

****ATTENTION****

The City Council meeting will be held in a hybrid format that may include both in-person AND virtual attendance via Zoom. Unless they have cause to appear virtually, Councilmembers will attend the meeting in person in Council Chambers, fifth floor of City Hall, 316 N. 26th Street. In order to honor the Right of Participation and the Right to Know in Article II, Sections 8 and 9, of the Montana Constitution, the City of Billings and City Council are making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- Review the Agenda Packet on the City's website at: www.billingsmt.gov and click on "Your Government," "City Council," and "Agendas & Minutes".
- View the meeting:
 - On Community 7 TV - Channel 7 or Channel 507 -- Spectrum Cable. *(On evenings when there is a conflict with School District No. 2 Board meetings, the City Council meeting will be broadcast on Channel 8 - Spectrum Cable.)* Channel 7 or Channel 978 - TDS Fiber.
 - Online at www.comm7tv.com and click on the "Watch Live" icon. Community 7 also has links to their Facebook page and YouTube channel.
 - On the City's website at www.billingsmt.gov and click on "Watch Meetings Online" on the homepage.
 - In-Person.

Citizens may submit public comment via the following methods:

- Mail: City Clerk, P.O. Box 1178, Billings, MT 59103
- Email: Council@billingsmt.gov.
 - Emails received after 3:00 PM on the day of the meeting, may be posted on the Council's webpage the following day for public viewing.
- Attend the meeting in person

Please contact Denise Bohlman, City Clerk, at bohlmand@billingsmt.gov, or at 406.657.8210, with any questions.



VISION STATEMENT:
"The Magic City: A diverse,
welcoming community
where people prosper and
business succeeds."

**CITY COUNCIL
REGULAR BUSINESS MEETING**

**AGENDA
JUNE 9, 2025**

5:30 P.M.

COUNCIL CHAMBERS
316 N. 26th Street, 5th Floor

CALL TO ORDER: Mayor Cole

PLEDGE OF ALLEGIANCE: Mayor Cole

INVOCATION: Councilmember Rupsis

ROLL CALL: Councilmembers present on roll call were: ☐ Shaw, ☐ Gulick, ☐ Neese, ☐ Owen, ☐ Rogers,
☐ Kennedy, ☐ Aspenlieder, ☐ Tidswell, ☐ Boyett, ☐ Rupsis

MINUTES: May 27, 2025

COURTESIES:

PROCLAMATIONS:

COUNCIL REPORTS:

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 ONLY. Speaker sign-in required.
(Comments are limited to three (3) minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium. Comments on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

1. **CONSENT AGENDA** -- Separations:

A. Mayor Cole recommends that Council confirm the following appointments:

1.

	Name	Board/Commission	Term	
			Begins	Ends
1	Randy Stone	Billings BID*	06/09/25	12/31/25
2	No Applications	Billings Parking Board*	06/09/25	12/31/25
3	Jordan Webber	Citizens Police Advisory Board*	06/09/25	12/31/25
4	Shannon Reiser	Human Relations Commission*	06/09/25	12/31/26

*1 Unexpired term of Matt Mikkelson

*2 Unexpired term of Mark Kary

*3 Unexpired term of Charles Loveridge

*4 Unexpired term of Kelly Gardner

B.

Bid Awards:

1. **2025 Vacuum Excavator.** (Opened 5/20/25) Recommend Vermeer Rocky Mountain.
2. **W.O. 25-01, Contract 1: Grand Avenue Water Main Replacement.** (Opened 5/20/25) Recommend COP Construction, LLC.
- C. **Contract** with Kittelson & Associates, Inc. for W.O. 25-19: Transportation Corridor Plan.
- D. **Purchase** Playground Fall Protection for Landon's Legacy Park; Dakota Playground.
- E. **Consultant Agreement** with SRF Consulting for MET Transit Financial Sustainability and Governance Study.
- F. **Amendment No. 6**, to the Purchase and Sale Agreement (PSA) for City Hall building at 210 N. 27th Street with Honaker Realty, LLC, and JWT Capital, LLC.
- G. **Lease Agreement** with CapeHon Development, LLC, for continued use and operation of the Park 3 Parking Garage.
- H. **Commercial Aviation Ground Lease** with Dan and Julane Wells.
- I. **FEMA Hazard Mitigation Grant Program, Increment 1** for BBWA Canal.
- J. **Donation** to Parks and Recreation from Partners for Parks for Pioneer Park Basketball Court.
- K. **Perpetual Right-of-Way Easement** from Big Island, LLC, for public street improvements.
- L. **Encroachment and Easement Agreement** with Valley Federal Credit Union for City Hall Parcel, including the Park 3 Garage and Skybridge.
- M. **Second/Final Reading Ordinance** amending Section 6-1208, BMCC - Curb Cuts.
- N. **Bills for the Week of:**
 1. May 12, 2025

Recommended Motion: I move to approve the items of the Consent Agenda as submitted, with the exception of items moved for separation.

REGULAR AGENDA:

2. **PUBLIC HEARING FOR EXEMPT PLAT** of Amended Certificate of Survey 3030, generally located south of Ironwood Drive and east of Woodfield Court. Staff recommends DENIAL. ***Quasi-Judicial**

Recommended Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to deny the exempt plat of Amended Certificate of Survey 3030, and require the applicant to complete a minor subdivision, as recommended by staff.

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required. *(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)*

COUNCIL INITIATIVES:

ADJOURN:

Council Chambers are readily accessible to individuals with physical disabilities.

For more information or to make requests for special arrangements, please contact the City Clerk's Office at 657-8210 or e-mail bohlmand@billingsmt.gov, 72 hours prior to the meeting date.

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**\* Quasi-Judicial** -- *Caution must be exercised concerning any potential ex parte communications with interested parties. This policy-making body may exercise approval or other adjudication authority which is "judicial" because it directly affects the legal rights of a person.*

**City Council Regular**

**Date:** 06/09/2025  
**Title:** Boards & Commissions Appointments  
**Presented by:** Chris Kukulski, City Administrator  
**Department:** City Hall Administration  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

Mayor Cole recommends that the City Council confirm the appointments to the following boards and commissions.

|   | Name            | Board/Commission                | Term     |          |
|---|-----------------|---------------------------------|----------|----------|
|   |                 |                                 | Begins   | Ends     |
| 1 | Randy Stone     | Billings BID*                   | 06/09/25 | 12/31/25 |
| 2 | No Applications | Billings Parking Board*         | 06/09/25 | 12/31/25 |
| 3 | Jordan Webber   | Citizens Police Advisory Board* | 06/09/25 | 12/31/25 |
| 4 | Shannon Reiser  | Human Relations Commission*     | 06/09/25 | 12/31/26 |

\*1 Unexpired term of Matt Mikkelson

\*2 Unexpired term of Mark Kary

\*3 Unexpired term of Charles Loveridge

\*4 Unexpired term of Kelly Gardner

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

The Mayor is requesting that the City Council confirm appointments for Board and Commission positions that are vacant due to a resignation.

**STAKEHOLDERS**

N/A

**ALTERNATIVES**

Council may:

- Confirm the proposed appointments; or
- Not confirm the appointments.

**FISCAL EFFECTS**

The proposed action has no financial impact.

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**City Council Regular**

**Date:** 06/09/2025  
**Title:** Purchase of 2025 Vacuum Excavator  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends purchasing a 2025 Vacuum Excavator from Vermeer Rocky Mtn in the total amount of \$139,966.50.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

The purchase of the 2025 Vacuum Excavator is included in the approved FY25 Equipment Replacement Plan (ERP) and the FY25 Street and Traffic budget. The vacuum excavator is a new addition to the fleet and will be used to expose utilities, assist in making repairs and help keep the storm system clean, freeing up jet trucks to perform critical maintenance on storm infrastructure.

The 2025 Vacuum Excavator was advertised on May 2nd and May 9th, 2025 in the Yellowstone County News and on the City's website. Bids were opened on May 20, 2025. Five bids were received. Vermeer Rocky Mountain submitted the lowest responsible bid that met specs.

**ALTERNATIVES**

City Council may:

- Approve the purchase of the 2025 Vacuum Excavator; or,
- Not approve the purchase. If not approved we will continue to use much more expensive equipment to make the repairs. We only have 2 jet trucks for the entire storm system and rely on them to be efficient at cleaning inlets and mainlines. These smaller repairs that could be made with the new vacuum excavator takes away from efficiency which lowers our service levels that we are striving to improve.

**FISCAL EFFECTS**

The City received 5 bids for the 2025 Vacuum Excavator as shown below:

| Bidder   | Normont Equipment | SWS Equipment | Ditch Witch West | Joe Johnson Equipment | Vermeer Rocky Mountain |
|----------|-------------------|---------------|------------------|-----------------------|------------------------|
| Base Bid | \$125,270.00*     | \$146,774.58  | \$128,114.21*    | \$124,545.00*         | \$139,966.50           |

\*Did not meet specifications.

Vermeer Rocky Mountain was the lowest bidder that met specifications. The 2025 Vacuum Excavator was budgeted in FY25 using storm funds in the amount of \$180,000. There are sufficient funds for the purchase. The overage will be used to cover shortfalls on other equipment purchases.

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**City Council Regular**

**Date:** 06/09/2025  
**Title:** W.O. 25-01, Contract 1: Grand Avenue Water Main Replacement  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Template Contract  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that City Council award a contract for W.O. 25-01, Contract 1: Grand Avenue Water Main Replacement, to COP Construction, LLC. in the amount of \$2,536,367.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

The City replaces and upgrades its water utilities as part of an annual maintenance program. This project will replace approximately 3,650 feet of existing 20-inch and 24-inch diameter water mains within Grand Avenue. The water mains being replaced were selected based on several criteria including age, break history, lead joint pipe, lead services, undersized water mains, and replacement prior to future pavement preservation projects. This project will replace the water main along Grand Avenue from Division Street to Virginia Lane (5th Street West), including all intersection lateral mains. The existing water main is bedded in concrete, has a break history, and valves that do not close. Due to the large diameter of the water main and concrete bedding, breaks are difficult and expensive to repair, and are prone to cause water outages to adjacent businesses and Billings Senior High School. Additionally, this section of Grand Avenue will need to have pavement overlay performed within the next 5 to 10 years, so the water main will be replaced ahead of the new paving.

The project was advertised on May 2, May 9, and May 16, 2025, in the Yellowstone County News and on the City's website. Bids were opened on May 20, 2025 and three bids were received. COP Construction, LLC. submitted the lowest, responsible bid.

**ALTERNATIVES**

City Council may:

- Award W.O. 25-01, Contract 1: Grand Avenue Water Main Replacement, to COP Construction, LLC in the amount of \$2,536,367; or,
- Do not award a contract and reject all bids. If the project is not awarded, the City's water mains in this area will continue to be unreliable and experience ongoing maintenance problems and expenses.

**FISCAL EFFECTS**

The following bids were received:

| Contractor                     | Total Bid Price |
|--------------------------------|-----------------|
| COP Construction, LLC          | \$2,536,367.00  |
| Askin Construction, LLC        | \$2,734,880.00  |
| Western Municipal Construction | \$3,023,030.00  |

This project was budgeted in FY25 using Water Funds in the amount of \$4,500,000. There are adequate funds to award this contract. Considering previously encumbered funds in the amount of \$1,561,957.50 for the Rosemont water main replacement, engineering fees and this contract (\$2,536,367.00), \$401,676 remains in the budget. Remaining funds will be used for any change orders on this contract and the Rosemont water main replacement contract.

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**City Council Regular**

**Date:** 06/09/2025  
**Title:** W.O. 25-19 Transportation Corridor Plan, Contract for Professional Services  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Template Contract  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that City Council award a Contract for Professional Services to Kittelson & Associates, Inc. in the amount of \$170,365.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

Council is asked to consider authorizing and executing a Contract for Professional Services with Kittelson & Associates, Inc. for services related to the development of the Transportation Corridor Plan. The City of Billings, through this planning effort, seeks to identify community priorities to establish a vision and framework for continuing to build and maintain a safe transportation network. Through this strategic transportation plan, the City of Billings will develop guidance for transportation corridors that accounts for community desires, the functions of the roadways, neighborhood character, and future land use, while recognizing that not every street can or should prioritize every mode. This plan will be reflective of the community's needs, meaning community engagement will be comprehensive and critical.

This contract is focused on the community outreach component of the project, and the majority of the contract is for community engagement and technical analysis. Community engagement will be accomplished by using visual aids (renderings, infographics, maps, graphic-based surveys) to gather feedback and gain an understanding of the community's vision for arterial and collector roadways within Billings. The scope of work includes significant time for in-person engagement (open houses, community group meetings, pop-up events) and assistance in developing online engagement (website, social media engagement, online surveys). This project will be led by City staff and assisted by the Consultant. Significant staff time will be spent on this phase of the project, with coordination occurring between various City departments. This contract does not include the final plan, although the results of this effort will be thoroughly documented. The intent is that the scope of work for the final plan will be determined after the community engagement component is completed. A contract for the final deliverable document (Transportation Corridor Plan) may be requested after this contract is completed.

The City publicly advertised a Request for Proposal in the Yellowstone County News and on the City website on September 6th, 13th, 20th, 27th, and October 4th, 2024. Two proposals were received - one from Kittelson & Associates, Inc. and one from Sanbell. The Kittelson & Associates team was selected based on staff review of their proposal, which demonstrated experience in transportation planning and engineering, public outreach, and local knowledge. The selection was based on criteria including firm experience, project manager, key project staff and subconsultants, available resources and consultant location, and project methodology and approach.

**ALTERNATIVES**

City Council may:

- Approve a Contract for Professional Services with Kittelson & Associates, Inc. in the amount of \$170,365; or,
- Not Approve a contract for Professional Services with Kittelson & Associates, Inc. If the contract is not approved, the project will not move forward as scoped.

**FISCAL EFFECTS**

The project is funded with \$75,000 from the Planning Department's Unified Planning Work Program (UPWP) and \$95,365 of gas tax funds.

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**Attachments**

Contract



## Contract for Professional Architectural and Engineering Services

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### Project: Transportation Corridor Plan

In consideration of the mutual promises herein, the City of Billings and Kittelson & Associates, Inc. agree as follows. This Contract consists of:

- Part I, consisting of 8 Sections of Special Provisions;
- Part II, consisting of 5 Sections of General Provisions;
- Appendix A consisting of 12 pages (Basic Services of Contractor);
- Appendix B consisting of 2 pages (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Contractor);
- Appendix D consisting of 2 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of \_\_\_\_ pages (Certificate(s) of Insurance); and

### PART I SPECIAL PROVISIONS

#### Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Administrator or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Kittelson & Associates, Inc.

#### Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.

- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Engineer shall provide as-built drawings and data as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings and data are received by the City of Billings. Requirements for submitting as constructed documents and data of completed Private Contracts, Work Orders, Special Improvement Districts and Site plans involving any City of Billings infrastructure: features such as, but not limited to Sanitary Sewer Manholes, Storm Drain Manholes, Water Valves, Water Bends, Signals, Street Light, etc.

Additional project documentation and data requirements reflecting as-built condition of City assets are as follows:

**Digital Delivery Formats:**

- **PDF Files:** One half size paper copy to scale, one full size paper copy to scale. Inclusion of manufacturer drawings and material lists.
- **Survey Point Files:** Required file formats: Comma delimited (asc, .txt, csv)
- **CADD Files:** AutoCAD DWG files, Version 2016, or equivalent. Required file formats: Drawing File (.dwg)
- **Geographic Information System (GIS) Files:** All spatial data provided to the City of Billings will be delivered in a format suitable for integration into the City's GIS System of Record including lines, points, and polygons digitally representing as-built assets. Required file formats:
  - File Geodatabase (.gdb)
  - Shapefiles (including, at a minimum .shp, .shx, .prj, .dbf, .xml)
- **CCTV Videos and Reports:** If post construction pipe inspection video was documented by contractor it will be provided along with corresponding reports at the time of as-built drawing and data submittal.

**Metadata:** Additional information to be included with deliverable.

- Date Captured and Delivered
- Data Description (e.g., unit of measure, abbreviations, code descriptions)
- Methods (e.g., technology and hardware used to generate data, field methods)
- Originator (e.g., contractor name, contact information)

**Location Accuracy:** Horizontal and vertical accuracy standards of spatial data deliverable.

- **Horizontal:** Data provided will be spatially accurate to within 1 Meter, with 95% probability.
- **Vertical:** Data provided will be spatially accurate to within 0.3048 Meter, with 95% probability.

**Coordinate System and Unit of Measurement:** Spatial data provided will be Montana State Plane, Zone 2500 using NAD83(2011), Horizontal and NAVD88 Vertical, Horizontal units and Vertical units will be international feet, GEOID18. Northing and easting coordinates will be in the grid distance system with precision to the nearest tenth of a foot, elevations to the nearest hundredth of a foot.

**Attribute/Object Data:** All noted delivery formats will include the following attributes or object data. *A supporting data dictionary file may be requested from the City that includes all noted fields below along with desired naming conventions and pick asset lists.*

- Point number or ID
- Northing, Easting, Elevation
- Feature Type (e.g., Manhole, Valve, Bend, Streetlight, etc.)
- Feature Description:
  - Size (e.g., Pipe Diameter, Manhole Cover Diameter)
  - Material
  - Measurement (e.g., Invert)
  - Manufacturer
  - Installation Date
- GPS Unit Make and Model
- Date and Timestamp
- Data Originator (e.g., contractor name)

**Delivery Methods:** Project documentation and data to be delivered as otherwise noted in the contract or utilizing one of the following methods.

- Secured Cloud-based Platform (e.g., Sharepoint, OneDrive, Box, etc.)
- External Hard Drive
- CD's or DVD's

E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

### Section 3. Time for Performance.

A. This Contract becomes effective when signed on behalf of Billings.

- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on May 1st, 2028. The parties may extend this agreement, by mutual concurrence, for one year, in writing prior to its termination.

#### Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

#### Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

#### Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to

termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.

- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

#### Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
  - 1. Workers' compensation and employer's liability coverage as required by Montana law.
  - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
  - 3. Commercial automobile liability -- \$1,500,000 per accident.
  - 4. Professional liability in the amount of \$1,500,000 per claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

## Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

## Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

## Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: Sarah Plath  
City of Billings  
Public Works – Engineering  
316 N 26th Street, Fifth Floor  
Billings, Montana 59101

FAX: (406) 237-6291

Contractor: Rachel Grosso, AICP  
Kittelson & Associates, Inc.  
101 South Capitol Boulevard, Suite 600  
Boise, ID 83702

FAX: (208) 338-2683

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
  - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
  - 2. Strikes or Work stoppages.
  - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
  - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;

- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and,
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

## **PART II GENERAL CONTRACT PROVISIONS**

### Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

### Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- F. The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.
- G. The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other

### Section 3. Permits, Laws, and Taxes.

Section 4. Nonwaiver.

Section 5. Amendment.

- Billings: City Council or Authorized Designee

- Section 6. Jurisdiction; Choice of Law.

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Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The **CONSULTANT** SHALL:

- A. Indemnify and hold **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CONSULTANT** or its agents or employees.
- B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **CONSULTANT**, the **CONSULTANT** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **CONSULTANT'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONSULTANT'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

- D. Indemnify and hold **CONSULTANT**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.
- E. Not indemnify and hold the **CONSULTANT** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CONSULTANT** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CONSULTANT** and the **CITY**, the **CITY** shall indemnify and hold the **CONSULTANT** harmless from

only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
**BUSINESS NAME**

\_\_\_\_\_  
**WILLIAM A. COLE,  
MAYOR**

\_\_\_\_\_  
**SIGNATURE**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**PRINT NAME**

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**CITY ATTORNEY'S OFFICE**

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**PRINT TITLE**

**ATTEST:**

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**DENISE BOHLMAN, CITY CLERK**

## **Appendix A**

### **Basic Services of Engineer**

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#### Section 1. Engineer's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the

Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.

- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Rachel Grosso, AICP working under the Principal-in-Charge, Andy Daleiden, P.E.

## Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Sarah Plath, P.E.

## Section 3. Scope of Work.

The City of Billings, through this planning effort, seeks to identify community priorities to establish a vision and framework for continuing to build and maintain a safe, multimodal transportation network. Through this strategic transportation plan, the City of Billings will develop guidance for transportation corridors that accounts for community desires, functions of the roadway, its neighborhood character and future land uses. The consultant team ("Consultant") for this planning effort consists of the following firms: Kittelson & Associates, Inc. (Kittelson), DOWL, Inc (DOWL), MIG, Inc (MIG), and Orion Planning + Design (Orion). The scope of work for this project is attached.

## Scope

The following sections present scope tasks, subtasks, deliverables, consultant team members, and assumptions associated with the Billings Transportation Corridors Plan. The scope is divided into two phases, the first of which focuses on creating a vision for the Billings transportation corridors through outreach, engagement, and technical analysis to inform modal typologies, and the second, which focuses on applying this vision into an actionable transportation plan. This scope only addresses Phase 1, and does not include Phase 2. Phase 2 will be scoped following the completion of Phase 1. The scoped tasks for DOWL, MIG, and Orion are attached to this document.

## PHASE 1: DEVELOPING A VISION FOR BILLINGS' TRANSPORTATION CORRIDORS

In order to develop a comprehensive and unifying vision for Billings' Transportation Corridors, this phase crafts a community engagement approach that reaches a wide collection of Billings residents, property owners, business owners, and visitors to gather information about the most important aspects of the transportation system, and spur community conversation about how to balance priorities across the transportation system.

### KEY ASSUMPTIONS

- City of Billings staff will lead the development of this planning effort, with support from the Consultant team.
- The Leadership Team will consist of City Council Members, the City Administrator, the Public Works Director, the Planning Director, the City Engineer, the Transportation Planning Coordinator, and the Assistant Transit Director. The Leadership Team will be the primary body that guides and reviews the development of this planning effort, led by the City Project Manager (PM). The Leadership Team will meet on a regular basis, with meeting support from the Consultant team on an as-needed basis.
- The Working Group will consist of City and MPO staff that will meet on an as-needed basis to provide technical assistance and advice for the development of this planning effort.
- The following scope tasks are intended to outline how the Consultant team will assist the City of Billings in progressing through this planning effort.

## Task 1: Project Management and Coordination

This task includes conducting project management activities for this planning effort.

### ASSUMPTIONS

- City PM will coordinate the scheduling of the project kick-off meetings.
- Consultant will coordinate the scheduling of the project updates.

### DELIVERABLES

- Project Kick-off Meetings (1)
- Project Update Calls (16)
- Invoices and Progress Reports (10)
- Draft and Final Schedule

### SUBTASKS

- 1.1 Project Kick-off Meeting.** Consultant (Kittelson) will prepare for and conduct one (1) one-hour virtual kickoff meeting using Microsoft Teams. At that meeting Consultant will:
  - a. Review a preliminary schedule, confirm the overall scope, and discuss focus areas;
  - b. Discuss potential project issues or risks and a range of mitigation options for successfully completing the plan; and
  - c. Discuss data needs.
- 1.2 Project Updates.** Consultant (Kittelson) will participate in up to sixteen (16) 30-minute Teams meetings with City PM to check-in on progress and/or address questions that might arise during the project. Project update meetings may be replaced by e-mail updates with approval by the City project manager (PM).
- 1.3 Monthly Invoices & Progress Reports.** Consultant (Kittelson) will prepare monthly invoices and progress reports. One invoice and progress report will be submitted to the City PM each month (10 total).
- 1.4 Project Schedule, Contract Administration, and Subconsultant Coordination.** Consultant (Kittelson) will prepare an initial detailed project schedule showing draft and final deliverable dates, project meetings, public involvement meetings, and review times. Consultant will submit draft schedule to City staff for review and revise based on City staff feedback. Consultant will maintain and update the schedule as necessary throughout the project. Potential changes in the project schedule will be communicated to and confirmed by the City PM as soon as Consultant is aware that they may need to occur. Consultant will coordinate subconsultant tasks and deliverables.

## Task 2: Plans and Policies Review

This task includes conducting research on best practices to emulate, and summarizing existing plans and policies for this planning effort.

### ASSUMPTIONS

- City PM will provide a draft Plan and Policy Summary (PDF) for the Consultant team to review. The Consultant team will provide one set of consolidated comments for the City PM to incorporate at their discretion.
- City PM will provide a draft Best Practices Review Summary (PDF) for the Consultant team to review. The Consultant team will provide one set of consolidated comments for the City PM to incorporate at their discretion.

### DELIVERABLES

- One Set of Consolidated Comments on the Plan and Policy Summary
- List of Recommended Documents to Include in Best Practices Review
- One Set of Consolidated Comments on the Best Practices Review and Recommendations

### SUBTASKS

- 2.1 **Plan and Policy Review and Summary.** City staff will lead the review of existing City of Billings plans, policies, and programs to summarize alignment/overlap, inconsistencies/conflicts, and areas for improvement. Consultant (Kittelson, MIG, DOWL, Orion) will review the summary document provided by the City and provide one set of consolidated comments to recommend policy and process changes for inclusion in this planning effort.
- 2.2 **Best Practices Review and Recommendations.** City staff will lead the review of documents to envision a multimodal transportation system that will inform the components of this planning effort. Consultant (Kittelson, MIG, DOWL, Orion) will provide a consolidated list of recommended documents to include in the review, in addition to documents identified by City staff, such as City of Redmond, St Louis Blueprint for Arterials, and Town of Marana Street Typologies, among others. Consultant (Kittelson, MIG, DOWL, Orion) will review the summary document provided by the City and provide one set of consolidated comments to recommend data collection activities, planning-level technical analyses, visual components/graphic designs, and/or community engagement activities to be included in this planning effort.

## Task 3: Meetings and Coordination

This task includes preparing for, facilitating, and attending meetings with the Leadership Team, the Working Group, City Council, and other partner agencies to guide the development of the project.

### ASSUMPTIONS

- City PM will coordinate scheduling of Leadership Team meetings, Working Group Meetings, and City Council meetings. City PM will lead these meetings, with support from the Consultant team. City PM will prepare agendas, meeting summaries, and presentations to share with the Working Group.

### DELIVERABLES

- Leadership Team Meetings (8)
- Working Group Meetings (4)
- Billings FLUM / Comprehensive Plan Coordination Meeting (3)

### SUBTASKS

- 3.1 **Leadership Team Meetings.** Consultant will attend up to eight (8) one-hour Leadership Team meetings. City PM will schedule, prepare for, and facilitate each Leadership Team Meeting, including agendas, meeting summaries, and presentations to share with the Leadership Team. It is assumed that Consultant will attend virtually with Microsoft Teams. Leadership Team meetings will discuss topics such as city priorities, coordination with Comprehensive / Land Use Planning, vision development, engagement priorities and results, and other related topics. The proposed agenda topics for the Leadership Team meetings include:
- a. **Meeting #1:** Review key findings from plan and policy summary. Critical considerations for corridor typologies, cross section dimensions, freight routes, MDT and Yellowstone County owned roadways, and other items that will influence the development of the corridor typologies. Community engagement approach for Round 1.
  - b. **Meeting #2:** Round 1 Community Engagement Key Findings (Interim Update). Best Practices Review and Recommendations.
  - c. **Meeting #3:** Round 1 Community Engagement Key Findings (Final) and Approach to Incorporating Feedback into Refined Corridor Typologies and Modal Corridors for Round 2 Community Engagement.
  - d. **Meeting #4:** Community engagement approach for Round 2 and initial findings from Round 2 Engagement.
  - e. **Meeting #5:** Round 2 Community Engagement Key Findings (Interim Update).
  - f. **Meeting #6:** Round 2 Community Engagement Key Findings (Final) and Approach to Incorporating Feedback into Finalized Corridor Typologies and Modal Corridors for Round 3 Community Engagement.
  - g. **Meeting #7:** Round 3 Community Engagement Update and Draft Vision and Typologies Document.

- h. **Meeting #8:** Final Vision and Typologies Document.
- 3.2 **Working Group Meetings.** Consultant will attend up to four (4) one-hour Working Group meetings virtually with Microsoft Teams.
- 3.3 **Future Land Use and Comprehensive Plan Coordination.** Consultant (Kittelson, Orion) will coordinate and facilitate up to three (3) one-hour meetings to coordinate efforts between the Billings Future Land Use Map and Comprehensive Plan Update and this project development efforts, where project status, timeframes, and key activities will be shared. As feasible, opportunities for joint community engagement will be explored. City staff will attend and coordinate as needed with partner agencies.

## Task 4: Community Engagement

This task includes three rounds of community engagement to identify key corridors around which to develop the street typologies and modal corridors, to collaborate on the vision for different roadway features and characteristics, and to report on how community feedback informed the overall planning effort. Additionally, support tasks such as creating project branding and providing graphic design support are included.

### ASSUMPTIONS

- City's project manager and/or Communications Coordinator will lead all advertisement and outreach efforts, leveraging City social media channels and resources. The City will create a media release for the project and the open house to submit to local news outlets; the City will create social media graphics to advertise the project on key websites such as Instagram and Facebook; the City will create and administer print/digital/radio advertisements; and the City will print and mail (as deemed necessary) the Consultant-created postcard/ takeaway card.
- City PM and additional City staff will lead additional community engagement events throughout the planning effort that are not supported by Consultant team staff, other than in the provision of materials.

### DELIVERABLES

- Draft and Final Project Branding
- Draft and Final Engagement Plan
- Graphic Design Support
- Round 1 Engagement Materials (Website Updates, Takeaway Cards)
- Round 1 Survey
- Round 1 Pop-Up Events (3)
- Round 1 Community Group Meetings (5)
- Round 1 Open House (1)
- Round 1 Open House Display Boards (8)
- Round 2 Engagement Materials (Website Updates, Takeaway Cards)
- Round 2 Visual Preference Survey
- Round 2 Pop-Up Events (3)
- Round 2 Community Group Meetings (5)

- Round 2 Open House (1)
- Round 2 Open House Display Boards (6)
- Round 3 Engagement Materials (Website Updates)

## SUBTASKS

- 4.1 **Project Branding.** Consultant will create project branding for all community engagement materials and project deliverables. Branding includes developing a project logo, color palette, and documentation templates. Consultant will provide up to two alternative logos and color palettes. Consultant will develop a map template with project branding. Consultant will finalize based on City PM feedback.
- 4.2 **Engagement Plan.** Consultant (Kittelson, DOWL) will create a Draft Engagement Plan that establishes engagement schedule, outlines contacts of community organizations/business owners, identifies target communities, and outlines event types, timelines, and materials, as well as identifying performance metrics (such as social media engagements, number of media coverages, demographics, unique and repeat participants, etc.). Consultant will provide the engagement plan to City staff for review and finalize based on one set of consolidated comments.
- 4.3 **Graphic Design Support.** Consultant (Kittelson, MIG) will develop infographics, diagrams, maps, and other visual communication tools on an as-needed basis to support community engagement efforts. Consultant will prepare a community engagement summary infographic for each round of engagement. Consultant is scoped to perform up to fifteen (15) hours of graphic design support.
- 4.4 **Round 1 Engagement:** The purpose of the first round of engagement is to identify issue areas, highlight key corridor features, and understand the Billings community's transportation priorities, utilizing the visual aids created as part of Task 5.3.
- a. **Advertising / Outreach.** Consultant (Kittelson) will create a postcard / "takeaway" card with a QR Code that links to the project website to give to participants of pop-up events and community group meetings, as well as to leave at key community locations. City will print the postcard / "takeaway" card.
  - b. **Website Copy.** Consultant (Kittelson) will provide website copy to the City PM to advertise pop-up events, community group meetings, and the open house, in addition to digital methods of providing feedback.
  - c. **Survey.** Consultant (Kittelson, DOWL, MIG) will develop an online survey that is linked from the project website and will allow community members to voice their transportation priorities, identify key corridors, and sign up for future involvement in the project. Consultant will create a corresponding paper survey. The City will provide one set of consolidated comments on the survey prior to publication.
  - d. **Open House #1.** Consultant (Kittelson, DOWL) will create up to eight (8) poster boards that outline key project concepts and visualizations to display at Open House #1. The City will provide one set of consolidated comments on the display boards prior to printing. City will host an in-person open house at a community destination to inform community members about the project and gather feedback on transportation priorities and key corridors to focus on. Consultant will support the staffing and logistics of the Open House. City will print and provide paper surveys. City will advertise the Open House on their website and through other appropriate channels, utilizing materials provided by the Consultant.

- e. **Corridor Pop-Up Events.** Consultant (DOWL) will prepare for and facilitate three (3) pop-up events at local community destinations (such as libraries, schools, community centers, or businesses) for up to two hours each to advertise the project, answer questions, and provide participants with digital and paper means of providing feedback regarding transportation priorities. The pop-up events will be scheduled in conjunction with the Open House. Utilizing the materials that the Consultant prepares for the pop-up events, City staff will lead additional pop-up events for each corridor.
  - f. **Corridor Community Group Meetings.** Consultant (DOWL) will prepare for and attend up to five (5) community group meetings for up to two hours each to discuss the project, answer questions, and collect targeted feedback about transportation priorities for each corridor (5 total meetings). Consultant will collaborate with City staff and Leadership Team to determine the groups with which to engage. The community meetings can be either virtual through Microsoft Teams or in-person, scheduled in conjunction with the Open House and pop-up events. Utilizing the materials that the Consultant prepares for the community group meetings, City staff will lead additional community group meetings for each corridor.
- 4.5 **Round 2 Engagement:** The purpose of the second round of engagement is to refine the street typologies, modal corridors, and associated characteristics developed as part of Task 5.4, through gathering targeted community feedback to address the needs of residents, business-owners, visitors, commuters, and other Billings community members.
- a. **Website Copy.** Consultant (Kittelson) will provide website copy to the City PM to advertise pop-up events, community group meetings, and the open house, in addition to digital methods of providing feedback.
  - b. **Visual Preference Survey.** Consultant (Kittelson, DOWL, MIG) will develop an online survey that is linked from the project website and will allow community members to view, learn about, and select their preferences for different visual representations of street typologies and associated features. Consultant will create a corresponding paper survey.
  - c. **Open House #2.** Consultant (Kittelson, DOWL) will create up to six (6) poster boards that outline key project concepts and visualizations to display at Open House #2. City will host an in-person open house at a community destination to inform community members about the project and gather feedback through the visual preference survey, either digitally or paper. City will advertise the Open House on their website and through other appropriate channels, utilizing materials provided by the Consultant.
  - d. **Corridor Pop-Up Events.** Consultant (DOWL) will prepare for and facilitate three (3) pop-up events at local community destinations (such as libraries, schools, community centers, or businesses) for up to two hours each to advertise the project, answer questions, and provide participants with digital and paper means of providing feedback regarding transportation priorities. The pop-up events will be scheduled in conjunction with the open house. Utilizing the materials that the Consultant prepares for the pop-up events, City staff will lead additional pop-up events for each corridor.
  - e. **Community Group Meetings.** Consultant (DOWL) will prepare for and attend up to five (5) community group meetings for up to two hours each to discuss the project, answer questions, and collect targeted feedback about transportation priorities for each corridor (5 total meetings). Consultant will collaborate with City staff and Leadership Team to determine the groups with which to engage. The community meetings can be either

virtual through Microsoft Teams or in-person, scheduled in conjunction with the open house and pop-up events. Utilizing the materials that the Consultant prepares for the pop-up events, City staff will lead additional community group meetings for each corridor.

- 4.6 **Round 3 Engagement:** The purpose of the third round of engagement is to report back to the Billings community to show how feedback from the first two rounds were incorporated into the final deliverables developed as part of Task 5.5, in order to continue to strengthen trust in the public process.
- a. **Website Copy.** Consultant (Kittelson) will provide website copy to the City PM to advertise city council presentation.
  - b. **Outreach.** City will lead presentations (utilizing materials developed as part of Task 6) to community groups and governing bodies.

## Task 5: Technical Analysis

This task includes as-needed graphic design, GIS mapping, and traffic engineering to support the development of corridor typologies that can be utilized for the three rounds of community engagement in Task 4.

### ASSUMPTIONS

- City PM will guide the development of the roadway features, typologies, and modal corridors through discussions with the Consultant team and reviews of the materials throughout the drafting, refining, and finalization stages. City PM will provide one consolidated set of comments on the draft document to assist the Consultant team in efficiently addressing revisions.
- While the scope for Phase 1 includes the identification, development, and refinement of six (6) corridor typologies / modal corridors, Phase 2 may expand upon what is developed as part of Phase 1 to include additional corridor typologies / modal corridors.
- City will be responsible for collecting and providing multimodal traffic count data for any traffic analysis.

### DELIVERABLES

- Graphic Design Support
- Photo Renderings (6)
- Traffic Engineering Support
- Visual Summaries for Draft Corridor Typologies / Modal Corridors (6)
- Visual Summaries for Refined Corridor Typologies / Modal Corridors (6)
- Visual Summaries for Finalized Corridor Typologies / Modal Corridors (6)

### SUBTASKS

- 5.1 **Graphic Design Support.** Consultant (Kittelson, MIG) will develop infographics, diagrams, maps, and other visual communication tools on an as-needed basis to support the development of corridor typologies. Consultant is scoped to perform up to twenty-eight (28) hours of graphic design support.

- a. Consultant will prepare one photo rendering per corridor (up to 6 total) to support corridor typology visual communication, using high-quality aerial imagery.
- 5.2 **Traffic Engineering Support.** Consultant (Kittelson, DOWL) will provide as-needed, planning-level traffic engineering support for the development and refinement of the corridor typology concepts, as directed by the City PM. Traffic engineering support could also include brainstorming issues and impacts of the corridor typologies / modal corridors from a traffic engineering perspective, or otherwise provided engineering expertise. Support could include Highway Capacity Manual intersection operations analysis with Synchro, Vistro, Sidra, or Highway Capacity Software; corridor-level Level of Service analysis using segment capacity thresholds; intersection analysis utilizing the NCHRP 1036 All-Day Intersection Assessment methodology; and/or travel demand modelling using the MPO's Regional Travel Demand Model. Any traffic engineering analysis performed will utilize multimodal traffic data provided by the City. Consultant is scoped to provide up to fifty-six (56) hours of traffic engineering support.
- 5.3 **Identify Corridor Characteristics for Engagement Round 1.** City will identify up to six (6) corridor typologies of varying functional classes, with distinct features, land uses, modal considerations, and other characteristics to recommend for inclusion in the project and to utilize for the first round of community engagement. The corridor typologies will be developed in such a manner that they may be expanded upon in subsequent phases of the project, outside of what is developed during this scope of work. City will identify several existing roadways that are examples of the corridor typologies, such as Rimrock Road, Lake Elmo Drive, Broadwater Avenue, 48th Street West, or 4th Avenue North, among others. City will provide high-quality, street-level images for each corridor to support the visual summaries.
  - a. Consultant (Kittelson, DOWL, MIG) will develop visual summaries for each corridor typology to highlight key features.
- 5.4 **Refine Corridor Typologies and Characteristics for Engagement Round 2.** Consultant (Kittelson, DOWL, MIG) will utilize the input from the first round of community engagement and one set of consolidated comments from the Leadership Team to further refine the six (6) corridor typologies and their characteristics, including the development of corridor descriptions, modal priority, key features, cross-sections, facility types, traffic calming elements, technology components, amenities, land use characteristics, and other visual and graphical elements. These typologies will be utilized as part of the visual preference survey during the second round of community engagement.
- 5.5 **Finalize Corridor Typologies.** Consultant (Kittelson, DOWL, MIG) will utilize the input from the second round of community engagement and one set of consolidated comments from the Leadership Team to finalize the six (6) corridor typologies, including the refinement of corridor descriptions, key features, cross-sections, facility types, modal priority, amenities, land use characteristics, and other visual and graphical elements. These typologies will be documented as part of Task 6.

## Task 6: Phase 1 Summary Presentation

This task includes summarizing the results of the transportation corridor analysis and community engagement efforts to inform Phase 2.

## ASSUMPTIONS

- City PM will guide the development of the summary presentation through discussions with the Consultant team and reviews of materials. City PM will provide one consolidated set of comments on the draft presentation to assist the Consultant team in efficiently addressing revisions.
- City PM will lead all presentations of the Task 6 materials – no consultant support is scoped for presentations.

## DELIVERABLES

- Draft and Final Summary Presentation

## SUBTASKS

- 6.1 **Draft Summary Presentation.** Consultant (Kittelson) will create a high-level summary of the planning process that highlights key findings from the corridor typology development and community engagement activities, as well as outlining recommended actions for Phase 2, such as design guidance, policy modifications, Comprehensive Plan strategies, and additional studies or technical analysis.
- 6.2 **Final Summary Presentation.** Consultant will revise and finalize the presentation based on Leadership Team and Working Group feedback (provided in one set of consolidated comments) as directed by the City PM.

## Appendix B

### Methods and Times of Payment

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#### Section 1. Payments for Basic Services.

Billings shall authorize payment to the Engineer for services performed under Appendix A of this Agreement. Partial payment shall be due the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer.

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct five percent (5%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered prior to construction, Appendix A, the Engineer shall be paid based upon actual time accrued, but not to exceed the total contract amount.

|                                          |                   |
|------------------------------------------|-------------------|
| 1. Project Management and Coordination   | \$19,210.00       |
| 2. Plans and Policies Review             | \$10,455.00       |
| 3. Meetings and Coordination             | \$10,860.00       |
| 4. Community Engagement                  | \$57,335.00       |
| 5. Technical Analysis                    | \$68,605.00       |
| 6. <u>Vision and Typologies Document</u> | <u>\$3,900.00</u> |
| Total                                    | \$170,365.00      |

- B. Final payment shall be the above stated basic fee less all previous payments.

#### Section 2. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

#### Section 3. Corrections.

Costs of Billings work that is required for corrections to the Engineer's work which requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

#### Section 4. Fee Increases

For contracts and services that are expected to require more than one (1) year to complete, the above stated basic services payments may be reviewed and adjusted annually by mutual agreement of the parties, based upon documented evidence that the Engineer's costs and hourly rates as shown in Appendix D have increased for all comparable clients.

## **Appendix C**

### **Additional Services of Engineer**

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Extra Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

## **Appendix D**

### **Schedule of Professional Fees**

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Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

#### Section 1. Professional Services.

See attached rate sheet.

**City of Billings**  
**Rate Schedule**  
*As of February 2025*

| <b>Classification</b>              | <b>Hourly<br/>Billing Rate*</b> |
|------------------------------------|---------------------------------|
| Senior Principal Engineer/Planner  | \$307.64                        |
| Aronson, Mike                      | \$283.00                        |
| Daleiden, Andrew                   | \$298.66                        |
| Principal Engineer/Planner         | \$267.01                        |
| Walker, Juliet                     | \$264.38                        |
| Associate Engineer/Planner         | \$234.93                        |
| Senior Engineer/Planner            | \$193.04                        |
| Engineer/Planner                   | \$158.02                        |
| Grosso, Rachel                     | \$163.12                        |
| Transportation Analyst             | \$135.59                        |
| Delgado, Justin                    | \$136.65                        |
| Ma, Jade                           | \$140.56                        |
| Technician I                       | \$108.38                        |
| Technician II                      | \$131.18                        |
| Senior Technician                  | \$157.64                        |
| Benne, Kyle                        | \$153.92                        |
| Hough, Kurtis                      | \$150.93                        |
| Associate Technician               | \$195.87                        |
| Mah, Susan                         | \$210.87                        |
| Office Support                     | \$105.77                        |
| Data Analyst / Software Technician | \$159.51                        |
| Senior Data Scientist/Developer    | \$233.59                        |

*\*Average classification rates are shown above along with actual rates for key personnel. These rates were developed using Kittelson's audited overhead of 205.03% and 12% profit. Actual wage rates will be invoiced, overhead and profit will be locked for the duration of the contract.*

## **Appendix E**

### **Project Schedule**

---

Based on a notice to proceed by Billings date no later than July 1st, 2025, the completion date for the Engineer's work through final design shall be:

- A. Community Engagement
  - 1. Round 1 Engagement completed September 1st, 2025
  - 2. Round 2 Engagement completed December 1st, 2025
- B. Final Summary Presentation
  - 1. Completed by March 1st, 2026

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

## City Council Regular

**Date:** 06/09/2025  
**Title:** Landon's Legacy Park Playground Fall Protection Installation  
**Presented by:** Brad Wright  
**Department:** Parks/Rec/Public Lands  
**Presentation:** No  
**Legal Review:** No  
**Project Number:** N/A

---

### RECOMMENDATION

PRPL requests City Council consent to award a contract to Dakota Playground for playground fall protection installation. PRPL will utilize a Sourcewell state purchasing agreement with Dakota Playground. The contract amount is \$200,000. This includes all material and labor.

### BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Landon's Legacy Foundation's intent is to develop an accessible and inclusive playground at Poly Vista Park to complete phase 2 of the development plan. The City of Billings has actively came alongside Landon's Legacy in a private/public partnership to ensure individuals who have disabilities have full access to playground equipment.

### STAKEHOLDERS

PRPL  
City of Billings  
Landon's Legacy Foundation  
City of Billings Residents

### ALTERNATIVES

City Council may:

- Approve the installation of fall protection by Dakota Playground or Not Approve which will lead to an incomplete playground that will be unsafe to use.

### FISCAL EFFECTS

The fall protection material and installation will be done through a Sourcewell State Purchasing Contract. Funding in the amount of \$200,000 was approved and set aside in the CIP2025 budget previously approved by City Council. PRPL does not expect to hire any FTEs. Any additional work that maybe incurred because of the new amenities should be handled in the allotted time in which a park employee is already onsite.

---

### Attachments

Fall Protection Quote  
Construction Drawing



# Dakota Playground

PO Box 1408 • Fargo, ND 58107  
Office 701-356-8800 • Fax 701-293-7811  
www.dakotaplayground.com  
Equal Opportunity Employer

|                                                                         |                                                                      |                              |
|-------------------------------------------------------------------------|----------------------------------------------------------------------|------------------------------|
| <b>PROPOSAL SUBMITTED TO</b><br>City of Billings – Billings Park & Rec. | <b>CONTACT NAME</b><br>Brad Wright                                   | <b>DATE</b><br>5/12/2025     |
| <b>ADDRESS</b><br>390 N 23 <sup>rd</sup> St.                            | <b>EMAIL</b><br>WrightR@billingsmt.gov                               | <b>PHONE</b><br>406-413-5498 |
| <b>CITY, STATE, ZIP CODE</b><br>Billings, MT                            | <b>JOB NAME / LOCATION</b><br>Landon's Legacy Playground/Billings MT |                              |

We propose to provide the following items, quantity as listed:

Playground Equipment as manufactured by Landscape  
Structures per drawings

**Per Sourcewell Contract No. 030117-LSI**

Price for Equipment

\$200,000.00

## Notes:

1. Above price does not include sales tax, bonds, permits, testing or other fees if applicable.
2. Above price includes shipping; it does not include unloading, assembly, or installation.
3. Unless otherwise directed by project specifications, this transaction is not bound by retainage.
4. This proposal supersedes any previous proposals (all of which are rescinded/revoked and no longer valid); any plans addenda or revisions issued after this proposal are not part of this proposal and Dakota Playground is not bound to; this proposal automatically becomes part of any subsequent contract signed by Dakota Playground, regardless of whether this proposal is signed by the recipient of this proposal.

**We propose hereby to furnish materials - complete in accordance with above specifications, for the sum of: As per above.**

This Proposal may be withdrawn by Dakota Playground if not accepted within 30 days.

## Acceptance of Proposal

The above prices, specifications, terms and conditions are satisfactory and are hereby accepted by Purchaser. Dakota Playground is authorized to do the work as specified and Purchaser shall make payment as outlined.

## Terms and Conditions

**Term of Payment**, due upon receipt and subject to approved credit by Dakota Playground.

## Material Sales

Unless otherwise specified above, payment due upon receipt of products.

**Dakota Playground**

By: Jason Harris  
Jason Harris

**Purchaser**

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

Printed Name: \_\_\_\_\_

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

Date of  
Acceptance: \_\_\_\_\_

Please click below to view our online Terms & Conditions:

<https://dakotaplayground.com/terms-conditions/quotes-invoices-material-sales/>

**PROPOSAL**

1. CONTRACTOR SHALL VERIFY ALL QUANTITIES, MEASUREMENTS, AND ELEVATIONS WITH ON-SITE CONDITIONS.
2. PLAYGROUND SURFACING AND EQUIPMENT INSTALLATION MUST BE IPEMA CERTIFIED BY A CERTIFIED INSPECTOR.
3. PLAYGROUND INSTALLER IS RESPONSIBLE TO PROVIDE ADEQUATE SURFACING DEPTHS FOR PLAY EQUIPMENT FALL HEIGHTS.
4. POURED IN PLACE SURFACING AS PROVIDED BY DURA PLAY OR APPROVED EQUAL.
5. PROVIDE FACTORY WARRANTIES FOR ALL EQUIPMENT AND SURFACING.
6. INSTALL ALL PLAY EQUIPMENT AND SURFACING IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
7. PLAY EQUIPMENT AS PROVIDED BY DAKOTA PLAYGROUND OR APPROVED EQUAL. CONTACT JASON HARRIS (800)-726-4062
8. PLAY EQUIPMENT INSTALLER MUST BE MANUFACTURER CERTIFIED AND HAVE A MINIMUM OF 5 YEARS OF EQUIPMENT INSTALLATION EXPERIENCE.
9. PLAYGROUND SURFACING AS PROVIDED BY SURFACE AMERICA. CONTACT SURFACE AMERICA AT (800)-999-0555. SURFACING MUST BE CERTIFIED LATEX FREE. INSTALL SURFACING PER MANUFACTURERS SPECIFICATIONS.
10. SURFACING INSTALLER MUST BE MANUFACTURER CERTIFIED AND MUST HAVE INSTALLED A MINIMUM OF 10 APPLICATIONS.
11. PLAY SURFACING SURFACE GRANULES SHALL BE STANDARD COLORS "ROYAL BLUE " AND "HUNTER GREEN" EACH BLENDED  $\frac{80}{20}$  WITH "BLACK DPO".
12. COORDINATE WITH LANDSCAPE ARCHITECT FOR SURFACING PATTERN LAYOUT. LANDSCAPE ARCHITECT TO PROVIDE DETAIL PATTERN DRAWINGS UPON REQUEST.
13. LOCATE PLAYGROUND UNDER DRAIN PIPING IN LOW POINTS OF SUB GRADE. SEE ENGINEERING
14. GENERAL CONTRACTOR IS RESPONSIBLE TO SECURE THE PLAYGROUND SURFACING FROM FOOT TRAFFIC FOR 48 HOURS CURING TIME.



# PLAYGROUND EQUIPMENT PLAN LLF

# Landon's Inclusive Playground And Phase II Parking Lot

BILLINGS, MT

Issue Date: 12.08.2023

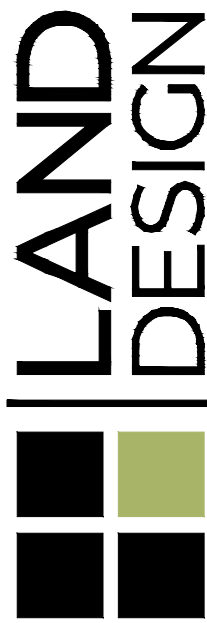
Revision \_\_\_\_\_ Date \_\_\_\_\_

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| - | - |

Drawn By: MV

Checked By: SR

Job Code: 2223



landscape architecture • land planning  
www.landdesigninc.net • 406.655.3550  
1670 S 48th St. West Billings, MT 59106

## L1.4

# PLAYGROUND EQUIPMENT PLAN LLF

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PLAYGROUND LAYOUT PLAN LLF

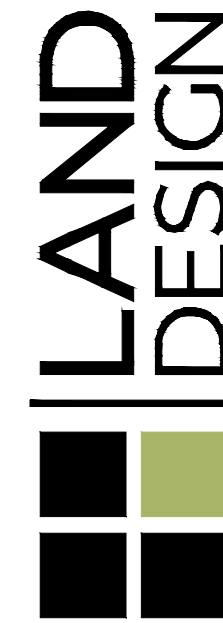
Landon's Inclusive Playground And Phase II Parking Lot

BILLINGS, MT

Issue Date: 12.08.2023

| Revision | Date |
|----------|------|
|          |      |
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|          |      |
|          |      |
|          |      |

Drawn By: MV  
Checked By: SR  
Job Code: 2223



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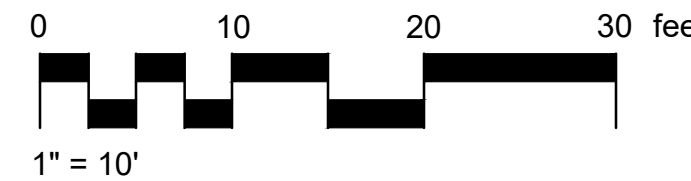
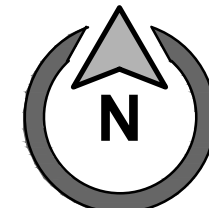
L1.5

PLAYGROUND LAYOUT  
PLAN LLF

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NORTHING/EASTING POINT SCHEDULE

| POINT | DESCRIPTION            | NORTHING    | EASTING     |
|-------|------------------------|-------------|-------------|
| 1     | PG POST CENTER         | N 143087.22 | E 102563.40 |
| 2     | PG POST CENTER         | N 143087.03 | E 102576.85 |
| 3     | PG POST CENTER         | N 143080.87 | E 102589.02 |
| 4     | PG POST CENTER         | N 143068.70 | E 102582.86 |
| 5     | PG POST CENTER         | N 143074.86 | E 102570.69 |
| 6     | PG POST CENTER         | N 143077.86 | E 102579.85 |
| 7     | PG POST CENTER         | N 143068.89 | E 102596.45 |
| 8     | PG EQUIP CENTER        | N 143048.58 | E 102533.79 |
| 9     | PG POST CENTER         | N 143037.42 | E 102546.30 |
| 10    | PG POST CENTER         | N 143041.44 | E 102557.03 |
| 11    | PG POST CENTER         | N 143034.27 | E 102559.71 |
| 12    | PG POST CENTER         | N 143030.26 | E 102548.98 |
| 13    | PG POST CENTER         | N 143020.00 | E 102564.89 |
| 14    | PG POST CENTER         | N 143006.92 | E 102589.35 |
| 15    | PG POST CENTER         | N 142997.32 | E 102585.76 |
| 16    | PG EQUIP CENTER        | N 142985.88 | E 102575.10 |
| 17    | PG POST CENTER         | N 143049.49 | E 102510.42 |
| 18    | PG POST CENTER         | N 143046.41 | E 102508.76 |
| 19    | PG POST CENTER         | N 143035.08 | E 102500.50 |
| 20    | PG POST CENTER         | N 143035.24 | E 102503.12 |
| 21    | PG POST CENTER         | N 143023.28 | E 102503.88 |
| 22    | PG POST CENTER         | N 143023.94 | E 102506.33 |
| 23    | PG POST CENTER         | N 143020.87 | E 102515.86 |
| 24    | PG POST CENTER         | N 143019.03 | E 102518.84 |
| 25    | PG POST CENTER         | N 143017.25 | E 102522.81 |
| 26    | PG POST CENTER         | N 143012.94 | E 102525.45 |
| 27    | PG POST CENTER         | N 143009.80 | E 102527.01 |
| 28    | PG POST CENTER         | N 143004.07 | E 102529.48 |
| 29    | PG POST CENTER         | N 143004.73 | E 102531.26 |
| 30    | PG POST CENTER         | N 143004.53 | E 102533.03 |
| 31    | PG POST CENTER         | N 143005.05 | E 102534.72 |
| 32    | PG POST CENTER         | N 143004.53 | E 102536.62 |
| 33    | PG EQUIP CENTER        | N 143007.43 | E 102517.47 |
| 34    | PG POST CENTER         | N 142995.03 | E 102514.24 |
| 35    | PG POST CENTER         | N 142992.33 | E 102516.47 |
| 36    | PG POST CENTER         | N 142995.47 | E 102522.85 |
| 37    | PG POST CENTER         | N 142997.69 | E 102525.55 |
| 38    | PG POST CENTER         | N 142989.78 | E 102532.07 |
| 39    | PG POST CENTER         | N 142987.56 | E 102529.37 |
| 40    | PG POST CENTER         | N 142984.10 | E 102529.94 |
| 41    | PG POST CENTER         | N 142982.88 | E 102533.22 |
| 42    | PG POST CENTER         | N 142985.10 | E 102535.92 |
| 43    | PG POST CENTER         | N 142988.55 | E 102535.35 |
| 44    | PG POST CENTER         | N 142992.47 | E 102548.16 |
| 45    | PG POST CENTER         | N 142990.24 | E 102545.46 |
| 46    | PG POST CENTER         | N 142986.79 | E 102546.03 |
| 47    | PG POST CENTER         | N 142985.56 | E 102549.31 |
| 48    | PG POST CENTER         | N 142987.79 | E 102552.01 |
| 49    | PG POST CENTER         | N 142991.24 | E 102551.44 |
| 50    | PG POST CENTER         | N 143007.74 | E 102553.88 |
| 51    | PG POST CENTER         | N 143005.52 | E 102551.17 |
| 52    | PG POST CENTER         | N 143002.06 | E 102551.75 |
| 53    | PG POST CENTER         | N 143000.84 | E 102555.03 |
| 54    | PG POST CENTER         | N 143003.06 | E 102557.73 |
| 55    | PG POST CENTER         | N 143006.52 | E 102557.15 |
| 56    | SHELTER POST CENTER    | N 143050.38 | E 102592.63 |
| 57    | SHELTER POST CENTER    | N 143040.83 | E 102579.79 |
| 58    | SHELTER POST CENTER    | N 143027.99 | E 102589.33 |
| 59    | SHELTER POST CENTER    | N 143037.54 | E 102602.17 |
| 60    | SHADE SAIL POST CENTER | N 143068.15 | E 102631.99 |
| 61    | SHADE SAIL POST CENTER | N 143057.15 | E 102635.44 |
| 62    | SHADE SAIL POST CENTER | N 143000.54 | E 102527.86 |
| 63    | SHADE SAIL POST CENTER | N 143019.83 | E 102546.82 |
| 64    | SHADE SAIL POST CENTER | N 142995.93 | E 102569.20 |
| 65    | PG POST CENTER         | N 142998.96 | E 102707.19 |
| 66    | PG POST CENTER         | N 142995.49 | E 102707.69 |
| 67    | PG POST CENTER         | N 143003.94 | E 102741.83 |
| 68    | PG POST CENTER         | N 143000.48 | E 102742.33 |



**City Council Regular**

**Date:** 06/09/2025  
**Title:** MET Transit Financial Sustainability and Governance Study: Recommend SRF Consulting  
**Presented by:** Rusty Logan  
**Department:** Transit  
**Presentation:** No  
**Legal Review:** Template Contract  
**Project Number:** N/A

---

**RECOMMENDATION**

Staff recommends that the City Council approve the Consultant Agreement with SRF Consulting for \$149,554 to complete the Billings MET Transit Financial Sustainability and Governance Study.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

The Billings MET Transit Division of the Aviation and Transit Department is requesting City Council approve a Consultant Agreement with SRF Consulting to complete a Financial Sustainability and Governance Study. This plan will provide recommendations, as well as related scenarios, to help meet changing demands as the City of Billings and surrounding area continues to grow. Currently, MET Transit exists as a municipal transit system funded locally via established property taxes and supplemented by both state and federal funds. With significant recent changes to property tax laws as well as historically limited alternative revenue sources, MET is seeking assistance in developing alternative or additional revenue streams as well as development of scenarios displaying the impact of stagnant or reduced revenue. Further, as the greater Billings area continues to expand, MET is seeking assistance in evaluating existing governance practices and models to ensure the transit system continues to meet the needs of the community. MET Transit intends to utilize the developed scenarios and recommendations informed by the data gathered to guide future decisions and facilitate further discussion. Further, the Aviation and Transit Department also intends to use the study data to inform decisions regarding the ongoing Airport authority discussion and potential impacts to Departmental structure and MET Transit. The scope of work of the study includes elements focused on community engagement, data collection regarding both MET Transit and other systems across the nation, analysis and scenario development for various revenue models and actions, and overall recommendations.

This project is identified in the 2025 Billings Urban Area Unified Planning and Work Program (UPWP), which was most recently recommended for approval by the City Council on August 12, 2024. The UPWP was ultimately approved by the Policy Coordinating Committee (PCC) on August 20, 2024. The UPWP is developed annually in conjunction with the Municipal Planning Organization (MPO) and identifies tasks to be completed using Federal Highway and Federal Transit planning dollars allocated annually.

A Request for Proposals was advertised in the *Yellowstone County News* and on the City of Billings website on April 18 and 25, and May 03, 2025. Two firms directly responded to the RFP with submitted proposals. These proposals were reviewed and scored by a combination of MET Transit staff and MPO staff. Both proposals were initially evaluated to ensure compliance with RFP requirements and then scored on a value per point basis with points awarded in categories including overall firm experience with similar or related plans, firm staff's experience and abilities, and overall proposed methodology in fulfillment of the proposed scope of work. Firm scoring as follows:

| FIRM                                     | PROPOSAL COST | TOTAL AVERAGE POINTS | COST PER POINT |
|------------------------------------------|---------------|----------------------|----------------|
| <b><i>SRF Consulting</i></b>             | \$ 149,554.00 | 95                   | \$ 1,574.25    |
| <b><i>Kittleson &amp; Associates</i></b> | \$ 148,745.00 | 82                   | \$ 1,806.62    |

As SRF Consulting represents the best cost per point value, staff recommends award to SRF Consulting for completion of the MET Transit Financial Sustainability and Governance Study.

**ALTERNATIVES**

City Council may:

- Approve the Consultant Agreement with SRF Consulting; or,
- Not Approve and direct staff on how to proceed.

#### **FISCAL EFFECTS**

The cost of the Consultant Agreement to complete the MET Transit Financial Sustainability and Governance Study would not exceed the Agreement amount of \$149,554. Funding for this project will be 80% Federal, 20% local, and is programmed in the Unified Planning and Work Program, utilizing Federal Transit Administration section 5303 federal funds and MET Transit reserve funds for match.

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#### **Attachments**

2025 Consultant Agreement



## **CONSULTANT AGREEMENT**

**THIS AGREEMENT** is made and entered into \_\_\_\_\_ by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and **SRF CONSULTING GROUP, INC** of Omaha, NE, hereinafter referred to as "**CONSULTANT**."

### **WITNESSETH:**

**WHEREAS**, the **CITY** proposes to complete a Transit Funding Sustainability and Governance Study and desires to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

**WHEREAS**, the **CITY** has authority to contract for such services, and;

**WHEREAS**, the **CONSULTANT** represents that he/she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

**NOW THEREFORE**, 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 **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof. In performing these services, the **CONSULTANT** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

**2. TERM:** This **AGREEMENT** shall be for a period of 6 months, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for on a month to month option by mutual agreement of both parties, in writing, thirty (30) days prior to termination of each term.

**3. PAYMENT:** In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT** a price not to exceed \$149,554.00.

Except as otherwise specified herein, the **CONSULTANT** shall invoice the **CITY** monthly for all services rendered pursuant to this **AGREEMENT**. Such invoices shall



specify the services provided to the **CITY** during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONSULTANT** for said invoice within thirty (30) days after receipt.

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the **CONSULTANT** will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **CONSULTANT'S** discretion.

**4. INCORPORATION BY REFERENCE:** All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.

**5. INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONSULTANT** is an independent contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **CONSULTANT** 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. **CONSULTANT** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONSULTANT** and any third parties.

**6. INDEMNITY:**

The **CONSULTANT** SHALL:

- A. Indemnify and hold **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CONSULTANT** or its agents or employees.
- B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by



the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.

- C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **CONSULTANT**, the **CONSULTANT** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **CONSULTANT'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONSULTANT'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

- D. Indemnify and hold **CONSULTANT**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.
- E. Not indemnify and hold the **CONSULTANT** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CONSULTANT** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CONSULTANT** and the **CITY**, the **CITY** shall indemnify and hold the **CONSULTANT** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

## 7. **INSURANCE:**

- A. The **CONSULTANT** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONSULTANT** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONSULTANT** shall provide the following insurance:



1. Workers' compensation and employer's liability coverage as required by Montana law.
2. Commercial general liability, including contractual liability assumed under an insured agreement and personal injury coverages in the minimum amount of \$750,000 per claim and \$1,500,000 per occurrence.
3. Automobile liability in the minimum amount of \$1,500,000 per accident.
4. Professional liability in the minimum amount of \$1,500,000 per claim.

The limits required by this **AGREEMENT** can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.

The **CITY** shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

**CONSULTANT** 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.

**CONSULTANT** shall maintain workers' compensation insurance coverage for all members and employees of **CONSULTANT's** business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

**CONSULTANT** 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.

### **Specific Insurance Requirements for Cyber/Data Information Security:**

**CONSULTANT** shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely



identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA.

If **CONSULTANT** maintains higher limits than the minimums shown above, the **CITY** requires and shall be entitled to coverage for the higher limits maintained by the **CONSULTANT**. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the **CITY**.

Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgements as may be caused by any act, omission, or negligence of the **CONSULTANT'S** officers, agents, representatives, assigns or subcontractors.

Note: If occurrence coverage is unavailable or cost-prohibitive, the CITY will accept 'claims made' coverage providing the following conditions are met:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work;
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and,
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Proposer must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

**8. AGREEMENTS OF CONSULTANT:** As an inducement to the execution of this **AGREEMENT** by the **CITY** and in consideration of the agreements to be performed by the **CITY**, the **CONSULTANT** agrees that:

A. Qualifications

The **CONSULTANT** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement



The **CONSULTANT** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

C. Facilities and Personnel

The **CONSULTANT** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **CONSULTANT** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

9. **AGREEMENTS OF CITY:**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the **CITY'S** portion of the project as designated in the scope of work.
- B. Name a Project Manager who shall be the liaison between the **CONSULTANT** and the **CITY**. For this project, the Project Manager for **CONSULTANT** designated is William Troe, Principal and the Project Manager for the **CITY** designated is Rusty Logan, Assistant Transit Director.

10. **NONDISCRIMINATION:**

- A. **CONSULTANT** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **CONSULTANT** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the

Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONSULTANT** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, **CONSULTANT** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**.

- B. The **CONSULTANT** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

The **CONSULTANT** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

The **CONSULTANT** and any **SUBCONSULTANT** shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **CONSULTANT'S** legal duty to furnish information.

- C. The **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
- D. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

- E. The **CONSULTANT** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of the **CONSULTANT** under this **AGREEMENT**.
- F. The **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
11. **PERMITS, LAWS, AND TAXES:** The **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by the **CONSULTANT** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. The **CONSULTANT** shall pay all taxes pertaining to its performance under this **AGREEMENT**. T
12. **NONWAIVER:** The failure of either party at any time to enforce a provision of this **AGREEMENT** shall in no way constitute a waiver of the provision, nor in any way affect the validity of this **AGREEMENT** or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
13. **TERMINATION OF AGREEMENT:** The right is reserved by the **CITY** to terminate this **AGREEMENT** at any time upon not less than thirty (30) days written notice to the **CONSULTANT**.

In the event the **CITY** terminates this **AGREEMENT**, the **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the **AGREEMENT** fee.

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) calendar 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**.

14. **CONFLICT OF INTEREST:** **CONSULTANT** shall exercise reasonable care and diligence to prevent any actions or conditions which could result

in a conflict with **CITY'S** interest. During the term of this **AGREEMENT**, **CONSULTANT** shall not accept any employment or engage in any consulting work which creates a conflict of interest with **CITY** or in any way compromises the services to be performed under this **AGREEMENT**. **CONSULTANT** shall immediately notify **CITY** of any and all violations of this Section upon becoming aware of such violation.

15. **SUCCESSORS AND ASSIGNS:** This **AGREEMENT** and all of the covenants hereof shall inure to the benefit of and be binding upon the **CITY** and the **CONSULTANT** respectively and his partners, successors, assigns, and legal representatives. Neither the **CITY** nor the **CONSULTANT** shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.
16. **CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated between the **CITY** and the **CONSULTANT** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.
17. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done. Applicable required Federal Transit Administration clauses and certifications have been attached to this contract as Exhibit B.
18. **ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
19. **SYSTEM SECURITY:** The **CONSULTANT** shall ensure systems delivered under this **AGREEMENT** are adequately secure. For purposes of this **AGREEMENT**, adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the **CITY** or State's use of its data and information technology or permit unauthorized access to the **CITY** or State's data or information technology.

The **CITY** and State have established control standards and policies that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. Thus, **CONSULTANT** shall provide reasonable proof, through independent audit reports, security scans of operating systems, code or the technology environment provided; that the system specified under this **AGREEMENT** meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and

availability of the **CITY** or State's data and information technology. Annual assurance statements shall be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

Prohibited Activities and Spoofing. **CONSULTANT**, Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the **CITY** or State's network or interfere or attempt to interfere with the **CITY** or State's systems, networks, authentication measures, servers or equipment, or with the use of or access to the **CITY** or State's network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the **CITY** or State's network or other systems; and (iii) attempting to portray itself as the **CITY** or State, or an affiliate of the **CITY** or State, or otherwise attempting to gain access, without authorization, via the **CITY** or State's network or systems to any account or information technology resource not belonging to **CONSULTANT**, Licensor or its officers, employees, agents, subcontractors, and affiliated users ("Spoofing"). **CONSULTANT** or Licensor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the billings.mt.gov or mt.gov domains or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the **CITY** or State's domain.

20. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of this **AGREEMENT**, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the **CITY**. Reproducibles of all notes, templates, creative files, reports, and plans shall be made available at the **CITY'S** request.
21. **PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**. All materials related to this **AGREEMENT** and services provided are considered public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.
22. **PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the **CITY**.
23. **RECORDS:** The **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records



available at all times during the **AGREEMENT** term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.

24. **ATTORNEY'S FEES AND COSTS:** That in the event it becomes necessary for either Party to this **AGREEMENT** to retain an attorney to enforce any of the terms or conditions of the **AGREEMENT** or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.
25. **LITIGATION LOCATION:** The parties agree that this **AGREEMENT** shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the **AGREEMENT** or the performance of its terms.
26. **MODIFICATION AND AMENDMENTS:** That 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 this **AGREEMENT**.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
(PRINT BUSINESS NAME ABOVE)

\_\_\_\_\_  
**WILLIAM A. COLE,  
MAYOR**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**PRINT TITLE**



**CITY ATTORNEY'S OFFICE**

**ATTEST:**

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**DENISE BOHLMAN, CITY CLERK**

## EXHIBIT A

The key objectives of the Transit Financial Sustainability and Governance Plan are:

- Evaluate current MET Transit funding levels and historical funding in relation to both sustaining current levels of service and sustainably increasing service.
- Evaluate current MET Transit structure within the City framework in relation to utilization of available funding, utilization of available resources, and efficiency of existing model; make recommendations for modification or improvements.
- Evaluate governance structures, interlocal agreements, and other mechanisms for administration, funding, and operations throughout the nation that have applicability for implementation in support of Billings MET Transit; make recommendations for strategies to leverage these mechanisms.
- Identify and evaluate un-utilized and under-utilized sources of revenue to improve system reach and growth throughout the urban area; make strategy recommendations for accessing and utilizing these revenue sources; evaluate fare levels and structures for similar transit agencies throughout the nation and evaluate the current MET Transit fare structure for potential changes to support ongoing and expanded transit services.
- Evaluate current MET Transit governance and financial practices and make recommendations to improve efficiency.
- Evaluate current MET Transit revenue generating programs for improvements, including the Advertising Program; recommend changes and new programs as appropriate.
- Other identified recommendations or best practices as applicable.

In consideration of the above objectives, the **CONSULTANT** will be expected to establish detailed analysis, recommendations, scenarios, and/or deliverables for the following tasks:

### Task 1: Project Management and Coordination

- Manage the study and coordinate with other entities.
- Bear responsibility for all documentation and equipment needs.
- Hold bi-weekly progress meetings with MET's Assistant Transit Director, as well as once monthly meetings with the Study Review Committee.
- Prepare documentation of expenses and submit invoices monthly.
- Provide Progress updates including, but not limited to:
  - Work performed during the report period
  - Upcoming tasks
  - Upcoming study milestones
  - Status of overall study schedule
  - Any identified issues



#### DELIVERABLES:

- Project Management Plan
- SWOT analysis
- Meeting and workshop agendas, meeting materials, presentations, notes, and summaries
- Decision summaries
- Staff check-in notes, materials, and summaries
- Invoices and supporting documentation

#### **Task 2: Community Engagement**

- Develop, implement, and facilitate a Public Engagement Plan for the study that reflects the requirements and obligations of the City of Billings MET Transit Public Participation Plan.
- Engage with elected officials and decisions makers both within the City and in potentially affected surrounding areas.
- Hold at least one (1) public meeting in conjunction with a City Council meeting.
- Hold two (2) to three (3) popup meeting events to engage with riders and the public.
- Conduct polling to gather public input.
- Engage with other area organizations including the school district, the business and healthcare communities, human services organizations, and active or alternative transportation focused groups.
- Provide an anticipated timeline for community engagement.
- Develop methods of consistent and effective communication to keep the community informed of the study, including use of social media and websites, as applicable.
- Review and include information gathered from previous MET Transit studies and surveys and conduct new surveys, as applicable.
- Provide recommendations on key business and agency partnerships to develop and foster within the community; reference innovative partnership and business engagement strategies that have proved effective in similar communities.
- Be available for meetings to present study findings and recommendations to the City Council and approving boards. Consultant will be responsible for developing and providing the presentations.

#### DELIVERABLES:

- Approved Public Engagement Plan with updates and timeline
- Digital copies of documents and meeting materials including decision maker presentations, pop up meeting materials, public meeting notices, input summaries, etc.



- Digital copies and summaries of comments received
- Poll results and summaries

### **Task 3: Data Collection**

The consultant shall gather and analyze existing conditions. Data gathered will include, but is not limited to:

- An assessment of current available MET Transit resources including revenue sources, reserves, capital assets, expected MET Transit operational and capital expenditure, forecasted wage and personnel liability, general operational expenditure, and other related metrics.
- Existing plans, including the Transit Asset Management Plan, the Capital Improvement Plan, and the Equipment Replacement Plan, and other existing plans, as needed.
- Current and historic fare structures and revenues.
- Current and historic advertising program data.
- Current operations data as applicable (routes, timetables, hours of operation, ridership, etc.).
- Current and historical operational contract data, including contracted services and revenue programs.
- Current in-kind or charged services provided by other City departments.
- Current Governance information and decision-making processes.
- Current relationships with local partners including boards, nonprofits, etc.
- Funding mechanisms existing within the state and region.
- Stakeholder and public support for additional funding mechanisms.
- Current area growth and population data, including forecasts.
- Current area financial metrics, including area cost of living, historical and forecasted inflation, forecasted property mill growth, and other applicable metrics.
- Interviews with decision makers and staff in support of funding or governance changes.

### **DELIVERABLES:**

- Technical memorandum summarizing existing conditions and base system status in regard to funding vs expenditure
- Technical memorandum addressing pertinent information from supporting documents including funding, capital needs, area growth, forecasts, etc.
- Interview and meeting summaries including findings

### **Task 4: Analysis and Scenario Development**

The consultant will analyze data and develop information regarding existing conditions, as well as scenarios with recommendations on modifications or restructure of transit funding mechanisms and governance. Specifically:

- Assessment of existing conditions including:
  - Operating statistics, service efficiency, service effectiveness, cost effectiveness, service amenities, etc.
  - Applicability of existing operating conditions to expanded service areas.
  - Identified weakness or gaps.
  - Farebox recovery ratio, ridership by fare type, subsidy per passenger.
  - Interest, debt, and asset coverage ratio.
- Peer system reviews including:
  - Financial comparisons regarding community size, ridership, governance structure, and other applicable metrics.
  - Fare assessment, including peer system fare structures, collection methods, historical fares, farebox recovery and other applicable information.
  - Alternative funding sources utilized including pros and cons of sources.
- Funding strategies and options analysis and development including:
  - Strengths, weaknesses, sustainability, and projections.
  - Funding source applicability to developed scenarios.
  - Savings and potential impact.
  - Include assessments of potential partnerships.
  - Include assessments of expanded advertising revenue options.
- Service scenario development including:
  - Maintenance of current service levels in conjunction with area growth and expense forecasts.
  - Support increases to a larger service area, including outside of City limits considering area growth and expense forecasts.
  - Stagnation of service if current funding level is carried forward as costs increase.
  - Reductions in service that would occur if revenue were reduced.
  - Alternatives that include expansion into adjacent communities or areas, including Laurel and Lockwood.
- Governance concept and organizational structure development including:
  - Taxing district models.
  - Joint-powers agreements and interlocal/intergovernmental agreements.
  - Municipal utilities and regional transit authorities.
  - Other applicable models.
  - Funding sources, including elasticity, adequacy, transparency.
  - Accountability and management structure for proposed models including coordination and necessity of new governmental structures.
  - Geographic considerations, including representative demographics



and regions.

- Interviews and data gathering with representatives from up to five (5) agencies.

#### DELIVERABLES:

- Needs assessment supporting need for changes in funding or financial policy
- Technical memorandum for peer comparisons
- Technical memorandum outlining funding strategies, governance concepts and organizational structures
- Synthesis of interview information, including summaries, notes, findings and related materials
- Distinct and detailed scenarios as outlined above, including summaries outlining specific impacts

#### **Task 5: Goals, Priorities, and Performance Measures**

The consultant shall:

- Lead goal making exercises to set the stage for consideration and implementation of the various developed scenarios over a multi-year period.
- Outline a series of performance measures and data sources for each goal and or metric that ideally coincide with already collected NTD data and other related items.
- Benchmarks for each goal or metric as a means of defining progress.

The consultant should report on existing common performance measures and recommend ways for MET to develop, track, and report internal performance measures to further support financial sustainability and make recommendations on how to best continue existing practices, should governance changes be recommended. This may include the development of tools for utilization by MET staff. Upon completion of this task, MET Transit should have a cohesive vision of the recommended path forward.

#### DELIVERABLES:

- Goals and priorities for Funding and Governance
- Performance benchmarks
- Future reporting schedule, content, responsibility
- Spreadsheet tracking structure or alternative tools for metric/benchmark tracking

#### **Task 6: Final Plan and Summary**

The consultant shall:

- Provide a draft study report integrating findings, detailing activities, and key action items with visuals and graphics to illustrate project information, analysis polls, and data. It shall include recommendations organized by a timeline of implementation, including City entities and relevant partners and also reflect revisions recommended from study partners. The draft shall be provided for



approval at least thirty (30) days prior to the plan approval process.

- Provide the final study report (upon approval) as a fully accessible PDF document for printing or posting on agency websites.
- An executive summary shall be included in the final study report.
- Present the study information, including findings and recommendations to the City of Billings City Council including:
  - A description of the study process
  - Current conditions and needs for changes.
  - General range of funding and governance alternatives
  - Evaluation process and criteria.
  - Recommendations and an implementation plan.

#### **DELIVERABLES:**

- Draft study report and all pertinent appendices, documents, and data
- Final study report and all pertinent appendices, documents, and data
- Executive summary
- Approval presentations

#### **All Deliverables**

For all indicated deliverables and tasks, the consultant will provide electronic copies of all documentation. The consultant will also be responsible for providing three (3) bound hard copies as well as electronic copies of the final approved Study Report and Executive Summary. All meeting summaries, presentations, appendices, technical analyses, and supporting documents shall be included. All data and study products, including creatives, GIS data, design files, polls, and other files shall be provided to the City of Billings MET Transit at the completion of the study.



## EXHIBIT B

### FTA Required Contract Clauses and Other Certifications

#### **1. No Federal Government Obligation to Third Parties**

The City of Billings, Aviation/Transit Department - MET Transit Division and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Governments in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **2. Program Fraud and False or Fraudulent Statements and Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **3. Access to Records**

**Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.



**Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

**Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. The Contractor also agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

FTA does not require the inclusion of these requirements in subcontracts.

#### **4. Federal Changes**

49 CFR Part 18 - The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **5. Civil Rights Laws and Regulations**

1) **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2) **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.



3) **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4) **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

#### **Civil Rights and Equal Opportunity**

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for



training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4) **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5) **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **6. Safe Operation of Motor Vehicles**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the City.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**



The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

#### **8. Energy Conservation**

The Contactor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **9. Disadvantaged Business Enterprises**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the City makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the City's written consent; and that, unless the City's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the City and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

#### **10. Prompt Payment**

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to



those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the City, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

#### **11. Procurement of Recovered Materials**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 42 CFR Part 247, and Executive Order 12873, as they apply to the procures of the items designated in Subpart B of 40 CFR Part 247. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

#### **13. Termination**

##### **Termination for Convenience**

The City, by written notice, may terminate this contract, in whole or in part, when it is in the City's interest. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

##### **Termination for Default [Breach or Cause]**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

##### **Opportunity to Cure**



The City at its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 business days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### **Waiver of Remedies for any Breach**

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### **14. Notification to FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the City, which will then notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the City is located. The Contractor is required to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. § 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) The City must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the City has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the City and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the City. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the City.

#### **15. Debarment and Suspension**



This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **16. Violation and Breach of Contract**

### Rights and Remedies of the City

The City shall have the following rights in the event that the City deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as the City for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include:

### Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the City directs Contractor to do so) or to suspend or abandon performance.

### Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of



this Contract by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

#### Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of The City. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the City's direction or decisions made thereof.

#### Performance during Dispute

Unless otherwise directed by The City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

#### Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall



constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **17. Byrd Anti-Lobbying Amendment**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

#### **23. Fly America Requirement**

- a) Definitions. As used in this clause—
  - 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  - 2) “United States” means the 50 States, the City of Columbia, and outlying areas.
  - 3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

##### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:



- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **27. Equal Employment Opportunity**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**36. Prohibition on certain telecommunications and video surveillance services or equipment.**

200.216 (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.



**Other Certifications**

1. The individual signing certifies that he/she is authorized to contract on behalf of the proposer.
2. The individual signing certifies that the proposer is not involved in any agreement to pay money or other consideration for the execution of this agreement, other than to an employee of the proposer.
3. The individual signing certifies that there has been no attempt by the proposer to discourage any potential proposer from submitting a proposal.

The proposer, by signing below, agrees to comply with these contract requirements and makes the certifications outlined above.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company



## APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date



## **DEBARMENT AND SUSPENSION CERTIFICATION**

### **(LOWER TIER COVERED TRANSACTION)**

The prospective lower tier participant (Bidder/Proposer) certifies by submission of this Offer, that neither it nor its principals, as defined at 2 CFR § 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded (defined at 2 CFR § 180.940) or disqualified as defined at 2 CFR §180.935.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- 1) It will comply and facilitate compliance with the requirements of 2 CFR § 180, subpart C and 2 CFR § 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- 2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently: debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified.
  - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    - i. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
    - ii. Violation of any Federal or State antitrust statute, or
    - iii. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State or local) terminated for cause or default within a three-year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
  - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 180 if it:
    - i. Equals or exceeds \$25,000
    - ii. Is for audit services, or
    - iii. Requires the consent of a Federal official, and
  - g. It will require that each covered lower tier contractor and subcontractor:



- i. Comply and facilitate compliance with the Federal requirements of 2 CFR part 180 and 3000, and
- ii. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
  - (a) Debarred, suspended, proposed for debarment, declared ineligible to participate, voluntarily excluded from participation or disqualified from participation in its federally funded project, and
- 3) It will provide a written explanation as indicate don a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

The certification in this clause is a material representation of fact relied upon by the City of Billings, Aviation/Transit Department - MET Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Billings, Aviation/Transit Department - MET Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

\_\_\_\_\_ **Signature of Bidder or Proposer's Authorized Official**

\_\_\_\_\_ **Name and Title of Bidder or Proposer's  
Authorized Official**

\_\_\_\_\_ **Date**



### **Bidder List Required Information**

The bidder listed below acknowledges that this information is required to be compiled and reported in accordance with the City's DBE Program and with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. 11(c). This form must be completed for all prime and sub-contractors. Failure to provide this data will result in a non-responsive bid.

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Years in Business: \_\_\_\_\_ Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Name of Majority Owner: \_\_\_\_\_

Race of Majority Owner: \_\_\_\_\_ Gender of Majority Owner: \_\_\_\_\_

NAICS Code(s) Applicable in Scope of Work: \_\_\_\_\_

\_\_\_\_\_

Type of Organization (Check one):

a. Sole Proprietorship ( ) b. Partnership ( ) c. Corporation ( ) d. Joint Venture ( )

Is Business Registered with the State of Montana as a Disadvantaged Business Enterprise?

a. Yes ( ) b. No ( )

Annual Gross Receipts of Business:

Less than \$500,000 ( )

\$500,000 - \$1,000,000 ( )

\$1,000,000 - \$5,000,000 ( )

\$5,000,000 - \$10,000,000 ( )

Over \$10,000,000 ( )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

## City Council Regular

**Date:** 06/09/2025  
**Title:** Amendment No. 6 to the Purchase and Sale Agreement on City Hall  
**Presented by:** Kevin Iffland, Assistant City Administrator  
**Department:** City Hall Administration  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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## RECOMMENDATION

Staff recommends that Council approve the Sixth Amendment to the Purchase and Sale Agreement between the City of Billings and Honaker Realty, LLC and JWT Capital, LLC.

## BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On March 1, 2024, the City entered into a Purchase and Sale Agreement (PSA) with Honaker Realty, LLC and JWT Capital, LLC for the sale of City Hall, Park 3, and adjacent parking parcels. The agreement has since been amended five times to address due diligence extensions, infrastructure issues, and financing contingencies.

The proposed Sixth Amendment resolves remaining infrastructure and title matters related to the 27th Street Skybridge, which spans a public right-of-way between the Garage Building and the Yellowstone County Courthouse.

Key provisions of the Sixth Amendment include:

If the Buyer identifies a development project, use, or sale of the Old City Hall or Garage Building that reasonably requires removal of the 27th Street Skybridge, the City and Buyer will split the removal and demolition costs 50/50--limited to costs attributable to City-owned property only.

Buyer will oversee the removal and must provide the City with cost estimates and detailed invoices. The City is required to reimburse 50% of actual, documented expenses within 45 days.

Disputes over reimbursement will be resolved through non-binding mediation in Billings before litigation.

The City's financial obligation expires 36 months after closing unless the Buyer provides written notice before expiration, in which case an extension of up to 36 months may be elected.

This resolves PSA Section 11(c)(9) and 11(c)(11) contingencies relating to encroachments and title matters, and extends certain other contingency deadlines to June 30, 2025.

The amendment demonstrates continued cooperation to keep the overall redevelopment project on track while balancing fiscal responsibility.

## STAKEHOLDERS

City of Billings -- Seller of City Hall and Park 3  
Honaker Realty, LLC and JWT Capital, LLC -- Buyer and prospective developer  
City Facilities Division -- Asset and contract oversight  
Downtown Billings Partnership -- Stakeholder in redevelopment of downtown core  
City Council and Public -- Policy oversight and fiscal responsibility

## ALTERNATIVES

City Council may:  
Approve the Sixth Amendment as recommended.  
Modify the Amendment before approval.  
Deny the Amendment

## FISCAL EFFECTS

If the Skybridge is removed within 36 months of closing, the City must reimburse 50% of the eligible removal costs. Staff recommends setting aside a portion of the sale proceeds to cover this potential liability without impacting future capital projects. A preliminary estimate places the total removal cost at approximately \$460,000, though this figure is based on a general survey and should be considered a rough approximation.

## SUMMARY

The Sixth Amendment establishes a clear, time-limited, and cost-shared path to address potential removal of the 27th Street Skybridge. It protects City interests, resolves outstanding contingencies, and allows the PSA to move toward closing.

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## Attachments

PSA Agreement

First Amendment to PSA

Second Amendment to the PSA

Third Amendment to PSA

Fourth Amendment to PSA

Fifth Amendment to PSA

Sixth Amendment to PSA



## CONTRACT ROUTING FORM

**(Contract must be signed by the non-City party before or within routing process)**

Honaker Realty, LLC & JWT Capital, LLC

**PARTY TO THE CONTRACT:** \_\_\_\_\_

**PURPOSE OF CONTRACT:** Sale of City Hall, Park 3, and Parking Lots on 27th Ave N  
\_\_\_\_\_

### PROCUREMENT COMPETED BY:

Written quotes

Competitive bid

x Request for proposals

Cooperative contract \_\_\_\_\_  
Contract #

Sole source justification

Other (please describe or N/A):  
\_\_\_\_\_  
\_\_\_\_\_

### Requestor:

Name: Jessica Fust  
\_\_\_\_\_

Dept: Facilities  
\_\_\_\_\_

Phone #: 406-657-8271  
\_\_\_\_\_

x Competition documentation attached  
(i.e. signed quote form, legal ad, sole source form, cooperative contract, etc.)

Insurance certificate(s) attached

x Council memo attached 3/11/24  
\_\_\_\_\_  
Date of award

x Signed by vendor (also check if signing in DocuSign)

## **Purchase and Sale Agreement**

**Seller: The City of Billings**

**Buyer: Honaker Realty, LLC & JWT Capital, LLC**

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** (“Agreement”) is made effective as of the latest date set out below in the signature block (“Effective Date”), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns (“Buyer”), and the **City of Billings** (“Seller”).

FOR VALUABLE CONSIDERATION, IT IS AGREED:

**1. Description of Property.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on the terms and conditions stated in this Agreement, the following property (collectively, the “Property”):

- (a) **Real Property.** That real estate in Yellowstone County, Montana (the “Property”):

Parcel A: (the “Parking Lots”).

Lots 5-6 & 8, 9, & 10, Block 92, of the Original Town, Now City of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in office of the Clerk and Recorder of said County.

Together with all: (a) appurtenances, improvements and fixtures (except as may be excluded below); and (b) all mineral rights held by Seller, if any, which were not previously severed from the real property. Seller shall make no warranty or representation to Buyer regarding any, wind or solar rights appurtenant or related to the Property, but shall transfer and convey (without warranty or representation) any, solar and wind rights that Seller may have with respect to the Property, if any.

Parcel B: (which contains two buildings the “Old City Hall Building” on the northern portion of Parcel B and the “Garage Building” consisting of the parking garage and office building on the southern portion of Parcel B).

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 58 of the Original Town, Now City of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in office of the Clerk and Recorder of said County.

Together with all: (a) appurtenances, improvements and fixtures (except as may be excluded below); and (b) all mineral rights held by Seller, if any, which were not previously severed from the real property. Seller shall make no warranty or representation to Buyer regarding any, wind or solar rights appurtenant or related to the Property, but shall transfer and convey (without warranty or representation) any, solar and wind rights that Seller may have with respect to the Property, if any.

- (b) **Personal Property.** The following personal property (the “Personal Property”), which is to be left upon the Real Property as part of the property purchased: (a) all

fixtures; and (b) any Personal Property that the Parties agree shall be left on the Property pursuant to a subsequent agreement in writing.

Seller and Buyer recognize and agree that the legal descriptions stated herein are tentative and will be modified by the property description information contained within the preliminary title commitment provided by Seller as detailed below, but only as approved by Buyer in writing; provided, further, that Buyer must be satisfied as to the sufficiency of the legal description and the condition of title conveyed as a contingency up to, and for, each Closing.

**2. Purchase Price.** The purchase price for the Property (“Purchase Price”) is as follows:

- (a) The Purchase Price for the Property is Two Million Eight Hundred Thousand Dollars (\$2,800,000.00). Payment of the Purchase Price shall be made as follows:
  - (1) \$35,000.00 earnest money (Earnest Money”), payable upon complete execution of this Agreement, which shall be held by the Closing Agent defined below in accordance with terms of this Agreement; and
  - (2) \$2,765,000.00 on the Closing Date in cash or certified funds.
  - (3) Buyer may extend the Closing Date by up to one hundred twenty days (120) days by giving Seller written notice that Buyer is extending the closing date and by paying the additional Earnest Money Deposits to the Closing Agent, as provided in Section 11(f) hereafter. The Extension Payments of additional Earnest Money shall be applied to reduce the Purchase Price. In the event that the sale does not close through no fault of Seller, then Seller shall retain the \$100,000.00 deposit and shall retain all rights and remedies under this Agreement, as provided in Section 11(f).

**3. Closing.**

- (a) Subject to the satisfaction of all contingencies herein, the closing (“Closing”) shall be held subject to the following schedule at the office of First Montana Title (“Closing Agent”), unless otherwise mutually agreed by the parties. Seller shall pay for the cost of a standard ATLA Owner’s Policy in the amount of the Purchase Price. Buyer shall pay and be solely responsible for any additional premiums or other costs in addition to the premium for standard coverage if Buyer elects to obtain ALTA extended coverage or any title endorsements to the title insurance policy. All other closing costs and fees, which do not include attorney fees and costs of the parties, shall be shared equally by Buyer and Seller. Provided that Buyer does not terminate this Agreement by reason of its due diligence during the Contingency Period or the failure of a contingency herein, the Closing of shall be held within thirty (30) days of the expiration of the Contingency Period, unless otherwise mutually agreed by the parties in accordance with the terms of this Agreement.
- (b) It is Seller’s intention to close the sale of the Property at one Closing through which Seller would transfer and convey Parcels “A” and “B” to Buyer. However, Buyer

may, at Buyer's option, bifurcate the Closings of Parcels "A" and "B" and close on Parcel "A" earlier than closing on Parcel "B", on the following terms: (i) Buyer waives all contingencies to closing set forth in this Agreement for both Parcel "A" and Parcel "B"; and (ii) pays the Purchase Price for Parcel "A". The closings on both Parcels "A" and "B" must occur no later than the first anniversary of the Effective Date of this Agreement. For the purposes of this Agreement, the Purchase Price for Parcel "A" shall be Seven Hundred Thousand Dollars (\$700,000.00) and the Purchase Price for Parcel "B" shall be Two Million One Hundred Thousand Dollars (\$2,100,000.00).

**4. Conveyance Documents.** On the Closing Date for each sale, the Seller shall execute and deliver to the Closing Agent:

- (a) A warranty deed conveying merchantable fee simple title to the Real Property to the Buyer free and clear of all liens and encumbrances, and subject only to: (i) reservations and exceptions in patents from the United States or the State of Montana; (ii) easements and rights-of-way of record; (iii) building, use and zoning restrictions, ordinances, and waivers of record, and sanitary and environmental restrictions; (iv) taxes and assessments prorated for the year of Closing and subsequent years which are not yet delinquent; (v) all mineral rights and prior conveyances, leases, transfers of any interest in minerals, including oil and gas and other hydrocarbons; (vi) all declarations, restrictions, covenants, and conditions of record; (vii) Permitted Exceptions as defined below;
- (b) A bill of sale conveying valid title to the Personal Property (if any) to Buyer free and clear of all liens and encumbrances. All Personal Property shall be conveyed **AS IS** and **WHERE IS**. Seller shall make **NO WARRANTY** and **NO REPRESENTATION** as to the Personal Property;
- (c) A Montana Realty Transfer Certificate(s) for the Property; and
- (d) Any and all other documents reasonably necessary to convey the Property to Buyer (all of the foregoing documents are collectively referred to as the "Conveyance Documents").

**5. Right of Entry.** Seller grants to Buyer (and Buyer's employees, agents and representatives) the right to enter the Property with a minimum 24-hour notice to the City Facilities Manager, during regular business hours, in order to inspect and investigate the same. Buyer may, at Buyer's sole expense, conduct reasonable soils, engineering and other tests and studies on the Property. Buyer shall not cause or suffer any lien or other encumbrance to be recorded against the Property; and shall promptly cause any such lien or other encumbrance caused or suffered by Buyer (including construction liens arising out of Buyer's activities) to be immediately discharged or bonded over to Seller's reasonable satisfaction. Buyer hereby indemnifies, protects, agrees to defend with counsel chosen by Seller (and reasonably acceptable to Buyer), and hold Seller, and its officers, officials, insurance companies, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs and expenses, demands, causes of action, claims or judgments arising, claimed or incurred against or by Seller, or its officers, officials, insurance companies, employees or agents, from all investigations, inspections, tests, and other activities undertaken on or with regard to the Property by Buyer, or its officers, directors, employees, agents, licensees and invitees, prior to the Closing Date. The provisions of this Section shall survive any termination of this Agreement or the Closing of the transaction contemplated hereby and shall not

be reduced or impaired by receipt by Seller or any sums and liquidated damages hereunder. Provided, however, that Buyer shall not indemnify Seller against any claim arising from Seller's negligence or for any claims, liabilities, penalties, damages, costs, expenses, demands, and causes of action, arising from any pre-existing conditions on the Property.

**6. Prorations.** Taxes and assessments on the Real Property for the current year shall be prorated between the parties as of the Closing Date. Buyer shall pay all taxes and assessments on the Real Property thereafter. Encumbrances to be discharged by Seller may, at Seller's option, be paid out of the Purchase Price at the Closing Date.

**7. Possession.** Buyer shall be entitled to possession of the Property on the Closing Date for each Parcel unless otherwise specified herein.

**8. Assignment.** Buyer may assign, in whole or in part, this Agreement in which Buyer, or its members, is a member or shareholder or partner, it being recognized that Buyer intends to form one or more entities to facilitate the development of the Property. In addition, in the event that Buyer's or its assignee's project funding or development requirements, or their IRC Section 1031 tax free exchange requirements, or their project development related credit or payment terms, require the assignment of their rights herein to another person or entity, in whole or in part, then Buyer and/or its assignee, with notice of such assignment to Seller, may assign their rights herein.

**9. Environmental.** Seller discloses to Buyer that the Property may contain lead paint and/or asbestos and/or other environmental contaminants. Additionally, Seller discloses that the Environmental Protection Agency declared a portion of downtown Billings to be a "Superfund Site" in connection with a chemical plume involving solvents from old dry-cleaning businesses. Seller has not determined whether or not the Property, or any portion of the Property, is located within the Superfund Site. Seller recommends additional environmental investigation and testing. Seller is unaware of the presence of any toxic or "hazardous material" (as defined under federal and Montana law) on or upon the Real Property in violation of or subject to remediation pursuant to any environmental law or regulation and Seller has not received any notice or communication of any alleged violation of any environmental law or regulation pertaining to the Real Property, except for the November 16, 2023 Notice from the United States Environmental Protection Agency regarding the presence of site contaminants of potential concern on Parcel B, the Old City Hall Building. During the Contingency Period, Buyer may inspect all of the Property for environmental matters at its cost. Seller will provide all environmental related information in its file to Buyer for inspection and Buyer may contact all persons or entities of its choosing, including employees of Seller, to determine and verify the extent of any environmental matters on the Property before the expiration of the applicable Contingency Period for each Parcel. To Seller's knowledge, no portion of the Real Property has ever been used for a dump or landfill. Seller is unaware of any underground storage tanks located on the Real Property, and to Seller's knowledge, no underground storage tanks have been removed from the Real Property except in compliance with applicable Montana and federal law. Seller shall provide to Buyer any environmental investigation reports that Seller may reasonably be able to locate in Seller's records. Buyer acknowledges that the Old City Hall Building was constructed on or around 1940. The age of the Old City Hall Building substantially exceeds the Seller's document retention policy. The Old City Hall Building predates the existence of computers. Over the decades, document retention policies and computer software programs have changed. As a result, the Seller may not be able to locate all environmental records related to the Old City Hall Building from 1940 to the present.

**10. Environmental Review.** Buyer shall have the right to enter onto the Real Property at reasonable times and in a reasonable manner, with minimum 24-hour notice to Seller, for the

purpose of making such environmental tests and surveys as Buyer deems necessary in connection with this Agreement at its sole cost, risk, and expense. Without warranty by Seller, Seller agrees to provide Buyer with any information which it has relating to the potential presence of or disposal on the Real Property of toxic, dangerous, or hazardous substances. After making such tests, studies and inspections, Buyer shall restore the Real Property to its condition prior to such tests, studies, and inspections. Buyer shall have until the expiration of the Contingency Period below for each respective Parcel to review the environmental condition of the Property. Should Buyer's environmental review indicate that there are or may be toxic, dangerous, or hazardous substances located on or about the Real Property in any particular Parcel, or Parcels, Buyer may, by notice in writing to Seller on or before the expiration of the Contingency Period below for each respective Parcel, terminate this Agreement, in which event Buyer shall be entitled to the return of the Earnest Money as provided below. Buyer shall, however, furnish a copy of such environmental review to Seller. Buyer's failure to so notify Seller on or before the expiration of the Contingency Period below for each respective Parcel shall be deemed conclusive evidence that Buyer desires to proceed to closing and accepts the Property in its **AS IS** condition with respect to environmental matters. In the event that Buyer gives written notice to Seller that it must terminate the Agreement by reason of an environmental issue during the Contingency Period, then the Agreement, at the election of Buyer, shall be deemed to be terminated in whole without liability, damage, fee, penalty, payment, or cost to Seller by Buyer, with return to Buyer of any Earnest Money paid by Buyer to the Closing Agent for the benefit of Seller hereunder.

#### **11. Buyer's Contingency Period and Title Review.**

- (a) **Buyer's Contingency Period.** The Buyer's "Contingency Period" shall commence on the Effective Date of this Agreement and shall terminate on the one hundred eightieth (180) day following the Effective Date. Notwithstanding the foregoing, so long as Buyer has approved or waived, or otherwise acknowledged satisfaction of all matters referred to in Sections 11(b) (title contingencies) during the timeframe described in Section 11(b), Buyer may extend the Contingency Period in thirty (30)-day increments on not more than four (4) occasions, upon Buyer's complying with the conditions of Section 11(f) and by Buyer giving written notice to Seller at least two (2) business days prior to the expiration of the Contingency Period, as then in effect, and by tendering the Extension Payment(s) referred to in Section 11(f) below.
- (b) **Title Review.** Buyer's obligation to proceed with the purchase of the Property is subject to Buyer's review and approval, in Buyer's sole and absolute discretion, the condition of title ("title") to the Real Property. Seller shall provide Buyer with a standard ALTA Owner's Title Insurance Policy, as Seller's cost, with insurance in the amount of the Purchase Price.
  - (1) At Buyer's election, Buyer may obtain an ALTA survey of the Real Property in form and substance acceptable to Buyer. Any ALTA survey shall be prepared at Buyer's cost. Similarly, Buyer may order an ALTA Owner's Extended Coverage Policy of Title Insurance. Seller will pay for the cost of a Standard Owner's Title Insurance Policy. Any increase in cost for an Extended Coverage Policy shall be the responsibility of Buyer.
  - (2) Buyer shall have thirty (30) days from the delivery of the Preliminary Title Commitment to approve or disapprove, in Buyer's sole and absolute discretion, the condition of Title to the Property.

- (3) In the event Buyer disapproves of Title to the Real Property within the period specified above, Buyer shall identify, in a written notice to Seller, which exceptions and conditions Buyer deems unacceptable (whether revealed by Title Company's Preliminary report, any ALTA Survey obtained by Buyer, or otherwise), and Seller shall have ten (10) business days following Seller's receipt of Buyer's notice of objection to commit, in a separate written notice to Buyer, to deliver Title to the Real Property on or before the Latest Closing Date free and clear of the exceptions and other conditions objected to by Buyer. If Buyer has objected to Title as herein above provided, then unless Seller commits to remove all exceptions and other conditions objected to by Buyer with the time prescribed above, this Agreement shall be automatically terminated unless Buyer waives the exception and other objections to Title that Seller declined to remove on or before the tenth (10<sup>th</sup>) business day following Buyer's receipt of Seller's written notice that Seller will not commit to removal of all exceptions objected to by Buyer. In the event that Buyer has not given Seller written notice of objection to Title within the time required above Title shall be deemed to be approved in its entirety. Buyer acknowledges that there are existing encroachments on Parcel A. Specifically, the Grand Building (to the south of Parcel A), encroaches upon Parcel A by approximately 6" and for two (2) sky bridges that are attached to the buildings on Parcel B. The Grand Building encroachment shall be a contingency for Closing until the Seller completes a lot line adjustment of the south property line, after which the Grand Building encroachment shall not be a contingency for Closing. The two sky bridges shall be a contingency for Closing until: (a) the Seller obtains encroachment agreements, encroachment permits, or similar approvals for the sky bridges; and (b) can confirm that Seller can convey to Buyer at closing, clear title to the sky bridges (except for the referenced encroachment agreements, encroachment permits, or similar approvals acceptable to Buyer) after which the sky bridges shall not be a contingency for Closing.

- (4) All title exceptions and other conditions approved by Buyer pursuant to this Section together with all other exceptions and encumbrances created by Buyer, shall be referred to herein as the "Permitted Exceptions."

- (c) **Buyer's Inspection and Due Diligence.** Buyer's obligation to proceed with the Purchase of the Property is further subject to fulfillment or waiver by Buyer, within the Contingency Period, of each of the contingencies set forth in Section 11 and as otherwise provided in this Agreement. It is understood and agreed that all Contingencies require Buyer's approval, which may be given or withheld in Buyer's sole and absolute judgment; consequently, Buyer's failure to waive or acknowledge satisfaction of any of the Contingencies, even if Buyer's failure to approve is unreasonable and even if Buyer fails to pursue all information relevant to an informed decision, shall not be a default by Buyer under this Agreement.

- (1) Buyer must approve, in Buyer's sole and absolute discretion, all due diligence materials delivered by Seller for Buyer's review. In addition, Buyer may obtain (at Buyer's cost and expense) and approve (in Buyer's

discretion) an engineering survey of the Property, Buyer's own Phase I and/or Phase II environmental site assessments, soils tests, structural and mechanical inspections and tests, and any other due diligence investigation, and any other investigation or test that Buyer deems prudent, in Buyer's sole and exclusive judgment.

- (2) Buyer must be satisfied (in Buyer's sole discretion) with the results of Buyer's investigation into the physical condition of the Real Property.
- (3) Without limiting the effect of any of the above, Buyer, in its absolute and sole discretion, and in the exercise of its due diligence during the Contingency Period, must be satisfied with any and all business, economic, structural, environmental, governmental, tax, transactional and financing matters for Buyer's intended development and project involving the Property, including being granted reasonable access to the improvements to the Parcel A and B Property, either personally or by its authorized agents, to inspect and investigate all aspects of the improvements thereon, including, without limitation, the roof, heating, cooling, structural, access, plumbing and electrical systems, and to examine any other matters relating to the status or the condition of the improvements to the Property.
- (4) Execution of an acceptable Development Agreement between DBP and Buyer to develop Parcel A.
- (5) Approval for Tax Increment Funds from DBP and Seller to Buyer for the reimbursement of up to \$5,000,000.00 for qualified public expenditures for Phase One of the project referenced above.
- (6) Execution of Franchise Agreements with the hotel company involved in Phase One of the project located on Parcel A.
- (7) Seller agrees to vacate the Property identified as Parcel B, on or before February 1, 2025 or within thirty (30) days of Closing, whichever is later, unless otherwise mutually agreed by both parties.
- (8) Seller shall provide suitable loading and unloading areas from 2<sup>nd</sup> Avenue North for hotel guests.
- (9) An agreement with the City Parking Division to provide management of the parking on Parcels A and B until the start of construction of Phase One for an agreed-to fee.
- (10) Buyer must obtain the approval of the DBP to remove the portable public rest room located on Parcel B and relocate the same to other property, not including any of the Property purchased herein, by the start of substantial construction of Buyer's Phase One improvements on Parcel A.
- (11) The Seller shall determine if the Grand Building to the south encroaches on Parcel A and, if so, the Seller shall remedy that encroachment by replatting Parcel A or by doing a lot line adjustment so that at the time of

Closing of the sale of Parcel A, there shall be no encroachment by the Grand Building. Prior to the Closing, Seller shall confirm its ownership of the sky bridges, and obtain Buyer accepted encroachment agreements, permits, or other appropriate approvals for the sky bridges. At Closing, Seller shall convey fee title through the warranty deed to the sky bridges to Buyer free of liens and encumbrances except for the mutually agreed encroachment agreements, encroachment permits, or other approvals.

- (d) **Time/Failure of Contingencies.** Buyer shall have until the expiration of the Contingency Period to approve, disapprove or waive the Contingencies, in Buyer's sole and absolute discretion. In the event the Contingencies are disapproved prior to the expiration of the Contingency Period (disapproval to be evidenced by a writing from Buyer to Seller received within the Contingency Period), or if the Contingency Period lapses without the Contingencies having been approved, fulfilled or waived by Buyer (approval to be evidenced by a writing from Buyer to Seller received within the Contingency Period), this Agreement shall be automatically terminated, whereupon all rights and obligations of Seller and Buyer to the other shall cease and terminate, subject to Buyer's limited indemnification obligations set forth in Section 9; provided, however, that in the event of unsatisfied Contingencies of Buyer, both Buyer and Seller shall meet and negotiate in good faith to attempt resolve such unsatisfied Contingencies, if possible, before the expiration of the Contingency Period. Effective upon the date of any such termination as provided above, the Closing Agent shall return to Buyer the Earnest Money Deposit (with accrued interest) in Escrow without liability, damage, fee, penalty, payment, or cost to Seller by Buyer.
- (e) **Approval.** Upon approval, fulfillment or waiver of the Contingencies, Buyer shall thereafter proceed with this transaction on the terms and conditions set forth herein.
- (f) **Extensions.** On or before two (2) business days prior to the end of the Contingency Period, as then in effect, Buyer may elect to extend the Contingency Period for up to four (4) periods of thirty (30) days each, exercisable upon written notice to Seller. Each such extension notice shall be accompanied by the payment of twenty-five thousand dollars (\$25,000) to the Closing Agent, (each an "Extension Payment") for each thirty-day period of extension. Notwithstanding the foregoing, Buyer shall not be permitted to extend the Contingency Period unless Title has been approved in accordance with Section 11 with respect to all of the Property, both Parcels "A" and "B". Except as provided below, all Extension Payments shall be non-refundable, notwithstanding later termination of this Agreement or failure of the transaction contemplated hereby to close, for any reason; provided, however, that in the event that this transaction does not close because of a default by Seller, then Buyer shall be entitled to a full and immediate refund of all Extension Payments (without interest), and may, in addition, pursue any and all other legal or equitable remedies available to Buyer. In the event that this transaction closes, then all Extension Payments shall be applied to the Purchase Price.

**12. Independent Investigation.** Buyer and Seller agree that the representations and warranties, and any limitations thereof, contained in this paragraph shall survive closing. Buyer enters into this Agreement in full reliance upon Buyer's independent investigation and judgment, and neither Seller nor Seller's agents or attorneys make any warranties or representations to Buyer, whether express or implied, about the Property except as specifically stated herein. There are no

verbal or other agreements which modify or affect this Agreement. By closing this transaction, Buyer acknowledges and agrees that: (a) Buyer has fully investigated the Property, including, but not limited to, zoning, environmental, structural, and construction conditions, and is satisfied that the Property and the condition of the Property are suitable for Buyer's intended use; (b) Buyer completed Buyer's due diligence investigation to Buyer's satisfaction; (c) Buyer's due diligence investigation has not been hampered or limited by Seller in any manner or respect; (d) Buyer is satisfied with the Property and its condition; (e) Buyer accepts the Property in its "**AS IS, WHERE IS**" condition; (f) Buyer acknowledges and agrees that Seller makes **NO WARRANTY OR REPRESENTATION**, of any kind or nature, except as may be provided under the warranties stated in the warranty deed, including but not limited to that the Property is fit for any particular purpose or that it is habitable; (g) Buyer will close this transaction in full reliance upon Buyer's independent investigation and judgment, and that any prior verbal representation (if any) by Seller (or anyone on behalf of Seller) will not modify or affect this Buy-Sell Agreement; (h) Buyer has not and shall not rely upon any statement or representation from Seller or anyone acting on behalf of Seller as to the condition of the property; and (i) Buyer is not relying and shall not rely upon any statement or representation of Seller except for the express written representation in this Buy-Sell Agreement and in Seller's Warranty Deed. Seller shall cooperate with and facilitate Buyer's investigation of the Property. Seller shall provide Buyer with any written reports relating to environmental and structural conditions of the Old City Hall Building that Seller may reasonably locate. Additionally, Seller shall provide any third-party entities with whom the Seller may have contracted with permission and authorization to communicate and share information with Buyer.

**13. Buyer's Development Obligations.** This section outlines the Buyer's responsibilities to redevelop and maintain Parcel B. Buyer shall maintain the Old City Hall Building, the Garage Building and the surrounding land, ensuring it remains aesthetically pleasing and free from blight. The Buyer commits to the ongoing care of the exterior of both buildings, landscaping, preventing the accumulation of trash, litter, graffiti, or any unsightly elements on Parcel B and to addressing any issues that may arise. Furthermore, the Buyer must refrain from boarding up windows and is obligated to promptly repair or replace any broken windows or doors to uphold the property's visual appeal. The Buyer is granted maximum flexibility in redeveloping the Parcel B Property, including the Old City Hall Building and the Garage Building, which may include options such as remodeling the existing buildings, partial or complete demolition of the buildings, or converting the buildings into condominiums, among other possibilities. The Seller's primary objective is to ensure the property's consistent maintenance with the explicit purpose of preventing blight and preserving the revitalization efforts of the downtown area. This paragraph is not intended to limit or restrict the Buyer's use or redevelopment of Parcel B. Buyer's obligations under this paragraph shall survive Closing. Buyer's continuing obligations to Seller under this Section shall terminate upon the earliest of the following to occur: (a) Buyer obtains a tenant for the Old City Hall Building on Parcel B; (b) Buyer demolishes some or all of the Old City Hall Building; or (c) Buyer opens a new hotel on Parcel A.

**14. Exclusion of Old City Hall Building.** It is the intention of the Parties to close the sale of Parcel A and Parcel B at the same time. Parcel B includes the Old City Hall Building on the north side of Parcel B. If, during Buyer's Contingency Period, Buyer's investigation and due diligence determines that there are Significant Environmental or Structural Problems or Material Economic Concerns (as defined herein) with the Old City Hall Building that make the use, development, and occupancy of the Old City Hall Building uneconomical, then Buyer shall make full disclosure of all investigations and reports on the Old City Hall Building to Seller, including but not limited to the projected costs of remediating or curing any environmental or structural or material economic issues with the Old City Hall Building. Thereafter, Buyer and Seller shall attempt to resolve and address the environmental, structural and/or material economic issues raised by Buyer prior to the

expiration of the Contingency Period, unless such Period is extended by mutual agreement in writing. If Buyer and Seller reach an agreement on addressing any Significant Environmental or Structural Problems or Material Economic Concerns with the Old City Hall Building, then that Contingency shall be eliminated and the sale of both Parcels A & B of the Property, including the Old City Hall Building, shall proceed. If Seller and Buyer cannot reach an agreement on addressing the Significant Environmental or Structural Problems or Material Economic Concerns with the Building, then Buyer may, in Buyer's sole and exclusive discretion: (a) terminate this Agreement after which neither party shall have any duty or obligation to the other party except for return of the Earnest Money to Buyer; or (b) elect to exclude the Old City Hall Building from the Closing and sale, as provided hereinafter in Section 14(c).

- (a) **Significant Environmental or Structural Problems or Material Economic Concerns.** For the purposes of this Agreement, the term "Significant Environmental or Structural Problems or Material Economic Concerns" shall mean the identification of unknown environmental or structural problems with the Old City Hall Building, or during the Contingency Period, a material economic concern develops for Buyer with respect to the reasonable development of the Old City Hall Building consistent with its overall development of the Property, and is a problem: (a) of such a scope or magnitude that the use, development, and/or occupancy of the Old City Hall Building would be uneconomical for any projected use of the Old City Hall Building in the development of the Property as a whole, with documentation of such hardship to be presented to the City; or (b) that would cost Buyer in excess of Three Hundred Thousand Dollars (\$300,000.00) to remediate and/or cure. An "unknown" Significant Environmental or Structural Problem shall mean any environmental or structural problem that is either unknown as of the date of this Agreement or the serious magnitude of which is unknown as of the date of this Agreement. The following matters shall not be considered "unknown" Significant Environmental or Structural Problems: (a) the presence of asbestos that can be removed, encapsulated, or abated for a reasonable cost not to exceed \$100,000.00; (b) the presence of lead paint that can be removed or abated at a reasonable cost not to exceed \$100,000.00; (c) the Building being included in an EPA Superfund Site because of a chemical plume involving solvents from old dry-cleaning businesses; or (d) site contaminants of potential concern detected in subslab samples by the EPA in 2023 that can be addressed or abated at a reasonable cost not to exceed \$100,000.00. A Material Economic Concern is one affecting the Old City Hall Building that is determined by Buyer in the course of its due diligence to be one that would adversely affect the economic development potential of the Old City Hall Building in an amount of at least Three Hundred Thousand Dollars (\$300,000.00).
- (b) **Joint Use Agreement.** If there are Significant Environmental or Structural Problems or Material Economic Concerns (as defined herein) with the Building and the Parties cannot agree on how to remediate or cure those problems, the Buyer may elect to exclude the Old City Hall Building from the Sale and the parties shall reasonably cooperate to put into place such joint use agreements as may be referenced below.
- (c) **Notice to Seller.** Buyer shall provide written notice to Seller, at least two (2) business days prior to the expiration of Buyer's Contingency Period as provided in Section 11(a), that Buyer has elected to exclude the Old City Hall Building from the Sale. As part of the Notice, Buyer must either waive or accept as satisfied all other contingencies in connection with the sale of Parcel A and all of Parcel B, with the exception of the Old City Hall Building. Upon receiving such notice from Buyer, Seller shall prepare and submit to Buyer a draft Joint Use Agreement to govern the use and operation of (a) the Old City Hall Building to the north and (b) the Garage Building to the South. All costs associated with

separating the Old City Hall Building from the Garage Building shall be the sole cost and expense of the Buyer. Buyer shall develop a plan to separate the systems within the Old City Hall Building from the remaining portion of Parcel B or for the joint use of some or all of the building systems. All costs and expenses associated with developing a Joint Use Agreement or with separating the Old City Hall Building and/or the building systems from the remainder of Parcel B shall be done at the cost and expense of Buyer, without any financial contribution from Seller. The Parties shall negotiate in good faith to agree upon a final Joint Use Agreement that would be subject to approval of both Buyer and Seller. The approval of the Seller will require formal approval of the Joint Use Agreement by the Billings City Council at a properly noticed public hearing. The Parties acknowledge that the Old City Hall Building and the Garage Building are separate buildings that are located on separate legal parcels, but share certain systems. Accordingly, the Parties must agree upon an equitable cost sharing agreement to address maintenance, replacement, and operating expenses of those systems as well as security and access issues. If Buyer and Seller cannot agree upon an acceptable Joint Use Agreement, then Buyer may elect to terminate this Agreement as its sole remedy, as provided above. If the Building is excluded from the Sale, the purchase price attributable to the southern portion of Parcel B will not be reduced. If Buyer elects to exclude the Old City Hall Building from the Closing because of Significant Environmental or Structural Problems or Material Economic Concerns, then the purchase price for the remaining portion of Parcel B (the Parking Garage) shall be Two Million One Hundred Thousand Dollars (\$2,100,000.00).

**15. Seller's Representations and Warranties.** Seller represents and warrants to Buyer as follows as of the Effective Date (and it shall be a condition to Buyer's obligation to close that such representations and warranties remain true as of the Closing Date):

- (a) **Authorization.** Seller has full power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. Seller has taken all action necessary to authorize its execution and performance of this Agreement, and the officer executing this Agreement on behalf of Seller has been duly authorized and directed to do so by Seller. Seller will provide to Buyer and the Closing Agent a certified copy of the resolution of the Seller's City Council and other governmental officers as may be required authorizing this transaction. This Agreement is, and Seller's other instruments when executed and delivered by Seller in accordance with the terms hereof will be, legal, valid, and binding obligations of the Seller and enforceable in accordance with their terms, except as the same may be affected by bankruptcy, insolvency, moratorium, or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.
- (b) **No Liens.** To the knowledge of Seller, there are no unrecorded liens, financing statements, encumbrances or agreements affecting the Real Property that will survive the Closing on any Parcel, and Seller has committed no acts which would result in the creation of such liens, financing statements, encumbrances or agreements affecting the Real Property. No work has been done on, and no materials have been furnished to, the Property for which full payment has not been made and for which a lien could be filed against the Real Property.
- (c) **Personal Property.** To the extent that Personal Property is ultimately included in the purchase herein, Seller has good and merchantable title to the Personal Property, free and clear of all pledges, claims, liens, restrictions, security interests,

charges, and encumbrances. To the extent, if any, that tangible Personal Property is being conveyed hereunder, to the best of Seller's knowledge, but without warranty, all of the tangible Personal Property is in good repair and condition, and is adequate for continuation of the operation of the Property.

- (d) **Encroachments.** To Seller's knowledge, there are no encroachments upon the Real Property nor does any improvement on the Real Property, including but not limited to alleys, adjacent buildings, or signage, encroach upon any property owned by others, except for the Grand Building with respect to Parcel A and the two (2) Skybridges attached to the buildings on Parcel B.
- (e) **No Violation of Laws.** Seller has not received notice of any violation of any applicable regulation, law or order relating in any material respect to the Real Property, nor does Seller have knowledge of any notice from any governmental authority of any (i) pollution, health, safety, fire, environmental or building code violations with respect to the Real Property; or (ii) the construction of public improvements or the imposition of any special taxes or assessments upon all or any part of the Real Property.
- (f) **Pending Claims.** To the knowledge of Seller, there are no claims, actions, proceedings or governmental investigations pending or threatened against or involving the Real Property or against or involving any of the Real Property; nor to the knowledge of Seller is there any reasonable basis for any claim, litigation, proceedings or other governmental investigation pertaining thereto. Provided, however, that the Property is located within an area designated by Environmental Protection Agency as a Superfund Site, generally known as the Billings, MT PCE Superfund Site. The EPA recently completed multiple indoor air and groundwater sampling in the area. The EPA is currently reviewing a focused feasibility study to address the indoor air exposure pathway and anticipates issuing a proposed plan in late spring 2024.
- (g) **Existing Leases and Leases Subsequent to Execution Date.** Seller hereby warrants that no commercial or other lease or agreement that affects the Property currently exists on the Property longer than thirty-one (31) days in duration. In addition, Seller hereby agrees that Seller shall not execute or bind the Property after the latest date on the signature block below, without the written consent of Buyer.

Seller shall hold Buyer harmless from any damage, loss, claims, penalty, cost, fee, fine or liability arising out of any falsity, omission or misstatement of the matters set forth in this paragraph.

**16. Buyer's Representations and Warranties.** Buyer hereby represents and warrants to Seller, both as of the date hereof and as of the Closing Date, that:

- (a) Buyer is duly organized, validly existing and in good standing under the laws of the State of Montana. Buyer has taken all action necessary to authorize its execution and performance of this Agreement, and the officer executing this Agreement on behalf of Buyer has been duly authorized and directed to do so by Buyer. Buyer has full power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. Buyer will provide to Seller and the Closing Agent a certified copy of the resolution of the Buyer's board of

directors authorizing this transaction. This Agreement is, and Buyer's other instruments when executed and delivered by Buyer in accordance with the terms hereof will be, legal, valid and binding obligations of the Buyer and enforceable in accordance with their terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

- (b) There is no legal action, suit, arbitration, governmental investigation or other legal or administrative proceeding, nor any order, decree or judgment in progress, pending or in effect, or, to the knowledge of Buyer, threatened, against or relating to Buyer in connection or relating to the transaction contemplated by this Agreement, and Buyer does not know or have any reasons to be aware of any basis for the same;
- (c) The performance by Buyer of Buyer's obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Buyer is a party or by which Buyer is bound and which would materially adversely affect the ability of Buyer to perform its obligations under this Agreement.

Buyer shall hold Seller harmless from any damage, loss, claims, penalty, cost, fee, fine or liability arising out of any falsity, omission or misstatement of the matters set forth in this Paragraph 16.

**17. Conditions to Closing.** Buyer shall have no obligation to close unless, at or prior to closing, together with all Contingencies stated herein, the following conditions are each satisfied or waived in writing by Buyer:

- (a) The Closing Agent shall have on the Closing Date for each Parcel contracted with Buyer to issue to Buyer the title insurance policy required in this Agreement in form satisfactory to Buyer and in due course after the closing;
- (b) Each of the agreements, covenants, warranties and representations of Seller shall be true and correct in all material respects at the time of closing and Seller shall not be in default of any provision of this Agreement; and
- (c) Seller shall have executed and deposited with the Closing Agent all documents called for to be executed and deposited by Seller under this Agreement, including, without limitation, those items set forth in Section 4 hereof;

**18. Remedies on Default.**

- (a) If Seller fails to consummate this Agreement in accordance with its terms for any reason within the control of the Seller, Buyer shall have as Buyer's sole remedy the option of either of the following:
  - (1) Rescinding this Agreement by giving written notice to Seller, in which event Buyer shall be entitled to a return of the Earnest Money, and any Extension Payment made, unless such Earnest Money is not refundable as provided in Sections 2(a)(3); or

(2) Enforcing specific performance by Seller of Seller's obligations hereunder.

(b) If Buyer fails to consummate this Agreement in accordance with its terms for any reason within the control of Buyer, except for the exercise of its rights associated with the Contingency Period, Seller shall have as Seller's sole remedy against Buyer the option of either of the following:

(1) Retaining the Earnest Money, together with any interest and earnings thereon, as liquidated damages for Buyer's breach of this Agreement, it being understood and agreed by the parties that actual damages for such a breach are uncertain and would be difficult, if not impossible, to determine; or

(2) Enforcing specific performance by Buyer of Buyer's obligations hereunder.

**19. Attorney Fees.** If either party defaults in its performance hereunder and the other party employs an attorney because of such default, the defaulting party agrees to pay, on demand, all costs, charges and expenses, including reasonable attorney and paralegal fees, incurred at any time by the other party because of the default.

**20. Notice.** Any notice to be given hereunder shall be in writing and shall either be served upon a party personally, or served by registered or certified mail, return receipt requested, directed to the party to be served at the address of the party stated below. A party wishing to change his designated address shall do so by notice in writing to the other party. Notice served by mail shall be deemed complete when deposited in the United States mail, postage prepaid. The following Notice Addresses shall apply:

**Seller:**  
City of Billings  
City Administrator  
City Hall  
210 North 27th Street  
Billings, MT 59101

**With a copy to:**  
City Attorney  
City of Billings  
City Hall  
210 North 27th Street  
Billings, MT 59101

**With a copy to:**  
Doug James and Bryce Burke  
Moulton Bellingham PC  
P.O. Box 2559  
Billings, MT 59103

**Buyer:**

**With a copy to:** Malcolm Goodrich  
Goodrich & Reely, PLLC  
P.O. Box 1899  
2812 1<sup>st</sup> Avenue North, Suite 301  
Billings, MT 59103

21. **Risk of Loss.** Risk of loss shall remain with Seller until closing.
22. **Copies and Counterparts.** A digital copy of this Agreement containing the actual or digital signature of either party shall be accepted as the original. This Agreement may be executed in one or more counterparts, which taken together shall constitute one and the same document.
23. **Time and Binding Effect.** Time shall be of the essence of this Agreement. The terms and conditions hereof shall inure to the benefit of, and be binding upon, the heirs, legal representatives, successors and permitted assigns of the parties hereto.
24. **Radon Disclosure Statement.** **RADON GAS: RADON GAS IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE HEALTH UNIT.**

Seller represents to Buyer that the Real Property:

\_\_\_\_\_ HAS been tested for Radon or Radon progeny.

\_\_\_\_\_ X HAS NOT been tested for Radon or Radon progeny.

If the Real Property has been tested for Radon or Radon progeny, Buyer hereby acknowledges that a copy of such test has been received along with evidence of any subsequent mitigation or treatment.

25. **Real Estate Brokers.** Buyer and Seller represent and warrant to one another that neither has engaged any brokers or real estate agents in connection with the sale who might claim a fee or commission by reason of the sale, except NAI Business Properties, which has been engaged as an agent of Seller exclusively and who shall be paid by Seller, if entitled to a fee or commission by reason of this sale. Notwithstanding, it is acknowledged that William Honaker is a licensed broker in the State of Montana representing the Buyer and shall be paid the buying brokerage fee of 2.5%.
26. **Marketing Rights.** Upon the execution of this Agreement, Buyer shall have the right to solicit prospects for the Property, but in no way bind Seller to any future commitments pertaining to said solicitation.
27. **Entire Agreement.** This Agreement embodies the entire Agreement between the parties, and supersedes all prior negotiations, representations (if any), understandings and agreements, if any, relating to the Property. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both parties hereto.

28. **Noxious Weeds Disclosure.** Buyers of real property in the state of Montana should be aware that some properties contain noxious weeds. The laws of the state of Montana require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and obligations as an owner of property, Buyer may contact the Yellowstone County, Montana extension agent or Weed Control Board.

29. **Megan's Law Disclosure.** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If Buyer desires further information Buyer may contact the local County Sheriff's office, the Department of Justice in Helena, Montana, and the probation officers assigned to the area.

30. **Neutral Interpretation.** The language contained in this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against either party, regardless of whether one party or the other may have drafted this Agreement.

31. **Limitation on Damages.** The Buyer and Seller stipulate and agree that in the event of any dispute between the Parties, that only actual documented compensatory damages may be awarded if damages are otherwise recoverable under this Agreement. Punitive damages, consequential damages, and exemplary damages shall not be awarded to either party.

32. **Mold Disclosure Statement.** "MOLD DISCLOSURE: There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The seller, landlord, seller's agent, buyer's agent, or property manager cannot and does not represent or warrant the absence of mold. It is the buyer's or tenant's obligation to determine whether a mold problem is present. To do so, the buyer or tenant should hire a qualified inspector and make any contract to purchase, rent, or lease contingent upon the results of that inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent, or lease."

33. **Title Evidence After Closing.** Within fifteen (15) days following the Closing Date of a Parcel or Parcels, Seller shall cause, at Seller's expense, a Standard ALTA Owner's Title Insurance Policy for the Parcel or Parcels Closed to be issued to Buyer in accordance with the terms of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

SELLER

The City of Billings

3/18/2024  
Date

DocuSigned by:  
By: William A. Cole  
2CA11D5423334EE...  
William A. Cole  
Mayor  
DocuSigned by:  
By: Denise R. Bohlman  
D503C2218DC34E0...  
Denise R. Bohlman  
City Clerk

BUYER

Honaker Realty, LLC

3/15/2024  
Date

DocuSigned by:  
By: Bill Honaker  
1589C4765B87B4...  
Printed Name: Bill Honaker  
Title: Managing Member

JWT Capital, LLC

3/16/2024  
Date

DocuSigned by:  
By: Don Cape  
BB3D8E89523B07...  
Printed Name: Don Cape  
Title: Principal

**City Council Regular**

**Date:** 03/11/2024  
**Title:** PUBLIC HEARING for Sale of City Hall, South Parking Lot, and North Parking Lot  
**Presented by:** John Caterino, Facilities Manager  
**Department:** City Hall Administration  
**Presentation:** Yes  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends approval of Purchase and Sale Agreement (PSA) and associated Development Agreement (DA) to sell City Hall/Park 3 parking structure (210 and 220 N 27th St.), South Parking Lot, and North Parking Lot on N 27th St., to Honaker Realty LLC for a combined total of \$2,800,000.00 (City Hall \$2,100,000.00, South Lot \$280,000.00, North Lot \$420,000.00).

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

On 12/7/2022 Administration Department signed a contract with NAI Business Properties with Matt Robertson acting as supervising broker for these transactions.

On 11/04/2022 and 11/11/2022 staff published, per City of Billings Code of Ordinances 22-902, a public notice to all owners within 300 of subject Property of potential sale of Park 1 ground retail space.

On 11/24/2022 Council approved a resolution authorizing City staff to advertise the sale and disposal of City Hall/Park3, resolution 22-11082. City Hall/Park 3 is also described as BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 58, LOT 1-12, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

On 11/24/2022 Council approved a resolution authorizing City staff to advertise the sale and disposal of South Parking Lot, resolution 22-11084. South Parking Lot is also described as BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 92 Lot 5 -6, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

On 11/24/2022 Council approved a resolution authorizing City staff to advertise the sale and disposal of North Parking Lot, resolution 22-11085. North Parking Lot is also described as BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 92 Lot 8, 9, and 10, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

Administration advertised a Request for Proposal (RFP) for each Property on 06/14/2023 and 06/21/2023 in *Yellowstone County News* and on the City's website.

One (1) proposal was submitted by 06/16/2023 for City Hall.

Five (5) proposals were submitted by 06/16/2023 for South Parking Lot.

Four (4) proposals were submitted by 06/16/2023 for North Parking Lot.

NAI and City Staff reviewed the proposals/offers and presented to City Council Operations Committee on 06/28/2023. After further discussion with City Council Operations Committee and NAI, City Staff recommends moving forward with the offer from Honaker Realty to purchase subject Properties due to a number of reasons:

- Quality of proposal
- Experience of proposer
- Financial capacity to complete transaction with pre-qualification letter from lender
- Proposed development and use of spaces
- Proposed development schedule
- Increased tax base and economic growth to Central Business District
- Total price competitiveness as Honaker Realty offered the highest price for the three Properties

On 02/23/2024 and 03/01/2024 staff published, per City of Billings Code of Ordinances 22-902, a public notice in the Yellowstone County News announcing a public hearing on whether to approve the sale of the city owned property.

The attached purchase and sale agreement has wording modifications for clarity from the latest draft that was presented to the City Council Operations Committee and sent to council members.

## **ALTERNATIVES**

City Council may:

- Approve Purchase and Sale Agreement and Development Agreement; or,
- Not Approve

Approval would begin the due diligence period for the Buyer and all contingencies will stay in place until the sale of Property is complete.

## **FISCAL EFFECTS**

The total combined funds of the sale of these Properties at \$2,800,000.00 will be used to offset construction costs at New City Hall.

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### **Attachments**

Resolution 22-11082  
Resolution 22-11084  
Resolution 22-11085  
Honaker Realty Submission  
Honaker Realty PSA - Buyer Signed

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REQUEST FOR PROPOSALS: NOTICE

The City of Billings is requesting proposals for **DISPOSITION OF MUNICIPAL REAL ESTATE SALE AND DEVELOPMENT OF BILLINGS CITY HALL**, for FACILITIES DIVISION, Billings, Montana. Proposals shall be received addressed to MATT ROBERTSON SIOR, PRINCIPAL/SUPERVISING BROKER, NAI BUSINESS PROPERTIES, via mail at 3312 4<sup>TH</sup> AVE NORTH, BILLINGS, MT 59101, via email at [MROBERTSON@NAIBUSINESSPROPERTIES.COM](mailto:MROBERTSON@NAIBUSINESSPROPERTIES.COM), or in-person at 3312 4<sup>TH</sup> AVE NORTH, BILLINGS, MT 59101 until 5:00 PM (MDT) on 16, JUNE, 2023.

More specific additional information regarding the **DISPOSITION OF MUNICIPAL REAL ESTATE SALE AND DEVELOPMENT OF BILLINGS CITY HALL** can be obtained by contacting MATT ROBERTSON SIOR, PRINCIPAL/SUPERVISING BROKER, NAI BUSINESS PROPERTIES, via telephone at (406) 294-6308 or email at [MROBERTSON@NAIBUSINESSPROPERTIES.COM](mailto:MROBERTSON@NAIBUSINESSPROPERTIES.COM). The full Request for Proposals may also be found on the City's website at [www.billingsmt.gov](http://www.billingsmt.gov), by clicking on "Doing Business," and then on "Bids."

Proposers may withdraw their proposal by written request at any time prior to the due date set for receiving proposals. No proposal may be withdrawn or modified after the due date and time, unless and until the award of the contract is delayed for a period exceeding ninety (90) days.

The right is reserved to reject any or all proposals received, to waive irregularities, to postpone the award of the contract for a period of not to exceed ninety (90) days, and to accept that proposal which is in the best interests of the City of Billings, Montana. Award of any contract may be contingent upon approval by Billings City Council.

The City of Billings is an Equal Opportunity Employer. The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

Published at Billings, Montana, APRIL 14 & APRIL 21, 2023.

Denise R. Bohlman  
Billings City Clerk  
P. O. Box 1178  
Billings, MT 59103

Publish: APRIL 14 & APRIL 21, 2023  
Dept.: FACILITIES

**Certificate Of Completion**

Envelope Id: AA3B0616B25A4358A5F20DE408F281BC

Status: Completed

Subject: Contract for signatures: Purchase and Sale Agreement for City Hall and Parking Lots

Source Envelope:

Document Pages: 23

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 0

Jessica Fust

AutoNav: Enabled

fustj@billingsmt.gov

Envelopeld Stamping: Enabled

IP Address: 161.7.21.147

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Jessica Fust

Location: DocuSign

3/15/2024 9:14:45 AM

fustj@billingsmt.gov

**Signer Events****Signature****Timestamp**

Liz Kampa

**Completed**

Sent: 3/15/2024 9:28:19 AM

kampa@billingsmt.gov

Viewed: 3/15/2024 10:09:29 AM

Purchasing Agent

Signed: 3/15/2024 10:15:59 AM

City of Billings

Using IP Address: 161.7.21.49

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Bill Honaker

  
DocuSigned by:  
Bill Honaker  
1589C4765B87441...

Sent: 3/15/2024 10:16:01 AM

bill@honaker.us

Viewed: 3/15/2024 12:24:53 PM

Managing Member

Signed: 3/15/2024 2:04:09 PM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 69.144.172.92

**Electronic Record and Signature Disclosure:**

Accepted: 3/15/2024 12:24:53 PM

ID: 0f7f3fec-355b-47bb-a97e-8b4c9b352571

Don Cape

  
DocuSigned by:  
Don Cape  
BB3D8E89523B468...

Sent: 3/15/2024 2:04:11 PM

dcape@jwtcompanies.com

Viewed: 3/16/2024 6:31:44 AM

Principal

Signed: 3/16/2024 6:32:01 AM

JWT Capital, LLC

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 205.204.26.162

**Electronic Record and Signature Disclosure:**

Accepted: 3/16/2024 6:31:44 AM

ID: 6e6665a4-e733-44bd-898a-b5eb8d73e8cb

Todd Corne

**Completed**

Sent: 3/16/2024 6:32:03 AM

cornet@billingsmt.gov

Viewed: 3/18/2024 2:29:23 AM

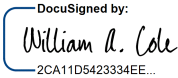
Security Level: Email, Account Authentication  
(None)

Using IP Address: 161.7.21.127

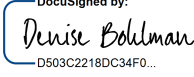
Signed: 3/18/2024 2:55:54 AM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

| Signer Events                                                                                            | Signature                                                                                                                                                                                                                    | Timestamp                                                                                  |
|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| William A. Cole<br>coleb@billingsmt.gov<br>Mayor<br>Security Level: Email, Account Authentication (None) | <div>DocuSigned by:<br/><br/>2CA11D5423334EE...</div> <div>Signature Adoption: Pre-selected Style<br/>Using IP Address: 72.175.160.94</div> | Sent: 3/18/2024 2:55:56 AM<br>Viewed: 3/18/2024 7:50:10 AM<br>Signed: 3/18/2024 7:50:31 AM |

**Electronic Record and Signature Disclosure:**  
Accepted: 12/3/2020 8:46:12 AM  
ID: 235dd76e-a3c9-4e23-89f5-aedaeb3b241a

|                                                                                                                                     |                                                                                                                                                                                                                             |                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Denise Bohlman<br>bohlmand@billingsmt.gov<br>City Clerk<br>City of Billings<br>Security Level: Email, Account Authentication (None) | <div>DocuSigned by:<br/><br/>D503C2218DC34F0...</div> <div>Signature Adoption: Pre-selected Style<br/>Using IP Address: 161.7.21.138</div> | Sent: 3/18/2024 8:05:08 AM<br>Viewed: 3/18/2024 8:14:01 AM<br>Signed: 3/18/2024 8:15:14 AM |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

| In Person Signer Events | Signature | Timestamp |
|-------------------------|-----------|-----------|
|-------------------------|-----------|-----------|

| Editor Delivery Events | Status | Timestamp |
|------------------------|--------|-----------|
|------------------------|--------|-----------|

| Agent Delivery Events | Status | Timestamp |
|-----------------------|--------|-----------|
|-----------------------|--------|-----------|

| Intermediary Delivery Events | Status | Timestamp |
|------------------------------|--------|-----------|
|------------------------------|--------|-----------|

| Certified Delivery Events | Status | Timestamp |
|---------------------------|--------|-----------|
|---------------------------|--------|-----------|

|                                                                                                                                    |                                                                   |                                                            |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------|
| Liz Kampa<br>kampal@billingsmt.gov<br>Purchasing Agent<br>City of Billings<br>Security Level: Email, Account Authentication (None) | <div><b>VIEWED</b></div> <div>Using IP Address: 161.7.21.49</div> | Sent: 3/18/2024 7:50:33 AM<br>Viewed: 3/18/2024 8:05:07 AM |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------|

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

| Carbon Copy Events | Status | Timestamp |
|--------------------|--------|-----------|
|--------------------|--------|-----------|

|                                                                                                   |                          |                            |
|---------------------------------------------------------------------------------------------------|--------------------------|----------------------------|
| Wynnette Maddox<br>maddoxw@billingsmt.gov<br>Security Level: Email, Account Authentication (None) | <div><b>COPIED</b></div> | Sent: 3/18/2024 8:15:16 AM |
|---------------------------------------------------------------------------------------------------|--------------------------|----------------------------|

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

| Witness Events | Signature | Timestamp |
|----------------|-----------|-----------|
|----------------|-----------|-----------|

| Notary Events | Signature | Timestamp |
|---------------|-----------|-----------|
|---------------|-----------|-----------|

| Envelope Summary Events | Status | Timestamps |
|-------------------------|--------|------------|
|-------------------------|--------|------------|

|                     |                  |                      |
|---------------------|------------------|----------------------|
| Envelope Sent       | Hashed/Encrypted | 3/15/2024 9:28:19 AM |
| Certified Delivered | Security Checked | 3/18/2024 8:14:01 AM |
| Signing Complete    | Security Checked | 3/18/2024 8:15:14 AM |
| Completed           | Security Checked | 3/18/2024 8:15:16 AM |

| Payment Events | Status | Timestamps |
|----------------|--------|------------|
|----------------|--------|------------|



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Carahsoft OBO City of Billings (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact Carahsoft OBO City of Billings:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [kampal@billingsmt.gov](mailto:kampal@billingsmt.gov)

### **To advise Carahsoft OBO City of Billings of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [kampal@billingsmt.gov](mailto:kampal@billingsmt.gov) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from Carahsoft OBO City of Billings**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [kampal@billingsmt.gov](mailto:kampal@billingsmt.gov) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with Carahsoft OBO City of Billings**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [kampal@billingsmt.gov](mailto:kampal@billingsmt.gov) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO City of Billings as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO City of Billings during the course of your relationship with Carahsoft OBO City of Billings.

**First Amendment to Purchase and Sale Agreement**

**Seller: The City of Billings**

**Buyer: Honaker Realty, LLC & JWT Capital, LLC**

## **FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT** (“PSA Amendment”) is made effective as of the latest date set out below in the signature block (“Effective Date”), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns (“Buyer”), and the **City of Billings** (“Seller”).

### **RECITALS**

- A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein (“Agreement”).
- B. The Agreement provides certain matters for due diligence review by Buyer within the “Contingency Period” referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. While the parties recognize that the Agreement permits extensions of the Contingency Period upon the payment of additional money from Buyer to Seller, pursuant to Section 11(f), the parties agree that based both upon Buyer’s ability to waive certain contingencies by September 18, 2024, as described below, and factors involving Contingencies outside of the control of Buyer, the agreement for the extension of the Contingency Period for certain matters defined below without additional consideration is warranted.
- C. In addition, the Agreement provides at Section 3(a) for a Closing Date within thirty (30) days of the satisfaction of Buyer’s Contingencies within the Contingency Period, provided, however, that such Section permits the parties to extend the Closing by mutual agreement. The parties agree that the Seller will not vacate the City Hall Property being purchased by the later of the potential Closing Date in Section 3(a) or February 1, 2025, as called for under the Agreement, Section 11(c)(7), and that it is beneficial to Seller that such Closing Date be extended to permit it additional time to vacate the City Hall Property, rather than create a lease structure for continued short term occupancy of the City Hall Property by Seller pending its vacating of such Property. Therefore, the parties believe that an extension of the Closing Date, as outlined below, to permit the orderly vacating of the City Hall Property by Seller, is warranted.
- D. Consequently, the parties agree that the Agreement should be amended as provided below.

### **FOR VALUABLE CONSIDERATION, IT IS AGREED:**

1. **Contingency Period.** Seller and Buyer agree that the following Contingencies set forth in the Agreement may be deemed to be waived by Buyer effective as of September 18, 2024:

- (a) environmental inspection and testing concerns referenced in Sections 10 and 11(c)(1) and (3) of the Agreement;
- (b) structural and mechanical inspections and testing referenced in Sections 11(c)(1) and (3) of the Agreement;
- (c) physical condition of the Property referenced in Section 11(c)(2) of the Agreement, except for the parking structure located on Parcel B of the Property for which repair

improvements are to be made by Seller as previously disclosed to Buyer by Seller, with agreed completion of such repair improvements by Buyer and Seller remaining a contingency for Buyer until completion of the same prior to Closing;

(d) execution of an acceptable Development Agreement between DBP and Buyer to develop Parcel A referenced in Section 11(c)(4);

(e) approval of Tax Increment Funds from DBP and Seller to Buyer referenced in Section 11(c)(5) of the Agreement;

(f) satisfaction of the encroachment of the Grand Building to the south of Parcel A referenced in Section 11(c)(11) of the Agreement.

The following Contingencies within the Agreement will be extended until November 15, 2024, or later date by mutual agreement, without additional consideration:

(g) approval of DBP for removal or use of the portable rest room located on Parcel B referenced in Section 11(c)(10) of the Agreement;

(h) execution of suitable Franchise Agreements with the hotel company involved in Phase 1 of the project located on Parcel A as referenced in Section 11(c)(6);

(i) Seller will provide approvals for suitable loading and unloading areas from 2<sup>nd</sup> Ave. North for hotel guests, as referenced in Section 11(c)(8);

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter not specifically deemed to be waived by Buyer in subsections 1(a) through (f) above or in subsections below.

The following Contingency within the Agreement will be extended until the later of February 1, 2025, or Closing, as amended herein, without additional consideration:

(m) financing deemed suitable by Buyer, and completion of financing, including those requirements imposed by Buyer's lender or lenders;

The following Contingencies within the Agreement will be extended without additional consideration until the Closing, as amended herein:

(n) title review and Seller's compliance with the state of title for the Property to be conveyed by Seller to Buyer;

(o) Seller vacates the Property within the Permitted Time to Vacate set out in Section 2 below; and

(p) Seller is in compliance with its requirements, agreements and commitments under the Agreement and herein.

2. Seller's Date to Vacate Property. Seller and Buyer agree that the Seller will vacate the Property, together with removal of its personal property therefrom, no earlier than February 1, 2025, and no later than April 1, 2025 (the "Permitted Time to Vacate"). Seller will give Buyer not less than sixty (60) days notice in writing of the date within the Permitted Time to Vacate on which it will have completely vacated the Property. Once Seller has completely vacated the Property during the Permitted Time to Vacate it will give written notice to Buyer of the completion of the same ("Notice of Completion of the Vacating of the Property"). Provided that the Contingencies permitted to Buyer are satisfied, Buyer will Close on the purchase of all of the Property within sixty (60) days of the date of the Notice of Completion of the Vacating of the Property.
3. Full Force and Effect. Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

**SELLER**

**The City of Billings**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
William A. Cole  
Mayor

By: \_\_\_\_\_  
Denise R. Bohlman  
City Clerk

**BUYER**

**Honaker Realty, LLC**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JWT Capital, LLC**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **Second Amendment to Purchase and Sale Agreement**

**Seller: The City of Billings**

**Buyer: Honaker Realty, LLC & JWT Capital, LLC**

## **SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT** (“PSA Amendment”) is made effective as of the latest date set out below in the signature block (“Effective Date”), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns (“Buyer”), and the **City of Billings** (“Seller”).

### **RECITALS**

- A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein (“Agreement”).
- B. The Agreement provides certain matters for due diligence review by Buyer within the “Contingency Period” referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. The parties originally extended certain deadlines to November 15, 2024 through the First Amendment to Purchase and Sale Agreement. The parties again desire to extend the Contingency Period for certain contingency items, as more particularly described below.
- C. Consequently, the parties agree that the Agreement should be amended as provided below.

### **FOR VALUABLE CONSIDERATION, IT IS AGREED:**

**1. Contingency Period.** Seller and Buyer agree that the following Contingencies set forth in the Agreement may be deemed to be waived by Buyer effective as of October 30, 2024:

(i) Seller will provide approvals for suitable loading and unloading areas from 2<sup>nd</sup> Ave. North for hotel guests, as referenced in Section 11(c)(8).

The following Contingencies within the Agreement will be extended until December 6, 2024, or later date by mutual agreement, without additional consideration:

(g) approval of DBP for removal or use of the portable rest room located on Parcel B referenced in Section 11(c)(10) of the Agreement;

(h) execution of suitable Franchise Agreements with the hotel company involved in Phase 1 of the project located on Parcel A as referenced in Section 11(c)(6);

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter not specifically deemed to be waived by Buyer in subsections 1(i) above or in subsections below.

2. Full Force and Effect. Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

**SELLER**

**The City of Billings**

11/14/2024  
\_\_\_\_\_  
Date

Signed by:  
BWilliam A. Cole  
2CA11D... William A. Cole  
Mayor  
Signed by:  
BDenise R. Bohlman  
D503C2... Denise R. Bohlman  
City Clerk

**BUYER**

**Honaker Realty, LLC**

11/13/2024  
\_\_\_\_\_  
Date

Signed by:  
BBill Honaker  
476... Bill Honaker  
Printed Name: Bill Honaker  
Title: Managing Member

**JWT Capital, LLC**

11/14/2024  
\_\_\_\_\_  
Date

DocuSigned by:  
BDon Cape  
D630E6... Don Cape  
Printed Name: Don Cape  
Title: Principal

## **Third Amendment to Purchase and Sale Agreement**

**Seller: The City of Billings**

**Buyer: Honaker Realty, LLC & JWT Capital, LLC**

### **THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT** (“PSA Amendment”) is made effective as of the latest date set out below in the signature block (“Effective Date”), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns (“Buyer”), and the **City of Billings** (“Seller”).

#### **RECITALS**

- A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein (“Agreement”).
- B. The Agreement provides certain matters for due diligence review by Buyer within the “Contingency Period” referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. The parties originally extended certain deadlines to November 15, 2024 through the First Amendment to Purchase and Sale Agreement.
- C. Following execution of the First Amendment to Purchase and Sale Agreement, the parties, on November 14, 2024, executed a Second Amendment to Purchase and Sale Agreement to extend the Contingency Period for certain matters until December 6, 2024.
- D. The parties again desire to extend the Contingency Period for certain contingency items, as more particularly described below.
- E. Consequently, the parties agree that the Agreement should be amended as provided below.

#### **FOR VALUABLE CONSIDERATION, IT IS AGREED:**

**1. Contingency Period.** Seller and Buyer agree that, in addition to any Contingencies previously waived specifically by Buyer in the First and Second Amendments to the Purchase and Sale Agreement, the following Contingencies set forth in the Agreement may be deemed to be waived by Buyer effective as of November, 25, 2024:

(h) execution of suitable Franchise Agreements with the hotel company involved in Phase 1 of the project located on Parcel A as referenced in Section 11(c)(6).

The following Contingencies within the Agreement will be extended until January 31, 2025, or later date by mutual agreement, without additional consideration:

(g) approval of DBP for removal or use of the portable rest room located on Parcel B referenced in Section 11(c)(10) of the Agreement;

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter either not specifically deemed to be waived by Buyer in subsection 1(h) above or any prior specifically waived item in the First and Second Amendments to the Purchase and Sale Agreement. Such due diligence matters not specifically waived as of the date hereof will include, but not be limited to, Buyer obtaining financing deemed satisfactory by it for the acquisition and development of the Property, and the parties agree that the financing requirements of Buyer and its lender may require the extension of the Contingency Period beyond January 31, 2025, in order to accommodate this contingency for final designs, bidding, appraisal and loan approval matters attendant to the loan for Buyer from lender, and that the parties will cooperate reasonably to reset and extend such Contingency Period for the same.

2. Closing Date/Vacating Date by Seller from Property. In order to facilitate the timing and acquisition of financing by Buyer, the Closing Date for Buyer's purchase of the Property will be on or before May 15, 2025 ("Closing Date"). Seller will vacate the Property by no later than the Closing Date. Seller will retain possession and risk of loss for the Property until the Closing Date, and Buyer will assume possession and risk of loss for the Property following the Closing Date. It is understood and agreed by Seller that, provided that its Contingencies are satisfied, Buyer must complete its purchase of the Property on or before June 1, 2025 in order to qualify for certain aspects of its funding for the project, thus Buyer will not be able to accord Seller any extension of the Closing Date beyond that set out herein.
3. Full Force and Effect. Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

**SELLER**

**The City of Billings**

12/18/2024

Date



Signed by: William A. Cole, Mayor  
 2CA11D... William A. Cole  
 Mayor

Signed by: Denise R. Bohlman  
 D503C2... Denise R. Bohlman  
 City Clerk

**BUYER**

**Honaker Realty, LLC**

12/17/2024

Date

Signed by: Bill Honaker  
 47... Bill Honaker  
 Printed Name: Bill Honaker  
 Title: Managing Member

JWT Capital, LLC

12/18/2024  
Date

DocuSigned by:  
Don Cape  
Printed Name: Don Cape  
Title: Principal

**Fourth Amendment to Purchase and Sale Agreement**

**Seller: The City of Billings**

**Buyer: Honaker Realty, LLC & JWT Capital, LLC**

## **FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT** (“PSA Amendment”) is made effective as of the last date set out below in the signature block (“Effective Date”), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns (“Buyer”), and the **City of Billings** (“Seller”).

### **RECITALS**

- A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein (“Agreement”).
- B. The Agreement provides certain matters for due diligence review by Buyer within the “Contingency Period” referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. The parties originally extended certain deadlines to November 15, 2024 through the First Amendment to Purchase and Sale Agreement.
- C. Following execution of the First Amendment to Purchase and Sale Agreement, the parties, on November 14, 2024, executed a Second Amendment to Purchase and Sale Agreement to extend the Contingency Period for certain matters until December 6, 2024, and executed a Third Amendment to Purchase and Sale Agreement on December 18, 2024 to extend certain Contingency Period matters until January 31, 2025.
- D. The parties again desire to extend the Contingency Period for certain Contingency Period items, as more particularly described below.
- E. Consequently, the parties agree that the Agreement should be amended as provided below.

### **FOR VALUABLE CONSIDERATION, IT IS AGREED:**

**1. Contingency Period.** Seller and Buyer agree that, in addition to any Contingencies previously waived specifically by Buyer in the First, Second and Third Amendments to the Purchase and Sale Agreement, the following Contingency set forth in the Agreement at Section 11 may be deemed to be waived by Buyer effective as of January 31, 2025:

(g) approval of DBP for removal or use of the portable rest room located on Parcel B referenced in Section 11(c)(10) of the Agreement.

The following Contingencies within the Agreement at Section 11 will be extended until March 31, 2025, without additional consideration:

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter either not specifically deemed to be waived by Buyer in subsection 1(g) above or any prior specifically waived item in the First, Second and Third Amendments to the Purchase and Sale Agreement.

The following Contingency within the Agreement at Section 11 will be extended until on or before the Closing Date without additional consideration: Buyer obtaining and putting into place financing deemed satisfactory by it for the acquisition and development of the Property.

2. **Closing Date/Vacating Date by Seller from Property.** Despite the extensions to the Contingency Period as set forth above, the parties anticipate that the Closing Date chosen in the Third Amendment to Purchase and Sale Agreement of May 15, 2025 ("Closing Date"), will remain in place unless the parties should mutually agree in writing to an earlier Closing Date. Seller will vacate the Property by no later than the Closing Date. Seller will retain possession and risk of loss for the Property until the Closing Date, and Buyer will assume possession and risk of loss for the Property following the Closing Date. It is understood and agreed by Seller that, provided that its Contingencies are satisfied, Buyer must complete its purchase of the Property on or before June 1, 2025 in order to qualify for certain aspects of its funding for the Project, thus Buyer will not be able to accord Seller any extension of the Closing Date beyond that set out herein.

3. **Full Force and Effect.** Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date appearing at their respective signatures.

**SELLER**

**The City of Billings**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
William A. Cole  
Mayor

By: \_\_\_\_\_  
Denise R. Bohlman  
City Clerk

**BUYER**

**Honaker Realty, LLC**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JWT Capital, LLC**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Fifth Amendment to Purchase and Sale Agreement**

**Seller: The City of Billings**

**Buyer: Honaker Realty, LLC & JWT Capital, LLC**

## **FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT** (“PSA Amendment”) is made effective as of the last date set out below in the signature block (“Effective Date”), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns (“Buyer”), and the **City of Billings** (“Seller”).

### **RECITALS**

- A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein (“Agreement”).
- B. The Agreement provides certain matters for due diligence review by Buyer within the “Contingency Period” referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. The parties originally extended certain deadlines to November 15, 2024 through the First Amendment to Purchase and Sale Agreement.
- C. Following execution of the First Amendment to Purchase and Sale Agreement, the parties, on November 14, 2024, executed a Second Amendment to Purchase and Sale Agreement to extend the Contingency Period for certain matters until December 6, 2024, executed a Third Amendment to Purchase and Sale Agreement on December 18, 2024 to extend certain Contingency Period matters until January 31, 2025, and executed a Fourth Amendment on December 18, 2024 to extend certain Contingency Period matters until March 31, 2025.
- D. The parties again desire to extend the Contingency Period for certain Contingency Period items, as more particularly described below.
- E. Consequently, the parties agree that the Agreement should be amended as provided below.

### **FOR VALUABLE CONSIDERATION, IT IS AGREED:**

**1. Contingency Period.** Seller and Buyer agree that the following Contingencies within the Agreement at Section 11 will be extended until June 16, 2025, without additional consideration:

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter either not specifically deemed to be waived by Buyer in subsection 1(g) above or any prior specifically waived item in the First, Second and Third Amendments to the Purchase and Sale Agreement.

The following Contingency within the Agreement at Section 11 will be extended until on or before the Closing Date without additional consideration: Buyer obtaining and putting into place financing deemed satisfactory by it for the acquisition and development of the Property.

**2. Closing Date/Vacating Date by Seller from Property.** Despite the extensions to the Contingency Period as set forth above, provided that the Contingencies are satisfied, the Closing

Date will be on June 16, 2025 ("Closing Date"), although Buyer may elect to close at a time between June 2, 2025 and June 16, 2025 if its Contingencies are, or will be, satisfied by an earlier Closing Date. Seller will vacate the Property by no later than the Closing Date. Seller will retain possession and risk of loss for the Property until the Closing Date, and Buyer will assume possession and risk of loss for the Property following the Closing Date. It is understood and agreed by Seller that, provided that its Contingencies are satisfied, Buyer must complete its purchase of the Property on or before June 30, 2025 in order to qualify for certain material aspects of its funding for the Project, thus Buyer will not be able to accord Seller any extension of the Closing Date beyond the June 16, 2025 date set out herein.

**3. Full Force and Effect.** Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date appearing at their respective signatures.

**SELLER**

**The City of Billings**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
William A. Cole  
Mayor

By: \_\_\_\_\_  
Denise R. Bohlman  
City Clerk

**BUYER**

**Honaker Realty, LLC**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JWT Capital, LLC**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Sixth Amendment to Purchase and Sale Agreement**

**Seller: The City of Billings**

**Buyer: Honaker Realty, LLC & JWT Capital, LLC**

## **SIXTH AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS SIXTH AMENDMENT TO PURCHASE AND SALE AGREEMENT** (“PSA Amendment”) is made effective as of the last date set out below in the signature block (“Effective Date”), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns (“Buyer”), and the **City of Billings** (“Seller”).

### **RECITALS**

- A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein (“Agreement”).
- B. The Agreement provides certain matters for due diligence review by Buyer within the “Contingency Period” referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. The parties originally extended certain deadlines to November 15, 2024 through the First Amendment to Purchase and Sale Agreement.
- C. Following execution of the First Amendment to Purchase and Sale Agreement, the parties, on November 14, 2024, executed a Second Amendment to Purchase and Sale Agreement to extend the Contingency Period for certain matters until December 6, 2024, executed a Third Amendment to Purchase and Sale Agreement on December 18, 2024 to extend certain Contingency Period matters until January 31, 2025, executed a Fourth Amendment on or around January 21, 2025 to extend certain Contingency Period matters until March 31, 2025, and executed a Fifth Amendment on or around April 14, 2025 to extend certain Contingency Period matters until June 16, 2025.
- D. The parties desire to enter into this Amendment to address certain matters relating to the skybridge encroachments and title matters as referenced in Section 11(c)(9) of the Agreement, as more particularly described below.
- E. Consequently, the parties agree that the Agreement should be amended as provided below.

### **FOR VALUABLE CONSIDERATION, IT IS AGREED:**

**1. Amended Agreement Terms.** Certain terms and conditions in the Agreement are being amended as follows:

- a. 27th Street Skybridge Matters. The following shall be added and incorporated into Section 13 of the Agreement, regarding Buyer’s Development Obligations:

Following the sale, Buyer shall endeavor to identify a beneficial use for the Old City Hall Building and the Garage Building. In the event Buyer identifies a development project or use for the Old City Hall Building and/or the Garage Building (or a proposed sale of the Old City Hall Building and/or the Garage Building) that reasonably requires the removal of the 27th Street Skybridge, then Buyer and Seller agree to equally split the costs to demolish and remove the 27th Street Skybridge that are attributable to ownership of the Old City Hall Building or the Garage Building. For the avoidance of doubt, this section shall not obligate Buyer or Seller for any costs or obligations of third parties, including Yellowstone County, associated with demolition and removal of the 27th Street Skybridge.

The parties shall each be responsible for fifty percent (50%) of the costs and expenses incurred to remove the Skybridge that are attributable to ownership of the Old City Hall Building or the Garage Building. Buyer shall contract for the completion of the Skybridge removal, and Buyer shall notify Seller of the scope and estimated cost of the removal prior to commencing such removal. Buyer shall submit detailed invoices and all other information reasonably requested by Seller documenting any work performed related to the Skybridge removal, including labor, material, and equipment costs. Seller shall pay Buyer one-half of all actual removal costs within forty-five (45) days of receipt of each request for reimbursement.

If the parties are unable to resolve any dispute described in this Section, then the parties agree to submit the dispute to a non-binding mediation in Billings, Montana prior to any litigation with a mediator who is a Montana licensed attorney mutually agreed upon by the parties. Each party shall pay its own separate fees and costs of attending the mediation and the mediator's fees and costs shall be equally shared by the parties.

This Section shall survive the Closing of the Agreement, but Seller's obligations under this section shall terminate and have no further force or effect on the date that is thirty-six (36) months after the Closing Date ("Termination Date"), unless written notice is provided by Buyer to Seller prior to the Termination Date in which case the Termination Date may be extended at Buyer's election for a period of up to thirty-six (36) additional months.

**2. Contingency Period.** Seller and Buyer agree that the following Contingencies within the Agreement at Section 11 will be extended until June 30, 2025, without additional consideration:

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9), which the parties anticipate will be executed on the Closing Date;

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter not specifically waived by Buyer in previous Amendments or in subsections below.

The following Contingency within the Agreement at Section 11 will be extended until on or before the Closing Date without additional consideration: Buyer obtaining and putting into place financing deemed satisfactory by it for the acquisition and development of the Property.

**3. Full Force and Effect.** Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date appearing at their respective signatures.

**SELLER**

**The City of Billings**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
William A. Cole  
Mayor

By: \_\_\_\_\_  
Denise R. Bohlman  
City Clerk

**BUYER**

**Honaker Realty, LLC**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JWT Capital, LLC**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## City Council Regular

**Date:** 06/09/2025  
**Title:** Approval of Lease Agreement with CapeHon Development, LLC for Park 3 Parking Garage  
**Presented by:** Kevin Iffland, Assistant City Administrator  
**Department:** City Hall Administration  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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### RECOMMENDATION

Staff recommends City Council approve the lease agreement between the City of Billings and CapeHon Development, LLC for continued use and operation of the Park 3 Parking Garage. If City Council approves this lease agreement, it will be executed at the time of closing of the Purchase and Sale Agreement.

### BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Park 3 Parking Garage, located at 210 N 27th Street, has historically served as an asset in the City's downtown parking inventory, supporting local businesses, City operations, and general public access. In 2024, CapeHon Development, LLC will acquire the former City Hall site, including the Park 3 structure, as part of a larger redevelopment initiative.

Following the sale, staff entered into negotiations with CapeHon to establish a lease arrangement that would allow the City to maintain uninterrupted public parking services during redevelopment of the surrounding properties. The proposed lease agreement provides the City with exclusive use of the Park 3 Parking Garage, the secured lower-level parking area, and the attendant station, with the right to continue leasing individual spaces to third parties.

Key terms include:

Term: Two years, expiring two years from the date of closing. No automatic renewal or notice required for termination.

Rent: \$12,231.25 per month, with prorated rent for partial months.

Utilities: \$1,495.00 per month, based on 274 parking spaces and 8,878 square feet of gas-heated area.

Taxes: The City will pay property taxes directly or reimburse the landlord for taxes assessed on a pro rata basis.

Insurance: The City will continue to insure the entire combined property (including adjacent Old City Hall and Administrative Building) under its blanket policy and will receive monthly reimbursement from the landlord for their share.

Maintenance & Repairs: The City is responsible for routine maintenance, snow removal, and specific capital repairs outlined in Exhibit B. Note that the items highlighted in Exhibit B were completed during the contractor's most recent mobilization at a cost of \$46,550. Structural repairs, roof, and major systems are the landlord's responsibility unless damage results from tenant negligence.

This agreement aligns with the City's downtown plan by ensuring the continued availability of structured parking and supporting downtown economic activity during property transitions.

### STAKEHOLDERS

City of Billings -- Parking Division: Maintains operational control of Park 3, ensuring public access and parking management.

CapeHon Development, LLC: Property owner and landlord. Seeking redevelopment of adjacent properties while enabling continuity of municipal parking services.

Downtown Businesses and Patrons: Rely on Park 3 for convenient parking access; disruption could negatively affect economic activity.

City Departments and Employees: Continue to utilize secured parking and support operations in the downtown core.

### ALTERNATIVES

City Council may:  
Approve the lease agreement as presented.  
Approve the lease agreement with modifications.  
Decline to approve the lease agreement, requiring renegotiation or alternative arrangements for parking service.

#### **FISCAL EFFECTS**

The lease will result in the following anticipated annual costs:

Base Rent: \$146,775.00

Utilities: \$17,940.00

Total Annual Lease Costs: \$164,715.00

Additional obligations include:

Property taxes (estimated, subject to annual billing)

Insurance (net of landlord reimbursement)

All costs are accounted for in the Parking Division's operating budget.

#### **SUMMARY**

Approval of the lease agreement ensures continuity of public parking operations in Park 3 during a critical redevelopment phase for downtown Billings. The lease reflects fair-market terms, clearly delineates responsibilities, and preserves the City's ability to maintain a vital public service without interruption. Staff recommends approval to secure stability for downtown access and public convenience over the next two years.

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#### **Attachments**

Parking Lease

## LEASE

This **LEASE** (“**Lease**” or “**Agreement**”) is entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2025 (“**Effective Date**”), by and between **CAPEHON DEVELOPMENT, LLC**, a Montana limited liability company, and its assigns (collectively, “**Landlord**”), and **THE CITY OF BILLINGS** (the “**City**” or “**Tenant**”).

Subject to the terms and conditions set forth in this Agreement, Landlord leases to Tenant, and Tenant leases from Landlord, certain portions of the real property legally described in “**Exhibit A**” with an address of 210 North 27<sup>th</sup> Street, Billings, MT 59101. Specifically, Tenant Leases those portions of the building formerly known as Billings City Hall which consist of the Park 3 Parking Garage, along with the associated attendant station within the garage, and the secured parking located below the Park 3 Parking Garage (the “**Property**”).

**1. Term.** The term of this Lease shall be two (2) years (“**Term**”). The Lease shall expire on June \_\_, 2027. Neither party is required to give the other party notice of the Lease termination.

**2. Rent.** Tenant shall pay Landlord Twelve Thousand Two Hundred Thirty-One and 25/100 Dollars (\$12,231.25) per month as base rent for the Property (“**Rent**”). Rent for any partial month shall be prorated based on the number of days remaining in the partial month. Any Rent payment that is not received by the fifth (5th) of the month for which it is to be made shall be a late payment, and Tenant shall pay a late payment fee of Two Hundred Dollars (\$200.00) in addition to Rent due. The late payment fee must be remitted with the late payment, and failure to do so shall render Tenant in default under this Agreement.

**3. Utilities.** Tenant shall pay and discharge all charges made by any public or private utility or others for gas, electric, or other services to the Property. Because utilities are not separately metered from other contiguous property owned by Landlord, Landlord and Tenant have agreed that Tenant’s electricity and water bill shall be calculated based upon \$56.05 per parking space, with 274 parking spaces being agreed as present in the Property, for a total annual electricity and water cost to be paid by Tenant to Landlord of \$15,357.00, and with the charge for gas calculated at the rate of \$0.29 per square foot, based upon 8,878 square feet in the Property, for a total annual gas cost to be paid by Tenant to Landlord of \$2,575.00. The combined total of Utilities costs attributable to Tenant’s interest of \$17,932.00 (\$15,357.00 plus \$2,575.00) will be divided into, and paid in, twelve equal monthly installments of \$1,495.00 each by Tenant to Landlord, payable in advance, on the first day of each month during the Term of this Lease. Tenant recognizes that because Landlord has owned the Property for a short period of time, Landlord must estimate the utility costs to be charged to Tenant provided herein because it does not have a history of experience with the actual utility costs attributable to the Property. Thus, Tenant agrees that the utility costs assessed to Tenant are based upon Landlord’s good faith estimate of utility costs for Tenant, as of the date of this Lease, and that, to the extent utility costs to Landlord are increased by providers or the estimate proves to be inadequate to account for actual utility charges incurred by Landlord, then the utility amounts charged to Tenant may be increased by Landlord for Tenant during the Term of the Lease based upon actual charges experienced by Landlord for the Property. Tenant shall pay for any and all other services furnished or provided to the Tenant or the Property, including trash services, at the request of Tenant during the Lease term.

**4. Landscaping and Snow Removal.** Tenant shall maintain in good condition and repair, any landscaping on the Property during the Term of the Lease. Tenant shall sand, salt, or otherwise remove snow and ice from parking areas, sidewalks, and other areas abutting the roadways or walkways on the Leased Property. Tenant shall pay all costs incurred upon the Property for landscaping or snow removal.

**5. Taxes.** Tenant agrees to pay directly to the taxing authority the real estate taxes and assessments levied against the Property for the period beginning on the Effective Date and for the remainder of the Term of the Lease. Landlord shall provide Tenant with all property tax bills as soon as practical upon receipt, and Tenant shall promptly pay the outstanding taxes owing against the Property. Alternatively, at Landlord's sole election, if tax statements are delivered to and paid by Landlord, then Tenant shall reimburse Landlord in full after demand is made by Landlord for payment of such taxes. Landlord shall provide Tenant with copies of any tax bill or other documentation reflecting real and personal property tax assessments as soon as practicable upon receipt. To the extent that taxes owed on the Property are not separately assessed from other contiguous property owned by Landlord, Landlord shall calculate and bill Tenant for, and Tenant shall pay promptly to Landlord, its proportionate share of the taxes owed on the Property.

Tenant agrees to pay all taxes levied or assessed against any personal property or fixtures placed on the Property directly to the appropriate taxing authority and shall not permit the same to become a lien against the Property unless the same is discharged promptly by Tenant. Special assessments for improvements to be constructed after the Effective Date shall be divided between the parties based on the useful life of the improvements, with Tenants paying any portion attributable to the Term, and the Landlord paying the remainder.

**6. Insurance.** During the Lease term, Tenant shall obtain the following insurance coverage at its cost, with coverage amounts subject to increase as determined to be reasonably necessary by Landlord, for the Property and for Landlord's contiguous real property commonly known, at the time of the parties' execution of this Lease as the Old City Hall Building and adjoining City Administrative Building (collectively, for the purpose of this paragraph, the Property, Old City Hall Building and City Administrative Building are referenced as the "Combined Property") :

a. "All Risk" Property Insurance covering physical loss or damage to the Combined Property, and insuring Landlord's interest therein. The insurance shall cover the Combined Property and shall be through Tenant's blanket property insurance policy for its properties in its prevailing total coverage amount in an amount which is presently set in the amount of \$21,000,000.00, with a \$100,000.00 deductible amount, or as the deductible may be reasonably modified later by Tenant from time to time during the term with notice to Landlord. Landlord shall reimburse Tenant for the costs associated with the insurance policies for the Old City Hall Building and City Administrative Building portion of the Combined Property (the "Landlord Portion") above by paying Tenant one-twelfth (1/12) of the annual policy costs for the Landlord Portion in estimated monthly installments. Tenant and Landlord shall periodically reconcile the amount received and may adjust Landlord's and Tenant's payments accordingly. In the event of underpayment or overpayment, Landlord and Tenant shall cooperate to adjust future monthly payments accordingly.

During the Lease term, Tenant shall maintain the following insurance coverage:

- b. Commercial General Liability Insurance in amounts no less than Two Million Dollars (\$2,000,000) per occurrence, Four Million Dollars (\$4,000,000) aggregate limit.

Insurance policies required under this Lease shall be in a form acceptable to Landlord. Policies shall contain provisions causing insurance proceeds for any damage to the Property to be made payable to Landlord, name Landlord as an additional insured, and contain provisions notifying Landlord in writing before any material change, cancellation, or termination of coverage.

**7. Quiet Enjoyment.** Tenant shall at all times during the Term of this Lease peaceably have, hold, and enjoy the Property without any manner of suit, trouble, or hindrance of or from Landlord or any person or persons under the control of Landlord, provided Tenant is not in default.

**8. Right of Entry and Inspection.** Landlord reserves the right to enter the Property upon reasonable notice to Tenant (except in case of an emergency, in which case no notice would be required) to inspect the Property or the performance by Tenant of the terms and conditions of this Lease.

**9. Repair and Maintenance.** Tenant shall be responsible for all normal cleaning, maintenance, and upkeep of the Property during the term of this Agreement. Any major repair or replacement of the structural components of the building shall be the responsibility of Landlord, unless the need for the major repair or replacement arose due to the negligent or intentional misconduct of Tenant or Tenant's permitted guests or customers. Landlord shall be responsible for all exterior painting and structural repairs, including roof, electrical, heating systems, and bearing walls during the term of this Agreement. Provided, however, that the repairs, alterations, additions, replacements and improvements stated in the attached **Exhibit "B"** shall be completed by Tenant at its sole cost during its tenancy herein and, upon completion, shall become the property of Landlord without abatement of Rent or other reimbursement or compensation due to Tenant.

**10. Alterations.** Except for the alterations, additions, replacements and improvements set forth on Exhibit "B", Tenant shall not make any alterations, additions, or replacements on or to the Property during the Term of this Agreement without the written approval of the Landlord.

**11. Signs.** Tenant shall have the right to install or place signs or other advertising material in, on, or about the Property, to the extent permitted by all local zoning regulations, ordinances, and any covenants, conditions, restrictions, and other documents of record related to the Property. All signage installed by Tenant must be approved by Landlord prior to installation. All costs and expenses related to Tenant's signs, or other advertising materials, including without limitation, maintenance, shall be at Tenant's sole responsibility. Nothing stated herein shall prevent Landlord from installing its own legally compliant signage on the Property and the parties shall cooperate to minimize any conflict between the signage of the two parties.

**12. Permitted Uses.** Tenant shall use and occupy the Property as a commercial parking structure, including the leasing of individual parking spaces for hourly or monthly use by third parties. Tenant shall not occupy or use the Property or permit any portion of the Property to be occupied or used, for any business or purpose that is unlawful, or permit anything to be done that would in any way increase the rate of liability or any other insurance coverage on the Property. Tenant

recognizes that Landlord may require parking spaces during Tenant's tenancy, and Tenant shall endeavor to provide Landlord with the required number of spaces, with Landlord to pay Tenant its standard parking rate for the same.

**13. Liens.** Tenant shall, during the term of this Lease, promptly remove or release, by the posting of a bond as either required or permitted by law, any lien against the Property or any portion thereof arising by reason of any fault or omission on the part of Tenant, and shall save and hold Landlord harmless from or against any such lien. In the event any such lien does attach against the Property, and shall not be released within fifteen (15) days after notice thereof, Landlord, in Landlord's sole discretion, may pay and discharge the same and relieve the Property therefrom; thereafter Tenant shall pay and reimburse Landlord upon demand for or on account of any cost or expense (including reasonable attorneys' fees) incurred by Landlord in discharging such lien, which sum shall include interest at a rate of twelve percent (12%) per annum, but not to exceed the highest lawful rate, from the date such lien is paid by Landlord until the date Landlord is reimbursed by Tenant.

**14. Indemnification.** Tenant indemnifies and agrees to hold Landlord harmless from and against any and all actions, claims, damages, and demands arising out of the use, occupancy, or non-use of the Property by Tenant or the failure of Tenant to maintain the Property as provided in this agreement, including, without limitation, any carelessness, negligence, improper conduct, or breach of this Lease by Tenant or its agents, guests, pets, employees, patrons, suppliers or licensees, and any and all costs, expenses and fees, including attorneys' fees, incurred by Landlord incident thereto or incurred by Landlord to enforce its rights or remedies against Tenant under this Agreement.

**15. Assignment and Subletting; Additional Tenants.** Tenant shall not assign this Lease or any part without the express written consent of Landlord, subject to Landlord's sole and absolute discretion. Any such consent shall not release Tenant from its covenants and obligations under this Agreement, and Tenant shall continue to be responsible for the performance of the covenants and obligations unless Landlord expressly releases Tenant in writing. Tenant is expressly permitted to offer short-term paid parking, monthly leased parking, or other paid use of the Property for the purpose of parking without violating this Section or this Lease.

**16. Default.** The occurrence of any of the following shall constitute an event of default:

- a. Tenant fails to pay the Rent or any other payment provided for in this Lease when due.
- b. Tenant fails to observe or perform any of the obligations of Tenant provided for in this Lease.
- c. A petition in bankruptcy or an application for any relief under any provision of the Bankruptcy Act is filed by or against Tenant.
- d. Tenant makes an assignment for the benefit of creditors.
- e. A receiver is appointed for the assets or affairs of Tenant.
- f. Tenant shall commit any act of bankruptcy.

g. Tenant's interest under this Agreement shall be levied upon under execution or seized by virtue of any writ of any court of law or equity.

h. Any assignment of this Lease, either in whole or in part, is effected by operation of law.

**17. Landlord's Rights.** If Tenant shall be in default under this Agreement, then Landlord shall have the right to make any payment or perform any act required by Tenant under any provision of this Lease, and, in exercising such right, to incur necessary and incidental costs and expenses, including reasonable fees and costs for Landlord's professionals and attorneys. All payments made and all costs, fees and expenses incurred by Landlord in connection with any exercise of such right, together with interest thereon at the maximum rate of interest then permitted by law from the respective dates of the making of such payments or the incurring of such costs and expenses, shall be reimbursed by Tenant immediately upon demand. Notwithstanding the foregoing, nothing herein shall imply any obligation on the part of Landlord to make any payment or perform any act required by Tenant.

**18. Landlord's Remedies.** In the event of default by Tenant which shall remain uncured after forty five (45) days' notice of the default, or fifteen (15) days in the case of non-payment of rent or any other sum due under the Lease (which shall not require notice of default from Landlord), in addition to any remedies permitted to Landlord under Montana law, Landlord may at once thereafter or at any time subsequently during the existence of such breach or default: (a) enter into and upon the Property or any part thereof and repossess the Property, expelling and removing all persons and property (which property may be removed and stored at the cost of, and for the account of Tenant), using such force as may be necessary, and (b) terminate this Lease, holding Tenant for damages for its breach.

**19. Miscellaneous Default Clauses.** In the event of breach of this Lease, the party at fault shall and shall pay to the other party all costs, reasonable attorneys' fees and costs, and other expenses which may be incurred by the other party in enforcing its rights under this Lease. The remedies described in this Lease, or the election of any remedy by either party is not exclusive of any other remedy or action which may otherwise be appropriate, each party having the right to pursue any and all other rights and remedies which it may have at law or in equity. The failure of either party to terminate this Lease at any time during the breach of any of the terms shall not be construed to be a waiver of the rights of the party as to any further or subsequent breach. Landlord's act of taking possession of the Property is not a termination of this Lease unless written notice of termination has been served on Tenant.

**20. Time of the Essence.** Time is of the essence in respect of the performance of each provision of this Lease.

**21. Surrender.** Upon the expiration or sooner termination of this Lease, Tenant, at its sole expense, shall remove from the Property all property of Tenant which is not affixed or attached to any part of the Property and shall quietly and peaceably surrender possession of the Property in good order and repair.

**22. Holding Over.** There shall not be any holding over by Tenant or any permitted assignee or subtenant of Tenant beyond the expiration or sooner termination of the Lease term. If Tenant does not surrender possession of the Property at the termination of the Lease, then such holding over by Tenant shall be a tenancy at the sufferance of Landlord upon the same terms and conditions as are provided for in this Agreement with a rental for the period of such holding over proportionate to the monthly installment of Rent last paid by Tenant during the term of this Lease, multiplied by one hundred twenty-five percent (125%).

**23. Condemnation.** In the event of any taking by condemnation or eminent domain of any portion of the Property, Landlord shall be entitled to all compensation paid, or award given, for the property taken. If all of the Property is taken, or if a portion thereof is taken so that the operation of the business conducted on the Property is not economically feasible, then, as of the date possession is taken under such condemnation or exercise of the right of eminent domain, this Lease shall cease and terminate and the obligations of the parties for the unexpired term of this Lease likewise shall cease and terminate.

**24. Casualty.** If the Property is damaged by fire, unavoidable accident, or other casualty covered by fire and extended coverage insurance and the damage is not caused by the act, or failure to act, of Tenant, its employees, agents, licensees, permittees, or invitees, then the parties shall each be entitled to terminate this Agreement and abate rent from and after such date of the damage or destruction. Notwithstanding the foregoing, the parties shall reasonably cooperate to minimize any Tenant liability relating to monthly or other parking leases outstanding at the time of any casualty (however, Landlord shall not be liable for any obligation of Tenant under any parking leases). If neither party elects to terminate this Agreement following damage or destruction of the Property, then Landlord shall keep Tenant reasonably informed of Landlord's restoration of the Property.

**25. Hazardous Materials.** As used in this Section, Hazardous Material means any chemical, substance, or material that is or may be hazardous to human health or to the safety of the environment, which are now or in the future become listed, defined, or regulated in any manner by any environmental law.

a. Tenant shall not use or allow the use of the Property in a manner that may cause Hazardous Materials to be released or to become present on, under, or about the Property or other properties in the vicinity of the Property.

b. Tenant shall indemnify, protect, defend, and hold Landlord harmless from all claims, judgments, causes of action, damages, penalties, fines, taxes, and expenses arising (directly or indirectly) as a result of or in connection with Tenant's breach of any prohibition or provision of this Section.

**26. Acceptance of Property.** Tenant represents that Tenant has examined the Property prior to taking possession or had the opportunity to inspect the Property and waived the right to do so. Tenant accepts the Property in its present condition, without representation or warranty, express or implied, in fact or by law, by the Landlord, and without recourse to the Landlord as to the nature, condition, or usability thereof, or the uses to which the Property may be put.

**27. Entire Agreement; Changes or Waivers.** This Lease constitutes the entire agreement between the parties and no waiver of any right, agreement, or condition and no modification of this Lease shall be binding upon either of the parties unless in writing and signed by the party to be bound.

**28. Headings.** Section headings are for convenience and are in no way to be construed as part of this Lease or as a limitation on the scope of the particular articles or sections to which they refer.

**29. Partial Invalidity.** In the event any provision of this Lease or part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby, it being understood that such remaining provisions shall be construed in a manner most clearly approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part thereof.

**30. Construction.** Wherever any neuter or singular term is used herein, such term shall be construed to include the masculine or feminine gender or the plural and so to include any party, whether male or female as may be appropriate.

**31. Notices.** Any and all notices, requests, or demands required under this Lease shall be in writing and shall be delivered in person or sent by United States certified or registered mail (return receipt requested), addressed as follows:

If to Landlord: CapeHon Development, LLC  
P.O. Box 2094  
Billings, MT 59103

With a copy to: Malcolm Goodrich  
Goodrich & Reely, PLLC  
2812 1st Avenue North, Suite 301  
Billings, MT 59103

If to Tenant: City of Billings  
Parking Manager  
City Hall  
316 N 26th Street  
Billings, MT 59101

With a copy to: City Attorney  
City of Billings  
City Hall  
PO Box 1178  
Billings, MT 59103

Notice served by mail shall be complete when deposited in the United States Post Office. Any change of address shall not be effective unless served upon the parties in the same manner as the notice referred to under this Agreement.

**32. Binding Effect; Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors, and authorized assigns.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective as of the Effective Date.

**LANDLORD**

**CAPEHON DEVELOPMENT, LLC**  
*a Montana limited liability company*

\_\_\_\_\_  
By: William D. Honaker  
Its: Managing Member

\_\_\_\_\_  
By: Donald E. Cape Jr.  
Its: Managing Member

**TENANT**

**THE CITY OF BILLINGS**

\_\_\_\_\_  
By: William A. Cole  
Its: Mayor

### **EXHIBIT A – REAL PROPERTY DESCRIPTION**

All the following shall constitute the Property, together with all improvements thereon:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 58 of the Original Town, Now City of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in office of the Clerk and Recorder of said County.

LESS AND EXCEPTING all portions of the Garage Building consisting of office space or other space not specifically utilized for parking or an ancillary use associated with the parking garage. Tenant expressly acknowledges and consents to Landlord retaining the sole and exclusive use of the City Administrative Building and Old City Hall Building portions of the real property.

The Property has a street address of 210 North 27th Street, Billings, MT 59101.

## **EXHIBIT B – TENANT REPAIRS**

The tenant repairs identified in Sections 9 and 10 are highlighted and summarized on the attached Engineer's Opinion of Estimated Probable Repair Costs and are more particularly described in the Condition Audit of Park 3 of the City of Billings, Montana, dated as of April 2024.

|                     |                                                                                            |               |              |   | Repairs Quantities & Costs |                 |                         |
|---------------------|--------------------------------------------------------------------------------------------|---------------|--------------|---|----------------------------|-----------------|-------------------------|
| Recommended Repairs |                                                                                            |               |              |   | Repair<br>Quantities       | 2024            | 2025 -2028              |
| Item No.            | Description                                                                                | Unit<br>Price | Unit<br>Type |   |                            | Repair<br>Costs | Repair Cost<br>(Note 6) |
| 1                   | Structural & Waterproofing Repair Work - Structurally Supported (Year 1, Priority Repairs) |               |              |   |                            |                 |                         |
| a.                  | Concrete Floor repair (partial depth) All levels                                           | \$ 125.00     | sf           | x | 10 =                       | \$ 1,250        | \$ -                    |
| b.                  | Traffic topping (Levels 2-3)                                                               | \$ 12.00      | sf           | x | 500 =                      | \$ 6,000        | \$ -                    |
| c.                  | Concrete Ceiling Repairs (Level 2 soffit)                                                  | \$ 300.00     | sf           | x | 20 =                       | \$ 6,000        | \$ -                    |
| d.                  | Replace Seals/Expansion Joints (at Stair Towers)                                           | \$ 175.00     | lf           | x | 60 =                       | \$ 10,500       | \$ -                    |
| e.                  | Fog Sealer for Top Deck                                                                    | \$ 0.20       | sf           | x | 22,000 =                   | \$ 4,400        | \$ -                    |
| f.                  | Methacrylate Sealer (Top Deck on Ramp)                                                     | \$ 2.50       | sf           | x | 1,500 =                    | \$ 3,750        | \$ -                    |
| g.                  | Concrete Wall Demo/Repair                                                                  | \$ 300.00     | sf           | x | 20 =                       | \$ 6,000        | \$ -                    |
|                     | Subtotal                                                                                   |               |              | = |                            | \$ 37,900       | \$ -                    |
| 2                   | Structural & Waterproofing Repair Work - Structurally Supported (Year 2 & Beyond)          |               |              |   |                            |                 |                         |
| a.                  | Concrete Floor repair (partial depth) All levels                                           | \$ 125.00     | sf           | x | 10 =                       | \$ -            | \$ 1,250                |
| b.                  | Traffic topping (Levels 2-3)                                                               | \$ 12.00      | sf           | x | 3,000 =                    | \$ -            | \$ 36,000               |
| c.                  | Route & Seal Cracks (Floor)                                                                | \$ 8.00       | lf           | x | 100 =                      | \$ -            | \$ 800                  |
| d.                  | Route & Seal Cracks (Column)                                                               | \$ 20.00      | lf           | x | 75 =                       | \$ -            | \$ 1,500                |
| e.                  | Replace Seals (at other locations)                                                         | \$ 20.00      | lf           | x | 85 =                       | \$ -            | \$ 1,700                |
| f.                  | Epoxy injection (soffit of roof level)                                                     | \$ 115.00     | lf           | x | 20 =                       | \$ -            | \$ 2,300                |
| g.                  | Cove Sealant Replacement (roof level)                                                      | \$ 8.00       | lf           | x | 1,200                      | \$ -            | \$ 9,600                |
|                     | Subtotal                                                                                   |               |              | = |                            | \$ -            | \$ 53,150               |
| 3                   | Architectural, Mechanical, Electrical (Years 1 + )                                         |               |              |   |                            |                 |                         |
| a.                  | Mechanical ADA Assist Door repair                                                          | \$ 1,500.00   | ea           | x | 2 =                        | \$ 3,000        | \$ -                    |
| b.                  | Re-Striping, Stenciling Allowance                                                          | \$ 32.00      | ea/stall     | x | 300 =                      | \$ 9,600        | \$ -                    |
| c.                  | Barrier Cable Re-tightening                                                                | \$ 150.00     | ea           | x | 6 =                        | \$ 900          | \$ -                    |
| d.                  | Electrical Allowance                                                                       | \$ 4,000.00   | ls           | x | 1 =                        | \$ 4,000        | \$ -                    |
|                     | Subtotal                                                                                   |               |              | = |                            | \$ 17,500       | \$ -                    |
|                     | Recommended Repair & Preventive Total                                                      |               |              | = |                            | \$ 55,400       | \$ 53,150               |
| 3                   | 10% Contingency for Unknown/Unanticipated Conditions                                       |               |              |   |                            |                 |                         |
|                     | Subtotal                                                                                   |               | ls           | = |                            | \$ 5,600        | \$ 5,400                |
| 4                   | Repair Work & Contingency                                                                  |               |              |   |                            |                 |                         |
|                     | Subtotal                                                                                   |               |              | = |                            | \$ 61,000       | \$ 58,550               |
| 5                   | Mobilization, General Conditions, Overhead (15% of Total)                                  |               |              |   |                            |                 |                         |
|                     | Subtotal                                                                                   |               | ls           | = |                            | \$ 9,200        | \$ 8,800                |
|                     | Recommended Total                                                                          |               |              | = |                            | \$ 70,200       | \$ 67,350               |

Notes:

1. Construction costs do not include engineering fee
2. The costs do not include construction administration, material testing, or permitting fees.
3. Contingency is for project conditions beyond Owner's control such as variation in quantities, hidden conditions, bidding climate and regulatory costs.
4. Estimate is based on normal business working hours and does not account for restricted/limited work hours
5. Costs do not include M/E/P/FP repairs or improvements including drainage, lighting, ventilation, carbon monoxide monitoring system and fire suppression systems or repairs to the elevators, unless specifically mentioned in the report and opinion of probable costs
6. Escalation of 5% should be added to the above cost for repairs performed in 2025 and beyond.

sf = Square Feet  
lf = Lineal Feet  
ea = Each Unit  
ls = Lump Sum

**City Council Regular**

**Date:** 06/09/2025  
**Title:** Commercial Aviation Ground Lease with Dan and Julane Wells  
**Presented by:** Jeff Roach  
**Department:** Airport  
**Presentation:** No  
**Legal Review:** Template Contract  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that City Council approve the Commercial Aviation Ground Lease with Daniel W. Wells and Julane Wells, Joint Tenants, commencing May 1, 2025 and ending April 30, 2035.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

The subject parcel of this Lease is located on the east end of the Airport at 1761 Aviation Place and has a long history. On May 24, 1999, Corporate Air entered into a twenty-five year Commercial Aviation Ground Lease with the City of Billings and subsequently built a 12,400 square foot building to accommodate a new U.S. Postal Service sort facility on the subject parcel. Dan Wells was the building contractor for the Corporate Air construction. In October 2004, Corporate Air sold the building and assigned its Lease interest to Industrial Properties, Inc. In 2015, Industrial Properties sold the building it owned and assigned its Lease interest to Daniel W. Wells and Julane Wells. The Wells have held that assigned Lease to its recent expiration on April 30, 2025. The Wells now wish to continue to lease with a new term. Staff has worked with the Wells to resize the parcel on a new 10-year term Lease to commence May 1, 2025 and end on April 30, 2035.

**ALTERNATIVES**

City Council may:

- Approve the new Commercial Aviation Ground Lease with Daniel W. Wells and Julane Wells, Joint Tenants; or,
- Not Approve the new Commercial Aviation Ground Lease with Daniel W. Wells and Julane Wells, Joint Tenants.

**FISCAL EFFECTS**

Annual rent for the first year is \$35,995.80. Annual rent for subsequent years will be adjusted on the May anniversary date each year using the average of the monthly percentage increases of the previous calendar year as determined by the Department of Labor Consumer Price Index For All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics.

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**Attachments**

Wells Lease\_2025

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the following:

and

WITNESSETH

1) Lessor owns and operates BILLINGS LOGAN INTERNATIONAL AIRPORT

2) Lessor deems it advantageous to itself and the operation of the Airport to lease

to the Lessee a certain parcel of land hereinafter described together with certain privileges, rights,

uses, and interests, and

3) Lessee wishes to engage in certain commercial aviation activities, and proposes

to lease on a net basis from Lessor said parcel of land and to avail itself of the same privileges, rights,

uses, and interests contemplated herein, and

4) Lessee has indicated a willingness and ability to properly keep and maintain

said land in accordance with standards established by Lessor.

NOW THEREFORE, the parties hereto covenant and agree as follows:

1 ARTICLE I

2 PREMISES AND PRIVILEGES

3 A. Description of the Premises. Lessor hereby leases to Lessee and Lessee hereby  
4 leases from Lessor that certain parcel of real property, together with improvements (hereinafter called  
5 the premises) for its exclusive use, specifically described as follows:

6 Main Parcel – 1761 Aviation Place

7 Commercial Lot 4

8 Commencing at the Southeast Corner of Section 30, T. 1 N., R. 26 E., P.M.M.,  
9 Yellowstone County, Montana; thence N 24°07'54" W a distance of 1,791.29  
feet to the Point of Beginning; thence S 89°33'38" W a distance of 137.00 feet;  
10 thence S 00°26'22" E a distance of 90.00 feet; thence N 81°33'32" W a  
distance of 64.78 feet; thence N 00°26'22" W a distance of 80.00 feet; thence  
11 S 89°33'38" W a distance of 137.00 feet; thence N 00°26'22" W a distance of  
387.51 feet; thence N 89°17'41" E a distance of 259.17 feet; thence  
12 S 00°26'22" E a distance of 387.51 feet to the Point of Beginning.

13 Said Parcel containing 105,870.01 square feet.

14 Premises is further depicted on attached Exhibit A, and by said reference made  
15 a part of this Lease.

16 B. General Privileges, Uses, and Rights. Lessor hereby grants to Lessee the  
17 following general privileges, uses, and rights, all of which shall be subject to the terms, conditions and  
18 covenants herein set forth. Said rights shall be subject to such Federal, State, or Local laws,  
19 ordinances, rules and regulations as now or may hereafter have application at the Airport. All use  
20 privileges granted herein shall be exercised in the event Lessee is the holder of the appropriate  
21 licenses for such commercial endeavors.

22 1) The general unrestricted use of all public Airport facilities and  
23 improvements, which are now or may hereafter be connected with or appurtenant to  
24 said Airport, except as hereinafter provided, to be used by Lessee and its sublessees for

1 commercial aviation activity as herein defined. For the purpose of this Lease, public  
2 Airport facilities shall include all necessary landing area appurtenances including, but  
3 not limited to, approach areas, runways, taxiways, aprons, aircraft and automobile  
4 parking areas, roadways, sidewalks, navigational aids, lighting facilities, terminal  
5 facilities, or other public facilities appurtenant to said Airport.

6 2) The right of ingress to and egress from the premises over and across  
7 public roadways serving the Airport for Lessee, Lessee's agents, employees, patrons  
8 and invitees, suppliers of service and furnisher of material.

9 C. Specific Privileges, Uses, and Rights. In addition to the general privileges,  
10 uses, and rights described above and without limiting the generality thereof, Lessor hereby grants to  
11 Lessee and sublessees the right to engage in commercial aviation activity on the premises as defined  
12 in subparagraphs 1 through 4 below subject to the conditions and covenants hereafter set out:

13 1) The conduct of a mail and freight forwarding business including vehicle  
14 transport, sorting or storage functions, and the use of all appropriate equipment  
15 required for this business.

16 2) The loading and unloading of aircraft in any lawful activity as  
17 incidental to the conduct of any services or operations outlined in this Paragraph C.

18 3) The maintenance of an office building on the premises necessary for the  
19 conduct of all approved activities.

20 4) The maintenance and minor repair of Lessee's, sublessee's, or hired  
21 contractor's aircraft and ground support equipment.

22 D. Concession, Uses, Services, and Activities Excluded. The following  
23 concessions, uses, services, and activities and the establishment thereof shall be specifically excluded  
24

1 from this Lease:

- 2 1) Ground transportation for hire.
- 3 2) Vehicle rental services.
- 4 3) Equipment rental services.
- 5 4) Food sales (except the sale of tobacco, confections, and refreshments
- 6 through coin-operated vending machines).
- 7 5) Fuel sales (aircraft or vehicle).
- 8 6) On-site fuel storage, fuel storage facilities, including the storage of
- 9 fueling vehicles, unless specifically approved in writing by the Director of Aviation
- 10 and Transit.
- 11 7) Buying and selling of aircraft or vehicle parts and accessories therefore,
- 12 and aviation equipment of all descriptions, either retail, wholesale, or as a dealer.
- 13 8) Flight schools and flight instruction.
- 14 9) Storage of personal vehicles, campers, boats, trailers, motor homes, or
- 15 other recreational vehicles, or parts and accessories for such.
- 16 10) Major repairs, overhauls, restoration, body shop or painting work on
- 17 motorized vehicles and equipment. Any major aircraft repairs will be coordinated with
- 18 the Director of Aviation and Transit.
- 19 11) Outside storage of supplies, parts, oil, or oil collection containers.
- 20 12) Storage of any household items.
- 21 13) Use of the premises in a residential capacity of any nature, whether
- 22 temporary or otherwise.
- 23 14) Improper storage of any chemicals, solutions, solvents, or any
- 24 potentially hazardous, explosive, or flammable materials or substances. Improper

1 storage includes storage in violation of any applicable Federal, State, or local  
2 environmental law, regulation or rule presently in effect or promulgated in the future,  
3 as such laws, regulations or rules may be amended from time to time.

4 15) Off-premise parking.

5 E. Reservation of Right-of-Way. Lessor hereby reserves a right-of-way easement  
6 for access purposes over the above described leasehold. Said reserved right-of-way may be used by  
7 Lessor and all of Lessor's representatives, agents and employees, and Lessor's tenants, employees of  
8 said tenants, and persons or entities serving said tenants.

9 F. Access/Inspection by Lessor. The Lessor or any person designated by the  
10 Lessor, shall at all times have reasonable access to the premises, for the purpose of examining and  
11 inspecting the same to determine Lessee's compliance with its obligations under this Lease and for  
12 purposes necessary, incidental to or connected with the performance of the Lessor's obligations  
13 hereunder, or in the exercise of Lessor's governmental functions. In the event of any emergency, the  
14 Lessor or its representatives shall have the right to take such action at the premises as they deem  
15 necessary for the protection of persons or property.

## 16 ARTICLE II

### 17 TERM OF LEASE

18 A. Term. The term of this Lease shall be for a period of ten (10) years,  
19 commencing on the 1st day of May 2025, and terminating on the 30th day of April 2035.

20 If during the term of the Lease, Lessee desires to make a substantial new capital  
21 investment in their facilities, the Lessor agrees to open the Lease for discussions regarding possible  
22 additional lease term appropriately related to the magnitude of the proposed new capital investment.

23 B. First Right of Refusal. At the end of the term hereof and provided Lessee is not  
24

1 then in default of this Lease, has kept and performed all of its obligations and duties hereunder, and is  
2 current with the payment of all fees and charges, the Lessee shall have the first right to accept a new  
3 lease of the premises at the same rates and charges and under the same terms and conditions that the  
4 premises may be offered to any other person or entity. Lessor shall have the sole discretion as to the  
5 use of said premises and whether or not it will be relet at the end of said term. Provided, that ninety  
6 (90) days prior to the end of the term, Lessee shall give notice in writing to Lessor of intent to exercise  
7 the first right of refusal. Lessor upon election to relet said premises shall give Lessee notice in writing  
8 of its decision and the proposed terms for a new lease. Lessee shall have thirty (30) days in which to  
9 give Lessor notice in writing of acceptance of the terms for a new lease.

10 C. National Emergency. In the event the rights and privileges hereunder are  
11 suspended by reason of war or other national emergency, the term of this Lease shall be extended by  
12 the amount of the period of such suspension.

### 14 ARTICLE III

#### 15 RENTAL AND FEES

16 A. Ground Rental. For the land described in Article I, Paragraph A., Lessee shall  
17 pay to Lessor \$0.34 per square foot per annum for all ground included in this Lease, for an annual  
18 rental of \$35,995.80. Said rental shall be payable monthly in advance, without billing, on the first day  
19 of each month in an amount equal to one-twelfth of the annual rentals, or \$2,999.65.

20 B. Interest Penalty. Without waiving any other right or action available to the  
21 Lessor, in the event of default in the payment of Lease rentals herein, or any other rentals, fees, or  
22 charges owed Lessor, the amount due shall accrue interest at the rate of one and one-quarter percent  
23 (1.25%) per month from the date such rentals, fees, or charges were due and payable, until paid in full.

1 Said interest shall not apply with respect to items being contested in good faith by Lessee and which  
2 are resolved in Lessee's favor.

3 C. Annual Readjustment of Ground Rental. During the term of the Lease, the  
4 rental rate will be adjusted annually on the anniversary of the Lease using the average of the monthly  
5 percentage increases of the previous calendar year, as determined by the Department of Labor  
6 Consumer Price Index for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics.

7 In no case shall the rates be less than the previous year. For the purposes of this Lease, the  
8 anniversary month shall be May of each year during the term of the Lease. The Lessor shall send  
9 Lessee a notice of the annual rental rate adjustment prior to each anniversary of the Lease denoting the  
10 adjusted rental rates.

11 D. Rental Adjustments to Market Value. On the fifth anniversary of the Lease and  
12 then on successive five-year anniversaries of the Lease, should any extensions of term be approved,  
13 the Lessor may conduct an analysis of the then-current lease rental rates for other on-Airport  
14 properties to determine the current market value of the property. Should the analysis identify that the  
15 then-current Lease rental rate is below market value for other on-Airport properties, the Lessor will  
16 notify Lessee six (6) months in advance of an impending Lease increase.

#### 17 ARTICLE IV

#### 18 OBLIGATIONS OF LESSOR

19 A. Lessor Warranties. Lessor warrants all things have happened and have been  
20 done to make its granting of said Lease effective and that Lessee shall have peaceful possession and  
21 quiet enjoyment of the leased premises during the term hereof, upon performance of Lessee's  
22 covenants herein.

23 B. Operation as Public Airport. Lessor shall, during the term hereof, operate and  
24

1 maintain the Airport and its public facilities, as defined hereinabove, as a public airport consistent  
2 with and pursuant to the sponsor's assurances given by Lessor to the United States Government under  
3 the Federal Airport Act.

4 C. Condition and Maintenance of Premises. Lessor shall assume no responsibility  
5 for the condition of the demised premises after delivery of premises to Lessee. Lessor shall maintain  
6 all existing roads on the Airport giving access to the leased premises and Lessor shall remove snow  
7 from the access roads as Lessor's resources permit.

## 8 ARTICLE V

### 9 OBLIGATIONS OF LESSEE

10 A. Condition of Premises. It shall be the sole responsibility of the Lessee to  
11 develop, keep, maintain, and operate the entirety of the premises and all improvements and facilities  
12 placed thereon at Lessee's sole cost and expense. The lease in every sense shall be without cost or  
13 expense to the Lessor. Lessee accepts the premises in its present condition and will repair and  
14 maintain any installations thereon except as provided in Article IV, Paragraph B.-C., and will remove  
15 or cause to be removed any debris to the extent required for its continuing use thereof.

16 B. Improvements. Lessee shall have the right to and shall provide for the future  
17 construction, alteration, expansion, and maintenance of its own improvements, in any lawful manner,  
18 upon or in the premises, for the purpose of carrying out any of the activities provided for herein, but  
19 shall obtain the prior written approval of Lessor for any such construction, alterations, or expansion.

20 C. Maintenance. Lessee shall, at its sole cost and expense, maintain the premises,  
21 improvements, and appurtenances thereto in a presentable condition free of refuse and debris  
22 consistent with good business practice and acceptable to Lessor. Lessee's maintenance responsibility  
23 shall include asphalt repair and snow removal on the premises.

1 D. Utilities. Lessee shall assume and pay for all costs or charges for utility  
2 services furnished to Lessee during the term thereof; provided, however, that Lessee shall have the  
3 right to connect to any available storm and sanitary sewers, water, electrical, or other utilities at  
4 Lessee's own cost and expense; and Lessee shall pay for any and all service charges incurred  
5 therefore. Lessee shall also provide an external water meter reading device in an external location of  
6 the leasehold structure approved by the Lessor; said meter reading device type shall be specified by  
7 Lessor. All utility services shall be installed underground.

8 E. Trash, Garbage, Etc. Lessee shall provide a complete and proper arrangement  
9 for the adequate sanitary handling and disposal of all trash, garbage and other refuse occurring as a  
10 result of Lessee's occupancy of the premises. Lessee shall provide and use Lessor approved  
11 receptacles for all garbage, trash and other refuse and shall place them on the premises in a location  
12 acceptable to the Lessor for their removal. Storing drums, cartons, barrels, pallets, crates, or other  
13 similar items in an unsightly or unsafe manner on or about the premises, is forbidden.

14 F. Signs. Lessee shall not maintain any billboards or advertising signs on the  
15 premises; unless specifically approved by Lessor. Provided, however, that Lessee may maintain on  
16 the outside of its building its name(s) or signs, the size, location, and design of which shall be subject  
17 to written approval of Lessor prior to installation.

18 G. Federal, State, and Local Regulations. Lessee acknowledges that the right to  
19 use said Airport facilities in common with others authorized to do so shall be exercised subject to and  
20 in accordance with the laws, rules, regulations, and ordinances of the United States of America, the  
21 State of Montana, and the City of Billings, now in force or hereafter prescribed or promulgated by  
22 authority or by law and shall be closely observed during the full term of this Lease.

23 H. Hazardous Substances. Lessee assumes full responsibility for its proper and  
24

1 legal use, handling, storage, and disposal of any hazardous substances used or consumed in the  
2 occupancy or conduct of its business on the premises. "Hazardous substance" shall be interpreted  
3 broadly to mean any substance or toxic material, fuel or petroleum-based products, hazardous or toxic  
4 or radioactive substance, or other similar term by any applicable Federal, State, or Local  
5 environmental law, regulation or rule presently in effect or promulgated in the future, as such laws,  
6 regulations or rules may be amended from time to time; and it shall be interpreted to include, but not  
7 be limited to, any substance which after release into the environment will or may reasonably be  
8 anticipated to cause sickness, death or disease. Lessee will hold Lessor harmless from and indemnify  
9 Lessor against and from any damage, loss, expenses, or liability to the extent resulting from any  
10 breach of these representations and warranty including all reasonable attorneys' fees and costs incurred  
11 as a result thereof.

## 12 ARTICLE IV

### 13 INSURANCE AND INDEMNIFICATION

14 A. Indemnification. Lessor and Lessor's officers, directors, agents, representatives,  
15 and employees shall be indemnified by Lessee as herein provided. It is expressly understood and  
16 agreed that Lessee is and shall be deemed an independent contractor and operator responsible to all  
17 parties for its respective acts or omissions and that Lessor shall in no way be responsible therefore. It  
18 is further agreed that in the use of the Airport, in the construction, alteration, or maintenance of any  
19 improvements thereon, and in the exercise or enjoyment of the privileges herein granted, Lessee shall  
20 indemnify, save harmless, and defend the Lessor and Lessor's officers, directors, agents,  
21 representatives, and employees from any and all losses that may result to the Lessor and Lessor's  
22 officers, directors, agents, representatives, and employees because of any negligence, act, or omission  
23 on the part of the Lessee or Lessee's agents, representatives, and employees and shall indemnify  
24

1 Lessor against any and all mechanic's and materialmen's liens or any other types of liens imposed  
2 upon the premises.

3 Lessee expressly agrees that Lessor shall not be liable to Lessee, for personal  
4 injury, bodily injury, or for any loss or damage to real or personal property occasioned by flood, fire,  
5 earthquake, lightning, windstorm, hail, explosion, riot, strike, civil disobedience or commotion,  
6 aircraft, smoke, vandalism, malicious mischief, or acts of civil authority, unless caused by the fault or  
7 negligence of Lessor, its officers, directors, agents, representatives, or employees.

8 B. Insurance. Lessee shall provide and keep in force for the term of this Lease a  
9 comprehensive general liability policy (occurrence form only), providing coverage for personal injury,  
10 bodily injury, death, and property damage, in amounts not less than \$2,000,000 per occurrence.

11 The comprehensive general liability policy shall be endorsed to name the City  
12 of Billings as a **PRIMARY ADDITIONAL INSURED**. The City of Billings' general liability policy  
13 will be excess and noncontributory. At the time of execution of this Lease, and annually thereafter,  
14 Lessee shall furnish a Certificate of Insurance and associated policy endorsements showing that  
15 required insurance is in force. Lessee shall provide notice to City of any changes to insurance or  
16 cancellation of any or all insurance at least thirty (30) calendar days in advance of such change or  
17 cancellation. Insurance coverage shall be maintained with insurance underwriters authorized to do  
18 business in the State of Montana, and that are satisfactory to the Lessor. The continuous maintenance  
19 by Lessee of all types of required insurance under this Lease is mandatory. Failure of the Lessee to  
20 maintain such insurance is a material breach of this Lease and does not amend this Lease, nor release  
21 the Lessee from any other obligations in this Lease.

22 If, in the Lessor's opinion, the minimum limits of the insurance coverage herein  
23 required become inadequate during the term of this Lease, Lessee agrees that it will increase such  
24

1 minimum limits by reasonable amounts on request of the Lessor.

## 2 ARTICLE VII

### 3 TERMINATION, CANCELLATION, SUSPENSION, AND TRANSFER

4 A. Termination. This Lease shall terminate at the end of the full term hereof  
5 without any notice by either party, except as indicated in Article II, Paragraph A. A holding over by  
6 the Lessee, its assigns or sublessees beyond the expiration of the term shall not be permitted without  
7 the written consent of the Director of Aviation and Transit or his/her designee and then only on a  
8 month-to-month basis.

9 Lessee shall have the right to remove all moveable furniture, fixtures,  
10 machinery and equipment and all other personal property owned or installed by Lessee on the  
11 premises, and all expenses connected with such removal shall be borne by the Lessee. Said property  
12 shall be removed within thirty (30) days after termination of Lease.

13 In addition, Lessee has the right to remove, at Lessee's expense, all buildings  
14 and other structures owned by Lessee located upon the premises within thirty (30) days upon the  
15 termination of this Lease. Lessee shall remove from the premises all debris resulting from the  
16 removal of the buildings or structures, and Lessee shall generally leave the premises in a clean and  
17 orderly condition acceptable to Lessor.

18 This right to remove personal property, buildings, and structures does not  
19 extend to pavement, water lines, sewer lines, electrical lines, utility poles, fencing, or exterior light  
20 poles, which improvements shall remain the property of the Lessor and shall not be removed.

21 In the event the Lessee elects not to remove the buildings and other structures,  
22 personal property, fixtures, machinery and equipment, and other improvements upon termination of  
23 the Lease, the disposition of the buildings and structures, personal property, fixtures, machinery and  
24

1 equipment, and other improvements will be left to the sole discretion of the Lessor. If Lessor elects to  
2 remove the buildings and structures, personal property, fixtures, machinery and equipment, and other  
3 improvements because of failure of Lessee to do so, the cost of removal, demolition, disposal, and  
4 other related actions shall be at Lessee's expense.

5 B. Cancellation by Lessee. This Lease shall be subject to cancellation by Lessee  
6 after the happening of one or more of the following events:

- 7 1) The permanent abandonment of the Airport as an Air Terminal.
- 8 2) The lawful assumption of the United States Government or any other  
9 authorized agency thereof, of the operation, control or use of the Airport, or any  
10 substantial part or parts thereof, in such a manner that substantially restricts Lessee for  
11 a period of at least ninety (90) days from operating in a normal manner.
- 12 3) Issuance by any court of competent jurisdiction of an injunction in any  
13 way preventing or restricting the use of the Airport, and the remaining in force of such  
14 injunction for a period of at least ninety (90) days.
- 15 4) The default by Lessor in the performance of any covenant or agreement  
16 herein required to be performed by Lessor and the failure of Lessor to remedy such  
17 default for a period of ninety (90) days after receipt from Lessee of written notice to  
18 remedy same.

19 Lessee may exercise such right of termination by written notice to Lessor at any  
20 time after the lapse of the above applicable periods of time and this Lease shall terminate as of that  
21 date. Rental due hereunder shall be payable only to the date of the happening of the event which  
22 results in said termination. Upon termination under the provisions of this Paragraph, Lessee shall  
23 have the same rights as described in Article VII, Paragraph A. herein.

1 C. Cancellation by Lessor.

2 1) This Lease shall be subject to cancellation by Lessor in the event  
3 Lessee shall:

4 a) Be in arrears in the payment of the whole or any part of the  
5 amounts agreed upon hereunder for a period of thirty (30) days after receipt of  
6 written notice of a past due payment.

7 b) File a voluntary petition of bankruptcy.

8 c) Make a general assignment for the benefit of creditors.

9 d) Default in the performance of any of the covenants and  
10 conditions required herein (except rental payments) to be kept and performed  
11 by Lessee, and such default continues for a period of thirty (30) days after  
12 written notice from Lessor of said default.

13 2) In the event of termination because of the happening of any of the  
14 aforesaid events, Lessor may take immediate possession of the premises and remove  
15 Lessee's effects, forcible if necessary, without being deemed guilty of trespassing.  
16 Upon said entry, this Lease shall terminate.

17 3) It is agreed that failure of Lessor to declare this Lease terminated or to  
18 reenter and take possession upon the default of Lessee for any of the reasons set out  
19 shall not operate to bar or destroy the right of Lessor to declare this Lease null and  
20 void by reason of any subsequent violation of the terms of this Lease.

21 D. Suspension of Lease. During the time of war or declared national emergency,  
22 Lessor shall have the right to lease the landing area or any part thereof to the United States  
23 Government for military use. If any such lease is executed, any provisions of this instrument which  
24

1 are inconsistent with the provisions of the lease to the Government shall be suspended, provided that  
2 the term of the lease shall be automatically extended by the amount of the period of suspension.

3 E. Subleasing, Assigning, and Transferring. The Lessee shall have the right to  
4 sublease, assign, or transfer all or any part of Lessee's leasehold interest in the premises for the same  
5 purpose established in Article I, Paragraph C., provided that written approval of the Lessor is obtained  
6 prior to any sublease, assignment, or transfer. As a condition of said approval, Lessor reserves the  
7 right to alter this Lease in any manner deemed necessary by Lessor. Any sublease, assignment, or  
8 transfer shall be subject to the same conditions, obligations, and terms as set forth herein, and as may  
9 be subsequently amended, and Lessee shall be responsible for the observance by its tenants and  
10 sublessees for the terms and covenants of this Lease, and any subsequent lease amendments. Lessee  
11 shall provide Lessor with a copy of any sublease.

## 12 13 ARTICLE VIII

### 14 NONDISCRIMINATION

15 A. General. In the use and occupation of the Airport, Lessee shall not discriminate  
16 against any person or class of persons by reason of race, color, religion, sex, national origin or  
17 ancestry, age, or disability. Additionally, for the services provided during the use and occupation of  
18 the Airport, Lessee shall furnish said services on a reasonable and not unjustly discriminatory basis to  
19 all users thereof and charge reasonable and not unjustly discriminatory prices for each unit of service,  
20 provided that the Lessee may be allowed to make reasonable and nondiscriminatory discounts,  
21 rebates, or other similar types of price reductions to volume purchasers.

22 B. Civil/Human Rights Laws. In the operation and use of the Airport, Lessee shall  
23 not, on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability,  
24

1 discriminate or permit discrimination against any person or group of persons in any manner prohibited  
2 by Part 21 of Title 49, Code of Federal Regulations, the Civil Rights Act of 1964, as amended, the  
3 Equal Pay Act of 1963, the Rehabilitation Act of 1973, and such other Federal, State, or Local laws as  
4 may be applicable.

5                 Without limiting the generality of the foregoing, Lessee agrees to not  
6 discriminate against any employee or applicant for employment because of race, color, religion, sex,  
7 national origin or ancestry, age, or disability. Lessee agrees to take affirmative action to ensure that  
8 applicants are employed, and that employees are treated during employment, without regard to their  
9 race, color, religion, sex, national origin or ancestry, age, or disability. Such action shall include, but  
10 not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment  
11 advertising; layoff or termination; rates of pay or other forms of compensation; selection for training;  
12 and disciplinary actions and grievances. Lessee agrees to post, in conspicuous places available to  
13 employees and applicants for employment, notices to be provided setting forth the provisions of this  
14 nondiscrimination clause.

15                 C. Lessee, for itself, its heirs, personal representatives, successors in interest, and  
16 assignees, as part of the consideration of this Lease, does hereby covenant and agree as a covenant  
17 running with the land that, in the event improvements are constructed, maintained, or otherwise  
18 operated on the Airport for a purpose for which a United States Department of Transportation program  
19 or activity is extended or for another purpose involving the provision of similar services or benefits,  
20 Lessee shall maintain and operate such improvements and services in compliance with all other  
21 requirements imposed pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs  
22 of the Department of Transportation), as said regulations may be amended.

1 D. Lessee, for itself, its heirs, personal representatives, successors in interest, and  
2 assignees, as a part of the consideration of this Lease, does hereby covenant and agree as a covenant  
3 running with the land that:

4 1) No person on the grounds of race, color, religion, sex, national origin or  
5 ancestry, age, or disability shall be excluded from participation in, denied the benefits  
6 of, or otherwise be subjected to discrimination in the use of said improvements.

7 2) No person on the grounds of race, color, religion, sex, national origin or  
8 ancestry, age, or disability shall be excluded from participation in, denied the benefits  
9 of, or otherwise be subjected to discrimination in the construction of any  
10 improvements on, over, or under such land and the furnishing of services thereon.

11 3) Lessee shall use the facilities in compliance with all other requirements  
12 imposed by, or pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted  
13 Programs of the Department of Transportation), as said regulations may be amended.

14 Lessee assures that it will undertake an affirmative action program as required  
15 by 14 CFR Part 152, Subpart E, to ensure that no person on the grounds of race, color, religion, sex,  
16 national origin or ancestry, age, or disability shall be excluded from participating in any employment  
17 activities covered in 14 CFR Part 152, Subpart E, or such employment activities covered in any  
18 applicable State or Local law. Lessee assures that no person shall be excluded on these grounds from  
19 participating in or receiving the services or benefits of any program or activity covered by this  
20 Article VIII.

21 E. During the performance of this Lease, the Lessee, for itself, its assignees, and  
22 successors in interest, agrees to comply with the following nondiscrimination statutes and authorities,  
23 including, but not limited to:  
24

- 1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 2) 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of The Civil Rights Act of 1964);
- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal aid programs and projects);
- 4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- 6) Architectural and Barriers Improvement Act of 1982 (49 U.S.C. § 471, § 47105) as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);

1                   8)     Titles II and III of the Americans with Disabilities Act of 1990, which  
2     prohibit discrimination on the basis of disability in the operation of public entities,  
3     public and private transportation systems, places of public accommodation, and certain  
4     testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of  
5     Transportation regulations at 49 CFR Parts 37 and 38;

6                   9)     The Federal Aviation Administration's Nondiscrimination statute (49  
7     U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin,  
8     and sex);

9                   10)    Executive Order 12898, Federal Actions to Address Environmental  
10    Justice in Minority Populations and Low Income Populations, which addresses  
11    discrimination against minority populations by discouraging programs, policies, and  
12    activities with disproportionately high and adverse human health or environmental  
13    effects on minority and low income populations;

14                  11)    Executive Order 13166, Improving Access to Services for Persons with  
15    Limited English Proficiency (LEP), and resulting agency guidance, national origin  
16    discrimination includes discrimination because of LEP. To ensure compliance with  
17    Title VI, you must take reasonable steps to ensure that LEP persons have meaningful  
18    access to your programs (70 Federal Regulations at 74087 – 74100);

19                  12)    Title IX of the Education Amendments of 1972, as amended, which  
20    prohibits you from discriminating because of sex in education programs or activities  
21    (20 U.S.C. 1681 *et seq.*).

1 ARTICLE IX

2 GENERAL PROVISIONS

3 A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize  
4 the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in  
5 any manner arising under this Lease, the nonprevailing party in any action pursued in a court of  
6 competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses,  
7 and attorney's fees, including fees for in-house attorneys, expended or incurred in connection  
8 therewith.

9 B. Governing Law. This Lease and all disputes arising hereunder shall be  
10 construed and enforced by the laws of the State of Montana. Venue in any proceedings held  
11 hereunder shall be in the State of Montana Thirteenth Judicial District Court, Yellowstone County,  
12 Montana.

13 C. Taxes. Lessee shall pay any taxes or assessments which may be lawfully levied  
14 against Lessee's occupancy or use of the premises or any improvements placed thereon as a result of  
15 Lessee's occupancy. But Lessee's independent contractor reserves the right to contest the levy of any  
16 tax or assessment which it feels is unjust.

17 D. Subordination of Lease.

18 1) This Lease shall be subordinate to the provisions of any existing or  
19 future agreements between Lessor and the United States Government relative to the  
20 administration, operation, or maintenance of the Airport, the execution of which has  
21 been or may be required as a condition precedent to the expenditure of Federal funds  
22 for the development of the Airport.

23 2) Notwithstanding any other prohibition or limitation of Lessee's right to  
24

1 sublease or assign its interest under this Lease, Lessor acknowledges and agrees that  
2 Lessee shall have the right to grant a security interest in its rights and interest under  
3 this Lease, with Lessor's written consent. Any mortgagee or beneficiary shall have the  
4 right to cure any default on the part of Lessee in the payment of rent hereunder and, in  
5 the event of default, to assume the Lessee's position under this Lease. In no event,  
6 shall Lessor be liable for the payment of the sum secured by such mortgage or trust  
7 indenture, nor for any expenses in connection with the same. Furthermore, such  
8 mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary  
9 will seek no monetary judgment against Lessor. The mortgage or trust indenture shall  
10 also contain provisions requiring the holder of the indebtedness secured by such  
11 mortgage or trust indenture to mail to Lessor by certified mail written notice of each  
12 breach of covenant, default, or foreclosure given to Lessee by the holder of any  
13 indebtedness, mortgage or trust indenture affecting or applying to Lessee's interest  
14 under this Lease and to provide Lessor with a copy of the release when the  
15 indebtedness under such mortgage or trust indenture is satisfied.

16 E. Modification and Amendments. Changes or modifications to this Lease will be  
17 done in the form of a lease amendment prepared by the Lessor, and to be agreed upon and signed by  
18 both Lessee and Lessor.

19 F. Paragraph Headings. The paragraph headings contained herein are for  
20 convenience in reference and are not intended to define or limit the scope of any provisions of this  
21 Lease or the particular paragraphs.

22 G. Effect of Invalid Provision. If any term or provision of this Lease or the  
23 application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the  
24

1 remainder of this Lease, or the application of such terms or provisions to persons or circumstances  
2 other than those to which it is invalid or unenforceable, shall not be affected hereby, and each term  
3 and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

4 H. Notices. Notices to Lessor provided for herein shall be sufficient if sent by  
5 certified mail, postage prepaid, addressed to:

6 Director of Aviation and Transit  
7 Billings Logan International Airport  
8 1901 Terminal Circle, Room 216  
9 Billings, MT 59105

10 and notices to Lessee, if sent by certified mail, postage prepaid, addressed to:

11 Daniel W. Wells and Julane Wells  
12 P.O. Box 80445  
13 Billings, MT 59108  
14 Telephone: (406) 672-3390  
15 E-mail: dan@wells.undiscovermes.com

16 or to such other addresses as the parties may designate to each other in writing from time to time.

17 I. Successors and Assignments. All of the terms, covenants, and agreements herein  
18 contained, or as subsequently amended from time to time, shall be binding upon and shall inure to the  
19 benefit of successors, assigns, and sublessees of the respective parties hereto.

20 IN WITNESS WHEREOF, this document has been duly executed by or on behalf of  
21 the parties hereto as of the date indicated below.  
22  
23  
24

1 DATE: \_\_\_\_\_

2  
3 ATTEST:

CITY OF BILLINGS

4  
5 BY \_\_\_\_\_  
CITY CLERK

BY \_\_\_\_\_  
MAYOR

6  
7 APPROVED AS TO FORM

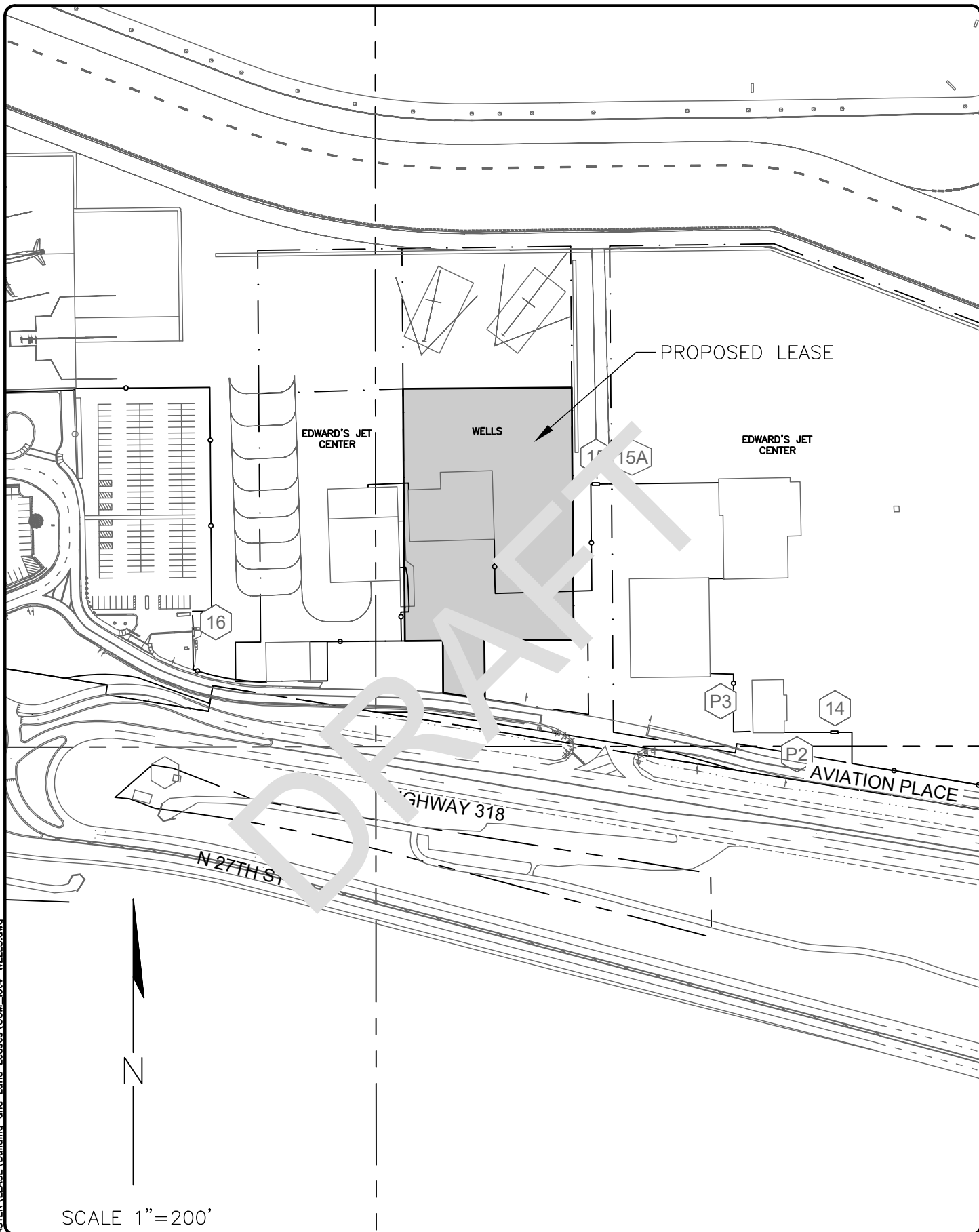
LESSEE

8  
9 BY \_\_\_\_\_  
CITY ATTORNEY

BY \_\_\_\_\_  
DANIEL W. WELLS

10 P. \_\_\_\_\_  
JULANE WELLS

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COMMERCIAL LOT 4 - WELLS  
LEASE

AVIATION AND TRANSIT DEPARTMENT-CITY OF BILLINGS

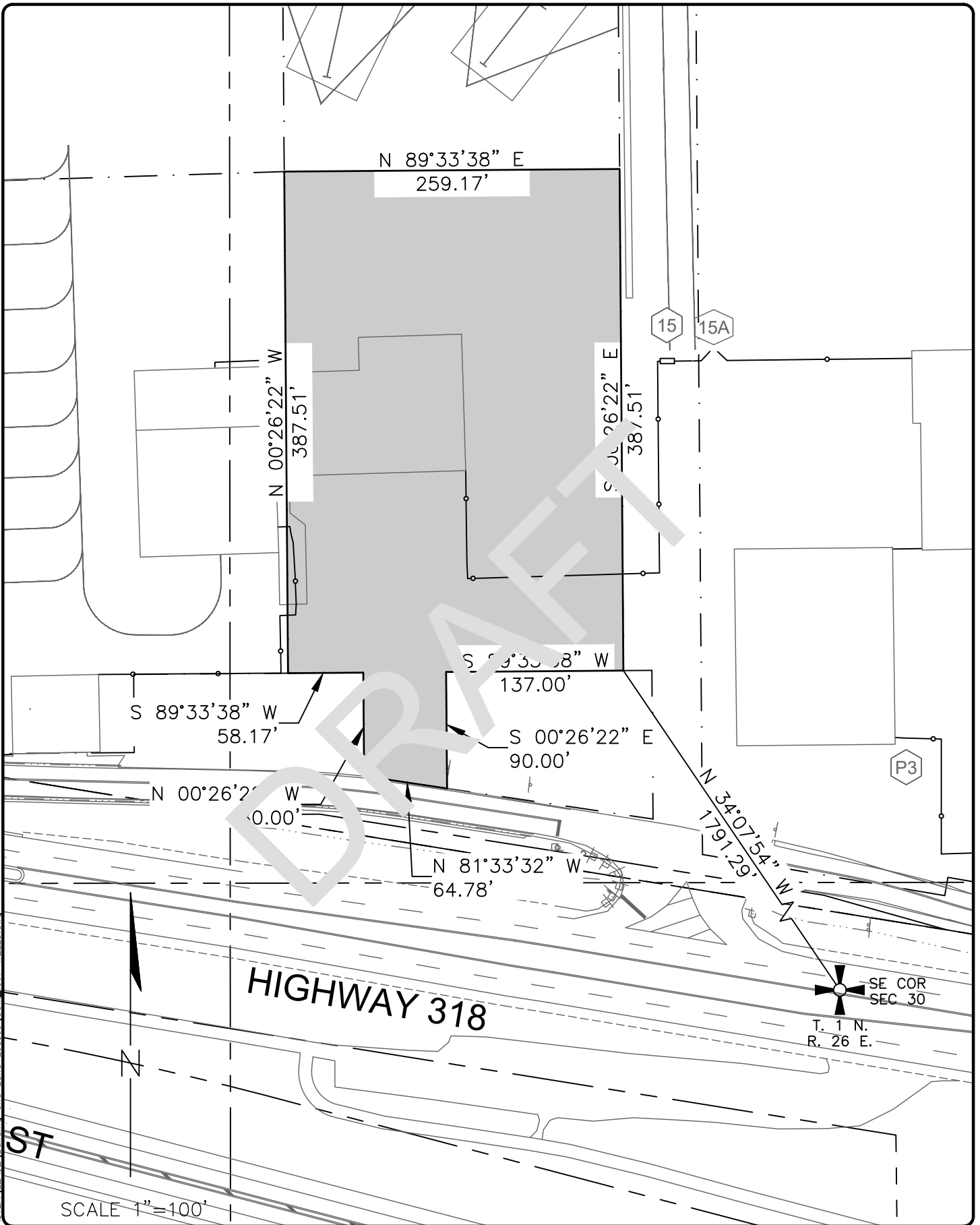
EXHIBIT A 1 of 3



315 N. 25th Street, Suite 102  
Billings, MT 59101  
Phone: 406.656.6000  
Fax: 406.237.1201

ISSUE DATE: APRIL 2025

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COMMERCIAL LOT 4 - WELLS  
LEASE

AVIATION AND TRANSIT DEPARTMENT-CITY OF BILLINGS

EXHIBIT A 2 of 3

**Morrison  
Maierle**

315 N. 25th Street, Suite 102  
Billings, MT 59101  
Phone: 406.656.6000  
Fax: 406.237.1201

ISSUE DATE: APRIL 2025

# DESCRIPTION

## Main Parcel

Commencing at the Southeast Corner of Section 30, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana; thence N 34°07'54" W a distance of 1791.29 feet to the Point of Beginning; thence S 89°33'38" W a distance of 137.00 feet; thence S 00°26'22" E a distance of 90.00 feet; thence N 81°33'32" W a distance of 64.78 feet; thence N 00°26'22" W a distance of 80.00 feet; thence S 89°33'38" W a distance of 58.17 feet; thence N 00°26'22" W a distance of 387.51 feet; thence N 89°33'38" E a distance of 259.17 feet; thence S 00°26'22" E a distance of 387.51 feet to the Point of Beginning.

Said Commercial Lot 4 containing 105,370.01 square feet.

DRAFT

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COMMERCIAL LOT 4 – WELLS  
LEASE

AVIATION AND TRANSIT DEPARTMENT—CITY OF BILLINGS

EXHIBIT A 3 of 3

 **Morrison  
Maierle**

315 N. 25th Street, Suite 102  
Billings, MT 59101  
Phone: 406.656.6000  
Fax: 406.237.1201

ISSUE DATE: APRIL 2025

## City Council Regular

**Date:** 06/09/2025  
**Title:** Acceptance of FEMA Hazard Mitigation Grant Award - Increment 1  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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### RECOMMENDATION

Staff recommends the City Council authorize the Mayor to sign the FEMA Hazard Mitigation Grant Program award letter for Increment 1 of the grant. The award amount is \$749,901.12 from FEMA and \$1,774,500.00 from the State of Montana Disaster Emergency Services Resiliency Funds to cover the non-federal match.

### BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The award from the FEMA Hazard Mitigation Grant Program will serve two purposes for the City of Billings. First, the City of Billings will be able to construct a diversion structure from the BBWA Canal into the West End Water Treatment Plant and reservoirs. Second, the grant will address potential flooding by automating the headgates at the BBWA Canal and installing three additional diversion structures throughout Billings to offload water in the event of flooding or other disaster.

The first increment awarded by FEMA in this letter will allow the City to begin construction on the Canyon Creek unloader, while the remainder of the grant is sent for Federal Congressional approval (an additional \$4,381,250.94 project cost). Additionally, the State of Montana will cover the non-federal portion of the match required by FEMA.

The BBWA Canal has historically had multiple flooding issues and has the potential to create landslides where it enters the tunnel in the Rimrocks north of downtown. Due to the potential for high-cost damages, the ability to divert water as quickly as possible to mitigate water damages and landslides will benefit the City immensely. Currently, the City does not have other funding sources to address this issue.

### ALTERNATIVES

City Council may:

- Authorize the Mayor to execute the FEMA HMGP Increment 1 Grant; or,
- Do not authorize the Mayor to execute the FEMA HMGP Increment 1 Grant. If the Grant is not signed, the City will not have the funding to connect to the BBWA Canal for the WEWTP or divert water to protect against flooding along the BBWA.

### FISCAL EFFECTS

The City of Billings will not be required to meet the non-Federal match portion of the grant as agreed in the original application. Instead, the State of Montana will cover the City's match portion. These match funds would have come from Water and General Funds.

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### Attachments

Increment 1 Award Letter FEMA HMGP



**Hazard Mitigation Grant Program**  
**DR4655**

City of Billings  
Public Works  
2251 Belknap Avenue  
Billings, MT 59101

Mrs. Debi Meling,

Congratulations, on behalf of Montana Disaster and Emergency Services (MT DES). Your application for financial assistance submitted under **DR-4655-04** has been approved for in the amount of **\$2,524,401.12**. The federal amount of increment I is **\$749,901.12**. The State of Montana is using Resiliency Funds to cover the City's match for increments I, II, and III in the amount of **\$1,774,500.00**.

Before you request and receive any of the Federal funds awarded, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligating Document for Award (attached to this Award Letter)

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award. In order to establish acceptance of the award and its terms, please complete, sign and return the Obligating Document for Award to MT DES.

For additional assistance, please contact SHMO Sara Hartley at 406-417-9238 or [sara.hartley@mt.gov](mailto:sara.hartley@mt.gov).

Sincerely,

**Jake Ganieany** Digitally signed by Jake Ganieany  
Date: 2025.05.20 09:45:17 -06'00'

Jake Ganieany  
Recovery/Mitigation Bureau Chief - AGAR  
Montana Disaster and Emergency Services



## AGREEMENT ARTICLES

**SUB-RECIPIENT:** City of Billings Public Works  
**PROGRAM:** DR-4655-04  
**AGREEMENT NUMBER:** DR-4655-4R

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## ARTICLE DESCRIPTION

- Article 1 Assurances, Administrative Requirements, Cost Principles, Representations, and Certifications. Recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non- Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the federal awarding agency.
- Article 2 General Acknowledgements and Assurances Recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in effect as of the federal award date and located at 2 C.F.R. Part 200 and adopted by DHS at 2 C.F.R. § 3002.10. All recipients and subrecipients must acknowledge and agree to provide DHS access to records, accounts, documents, information, facilities, and staff pursuant to 2 C.F.R. § 200.337. I. Recipients must cooperate with any DHS compliance reviews or compliance investigations. II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities and personnel. III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements required by law, federal regulation, Notice of Funding Opportunity, federal award specific terms and conditions, and/or federal awarding agency program guidance. V. Recipients must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receiving the Notice of Award for the first award under which this term applies. Recipients of multiple federal awards from DHS should only submit one completed tool for their organization, not per federal award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active federal award, not every time a federal award is made. Recipients must submit the completed tool, including supporting materials, to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov). This tool clarifies the civil rights obligations and related reporting requirements contained in these DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. DHS Civil Rights Evaluation Tool | Homeland Security. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension to the 30-day deadline if the recipient identifies steps and a timeline for

completing the tool. Recipients must request extensions by emailing the request to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov) prior to expiration of the 30-day deadline.

- Article 3 Acknowledgement of Federal Funding from DHS Recipients must acknowledge their use of federal award funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal award funds.
- Article 4 Activities Conducted Abroad Recipients must coordinate with appropriate government authorities when performing project activities outside the United States obtain all appropriate licenses, permits, or approvals.
- Article 5 Age Discrimination Act of 1975 Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (codified as amended at 42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.
- Article 6 Americans with Disabilities Act of 1990 Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.
- Article 7 Best Practices for Collection and Use of Personally Identifiable Information Recipients who collect personally identifiable information (PII) as part of carrying out the scope of work under a federal award are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.
- Article 8 Civil Rights Act of 1964 – Title VI Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA’s implementing regulations at 44 C.F.R. Part 7.
- Article 9 Civil Rights Act of 1968 Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284 (codified as amended at 42 U.S.C. § 3601 et seq.) which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units— i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)
- Article 10 Copyright Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 to any work first produced under federal awards and also include an acknowledgement that the work was produced under a federal award (including the federal award number and federal awarding agency). As detailed in 2 C.F.R. § 200.315, a federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and to authorize

others to do so.

- Article 11 Debarment and Suspension Recipients must comply with the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689 set forth at 2 C.F.R. Part 180 as implemented by DHS at 2 C.F.R. Part 3000. These regulations prohibit recipients from entering into covered transactions (such as subawards and contracts) with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
- Article 12 Drug-Free Workplace Regulations Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government- wide implementation (2 C.F.R. Part 182) of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).
- Article 13 Duplicative Costs Recipients are prohibited from charging any cost to this federal award that will be included as a cost or used to meet cost sharing or matching requirements of another federal award in either the current or a prior budget period. (See 2 C.F.R. §200.403(f)). However, recipients may shift costs that are allowable under two or more federal awards where otherwise permitted by federal statutes, regulations, or the federal financial assistance award terms and conditions.
- Article 14 Education Amendments of 1972 (Equal Opportunity in Education Act) –Title IX Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (codified as amended at 20 U.S.C. §1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA’s implementing regulations at 44 C.F.R. Part 19.
- Article 15 E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety Recipient State, Tribal, local, or territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. Recipient State, Tribal, local, or territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.
- Article 16 Energy Policy and Conservation Act Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. §6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
- Article 17 False Claims Act and Program Fraud Civil Remedies Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§ 3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)
- Article 18 Federal Debt Status All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)
- Article 19 Federal Leadership on Reducing Text Messaging while Driving Recipients are encouraged to adopt and enforce policies that ban text messaging while driving recipient-owned, recipient-rented, or privately owned vehicles when on official government business or when performing any work for or on behalf of the Federal Government. Recipients are also encouraged to conduct the initiatives of the type described in Section 3(a) of E.O. 13513.
- Article 20 Fly America Act of 1974 Recipients must comply with Preference for U.S. Flag Air Carriers (a list of certified air carriers can be found at: [Certificated Air Carriers List | US Department of Transportation, https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list](https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list)) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
- Article 21 Hotel and Motel Fire Safety Act of 1990 Recipients must ensure that all conference, meeting, convention, or training space funded entirely or in part by federal award funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a.

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|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Article 22 | John S. McCain National Defense Authorization Act of Fiscal Year 2019 Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. The statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors– prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.                                                                                                                                                                                                                         |
| Article 23 | Limited English Proficiency (Civil Rights Act of 1964, Title VI) Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <a href="https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited">https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited</a> and additional resources on <a href="http://www.lep.gov">http://www.lep.gov</a> . |
| Article 24 | Lobbying Prohibitions Recipients must comply with 31 U.S.C. § 1352 and 6 C.F.R. Part 9, which provide that none of the funds provided under a federal award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification. Per 6 C.F.R. Part 9, recipients must file a lobbying certification form as described in Appendix A to 6 C.F.R. Part 9 or available on Grants.gov as the Grants.gov Lobbying Form and file a lobbying disclosure form as described in Appendix B to 6 C.F.R. Part 9 or available on Grants.gov as the Disclosure of Lobbying Activities (SF-LLL).                |
| Article 25 | National Environmental Policy Act Recipients must comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.                                                                                                                                                                                                                             |
| Article 26 | Nondiscrimination in Matters Pertaining to Faith-Based Organizations It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.                                                                                                                                                                                                                                                                                                                   |
| Article 27 | Non-Supplanting Requirement Recipients of federal awards under programs that prohibit supplanting by law must ensure that federal funds supplement but do not supplant non-federal funds that, in the absence of such federal funds, would otherwise have been made available for the same purpose.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Article 28 | Notice of Funding Opportunity Requirements All the instructions, guidance, limitations, scope of work, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this federal award are incorporated by reference. All recipients must comply with any such requirements set forth in the NOFO. If a condition of the NOFO is inconsistent with these terms and conditions and any such terms of the Award, the condition in the NOFO shall be invalid to the extent of the inconsistency. The remainder of that condition and all other conditions set forth in the NOFO shall remain in effect.                                                                                                                                                                                                                                                                                                |
| Article 29 | Patents and Intellectual Property Rights Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq. and applicable regulations governing inventions and patents, including the regulations issued by the Department of Commerce at 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts, and Cooperative Agreements) and the standard patent rights clause set forth at 37 C.F.R. § 401.14.                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Article 30 | Procurement of Recovered Materials States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962) and 2 C.F.R. § 200.323. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.                                                                                                                                                                                                                                                                                                        |

- Article 31      Rehabilitation Act of 1973 Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified as amended at 29 U.S.C. § 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- Article 32      Reporting of Matters Related to Recipient Integrity and Performance If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of the federal award, then the recipient must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated by reference.
- Article 33      Reporting Subawards and Executive Compensation For federal awards that equal or exceed \$30,000, recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation set forth at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated by reference.
- Article 34      Required Use of American Iron, Steel, Manufactured Products, and Construction Materials Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. Waivers, when necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. (a) When the Federal agency has determined that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described as “Buy America” Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov. Definitions The definitions applicable to this term are set forth at 2 C.F.R. § 184.3, the full text of which is incorporated by reference.
- Article 35      SAFECO Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. The SAFECOM Guidance is updated annually and can be found at Funding and Sustainment | CISA.
- Article 36      Terrorist Financing Recipients must comply with E.O. 13224 and applicable statutory prohibitions on transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible for ensuring compliance with the E.O. and

laws.

- Article 37      Trafficking Victims Protection Act of 2000 (TVPA) Recipients must comply with the requirements of the government-wide financial assistance award term which implements Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 106 (codified as amended at 22 U.S.C. § 7104). The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated by reference.
- Article 38      Universal Identifier and System of Award Management Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated reference.
- Article 39      USA PATRIOT Act of 2001 Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§175–175c.
- Article 40      Use of DHS Seal, Logo and Flags Recipients must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.
- Article 41      Whistleblower Protection Act Recipients must comply with the statutory requirements for whistleblower protections at 10 U.S.C § 4701 41 U.S.C. § 4712.
- Article 42      Environmental Planning and Historic Preservation (EHP) Review DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the recipient to comply with all federal, state and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. General guidance for FEMA’s EHP process is available on the DHS/FEMA Website at: <https://www.fema.gov/grants/guidance-tools/environmental-historic>. Specific applicant guidance on how to submit information for EHP review depends on the individual grant program and applicants should contact their grant Program Officer to be put into contact with EHP staff responsible for assisting their specific grant program. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archaeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.
- Article 43      Applicability of DHS Standard Terms and Conditions to Tribes the DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to sub-recipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.
- Article 44      Acceptance of Post Award Changes In the event FEMA determines that an error in the award package has been made, or if an administrative change must be made to the award package, recipients will be notified of the change in writing. Once the notification has been made, any subsequent requests for funds will indicate recipient acceptance of the changes to the award. Please call FEMA Grant Management Operations at (866) 927-5646 or via e-mail to: [ASK-GMD@fema.dhs.gov](mailto:ASK-GMD@fema.dhs.gov) if you have any questions.
- Article 45      Disposition of Equipment Acquired Under the Federal Award For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state sub-recipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state sub-recipients must follow the disposition requirements in accordance with state laws and procedures.

- Article 46 Prior Approval for Modification of Approved Budget Before making any change to the FEMA approved budget for this award, you must request prior written approval from FEMA where required by 2 C.F.R. section 200.308. For purposes of non-construction projects, FEMA is utilizing its discretion to impose an additional restriction under 2 C.F.R. section 200.308(f) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved. For purposes of awards that support both construction and non-construction work, FEMA is utilizing its discretion under 2 C.F.R. section 200.308(h)(5) to require the recipient to obtain prior written approval from FEMA before making any fund or budget transfers between the two types of work. You must report any deviations from your FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.
- Article 47 Indirect Cost Rate 2 C.F.R. section 200.211(b)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.
- Article 48 Clean Water Act (CWA) The project may require a Section 404 permit from the Corps of Engineers. The City of Billings Public Works shall consult with USACE regulatory office to determine project requirements. The City of Billings Public Works is responsible for obtaining any needed permits and verifying and complying with all permit requirements, including wetland mitigation, any permit conditions, pre-construction notification requirements, and regional conditions as provided by the Army Corps of Engineers. The City of Billings Public Works is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre-Construction Notification (PCN) conditions of applicable NWP. This is to include any requirements per the Montana Dept of Environmental Quality 401 Water Quality Certification for Clean Water Act permits.
- Article 49 State Hazardous Materials and Solid Waste Laws 1. All waste material associated with the project must be disposed properly and not placed in identified floodplains/floodways or wetland areas. 2. In the unlikely event a spill or leak would occur from the construction equipment within the project area, construction activities must cease, and Montana Department of Environmental Quality (DEQ) must be contacted regarding the appropriate procedure for handling any contaminated soils or water. 3. All solid and hazardous waste materials must be disposed of, managed, and transported in accordance with the guidelines outlined in Montana DEQ regulations.
- Article 50 National Historic Preservation Act (NHPA) 1. The City of Billings Public Works and/or its designated contractor is responsible for complying with the Cultural Resource Guidance for Material Sources stipulated by the Montana Historical Society. Any fill material used for back filling, grading or ground restoration for this project must be obtained on-site from within the project APE, from a permitted MT DEQ Open cut pit, or from previously approved sources (existing commercial sources, existing contractor or County Stockpiles); otherwise, additional coordination with FEMA and the MT SHPO will be required to obtain necessary approvals. Documentation must be supplied to FEMA at project closeout. Failure to comply with this requirement may jeopardize FEMA funding. 2. If discovery of unexpected cultural or historic resources occurs during construction, activities must immediately cease in the area of discovery. The applicant must notify FEMA and take all reasonable measures to avoid or minimize harm to the property until FEMA, in coordination with the SHPO, participating Tribe(s), and any other consulting parties can evaluate the discovery and the effects of the Undertaking on the resources.
- Article 51 State Water and Soil Laws 1. The Applicant is responsible for obtaining any required water quality permits from the Montana Department of Environmental Quality. This is to include, but not limited to, turbidity 318 Authorization permits and MPDES (Montana Pollutant Discharge Elimination System) storm water construction general permits. 2. The Applicant must coordinate with the Montana Dept of Environmental Quality and obtain appropriate Clean Water Act Section 401 Water Quality Certifications, as applicable. 3. The Applicant is responsible for coordinating with the MT DEQ Water Protection Bureau and obtaining a construction dewatering permit, as applicable. 4. Areas of ground disturbance will be re-vegetated with native grasses to minimize and/or control the potential for spreading of noxious weeds. Construction equipment must be decontaminated before and after construction activities to prevent spread of invasive species.
- Article 52 State Fish, Wildlife and Natural Heritage Laws The applicant is responsible for coordinating with Montana Fish, Wildlife and Parks and obtaining any necessary permits (FWP-SPA 124) prior to

construction, as applicable.

- Article 53      Migratory Bird Treaty Act (MBTA) Project activities have the potential to impact migratory birds and raptors. The proposed actions are subject to compliance with the Migratory Bird Treaty Act (MBTA). In accordance with US Fish and Wildlife (USFWS) guidelines, the sub-applicant is responsible for obtaining and complying with any necessary permits from USFWS. To avoid impacts to migratory birds and raptors, the project area must be inspected for nesting activity prior to the start of work. If active nests are discovered, the Montana Ecological Services Field Office must be contacted. Appropriate USFWS buffer zones and/or seasonal restrictions may be required. Alternatively, work can be completed outside of the nesting season (generally April 15 through August 31). For more specific information on nesting season dates, please contact the USFWS Montana Ecological Services Field Office.
- Article 54      Bald and Golden Eagle Protection Act (BGEPA) Project activities have the potential to impact migratory birds and raptors. The proposed actions are subject to compliance with the Bald and Golden Eagle Protection Act (BGEPA). In accordance with US Fish and Wildlife (USFWS) guidelines, the sub-applicant is responsible for obtaining and complying with any necessary permits from USFWS. To avoid impacts to migratory birds and raptors, the project area must be inspected for nesting activity prior to the start of work. If active nests are discovered within action area line of sight, the Montana Ecological Services Field Office and FEMA must be contacted. Appropriate USFWS buffer zones and/or seasonal restrictions may be required. Alternatively, work can be completed outside of the nesting season. For eagles in Montana the nesting season exclusion dates are February 1 - August 15th. If work must occur February 1 - August 15th, the sub-applicant must follow the Montana Bald Eagle Management Guidelines: An Addendum to Montana Bald Eagle Management Plan (1994). The guidelines can be found at: [https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wildlife-reports/bald-eagle/bald-eagle-guidelines-final-5\\_05\\_10.pdf](https://fwp.mt.gov/binaries/content/assets/fwp/conservation/wildlife-reports/bald-eagle/bald-eagle-guidelines-final-5_05_10.pdf)
- Article 55      Endangered Species Act (ESA) The City of Billings Public Works must implement the following construction best management practices and other minimization measures outlined in Section 1.3 of the Biological Assessment dated August 4, 2023: 1. Minimize disturbance to ground cover and vegetation within known Ute Ladies'-tresses habitats. Where possible use existing roads and trails. 2. Avoid bringing in non-native seed on vehicles and equipment. 3. Minimize temporary ground/vegetation clearing within and outside the construction limits. 4. Disturbed soils and native vegetation should be segregated and salvaged for re-planting and restoration efforts wherever feasible. 5. Clean all machinery and equipment prior to entering the project site. 6. Removal/disturbance of Ute Ladies'-tresses habitat should be avoided during the time of year when they are inflorescence (generally a span of about three to four weeks in mid-August to early-September).
- Article 56      Executive Order 11988 - Floodplains A Floodplain Development Permit must be obtained from the City of Billings Public Works Floodplain Administrator and/or designated County official.
- Article 57      Executive Order 11990 - Wetlands 1. To minimize impacts to wetlands, appropriate erosion and sediment control measures will be installed to control the discharge of pollutants from the construction site. 2. Impacts to jurisdictional wetlands must be addressed in compliance with Section 404 of the Clean Water Act. Wetland impacts will be mitigated through purchase of credits from a wetland mitigation bank or other approved method designated by USACE. 3. Reseeding and replanting of any disturbed areas shall be incorporated into the project design.
- Article 58      NEPA Condition 1 1. Construction noise levels will be minimized by ensuring that construction equipment is equipped with a recommended muffler in good working order or implementation of other appropriate measures. Impact to noise levels could be minimized by limiting construction activities that occur during early morning or late evening hours. 2. To mitigate for fugitive dust during construction, periodic watering of active construction areas, particularly in areas close to sensitive receptors (e.g., hospitals, senior citizen homes, and schools) will be implemented. 3. To minimize any potential hazards to occupational health and safety, construction workers and equipment operators are required to wear appropriate PPE and to be properly trained for the work being performed.
- Article 59      Standard Condition #1 Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- Article 60      Standard Condition #2 This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

Article 61

Standard Condition #3 If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

## **Obligating Document for Award**

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|                                                                                                                                                                                                                               |                                                                                                                      |                                                                                                                 |                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| AGREEMENT NUMBER:<br><br>FM-5324-DR-4655-04                                                                                                                                                                                   | SUB-RECIPIENT NAME AND ADDRESS:<br><br>City of Billings<br>Public Works<br>2251 Belknap Avenue<br>Billings, MT 59101 |                                                                                                                 | ISSUING STATE OFFICE AND ADDRESS:<br><br>Montana Disaster and Emergency Services<br>P.O. Box 4789<br>1956 MT Majo Street<br>Fort Harrison, MT 59636-4789 |
| AMENDMENT                                                                                                                                                                                                                     |                                                                                                                      |                                                                                                                 |                                                                                                                                                          |
| NAME OF SUB-RECIPIENT AUTHORIZED REPRESENTATIVE:<br><br>Debi Meling<br>Public Works Director                                                                                                                                  | SUB-RECIPIENT AUTHORIZED REPRESENTATIVE CONTACT INFORMATION:<br><br>406-657-3097                                     | MT DES Authorized Organization Representative:<br><br>SHMO Sara Hartley                                         |                                                                                                                                                          |
| EFFECTIVE DATE OF THIS ACTION:05/20/2025                                                                                                                                                                                      | METHOD OF PAYMENT:<br><br>EFT                                                                                        | NAME AND CONTACT INFORMATION OF MT DES GRANT COORDINATORS:                                                      |                                                                                                                                                          |
| FEDERAL AWARD AMOUNT: \$749,901.12 (Increment I)<br><br>LOCAL MATCH AMOUNT: \$0.00<br><br>RESILIENCY FUNDING: \$1,774,500.00 (Increments I,II,III)<br><br>TOTAL PROJECT COST: \$2,524,401.12                                  |                                                                                                                      | PERIOD OF PERFORMANCE:<br>From:06/16/2022 To:13/13/2026<br><br>Budget Period:<br>From: 06/16/2022 To:12/13/2026 |                                                                                                                                                          |
| ASSISTANCE ARRANGEMENT:<br><br>Cost Reimbursement                                                                                                                                                                             | CFDA #:<br>97.039                                                                                                    |                                                                                                                 |                                                                                                                                                          |
| SUB-RECIPIENT SIGNATORY OFFICIAL (Name and Title)                                                                                                                                                                             |                                                                                                                      |                                                                                                                 | DATE                                                                                                                                                     |
| SUB-RECIPIENT AUTHORIZED REPRESENTATIVE (Name and Title)                                                                                                                                                                      |                                                                                                                      |                                                                                                                 | DATE                                                                                                                                                     |
| MT DES SIGNATORY (Name and Title)<br><b>Jake Ganieany</b> Digitally signed by Jake Ganieany<br>Date: 2025.05.20 09:45:50 -06'00'<br>Jake Ganieany, Recovery/Mitigation Bureau Chief, Authorized Organizational Representative |                                                                                                                      |                                                                                                                 | DATE                                                                                                                                                     |

**Date:** 06/09/2025  
**Title:** Donation of Funds for Pioneer Park Basketball Court Project  
**Presented by:** Brad Wright  
**Department:** Parks/Rec/Public Lands  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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#### **RECOMMENDATION**

PRPL requests City Council consent to accept and utilize funds donated from Partners 4 Parks to build a basketball court in Pioneer Park. Partners for Parks will donate up to \$100,000 towards project costs. They have also taken advantage of the matching grant program through the Parks Department in which they were awarded \$29,549.00. This brings the total construction funds to \$129,549.00.

#### **BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

Partners for Parks has fund raised throughout the city to construct a new basketball court in Pioneer Park. The court will replace the under-utilized little league ball field in the southwest corner of the park. Through verbal public canvassing, Partners for Parks and the Kaden's Court Committee found the public is strongly in favor of the court. Pioneer Park currently does not have a basketball court.

#### **STAKEHOLDERS**

PRPL  
City of Billings  
Pioneer Park  
City of Billings Residents

#### **ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve

#### **FISCAL EFFECTS**

Funding for this project will be covered by up to \$100,000 donation from Partners for Parks and \$29,549 from the Parks FY25 budget using designated matching grant program funds. PRPL does not expect to hire any FTEs. Any additional work added because of the improvements should still be handled in the allotted time that a park employee is already onsite.

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#### **Attachments**

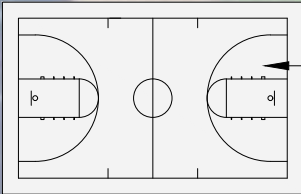
Construction Drawings



EXISTING TENNIS COURTS

PIONEER PARK

3RD STREET WEST



LOCATE COURT IN  
SOUTHWEST CORNER  
OF PIONEER PARK

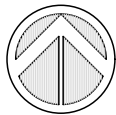
COORDINATE EXACT  
LOCATION OF COURT  
WITH PARKS' STAFF

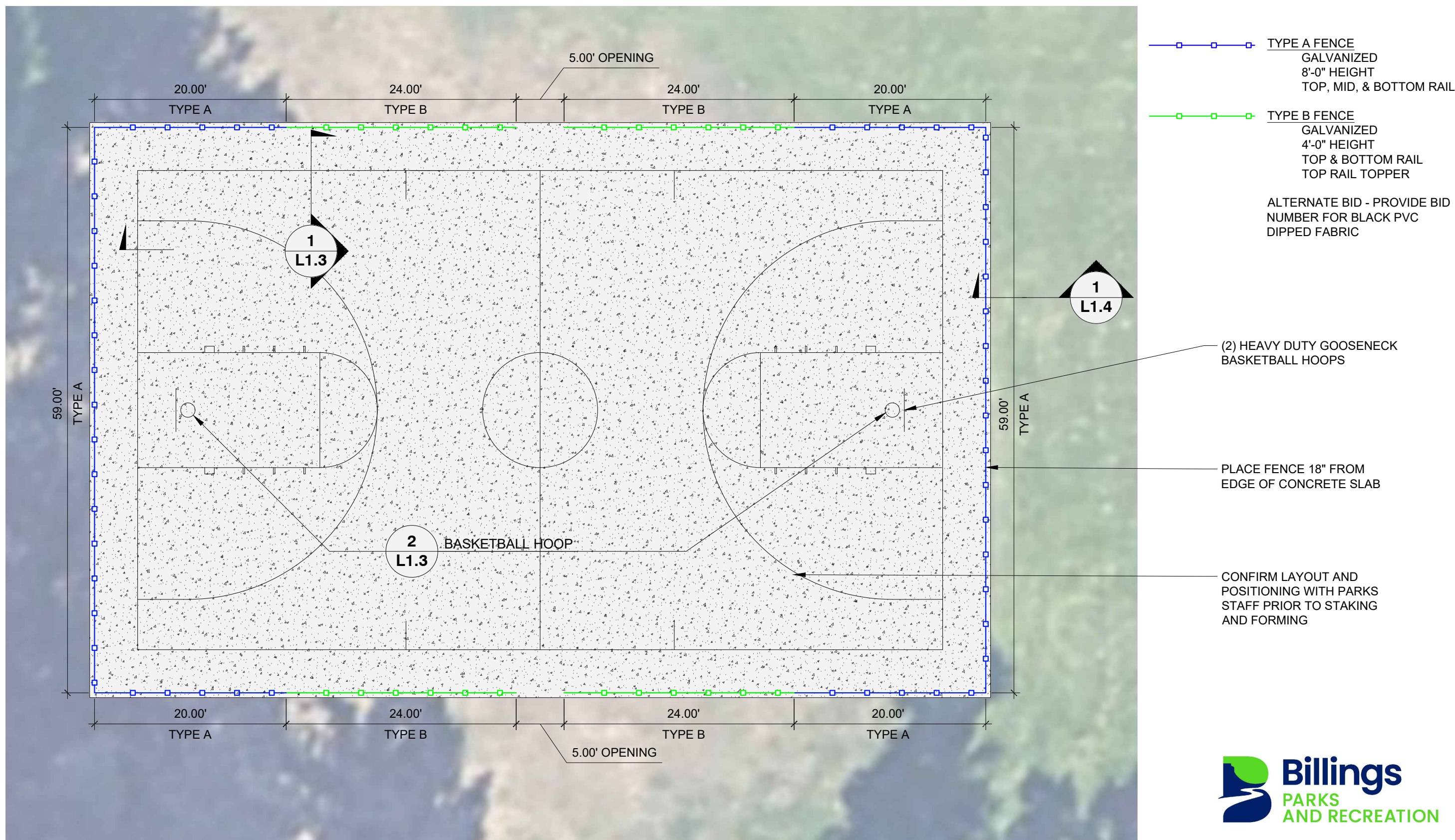
SENIOR HIGH SCHOOL  
TRACK AND FIELD



PIONEER PARK BASKETBALL COURT

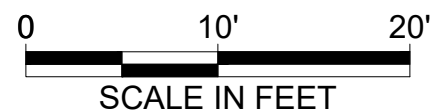
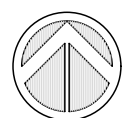
L1.1 - BID EXHIBIT  
COURT LOCATION  
MAY 22, 2025

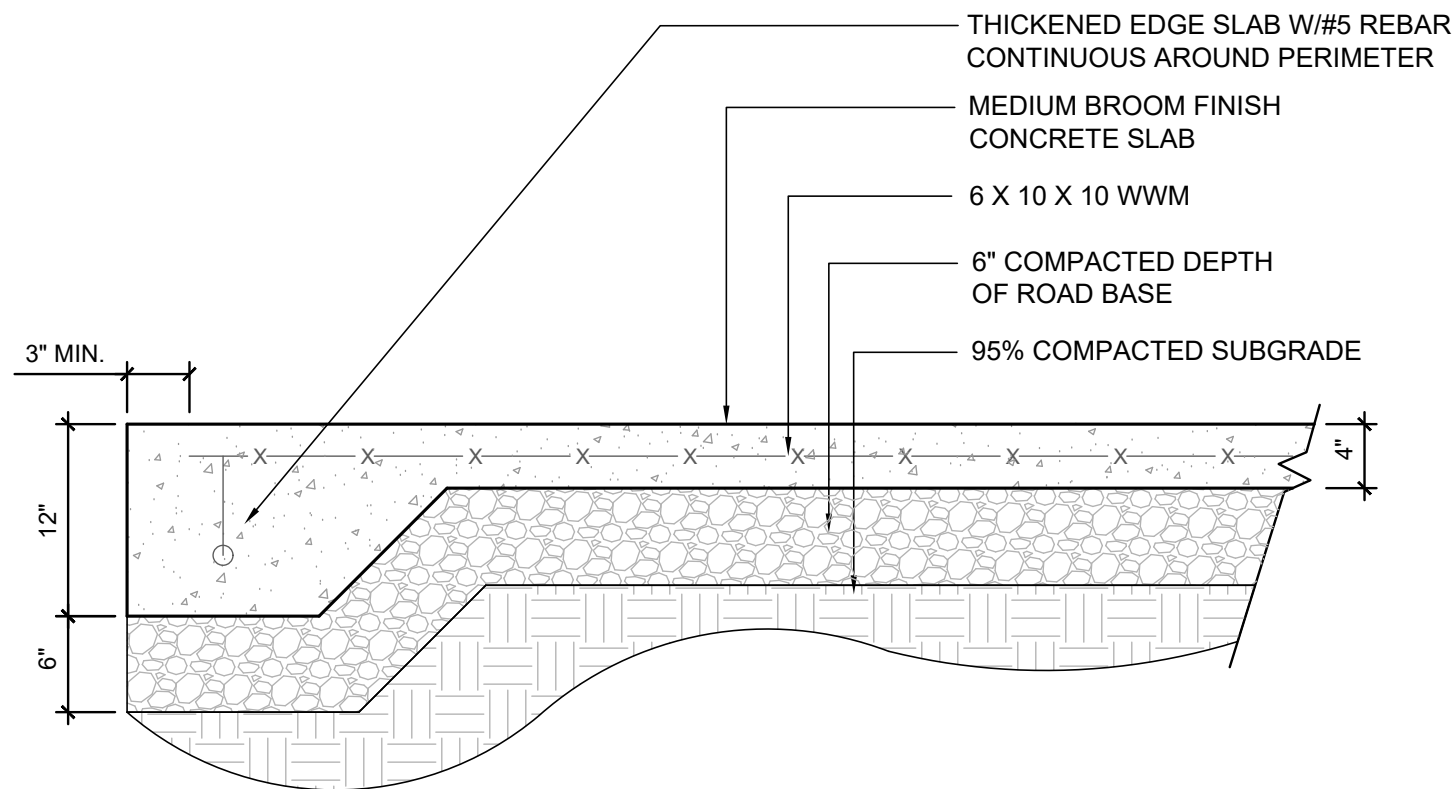




# PIONEER PARK BASKETBALL COURT

L1.2 - BID EXHIBIT  
COURT LAYOUT  
MAY 22, 2025

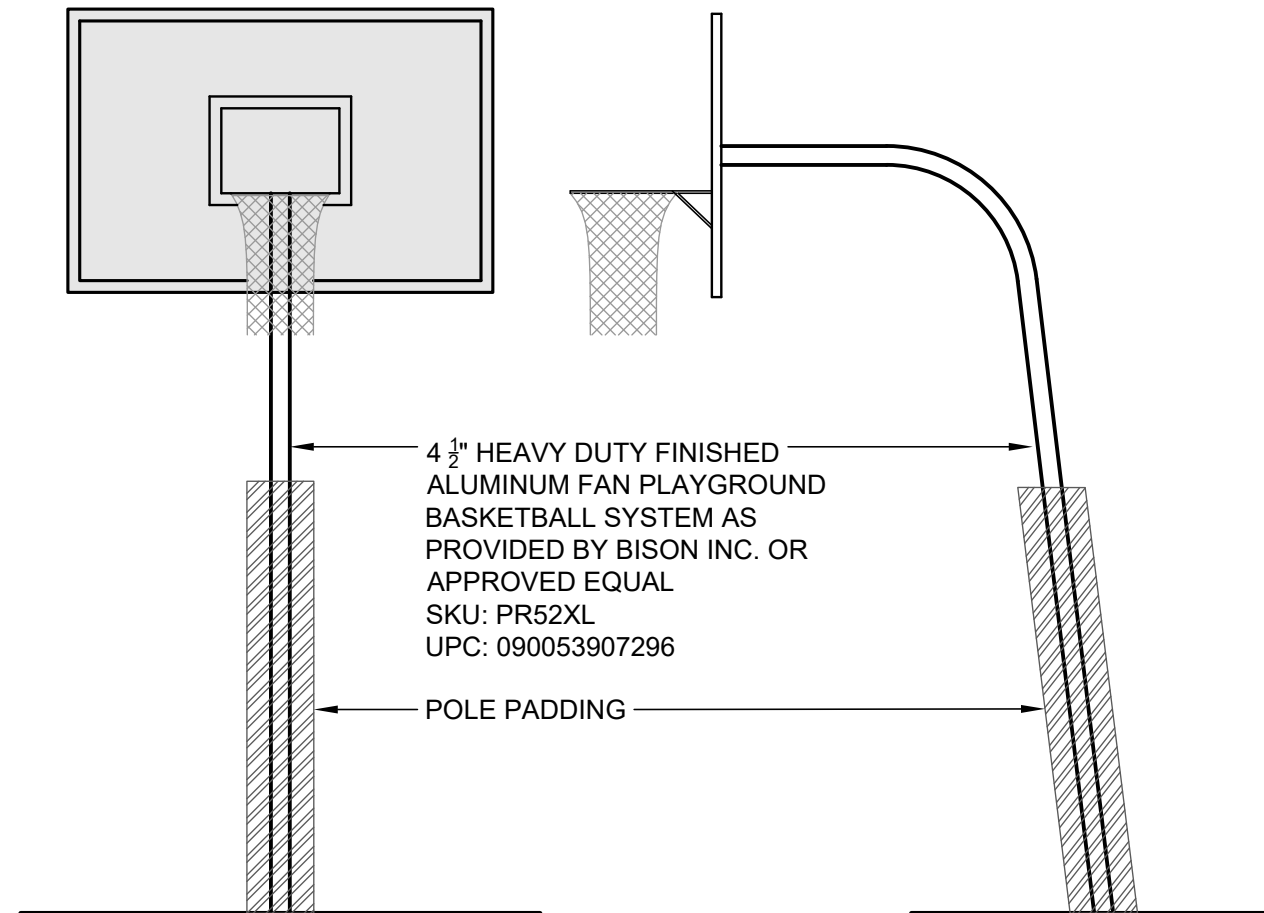




**1** CONCRETE COURT PAVING

1" = 1'-0"

P-CO-SPO-23



**2** BASKETBALL HOOP

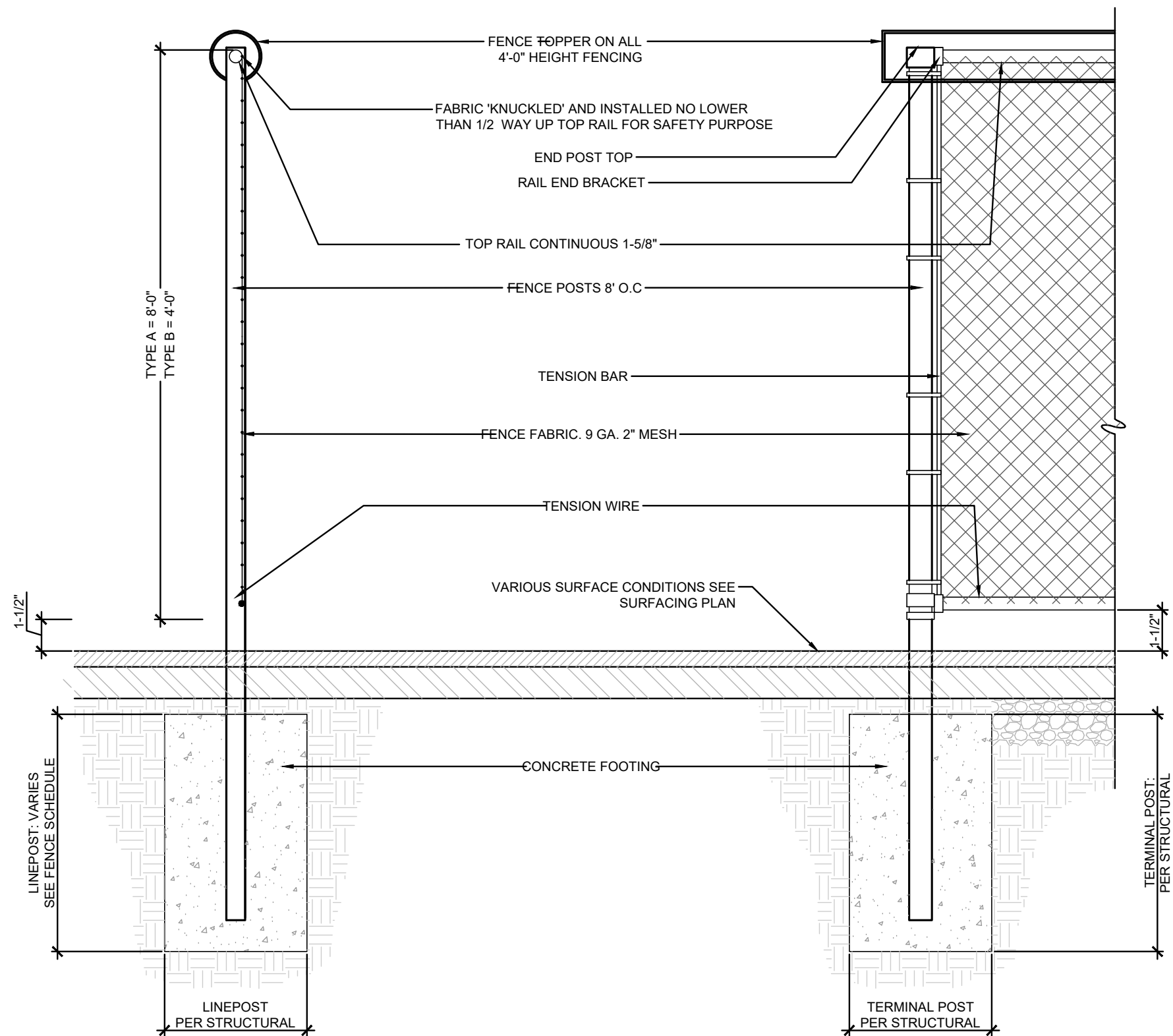
3/8" = 1'-0"

P-CO-SPO-24

## PIONEER PARK BASKETBALL COURT

L1.3 - BID EXHIBIT  
COURT DETAILS  
MAY 22, 2025





1 CHAINLINK FENCE  
NTS

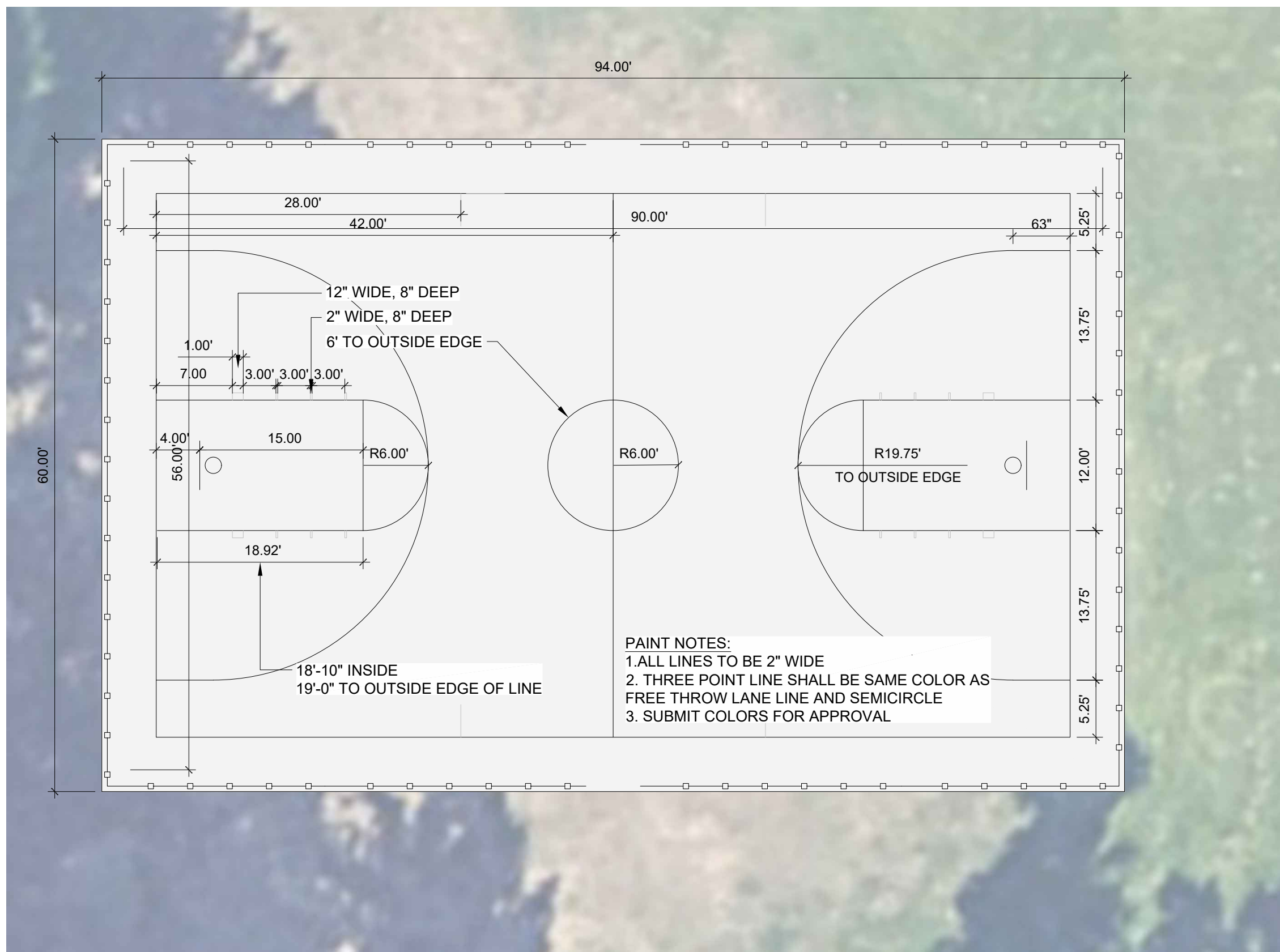
P-CO-KAD-01



# PIONEER PARK BASKETBALL COURT

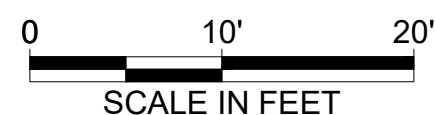
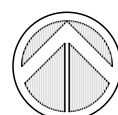
L1.4 - BID EXHIBIT  
COURT DETAILS  
MAY 22, 2025





# PIONEER PARK BASKETBALL COURT

L1.5 - BID EXHIBIT  
COURT PAINTING LAYOUT  
MAY 22, 2025



**City Council Regular**

**Date:** 06/09/2025  
**Title:** Acceptance of Perpetual Right-of-Way Easement for Western Sky Drive from Big Island, LLC.  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Template Contract  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that City Council accept the perpetual right-of-way easement for the development of the eastern portion of Western Sky Drive from Big Island, LLC.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

Previously, Western Sky Subdivision, 2nd Amended, dedicated public road right-of-way for the development of Western Sky Drive on the south side of King Avenue West. At the time, Western Sky Subdivision didn't dedicate the full right-of-way necessary for the street as 20 feet of the right-of-way to the east was not within the ownership control of the Developer at the time. However, the adjacent development on the east side of Western Sky Drive (Big Island, LLC.) is now providing the remaining perpetual right-of-way easement to allow for the completion of Western Sky Drive. Acceptance of the easement by City Council allows the completion of the remaining public street improvements on the east side of Western Sky Drive by the Big Island, LLC., at no cost to the City.

**ALTERNATIVES**

City Council may:

- Accept the perpetual right-of-way easement; or,
- Not accept the perpetual right-of-way easement. If the easement is not accepted, public improvements required to complete a portion of Western Sky Drive cannot be completed adjacent to the Big Island development.

**FISCAL EFFECTS**

There is no significant financial impact to the City with the acceptance of the perpetual right-of-way easement.

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**Attachments**

Big Island LLC Perpetual Right of Way Easement

Return To:

City of Billings – Engineering Division  
316 N 26<sup>th</sup> Street  
5<sup>th</sup> Floor  
Billings, MT 59101

### PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this 19<sup>th</sup> day of May, 2025, the undersigned,

Cal Kunkel, being a duly authorized representative of **Big Island LLC** of 2729 Aspen Way, Billings, MT 59106, the address of hereinafter called “Grantors”, hereby grant and convey unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called “Grantee”, a perpetual easement and right-of-way over, across, under and through real property as shown on the included Exhibit A, more particularly described as follows, to-wit:

**Commencing at the northwest corner of Lot 1-A of the Amended Plat of Lots 1, 3, and 4, Block 1, Western Subdivision, being situated in the NW ¼ of Section 15, Township 1 South, Range 25 E, P.M.M., Yellowstone County, Montana, being the Point of Beginning; thence S89° 31' 34"E a distance of 19.28 feet along the northern boundary of said Lot 1-A; thence S00° 09' 04"E a distance of 238.77 feet; thence a distance of 97.14 feet along a curve to the right having a chord bearing of S11° 27' 46"W and radius being 239.30 feet to a point being on the west boundary line of said Lot 1-A; thence N00° 07' 34"W a distance of 333.48 feet back to the Point of Beginning. As depicted in attached Exhibit A.**

**Said area containing 5,850 square feet (0.134 acres), more or less.**

This Perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing public roadway, curb and gutter, and sidewalk, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said improvements.

Grantors shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

1. Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as many be licensed by Grantee.
2. Grantors agree not to plant, nor cause to be planted within the easement right-of-way, any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
3. Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in



**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

The Mayor and City Council of the City of Billings acknowledges receipt and hereby accepts the property interest conveyed through this instrument.

\_\_\_\_\_  
Mayor, City of Billings

ATTEST: \_\_\_\_\_  
City Clerk

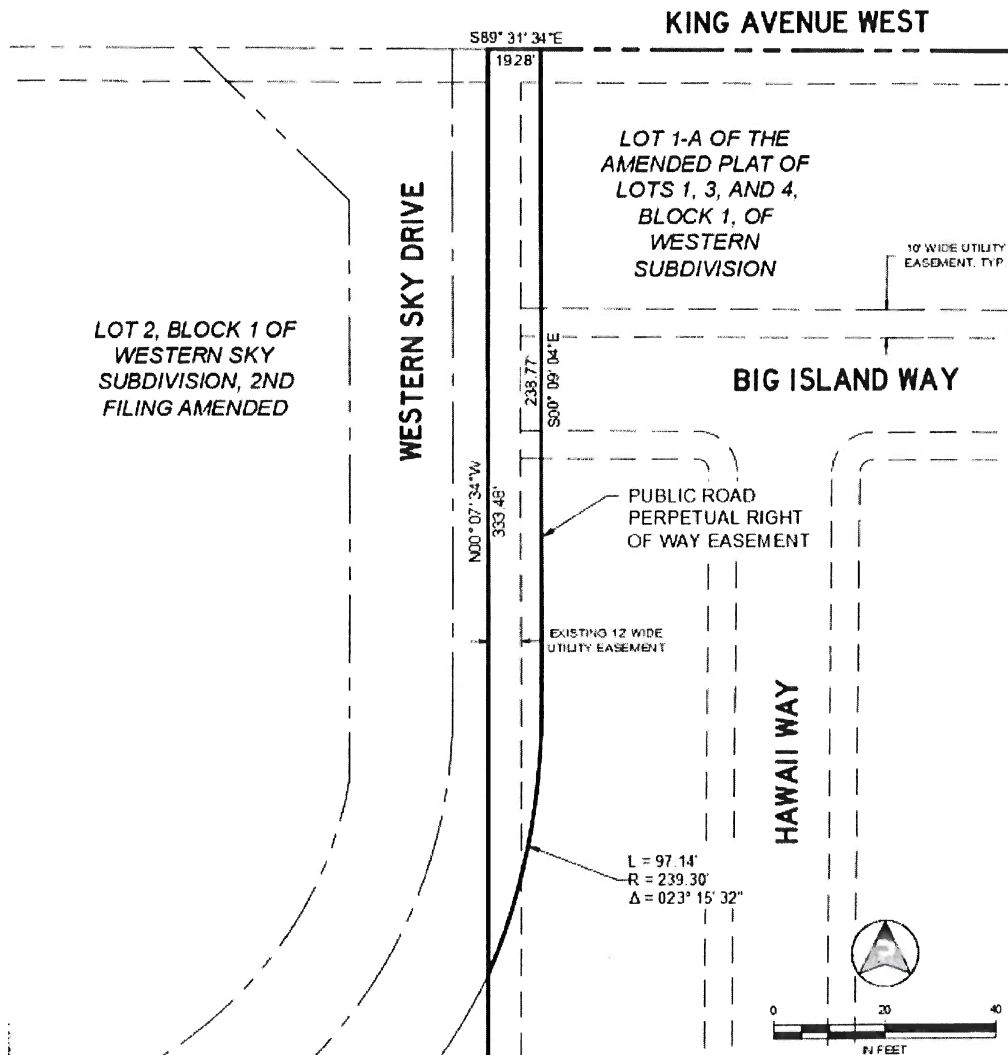
STATE OF MONTANA     )  
                                      :ss  
County of Yellowstone     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana

# EXHIBIT A



## City Council Regular

**Date:** 06/09/2025  
**Title:** Encroachment and Easement Agreement with Valley Federal Credit Union  
**Presented by:** Kevin Iffland, Assistant City Administrator  
**Department:** City Hall Administration  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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## RECOMMENDATION

Staff recommends City Council approval of the Encroachment and Easement Agreement between the City of Billings and Valley Federal Credit Union (Valley FCU).

## BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The City of Billings owns the City Hall Parcel, located in Block 58 of the Billings Original Townsite, which includes the Park 3 Parking Garage. A pedestrian Skybridge connects this City Hall Parcel to the Valley FCU Parcel, which consists of Lots 19-22 of the same block. The Skybridge encroaches upon and physically connects to the Valley FCU building.

The City has entered into a Purchase and Sale Agreement for the transfer of the City Hall Parcel, including the Park 3 Garage and Skybridge, to Honaker Realty, LLC and JWT Capital, LLC. To ensure clear terms for the shared use and responsibilities related to the Skybridge and its encroachment on the Valley FCU property, an Encroachment and Easement Agreement was negotiated.

This agreement formalizes mutual rights and responsibilities regarding access, maintenance, control, security, indemnity, and removal procedures for the Skybridge and its encroachment onto the Valley FCU Parcel. The document ensures orderly management of shared infrastructure and protects the City's and Valley FCU's interests.

This agreement is consistent with adopted policies for cooperative property management and supports the City's commitment to responsible asset disposition.

## STAKEHOLDERS

City of Billings  
Valley Federal Credit Union  
Honaker Realty, LLC and JWT Capital, LLC (purchasers of the City Hall Parcel)  
Downtown businesses and public patrons using Park 3 Garage and Skybridge

## ALTERNATIVES

City Council may:  
Approve the Encroachment and Easement Agreement as presented.  
Direct staff to revise specific terms within the agreement.  
Decline to approve the agreement, which may impact the pending sale of the City Hall Parcel and Skybridge.

## FISCAL EFFECTS

There are no direct fiscal costs associated with approving the agreement. However, the agreement assigns responsibility to the City (and successors) for maintenance of the Skybridge and related infrastructure. These costs are not anticipated to be significant in the short term and may be transferred with ownership during the sale of the City Hall Parcel. The agreement also includes indemnity provisions that protect both parties from damage caused by the other.

## SUMMARY

The Encroachment and Easement Agreement with Valley FCU is a proactive measure to address infrastructure shared between City property and private property prior to the transfer of ownership of the City Hall Parcel. The agreement protects access rights, assigns maintenance and liability responsibilities, and ensures clarity for future owners. Approval of this agreement will support the smooth completion of the City Hall Parcel sale and continued public and private cooperation in Downtown Billings.

---

Encroachment and Easement Agreement

## Attachments

Upon recording, return to:  
Bryce Burke  
Moulton Bellingham PC  
P.O. Box 2559  
Billings, MT 59103-2559  
Telephone (406) 248-7731

## **ENCROACHMENT AND EASEMENT AGREEMENT**

This Encroachment and Easement Agreement ("**Agreement**") is made effective \_\_\_\_\_, between **VALLEY FINANCIAL CREDIT UNION ("Valley")**, and **THE CITY OF BILLINGS, MONTANA ("City")**.

### **RECITALS**

- A. The City is the owner of certain real property located in Yellowstone County, Montana, more particularly described as follows:

BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 58, Lot 1 – 12.

The foregoing parcel shall be referred to as the "City Hall Parcel".

- B. The City Hall Parcel also contains the Park 3 Parking Garage, with an address of 210 North 27th Street, Billings, MT 59101.
- C. Valley is the owner of certain real property located in Yellowstone County, Montana, more particularly described as follows:

LOTS 19, 20, 21 AND ALL OF LOT 22, EXCEPT THAT PORTION THEREOF BEING A STRIP OF LAND ALONG THE SOUTH LINE OF SAID LOT 22, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 22, WHICH IS ALSO THE NORTHWEST CORNER OF LOT 23, AND RUNNING THENCE IN A NORTHERLY AND WESTERLY DIRECTION A DISTANCE OF THREE-TENTHS OF A FOOT AT RIGHT ANGLES TO THE LINE DIVIDING THE SAID LOT 22 FROM THE SAID LOT 23 AND RUNNING THENCE AT RIGHT ANGLES TO THE COURSE LAST AFORESAID AND IN A NORTHERLY DIRECTION A DISTANCE OF 140 FEET MORE OR LESS, TO THE NORTH AND EAST BOUNDARY LINE OF LOTS 22 AND 23 AFORESAID, AND RUNNING THENCE APPROXIMATELY AT RIGHT ANGLES TO THE COURSE LAST AFORESAID AND IN A SOUTHERLY AND EASTERLY

DIRECTION ALONG THE BOUNDARY LINE LAST DESCRIBED A DISTANCE OF THREE-TENTHS OF A FOOT, MORE OR LESS, TO THE SOUTHEAST CORNER OF LOT 22 AFORESAID WHICH IS ALSO THE NORTHEAST CORNER OF SAID LOT 23, AND RUNNING THENCE APPROXIMATELY AT RIGHT ANGLES TO THE COURSE LAST AFORESAID IN A WESTERLY AND SOUTHERLY DIRECTION ALONG THE LINE DIVIDING THE LOT 22 FROM THE SAID LOT 23, A DISTANCE OF 140 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING, IN BLOCK 58, OF TOWN OF BILLINGS, IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT #16312.

The foregoing parcel shall be referred to as the “Valley FCU Parcel”.

- D. A pedestrian Skybridge connects the building on the City Hall Parcel to the building on the Valley FCU Parcel. The City is the owner of the Skybridge and the City Hall Parcel and Valley acknowledges and agrees to the City’s ownership of the Skybridge. The skybridge connects the two properties through the alleyway between the properties.
- E. The City has entered into a purchase and sale agreement with Honaker Realty, LLC and JWT Capital, LLC for the purchase of the City Hall Parcel.
- F. The City intends to transfer ownership of the City Hall Parcel and the Skybridge to the purchasers of the City Hall Parcel.
- G. Valley and the City enter into this Agreement for the purpose of defining their respective rights and duties with respect to the Skybridge.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

### **AGREEMENT**

1. **Grant of Easement.** The City grants to Valley and its successors and assigns an access easement for Valley and its employees, guests, and invitees to use the Skybridge for the purpose of ingress and egress to and from the Park 3 Parking Garage on the City Hall Parcel over and through the Skybridge that connects to the Valley FCU Parcel. Through this easement, the City grants to Valley and its successors and assigns, employees, guests, and invitees, access to and from the Park 3 Garage and the Park 3 Parking Garage through the Skybridge. This easement shall be appurtenant to the City Hall Parcel. For the purposes of this easement, the Valley FCU Parcel is the “Dominant Estate”, and the City Hall Parcel is the “Servient Estate”.

2. **Skybridge Encroachment.** The Skybridge connects the Valley FCU Parcel to the City Hall Parcel. The Skybridge encroaches upon and is attached to the building on the Valley FCU Parcel. The encroachment or “Encroachment Area” refers to that portion of the Skybridge that encroaches upon and attaches to the Valley FCU Building as well as the support columns under the Skybridge on the east side of the Valley FCU Building. The “Encroachment Area” means the specific area where the Skybridge attaches to the Valley FCU Building and includes the connecting portions of both the Skybridge and the Valley FCU Building as well as the support columns. The attached Exhibit A details the location and scope of the encroachment. Valley and the City consent to the encroachment as depicted on Exhibit A and further grant the City and its successors and assigns an easement to construct, maintain, and use the Skybridge and Encroachment Area.
3. **Skybridge Maintenance.** The City covenants and agrees that the City and its successors and assigns shall keep and maintain the Skybridge and Encroachment Area and ensure that the Skybridge is kept in good order and repair, consistent with maintaining the Skybridge in a condition that shall permit continued access and use through the same. The cost of maintaining the Skybridge and Encroachment Area shall be borne entirely by the City and its successors and assigns. Valley and its successors and assigns acknowledge and agree that, subject to applicable laws and regulations, the City and its successors and assigns shall, at all times, have exclusive control over and responsibility for all aspects involving maintenance or construction of the Skybridge; however, in no event shall such maintenance or construction increase the scope of the encroachment or easement described in this Agreement.
4. **Maintenance of Encroachment.** The City covenants and agrees to reimburse Valley for the reasonable costs to repair damage to the Valley FCU Building caused by the City’s maintenance of the Skybridge or the Encroachment Area. Valley covenants and agrees to reimburse the City for any and all costs to repair any damage to the Skybridge caused by Valley or Valley’s maintenance of the Valley FCU Building.

Subject to the right of the City or its successors and assigns to remove the Skybridge as detailed below, neither party shall do or permit to be done any act or thing that would tend to jeopardize the structural, cosmetic, or architectural integrity of the Valley FCU Building, the Skybridge, or the City Hall Building, nor shall they perform any act in relation to the Encroachment Area that would cause damage to any portion of the respective portions of the Skybridge or Valley FCU Building.

5. **Security and Fire Suppression.** The City and its successors and assigns shall be responsible for all security, alarm systems, cameras, and fire suppression systems located in the Park 3 Garage or the Skybridge. All systems located within the Skybridge shall be independent of and separate from the Valley FCU Building. Accordingly, no alarms, cameras, data cables, electrical wiring, or other shared systems in the Skybridge shall be connected to or operated from the Valley FCU Building or any of the equipment or systems located in the Valley FCU Building.

6. **Control and Access to Valley FCU Building.** The City or its successors and assigns shall have the exclusive right to limit or control access to the Valley FCU Building through the Skybridge, including without limitation the right to terminate access through the Skybridge or to remove the Skybridge without replacement. The City or its successor and assigns may, in its sole and exclusive discretion, limit or prohibit access to the Valley FCU Building through the Skybridge. The City or its successor and assigns shall generally keep the doors between the Park 3 Parking Garage and the Skybridge open during normal business hours. The door from the Park 3 Parking Garage to the Skybridge shall be locked during those days and hours outside ordinary business hours including hours after closing, Saturdays, Sundays, and holidays. The City or its successor and assigns may lock the door to the Skybridge for security, maintenance, or public safety purposes. Similarly, Valley and its successors and assigns shall keep the door from the Skybridge to the Valley FCU Building open during general business hours when the Valley FCU Building is open to the general public. In the event the City or its successors or assigns determines that it is advisable to remove the Skybridge without replacing the same, which decision shall be in the sole discretion of the City or its successors and assigns, then it shall provide the notice of its intent to Valley as provided at Section 7 below, and it shall effect such removal, at its sole cost, in a manner which restores the exterior and interior connecting Valley FCU Building wall to the Skybridge to reasonably conform to the exterior and interior finishes of the Valley Building at the time of its removal; provided, however, that Valley shall not be entitled to compensation from City or its successor or assigns by reason of the removal of the Skybridge, its closure or the termination of the easement granted herein except for the obligation of City and its successors or assigns to restore the exterior and interior of the Valley FCU Building as provided above in the case of the removal of the Skybridge.
7. **Destruction or Damage of the City Hall Building; Termination of Easement.** In the event the City Hall Building or the Park 3 Parking Garage are destroyed, removed, damaged, remodeled, reconfigured or reconstructed in a way that prevents or limits occupancy for either or both facilities, for any reason, the covenants, agreements, obligations, duties, or property interests, including easement interests granted to Valley by this Agreement, shall terminate.

In the event the City (or its successors or assigns) elects to close the Park 3 Parking Garage or the City Hall Parcel to the general public, it shall provide notice of such closing to Valley no less than forty-five (45) days (the “**Easement Notice Period**”) prior to the proposed closing of the Skybridge; provided, however, that such notice shall be solely for the purpose of information and not to provide Valley with a right to object to the same. The easements and other rights granted to Valley shall automatically expire and be of no further force or effect following the Easement Notice Period.

In the event the City (or its successors or assigns) elects to remove the Skybridge connecting the Park 3 Parking Garage and the Valley FCU Building, it shall provide notice of such removal to Valley FCU no less than sixty (60) days (the “**Removal Notice Period**”) prior to the proposed removal; provided, however, that such notice shall be solely for the purpose of information and not to provide Valley with a right to object to the same. The City or the owner of the City Hall Parcel shall cause the removal of the Skybridge within ninety (90) days following the Removal Notice Period or as soon thereafter as reasonably practicable if additional time for removal of the Skybridge is required.

8. **Easement and Covenants to Run with the Land.** Unless terminated as provided herein, the grant of the easements and covenants described in this Agreement shall run with the land and shall be binding on and shall inure to the benefit of the parties of this Agreement, and their respective successors or assigns. Nothing contained in this Agreement shall grant any easement or access or use rights to the general public.
9. **Indemnity.** Each of the parties agree to indemnify and to hold the other party harmless from and against any and all liability for personal injury or property damage when such injury or damage shall result from, arise out of, or be attributable to maintenance, repair, or access undertaken by the other party during the time this Agreement is in place. Neither party shall be required to indemnify the other party for such other party's intentional or negligent acts or omissions.
10. **Insurance.** The City and its successors and assigns shall maintain commercial general liability insurance covering (i) the City's liability with respect to the Skybridge; and (ii) any construction that the City may perform in connection with the Skybridge. Such insurance shall provide limits of not less than \$1,000,000 general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the pedestrian Skybridge, or such other amounts as may be required by City Ordinances or applicable regulations.
11. **Negligent Acts or Omissions.** If the negligent acts or omissions of the owners, agents, or employees of Valley or the City cause damage to or destruction of the Valley FCU Building, the Skybridge, or the Encroachment Area, then such negligent party shall bear the entire cost of repair or reconstruction caused by the negligent acts or omissions. If either party to this Agreement fails or refuses to pay its share, or all costs in case of any negligent act or omission, the other party may perform the required repairs or restoration and shall be entitled to seek contribution from the negligent party. The party performing the repairs shall be entitled to recover attorney's fees along with all further and additional relief afforded under the law.
12. **Notices.** Any notice, consent, approval, waiver, or election that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be hand delivered, sent by First Class United States Mail, postage prepaid, or sent by email if accompanied by confirmation of receipt, with the original sent by First Class United States Mail, postage prepaid, to the respective parties at the addresses listed below:

**To the City:**

City of Billings  
c/o City Administrator  
P.O. Box 1178  
Billings, MT 59103  
Email: kukulskic@billingsmt.gov  
Phone: 406-657-8433

With a copy to (but which shall not constitute notice to the City)

|        |                      |
|--------|----------------------|
|        | City of Billings     |
|        | c/o City Attorney    |
|        | P.O. Box 1178        |
|        | Billings, MT 59103   |
| Email: | dahlg@billingsmt.gov |
| Phone: | 406-657-8205         |

|                   |                               |
|-------------------|-------------------------------|
| <b>To Valley:</b> | Valley Financial Credit Union |
|                   | c/o Brandon Scala             |
|                   | PO Box 20417                  |
|                   | Billings, MT 59104            |
| Email:            | bscala@valley.fcu.com         |
| Phone:            | 406-655-2755                  |

With a copy to (but which shall not constitute notice to Valley)

|        |                         |
|--------|-------------------------|
|        | Allie Law Firm          |
|        | c/o Ron Allie           |
|        | P.O. Box 20417          |
|        | Billings, MT 59104-0417 |
| Email: | allielaw@msn.com        |
| Phone: | 406-655-5089            |

Except as otherwise provided in this Agreement, the parties shall provide at least seven (7) days advance notice of any fact or circumstance affecting the terms and conditions of this Agreement, or where notice is otherwise required under this Agreement.

13. **Authority.** The undersigned persons signing this Agreement represent they have full authority, on behalf of the respective party, to enter into and bind the party to this Agreement.
14. **Confidentiality.** Except as set forth in this Agreement and any additions or amendments, the parties shall treat all information relating to the performance of the Agreement, but not as to the existence of this Agreement, as highly confidential information and trusted to the parties, solely for use in this transaction, and the parties shall not divulge or disclose any such information for any reason, unless required by law or by public records requests applicable to the City; provided, however, that the City and its successors and assigns may elect to record an Abstract of this Agreement and this duty of confidentiality shall not prevent disclosure of this Agreement or any portion of its contents on request of a third party for legitimate business reasons or as may be required by a title insurance underwriter.

15. **Breach.** Except as provided in this Agreement and any additions or amendments, each party shall disclose a known breach or other incident, to the other, by written notice, within thirty (30) days of discovery. The breaching party is allowed thirty (30) days from the notice date or such longer period as may be reasonably required to correct a breach if the breaching party commences a correction within thirty (30) days and thereafter diligently pursues the correction, to correct the breach or incident, or the other party may immediately terminate the Agreement, with written notice to the breaching party.
16. **Expenses.** Except as set forth in this Agreement and additions thereto, each party shall pay its own legal, accounting and other fees or expenses, incurred with respect to the transactions contemplated by this Agreement.
17. **Further Assurances.** The parties shall execute such further documents and take such further actions as may be necessary or convenient to the furtherance of the transactions, contemplated by this Agreement.
18. **Headings.** The Agreement headings are for reference purposes only and do not have any substantive effect.
19. **Time is of the Essence.** Time is of the essence in this Agreement and all clauses herein.
20. **Force Majeure.** Neither party shall be liable for, nor shall either party be considered in breach of this Agreement, due to any failure to perform its obligations, under this Agreement, other than a failure to pay amounts due, as a result of a cause beyond its control, which could not have been prevented with reasonable care, provided that said party has taken reasonable measures to notify the other party, in writing, of the delay.
21. **Survival.** Except as set forth in this Agreement and additions thereto, the obligation to pay amounts due, proprietary rights and the confidentiality and indemnification obligations, set forth in this Agreement, shall survive the termination of this Agreement.
22. **Counterparts.** The parties may execute this Agreement in counterparts, which taken together shall form one legal instrument.
23. **Binding Effect.** This Agreement, and the terms, conditions and covenants described herein, shall be binding on and shall inure to the benefit of the City, Valley, and their respective successors and assigns, and any person or entity that at any time hereafter shall become the owner of the City Hall Parcel, the Valley FCU Parcel, or the Skybridge, or portion thereof.
24. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana. Venue shall lie in Yellowstone County.
25. **Attorney's Fees.** The prevailing party in any litigation, arbitration, or other proceeding arising out of, or relating to, this Agreement shall be entitled to recover, all costs, charges, and expenses, and all reasonable attorney and paralegal fees that the prevailing party incurred in maintaining such litigation, arbitration, or other proceeding.

26. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
27. **Severability.** Invalidation of any one of the provisions or covenants herein by judgment or court order shall in no way affect any of the other provisions herein which shall remain in full force and effect.
28. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
29. **Recitals.** The Recitals stated above are incorporated into the parties' agreement herein.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2025.

**VALLEY FINANCIAL CREDIT UNION**

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

STATE OF MONTANA       )  
County of Yellowstone    )

\_\_\_\_\_  
This instrument was signed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_, known to me to be \_\_\_\_\_ of Valley Financial Credit Union.

\_\_\_\_\_  
Signature of Notary Public

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
By: William A. Cole  
Its: Mayor

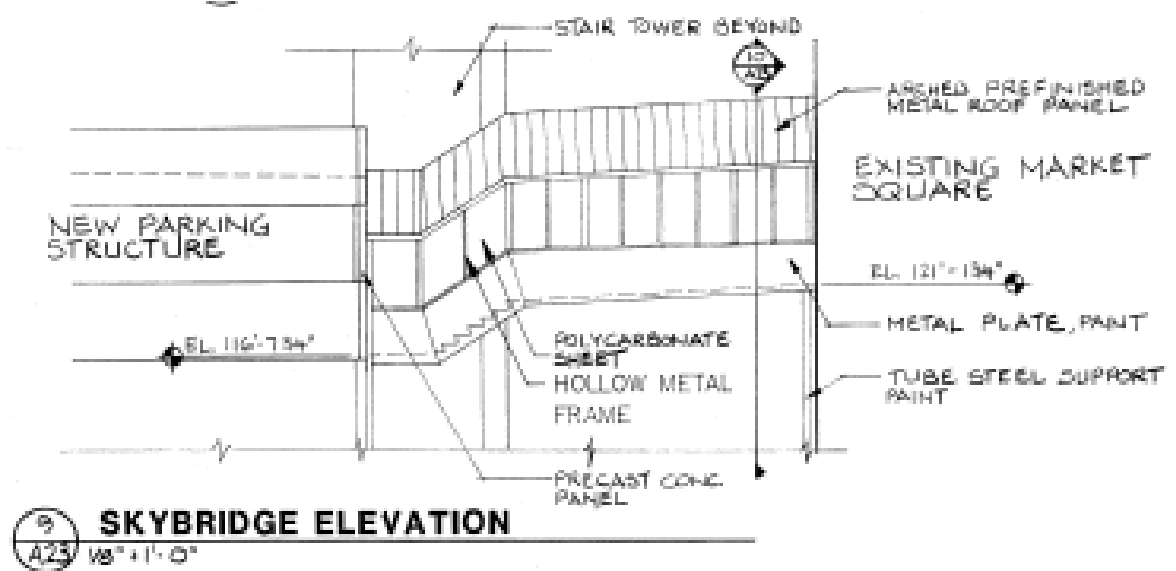
STATE OF MONTANA     )  
County of Yellowstone     )

      This instrument was signed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2025, by William A. Cole, Mayor of the City of Billings.

\_\_\_\_\_  
Signature of Notary Public

## EXHIBIT A – LOCATION AND SCOPE OF ENCROACHMENT

The encroachment area encompasses the West End Support and other connecting portions of the Skybridge and the VCU Building, as shown in the plans below.



## City Council Regular

**Date:** 06/09/2025  
**Title:** Second Final Reading Ordinance BMCC Section 6-1208 Curb Cut Regulations  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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## RECOMMENDATION

Staff recommends the City Council approve the second and final reading of the ordinance amending Billings, Montana City Code (BMCC), Section 6-1208 Curb Cut Regulations.

## BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The City Council adopted new subdivision regulations in 2024. As part of subdivision regulation effort, traffic study standards were updated creating an incongruity between traffic studies required for subdivisions and site development. The curb cut ordinance is part of the site development regulations. The curb cut ordinance update will provide consistency in traffic studies between site development and subdivision regulations, correct some of the current zoning code conflicts, and re-establish parking lot surfacing requirements that were removed with the implementation of the Re-Code zoning updates.

To-date, staff engaged with local architects, engineers, surveyors, designers, the Home Builders Association, and various home builders through meetings and direct mailings of the draft code. Staff presented the code revisions to Planning Board on April 22, 2025 and to the City Council on April 28, 2025 as a special presentation to receive direction. At the April 28, 2025 meeting, the City Council discussed the proposed changes and generally agreed with those changes, but recommended removing references to private street requirements for sidewalks and street lights and to have a future discussion surrounding private streets. Staff removed the language requiring sidewalks and street lights within private streets in this ordinance change.

At its meeting on May 27, 2025, the City Council conducted a public hearing and approved the first reading of an ordinance amending BMCC Section 6-1208 Curb Cut Regulations, including two changes recommended by staff:

- Section 6-1208 (d) Traffic Impact Study: Delete "The City Engineer may require applicant analysis and review of a specific traffic impact created by a development generating less than 100 peak-hour or 1000 trips per day.
- Section 6-1208 (14) Abandoned or Unused Curb Cuts: Add "At the time of building permit application approval," to the beginning of Section (14).

A red-lined and clean version of the amended curb cut ordinance is attached to this memo.

## STAKEHOLDERS

Staff sent out drafts of the proposed code to the Home Builders Association, individual builders and developers, architects, surveyors, and engineers. Staff discussed the proposed changes at multiple Home Builders Local Issues meetings held monthly by planning and engineering staff and held an open house on April 9, 2025. Staff presented the draft code to Planning Board on April 22, 2025 and to City Council on April 28, 2025. A legal ad was published for this public hearing.

## ALTERNATIVES

The City Council may:

- Approve the amendments to the code as recommended by staff; or
- Approve some of the proposed amendments

## FISCAL EFFECTS

Approval of all or some of the proposed amendments will have a negligible financial impact on the City's budget.

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## Attachments

Ordinance Amendment Redlined



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING  
THAT SECTION 6-1208 OF THE BILLINGS, MONTANA  
CITY CODE BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

**Section 1.** That Section 6-1208, Billings, Montana City Code, be amended to read as follows:

**Sec. 6-1208. Curb cut regulations.**

(a) *Purpose.* The purpose of this section is to standardize, regulate and control the location, size, type, construction, maintenance and quantity of curb cuts, driveway aprons, driveways, and sidewalk driveway crossings in the city from the standpoint of proper design, safe and efficient entry to and exit from city streets to private property, safety of vehicular traffic in the streets, and safety of pedestrian traffic on the sidewalk area.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

*Alley* shall mean a narrow public thoroughfare, providing access to the rear s yard of the abutting properties.

*Curb cut* shall mean the total street curbing that is removed to place a driveway and slopes.

*Curb return* shall mean the curved portion of a street curb at drive approaches.

*Driveway* shall mean that area on private property where vehicles are operated, parked or allowed to stand.

*Driveway apron* shall mean the area, construction or improvement between the curb cut or proposed curb line and the back edge of walk or proposed walk line, to provide ingress and egress for vehicles from the alley, street or roadway to a definite area of the private property.

*Driveway width* shall mean that portion of the street curbing that is removed excluding curb returns or transitions to provide ingress to and egress from abutting property.

*Intersection* shall mean the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways which join each other at, or approximately at, right angles, or the area within which vehicles traveling upon different roadways joining at any other angle may come in conflict.

*Right-of-way* shall mean public property dedicated for streets, alleys or other public uses.

*Roadway* shall mean that portion of a street improved, designed and customarily used for vehicular travel, exclusive of the berm or shoulder.

*Sidewalk* shall mean that portion of a street between curb lines or the outer lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

*Street* shall mean the entire width between the boundary lines of the right-of-way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

*Traffic* shall mean pedestrians, vehicles, and other conveyances, either singly or together, while using any street, alley or roadway for purposes of travel.

*Transitions* shall mean the ~~three-foot~~ ramp sections along the street curb on each side of a driveway apron.

(c) *Permit required.* It shall be unlawful for any person either as owner, agent, servant, contractor or employee to cut, break, remove or alter any curbing, driveway apron or sidewalk, or cause to have cut, broken or removed any curbing, driveway apron or sidewalk, or to install or cause to have installed any driveway, or any vehicular access, on any public right-of-way in the city without a permit. Permits shall be issued only to properly licensed and bonded contractors by the city after payment of fees as prescribed by council resolution. At the time the permit application is made, the city shall be advised of any parking meters, traffic or street signs, signal poles, street light poles, fire plugs, trees or obstructions that will be affected by the placement or removal of the driveway or sidewalk.

~~(d) *Accessibility study.* If any proposed site development will generate five hundred (500) or more vehicle trips per day, a traffic accessibility study shall be required before any developmental permit is issued. A vehicular trip is defined as a one-way journey of a motorized vehicle. If the study indicates a need for the installation of traffic-control devices to regulate traffic flow generated by the facility, such traffic-control devices shall be installed at the expense of the owner of the facility. The study shall include but not be limited to:~~

~~(1) Estimated number of vehicular trips per day;~~

~~(2) Location of approaches;~~

~~(3) Circulation and channelization patterns;~~

~~(4) Location and type of traffic-control devices;~~

~~(5) Pedestrian systems;~~

~~(6) Bicycle systems;~~

~~(7) Projected turning movements; and~~

~~(8) Impact on surrounding existing street intersections.~~

~~(d) *Traffic Impact Study.* At the time of site development submittal, a traffic impact study shall be prepared by the applicant and approved by the City Engineer for any new residential, institutional, commercial or industrial development in accordance with subdivision regulations Sec. 23-406, with the following exception:~~

~~If the proposed site is located within a subdivision having a traffic impact study completed within the past twenty (20) years and does not exceed the assumed trip generation value identified in the subdivision traffic study for the site or the total subdivision trip generation value by 100 peak-hour trips or 1000 average daily trips, the applicant shall complete a traffic memo documenting compliance with the subdivision study. The applicant shall meet and discuss elements of any study with City Engineering to determine the general extents scope of the study at the time of the pre-application meeting.~~

~~The City Engineer may require applicant analysis and review of a specific traffic impact created by development generating less than 100 peak-hour or 1000 trips per day.~~

(e) *Consent of property owner required.* Before a permit is granted for the removal of the curb and/or the construction of a driveway on any street, the applicant for

the driveway permit must produce evidence satisfactory to the city to show that the construction of such driveway is agreeable to and in accordance with the desire of the owners of the property to which such driveway will be an entrance.

(f) *Fees.* Permit, inspection and service fees shall be charged by the city as prescribed by council resolution.

(g) *City to furnish inspector.* The city shall furnish an inspector to inspect every piece of curb, driveway and driveway apron to be constructed, whose duties shall be to check the forms for alignment, grade and materials and to see that the work is done in accordance with the specifications of the city at the time of the issuance of the permit. The city shall be notified at least twenty-four (24) hours in advance of the time when the work is proposed to be started.

(h) *Allowable curb cut widths.*

(1) In ~~single-family~~N1, N2, N3 or RMH residential zoned districts, and any other zone that allows one or two-family dwellings, the maximum driveway width shall be thirty (30) feet and shall be located in accordance with city specifications or drawings. ~~For lots or parcels with more than twenty-five (25) feet of frontage, the total combined width of all driveways shall not exceed fifty (50) percent of the frontage of that parcel or lot.~~ The minimum distance between curb cuts serving the same lot or parcel shall be twenty-five (25) feet and shall have twenty-five (25) feet of full height curb, except when multiple buildings are located on a single parcel, the minimum distance between separate and adjacent building curb cuts shall be four (4) feet. Up to a thirty-six (36) foot driveway width is allowed for a shared approach between two buildings.

(2) In any ~~multifamily~~NX zoned districts, and any other zone that allows multi-family dwellings (three (3) or more attached dwelling units), the maximum driveway width shall not exceed thirty-~~six (306)~~ feet and shall be located in accordance with city specifications or drawings. The minimum distance between curb cuts shall be twenty-five (25) feet and shall have twenty-five (25) feet of full height curb. When multiple buildings are located on a single parcel, the minimum distance between separate and adjacent adjacent-building curb cuts shall be four (4) feet. except in the case where two driveways serve side-by-side 2-unit buildings, a minimum six-foot separation distance is required between the two (2) driveways. Up to a thirty-six (36) foot driveway is allowed for a shared approach between two buildings.

(3) In all commercial, mixed-use and industrial use districts, the maximum driveway width shall be thirty (30) feet except driveway widths for service stations and trucking businesses may be up to forty (40) feet when approved by the city, and shall be located in accordance with city specifications and drawings. The minimum distance between curb cuts shall be twenty-five (25) feet.

(4) In any allowable location, no driveway width shall be less than twelve (12) feet wide.

(5) For a local residential street, up to two (2) curb cuts are allowed per residential building containing up to two livingdwelling unit(s), but there shall be a minimum of a twenty-five (25) foot separation between curb cuts. For buildings containing more than 2 dwelling units on a local residential street, multiple curb cuts are allowed per building, but there shall be a minimum a twenty-five (25) foot separation between curb cuts. The minimum distance between separate and adjacent building curb cuts shall be four (4) feet.

(6) For a local commercial, collector, or arterial street, up to two (2) curb cuts will be allowed for property frontages up to six hundred (600) feet, and an additional curb cut will be allowed for property frontages over six hundred (600) feet to nine hundred (900) feet, unless restricted by access management policy. Property frontages over nine hundred (900) feet may have curb cuts as approved by the City Engineer. For an existing property frontage that is unable to meet access management policy standards, the City shall determine access location in consultation with the applicant. Frontages of sixty (60) feet or less shall be limited to one (1) driveway. Not more than two (2) driveways shall be provided to any single property tract or business establishment, except where the property frontage exceeds six hundred (600) feet, there may be one (1) additional driveway for each additional three hundred (300) feet of frontage. In cases where parcels have more than one street frontage, each frontage shall be treated separately when determining the allowed number of driveways.

(i) *General regulations.* Every curb cut, driveway, and driveway apron constructed or altered in the street right-of-way or on private property shall conform to the following regulations:

(1) No ~~driveway apron shall be constructed closer than five (5) feet~~ curb cut shall extend beyond the side property line for the property being served by the curb cut from the side property line or as may be regulated by city specifications in effect at the time of such work.

(2) No driveway apron shall be closer than five (5) feet to, nor shall it be so located as to interfere with, intersecting sidewalks, utility facilities, light standards, fire hydrants, catch basins, street signs, signals or other public improvements or installations.

(3) Any necessary adjustments to such utility facilities, light standards, fire hydrants, catch basins, street signs, signals, underground conduits for street lighting or fire alarm systems, or other public improvements or installations shall be accomplished without cost to the city.

(4) No curb cut shall be made between the points of curvature of any curb radius at intersections, nor closer than ten (10) feet from the points of curvature except along arterial streets or streets intersecting an arterial at a signalized intersection any curb cut shall be a minimum of one hundred (100) feet from the corner, unless restricted by access management policy. The location of curb cuts for lots or parcels along arterial or collector streets having less than one hundred (100) feet of frontage shall be approved by the city engineer or their designee. For a two-leg uncontrolled intersection on a local residential street, the City may approve a curb cut on the larger outside radius provided adequate sight distance is maintained.

(5) No curb cut or driveway apron shall be located so as to create a hazard to pedestrians or motorists, or to invite or compel illegal or unsafe traffic movements.

(6) Every curb cut and/or driveway apron must provide complete access to a surface parking space, a covered parking space building or loading dock on private property requiring the entrance of vehicles in accordance with city specifications and drawings. Driveways constructed less than twenty (20) feet between back of sidewalk and garage face shall not be used for vehicle parking such that a vehicle encumbers use of any portion of the sidewalk.

(7) In any commercial, mixed-use or industrial use, driveways shall be designed such that vehicles entering or egressing shall not be required to back from or into a street right-of-way.

(8) All curb cuts and driveway aprons are to be constructed of Portland cement concrete of a quality and type as specified by the city, and in accordance with city specifications in effect at the time of such work. Curb cuts shall be permitted only with construction of adjoining Portland cement concrete aprons ~~having a minimum depth of five (5) feet.~~

(9) All work shall be done under the supervision of the city, and in accordance with city specifications in effect at the time of such work.

(10) The licensed and bonded contractor or his or her agent doing the construction or alteration work shall maintain the premises in a safe manner and shall provide adequate barricades and lights at his or her own expense to protect the safety of the public using the adjacent streets or sidewalks, and shall hold the city free from any damages incurred by his or her operations.

(11) The angle between any driveway apron and the street and/or curb line shall be ninety (90) degrees to the street tangent or on a radial line to the street curve.

(12) The two (2) side borders of each driveway apron between the curb line and property line shall be parallel.

(13) The city street right-of-way shall not be used for private commercial purposes unless allowed through the issuance of an Encroachment Permit (Sec. 22-400), a special review approval (Sec. 27-1600), or other permission granted by City Council. ~~A permit for the construction of a curb cut driveway shall not be issued unless vehicles which will use the driveway can be parked entirely within the private property lines.~~

(14) At the time of building permit application approval, ~~A~~any curb cut or driveway apron which has become abandoned or unused through a change of the conditions for which it was originally intended shall be closed and the owner shall replace any such curb cut and/or driveway apron with a standard curb and sidewalk (if necessary) to be constructed according to the city specifications in effect at the time of such work. If the owner does not make such replacement within sixty (60) days after notice, the city may do so at the expense of the owner.

(15) Driveways serving facilities that will generate five hundred (500) or more vehicle trips per day may, at the discretion of the city, be classified and constructed as a street intersection. A complete design of the intersection shall be submitted to the city before a permit is issued. Approval of this type entrance may be contingent upon the applicant installing traffic-control devices at his or her sole expense. This type of entrance shall be included in calculating number, spacing, or any other requirement pertaining to driveways as specified herein.

(16) Surfacing is required for private streets, driveways, off-street parking, loading, storage, rental or service areas for vehicles including service stations, used car

lots, and storage rental. Surfacing shall be asphalt concrete, Portland concrete cement, pervious concrete, or pervious pavers, and shall meet Public Rights-of-Way Accessibility Guidelines ("PROWAG"). Gravel surfacing, rotomillings or similar crushed loose glass, or material with integral particle to particle binder shall not be allowed unless the area is behind a gated area not accessible to the public and is used for storage of materials and fleet vehicles. Further, surfacing shall not have the potential to track sediment into the public right-of-way. Surfacing shall be designed by accepted engineering methods and subject to the approval of the City Engineer. Driveways providing access to serving a single-family, two-family, or multi-family dwelling unit shall be surfaced a minimum of twenty-five (25) feet from the back of the driveway apron unless zoning setbacks allow or dictate a shorter distance.

(17) Public improvements such as street or alley paving, curbs, gutters, sidewalks, drainage facilities, water and sewer facilities, or other public improvements may be required along the property frontage by the City at the time of site development for certain developments that do not require issuance of a building permit, are not subject to a subdivision improvements agreement, or are not subject to an annexation agreement. A right-of-way permit shall be required by the City for these improvements.

(j) *Restrictions.* In addition to the general regulations prescribed herein, curb cuts and driveway aprons to be constructed or altered in districts must conform to the following:

(1) Where a property abuts more than one city street, the maximum curb cut permitted on each street shall be considered separately and shall be governed by the frontage of the property on that street. The City may require only curb cut access to the lower street classification. For example, the City may require curb cut access to only a local access street rather than an arterial street for a property that fronts both a local access and arterial street.

(2) ~~Two Unless modified by (h)(1) and (h)(2), two~~ (2) or more curb cuts serving the same property must be separated by islands with full height curb not less than twenty-five (25) feet long, except on arterial roads where there shall be a minimum of one hundred (100) feet of separation.

(3) ~~Where a property width is sixty (60) feet or less, A joint curb cut with an adjoining property of sixty (60) feet or less is allowed between two adjoining properties. may be constructed at a maximum width of twenty-eight (28) feet.~~

Both property owners must be in agreement to a joint curb cut and must submit a copy of their written agreement and a recorded easement to the city that identifies maintenance responsibilities between the private parties.

**(k). Administrative relief.**

**A. Applicability.**

1. Administrative relief allows the modification of an existing numeric dimensional standard to accommodate site-specific or minor construction issues.
2. Administrative relief is applicable to new development, and redevelopment.
3. Administrative relief may be requested either as part of an original application or as a modification to an existing approval.

**B. Authority.** Administrative relief may be requested by an applicant qualified to request a primary development approval or amendment.

**C. Procedures.**

1. All applications for administrative relief shall identify the specific issue that the administrative relief is intended to address and how the administrative relief will resolve that issue:
  - (a) A written request for administrative relief prior to construction shall be submitted with the project site plan application.
  - (b) A written request for administrative relief to address a minor construction issue shall be submitted with the approved project site plan, a written description of the minor construction issue, and an amended drawing of that part of the site for which the administrative relief is requested.

**D. Permitted types of administrative relief.**

1. In all zoning districts an applicant may request the following adjustments through administrative relief:
  - (a) Up to ten (10) percent reduction in minimum separation between curb cuts serving the same property.
  - (b) Up to ten (10) percent reduction in minimum separation distance to public improvements or installations.

(c) A five (5) foot separation distance from public improvements or installations to the driveway rather than curb cut where the improvements or installations sit at least ten (10) feet behind the curb.

(d) Up to ten (10) percent reduction in minimum separation distance to points of curvature of any curb radius at intersections of a local street.

2. Administrative relief may not:

(a) Permit a curb cut to extend beyond the side property line of the property being served by the curb cut;

(b) Be used to reduce private street, roadway, or drive aisle widths

E. *Decision criteria.* The City Engineer or their designee shall approve or deny the application and provide written notification of the decision to the applicant within fifteen (15) days from the date of submission. If an application is denied, the written notification shall include the reason for denial.

F. *Appeal process.*

1) If the applicant would like to appeal a denial from the City Engineer, then within thirty (30) days from the date of denial the applicant must submit a written request for review to the City Administrator. This request for review shall contain the applicant's correct mailing address, shall identify the application for which review is requested, shall contain a statement of the reason(s) why the applicant believes the denial should be reversed, and shall be signed by the applicant. The City Administrator shall have thirty (30) days from receipt of the request for review to a.) -approve or deny the application and b.) issue a written notification of the decision to the applicant. If an application is denied, the written notification shall include the reason for denial.

2) If the applicant would like to appeal a denial from the City Administrator, then within thirty (30) days from the date of denial the applicant must file a written notice of appeal with the City Administrator. This notice of appeal shall contain the applicant's correct mailing address, shall identify the application being appealed, shall contain a statement of the reason(s) why the applicant believes the denial should be reversed, and shall be signed by the applicant. The City Administrator shall act promptly to have the appeal placed on the City Council's agenda. The petitioner shall be notified in writing by certified mail, return receipt requested, of the date and time

the matter will be considered on the City Council's agenda. The petitioner and all other interested persons may appear at the time and place and be heard. The City Council shall act on the question within thirty (30) days of the hearing.

(l) *Deviation.* Permission to deviate from the requirements and regulations of this section shall be granted by the City Administrator and the City Council only where unusual conditions or strict adherence to this section would cause undue and extreme hardship.

**Section 2. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 3. REPEALER.** All resolutions and ordinances of the City Code inconsistent herewith are hereby repealed.

**Section 4. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or application, and, to this end, the provisions of this ordinance are declared severable.

PASSED by the City Council on first reading the \_\_\_\_ day of \_\_\_\_\_, 2025.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2025.

CITY OF BILLINGS

BY: \_\_\_\_\_  
William A. Cole, Mayor

Attest:

BY: \_\_\_\_\_  
Denise R. Bohlman, City Clerk

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING  
THAT SECTION 6-1208 OF THE BILLINGS, MONTANA  
CITY CODE BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

**Section 1.** That Section 6-1208, Billings, Montana City Code, be amended to read as follows:

**Sec. 6-1208. Curb cut regulations.**

(a) *Purpose.* The purpose of this section is to standardize, regulate and control the location, size, type, construction, maintenance and quantity of curb cuts, driveway aprons, driveways, and sidewalk driveway crossings in the city from the standpoint of proper design, safe and efficient entry to and exit from city streets to private property, safety of vehicular traffic in the streets, and safety of pedestrian traffic on the sidewalk area.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

*Alley* shall mean a narrow public thoroughfare, providing access to the rear yard of the abutting properties.

*Curb cut* shall mean the total street curbing that is removed to place a driveway and slopes.

*Curb return* shall mean the curved portion of a street curb at drive approaches.

*Driveway* shall mean that area on private property where vehicles are operated, parked or allowed to stand.

*Driveway apron* shall mean the area, construction or improvement between the curb cut or proposed curb line and the back edge of walk or proposed walk line, to provide ingress and egress for vehicles from the alley, street or roadway to a definite area of the private property.

*Driveway width* shall mean that portion of the street curbing that is removed excluding curb returns or transitions to provide ingress to and egress from abutting property.

*Intersection* shall mean the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways which join each other at, or approximately at, right angles, or the area within which vehicles traveling upon different roadways joining at any other angle may come in conflict.

*Right-of-way* shall mean public property dedicated for streets, alleys or other public uses.

*Roadway* shall mean that portion of a street improved, designed and customarily used for vehicular travel, exclusive of the berm or shoulder.

*Sidewalk* shall mean that portion of a street between curb lines or the outer lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

*Street* shall mean the entire width between the boundary lines of the right-of-way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

*Traffic* shall mean pedestrians, vehicles, and other conveyances, either singly or together, while using any street, alley or roadway for purposes of travel.

*Transitions* shall mean the ramp sections along the street curb on each side of a driveway apron.

(c) *Permit required.* It shall be unlawful for any person either as owner, agent, servant, contractor or employee to cut, break, remove or alter any curbing, driveway apron or sidewalk, or cause to have cut, broken or removed any curbing, driveway apron or sidewalk, or to install or cause to have installed any driveway, or any vehicular access, on any public right-of-way in the city without a permit. Permits shall be issued only to properly licensed and bonded contractors by the city after payment of fees as prescribed by council resolution. At the time the permit application is made, the city shall be advised of any parking meters, traffic or street signs, signal poles, street light poles, fire plugs, trees or obstructions that will be affected by the placement or removal of the driveway or sidewalk.

(d) *Traffic Impact Study.* At the time of site development submittal, a traffic impact study shall be prepared by the applicant and approved by the City Engineer for any new residential, institutional, commercial or industrial development in accordance with subdivision regulations Sec. 23-406, with the following exception:

If the proposed site is located within a subdivision having a traffic impact study completed within the past twenty (20) years and does not exceed the assumed trip generation value identified in the subdivision traffic study for the site or the total subdivision trip generation value by 100 peak-hour trips or 1000 average daily trips, the applicant shall complete a traffic memo documenting compliance with the subdivision study. The applicant shall meet and discuss elements of any study with City Engineering to determine the general scope of the study at the time of the pre-application meeting.

(e) *Consent of property owner required.* Before a permit is granted for the removal of the curb and/or the construction of a driveway on any street, the applicant for the driveway permit must produce evidence satisfactory to the city to show that the construction of such driveway is agreeable to and in accordance with the desire of the owners of the property to which such driveway will be an entrance.

(f) *Fees.* Permit, inspection and service fees shall be charged by the city as prescribed by council resolution.

(g) *City to furnish inspector.* The city shall furnish an inspector to inspect every piece of curb, driveway and driveway apron to be constructed, whose duties shall be to check the forms for alignment, grade and materials and to see that the work is done in accordance with the specifications of the city at the time of the issuance of the permit. The city shall be notified at least twenty-four (24) hours in advance of the time when the work is proposed to be started.

(h) *Allowable curb cut widths.*

(1) In N1, N2, N3 or RMH residential zoned districts, and any other zone that allows one or two-family dwellings, the maximum driveway width shall be thirty (30) feet and shall be located in accordance with city specifications or drawings. The minimum distance between curb cuts serving the same lot or parcel shall be twenty-five (25) feet and shall have twenty-five (25) feet of full height curb, except when multiple buildings are located on a single parcel, the minimum distance between separate and adjacent building curb cuts shall be four (4) feet. Up to a thirty-six (36) foot driveway width is allowed for a shared approach between two buildings.

(2) In any NX zoned districts, and any other zone that allows multi-family dwellings (three (3) or more attached dwelling units), the maximum driveway width shall not exceed thirty (30) feet and shall be located in accordance with city specifications or drawings. The minimum distance between curb cuts shall be twenty-five (25) feet and shall have twenty-five (25) feet of full height curb. When multiple buildings are located on a single parcel, the minimum distance between separate and adjacent building curb cuts shall be four (4) feet. Up to a thirty-six (36) foot driveway is allowed for a shared approach between two buildings.

(3) In all commercial, mixed-use and industrial use districts, the maximum driveway width shall be thirty (30) feet except driveway widths for service stations and trucking businesses may be up to forty (40) feet when approved by the city, and shall be located in accordance with city specifications and drawings. The minimum distance between curb cuts shall be twenty-five (25) feet.

(4) In any allowable location, no driveway width shall be less than twelve (12) feet wide.

(5) For a local residential street, up to two (2) curb cuts are allowed per residential building containing up to two dwelling unit(s), but there shall be a minimum of a twenty-five (25) foot separation between curb cuts. For buildings containing more than 2 dwelling units on a local residential street, multiple curb cuts are allowed per building, but there shall be a minimum a twenty-five (25) foot separation between curb cuts. The minimum distance between separate and adjacent building curb cuts shall be four (4) feet.

(6) For a local commercial, collector, or arterial street, up to two (2) curb cuts will be allowed for property frontages up to six hundred (600) feet, and an additional curb cut will be allowed for property frontages over six hundred (600) feet to nine hundred (900) feet, unless restricted by access management policy. Property frontages over nine hundred (900) feet may have curb cuts as approved by the City Engineer. For an existing property frontage that is unable to meet access management policy standards, the City shall determine access location in consultation with the applicant.

(i) *General regulations.* Every curb cut, driveway, and driveway apron constructed or altered in the street right-of-way or on private property shall conform to the following regulations:

(1) No curb cut shall extend beyond the side property line for the property being served by the curb cut or as may be regulated by city specifications in effect at the time of such work.

(2) No driveway apron shall be closer than five (5) feet to, nor shall it be so located as to interfere with, intersecting sidewalks, utility facilities, light standards, fire hydrants, catch basins, street signs, signals or other public improvements or installations.

(3) Any necessary adjustments to such utility facilities, light standards, fire hydrants, catch basins, street signs, signals, underground conduits for street lighting or fire alarm systems, or other public improvements or installations shall be accomplished without cost to the city.

(4) No curb cut shall be made between the points of curvature of any curb radius at intersections, nor closer than ten (10) feet from the points of curvature except along arterial streets or streets intersecting an arterial at a signalized intersection any curb cut shall be a minimum of one hundred (100) feet from the corner, unless restricted by access management policy. The location of curb cuts for lots or parcels along arterial or collector streets having less than one hundred (100) feet of frontage shall be approved by the city engineer or their designee. For a two-leg uncontrolled intersection on a local residential street, the City may approve a curb cut on the larger outside radius provided adequate sight distance is maintained.

(5) No curb cut or driveway apron shall be located so as to create a hazard to pedestrians or motorists, or to invite or compel illegal or unsafe traffic movements.

(6) Every curb cut and/or driveway apron must provide complete access to a surface parking space, a covered parking space or loading dock on private property requiring the entrance of vehicles in accordance with city specifications and drawings. Driveways constructed less than twenty (20) feet between back of sidewalk and garage face shall not be used for vehicle parking such that a vehicle encumbers use of any portion of the sidewalk.

(7) In any commercial, mixed-use or industrial use, driveways shall be designed such that vehicles entering or egressing shall not be required to back from or into a street right-of-way.

(8) All curb cuts and driveway aprons are to be constructed of Portland cement concrete of a quality and type as specified by the city, and in accordance with city

specifications in effect at the time of such work. Curb cuts shall be permitted only with construction of adjoining Portland cement concrete aprons.

(9) All work shall be done under the supervision of the city, and in accordance with city specifications in effect at the time of such work.

(10) The licensed and bonded contractor or his or her agent doing the construction or alteration work shall maintain the premises in a safe manner and shall provide adequate barricades and lights at his or her own expense to protect the safety of the public using the adjacent streets or sidewalks, and shall hold the city free from any damages incurred by his or her operations.

(11) The angle between any driveway apron and the street and/or curb line shall be ninety (90) degrees to the street tangent or on a radial line to the street curve.

(12) The two (2) side borders of each driveway apron between the curb line and property line shall be parallel.

(13) The city street right-of-way shall not be used for private commercial purposes unless allowed through the issuance of an Encroachment Permit (Sec. 22-400), a special review approval (Sec. 27-1600), or other permission granted by City Council.

(14) At the time of building permit application approval, any curb cut or driveway apron which has become abandoned or unused through a change of the conditions for which it was originally intended shall be closed and the owner shall replace any such curb cut and/or driveway apron with a standard curb and sidewalk (if necessary) to be constructed according to the city specifications in effect at the time of such work. If the owner does not make such replacement within sixty (60) days after notice, the city may do so at the expense of the owner.

(15) Driveways serving facilities that will generate five hundred (500) or more vehicle trips per day may, at the discretion of the city, be classified and constructed as a street intersection. A complete design of the intersection shall be submitted to the city before a permit is issued. Approval of this type entrance may be contingent upon the applicant installing traffic-control devices at his or her sole expense. This type of entrance shall be included in calculating number, spacing, or any other requirement pertaining to driveways as specified herein.

(16) Surfacing is required for private streets, driveways, off-street parking, loading, storage, rental or service areas for vehicles including service stations, used car lots, and storage rental. Surfacing shall be asphalt concrete, Portland concrete

cement, pervious concrete, or pervious pavers, and shall meet Public Rights-of-Way Accessibility Guidelines ("PROWAG"). Gravel surfacing, rotomillings or similar crushed loose glass, or material with integral particle to particle binder shall not be allowed unless the area is behind a gated area not accessible to the public and is used for storage of materials and fleet vehicles. Further, surfacing shall not have the potential to track sediment into the public right-of-way. Surfacing shall be designed by accepted engineering methods and subject to the approval of the City Engineer. Driveways providing access to a single-family, two-family, or multi-family dwelling unit shall be surfaced a minimum of twenty-five (25) feet from the back of the driveway apron unless zoning setbacks allow or dictate a shorter distance.

(17) Public improvements such as street or alley paving, curbs, gutters, sidewalks, drainage facilities, water and sewer facilities, or other public improvements may be required along the property frontage by the City at the time of site development for certain developments that do not require issuance of a building permit, are not subject to a subdivision improvements agreement, or are not subject to an annexation agreement. A right-of-way permit shall be required by the City for these improvements.

(j) *Restrictions.* In addition to the general regulations prescribed herein, curb cuts and driveway aprons to be constructed or altered in districts must conform to the following:

(1) Where a property abuts more than one city street, the maximum curb cut permitted on each street shall be considered separately and shall be governed by the frontage of the property on that street. The City may require only curb cut access to the lower street classification. For example, the City may require curb cut access to only a local access street rather than an arterial street for a property that fronts both a local access and arterial street.

(2) Two (2) or more curb cuts serving the same property must be separated by islands with full height curb not less than twenty-five (25) feet long, except on arterial roads where there shall be a minimum of one hundred (100) feet of separation.

(3) A joint curb cut is allowed between two adjoining properties. Both property owners must be in agreement to a joint curb cut and must submit a copy of their written agreement and a recorded easement to the city that identifies maintenance responsibilities between the private parties.

**(k). Administrative relief.**

**A. *Applicability.***

1. Administrative relief allows the modification of an existing numeric dimensional standard to accommodate site-specific or minor construction issues.
2. Administrative relief is applicable to new development, and redevelopment.
3. Administrative relief may be requested either as part of an original application or as a modification to an existing approval.

**B. *Authority.*** Administrative relief may be requested by an applicant qualified to request a primary development approval or amendment.

**C. *Procedures.***

1. All applications for administrative relief shall identify the specific issue that the administrative relief is intended to address and how the administrative relief will resolve that issue:
  - (a) A written request for administrative relief prior to construction shall be submitted with the project site plan application.
  - (b) A written request for administrative relief to address a minor construction issue shall be submitted with the approved project site plan, a written description of the minor construction issue, and an amended drawing of that part of the site for which the administrative relief is requested.

**D. *Permitted types of administrative relief.***

1. In all zoning districts an applicant may request the following adjustments through administrative relief:
  - (a) Up to ten (10) percent reduction in minimum separation between curb cuts serving the same property.
  - (b) Up to ten (10) percent reduction in minimum separation distance to public improvements or installations.
  - (c) A five (5) foot separation distance from public improvements or installations to the driveway rather than curb cut where the improvements or installations sit at least ten (10) feet behind the curb.

- (d) Up to ten (10) percent reduction in minimum separation distance to points of curvature of any curb radius at intersections of a local street.
- 2. Administrative relief may not:
  - (a) Permit a curb cut to extend beyond the side property line of the property being served by the curb cut;
  - (b) Be used to reduce private street, roadway, or drive aisle widths
- E. *Decision criteria.* The City Engineer or their designee shall approve or deny the application and provide written notification of the decision to the applicant within fifteen (15) days from the date of submission. If an application is denied, the written notification shall include the reason for denial.
- F. *Appeal process.*
  - 1) If the applicant would like to appeal a denial from the City Engineer, then within thirty (30) days from the date of denial the applicant must submit a written request for review to the City Administrator. This request for review shall contain the applicant's correct mailing address, shall identify the application for which review is requested, shall contain a statement of the reason(s) why the applicant believes the denial should be reversed, and shall be signed by the applicant. The City Administrator shall have thirty (30) days from receipt of the request for review to
    - a.) approve or deny the application and
    - b.) issue a written notification of the decision to the applicant.If an application is denied, the written notification shall include the reason for denial.
  - 2) If the applicant would like to appeal a denial from the City Administrator, then within thirty (30) days from the date of denial the applicant must file a written notice of appeal with the City Administrator. This notice of appeal shall contain the applicant's correct mailing address, shall identify the application being appealed, shall contain a statement of the reason(s) why the applicant believes the denial should be reversed, and shall be signed by the applicant. The City Administrator shall act promptly to have the appeal placed on the City Council's agenda. The petitioner shall be notified in writing by certified mail, return receipt requested, of the date and time the matter will be considered on the City Council's agenda. The petitioner and all other interested persons may appear at the time and place and be heard. The City Council shall act on the question within thirty (30) days of the hearing.

(l) *Deviation.* Permission to deviate from the requirements and regulations of this section shall be granted by the City Administrator and the City Council only where unusual conditions or strict adherence to this section would cause undue and extreme hardship.

**Section 2. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 3. REPEALER.** All resolutions and ordinances of the City Code inconsistent herewith are hereby repealed.

**Section 4. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or application, and, to this end, the provisions of this ordinance are declared severable.

PASSED by the City Council on first reading the 27th day of May, 2025.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2025.

CITY OF BILLINGS

BY: \_\_\_\_\_  
William A. Cole, Mayor

Attest:

BY: \_\_\_\_\_  
Denise R. Bohlman, City Clerk

**City Council Regular**

**Date:** 06/09/2025  
**Title:** Payment of Claims for week of May 12th, 2025  
**Presented by:** Erin Watterud  
**Department:** Finance  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends Council approve the Payment of Claims

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

Claims in the amount of \$4,406,329.81 have been reviewed and are presented for City Council payment approval. A complete listing of the claims for the week are available in the Finance Department. Payment Approval Process Every invoice for payment is entered into the City's accounting system and the backup documentation is scanned in and attached (physical invoices, additional e-mails explaining payments, bids, contracts, etc.). Each invoice goes through a multi-step approval process depending upon the amount of the payment. First, invoices are entered by the department requesting the payment and the department director or designee must perform an initial review and approval of the purchase. The number of approvals within the department can vary based upon the size of the department, but no less than one approver within each department must verify the payment. Second, all payments, regardless of size, must be approved by the Purchasing Agent or designee. The Purchasing Agent will review the payment to ensure purchasing procedures are followed and appropriate documentation is attached. If the payment is greater than \$1,000, then it must be approved by the Finance Director or designee. If that payment is greater than \$10,000, then it must be approved by the City Administrator or Assistant City Administrator. Once all approvals are completed, the payment is able to be made and the Accounts Payable Clerk can print the check. After all checks are printed, a list of all checks in excess of \$2,500 is generated and placed on the next City Council meeting for review.

**ALTERNATIVES**

No other alternatives were analyzed.

**FISCAL EFFECTS**

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

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**Attachments**

CouncilMemo wk of 05122025

| Check Date | Check # | Name                          | Fund Name        | Amount        | Item Desc                                             |
|------------|---------|-------------------------------|------------------|---------------|-------------------------------------------------------|
| 05/12/2025 | 880109  | A-1 Landscaping & Nursery     | Library          | \$ 3,232.00   | 6276 May 2025 landscaping maintenance                 |
| 05/12/2025 | 880114  | Alternatives                  | CDBG             | \$ 67,956.26  | Q2 HOME-ARP Supportive Services Reimbursement         |
| 05/12/2025 | 880115  | Altitude Signal               | Street/Traffic   | \$ 4,844.00   | monitors for signals                                  |
| 05/12/2025 | 880115  | Altitude Signal               | Street/Traffic   | \$ 1,250.00   | MMU repair for signals                                |
| 05/12/2025 | 880119  | Askin Construction            | Storm Sewer      | \$ 293,504.20 | WO 24-38 Wicks Lane Storm, Phase II                   |
| 05/12/2025 | ACH     | Burns & McDonnell Engineering | Water            | \$ 145,457.58 | WO 19-42 West End Water Treatment Plant Project       |
| 05/12/2025 | 880127  | Civicplus                     | General          | \$ 5,134.32   | Municode Codification Admin Support Fee/Full Svc Supp |
| 05/12/2025 | 880127  | Civicplus                     | P.W. Admin       | \$ 6,834.49   | SSL Management Renewal 06/25-06/26/2026               |
| 05/12/2025 | 880129  | CM Tree Service and Removal   | Park Dist 1      | \$ 24,750.00  | removal of cottonwood tree at 2202 32nd -10477        |
| 05/12/2025 | 880131  | CompuNet Inc                  | Library          | \$ 34,787.62  | Equipment payment, balance due upon completion        |
| 05/12/2025 | 880133  | Copy Right                    | General          | \$ 943.05     | Business License Certificates                         |
| 05/12/2025 | 880133  | Copy Right                    | General          | \$ 1,205.05   | Business License Full Face Envelopes                  |
| 05/12/2025 | 880133  | Copy Right                    | Library          | \$ 576.22     | 62630 Newsletter                                      |
| 05/12/2025 | 880137  | Cues                          | Street/Traffic   | \$ 112,542.00 | CCTV Storm inspection camera upgrade                  |
| 05/12/2025 | 880145  | Dept Of Justice Dci           | Public Safety    | \$ 59,161.23  | CJIN Transactions, Omnixx & Terminal fees.            |
| 05/12/2025 | 880146  | Dick Anderson Construction    | Wastewater       | \$ 33,591.06  | WO 20-44 WRF Nutrient Recovery Improvements           |
| 05/12/2025 | 880146  | Dick Anderson Construction    | Water            | \$ 871,832.91 | WO 19-12 West End Reservoir Const Services Contract   |
| 05/12/2025 | 880146  | Dick Anderson Construction    | Water            | \$ 513,943.65 | WO 23-96 Dick Anderson Const WTP Intake #2 Catwalk    |
| 05/12/2025 | 880148  | Ditch Witch West              | Capital Replace  | \$ 41,536.00  | FY25 ERP #1675 replacement vacuum excavator trailer   |
| 05/12/2025 | 880148  | Ditch Witch West              | Park Dist 1      | \$ 4,336.39   | FY25 ERP #1675 replacement vacuum excavator trailer   |
| 05/12/2025 | 880150  | Downtown Billings Partnership | Tax Incrmnt N27  | \$ 26,383.92  | DT TIF Operating agreement                            |
| 05/12/2025 | 880152  | EBMS                          | City Ins Fund    | \$ 825.00     | June 2025 Statement                                   |
| 05/12/2025 | 880152  | EBMS                          | City Ins Fund    | \$ 40,955.00  | June 2025 Statement                                   |
| 05/12/2025 | 880152  | EBMS                          | City Ins Fund    | \$ 77,834.38  | June 2025 Statement                                   |
| 05/12/2025 | 880152  | EBMS                          | City Ins Fund    | \$ 1,260.00   | June 2025 Statement                                   |
| 05/12/2025 | 880152  | EBMS                          | City Ins Fund    | \$ 6,683.04   | June 2025 Statement                                   |
| 05/12/2025 | 880152  | EBMS                          | Payroll Clearing | \$ 13,571.40  | June 2025 Statement                                   |
| 05/12/2025 | 880159  | Fisher Sand & Gravel          | Street/Traffic   | \$ 5,390.72   | asphalt                                               |
| 05/12/2025 | 880159  | Fisher Sand & Gravel          | Street/Traffic   | \$ 420.48     | asphalt                                               |
| 05/12/2025 | 880159  | Fisher Sand & Gravel          | Street/Traffic   | \$ 380.16     | asphalt                                               |
| 05/12/2025 | 880159  | Fisher Sand & Gravel          | Street/Traffic   | \$ 410.88     | asphalt                                               |
| 05/12/2025 | 880159  | Fisher Sand & Gravel          | Street/Traffic   | \$ 398.72     | asphalt                                               |
| 05/12/2025 | 880159  | Fisher Sand & Gravel          | Street/Traffic   | \$ 2,400.00   | concrete                                              |

| Check Date | Check # | Name                    | Fund Name     | Amount       | Item Desc                                                  |
|------------|---------|-------------------------|---------------|--------------|------------------------------------------------------------|
| 05/12/2025 | 880163  | GE Grid Solutions       | Water         | \$ 7,140.56  | Jim Marshall...Parts for 2024 Switchgear ; Invoice 1716250 |
| 05/12/2025 | 880163  | GE Grid Solutions       | Water         | \$ 40.10     | WO 24-42 2024 Switchgear Parts...freight                   |
| 05/12/2025 | 880171  | Hurricane Butterfly LE  | Public Safety | \$ 3,997.90  | 25-0109, super sock bean bag rounds                        |
| 05/12/2025 | 880175  | InfoSend                | P.W. Admin    | \$ 4,154.42  | Statement Processing ..04/01-04/28/2025                    |
| 05/12/2025 | 880175  | InfoSend                | P.W. Admin    | \$ 12,817.29 | Statement Processing ..04/01-04/28/2025                    |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 0.01      | 87647451                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 10.19     | 87647451                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 11.79     | 87647451                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 0.01      | 87647452                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 9.74      | 87647452                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 0.17      | 87647454                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 205.65    | 87647454                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 38.34     | 87647454                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 42.30     | 87647454                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 22.38     | 87647454                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 0.10      | 87647455                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 92.97     | 87647455                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 33.18     | 87647455                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 11.20     | 87647455                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 2.64      | 87647456                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 670.91    | 87647456                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 968.08    | 87647456                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 49.05     | 87647456                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 470.41    | 87647456                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 1,775.63  | 87647456                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 0.05      | 87647457                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 51.33     | 87647457                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 11.20     | 87647458                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 0.02      | 87647543                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 15.33     | 87647543                                                   |
| 05/12/2025 | 880176  | Ingram Library Services | Library       | \$ 7.14      | 87647543                                                   |
| 05/12/2025 | 880180  | Invoice Cloud           | Building      | \$ 23.30     | Biller Portal Access Fee - All...EFT-MAR                   |
| 05/12/2025 | 880180  | Invoice Cloud           | City Ins Fund | \$ 20.39     | Biller Portal Access Fee - All...EFT-MAR                   |

| Check Date | Check # | Name                  | Fund Name        | Amount       | Item Desc                                                 |
|------------|---------|-----------------------|------------------|--------------|-----------------------------------------------------------|
| 05/12/2025 | 880180  | Invoice Cloud         | Parking          | \$ 20.39     | Biller Portal Access Fee - All...EFT-MAR                  |
| 05/12/2025 | 880180  | Invoice Cloud         | Solid Waste      | \$ 7,639.29  | Biller Portal Access Fee - All...April 2                  |
| 05/12/2025 | 880180  | Invoice Cloud         | Solid Waste      | \$ 518.36    | Biller Portal Access Fee - All...EFT-MAR                  |
| 05/12/2025 | 880180  | Invoice Cloud         | Wastewater       | \$ 11,458.94 | Biller Portal Access Fee - All...April 2                  |
| 05/12/2025 | 880180  | Invoice Cloud         | Water            | \$ 15,625.82 | Biller Portal Access Fee - All...April 2                  |
| 05/12/2025 | 880183  | Jares Fence Company   | Property Ins     | \$ 4,795.00  | Repairs to fencing at Lillis Park                         |
| 05/12/2025 | 880184  | JC Billion            | Capital Replace  | \$ 33,786.50 | 2025 model 3/4 ton 4 wheel drive extended cab             |
| 05/12/2025 | 880184  | JC Billion            | Public Safety    | \$ 17,596.50 | 2025 model 3/4 ton 4 wheel drive extended cab             |
| 05/12/2025 | 880184  | JC Billion            | Street/Traffic   | \$ 47,811.00 | 2025 model One ton 4 wheel drive regular cab long 8ft box |
| 05/12/2025 | 880184  | JC Billion            | Street/Traffic   | \$ 58,066.00 | 2025 one ton 4 wheel drive extended cab long 8ft          |
| 05/12/2025 | 880184  | JC Billion            | Street/Traffic   | \$ 48,008.00 | 2025 one ton 4 wheel drive regular cab long               |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 349.20    | P02736                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 633.00    | P02736                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 56.04     | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 135.36    | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 188.87    | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 1,205.36  | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 1,550.00  | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 1,600.00  | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 452.64    | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 359.30    | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Fleet            | \$ 5.98      | P02737                                                    |
| 05/12/2025 | ACH     | Joe Johnson Equipment | Street/Traffic   | \$ 6,325.00  | wire for sweeper brooms                                   |
| 05/12/2025 | ACH     | Kone                  | Facilities       | \$ 707.07    | Inv. #871671644 Maintenance Period for April 2025         |
| 05/12/2025 | ACH     | Kone                  | Parking          | \$ 429.94    | ELEVATOR MAINTENANCE PARK 2                               |
| 05/12/2025 | ACH     | Kone                  | Parking          | \$ 245.18    | MONTHLY ELEVATOR MAINTENANCE PARK 1-3                     |
| 05/12/2025 | ACH     | Kone                  | Parking          | \$ 735.54    | MONTHLY ELEVATOR MAINTENANCE PARK 1-3                     |
| 05/12/2025 | ACH     | Kone                  | Parking          | \$ 490.36    | MONTHLY ELEVATOR MAINTENANCE PARK 1-3                     |
| 05/12/2025 | 880192  | Laurel Chevrolet      | Building         | \$ 42,290.00 | Replacement truck for #1062 - Building Inspector          |
| 05/12/2025 | 880192  | Laurel Chevrolet      | Building         | \$ 42,290.00 | Truck for Fire Inspector/Plans Examiner                   |
| 05/12/2025 | 880193  | Mailing Technical     | Central Services | \$ 5,503.64  | Postage for April, 2025                                   |
| 05/12/2025 | 880193  | Mailing Technical     | General          | \$ 837.00    | Postage for April, 2025                                   |
| 05/12/2025 | 880193  | Mailing Technical     | Library          | \$ 1,276.44  | LIBR Library mailing April 2025                           |

| Check Date | Check # | Name                    | Fund Name     | Amount        | Item Desc                                           |
|------------|---------|-------------------------|---------------|---------------|-----------------------------------------------------|
| 05/12/2025 | 880193  | Mailing Technical       | Parking       | \$ 992.55     | Postage for April, 2025                             |
| 05/12/2025 | 880195  | Marsh & McLennan Agency | Property Ins  | \$ 2,945.00   | Add the Builders Risk Value and transfer Stillwater |
| 05/12/2025 | 880200  | Midwest Tape            | Library       | \$ 4,626.30   | 507112712 Hoopla                                    |
| 05/12/2025 | 880202  | Mitchell Court          | CDBG          | \$ 531,512.67 | Affordable Housing Development Project              |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 1,192.42   | 113966BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 207.72     | 114137BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 1,628.76   | 114283BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 250.00     | 114283BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 212.50     | 114321BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 589.33     | 114321BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 137.73     | 114389BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 192.14     | 114391BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 138.04     | 114396BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 93.12      | 114426BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 6.34       | 114666BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 13.90      | 114670BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ 289.32     | 115240BL                                            |
| 05/12/2025 | 880204  | Montana Peterbilt       | Fleet         | \$ (156.25)   | CM111233BL                                          |
| 05/12/2025 | 880204  | Montana Peterbilt       | Transit       | \$ 212.50     | 114936BL core deposit                               |
| 05/12/2025 | 880204  | Montana Peterbilt       | Transit       | \$ 582.40     | 114936BL Nox sensor intake                          |
| 05/12/2025 | 880207  | Motorola Solutions      | Public Safety | \$ 11,501.25  | Integration VAD RMS package May 2024-May 2025       |
| 05/12/2025 | 880207  | Motorola Solutions      | Public Safety | \$ 18,633.32  | Integration VAD RMS package May 2024-May 2025       |
| 05/12/2025 | 880207  | Motorola Solutions      | Public Safety | \$ 1,515.43   | Integration VAD RMS package May 2024-May 2025       |
| 05/12/2025 | 880208  | MT Dept of Rev-CGR2     | Storm Sewer   | \$ 2,964.68   | WO 24-38 Wicks Lane Storm, Phase II                 |
| 05/12/2025 | 880208  | MT Dept of Rev-CGR2     | Wastewater    | \$ 339.30     | WO 20-44 WRF Nutrient Recovery Improvements         |
| 05/12/2025 | 880208  | MT Dept of Rev-CGR2     | Wastewater    | \$ 3,485.71   | WO 23-22 WRF Digester Boiler..Construction          |
| 05/12/2025 | 880208  | MT Dept of Rev-CGR2     | Wastewater    | \$ 2,635.50   | WO 23-23 Briarwood Lift Station H2S                 |
| 05/12/2025 | 880208  | MT Dept of Rev-CGR2     | Water         | \$ 8,806.39   | WO 19-12 West End Reservoir Project                 |
| 05/12/2025 | 880208  | MT Dept of Rev-CGR2     | Water         | \$ 5,191.35   | WO 23-96 WTP Intake #2 Catwalk Repairs and Improv   |
| 05/12/2025 | 880210  | Napa Auto Parts         | Fleet         | \$ 41.12      | 653844                                              |
| 05/12/2025 | 880210  | Napa Auto Parts         | Fleet         | \$ 13.26      | 653844                                              |
| 05/12/2025 | 880210  | Napa Auto Parts         | Fleet         | \$ 16.78      | 653844                                              |
| 05/12/2025 | 880210  | Napa Auto Parts         | Fleet         | \$ 74.94      | 6538790                                             |

| Check Date | Check # | Name                        | Fund Name      | Amount       | Item Desc                                          |
|------------|---------|-----------------------------|----------------|--------------|----------------------------------------------------|
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 27.24     | 653916                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 32.72     | 654121                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 20.01     | 654121                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 4.24      | 654126                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 58.75     | 654189                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 50.50     | 654214                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 28.56     | 654391                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 20.45     | 654391                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 338.04    | 654423                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 38.72     | 654423                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 36.99     | 654568                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 96.00     | 654569                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 74.85     | 654651                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 231.88    | 654706                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 15.52     | 654995                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 77.63     | 655243                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 8.11      | 655417                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 48.41     | 655566                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 14.88     | 657520                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 87.48     | 657628                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 99.84     | 657628                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 275.34    | 657874                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 42.60     | 657932                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 6.22      | 657932                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 12.44     | 657933                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Fleet          | \$ 899.00    | 658085                                             |
| 05/12/2025 | 880210  | Napa Auto Parts             | Street/Traffic | \$ 14.93     | heat shrink tubing/cap screw fir irrigation repair |
| 05/12/2025 | 880210  | Napa Auto Parts             | Street/Traffic | \$ 32.63     | wire/shrink tube/terminals for irrigation repair   |
| 05/12/2025 | 880210  | Napa Auto Parts             | Street/Traffic | \$ 19.10     | heat shrink tubing for irrigation                  |
| 05/12/2025 | 880210  | Napa Auto Parts             | Street/Traffic | \$ 9.11      | terminals for irrigation wiring                    |
| 05/12/2025 | 880212  | Native American Development | CDBG           | \$ 2,243.58  | Q1 HOME-ARP Reimbursement                          |
| 05/12/2025 | 880212  | Native American Development | CDBG           | \$ 12,615.89 | Q2 HOME-ARP Reimbursement                          |
| 05/12/2025 | 880216  | NorthWestern Energy         | Library        | \$ 6,287.60  | 3039007-4 Library electricity May 2025             |

| Check Date | Check # | Name                | Fund Name   | Amount    | Item Desc |
|------------|---------|---------------------|-------------|-----------|-----------|
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 76.34  | 0712539-6 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 75.73  | 0720841-6 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.13   | 0722253-2 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 184.95 | 0722256-5 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 8.52   | 0722258-1 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 12.74  | 0722259-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 8.80   | 0722272-2 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 326.00 | 0722273-0 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 9.03   | 0722274-8 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 86.47  | 0722275-5 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 29.36  | 0722277-1 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 29.86  | 0722278-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 12.90  | 0722279-7 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.13   | 0722280-5 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.13   | 0722281-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.13   | 0722283-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.13   | 0722284-7 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 12.90  | 0722808-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.70   | 0722852-1 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 8.52   | 0722862-0 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 44.47  | 0722901-6 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.70   | 0722976-8 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 436.41 | 0722995-8 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 78.72  | 0723005-5 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.13   | 0723025-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ -      | 0723039-4 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.00   | 0723046-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 9.69   | 0723049-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 19.48  | 0723064-2 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 19.48  | 0723065-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 4.09   | 0723391-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 56.99  | 0723884-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 19.48  | 0723887-6 |

| Check Date | Check # | Name                | Fund Name   | Amount    | Item Desc |
|------------|---------|---------------------|-------------|-----------|-----------|
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 20.49  | 0793134-8 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 26.17  | 0920801-8 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 29.41  | 0978917-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 199.97 | 0999807-1 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 15.16  | 1141284-8 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.27   | 1156527-2 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 41.14  | 1160780-1 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.27   | 1230066-1 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ -      | 1409394-2 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.00   | 1588262-4 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 10.24  | 1635289-0 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 0.52   | 1692666-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.54   | 1902257-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 63.50  | 3020837-5 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.00   | 3178260-0 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 6.00   | 3477233-5 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 9.16   | 3771457-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 22.36  | 3999603-8 |
| 05/12/2025 | 880216  | NorthWestern Energy | Park Dist 1 | \$ 43.17  | 4148708-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 5.88   | 0722272-2 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 6.13   | 0723384-4 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 8.10   | 0723385-1 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 8.10   | 0723386-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 8.10   | 0723387-7 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 8.10   | 0723388-5 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 2.73   | 0723391-9 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 0.61   | 0723392-7 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 6.54   | 0723393-5 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 6.13   | 0723394-3 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 6.13   | 0723395-0 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 6.13   | 0723396-8 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 6.13   | 0723397-6 |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint | \$ 6.13   | 0723398-4 |

| Check Date | Check # | Name                | Fund Name      | Amount      | Item Desc                          |
|------------|---------|---------------------|----------------|-------------|------------------------------------|
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 6.13     | 0723835-5                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 8.52     | 0723836-3                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 6.27     | 0723840-5                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ -        | 0723879-3                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 6.21     | 0723883-5                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 0.88     | 0723885-0                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 0.52     | 0971824-8                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 45.60    | 1045813-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 0.52     | 1312707-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 0.52     | 1396192-5                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 0.70     | 1513796-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 20.44    | 1513800-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 8.33     | 1513802-7                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 7.93     | 1513804-3                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 6.70     | 1514388-6                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 6.82     | 1564209-3                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Parks Maint    | \$ 0.52     | 2041362-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Public Safety  | \$ 1,792.34 | 0100476-1 Station 1 April Services |
| 05/12/2025 | 880216  | NorthWestern Energy | Public Safety  | \$ 9.58     | 0712532-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Public Safety  | \$ 1,389.07 | 1183483-5                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Public Safety  | \$ 246.91   | 4045328-4                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Radio          | \$ 181.93   | 1006915-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 6.27     | 0855404-0                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 48.71    | 1045820-6                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 109.38   | 1738989-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 1.30     | 1797828-9                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 6.97     | 2047000-1                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 7.65     | 2047007-6                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 8.06     | 2047010-0                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 6.97     | 2047011-8                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 6.97     | 2047013-4                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 7.51     | 2047017-5                          |
| 05/12/2025 | 880216  | NorthWestern Energy | Street/Traffic | \$ 7.11     | 2047018-3                          |

| Check Date | Check # | Name                        | Fund Name        | Amount       | Item Desc                                              |
|------------|---------|-----------------------------|------------------|--------------|--------------------------------------------------------|
| 05/12/2025 | 880216  | NorthWestern Energy         | Street/Traffic   | \$ 7.51      | 2047019-1                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Street/Traffic   | \$ 43.72     | 3648861-7                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Street/Traffic   | \$ 15.22     | 3660075-7                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Transit          | \$ 2,562.14  | 0100473-8 Electricity- METroplex. April Utilities      |
| 05/12/2025 | 880216  | NorthWestern Energy         | Wastewater       | \$ 140.60    | 0723383-6                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Wastewater       | \$ 285.24    | 0723878-5                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Wastewater       | \$ 11.22     | 1704025-4                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Wastewater       | \$ 74.33     | 1704030-4                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Water            | \$ 540.09    | 0100478-7                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Water            | \$ 10.06     | 0722249-0                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Water            | \$ 2,651.24  | 0722270-6                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Water            | \$ 7.11      | 1160807-2                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Water            | \$ 5.35      | 1346673-5                                              |
| 05/12/2025 | 880216  | NorthWestern Energy         | Water            | \$ 360.38    | 805 Constitution Ave....April 2025                     |
| 05/12/2025 | ACH     | Parker Technology           | Parking          | \$ 1,086.64  | CALL CENTER SERVICES - EMPIRE                          |
| 05/12/2025 | ACH     | Parker Technology           | Parking          | \$ 267.69    | CALL CENTER SERVICES - PARK 1                          |
| 05/12/2025 | ACH     | Parker Technology           | Parking          | \$ 834.40    | CALL CENTER SERVICES - PARK 2                          |
| 05/12/2025 | ACH     | Parker Technology           | Parking          | \$ 375.60    | CALL CENTER SERVICES - PARK 3                          |
| 05/12/2025 | 880223  | Passio Technologies         | Transit          | \$ 5,540.00  | #CINV-084092 Annual subscription, Amendment #3         |
| 05/12/2025 | 880225  | Performance Engin & Consult | Gas Tax          | \$ 4,045.00  | WO 25-28 Safe Routes to School                         |
| 05/12/2025 | 880225  | Performance Engin & Consult | Gas Tax          | \$ 3,740.00  | WO 25-28 Safe Routes to School                         |
| 05/12/2025 | 880225  | Performance Engin & Consult | Gas Tax          | \$ 3,740.00  | WO 25-28 Safe Routes to School                         |
| 05/12/2025 | 880225  | Performance Engin & Consult | Gas Tax          | \$ 2,880.00  | WO 25-28 Safe Routes to School...13th St               |
| 05/12/2025 | 880225  | Performance Engin & Consult | Storm Sewer      | \$ 14,077.50 | Clearwater Estates Subdivision - Monad D               |
| 05/12/2025 | 880225  | Performance Engin & Consult | Storm Sewer      | \$ 35,558.75 | WO 24-38 Wicks Lane Storm                              |
| 05/12/2025 | 880226  | Pride of Montana            | Facilities       | \$ 6,129.22  | General cleaning of Stillwater Building April 2025     |
| 05/12/2025 | 880227  | Pro Clean Northwest         | Stillwater Const | \$ 23,305.00 | Basement concrete grinding at the Stillwater Building. |
| 05/12/2025 | 880228  | Public Utilities            | Facilities       | \$ 954.13    | 3090329                                                |
| 05/12/2025 | 880228  | Public Utilities            | Facilities       | \$ 140.54    | 3100365                                                |
| 05/12/2025 | 880228  | Public Utilities            | Facilities       | \$ 763.79    | 3113479                                                |
| 05/12/2025 | 880228  | Public Utilities            | Park Dist 1      | \$ 100.67    | 3060453                                                |
| 05/12/2025 | 880228  | Public Utilities            | Park Dist 1      | \$ 86.57     | 3113369                                                |
| 05/12/2025 | 880228  | Public Utilities            | Park Dist 1      | \$ 492.78    | 3113369                                                |

| Check Date | Check # | Name                           | Fund Name      | Amount        | Item Desc                                            |
|------------|---------|--------------------------------|----------------|---------------|------------------------------------------------------|
| 05/12/2025 | 880228  | Public Utilities               | Parking        | \$ 3.97       | 3088641                                              |
| 05/12/2025 | 880228  | Public Utilities               | Public Safety  | \$ 190.93     | 3104126                                              |
| 05/12/2025 | 880228  | Public Utilities               | Public Safety  | \$ 31.00      | 3110936                                              |
| 05/12/2025 | 880228  | Public Utilities               | Solid Waste    | \$ 316.25     | 3092576                                              |
| 05/12/2025 | 880228  | Public Utilities               | Solid Waste    | \$ 13.35      | 3112719                                              |
| 05/12/2025 | 880228  | Public Utilities               | Transit        | \$ 626.85     | 3057820                                              |
| 05/12/2025 | 880228  | Public Utilities               | Wastewater     | \$ 2,935.45   | 3060439                                              |
| 05/12/2025 | 880228  | Public Utilities               | Wastewater     | \$ 15.06      | 3075442                                              |
| 05/12/2025 | 880231  | Rimrock Foundation             | PD Program     | \$ 18,953.16  | Salaries & Supplies.                                 |
| 05/12/2025 | 880231  | Rimrock Foundation             | PD Program     | \$ 22,591.55  | Treatment & Lodging.                                 |
| 05/12/2025 | 880233  | Riverstone Health              | General        | \$ 11,250.00  | Q4 FY25 April - June 2025 DEQ Air Quality Monitoring |
| 05/12/2025 | 880233  | Riverstone Health              | Public Safety  | \$ 14,604.86  | March 2025 RiverStone Health two Nurses              |
| 05/12/2025 | 880234  | Rocky Mountain Health Network  | City Ins Fund  | \$ 8,000.00   | May 2025 Health Is-Corporate Wellness                |
| 05/12/2025 | 880234  | Rocky Mountain Health Network  | City Ins Fund  | \$ 47,088.00  | Inv. 505706 April 2025 Bio Event                     |
| 05/12/2025 | 880241  | SIGNAL 88 FRANCHISE GROUP      | Library        | \$ 19,508.25  | US_30533 Security Guard Service May 2025             |
| 05/12/2025 | 880244  | St Vincent Occupational Health | City Ins Fund  | \$ 750.00     | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Fleet          | \$ 114.25     | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | General        | \$ 4,205.50   | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Public Safety  | \$ 1,081.25   | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Solid Waste    | \$ 685.50     | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Street/Traffic | \$ 114.25     | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Transit        | \$ 114.25     | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Transit        | \$ 228.50     | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Wastewater     | \$ 20.00      | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Water          | \$ 193.00     | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880244  | St Vincent Occupational Health | Water          | \$ 490.75     | Drug Testing, DOT Physicals, On-site Nursing, Hep B  |
| 05/12/2025 | 880246  | Star Service                   | Solid Waste    | \$ 2,300.00   | Repipe flare at landfill                             |
| 05/12/2025 | 880246  | Star Service                   | Wastewater     | \$ 345,084.61 | WO 23-22 WRF Digester Boiler...Construction          |
| 05/12/2025 | 880250  | Summit Fire & Security         | Library        | \$ 5,466.00   | 3233546 5 year maintenance                           |
| 05/12/2025 | 880255  | Thorn Run Partners             | General        | \$ 3,750.00   | Federal Lobbying Svcs 2 Year Contract                |
| 05/12/2025 | 880255  | Thorn Run Partners             | P.W. Admin     | \$ 3,750.00   | Federal Lobbying Svcs 2 Year Contract                |
| 05/12/2025 | ACH     | Town & Country Supply          | Public Safety  | \$ 3,250.77   | Unleaded fuel and diesel for stations                |
| 05/12/2025 | 880259  | Utilities Underground Location | Phone System   | \$ 17.27      | April 2023 Locates                                   |

| Check Date | Check # | Name                           | Fund Name      | Amount        | Item Desc                           |
|------------|---------|--------------------------------|----------------|---------------|-------------------------------------|
| 05/12/2025 | 880259  | Utilities Underground Location | Phone System   | \$ 20.41      | April 2023 Locates                  |
| 05/12/2025 | 880259  | Utilities Underground Location | Phone System   | \$ 40.25      | April 2025 Locates                  |
| 05/12/2025 | 880259  | Utilities Underground Location | Phone System   | \$ 6.28       | February 2023 Locates               |
| 05/12/2025 | 880259  | Utilities Underground Location | Phone System   | \$ 51.81      | July 2023 Locates                   |
| 05/12/2025 | 880259  | Utilities Underground Location | Storm Sewer    | \$ 616.88     | Locates = 1410...for April 2025     |
| 05/12/2025 | 880259  | Utilities Underground Location | Street/Traffic | \$ 616.88     | Locates = 1410...for April 2025     |
| 05/12/2025 | 880259  | Utilities Underground Location | Street/Traffic | \$ 616.88     | Locates = 1410...for April 2025     |
| 05/12/2025 | 880259  | Utilities Underground Location | Wastewater     | \$ 308.43     | Locates = 1410...for April 2025     |
| 05/12/2025 | 880259  | Utilities Underground Location | Water          | \$ 308.43     | Locates = 1410...for April 2025     |
| 05/12/2025 | 880264  | Western Municipal Construction | Wastewater     | \$ 260,914.50 | WO 23-23 Briarwood Lift Station H2S |
| 05/12/2025 | 880267  | Wovek                          | Park Dist 1    | \$ 90,111.04  | Castlerock restroom renovations     |
| 05/12/2025 | 880267  | Wovek                          | Park Dist 1    | \$ 3,175.18   | Castlerock restroom renovations     |

**City Council Regular**

**Date:** 06/09/2025  
**Title:** Amended Certificate of Survey 3030, Zimmerer Family Transfer - Exempt Plat - Public Hearing for Appeal of Evasion Determination  
**Presented by:** Hunter Kelly, Planner 1  
**Department:** Planning & Community Services  
**Presentation:** Yes  
**Legal Review:** Yes  
**Project Number:** PZX-24-00315

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**RECOMMENDATION**

Per City of Billings Subdivision Regulations Appendix B, Section B.8, when 3 or more parcels of less than 160 acres each with common covenants or facilities pertaining to each parcel have been divided from the original tract, a pattern of development shall be presumed to be adopted for the purposes of evading the Montana Subdivision and Platting Act (the Act, or MSPA). Therefore, city staff recommends the City Council deny the exempt plat of Amended Certificate of Survey 3030, requiring the applicant to instead complete a minor subdivision.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

Tom Llewellyn, on behalf of Stephen Zimmerer, submitted an exempt plat to the Planning Division to split the Remainder of Tract 2 of Certificate of Survey 3030, generally located south of Ironwood Drive and east of Woodfield Court. The agent on behalf of the applicant has requested to split the existing Tract into four (4) lots using an exemption from subdivision, a division made outside of a platted subdivision for the purpose of a single gift or sale in each county to each member of the landowner's immediate family, MCA 76-3-207 (1)(b) and City of Billings Subdivision Regulations Section 23-105 and Appendix B, Section C. Immediate family member means a spouse, children by blood or adoption, and parents, MCA 76-3-103(8) and City of Billings Subdivision Regulations, Appendix B, Section C.2.

This exempt plat would create four (4) lots from the parent lot, with proposed Lots 1, 2, and 3 being gifted to Zainya Zimmerer (Child), Zahrah A. Zimmerer (Child), and Brenda Zimmerer (Spouse), respectively. Stephen Zimmerer would retain ownership of Lot 4. Whenever three (3) or more parcels of less than 160 acres each with common covenants or facilities pertaining to each parcel have been divided from the original tract, it is considered a pattern of development, per City of Billings Subdivision Regulations Appendix B, Section B.8. A pattern of development shall be presumed to be adopted for the purposes of evading the Montana Subdivision and Platting Act (the Act, or MSPA). Staff reviewed the checkprint submittal of the exempt certificate of survey and determined that the exemption creates a pattern of development and is being used to evade the Act and that the exemption should be denied. Tom Llewellyn is appealing this determination and requesting a hearing with the governing body, City of Billings City Council, per City of Billings Subdivision Regulations Appendix B.5.

Because this has rarely happened, if at all, the process is outlined more specifically below for Council's reference. Additionally, the evasion criteria outlined in Appendix B of the [City's Subdivision Regulations](#) is attached to this memo.

Montana law provides that "exemption provisions of the Act are to be generally given a narrow interpretation." *State ex rel. Dreher v. Fuller*, (1993) 257 Mont. 445, 448-449, 849 P.2d 1045, 1047 (citing *State ex rel. Florence--Carlton School District No. 15--16 v. Board of County Commissioners of Ravalli County* (1978), 180 Mont. 285, 291, 590 P.2d 602, 605). The Act requires every city to adopt and provide for the enforcement of local subdivision regulations. MCA 76-3-501. The Act and the City's subdivision regulations provide for exemptions from subdivision review and approval, unless the method of disposition is adopted for the purpose of evading the requirements of the Act. See MCA 76-3-201 and City's Subdivision Regulations, Section 23-105. The City's subdivision regulations must establish criteria to use in determining whether a proposed method of disposition using an exemption is an attempt to evade the requirements of the Act or City regulations. MCA 76-3-504.

The Montana Supreme Court has held "governing bodies have the power and duty to evaluate and determine from all the circumstances whether the proposed division of land is based on a purpose to evade subdivision requirements." *State ex rel. Dreher v. Fuller*, 257 Mont. 445, 451 (1993) (citing *State ex rel. v. Leach v. Visser*, 234 Mont. 438, 447 (1989)). Additionally, a "local government may legitimately require one claiming an exemption from the Act's requirements to make some evidentiary showing the exemption is justified..." *Id.*

The City of Billings is authorized to establish procedures to evaluate a proposed conveyance to determine if it is an attempted evasion of the Act. MCA 76-3-504(1)(p); see also *Dreher v. Fuller*, 257 Mont. at 451 (citing *Withers v. County of Beaverhead*, 218 Mont. 447, 450 (1985)). The City's subdivision regulations establish both the criteria and a process for Council to evaluate a division of land to determine whether that division is for the purpose of evading the Act. See Appendix B of the City's Subdivision Regulations.

Council should evaluate all relevant circumstances in assessing the intent of the subdivider. This may include the nature of the subdivider's business, the nature of the use and the prior history of the tract, the proposed configuration of the tract after the transaction would be complete, and any pattern of exempt transactions that will result in the equivalent of a subdivision without review. See *Dreher*, 257 Mont. at 451-452, citing 40 Op. Att'y Gen. 58, 62 (1983). "A claimant who attempts to engage in a pattern of exempt transactions which will result in the equivalent of a subdivision without local government review, should be denied exemption... To allow an exemption in such circumstances would obviously subvert the Act's public policy requiring *a priori* review of divisions of land which may have substantial impact on public health, safety, and general welfare." *Id.* See also MCA 76-3-102. In this instance, Council will want to review the criteria in Appendix B, Section C. as it applies to gifts or sales to a member of the immediate family. See also MCA 76-3-207.

"Because exemptions of statutes pertaining to health, safety, and welfare of the public should be narrowly construed, a party claiming the exemption should have the burden of proving his entitlement to the exemption." *Dreher*, 257 Mont. at 453. Council may hear additional evidence at the public hearing to determine whether the use of the exemption was intended to evade the Act. If Council determines the information provided by the applicant overcomes the presumption that the exemption is being used to evade the Act, Council may authorize the use of the exemption. Appendix B, Section B.5.

## STAKEHOLDERS

Due to the applicant appealing the determination to City Council, a public hearing is required. Comments may be made by adjacent property owners during the City Council public hearing.

## ALTERNATIVES

City Council may:

- Approve the authorization of the use of an exemption for Amended Certificate of Survey 3030; or,
- Disapprove the authorization of the use of an exemption for Amended Certificate of Survey 3030. If the exemption is determined to be an evasion of MSPA, the landowner may submit a subdivision application for the proposed land division according to the City of Billings Subdivision Regulations.

## FISCAL EFFECTS

The determination of use of the exemption has no fiscal impact on the Planning Division.

## SUMMARY

The request is for the City Council to determine whether the family transfer is intended to evade the Act.

The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to:

### (1) The nature of the use of the parcel.

The majority of the parcel is vacant and includes Cove Creek. Three (3) of the four (4) lots are of a size and configuration that resembles nearby residential development.

### (2) The prior history of uses of the particular tract in question.

The parcel is a vacant remainder parcel, most of the original C.O.S. 3030, Tract 2 has been developed into Ironwood Estates, 1st-4th Filings. The parcel was also annexed at the same time as the land associated with what is currently Ironwood Estates, 1st-4th Filings.

### (3) The proposed configuration of the tracts if the proposed exempt transaction is completed.

Lots 1, 2, and 3 would be accessed from Ironwood Drive. Lots 1 and 2 would have a shared access and utility easement along their shared property line for the benefit of Lot 3. This driveway would be 171.51 feet long, which requires an approved cul-de-sac or hammerhead turnaround at the terminus for emergency access and vehicle circulation. No such turnaround is depicted on the plat. Lot 4 would be accessed from Ironwood Drive, but primarily includes Cove Creek throughout its length and may not be suitable for development.

**(4) Any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.**

Amended Certificate of Survey 3030 proposes four (4) lots through family transfer. The creation of four lots is also considered a minor subdivision. Staff found that the aforementioned circumstances reinforce the initial determination that this exempt plat is an attempted evasion of the Montana Subdivision and Platting Act. Lots 1-3 would effectively be a cul-de-sac neighborhood without the required internal road development or coordinated infrastructure improvements. This presents concerns of public safety and consistency of development and City standards in residentially developed areas that would be addressed by going through subdivision.

Per City of Billings Subdivision Regulations Appendix B.6., staff is required to issue an advisory opinion on whether evasion would occur. After staff review and consideration, staff finds the development of four residential tracts with a common access results in a clear pattern of development equivalent and identical to a minor subdivision. By not going through subdivision review, an approved turnaround, road, streetlights, and sidewalks will not be constructed. All of these items have a direct relationship to emergency services, public safety and consistency of standards for residential development in the City.

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**Attachments**

Exempt Plat  
Notice of Evasion to C&R  
Appendix B, City Subdivision Regulations

AMENDED CERTIFICATE OF SURVEY No. 3030  
BEING THE REMAINDER OF TRACT 2  
LOCATED WITHIN THE SE¼ OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 24 EAST, P.M.M.  
YELLOWSTONE COUNTY, MONTANA  
PURPOSE OF AMENDMENT: FAMILY MEMBER TRANSFER  
COMMISSIONED BY: STEPHEN ZIMMERER

LEGAL DESCRIPTION

A tract of land located within the southeast ¼ Section 24, Township 1 North, Range 24 East, Principal Meridian Montana, Yellowstone County, Montana, more particularly described as follows:

That portion of Certificate of Survey 3030, Doc.3081121, lying southerly of the western boundary of Ironwood Estates Subdivision, First Filing, Doc 3196396, being within the southeast one-quarter (SE1/4) of Section 24, Township 1 North, Range 24 East, Principal Meridian Montana, Yellowstone County, Montana, being more particularly described as follows:

Commencing at the southeast corner of Section 24, Township 1 North, Range 24 East, Principal Meridian Montana, said point being a 3 ¼-inch diameter aluminum cap inscribed "MDOT" along with other markings, thence N89°04'18"W along the section line common to Sections 24 and 25, a distance of 227.13 feet to a 5/8-inch diameter rebar with an orange plastic cap inscribed "3362 ES", said point being the Point of Beginning;

Thence from said point of beginning, N89°04'18"W along the section line of said Sections 24 and 25, a distance of 342.60 feet to a 5/8-inch diameter rebar with an orange plastic cap inscribed "3362 ES", said point being the southeast corner of Ironwood Estates Subdivision, Second filing, Doc 3309802; thence, the next seven courses being along the easterly boundary of said Ironwood Estates Subdivision, Second Filing, N12°15'40"W, a distance of 384.86 feet, said point being a 5/8-inch diameter rebar with an orange plastic cap inscribed "3362 ES"; thence N70°52'01"W, a distance of 298.83 feet, said point being a 5/8-inch diameter rebar with an orange plastic cap inscribed "3362 ES"; thence N61°19'26"W, a distance of 115.64 feet, said point being a 5/8-inch diameter rebar with an orange plastic cap inscribed "3362 ES"; thence N49°02'27"W, a distance of 104.85 feet, said point being a 5/8-inch diameter rebar with an orange plastic cap inscribed "3362 ES"; thence N38°07'13"W, a distance of 125.38 feet, said point being a 5/8-inch diameter rebar with an orange plastic cap inscribed "3362 ES", thence S66°45'26"W, a distance of 206.36 feet, said point being a 5/8-inch diameter rebar with a yellow plastic cap inscribed "41478 LS"; thence, along the easterly boundary of Woodfield Court a 60 foot right-of-way, along a non-tangent curve to the left with an arc length of 175.43 feet, a radius of 549.91 feet, a delta angle of 18°16'43", a chord bearing of N30°26'47"W, and a chord length of 174.69 feet, said point being a 5/8-inch diameter rebar with a yellow plastic cap inscribed "41478 LS"; thence departing said easterly boundary of Ironwood Estates Subdivision, Second Filing, the next two courses being along the southerly right-of-way line of Ironwood Drive a 60 foot right-of-way, along a tangent curve to the right with a radius of 10.00 feet, an arc length of 15.19 feet, a delta angle of 87°01'23", a chord bearing of N3°54'35"E, and a chord length of 13.77 feet, said point being a 5/8-inch diameter rebar with a yellow plastic cap inscribed "41478 LS"; thence along a tangent curve to the right with a radius of 1970.00 feet, an arc length of 453.89 feet, a delta angle of 13°12'04", a chord bearing of N54°00'21"E, and a chord length of 452.89 feet, said point being a 5/8-inch diameter rebar; thence departing said southerly right-of-way boundary of Ironwood Drive, the next four courses being along the westerly boundary of Ironwood Estates Subdivision, First Filing, Doc. 3196396, S22°44'00"E, a distance of 272.43 feet, said point being a 5/8-inch diameter rebar with a yellow plastic cap inscribed "41478 LS"; thence along a tangent curve to the left with a radius of 528.37 feet, an arc length of 472.30 feet, a delta angle of 51°12'56", a chord bearing of S48°12'53"E, and a chord length of 456.75 feet, said point being a 5/8-inch diameter rebar with a yellow plastic cap inscribed "9960 LS"; thence S73°44'22"E, a distance of 353.63 feet, said point being a 5/8-inch diameter rebar with a yellow plastic cap inscribed "9960 LS"; thence S12 °47'08"E, a distance of 407.00 feet, to the Point of Beginning, said Tract 2 of Record contains 7.79 acres, more or less.

CERTIFICATE OF LANDOWNER

Pursuant to Section 76-3-207(1)(b), MCA, I certify that the purpose of this survey is for a division made outside of a platted subdivision for the purpose of a single gift or sale in each county to each member of the landowner's immediate family. Therefore, this survey is exempt from review as a subdivision.

Tract to be conveyed: Lot 1  
Name of Grantor: Stephen Zimmerer  
Name of Grantee: Zainya Zimmerer  
Relationship of Grantee to Grantor: Child

Tract to be conveyed: Lot 2  
Name of Grantor: Stephen Zimmerer  
Name of Grantee: Zahrah A. Zimmerer  
Relationship of Grantee to Grantor: Child

Tract to be conveyed: Lot 3  
Name of Grantor: Stephen Zimmerer  
Name of Grantee: Brenda Zimmerer  
Relationship of Grantee to Grantor: Spouse

Furthermore, All tracts are excluded from Department of Environmental Quality review pursuant to ARM 17.36.605(2)(a) which excludes: "a parcel that has no facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal, if no facilities will be constructed on the parcel;"

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Stephen Zimmerer

CERTIFICATE OF YELLOWSTONE COUNTY HEALTH DEPARTMENT

\_\_\_\_\_  
Health officer/Authorized Representative

CERTIFICATE OF SURVEYOR

I, the undersigned, Christopher W. Kosine, Professional Land Surveyor, do hereby certify that during September, 2024, I supervised the survey, plotting, and describing of the parcels as shown on the accompanying plat and platted in accordance with the provisions of the Montana Subdivision and Platting Act, Section 76-3-101 through 76-3-625, MCA, and the Yellowstone County Subdivision Regulations.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Christopher W. Kosine, PLS  
License No. 41478



CERTIFICATE OF COUNTY ATTORNEY

This document has been reviewed by the City Attorney's office and is acceptable as to form.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Reviewed by: \_\_\_\_\_

CERTIFICATE OF COUNTY TREASURER

I hereby certify, pursuant to Section 76-3-611(1)(b) and 76-3-207(1)(f)(vi), MCA, that the accompanying plat has been duly examined and that all real property taxes and special assessments assessed and levied on the land have been paid.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Treasurer of Yellowstone County

STATE OF MONTANA       )  
                                      ):SS  
County of Yellowstone    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, a notary public in and for the state of Montana, personally appeared Scott Lawson, known to me to be the person who signed the forgoing instrument, Witness my hand and seal the day and year herein above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana



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PROFESSIONAL ENGINEERS & SURVEYORS  
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Phone: (406) 522-9526

GODY  
Phone: (207) 509-5541

GREAT FALLS  
Phone: (406) 604-4644

HELENA  
Phone: (406) 442-8584

CERTIFICATE OF SURVEY

COUNTY: YELLOWSTONE  
PRINCIPAL MERIDIAN,  
MONTANA

| 1/4                                 | SEC | T  | R   | 1/4                                 | SEC | T | R |
|-------------------------------------|-----|----|-----|-------------------------------------|-----|---|---|
| <input checked="" type="checkbox"/> | 24  | 1N | 24E | <input checked="" type="checkbox"/> |     |   |   |
| <input checked="" type="checkbox"/> |     |    |     | <input checked="" type="checkbox"/> |     |   |   |

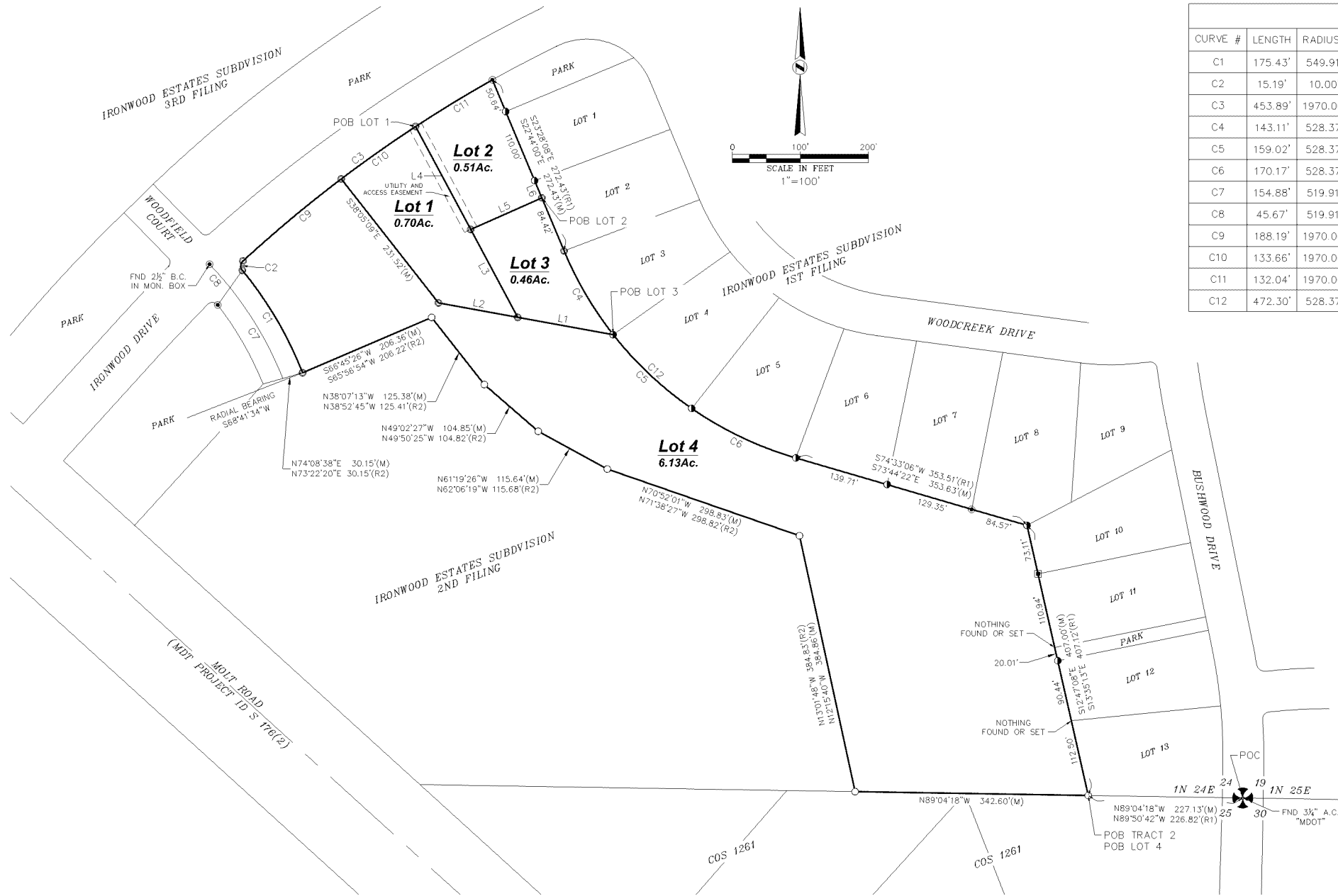
FIELD: JM  
DRAWN: WS  
CHECKED: CK  
DATE: 12/20/2024

SHEET  
1 OF 2

AMENDED CERTIFICATE OF SURVEY No. 3030

BEING THE REMAINDER OF TRACT 2  
LOCATED WITHIN THE SE<sup>1</sup>/<sub>4</sub> OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 24 EAST, P.M.M.  
YELLOWSTONE COUNTY, MONTANA

PURPOSE OF SURVEY: FAMILY MEMBER TRANSFER  
COMMISSIONED BY: STEPHEN ZIMMERER



| Curve Table |         |          |            |               |              | Curve Table (Record) |         |          |            |               |              |        |
|-------------|---------|----------|------------|---------------|--------------|----------------------|---------|----------|------------|---------------|--------------|--------|
| CURVE #     | LENGTH  | RADIUS   | DELTA      | CHORD BEARING | CHORD LENGTH | CURVE #              | LENGTH  | RADIUS   | DELTA      | CHORD BEARING | CHORD LENGTH | RECORD |
| C1          | 175.43' | 549.91'  | 018°16'43" | N30°26'47"W   | 174.69'      | C1                   | 175.44' | 549.91'  | 018°16'44" | N31°13'28"W   | 174.69'      | (R2)   |
| C2          | 15.19'  | 10.00'   | 087°01'23" | N03°54'35"E   | 13.77'       | C2                   | 15.18'  | 10.00'   | 086°59'28" | S03°07'54"W   | 13.77'       | (R1)   |
| C3          | 453.89' | 1970.00' | 013°12'04" | N54°00'21"E   | 452.89'      | C3                   | 453.90' | 1970.00' | 013°12'04" | S53°13'40"W   | 452.89'      | (R1)   |
| C4          | 143.11' | 528.37'  | 015°31'07" | S30°22'13"E   | 142.67'      | C4                   | 142.98' | 529.93'  | 015°27'31" | S31°11'53"E   | 142.54'      | (R1)   |
| C5          | 159.02' | 528.37'  | 017°14'39" | S46°45'06"E   | 158.42'      | C5                   | 159.13' | 529.93'  | 017°12'16" | S47°31'47"E   | 158.53'      | (R1)   |
| C6          | 170.17' | 528.37'  | 018°27'08" | S64°36'00"E   | 169.43'      | C6                   | 170.37' | 529.93'  | 018°25'12" | S65°20'30"E   | 169.64'      | (R1)   |
| C7          | 154.88' | 519.91'  | 017°04'07" | N30°09'38"W   | 154.31'      | C7                   | 154.89' | 519.91'  | 017°04'11" |               |              | (R2)   |
| C8          | 45.67'  | 519.91'  | 005°01'57" | N41°12'40"W   | 45.65'       | C8                   | 45.63'  | 519.91'  | 005°01'44" | N41°59'07"W   | 45.62'       | (R1)   |
| C9          | 188.19' | 1970.00' | 005°28'24" | S50°08'31"W   | 188.12'      |                      |         |          |            |               |              |        |
| C10         | 133.66' | 1970.00' | 003°53'14" | S54°49'20"W   | 133.63'      |                      |         |          |            |               |              |        |
| C11         | 132.04' | 1970.00' | 003°50'25" | S58°41'10"W   | 132.02'      |                      |         |          |            |               |              |        |
| C12         | 472.30' | 528.37'  | 051°12'54" | S48°13'07"E   | 456.73'      |                      |         |          |            |               |              |        |

| Parcel Line Table |             |          |
|-------------------|-------------|----------|
| LINE #            | BEARING     | DISTANCE |
| L1                | S79°43'18"E | 142.44'  |
| L2                | S79°43'18"E | 118.36'  |
| L3                | N28°09'26"W | 146.45'  |
| L4                | N28°09'26"W | 171.51'  |
| L5                | N66°02'58"E | 114.35'  |
| L6                | S22°44'00"E | 27.37'   |

LEGEND

|      |                                                 |
|------|-------------------------------------------------|
|      | SUBJECT PARCEL BOUNDARY                         |
|      | ADJACENT PROPERTY BOUNDARY                      |
|      | SET MONUMENT 4147B LS                           |
|      | FOUND 5/8" REBAR OR AS NOTED                    |
|      | FOUND 5/8" REBAR W/ 1 1/4" YELLOW PLASTIC CAP   |
|      | FOUND 5/8" REBAR W/ 1 1/4" YELLOW PLASTIC CAP   |
|      | FOUND 5/8" REBAR W/ 1 1/4" ORANGE PLASTIC CAP   |
|      | FOUND PLSS MONUMENT AS NOTED                    |
| (M)  | MEASURED, OR CALCULATED                         |
| (R1) | IRONWOOD ESTATES SUBDIVISION, 1ST FILING (2002) |
| (R2) | IRONWOOD ESTATES SUBDIVISION, 2ND FILING (2004) |

BASIS OF BEARING:  
RMTCS BILLINGS (IFT) GRID NORTH, NAD83(CONUS) DATUM, EPSG: 7127  
DERIVED FROM RTK CORRECTIONS FROM MTEI (CORS)

LAMBERT CONFORMAL CONIC SINGLE PARALLEL  
CENTRAL MERIDIAN: 108°25'00"W  
GRID ORIGIN: 45°47'00"N  
FALSE NORTHING: 164041.995'  
FALSE EASTING: 656167.979'  
SCALE FACTOR: 1.0001515

DISTANCES ARE IN INTERNATIONAL FOOT GROUND UNITS.



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GREAT FALLS  
Phone: (406) 604-4644  
CODY  
Phone: (307) 569-5541  
HELENA  
Phone: (406) 442-8594

CERTIFICATE OF SURVEY

|                             |     |     |     |   |     |     |   |   |
|-----------------------------|-----|-----|-----|---|-----|-----|---|---|
| COUNTY: YELLOWSTONE         | 1/4 | SEC | T   | R | 1/4 | SEC | T | R |
| PRINCIPAL MERIDIAN, MONTANA | 24  | 1N  | 24E |   |     |     |   |   |

FIELD: JM  
DRAWN: WS  
CHECKED: CK  
DATE: 12/20/2024  
SHEET  
2 OF 2

City/County  
Planning Division

Billings  
Metropolitan  
Planning  
Organization

316 N 26<sup>th</sup> Street  
Billings, MT  
59101 5th Floor  
P 406.657.8247

To: Jeff Martin, Clerk and Recorder  
From: Anna Vickers, Planning Division Manager  
Date: May 15, 2025  
RE: Amended Certificate of Survey 3030, Zimmerer Family Transfer - Exempt Plat (PZX-24-00315)

Tom Llewellyn, on behalf of Stephen Zimmerer submitted an exempt survey for the purpose of creating four parcels using the family transfer exemption per Montana Code Annotated 76-3-207(1)(b).

The design, development, and creation of four parcels using an exemption does require that the governing body determine whether or not the creation of lots evades the Montana Subdivision and Platting Act (MSPA). Appendix B of City of Billings Subdivision Regulations provide guidance on how to determine whether evasion has occurred.

*The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to:*

- 1. the nature of the use of the parcel,*
- 2. the prior history of uses of the particular tract in question,*
- 3. the proposed configuration of the tracts if the proposed exempt transaction is completed, and*
- 4. any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v Fuller, 50 St. Rptr.454, 1993).*

*Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever three (3) or more parcels of less than 160 acres each with common covenants or facilities pertaining to each parcel have been divided from the original tract.*

Per the regulations, staff is required to issue an advisory opinion on whether evasion has occurred. After staff review and consideration, staff finds the development of four residential tracts with a common access results in a clear pattern of development equivalent and identical to a subdivision. By not going through subdivision review, an approved turn around, road, streetlights, and sidewalks will not be constructed. All of these items have a direct relationship to emergency services and public safety.

This matter will need to be discussed with the City of Billings City Council for guidance and direction. This discussion is scheduled for June 9, 2025.

## **APPENDIX B**

### **Evasion Criteria**

#### **City of Billings Evasion Criteria**

##### **A. Purpose.**

The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the development is an attempt to evade the Montana Subdivision and Platting Act (MSPA), 76-3-101, et. seq., MCA.

The following procedures, criteria and requirements shall be used to review an exemption from subdivision review and to determine whether the division of land is for the purpose of evading the MSPA.

##### **B. Procedures and General Requirements.**

1. Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Clerk and Recorder (1) a certificate of survey, exempt amended plat, or where a survey is not required an instrument of conveyance, and (2) evidence of, and a notarized statement affirming, entitlement to the claimed exemption signed by the landowner.
2. When a certificate of survey, exempt amended plat, or instrument of conveyance is submitted to the Planning Department, the Planning Department shall cause the documents to be examined by the designated agents of the governing body: (the City or County Public Works Department, City or County Attorney, Sanitarian, Treasurer, and Clerk and Recorder). The agents shall examine the proposed land division to determine whether it complies with the requirements set forth in this Resolution, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act (76-4-101, et seq., MCA).
3. After the review to evaluate compliance with the requirements contained in this section, the agents shall submit written comments as to whether the use of the exemption is intended to evade the purposes of the Act, after which a written recommendation will be presented to the governing body for its review.
4. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall recommend to the Clerk and Recorder to file the certificate of survey, exempt amended plat, or record the instrument of conveyance and accompanying documents. If the agents find that the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the Clerk and Recorder of their determination and recommend whether or not to file or record the documents, and upon his/her concurrence, the Clerk shall return the materials to the landowner with an explanation as to why the recordation was declined.

## **APPENDIX B**

### **Evasion Criteria**

5. Any person whose proposed use of an exemption has been denied by the designated agents may appeal the agents' decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act.

If the governing body concludes that the information provided by the developer overcomes the recommendation by staff that the exemption is being used to evade the Act, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an exempt amended plat or an instrument of conveyance recorded) if the governing body has signed a certificate of an exemption as provided in these regulations.

6. Landowners or their representatives are encouraged to meet with the governing body's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

The agents may issue an advisory opinion only, and the opinion does not constitute a commitment by the local officials when the documents creating the proposed land division are submitted to the Clerk and Recorder.

7. The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: (1) the nature of the use of the parcel, (2) the prior history of uses of the particular tract in question, (3) the proposed configuration of the tracts if the proposed exempt transaction is completed, and (4) any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller, 50 St. Rptr. 454, 1993).
8. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever three (3) or more parcels of less than 160 acres each with common covenants or facilities pertaining to each parcel have been divided from the original tract.
9. If the use of an exemption is determined to be an evasion of MSPA, the landowner may submit a subdivision application for the proposed land division.

#### **C      Exemption as a Gift or Sale to a Member of the Immediate Family (76-3-207(1)(b), MCA).**

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.

**APPENDIX B**  
**Evasion Criteria**

2. "Immediate family" is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7), MCA).
3. Any certificate of survey filed that would use this exemption to create a parcel for conveyance to a family member must clearly identify the name of the grantee, the grantee's relationship to the landowner, and the parcel to be conveyed under this exemption, and be accompanied by, or contain, the landowner's written certification of compliance. The certificate of survey or other instrument must also cite the exemption claimed and include the proper language. Also, the certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.
4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review. However, the use of the exemption may not result in more than one remaining parcel of less than 160 acres.
5. Any proposed use of the family conveyance exemption to divide a tract that was previously created through use of an exemption shall be presumed to be an evasion of the Act if it creates a pattern of development consistent with an overall plan with characteristics such as common roads, utility easements, restrictive covenants, open space or common marketing. This presumption will not be rebutted by previous ownership of the tracts, and pertains to remaining tracts of less than 160 acres as well as to those tracts that were previously created through the use of one or more of the exemptions.
6. The use of the family conveyance exemption to divide tracts that were created with the subdivision process are allowed as long as they can also meet the requirements of zoning.
7. An immediate family member or the spouse of an immediate family member who receives a division of land as part of a gift or sale may not transfer or otherwise convey the division of land for a period of up to 2 years after the date of the division. The governing body may authorize variances from these requirements to address hardship situations.

**D. Exemption to Provide Security for a Construction Mortgage, Lien or Trust Indenture (76-3-201(1)(b) MCA).**

1. Statement of Intent: Under policies of many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or a contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
2. When claiming this exemption, the landowner shall submit the following documents to the City-County Planning Department:

## **APPENDIX B**

### **Evasion Criteria**

- a. A signed statement from both the landowner and the lending institution that the creation of the exempted parcel is necessary for the owner to secure construction financing through a construction mortgage, lien or trust indenture on the exempted parcel.
  - b. Any certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in Section H. of this Chapter.
3. The use of this exemption is presumed to have been adopted for the purpose of evading MSPA if:
- a. It will create a site for more than one dwelling unit;
  - b. The loan is for someone other than the owner of record or the recorded contract purchaser of the parcel to be divided.
  - c. It will create a pattern of development which is equivalent to a subdivision with characteristics such as common roads, sewer, water, utility easements, restrictive covenants, open space or a common marketing or promotional plan.

#### **E. Exemption for Agricultural Purposes (76-3-207 (1)(c), MCA).**

1. Statement of Intent: The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built.
2. "Agricultural Purpose," for purposes of these evasion criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the Montana Department of Environmental Quality (MDEQ), provided the applicable exemption is properly invoked by the property owner.
3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading MSPA:
  - a. The parties to the transaction by gift, sale, or agreement, must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the governing body. An example of a covenant is provided in Section H. of

## **APPENDIX B**

### **Evasion Criteria**

this Chapter.

- b. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer).
- c. Any change in use of the land for anything other than agricultural purposes subjects the parcel to full review as a subdivision.
- d. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked and the land division is reviewed under MCA Title 76, Chapter 3.
- e. A certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in Section H. of this Chapter.

#### **F. Relocation of Common Boundary (76-3-207(1) (a, d and e), MCA).**

1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels and to allow a one-time transfer of a tract to affect that change in location without subdivision review.
2. If the relocation of a common boundary would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision. If a temporary tract is created, language shall be added to indicate that the temporary tract is merged forever with the adjacent tract.
3. Within a platted subdivision, a division of lots that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the County Clerk and Recorder in accordance with Section 306 of these Regulations.
4. Certificates of survey or amended plats claiming this exemption must be clearly distinguished between the existing boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate certification must be included on the certificate of survey as provided in Section H. of this Chapter.

#### **G. Remainder Parcels.**

Statement of Intent: Any part of an original tract of record, less than 160 acres that is left following the segregation of other parcels from the tract for the purpose of transfer shall be reviewed as part of the subdivision.