each year thereafter during the term.
3. **Acceptance of Condition.** Lessee acknowledges familiarity with the condition of said leased premises and that no representation, statement or warranty, expressed or implied, has been made by or on behalf of Lessor as to such condition. In no event, shall Lessor be liable for any defect in such property or for any limitation on its use. The taking of possession of the leased premises shall be conclusive evidence that Lessee accepts the same “as is” and that the leased premises were in good condition at the time possession took place. Lessee agrees to accept the leased premises in the condition in which they exist at the date of taking possession, without representation or warranty, express or implied, in fact or by law, by Lessor, and without recourse to the Lessor as to the nature, condition or unsuitability thereof, or as to the uses to which the Premises may be put.
4. **Utilities.** Lessee shall pay all charges for utilities used, rendered, or supplied upon or in connection with the leased premises.
5. **Insurance.**
 - a. **Property and Casualty Coverage.** During the entire term of this Agreement, Lessee shall cause the Leased premises to be insured at all times against loss or damage by special perils and related casualty in an amount representing the full insurable replacement value thereof as determined by Lessor. Replacement coverage shall be subject to such deductible clauses as are required in order to obtain coverage at reasonable cost, and

which coverage shall be increased by Lessee as may be necessary to provide that the insurance proceeds will be sufficient to cover replacement, repairs or reconstruction with comparable quality materials, or security to ensure the removal of the pasta plant and other improvements at the end of the lease, as set forth hereafter. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. In lieu of separate policies, blanket policies having the coverage required herein may be maintained. Such policy, or policies, shall name Lessor as insured, and all policy proceeds shall be payable to Lessor. At the request of Lessor, policies or certificates evidencing such insurance shall be delivered to Lessee.

b. **Comprehensive liability insurance.** Lessee shall maintain in effect throughout the term of this Lease Agreement comprehensive general liability insurance covering the use, occupation or condition of leased premises in the amount of One Million Dollars (\$1,000,000.00) for injury to or death of any one person per occurrence, and in the amount of Two Million Dollars (\$2,000,000.00) aggregate for injury to or death of any number of persons in one occurrence. Such insurance shall specifically insure Lessee against all liability assumed by it hereunder, as well as liability imposed by law, and shall insure both Lessor and Lessee, but shall be endorsed so as to create the same liability on the part of the insurer as though separate policies had been written for Lessor and Lessee.

Lessee, for itself, its employees, agents, successors and assigns, shall fully save and hold harmless Lessor from any cause, claim, demand or action of any sort or nature arising from or out of Lessee's occupation, use or possession of the said leased premises; excepting therefrom only, any cause, claim, demand or action of any sort or nature arising out of the negligence of Lessor or its agents.

c. **Lessor's right to pay premiums on behalf of Lessee.** All of the policies of insurance referred to in this Lease Agreement, shall be written in form satisfactory to Lessor and by insurance companies satisfactory to Lessor. Lessee shall pay all of the premiums and deliver evidence of such policies to Lessor, and in the event of failure of Lessee either to effect such insurance in the name hereinabove called for, or to pay the premiums therefore, or to deliver evidence of said insurance to Lessor, Lessor shall be entitled to, but shall have no obligation to, effect such insurance and pay the premiums therefore, which premiums shall be repayable to Lessor by Lessee with the next installment of rental due under this Lease Agreement, and Lessee's failure to repay the same shall carry with it the same consequences as failure to pay any installment of rental under this Lease Agreement. Each insurer shall agree, by endorsement on the policy or policies issued by it, or by independent instruments furnished to Lessor, that it will give to Lessor thirty (30) days' written notice before the policy or policies in question shall be altered or canceled. Lessor agrees not to unreasonably withhold its approval as to the form or to the insurance companies selected by Lessee.

6. **Taxes and Assessments.**

a. **Taxes as additional rental.** As additional rental hereunder, Lessee shall pay and discharge as they become due, promptly and before delinquency, all real estate taxes, special improvement district taxes, special city taxes, special assessments and other charges and taxes of every nature and kind, whatsoever, if any can be and are assessed against the land and building. All of the taxes and assessments under this paragraph shall be prorated at the commencement and at the expiration of this Lease Agreement.

b. **Receipt.** Lessee shall obtain and deliver copies of all receipts showing taxes and assessments which have been paid promptly on payment thereof to Lessor at the address provided for under the "Payments and Notices" paragraph, below.

7. **Repairs and Maintenance.**

a. **Maintenance of Leased Premises.** Lessee shall, throughout the term of this Lease Agreement, at its own cost, and without any expense to Lessor, keep and maintain the leased premises, including the building and improvements, and all appurtenances thereto, including, sidewalks and parking lots adjacent thereto, in good condition and repair, including but not limited to, timely removal of rubbish and trash. Lessor shall not be obligated to make any repairs, maintenance, replacements or renewals of any kind, nature or description whatsoever to the leased premises or any improvements thereon; PROVIDED further that Lessor shall not be responsible for repairs or maintenance resulting from the negligence of Lessee, its employees, agents, or invitees, which shall be the sole responsibility of Lessee.

b. **Entry by Lessor for Failed Maintenance.** Should Lessee at any time fail, neglect or refuse to fulfill this obligation to repair and maintain, Lessor may, but need not, enter the leased premises and make such repairs or alternations as, in its opinion, it may deem necessary, and Lessor may charge the costs of the same to Lessee to be paid upon the first day of the following month as part of the rental, and should said costs not be so paid, this Lease Agreement shall be considered in default.

8. **Right of Entry.** Lessor, or its agents or employees, shall have the right to enter the leased premises at all reasonable hours to examine the same or to make such repairs or temporary alterations as shall be deemed necessary for the safety or preservation of the leased premises. There shall be no rebate of rent, nor liability for any loss of occupation or quiet enjoyment occasioned thereby.

9. **Use of Lot.** Lessee agrees to use and operate the Lot continuously during the term of this Lease Agreement primarily for Lessee's business purposes and services convenient to Lessee and incidental thereto. Lessee further agrees that it will not make or suffer any unlawful, improper, or offensive use of the leased premises, or in any way use or occupy the same contrary to any law of the State, or any ordinance of the City, now or hereafter made. Lessee shall not commit, or suffer to be committed, any waste on the leased premises or any nuisance. Lessee agrees that no use shall be made or permitted to be made of the leased premises, or acts done,

which will cause a cancellation of any insurance policy covering the leased premises or any part thereof. At its own cost, responsibility, and risk, Lessee intends to use the property to operate a pasta plant facility on the Lot to conduct manufacturing of food products.

10. **Subletting and Assignment.** Lessee shall not have the right to assign this Lease Agreement or sublet the premises, or any part thereof, without the prior written permission of Lessor. Should Lessor grant such permission, any assignment or sublease shall be subject to all the provisions of this Lease Agreement, the rental reserved herein shall not be altered in any manner whatsoever, and Lessee shall continue to be bound by all the terms, conditions, and covenants of this Lease Agreement and be liable for the rents reserved in this Lease Agreement; provided, however, anything in this Lease Agreement to the contrary notwithstanding, Lessor, may release Lessee from any further liability whatsoever, at its option, by doing so in writing. Permission given by Lessor to an assignment or sublease shall not be deemed to be permission given to any subsequent assignment or sublease. Any assignment or sublease made without the prior written permission of Lessor shall be void, and shall, at the option of Lessor, terminate this Lease Agreement.

11. **Improvements.** With Lessor's consent, which shall not be unreasonably withheld, Lessee shall be permitted, during the term of this Lease Agreement, to make such improvements and alterations to the leased property as it may see fit, provided such improvements and/or alterations. At the termination of this Lease Agreement, the Lessee shall have the right to dismantle and remove all of the improvements it has made to the leased property, (including without limitation, buildings, improvements, fixtures, trade fixtures, machinery, equipment and other personal property); further, Lessee shall remove such improvements upon Lessor's request. Lessee shall have a period of six months following the termination of this Agreement, regardless of the termination to effect removal and shall have reasonable access to the Premises for that purpose. Lessee shall maintain insurance coverages on the leased premises during such removal. Any improvements or trade fixtures, not so removed, shall become the sole property of Lessor upon termination of this Agreement and Lessor shall have the right to any proceeds from insurance or other security as defined in Paragraph 5.a. which ensures removal of the improvements or trade fixtures at the termination of this Agreement.

12. **Lessor and Lessee's Title.** Lessor is not, and never shall be, liable to any creditor of Lessee or any claimant against the estate or property of Lessee for any debt, loss, contract, or other obligation of Lessee. The relationship between Lessor and Lessee is solely that of landlord and tenant, and does not, and never shall be, deemed a partnership or joint venture.

13. **Liability for Liens.** Lessor's interest in and to said leased premises shall not be subject to, or permitted to become subject to, any lien or claims from or arising out of the use and occupation of the leased premises by Lessee. If, and in the event, such liens or claims arise or occur, Lessee shall promptly and forthwith cause the same to be released or discharged to the extent that the interest of Lessor is encumbered thereby.

14. **Condition of Premises Upon Surrender.** At the expiration of this Lease Agreement, Lessee shall quit, restore and surrender the leased premises in as good condition as when Lessee first leased the premises, reasonable wear and tear and damage by the elements excepted.

15. **Environmental.**

a. **Environmental Law and Hazardous Materials.**

“**Environmental Law**” means any federal, state or local statute, law, rule, regulation, ordinance, code, guideline, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; and any state and local counterparts and equivalents, including without limitation the Montana Hazardous Waste and Underground Storage Tank Act, MCA § 75-10-401, et seq., and the Montana Comprehensive Environmental Cleanup and Responsibility Act, MCA § 75-10-701, et seq.

“**Hazardous Materials**” means (a) any oil, petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous chemical,” “hazardous material,” “hazardous substance,” “hazardous waste,” “pollutant,” or “contaminant” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, the presence, collection, storage, use, generation, manufacturing, treatment, transportation, disturbance, disposal or exposure to or of which is prohibited, limited or regulated by any governmental authority and/or under any applicable Environmental Law.

“**Hazardous Materials Contamination**” means the contamination (whether presently existing or occurring after the date of this Agreement) of the buildings, improvements, facilities, soil, ground water, air or other elements on, or of, the leased premises by Hazardous Materials, or the contamination (whether before or after the date of this instrument) of the buildings, improvements, facilities, soil, ground water, air or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the leased premises.

b. **Lessee's Obligations.**

i. PMT represents and warrants to Lessor that: (1) during the period of PMT's prior occupancy of the leased premises described in Exhibit A, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Materials or any Hazardous Materials Contamination by any person on, under, about or from any of the Premises, other than Hazardous Materials which are present, stored, handled or used in PMT's ordinary course of business and in compliance with all applicable laws, including Environmental Laws; and (2) PMT has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws involving the subject property; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Materials or any Hazardous Materials Contamination on, under, about, or from the Leased premises by any prior owners or occupants of any of the Premises; (c) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Materials or any Hazardous Materials Contamination on, under, about, or from any property adjoining the Premises; (d) any underground storage tanks or underground storage tank systems located under or on the subject property; or (e) any actual or threatened litigation or claims of any kind by any person relating to such matters. The representations and warranties contained herein are based on PMT's due diligence in investigating the subject property for Hazardous Materials.

PMT agrees: (1) that neither PMT nor any tenant, contractor, agent or other authorized user of any of the leased premises shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Materials on, under, about, or from any of the leased premises, other than such presence, storage, use or handling of Hazardous Materials as may occur in the ordinary course of business of PMT or such authorized user and in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation, all Environmental Laws; (2) to give notice to City immediately upon acquiring knowledge of: (i) the presence of any Hazardous Materials on the leased premises, other than Hazardous Materials which are placed, stored, used, or handled in compliance with clause (1) of this Subsection, or (ii) of any Hazardous Materials Contamination of the leased premises, with a full description thereof in either case; (3) to deliver to City promptly after receipt copies of any documents received from, or submitted to, any governmental regulatory, environmental, or health agency concerning any actual, alleged, or potential violation or noncompliance with any Environmental Law with respect to operations upon the leased premises; (4) to comply, and to cause any and all lessees or other authorized users of the leased premises to

comply, with any applicable requirements of Environmental Laws, including without limitation, at PMT's or such authorized user's own expense, preparation, submission and carrying out of any plans and financial assurances that may be required by any governmental authority with respect to any cleanup or remediation of any Hazardous Materials or Hazardous Materials Contamination; and (5) upon the reasonable request of City, at any time and from time to time during the existence of this Agreement, to provide at PMT's sole expense an inspection or audit of the leased premises from an engineering or consulting firm approved by City, indicating the presence or absence of Hazardous Materials or Hazardous Materials Contamination on or in the leased premises. If PMT fails to provide such inspection report or audit after reasonable notice, City may order same, and PMT grants to City and its employees and agents access to the leased premises for the purpose of inspecting and testing for the presence of Hazardous Materials and Hazardous Materials Contamination. The cost of such tests shall be a demand obligation owing by PMT to City hereunder (for benefit of City as applicable) together with interest thereon;

- ii. PMT will obtain, maintain in full force and effect, and strictly comply with any and all governmental permits, approvals, and authorizations necessary for the conduct of Lessee's business operations;
- iii. PMT will supply Lessor with copies of any such permits, approvals and authorizations;
- iv. PMT will promptly notify Lessor of the expiration or revocation of any such permits, approvals and authorizations; and
- v. Except to the extent of City's gross negligence or willful misconduct, PMT hereby (1) releases and waives any future claims against City for indemnity or contribution in the event PMT becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless City from and against any and all fines, claims, losses, liabilities, damages, settlements, judgments, penalties, costs, expenses, attorney, expert and consultant fees, and actions of any kind (including without limitation, administrative or court investigative, enforcement, cleanup, remediation and restoration proceedings) which City directly or indirectly sustains or suffers resulting from a breach of Section 15.b. of this Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of Hazardous Materials or Hazardous Materials Contamination on the leased premises, or from any failure of PMT

to provide information, make submissions or take steps required under any Environmental Law. The provisions of this Subsection of this Agreement, including the obligation to indemnify and defend, shall survive the termination, expiration, or satisfaction of this Agreement.

c. City shall notify PMT, in writing, within ten (10) days if any action or proceeding involving a liability indemnified against under Section 15(b) and/or Section 16 is brought against City. PMT, at its own cost and expense, may, and upon written demand from City, shall, assume the defense of such action or proceeding including the employment of counsel, who shall be counsel satisfactory to City, or its officers, employees or agents, as the case may be. City or its officers, employees or agents may employ separate counsel in any such action and participate in the defense thereof. In that event, the fees and expenses of the separate counsel shall be the responsibility of City. PMT will not be liable to indemnify any person or entity for the settlement of any action made without its consent. The omission to notify PMT as herein provided will not relieve PMT from any liability which it may have to any indemnified party pursuant hereto except to the extent such omission materially prejudices the interests of PMT.

This indemnification shall survive the end of the term of this lease, and any extensions hereof, and shall inure to the benefit of Lessor, its successors and assigns.

16. **Indemnity.** Lessee agrees to indemnify, defend, and save Lessor harmless from and against all claims for or on account of damages to property or injuries (including death) to persons arising out of Lessee's use and occupancy of the leased Premises. Lessor shall not be liable to Lessee or any third party for any damage or injury (including death) to persons or property resulting from any defect in the leased Premises or the improvements thereon, whether such defects are the result of improper construction, lack of maintenance or repair, improper maintenance or repair, or other cause whatsoever.

17. **Enforcement.** In the event either party resorts to judicial proceedings to enforce any rights under this Lease, or to obtain relief for the breach of any covenant hereof, the party ultimately prevailing in such proceedings, shall be entitled to recover from the defaulting party the costs of such proceedings, including reasonable attorneys' fees.

18. **Default.** If any default shall be made by Lessee in the performance of any of the covenants or terms of this Lease Agreement, and,

- a. such default shall continue for fifteen days beyond any notice of default hereunder or under, the terms of the Lease Agreement (whether notice is given by Lessor hereunder as provided in the Lease Agreement); or
- b. if the premises shall become vacated or abandoned; or
- c. if Lessee shall be dispossessed therefrom during the term of this Lease Agreement; or

d. if a petition for bankruptcy or assignment for the benefit of creditors shall be filed by Lessee (or by any one of the corporations comprising Lessee) or if Lessee (or any one of the corporations comprising Lessee) shall be finally adjudicated bankrupt, and the same shall not be discharged within ten days after written demand therefore by Lessor; then

Lessee does hereby authorize and empower Lessor to annul and cancel this Lease Agreement, at once, re-enter the premises, take possession of said premises immediately, and by force if necessary without any previous notice of intention to re-enter, remove all persons and their property therefrom, and to use such force and assistance in effecting and perfecting such removal as Lessor may deem advisable to recover at once full and exclusive possession of all of said leased premises. This is authorized, whether the said premises are in possession of Lessee or of third persons, or whether the premises are vacant.

Alternatively, Lessor may, at its option, at any time after such default in the performance of any of the covenants or terms of this Lease Agreement, re-enter and take possession of said premises without such re-entering working a forfeiture of the rents to be paid and the covenants to be kept and performed by Lessee for the full term of this Lease Agreement. In such event, Lessor may, at its option, re-let the premises and receive the rental therefore, applying the same first to the payment of expenses for re-entering and re-letting (including reasonable attorneys' fees and the expense of making the premises acceptable to a new tenant), and then for the payment of rent and the fulfillment of Lessee's agreements hereunder, in which case Lessee shall remain liable only for the difference, if any, between the amounts due for the remainder of the term of this Lease Agreement and the amount received from a new tenant, after deducting the expenses set forth above.

The foregoing remedies shall not be deemed exclusive, and Lessor may, at its option, pursue any other applicable remedy available under the laws of the State of Montana.

19. **Lease Subordination.** Lessee agrees that this Lease shall be subordinate to any mortgages or trust deeds that are now or may hereafter be placed upon the leased premises, and all renewals, replacements, and extensions thereof, provided the mortgagee or beneficiary named in said mortgages or trust deeds shall agree to recognize the Lease of Lessee in the event of foreclosure if Lessee is not in default. If any mortgagee or beneficiary elects to have this Lease superior to its mortgage or deed of trust by notice to Lessee, then this Lease shall be deemed superior to the lien of any such mortgage or trust deed, whether this Lease is dated or recorded before, or after, said mortgage or trust deed.

20. **Attornment.** Lessee shall, in the event any proceeding is brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Lessor covering the leased premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the landlord under this Lease.

22. **Option regarding Premises.** At any time after January 2018, Lessor hereby grants Lessee the exclusive right, privilege and option to purchase the Premises for its Appraised Value upon the following terms and conditions:

- a. During the term of this lease, the Lessee may give the Lessor written notice (the "Appraised Value Request") that it wishes to establish the Appraised Value, which shall mean the then fair market value of the Premises as raw industrial land, excluding all buildings, improvements, fixtures, trade fixtures, machinery, equipment or other personal property constructed or placed in or on the Premises, as of the date of the delivery of the Appraised Value Request;
- b. The option granted pursuant to this section 22 must be exercised, if at all, within fifteen days after the Appraised Value has been determined by a Certified Real Estate Appraiser mutually agreeable to the parties;
- c. At the Date of Closing, which will be the fifteenth day after the Lessee provides written notice of its exercise of the option pursuant to Section 22.b., the Lessor and Lessee shall close the purchase and sale of the Premises as follows:
 - i. the Lessor shall execute and deliver to the Lessee a warranty deed covering the Premises in a form reasonably acceptable to the Lessee warranting that Lessor owns fee simple title to the Premises, free and clear of all liens and encumbrances, other than existing easements and rights-of-way; building, use, zoning, health, sanitation, environmental and similar restrictions, laws, ordinances and regulations; this Lease; any mortgages, deeds of trust or assignments securing obligations of the Lessee; any other liens or encumbrances against the Premises which the Lessee created; and taxes and assessments for the year in which the Date of Closing occurs;
 - ii. the Lessee shall pay the Appraised Value to the Lessor via cashier's check or bank wire transfer;
 - iii. the Lessor shall, deliver to the Lessee a preliminary commitment for title insurance issued by a title insurance company reasonably acceptable to the Lessee, in the amount of the Appraised Value, insuring that the Lessor is the owner of fee simple title to the Premises, free and clear of all liens and encumbrances, other than those to which the warranty deed is subject; and
 - iv. the Parties equally share in closing costs necessary to effect the sale.

23. **Lessor's Obligations.** The Lessor agrees:

- a. To provide, at no additional cost to Lessee, an easement over and across properties the Lessor owns, for the purpose of constructing, maintaining and operating a railroad spur between the leased premises and the Burlington Northern Santa Fe (BNSF) railroad line located in a southeasterly direction from the premises, as depicted on the attached Exhibit B; and in this connection, the Lessor agrees to cooperate with Lessee in order to obtain easements from others who may own the lands between the leased premises and the BNSF railroad line;

b. To provide an easement over and across the properties the Lessor owns between 25th Street and the leased premises' western entrance to provide access to and from 25th Street, as shown on Exhibit B; and

c. If the Lessor acquires the abandoned BNSF rail line abutting the leased premises on its southern border, Lessee shall have the right to use, at no additional cost, and upon Lessor's approval, the northern one-half of the properties acquired which abut the southern boundary of the leased premises, so long as the Lessee's use does not interfere with Lessor's use of those properties as a utility corridor.

24. **Payments and Notices.** The rentals due hereunder shall be paid by Lessee to Lessor at 2 Park Drive South, Great Falls, Montana 59401, or at such other place or to a designee of Lessor, as Lessor may from time to time direct by written notice given to Lessee thirty (30) days prior to the date of payment.

Any notices required, or which may be submitted hereunder, from Lessee to Lessor may be sent by registered or certified mail to the address designated above for the payment of rent, or may be personally served upon Lessor.

Any notices required, or which may be submitted hereunder from Lessor to Lessee may be sent by registered or certified mail to the premises leased hereunder, or may be personally served upon Lessee.

All notices referred to in the Default paragraph hereinabove shall be sufficient for all purposes if they describe the default or defaults in general terms.

For any notice, service by mail shall be deemed complete when the notice is enclosed in an envelope, duly sealed, with postage prepaid, and deposited in the United States Post Office, or any regular depository thereof, directed to Lessor or Lessee at the addresses hereinabove provided.

25. **Termination.** Lessee acknowledges and agrees that, in the event of termination of this Lease, for any reason and under any circumstances, Lessee will be subject to rental payments to Lessor pro-rated for time Lessee is occupying the premises.

26. **Invalidity.** The invalidity, or ineffectiveness for any reason, of this Lease Agreement, shall in no way affect the validity or enforceability of the remaining portion thereof and any invalid or unenforceable provisions shall be deemed severed from the remainder of the Lease Agreement.

27. **Waiver.** The waiver by Lessor of, or the failure of Lessor to, take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of same, or any other term, covenant, or condition herein contained.

28. **Effect of Lessee's Holding Over.** Any holding over after the expiration of the term of this Lease Agreement with the consent of Lessor shall be construed to be a tenancy from month to month, at the same monthly rental as required pursuant to the terms of this Lease

Agreement, and shall otherwise be on the terms and conditions herein specified so far as applicable.

29. **Binding Effect.** It is mutually understood and agreed that each and every provision of this Lease Agreement shall bind and inure to the benefit of the agents, administrators, successors and assigns of the respective parties hereto. Masculine pronouns shall be construed as feminine or neuter pronouns and singular pronouns and verbs shall be construed as plural in any place in which the context may require such construction.

30. **Time of the Essence.** Time is of the essence of this Lease Agreement, and of each and every provision hereof.


31. **Applicable Law, Jurisdiction, and Venue.** This Lease Agreement shall be governed by, and constructed in accordance with, the laws of the State of Montana without giving effect to the conflicts-of-laws principles thereof. The parties hereby consent to jurisdiction and venue for any litigation or dispute arising from this Lease Agreement in the Montana State District Court in the Eighth Judicial District in and for Cascade County.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Agreement on the day and year first hereinabove written.

City of Great Falls, Montana

Pasta Montana L.L.C.

By _____
Gregory T. Doyon, City Manager

By 
Print Name: C. Daniel Bateman
Print Title: Chief Financial Officer

ATTEST:

(Seal of the City)

Lisa Kunz, City Clerk

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.

Order No. A-50464

EXHIBIT A

Certificate of Survey No. 3295, filed September 9, 1996, records of Cascade County, Montana, more fully described as follows: A parcel of land situated in portions of the W1/2 of Section 5 and the E1/2 of Section 6, all in Township 20 North, Range 4 East of the P.M.H., Cascade County, Montana, being a portion of Veterans Memorial Park, formerly known as Black Eagle Park according to the plat on file in the records of the Cascade County Surveyor, dated March 14, 1935, said Lease Parcel being described as follows:

Commencing at a brass cap in a monument box at the centerline intersection of 8th Avenue North and 25th Street North as shown on the plat of the Eleventh Addition to Great Falls Townsite as recorded in the office of the Cascade County Clerk and Recorder;

THENCE $N00^{\circ}18'08''W$, ($N00^{\circ}15'00''W$ recorded) along the centerline of 25th Street North, a distance of 590.66 feet (590.88 feet recorded) to a point;

THENCE $N89^{\circ}41'52''E$, perpendicular to last said line, a distance of 40.00 feet to the Easterly right of way line of said 25th Street North and the Southwest corner of that certain parcel as shown on Certificate of Survey No. 1799 which is recorded in the office of the Cascade County Clerk and Recorder, from which the Southeast corner of said parcel bears $N89^{\circ}52'00''E$ (record and measured) a distance of 1101.12 feet (1101.30 feet recorded);

THENCE $N00^{\circ}18'08''W$, ($N00^{\circ}15'00''W$ recorded) parallel with and 40.00 feet easterly from said centerline of 25th Street North and along said Easterly right of way line and along the Westerly line of said Certificate of Survey 1799 parcel, a distance of 27.91 feet (27.89 feet recorded) to the Northwest corner of the Certificate of Survey 1799 parcel, said point lying on the Southerly line of a Burlington Northern Railroad right of way;

THENCE continuing $N00^{\circ}18'08''W$ along said Easterly right of way line of 25th Street North, a distance of 100.08 feet to a point which lies on the Northerly line of said railroad right of way, said point being the POINT OF BEGINNING of the Lease Parcel herein described;

THENCE continuing $N00^{\circ}18'08''W$, along said Easterly right of way line of 25th Street North, a distance of 225.34 feet to a point;

THENCE leaving last said line, $N58^{\circ}44'48''E$, a distance of 217.59 feet to an angle point;

THENCE $N89^{\circ}45'36''E$, a distance of 509.94 feet to a point;

THENCE $S00^{\circ}14'24''E$, a distance of 342.77 feet to a point which lies on said Northerly railroad right of way line;

(Continued)

Report Continued
Order No. A-50464
Page No. 2

THENCE S89°52'20"W, along said Northerly line, a distance of 484.16 feet to the point of curvature of a circular curve to the right, with a radius that bears N00°07'40"W, a distance of 5679.58 feet;

THENCE continuing along said Northerly line and along the arc of said curve, through a central angle of 02°08'22" a distance of 212.08 feet to the POINT OF BEGINNING.

(End of Exhibit A)

EXHIBIT

B

①

RIVER DRIVE (U.S. HWY 87 BY-PASS)

25TH STREET N.

LEASE LINE

LEASE LINE

DW 2

DW 1

DW 5

PASTA MONTANA

FUTURE EXPANSION

DW 7

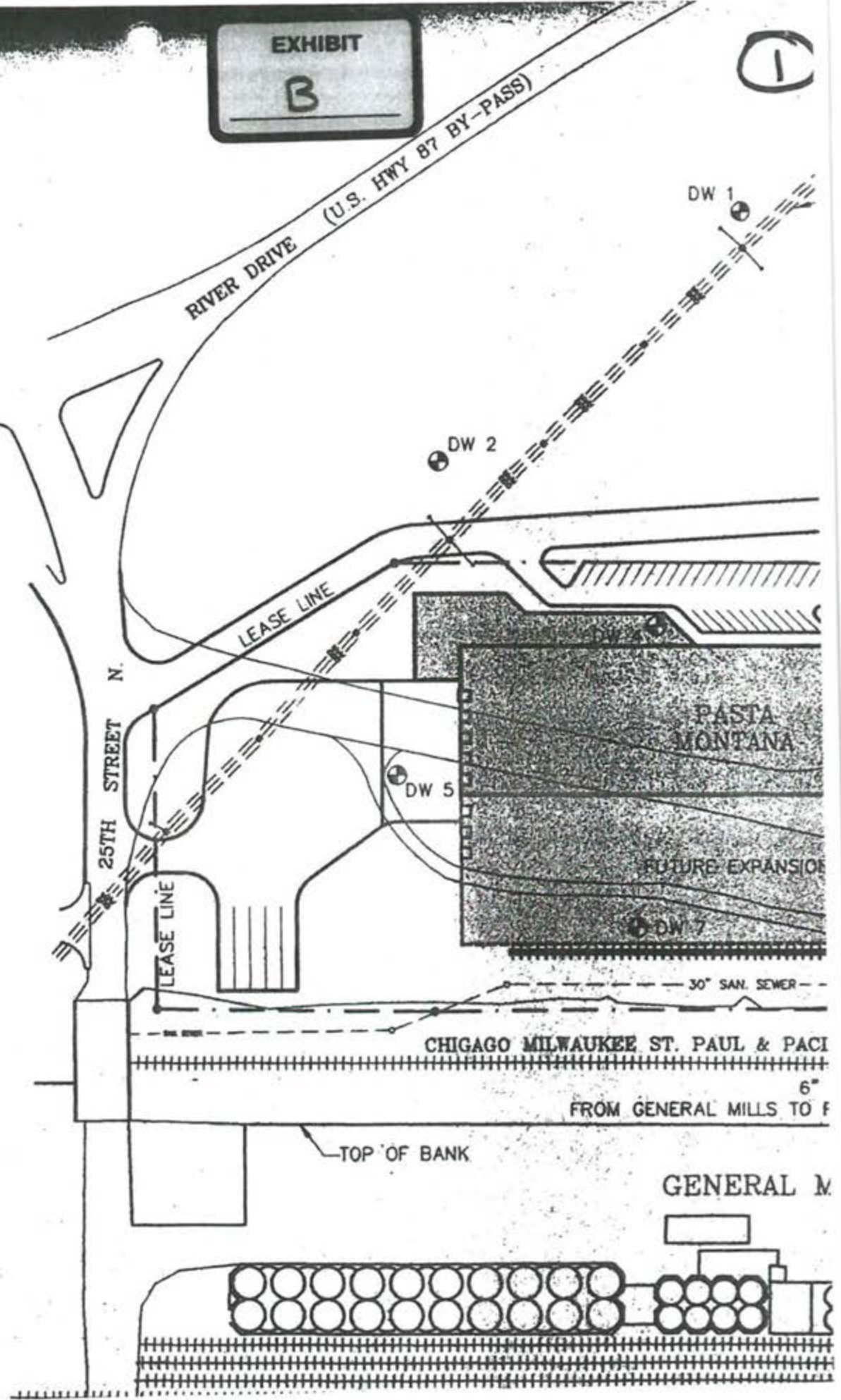
30" SAN. SEWER

CHICAGO MILWAUKEE ST. PAUL & PACI

6" FROM GENERAL MILLS TO F

TOP OF BANK

GENERAL M.



(2)

RIAL ELECTRICAL LINES

DODGER STADIUM

DW 3

LEASE LINE

SAN. SEWER

30" SAN. SEWER

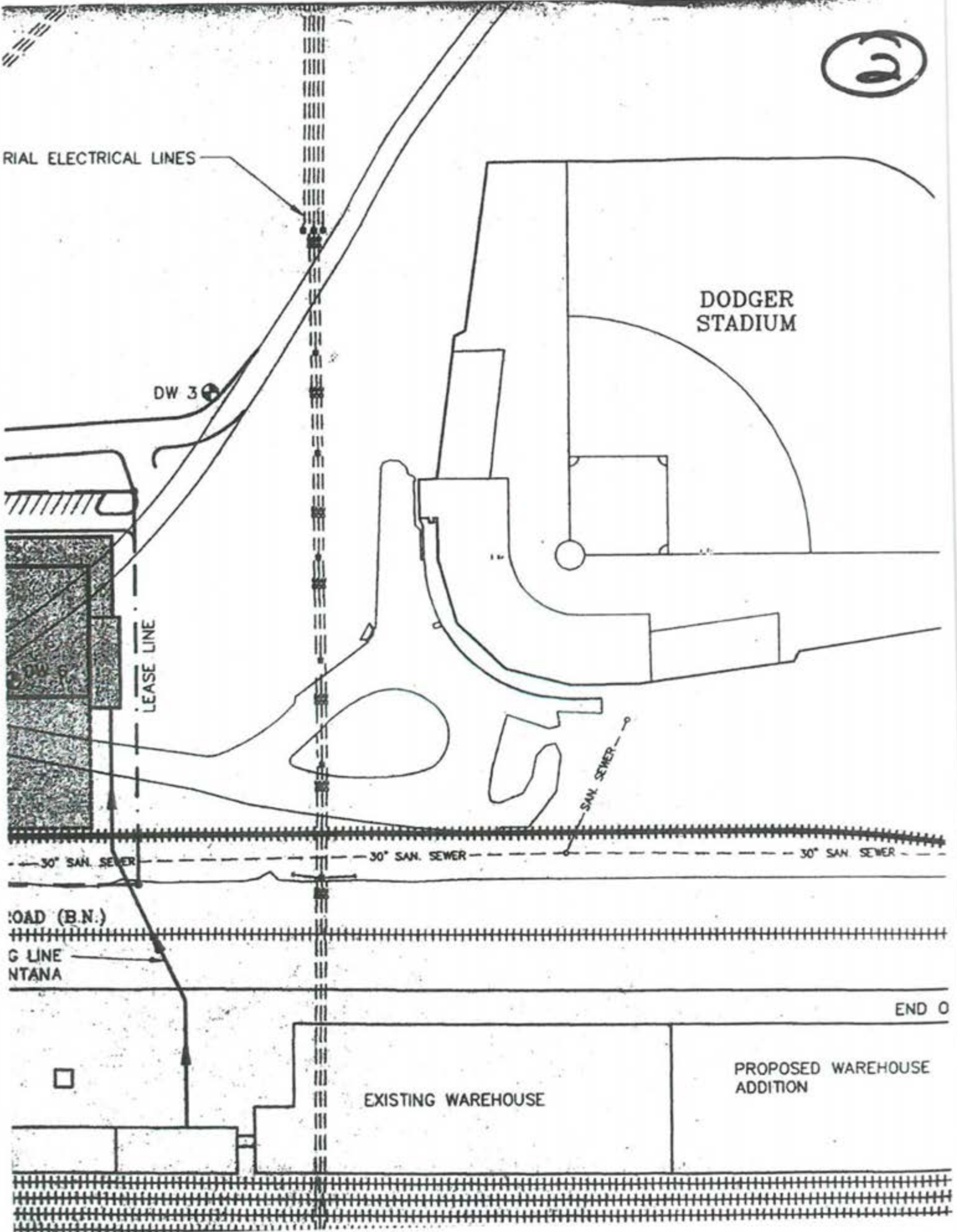
ROAD (B.N.)

G LINE
NTANA

END 0

EXISTING WAREHOUSE

PROPOSED WAREHOUSE
ADDITION



DRIVING RANGE FENCE

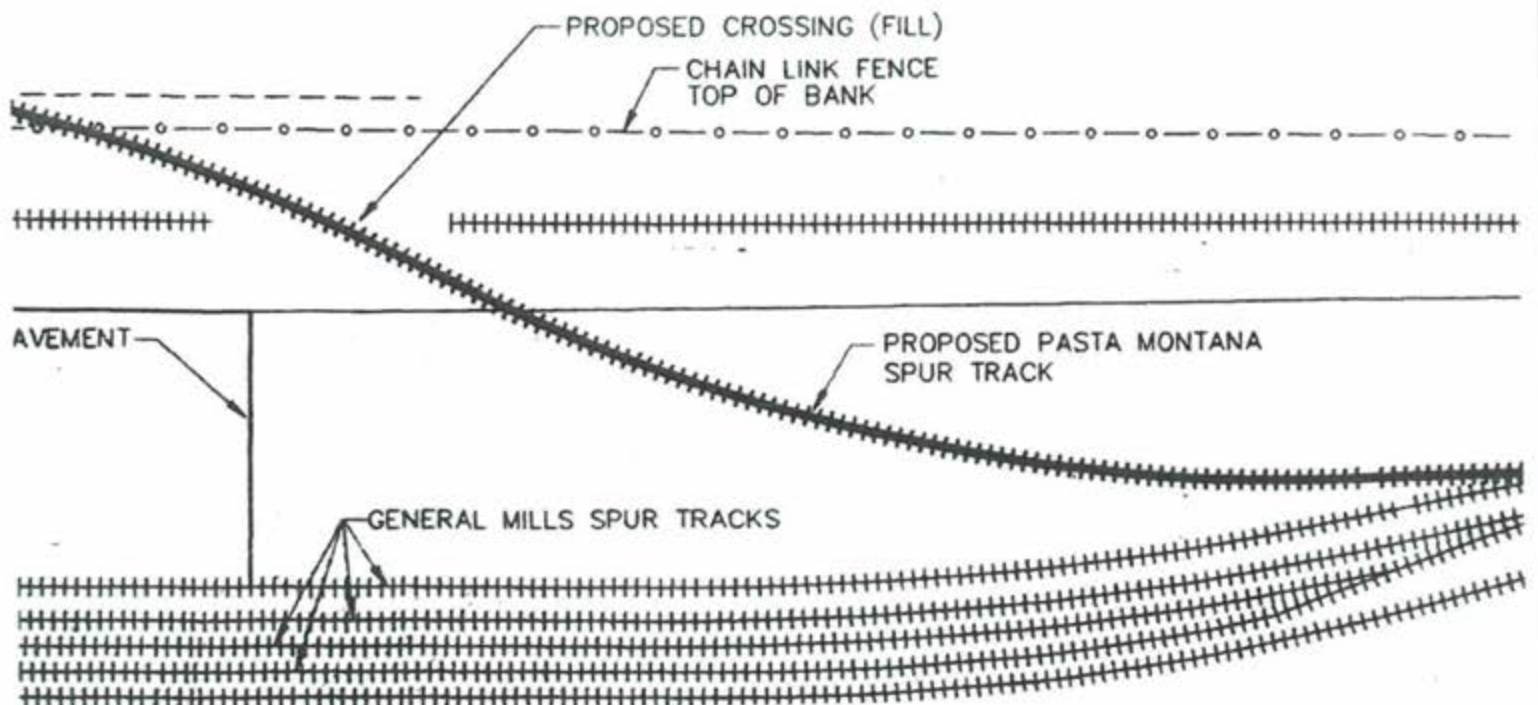
MUNICIPAL GOLF COURSE

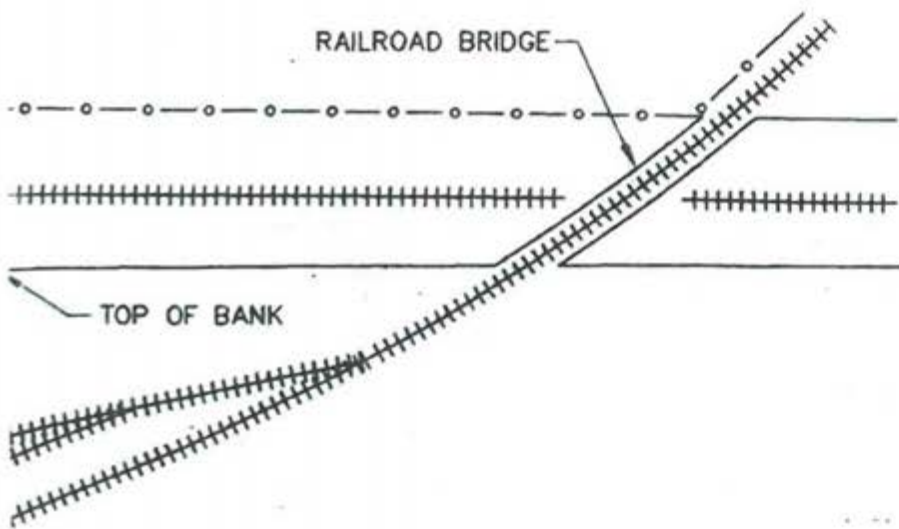


SCALE 1" = 100'



CHAIN LINK FENCE





(F)

PASTA MONTANA
GREAT FALLS, MONTANA

OVERALL SITE PLAN