



THE CITY COMMISSION OF BOZEMAN, MONTANA

REGULAR MEETING AGENDA

Tuesday, August 12, 2025

How to Participate:

If you are interested in commenting in writing on items on the agenda please send an email to comments@bozeman.net or visit the [Public Comment Page](#) prior to 12:00 p.m. on the day of the meeting. At the direction of the City Commission, anonymous public comments are not distributed to the City Commission or staff.

Public comments will also be accepted in-person and through video conference during the appropriate agenda items but you may only comment once per item.

As always, the meeting will be recorded and streamed through the [Commission's video page](#) and available in the City on cable channel 190.

For more information please contact the City Clerks' Office at 406.582.2320.

A. Call to Order - 6:00 PM - Commission Room, City Hall, 121 North Rouse

This meeting will be held both in-person and also using an online video conferencing system. You can join this meeting:

[Via Video Conference:](#)

Click the Register link, enter the required information, and click submit.

Click Join Now to enter the meeting.

Via Phone: *This is for listening only if you cannot watch the stream, channel 190, or attend in-person*

United States Toll

+1 669 900 9128

Access code: 933 7244 1920

B. Pledge of Allegiance and a Moment of Silence or Mindfulness

C. Changes to the Agenda

D. FYI

E. Commission Disclosures

F. Consent

F.1 [Accounts Payable Claims Review and Approval](#) (Edwards)

F.2 [Approval of depository bonds and pledged securities as of June 30, 2025](#) (Clark)

F.3 [Authorize the City Manager to Sign a Notice of Award to The Third Element, Inc., in the](#)

Amount of \$539,473.00 for the WRF Motor Control Center Installation Contract as well as Contract Documents Once Received(Heaston)

- F.4 Approve the Gran Cielo Block 4 Subsequent Minor Subdivision Preliminary Plat application to further subdivide 5 lots in Block 4 of Gran Cielo Subdivision into a 7 lot subdivision for residential single household uses. The subject property is zoned R-3 (Residential Medium Density District) and contains 0.69 acres of buildable lots. Generally located Northeast of the corner of Cielo Way and South 31st Avenue, Application 25157 (Quasi-Judicial)(Garber)
- F.5 Authorize the City Manager to Sign the City of Bozeman FY23 Safe Streets and Roads for All Grant Agreement with the Federal Highway Administration(Lonsdale)
- F.6 Authorize the City Manager to Sign a Small Municipal and County Enterprise License Agreement with VertiGIS for Annual Software Subscription(Jorgenson)
- F.7 Authorize the City Manager to Sign a Professional Services Agreement with Ayres Associates Inc. for Aerial Imagery and LiDAR Data Download Tool(Jorgenson)
- F.8 Authorize the City Manager to Sign Amendment 2 to a Professional Services Agreement with Rock Steady Movers for Bozeman City Hall Phase 3 Move Services(Miller)
- F.9 Authorize the City Manager to sign Task Order No. 4 of the Professional Services Master Task Order Agreement with the firm of HDR Engineering, Inc., providing engineering services for the East Gallatin River Streambank Erosion Protection Project, CIP No. WW111(Nielsen)
- F.10 Resolution adopting authorization of Change Order No. 1 with CK May Excavating, Inc. for the Sourdough Intake Improvements Project(Murray)

G. Public Comment on Non-agenda Items Falling Within the Purview and Jurisdiction of the Commission

This is the time to comment on any matter falling within the scope of the Bozeman City Commission. There will also be time in conjunction with each agenda item for public comment relating to that item but you may only speak once per topic. Please note, the City Commission cannot take action on any item which does not appear on the agenda. All persons addressing the City Commission shall speak in a civil and courteous manner and members of the audience shall be respectful of others. Please state your name, and state whether you are a resident of the city or a property owner within the city in an audible tone of voice for the record and limit your comments to three minutes.

Written comments can be located in the [Public Comment Repository](#).

H. Special Presentation

- H.1 Food for Fines Inaugural Event (Tierney)
- H.2 Fowler Avenue Connection 60% Design Special Presentation (Ross)

I. Action Items

- I.1 Annexation and Zone Map Amendment Requesting Annexation and the Establishment of an Initial Zoning Designation of R-1 on 0.903 Acres, the 1727 Kenyon Drive Annexation,

[Application 25051](#)(Rogers)

Recommended Annexation Motion:

Having reviewed and considered the staff report, application materials, public comment, and all information presented, I hereby adopt the findings presented in the staff report for application 25051 and move to approve the Kenyon Drive Annexation with recommended terms of annexation, and direct staff to prepare an annexation agreement for signature by the parties.

Recommended Zoning Motion:

Having reviewed and considered the staff report, application materials, public comment, recommendation of the Zoning Commission, and all information presented, I hereby adopt the findings presented in the staff report for application 25051 and move to approve the Kenyon Drive Zone Map Amendment, with contingencies required to complete the application processing.

J. Work Session

J.1 [Fowler Avenue Community Housing Work Session](#)(Fine)

K. Appointments

K.1 [Appointment to the Library Board of Trustees](#) (Maas)

Consider the Motion: *I move to appoint one member to the Library Board of Trustees for a term ending June 30, 2029.*

L. FYI / Discussion

M. Adjournment

City Commission meetings are open to all members of the public. If you have a disability that requires assistance, please contact our ADA Coordinator, David Arnado, at 406.582.3232.

Commission meetings are televised live on cable channel 190 and streamed live on our [Meeting Videos Page](#).

Memorandum

REPORT TO: City Commission

FROM: Nicole Armstrong, Accounts Payable Clerk
Rhonda Edwards, Accounts Payable Clerk
Aaron Funk, City Controller
Melissa Hodnett, Finance Director

SUBJECT: Accounts Payable Claims Review and Approval

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Finance

RECOMMENDATION: The City Commission is recommended to make a motion and approve payment of claims as presented.

STRATEGIC PLAN: 7.5. Funding and Delivery of City Services: Use equitable and sustainable sources of funding for appropriate City services, and deliver them in a lean and efficient manner.

BACKGROUND: Montana Code Annotated, Section 7-6-4301 requires claims to be presented to the City Commission within one year of the date the claims accrued. Claims presented to the City Commission under this item have been reviewed and validated by the Finance Department. The Department has ensured that all goods and services have been received along with necessary authorizations and supporting documentation. Please provide approval for checks dated August 13, 2025.

UNRESOLVED ISSUES: None

ALTERNATIVES: The City Commission could decide not to approve these claims or a portion of the claims presented. This alternative is not recommended as it may result in unbudgeted late fees assessed against the City.

FISCAL EFFECTS: The total amount of the claims to be paid is presented at the bottom of the Expenditure Approval List posted on the City's website at <https://www.bozeman.net/departments/finance/purchasing>.

Report compiled on: August 21, 2024

Memorandum

REPORT TO: City Commission

FROM: Clark

SUBJECT: Approval of depository bonds and pledged securities as of June 30, 2025

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Finance

RECOMMENDATION: Approve the depository bonds and pledged securities as of June 30, 2025.

STRATEGIC PLAN: 7.5. Funding and Delivery of City Services: Use equitable and sustainable sources of funding for appropriate City services, and deliver them in a lean and efficient manner.

BACKGROUND: Pledged securities are assets, such as government or municipal bonds, that a financial institution commits as collateral to secure a deposit in excess of the \$250,000 insured by the FDIC. Utilizing pledged securities offers an added layer of security for large deposits, ensuring that funds are protected beyond the standard FDIC insurance limits. This practice ensures that public money remains secure, promoting fiscal responsibility and stability. Per MCA section 7-6-207 the City Commission must approve pledged securities at least quarterly.

UNRESOLVED ISSUES: None

ALTERNATIVES: As suggested by the City Commission

FISCAL EFFECTS: The city is sufficiently pledged.

Attachments:

[Depository Bonds & Securities 063025.pdf](#)

[SLC_580049.pdf](#)

[SLC_581108.pdf](#)

Report compiled on: July 30, 2025

DEPOSITORY BONDS AND SECURITIES

AS OF
June 30, 2025

	<u>MATURITY</u>	<u>CUSIP NO/LOC NO.</u>	<u>TOTAL AMOUNT</u>
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US BANK

All Accounts

Federal Deposit Insurance Corporation-Operating Accts			\$ 250,000.00
LOC-FHLB Cincinnati	7/15/2025	580049	\$ 12,000,000.00
LOC-FHLB Cincinnati	7/15/2025	581108	\$ 6,000,000.00

TOTAL – US Bank			<u>\$ 18,250,000.00</u>
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This is to certify that we, the Commission of the City of Bozeman, in compliance with the provisions of Section 7-6-207, M.C.A., have this day certified the receipts of US Bank, for the Depository Bonds held by the Director of Finance as security, for the deposit for the City of Bozeman funds as of June 30, 2025, by the banks of Bozeman and approve and accept the same.

TERENCE CUNNINGHAM, Mayor

JOEY MORRISON, Deputy Mayor

JENNIFER MADGIC, Commissioner

DOUGLAS FISCHER, Commissioner

EMMA BODE, Commissioner

PLEDGED SECURITIES AND CASH IN BANK

As of
6/30/2025

US BANK

Total Cash on Deposit	<u>\$7,060,668.25</u>
FDIC Coverage	\$250,000.00
Amount Remaining	<u>\$6,810,668.25</u>
Pledges Required 104%	<u>\$7,083,094.98</u>
Actual Pledges	\$18,000,000.00
Over (Under) Pledged	<u>\$10,916,905.02</u>

REFERENCE: Section 7-6-207, M.C.A.



Issue Date: April 15, 2025

LOC No.: 580049

Beneficiary: City of Bozeman
P.O. Box 1230
Bozeman, MT 59771-1230

Ladies and Gentlemen:

For the account of U.S. Bank National Association, CINCINNATI, OH, we hereby authorize you to draw on us at sight up to an amount of \$12,000,000.00.

This letter of credit is irrevocable, unconditional and nontransferable.

Drafts drawn under this letter of credit must be accompanied by the original letter of credit and be presented in substantially the form attached as Exhibit A, at the office identified below by an authorized officer of the beneficiary no later than 2:00 P.M., Cincinnati time, on Tuesday, July 15, 2025.

This letter of credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We engage with you that multiple drafts drawn under and in compliance with the terms of this letter of credit will be duly honored at the Credit Department of the Federal Home Loan Bank of Cincinnati, 221 East Fourth Street, Cincinnati, Ohio 45202.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication 600.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Wishart".

Lisa Wishart
Vice President

A handwritten signature in blue ink that reads "Markus Pepper".

Markus Pepper
Credit Operations Officer

c: Corinne M Yerigan O'Neil
U.S. Bank National Association



Issue Date: July 1, 2025

LOC No.: 581108

Beneficiary: City of Bozeman
P.O. Box 1230
Bozeman, MT 59771-1230

Ladies and Gentlemen:

For the account of U.S. Bank National Association, CINCINNATI, OH, we hereby authorize you to draw on us at sight up to an amount of \$6,000,000.00.

This letter of credit is irrevocable, unconditional and nontransferable.

Drafts drawn under this letter of credit must be accompanied by the original letter of credit and be presented in substantially the form attached as Exhibit A, at the office identified below by an authorized officer of the beneficiary no later than 2:00 P.M., Cincinnati time, on Tuesday, July 15, 2025.

This letter of credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We engage with you that multiple drafts drawn under and in compliance with the terms of this letter of credit will be duly honored at the Credit Department of the Federal Home Loan Bank of Cincinnati, 221 East Fourth Street, Cincinnati, Ohio 45202.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication 600.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Wishart".

Lisa Wishart

Vice President

A handwritten signature in blue ink that reads "Markus Pepper".

Markus Pepper

Credit Operations Officer

c: Corinne M Yerigan O'Neil
U.S. Bank National Association

Memorandum

REPORT TO: City Commission

FROM: Brian Heaston, Engineer III

SUBJECT: Authorize the City Manager to Sign a Notice of Award to The Third Element, Inc., in the Amount of \$539,473.00 for the WRF Motor Control Center Installation Contract as well as Contract Documents Once Received

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Agreement - Vendor/Contract

RECOMMENDATION: Authorize the City Manager to Sign a Notice of Award to The Third Element, Inc., in the Amount of \$539,473.00 for the WRF Motor Control Center Installation Contract as well as Contract Documents Once Received.

STRATEGIC PLAN: 2.2 Infrastructure Investments: Strategically invest in infrastructure as a mechanism to encourage economic development.

BACKGROUND: The water reclamation facility (WRF) motor control center (MCC) installation contract provides for the replacement of three MCCs at the WRF that were separately purchased by the City under an [existing equipment contract previously authorized by the City Commission](#). Follow the prior hyperlink for additional background information about the equipment contract. The City will assign the equipment contract to The Third Element such that it be made an integral component of the installation contract. The Third Element will assume the City's role and responsibilities as Purchaser under the equipment contract upon its assignment and integration into the installation contract.

Public bids for the installation contract were opened on July 24, 2025. Two bids were received with the apparent low bid price provided by The Third Element. Third Element's bid was reviewed by the project engineer, AE2S, and found to conform with the bidding requirements. AE2S's award recommendation letter is attached to this memo along with the certified bid tabulation and notice of award form.

UNRESOLVED ISSUES: None.

ALTERNATIVES: As suggested by the City Commission.

FISCAL EFFECTS: The installation contract award amount of \$539,473.00 includes the outstanding value of the equipment procurement contract at the time bids were opened. The outstanding amount was \$475,489, therefore placing the

bid price for installation of the equipment itself at \$69,384. Funding is provided by wastewater fund CIP project WW121 – WRF MCC Replacement. Budget authority available in FY26 for WW121 totals \$632,000. Sufficient funding is available to award the installation contract. The remaining portion of the available budget, \$92,527, is obligated to AE2S for construction administration purposes and construction contingency.

Attachments:

[00 51 01 - Notice of Award.pdf](#)

[Certified Bid Tab - WRF MCC Installation.pdf](#)

[Engineer's Recommendation of Award.pdf](#)

Report compiled on: July 28, 2025

NOTICE OF AWARD

Date of Issuance: August 12, 2025
Owner: City of Bozeman Owner's Project No.: WW121
Engineer: AE2S Engineer's Project No.: P05097-2022-012
Project: Bozeman WRF MCC Installation
Contract Name: Bozeman WRF MCC Installation
Bidder: The Third Element, Inc.
Bidder's Address: 3116 East Lyndal Ave. Helena, MT 59601

You are notified that Owner has accepted your Bid dated **July 24, 2025**, for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Bozeman WRF MCC Installation

The Contract Price of the awarded Contract is **\$539,473**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

Four (4) copies of unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☐ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **four (4)** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6, and any applicable Supplementary Conditions.
3. Other conditions precedent (if any): **None**

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **City of Bozeman**

By (signature): _____

Name (printed): _____

Title: _____

Copy: Engineer

WRF MCC Upgrade - Installation						
Name:	Contractor #:	Affirmation Form:	Addendum 1 & 2 Acknowledged	Non-Collusion	Bid Bond:	Base Bid Total:
The Third Element Inc 28 Intrepid Drive Bozeman MT 59718	ELE UCO LIC 16041	X	X	X	X	\$539,473.00
Colstrip Electric Inc 647 S. 18th St W Billings MT 59012		X	X	X	X	\$561,489.00
These bids were opened and read before the undersigned at 2:30 pm on Thursday, July 24, 2025						
DocuSigned by: Mike Maas F41F922095AB475  Mike Maas City Clerk DocuSigned by: Brian Heaston 6A3571248984456... Brian Heaston Engineer						
						



July 30, 2025

City of Bozeman - Engineering
Attn: Brian Heaston, PE
Senior Engineer
20 E. Olive St.
Bozeman, MT 59771
bheaston@bozeman.net

RE: Recommendation of Award for Bozeman WRF MCC Installation

Dear Mr. Heaston:

Since Advertising the Bidding Documents on July 5, 2025 for the Bozeman WRF MCC Installation Project, AE2S has supported the City of Bozeman through our Bid Phase Services. Bids were opened on July 24, 2025 and this letter serves as a summary of our evaluation and recommendation for Award of the Contract.

Summary of Bids Received:

The City of Bozeman received two bids for the Project: one from The Third Element, Inc. and the other from Colstrip Electric, Inc. A tabulation of these bids is enclosed with this letter and each Bidder's Total Lump Sum Bid Price is listed below.

<u>BIDDER:</u>	<u>TOTAL LUMP SUM BID PRICE</u>
The Third Element, Inc.	\$539,473.00
Colstrip Electric, Inc	\$561,489.00

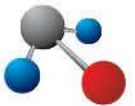
The Third Element, Inc appears to have submitted the lowest bid based on the Total Lump Sum Bid Price.

Bidder's Responsiveness:

The Bidder's proposal was submitted in a sealed envelope addressed to the City of Bozeman, care of the City Clerk and included all of the following requirements:

- Acknowledgement of Addendum 1 through 2 on both the envelope and the Bid Form.
- Signed and Duly Executed Bid Form with evidence of Bidder's authority to sign.
- Bid Security in the form of a Bid Bond in the amount of 10%, along with the Surety's Power of Attorney and supporting records.
- Non-Discrimination and Equal Pay Affirmation.
- Non-Collusion Affidavit.
- Certificate of Contractor Registration (Registration Number ELE-UCO-LIC-16041).
- A valid Bozeman business license.

Based on this documentation, The Third Element, Inc proposal appears to be "responsive."

**Bidder's Qualifications and Past Performance:**

We have experience working with both electrical contractors on previous AE2S projects, including large facility developments in Montana and North Dakota. Based on that experience, we are confident that both contractors are capable of successfully performing the work required for this project.

However, The Third Element was the low bidder, currently holds the procurement contract, and, to AE2S's knowledge, also serves as the City's on-call electrician for various facilities. These factors may offer an advantage in terms of continuity, familiarity with the City's systems, and the ability to meet the project's installation timeline.

Bid Irregularities:

Our review did not identify irregularities in either Bidder's proposals.

Bid Prices in Relation to Engineer's Opinion of Probable Costs:

The Engineer's estimate for this project was \$600,000. Both bids came in under the estimated cost and aligned with the Engineer's expectations. The variance between the two bids was minimal, indicating consistency in pricing and understanding of the project scope.

Recommendation of Award:

We recommend the City of Bozeman consider awarding the Contract to The Third Element Inc, contingent upon its satisfaction with the Bidder's qualifications and references.

This recommendation is based on our review of the submitted bids and the information available at the time of this assessment. The final decision regarding the contract's award rests solely with the Owner. Should the Owner require additional assistance in evaluating the qualifications of the selected Bidder or clarifying their understanding of the Work, we remain available to provide support upon request.

Sincerely,

AE2S

James Sletten
Project Manager

Encl.: Bid Tabulation for Bozeman WRF MCC Installation Contract

Bozeman WRF MCC Upgrade - Installation
City of Bozeman
Bozeman, MT
AE2S Project No. P05097-2022-012
Bid Opening Time 2:30 PM MDT Date Thursday, July 24, 2025

Contractor		Acknowledge Addenda 1-2	10% Bid Security	Surety's Power of Attorney	00 45 13 Bidder's Qualifications Statement	Non-Collusion Affidavit	Non-Discrimination and Equal Pay Affirmation	Montana Contractor's License or Covenant to Obtain City of Bozeman Business License or Covenant to Obtain Bidder's Power of Attorney or Corporate Resolution	Bid Form	Total Bid Price (Single Lump Sum plus Assigned Contract Value)
1	The Third Element, Inc.	✓	✓	✓	✓	✓	✓	✓	✓	\$539,473.00
2	Colstrip Electric, Inc.	✓	✓	✓	✓	✓	✓	✓	✓	\$561,489.00
	Engineer's Estimate									\$600,000.00

James Sletten

James Sletten



Advanced Engineering and Environmental Services, LLC
1288 North 14th Ave. Suite 103
Bozeman, MT 59715
Tel: 406-219-2633

Memorandum

REPORT TO: City Commission

FROM: Danielle Garber, Senior Planner
Brian Krueger, Development Review Manager
Rebecca Harbage, Deputy Director of Community Development
Erin George, Director of Community Development

SUBJECT: Approve the Gran Cielo Block 4 Subsequent Minor Subdivision Preliminary Plat application to further subdivide 5 lots in Block 4 of Gran Cielo Subdivision into a 7 lot subdivision for residential single household uses. The subject property is zoned R-3 (Residential Medium Density District) and contains 0.69 acres of buildable lots. Generally located Northeast of the corner of Cielo Way and South 31st Avenue, Application 25157 (Quasi-Judicial)

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Community Development - Quasi-Judicial

RECOMMENDATION: Having reviewed and considered the application materials, public comment, and all the information presented, I hereby adopt the findings presented in the staff report for application 25157 and move to approve the subdivision with conditions and subject to all applicable code provisions.

STRATEGIC PLAN: 4.2 High Quality Urban Approach: Continue to support high-quality planning, ranging from building design to neighborhood layouts, while pursuing urban approaches to issues such as multimodal transportation, infill, density, connected trails and parks, and walkable neighborhoods.

BACKGROUND: The Department of Community Development received a Preliminary Plat Application on April 24, 2025 requesting a subsequent minor subdivision to further subdivide Lots 1-5, Block 4 of Gran Cielo Subdivision Phase 2 into 7 lots. The subject property is zoned R-3 (Residential Medium Density District).

This land was previously reviewed under the following applications:

- [17522 Gran Cielo Major Subdivision Preliminary Plat](#) (external link to the Finding of Facts and Order signed July 16, 2018)

- [19219 Gran Cielo Major Subdivision Preliminary Plat](#) (external link to the online document repository for this project)

All required infrastructure has been constructed or financially guaranteed and subsequent final plat applications have been reviewed and recorded for all existing lots in the subdivision. This subsequent minor subdivision is located in Phase 2 and the recorded Phase 2 Final Plat may be viewed in the city's online document repository under [Document 003 – Existing Recorded Plat](#). No phasing is proposed. No new infrastructure, streets, lighting, or city parks are proposed. The site does not contain surface water or wetlands, existing vegetation, or public lands.

Preapplication review was completed on February 24, 2025. BMC 38.220.060.A requires documentation of compliance with adopted standards unless waivers have been granted during the pre-application process. Waivers were granted from the following documentation requirements: Surface Water; Floodplains; Groundwater; Geology Soils, Slopes; Vegetation; Wildlife; Agriculture; Agricultural Water User Facilities; Park and Recreation Facilities; Neighborhood Center Plan; Lighting Plan; Miscellaneous; And Affordable Housing. Partial waivers were granted for the required engineering reports for water and sewer, stormwater management, and streets, roads and alleys with supplemental memos prepared by a professional engineer licensed in the State of Montana indicating capacity exists to accommodate the 2 additional homes.

On June 12, 2025 the Development Review Committee (DRC) found the application sufficient for continued review and recommends the conditions and code provisions identified in the staff report. The subdivider did not request any variances with this application. The City did not receive any written public comment on the application as of the writing of this report. Please see the staff report for analysis of the review criteria.

On July 21, 2025 the Community Development Board (CDB) acting in its capacity as the Planning Board considered the application and provided a unanimous recommendation for approval. There were no questions to staff and no discussions regarding the proposed subdivision. No public comment was received during review of the agenda item; however, a public comment was received during the general public comment following the vote. The comment was related to this application as well as the general UDC update. A summary of the public comment, and the staff response can be found in the attached staff report on page 18.

This subdivision meets the criteria for review under 76-3-616 Montana Code Annotated (MCA) - Exemption for Certain Subdivisions. This statute exempts

this subdivision from the public hearing requirement. Per BMC 38.240.100 the final decision for this preliminary plat must be made within 60 working days from sufficiency, or by September 9, 2025. The City Commission meeting regarding this subdivision is scheduled for August 12, 2025.

Materials in the submittal relevant to the Planning Board's duties include:

- [Application Documents](#)
- [Application Drawings](#)

The application documents folder will contain the cover letter, water and sewer memo and report, stormwater management memo and report, and the streets, roads and alleys memo and traffic impact study waiver, as well as documentation to demonstrate compliance with Chapter 38 including compliance with adopted standards required in BMC 38.220.060 where waivers were not granted.

The application drawings folder will contain the draft plat, as well as the overall site plan and proposed services layout.

UNRESOLVED ISSUES: None

ALTERNATIVES: As recommended by the City Commission

FISCAL EFFECTS: Fiscal impacts are undetermined at this time, but will include increased property tax revenues from new development, along with increased costs to deliver municipal services to the property. Impact fees will be collected at the time of building permit issuance for individual buildings along with City sewer and water connection fees.

Attachments:
[25157 Staff Report CC.pdf](#)

Report compiled on: July 31, 2025

25157 Gran Cielo Block 4 Subdivision Preliminary Plat**Public Meeting/Hearing Dates:**

Planning Board meeting was held - Monday, July 21, 2025 at 6:00 pm.

City Commission meeting will be held Tuesday, August 12, 2025 at 6:00 pm

Project Description: A preliminary plat requesting to further subdivide 5 lots in Block 4 of Gran Cielo Subdivision into a 7 lot subdivision for residential single household uses. The subdivision is proposed on 0.69 acres and is zoned R-3.

Project Location: Addresses TBD, Northeast of the corner of Cielo Way and South 31st Avenue

Staff Finding: The application conforms to standards and is sufficient for approval with conditions and code provisions.

Recommended Planning Board Motion: Having reviewed and considered the application materials, public comment, and all the information presented, I hereby adopt the findings presented in the staff report for application 25157 and move for the Community Development Board in its capacity as the Planning Board to recommend approval of the subdivision with conditions and subject to all applicable code provisions.

Recommended City Commission Motion: Having reviewed and considered the application materials, public comment, and all the information presented, I hereby adopt the findings presented in the staff report for application 25157 and move to approve the subdivision with conditions and subject to all applicable code provisions.

Report Date: July 15, 2025

Staff Contact: Danielle Garber, Senior Planner
Alicia Paz-Solis, Project Engineer

Agenda Item Type: Consent (Quasi-judicial)

EXECUTIVE SUMMARY

This report is based on the application materials submitted and public comment received to date. The application materials are available in the City's [Laserfiche archive](#) and may be accessed through the [Community Development viewer](#).

Unresolved Issues.

There are no unresolved issues with this application.

Project Summary

The Department of Community Development received a Preliminary Plat Application on April 24, 2025 requesting a minor subdivision to further subdivide Lots 1-5, Block 4 of Gran Cielo

Subdivision Phase 2 into 7 lots. The subject property is zoned R-3 (Residential Medium Density District).

This land was previously reviewed under the following applications:

- [17522 Gran Cielo Major Subdivision Preliminary Plat](#) (external link to the Finding of Facts and Order signed July 16, 2018)
- [19219 Gran Cielo Major Subdivision Preliminary Plat](#) (external link to the online document repository for this project)

Application 17522 provided the primary review for the Gran Cielo Major Subdivision and the findings of fact was signed in July of 2018. On February 1, 2019, Application 19219 was submitted for changes requested to the amount of provided parkland and park design. The proposed changes under application 19219 were reviewed at a public hearing on September 23, 2019 and the Findings of Fact and Order was signed on November 4, 2019. All required infrastructure has been constructed or financially guaranteed and subsequent final plat applications have been reviewed and recorded for all proposed lots in the subdivision under the following applications:

- 19472 Gran Cielo Subdivision Phase 1 Final Plat
- 20362 Gran Cielo Subdivision Phase 1A Final Plat
- 21414 Gran Cielo Subdivision Phase 2 Final Plat.

This subsequent minor subdivision is located in Phase 2 and the recorded Phase 2 Final Plat may be viewed in the city's online document repository under [Document 003 – Existing Recorded Plat](#).

Proposed land uses of single household residential are not proposed to change from the initial subdivision review. Lot lines for the existing 5 undeveloped lots will be adjusted to accommodate the 2 new lots proposed. All proposed lots meet the minimum lot area and width standards required in Section 38.320.030 of the Bozeman Municipal Code (BMC).

South 13st Avenue adjacent to Block 4 has already been constructed and accepted by the City. Water and sewer lines mains serving the subject property exist and are located in South 31st Avenue. The 2 new proposed lots have available access from the already constructed South 31st Avenue, and the alley that runs north-south through the center of Block 4. Three new water service lines from the main in South 31st Avenue are proposed, as well as 2 new sewer lines.

No phasing is proposed. No new infrastructure, streets, lighting, or city parks are proposed. The site does not contain surface water or wetlands, existing vegetation, or public lands.

Pre-application review was completed on February 24, 2025. BMC 38.220.060.A requires documentation of compliance with adopted standards unless waivers have been granted during the pre-application process. Waivers were granted from the following documentation requirements: Surface Water; Floodplains; Groundwater; Geology Soils, Slopes; Vegetation; Wildlife; Agriculture; Agricultural Water User Facilities; Park and Recreation Facilities;

Neighborhood Center Plan; Lighting Plan; Miscellaneous; And Affordable Housing. Partial waivers were granted for the required engineering reports for water and sewer, stormwater management, and streets, roads and alleys with supplemental memos prepared by a professional engineer licensed in the State of Montana indicating capacity exists to accommodate the 2 additional homes.

On June 12, 2025 the Development Review Committee (DRC) found the application sufficient for continued review and recommends the conditions and code provisions identified in this report.

On July 21, 2025 the Community Development Board (CDB) acting in its capacity as the Planning Board considered the application and provided a unanimous 5-0 recommendation for approval. There were no questions to staff and no discussions regarding the proposed subdivision. No public comment was received during review of the agenda item; however, a public comment was received during the general public comment following the vote. The comment was related to this application as well as the general UDC update. The commenter expressed disappointment in the single household uses as it relates to housing and infrastructure costs, as well as how single household growth in medium density zoning generally impacts surrounding county open lands. The Commenter provided a price comparison between attached single household uses (townhomes and duplexes), and detached single household uses (single family homes). The commenter also related these comments to the proposed UDC update and the development of the newly proposed R-B medium density zoning district. Staff response to this public comment, while not directly related to the agenda item, can be found in Appendix C of this report.

The subdivider did not request any variances with this application. The City did not receive any written public comment on the application as of the writing of this report.

The final decision for this preliminary plat must be made by September 9, 2025 or 60 working days from the sufficiency date per [BMC 38.240.100](#) and [MCA 76-3-616](#) for exempt subdivisions.

Alternatives

1. Approve the application with the recommended conditions;
2. Approve the application with modifications to the recommended conditions;
3. Deny the application based on the Commission's findings of non-compliance with the applicable criteria contained within the staff report; or
4. Continue the public meeting on the application, with specific direction to staff or the subdivider to supply additional information or to address specific items.

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SECTION 1 – MAP SERIES



Exhibit 1 – Zoning

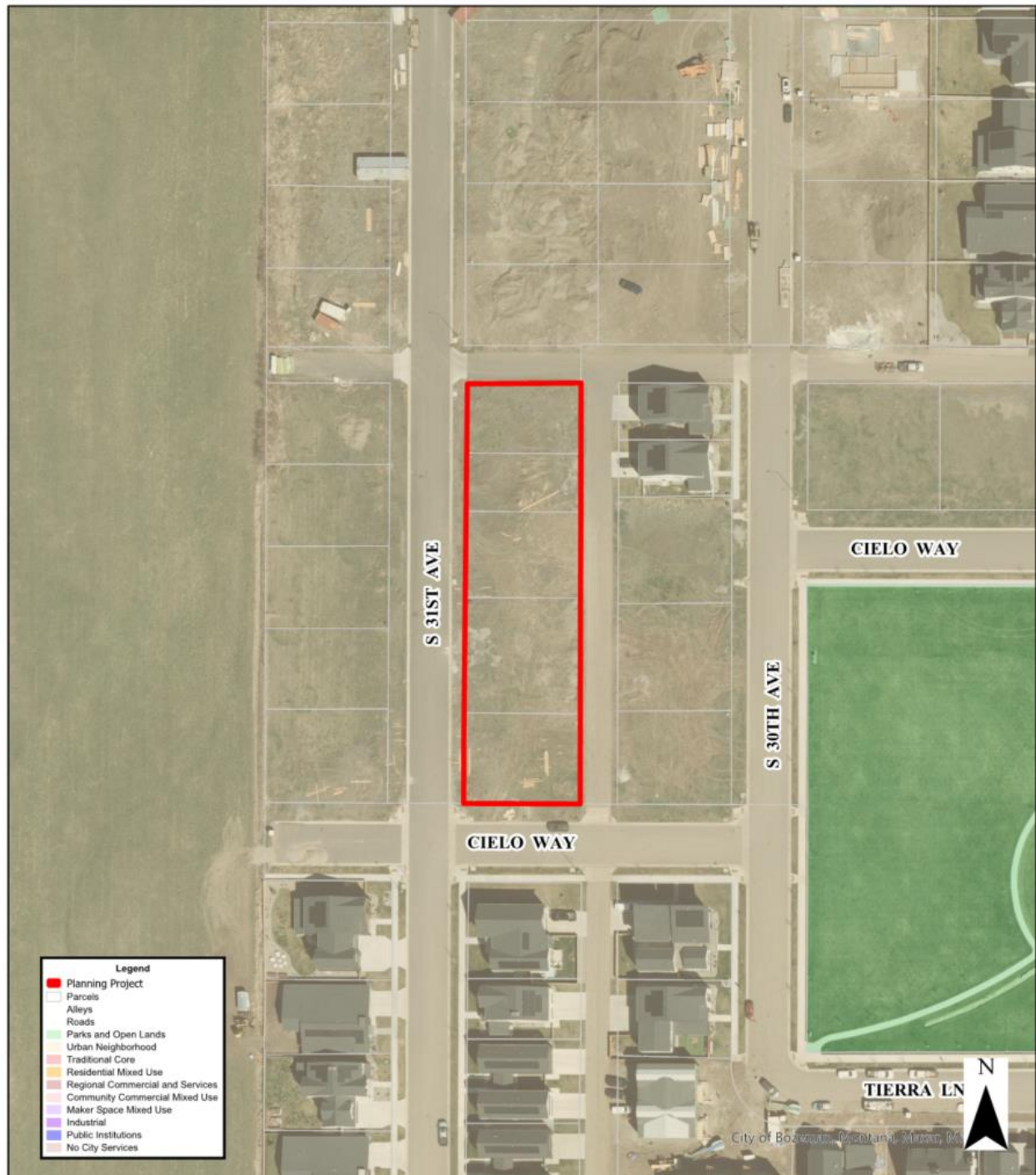


Exhibit 2 – Future Land Use Map



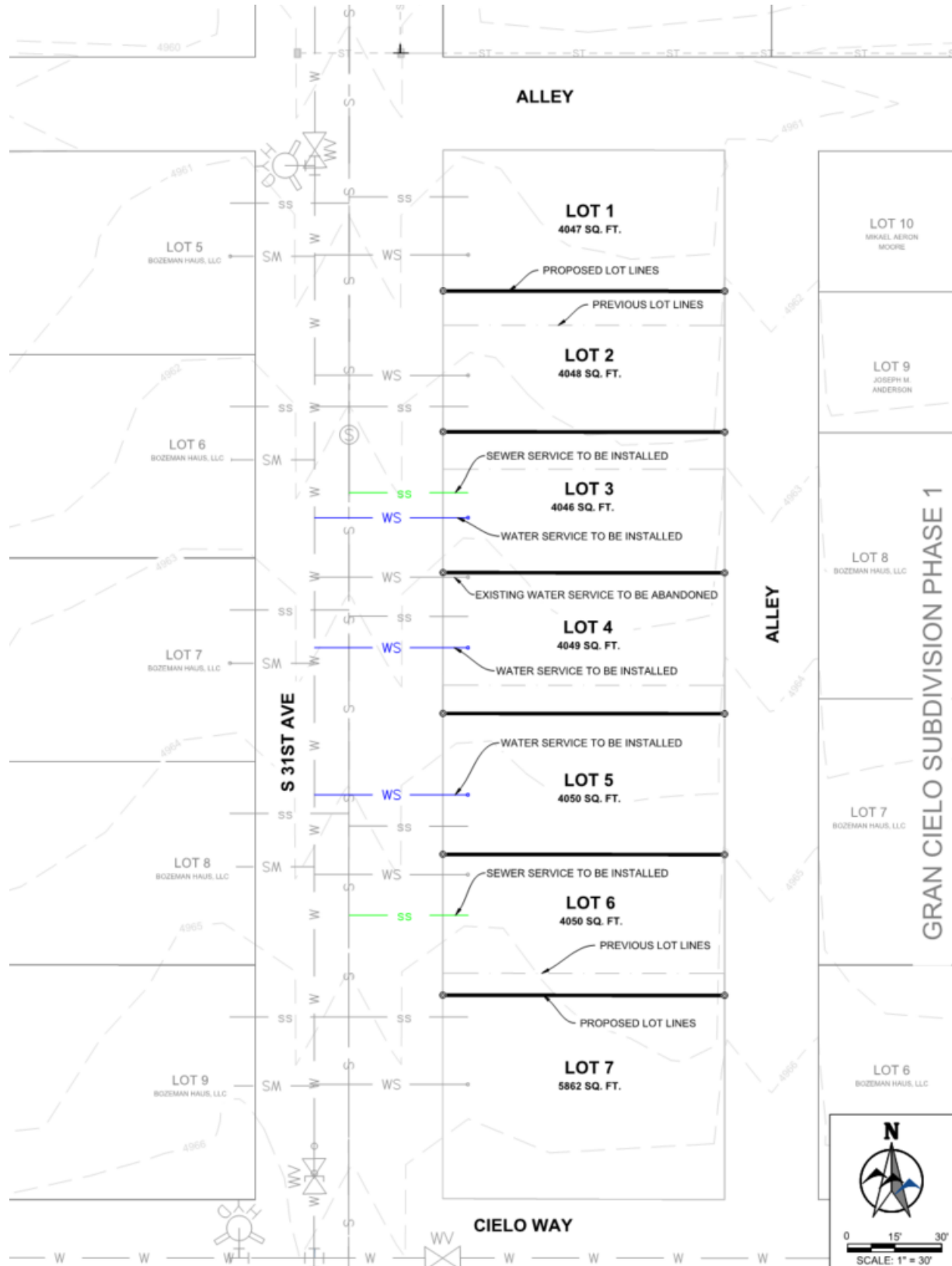


Exhibit 4 – Site and Services Layout (see full sheet in file, under drawing 002)

SECTION 2 – REQUESTED VARIANCES

No variances are requested with this application.

SECTION 3 – RECOMMENDED CONDITIONS OF APPROVAL

Please note that these conditions are in addition to any required code provisions identified in this report. These conditions are specific to this project.

Recommended Conditions of Approval:

1. The plat shall conform to all requirements of the Bozeman Municipal Code and the Uniform Standards for Subdivision Plats (Uniform Standards for Certificates of Survey and Subdivision Plats (24.183.1104 ARM) and shall be accompanied by all required documents, including certification from the City Engineer that as-built drawings for public improvements were received, a platting certificate, and all required and corrected certificates. The Final Plat application shall include one (1) signed reproducible copy on a 3 mil or heavier stable base polyester film (or equivalent). The Gallatin County Clerk & Records office has elected to continue the existing medium requirements of 1 mylar with a 1 binding margin on one side for both plats and COSs. The Clerk and Recorder will file the new Conditions of Approval sheet as the last same sized mylar sheet in the plat set
2. The applicant shall submit with the application for Final Plat review and approval, a written narrative stating how each of the conditions of preliminary plat approval and noted code provisions have been satisfactorily addressed. This narrative shall be in sufficient detail to direct the reviewer to the appropriate plat, plan, sheet, note, covenant, etc. in the submittal.

SECTION 4 – CODE REQUIREMENTS

1. **Sec. 38.100.080 – Compliance with regulations required.** The applicant is advised that unmet code provisions, or code provisions that are not specifically listed as conditions of approval, does not, in any way, create a waiver or other relaxation of the lawful requirements of the Bozeman Municipal Code or state law.
2. **Sec. 38.220.310, and 320. Property Owners' Association.** Updated Property owners' association (POA) documents including covenants must be provided with the final plat prior to being finalized and recorded. The POA documents must include the requirements of BMC 38.220.310, and 320 where applicable. Additionally based on the existing documents revise and add the following.
 - a. Prior to final plat approval, provide an exhibit with the stormwater maintenance plan identifying all the stormwater features that the POA maintains. This exhibit must be included in a supplemental declaration and be recorded with the minor subdivision plat.
3. **Sec. 38.410.130 - Water Adequacy.** The applicant has indicated they intend to pay cash-in-lieu of water with future development to satisfy this section of the Bozeman Municipal Code. The estimated annual municipal demand from the addition of the two lots is 0.468 acre-feet. At the City's current CILWR fee rate of \$6,000/AF the CILWR fee for the project is \$2,808. The amount and rate must be confirmed with the Engineering Division and paid prior to final plat approval.

4. **Sec. 38.220.070.8—Conditions of approval.** A sheet(s) of the plat depicting conformance with subdivision application approval must be submitted as set forth in 24.183.1107 ARM as may be amended and as required by the county clerk and recorder, and must: Be entitled "Conditions of Approval of [insert name of subdivision]" with a title block including the quarter-section, section, township, range, principal meridian, county, and, if applicable, city or town in which the subdivision is located.
- a. Contain any text and/or graphic representations of requirements by the governing body for final plat approval including, but not limited to, setbacks from streams or riparian areas, floodplain boundaries, no-build areas, building envelopes, or the use of particular parcels.
 - b. Include a certification statement by the landowner that the text and/or graphics shown on the conditions of approval sheet(s) represent(s) requirements by the governing body for final plat approval and that all conditions of subdivision application have been satisfied.
 - c. Include a notation stating that the information shown is current as of the date of the certification, and that changes to any land-use restrictions or encumbrances may be made by amendments to covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.
 - d. Include a notation stating that buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat, and that buyers of property are strongly encouraged to contact the local community development department and become informed of any limitations on the use of the property prior to closing.
 - e. List all associated recorded documents and recorded document numbers.
 - f. Include a tabulation of parkland credit for the entire subdivision and attributed to each lot.
 - g. Include a tabulation of open space. List easements, including easements for agricultural water user facilities.
 - h. In addition, the applicant must add a note to the conditions of approval sheet of the plat that:
 - i. The maintenance of all stormwater facilities, including stormwater facilities within the park parcels, is the responsibility of the property owners' association (POA).
 - ii. No crawl spaces will be permitted with future development of the site, unless a professional engineer registered in the State of Montana certifies that the lowest point of any proposed structure is located above the seasonal high groundwater level and provide supporting groundwater data prior to the release of building permit. In addition, sump pumps are not allowed to be connected to the sanitary sewer system.
 - iii. Sump pumps are also not allowed to be connected to the drainage system unless capacity is designed into the drainage system to accept the pumped water. Water from sump pumps may not be discharged onto streets, such as into the curb and gutters where they may create a safety hazard for pedestrians and vehicles.

- iv. Include a notation stating that topsoil depth and topsoil quality requirements must be met on all future subdivided lots prior to installation of landscaping and irrigation, as outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

SECTION 5 – RECOMMENDATION AND FUTURE ACTIONS

The Development Review Committee (DRC) determined the application was sufficient for continued review and recommended approval with conditions on June 12, 2025.

Planning Board meeting was held - Monday, July 21, 2025 at 6:00 pm. Board members voted unanimously 5-0 to recommend approval of the proposed subdivision. Video of the meeting may be found on the [City's Website](#). No public comment was received during review of the agenda item; however, a public comment was received during the general public comment following the vote. The comment was related to this application as well as the general UDC update. Staff response to this public comment, while not directly related to the agenda item, can be found in Appendix C of this report.

City Commission meeting will be held Tuesday, August 12, 2025 at 6:00 pm

SECTION 6 – STAFF ANALYSIS AND FINDINGS

Analysis and resulting recommendations are based on the entirety of the application materials, municipal codes, standards, plans, public comment, and all other materials available during the review period. Collectively this information is the record of the review. The analysis in this report is a summary of the completed review.

Applicable Subdivision Review Criteria, Section 38.240.150.B, BMC.

In considering applications for subdivision approval under this title, the advisory boards and City Commission shall consider the following:

1) Compliance with the survey requirements of Part 4 of the Montana Subdivision and Platting Act

The preliminary plat was prepared in accordance with the surveying and monumentation requirements of the Montana Subdivision and Platting Act by a Professional Engineer registered in the State of Montana. As noted in the code requirements, the final plat must comply with State statute, Administrative Rules of Montana, and the Bozeman Municipal Code.

2) Compliance with the local subdivision regulations provided for in Part 5 of the Montana Subdivision and Platting Act

The final plat must comply with the standards identified and referenced in the Bozeman Municipal Code. The subdivider is advised that unmet code provisions, or code provisions not specifically listed as a condition of approval, do not, in any way, create a waiver or other

relaxation of the lawful requirements of the Bozeman Municipal Code or State law. Sections 3 and 4 of this report identify conditions and code provisions necessary to meet all municipal standards. The listed code requirements address necessary documentation and compliance with standards. Therefore, upon satisfaction of all conditions and code corrections the subdivision will comply with the subdivision regulations.

3) Compliance with the local subdivision review procedures provided for in Part 6 of the Montana Subdivision and Platting Act

The Bozeman Planning Board public meeting and City Commission public hearings were properly noticed in accordance with the Bozeman Municipal Code. Based on the recommendation of the Development Review Committee (DRC) and other applicable review agencies, as well as any public testimony received on the matter, the City Commission will make the final decision on the subdivider's request. Review of this subdivision was conducted under the terms of 76-3-616 MCA as authorized in 38.240.100.

The Department of Community Development received a preliminary plat application on April 24, 2025. The DRC reviewed the preliminary plat application and determined the submittal was sufficient to allow for the continued review of the proposed subdivision.

On June 12, 2025 the Development Review Committee (DRC) found the application sufficient for continued review and recommends the conditions and code provisions identified in this report.

The applicant posted public notice on the subject property on June 20, 2025. The applicant sent public notice to all landowners of record within 200-feet of the subject property via first class mail, on June 20, 2025. No written public comment had been received on this application as of the writing of this report.

On July 15, 2025 a major subdivision staff report was completed and forwarded with a recommendation of conditional approval for consideration to the Planning Board.

On July 21, 2025 the Community Development Board (CDB) acting in its capacity as the Planning Board considered the application and provided a unanimous 5-0 recommendation for approval. There were no questions to staff and no discussions regarding the proposed subdivision. No public comment was received during review of the agenda item; however, a public comment was received during the general public comment following the vote. The comment was related to this application as well as the general UDC update. The commentor expressed disappointment in the single household uses as it relates to housing and infrastructure costs, as well as how single household growth in medium density zoning generally impacts surrounding county open lands. Staff response to this public comment, while not directly related to the agenda item, can be found in Appendix C of this report.

On July 31, 2025 a major subdivision staff report was completed and forwarded with a recommendation of conditional approval to the City Commission.

4) Compliance with Chapter 38, BMC and other relevant regulations

Community Development staff and the DRC reviewed the preliminary plat against all applicable regulations and the application complies with the BMC and all other relevant regulations with conditions and code corrections. This report includes [Conditions of Approval](#) and required [code provisions](#) as recommended by the DRC for consideration by the City Commission to complete the application processing for final plat approval. All municipal water and sewer facilities will conform to the regulations outlined by the Montana Department of Environmental Quality and the requirements of the Design Standards and Specifications Policy (DSSP) and the City of Bozeman Modifications to Montana Public Works Standard Specifications.

Water/sewer – The additional 2 lots will not significantly burden city water and sewer infrastructure. [Document 028](#) contains the supplementary capacity memo prepared by a professional engineer licensed with the State of Montana with water and wastewater calculations demonstrating the additional demand per day. This memo and the attached original design report was reviewed by the Engineering Division for compliance with state and local Public Works Standard Specifications, the City’s design standards, the City of Bozeman Water Facility Plan and was found to meet City’s review requirements. Adequate water distribution systems and capacity, and sewage collection and disposal capacity exists to serve two additional households within the subdivision. Code provision 3 requires the applicant offset estimated water demand prior to final plat approval per subsection D of BMC 38.410.130. Per this section, the application may either transfer water rights into city ownership that are appurtenant to the land being developed or as acceptable to the city, provide payment of cash-in-lieu of water rights at a rate established by the most recent City Commission resolution, or a combination of both.

Easements - The final plat must provide and depict all necessary utilities and required utility easements. Public utilities are already located within dedicated street right of ways. No additional easements are required. Ten-foot front yard utility easements are depicted on the preliminary plat and are proposed to be granted with the final plat in accordance with standards.

Parks – No additional parkland is required per BMC 38.420.020.B.5 – Land dedication or its equivalent cash donation in-lieu of land dedication must not be required for a development for which the required amount of parkland is shown to have already been provided. The maximum parkland dedication for the underlying subdivision was provided with the initial phase of Gran Cielo. The city’s parks planner reviewed the application for compliance with parkland requirements and determined that no additional parkland is triggered by the two additional lots. A developed public park constructed with the initial phase of Gran Cielo exists about a half block, or less than 200 feet from the subject property and is accessible via public sidewalks.

Stormwater – The additional 2 lots will not significantly burden constructed stormwater facilities within the Gran Cielo Subdivision. [Document 029](#) contains the supplementary capacity memo prepared by a professional engineer licensed with the State of Montana. This memo and the attached original design report was reviewed by the Engineering Division for compliance with state and local Public Works Standard Specifications, the City’s design standards, and was

found to meet code requirements. Code provision 3 requires the property owners' association to maintain all stormwater facilities outside of the public right-of-way and to incorporate an updated maintenance plan into the association documents prior to final plat approval. This will ensure the proper maintenance of necessary stormwater infrastructure as the subdivision is further built out.

Police/Fire – The City of Bozeman's Police and Fire emergency response area includes this subject property. The subdivision does not impact the City's ability to provide emergency services to the subject property. The necessary addresses will be provided to enable 911 response to individual parcels prior to recording of the final plat. Required fire hydrants exist to serve the 2 proposed lots.

5) The provision of easements to and within the subdivision for the location and installation of any necessary utilities

The final plat will provide and depict all necessary utilities and required utility easements. Ten-foot front yard utility easements are depicted on the preliminary plat and are proposed to be granted with the final plat in accordance with standards.

6) The provision of legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel

The final plat will provide legal and physical access to each parcel within the subdivision. The two new proposed lots have access from South 31st Avenue and the alley within Block 4.

Documentation of compliance with adopted standards 38.220.060

The Development Review Committee (DRC) completed a subdivision pre-application plan review on February 24, 2025 and no variances were requested. Waivers were granted as indicated in each section below.

Staff offers the following summary comments on the documents required with Article 38.220.060, BMC.

38.220.060.A.1 – Surface water

No surface water is present within or adjacent to the subject property. Documentation of this standard was waived with the pre-application review.

38.220.060.A.2 - Floodplains

No flood hazards were evaluated during review of this application. Documentation of this standard was waived with the pre-application review.

38.220.060.A.3 - Groundwater

A geotechnical investigation was conducted during the initial preliminary plat review under Application No. 17522. A new report was not required with this application. Condition of Approval 1 on the original recorded Gran Cielo Subdivision Phase 2 plat limits the construction of crawlspaces or basements due to seasonal high groundwater tables present at the subject property. Code provision 4 requires a conditions of approval page be added to the proposed plat

for final plat review. The applicant must add the following notes: No crawl spaces will be permitted with future development of the site, unless a professional engineer registered in the State of Montana certifies that the lowest point of any proposed structure is located above the seasonal high groundwater level and provide supporting groundwater data prior to the release of building permit. In addition, sump pumps are not allowed to be connected to the sanitary sewer system; and Sump pumps are also not allowed to be connected to the drainage system unless capacity is designed into the drainage system to accept the pumped water. Water from sump pumps may not be discharged onto streets, such as into the curb and gutters where they may create a safety hazard for pedestrians and vehicles. Documentation of this standard was waived with the pre-application review.

38.220.060.A.4 - Geology, Soils and Slopes

This subdivision will not significantly impact the geology, soils or slopes. No significant geological features or slopes exist on the site. A new geotechnical investigation report was not required with this application. Documentation of this standard was waived with the pre-application review.

38.220.060.A.5 - Vegetation

There is no existing vegetation on the subject property. Documentation of this standard was waived with the pre-application review.

38.220.060.A.6 - Wildlife

Subdivision of the small block located entirely within an urban setting will not significantly impact wildlife. Residential development already exists along all boundaries. Documentation of this standard was waived with the pre-application review.

38.220.060.A.7 - Agriculture

This subdivision will not impact agriculture. Residential development already exists along all boundaries. Documentation of this standard was waived with the pre-application review.

38.220.060.A.8 - Agricultural Water User Facilities

No agricultural water user facilities are located within or adjacent to the subject property. Residential development already exists along all boundaries. Documentation of this standard was waived with the pre-application review.

38.220.060.A.9 - Water and Sewer

The subdivision will not significantly impact city water and sewer infrastructure. The subdivision will be served from existing installed, and accepted infrastructure. Service stub locations will be revised to accommodate the construction of two additional homes on the block. See discussion above under primary review criteria.

38.220.060.A.10 - Stormwater Management

The subdivision will not significantly impact stormwater infrastructure. See discussion above under primary review criteria.

38.220.060.A.11 - Streets, Roads and Alleys

The subdivision will not significantly impact the City's street infrastructure. No additional streets or street improvements are required with this subdivision. Local street access is existing.

[Document 030](#) contains the supplementary capacity memo prepared by a professional engineer licensed with the State of Montana. This memo and the attached traffic impact study waiver was reviewed by the Engineering Division for compliance with state and local Public Works Standard Specifications, the City's design standards, and was found to meet code requirements. According to the memo "All roads were recently constructed as part of the Gran Cielo I major subdivision. The increase of approximately 19 trips over the course of a single day or 2 more trips during peak hour demonstrates the current local road capacity is sufficient."

38.220.060.A.12 – Non-Municipal Utilities

The applicant has received confirmation of future service connections from Charter, and Yellowstone Fiber for the proposed subdivision. These responses are provided under [Document 031](#). Northwestern Energy equipment is existing within the front yard 10-foot utility easement. The applicant has been advised by Northwestern Energy during the review process that the realignment of lot lines and the addition of two new lots will require the relocation of equipment and stubs. A construction application with Northwestern Energy is required to facilitate these changes.

38.220.060.A.13 - Land Use

The application has provided future land use data consistent with the R-3 zoning district under [Document 032](#). Proposed land uses for the subdivision are single household residential. Development of lots within the subdivision will be subject to Bozeman Municipal Code (BMC) provisions at the time of development.

38.220.060.A.14 - Parks and Recreation Facilities

No additional parkland dedication or cash-in-lieu of parkland is required with this subdivision. The Parks Department reviewed the parkland requirements during the DRC review process. See discussion above under primary review criteria.

38.220.060.A.15 - Neighborhood Center Plan

To provide a neighborhood focal point, all residential subdivisions that are ten net acres in size or greater, must have a neighborhood center. A neighborhood center was provided with the original Gran Cielo Subdivision. Documentation of this standard was waived with the pre-application review.

38.220.060.A.16 - Lighting Plan

Street lighting was installed or financially guaranteed with the Gran Cielo Phase 2 Subdivision final plat. Documentation of this standard was waived with the pre-application review.

38.220.060.A.17 - Miscellaneous

The proposed subdivision is not located within 200 feet of any public land access or within a delineated Wildland Urban Interface area. No health or safety hazards on-site or off-site will be created with this development. Documentation of this standard was waived with the pre-application review.

38.220.060.A.19 - Affordable Housing

This application does not rely on incentives authorized in 38.380. Therefore, no analysis is required. Documentation of this standard was waived with the pre-application review.

APPENDIX A – PROJECT SITE ZONING AND GROWTH POLICY**Zoning Designation and Land Uses:**

The subject property is zoned R-3, Residential Medium Density District. The intent of the R-3 residential medium density district is to provide for the development of one- to five-household residential structures near service facilities within the city. This purpose is accomplished by:

1. Providing for minimum lot sizes in developed areas consistent with the established development patterns while providing greater flexibility for clustering lots and mixing housing types in newly developed areas.
2. Providing for a variety of housing types, including single household dwellings, two to four household dwellings, and townhouses to serve the varied needs of households of different size, age and character, while reducing the adverse effect of non-residential uses.

Use of this zone is appropriate for areas with good access to parks, community services and/or transit. This application meets the intent of the R-3 district by adding additional residential homes in proximity to an established park. The proposed subdivision meets minimum lot sizes within an area with an established development pattern. The overall subdivision provides a mixture of housing types including single household, townhomes, and apartments.

Adopted Growth Policy Designation:

Table 4 of the [Bozeman Community Plan 2020](#) shows the correlation between future land use map designations and implementing zoning districts.

The subject property is designated as Urban Neighborhood. R-3 zoning is properly correlated to the Urban Neighborhood land use designation. This category primarily includes urban density homes in a variety of types, shapes, sizes, and intensities. Large areas of any single type of housing are discouraged. In limited instances, an area may develop at a lower gross density due to site constraints and/or natural features such as floodplains or steep slopes. Complementary uses such as parks, home-based occupations, fire stations, churches, schools, and some neighborhood-serving commerce provide activity centers for community gathering and services. The Urban Neighborhood designation indicates that development is expected to occur within municipal boundaries. This may require annexation prior to development. Applying a zoning

district to specific parcels sets the required and allowed density. Higher density residential areas are encouraged to be, but are not required or restricted to, proximity to commercial mixed-use areas to facilitate the provision of services and employment opportunities without requiring the use of a car.

This proposed subdivision is well suited to implement the Urban Neighborhood designation by providing additional residential homes within an established residential neighborhood and correlated zoning district.

APPENDIX B – DETAILED PROJECT DESCRIPTION

Project Background and Description

A preliminary plat application by the applicant, WWC Engineering, 895 Technology Boulevard, Suite 203, Bozeman, MT 59718, representing owner Bozeman Haus LLC, 15267 SE Rivershore, Vancouver, WA 98683.

APPENDIX C – NOTICING AND PUBLIC COMMENT

Notice was provided at least 15 and not more than 45 days prior to the City Commission public meeting per BMC 38.220.420, The City scheduled public notice for this application on June 23, 2025. The applicant posted public notice on the subject property on June 20, 2025. The City sent public notice to physically adjacent landowners of record within 200-feet of the subject property via first class mail on June 20, 2025. The City did not receive any written public comment on the application as of the writing of this report.

Indirect public comment was received during the Community Development Board meeting review on July 21, 2025 from a representative of Forward Montana. No public comment was received during review of the agenda item; however, a public comment was received during the general public comment following the vote. The comment was related to this application as well as the general Unified Development Code (UDC) update. The commentor expressed disappointment in the proposed single household uses as it relates to housing and infrastructure costs, as well as how single household growth in medium density zoning generally impacts surrounding county open lands. The Commenter provided a price comparison between attached single household uses (townhomes), and detached single household uses (single family homes). The commenter also related these comments to the proposed UDC update and the development of the newly proposed R-B medium density zoning district.

In response to this public comment staff would like to restate that with this application the applicant is proposing to add 2 lots to a previously approved 5 lot block for a total of 7 lots and reducing the size of all existing lots. The layout for the subdivision can be viewed in [Exhibit 3](#) above. Single household uses and townhomes are currently permitted within R-3 zoning per [BMC 38.310.030](#). The size of the proposed lots in this block meets the minimum allowed in the R-3 zoning district for single household uses at 4,000 square feet.

Additional homes per lot, such as for a duplex, would require larger lot configurations with a similar density outcome for the block. However, the proposed plat and the current R-3 zoning does not limit the development of these lots to single detached homes, and they may develop in single attached home (townhome) configurations. Development of each lot is subject to Bozeman Municipal Code (BMC) provisions at the time of development. Also see the zoning designation and land uses discussion above under [Appendix A](#). Form and Intensity Standards, including minimum lot sizes and allowable lot coverage for R-3 zoning can be found in [BMC 38.320.030](#).

The previously approved larger [Gran Cielo Subdivision](#), with application details provided on page 2 of this report, was developed with a mix of housing types including single homes, townhomes, and apartments.

APPENDIX D – OWNER INFORMATION AND REVIEWING STAFF

Owner: Bozeman Haus LLC, 15267 SE Rivershore, Vancouver, WA 98683.

Applicant: WWC Engineering, 895 Technology Boulevard, Suite 203, Bozeman, MT 59718

Representative: Same as Applicant

Report By: Danielle Garber, Senior Planner

FISCAL EFFECTS

Fiscal impacts are undetermined at this time, but will include increased property tax revenues from new development, along with increased costs to deliver municipal services to the property. Impact fees will be collected at the time of building permit issuance for individual buildings along with City sewer and water connection fees.

ATTACHMENTS

The full application and file of record can be viewed digitally at the Community Development Department at 20 E. Olive Street, Bozeman, MT 59715, the application drawings and documents and a copy of the public notice may be viewed in the City’s online document repository located at <https://www.bozeman.net/departments/community-development/planning/project-information-portal>, select the “Project Documents Folder” link and navigate to application 25157 located within the 2025 folder.

Project documents and drawings are available at this direct link to the public document repository for [application 25157](#).

The following documents and drawings are available in the online public archive:

- [Drawing 001 Gran Cielo Block 4 Preliminary Plat](#)
- [Drawing 002 Site & Services Layout](#)
- [Drawing 003 Gran Cielo Phase 2 Recorded Plat](#)
- [Document 001 Cover Letter](#)
- [Document 028 Water & Sewer Package](#)
- [Document 029 Stormwater Management Package](#)
- [Document 030 Streets, Roads, and Alleys Package](#)

Memorandum

REPORT TO: City Commission

FROM: Taylor Lonsdale, Transportation Engineer
Nicholas Ross, Director of Transportation and Engineering

SUBJECT: Authorize the City Manager to Sign the City of Bozeman FY23 Safe Streets and Roads for All Grant Agreement with the Federal Highway Administration

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Agreement - Legal

RECOMMENDATION: Authorize the City Manager to Sign the City of Bozeman FY23 Safe Streets and Roads for All Grant Agreement with the Federal Highway Administration

STRATEGIC PLAN: 4.5 Housing and Transportation Choices: Vigorously encourage, through a wide variety of actions, the development of sustainable and lasting housing options for underserved individuals and families and improve mobility options that accommodate all travel modes.

BACKGROUND: The City of Bozeman applied for and was awarded an FY2023 Safe Streets and Roads for All (SS4A) Grant through the Federal Highway Administration (FHWA). The grant award is to fund a Comprehensive Safety Action Plan and demonstration activities that include the installation of advanced safety data collection equipment in four existing traffic signals. The equipment procured through the grant funding will collect data on speeding, red light running, and near misses. This data will be incorporated into the safety plan as well as being used to identify focused enforcement opportunities.

An agreement for the FY2023 SS4A grant award came before commission previously on 12/10/2024. The attached Grant Routing Form was signed at that time. When the agreement went to FHWA for their final signature, the signing authority wanted an additional table added to the grant agreement. City staff submitted the revised agreement to FHWA. In early 2025, the federal grant approval process was put on hold. The new agreement is now back for city signature.

This FY2023 SS4A grant award will be combined with an FY2024 SS4A grant award to fund additional scope for both the Comprehensive Safety Action Plan and the associated demonstration activities. FHWA is reviewing the draft agreement for the FY2024 award. Staff will bring that agreement to commission as soon as the final agreement is received from FHWA.

UNRESOLVED ISSUES: None.

ALTERNATIVES:

None identified.

FISCAL EFFECTS:

The FY2023 SS4A grant award requires a 20% local match. The federal grant amount is \$200,000 and the local match is \$50,000. The funding for the local match has been appropriated in the FY26 Operating Budget.

Attachments:

[FY2023 SS4A_agreement for](#)

[signature_693JJ32540629_FINAL.pdf](#)

[SS4A_FY23_TermsConditions-Title23-Implementation-2025-03-17.pdf](#)

[SS4A-FY23_Exhibits_2025-03-17.pdf](#)

[FY2023 SS4A_Grant routing form_signed.pdf](#)

Report compiled on: July 25, 2025

- | | | | | | | | | | | | | |
|--|--|---|----------------|-----------|------------------|----------|----------------------|-----|--------------|-----|--------|-----------|
| 1. Federal Award No.
693JJ32540629 | 2. Effective Date
See No. 16 Below | 3. Assistance Listings No.
20.939 | | | | | | | | | | |
| 4. Award To
City of Bozeman
121 N Rouse Ave
Bozeman, MT
59715-3740, USA

Unique Entity Id.: EEAPKALAEM35
TIN No.: 81-6001238 | 5. Sponsoring Office
U.S. Department of Transportation
Federal Highway Administration
Office of Safety
1200 New Jersey Avenue, SE
HSSA-1, Mail Drop E71-117
Washington, DC 20590 | | | | | | | | | | | |
| 6. Period of Performance
Effective Date of Award – 36 months | 7. Total Amount
<table border="0" style="width: 100%;"> <tr> <td style="width: 70%;">Federal Share:</td> <td style="text-align: right;">\$200,000</td> </tr> <tr> <td>Recipient Share:</td> <td style="text-align: right;">\$50,000</td> </tr> <tr> <td>Other Federal Funds:</td> <td style="text-align: right;">\$0</td> </tr> <tr> <td>Other Funds:</td> <td style="text-align: right;">\$0</td> </tr> <tr> <td>Total:</td> <td style="text-align: right;">\$250,000</td> </tr> </table> | | Federal Share: | \$200,000 | Recipient Share: | \$50,000 | Other Federal Funds: | \$0 | Other Funds: | \$0 | Total: | \$250,000 |
| Federal Share: | \$200,000 | | | | | | | | | | | |
| Recipient Share: | \$50,000 | | | | | | | | | | | |
| Other Federal Funds: | \$0 | | | | | | | | | | | |
| Other Funds: | \$0 | | | | | | | | | | | |
| Total: | \$250,000 | | | | | | | | | | | |
| 8. Type of Agreement
Grant | 9. Authority
Section 24112 of the Infrastructure Investment and Jobs Act (IIJA. Pub. L. 117–58, November 15, 2021) | | | | | | | | | | | |
| 10. Procurement Request No.
HSA240110PR | 11. Federal Funds Obligated
Base Phase: Pre-NEPA: N/A
Phase 1: Final Design: \$150,000
Option Phase 2: Construction \$50,000 | | | | | | | | | | | |
| 12. Submit Payment Requests To
See Article 5. | 13. Accounting and Appropriations Data
15X0173E50.0000.055SR10500.5592000000.41010.61006600 | | | | | | | | | | | |

14. Description of the Project

The project will develop a Comprehensive Safety Action Plan for the City of Bozeman using a data driven approach to identify systemic safety needs and then identify strategies to address the identified needs based on proven countermeasures. Additionally, the project will demonstrate the use of advanced technology at key signalized intersections to collect supplemental data that will guide the demonstration of strategies that aim to eliminate serious injury and fatal crashes.

RECIPIENT

15. Signature of Person Authorized to Sign

Signature Date
Name: Chuck Winn
Title: City Manager, City of Bozeman

Attest:

Signature Date
Name: Mike Maas
Title: City Clerk, City of Bozeman

FEDERAL HIGHWAY ADMINISTRATION

16. Signature of Agreement Officer

Signature Date
Name: Ryan Buck
Title: Agreement Officer

U.S. DEPARTMENT OF TRANSPORTATION

**GRANT AGREEMENT UNDER THE
FISCAL YEAR 2023 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM**

This agreement is between the United States Department of Transportation's (the "**USDOT**") Federal Highway Administration (the "**FHWA**") and the City of Bozeman (the "**Recipient**").

This agreement reflects the selection of the Recipient to receive a Safe Streets and Roads for All ("**SS4A**") Grant for the City of Bozeman Safety Action Plan and Safety Demonstration Project.

The parties therefore agree to the following:

**ARTICLE 1
GENERAL TERMS AND CONDITIONS**

1.1 General Terms and Conditions.

- (a) In this agreement, "**General Terms and Conditions**" means the content of the document titled "General Terms and Conditions Under the Fiscal Year 2023 Safe Streets and Roads for All ("**SS4A**") Grant Program," dated March 17, 2025, which is available at <https://www.transportation.gov/grants/ss4a/grant-agreements> under "Fiscal Year 2023." Articles 7–30 are in the General Terms and Conditions. The General Terms and Conditions are part of this agreement.
- (b) The Recipient acknowledges that it has knowledge of the General Terms and Conditions. Recipient also states that it is required to comply with all applicable Federal laws and regulations including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.); and Build America, Buy America Act (IIJA, div. G §§ 70901-27).
- (c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient's non-compliance with the General Terms and Conditions may result in remedial action, termination of the SS4A Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the FHWA the SS4A Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

ARTICLE 2
APPLICATION, PROJECT, AND AWARD

2.1 Application.

Application Title: City of Bozeman Safety Action Plan and Safety Demonstration Project

Application Date: July 10, 2023

2.2 Award Amount.

SS4A Grant Amount: \$200,000

2.3 Federal Obligation Information.

Federal Obligation Type: Multiple

Obligation Condition Table		
Phase the Project	Allocation of the SS4A Grant	Obligation Condition
Base Phase: Pre-NEPA	Not Applicable	

Obligation Condition Table		
Phase the Project	Allocation of the SS4A Grant	Obligation Condition
Phase 1: Final Design	\$150,000	The Recipient shall not expend any funds (Federal or non-Federal) for, seek reimbursement of eligible costs, or otherwise begin any part of the final design and construction of an Implementation Project unless and until: (1) The requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (“NEPA”), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (“NHPA”), and any other applicable environmental laws and regulations have been met; and (2) FHWA, or a State with applicable NEPA Assignment authority, has approved the NEPA document for the Project and provided the Recipient with a written notice that the environmental review process is complete; and (3) FHWA has obligated additional funds for this phase and notified the Recipient in writing that the Recipient may proceed to the next activity after NEPA approval, and the Recipient has acknowledged receipt in writing of FHWA’s notification. Recipient shall not proceed with any such activities until (2) and (3) as described in this section are met. Costs that are incurred before (2) and (3) as described in this section are met are not allowable costs under this agreement. Extent of activities that are permissible before NEPA is complete are those activities constituting “preliminary design” as specified in FHWA Order 6640.1A.

Obligation Condition Table		
Phase the Project	Allocation of the SS4A Grant	Obligation Condition
Phase 2: Construction (Demonstration)	\$50,000	The Recipient shall not expend any funds (Federal or non-Federal) for, seek reimbursement of eligible costs, or otherwise begin any part of the construction or final design and construction of an Implementation Project unless and until: (1) The requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (“NEPA”), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (“NHPA”), and any other applicable environmental laws and regulations have been met; and (2) FHWA, or a State with applicable NEPA Assignment authority, has approved the NEPA document for the Project and provided the Recipient with a written notice that the environmental review process is complete; and (3) FHWA has obligated additional funds for this phase and notified the Recipient in writing that the Recipient may proceed to the next activity after NEPA approval, and the Recipient has acknowledged receipt in writing of FHWA’s notification. Recipient shall not proceed with any such activities until (2) and (3) as described in this section are met. Costs that are incurred before (2) and (3) as described in this section are met are not allowable costs under this agreement. Extent of activities that are permissible before NEPA is complete are those activities constituting “preliminary design” as specified in FHWA Order 6640.1A.

2.4 Budget Period.

Base Phase Budget Period: NEPA Completed March 18, 2024

Phase 1 Budget Period: Effective Date of Award – See Block 6 of Page 1

Phase 2 Budget Period: Effective Date of Award – See Block 6 of Page 1

2.5 Grant Designation.

Designation: Planning and Demonstration

ARTICLE 3 SUMMARY PROJECT INFORMATION

3.1 Summary of Project's Statement of Work.

The project will be completed in three phases as follows:

Base Phase: Pre-NEPA: Action Plan and Demonstration NEPA already completed on March 18, 2024.

Option Phase I: Final Design: The outcome of this project will be a Comprehensive Safety Action Plan for the City of Bozeman. The city Transportation Board will assist City Commission in oversight of the plan development which will be led by the city's Department of Transportation and Engineering. The city intends to hire a consultant to support the plan development. Plan development will be founded on analysis of existing conditions including locations, severity, contributing factors, and crash types for all road users. The safety analysis will include evaluation of systemic safety needs by user type. Goals will ultimately include identification of high-crash and high-injury routes and intersections as well as suggested countermeasures to address the identified safety concerns. Of particular interest will be strategies for arterial speed management and intersection safety. Robust public engagement will be provided through all phases of planning by developing a project-specific Engagement Plan using our Engage Bozeman Initiative.

Option Phase 2: Construction (Demonstration): The demonstration activities of the grant involve the city demonstrating advanced technology at key signalized intersections to collect supplemental data and to demonstrate strategies that aim to eliminate serious injury and fatal crashes. The addition of ITS equipment to existing signal systems will enable Bozeman to collect data on red light running, speeding, and near misses. The installation of the new ITS equipment will not impact the existing built environment. The City of Bozeman intends to implement demonstration strategies that address the specific safety problems identified and utilize this new equipment to collect follow up data to evaluate each strategy. The results of these demonstration activities will inform the development of the Action Plan and will build evidence around counter measures that work.

The outcome of the Plan and the Demonstration activities will be summarized in the final report along with the required performance measurement information. The Plan and the report will be available to the public via the city's website.

3.2 Project's Estimated Schedule.

Action Plan Schedule

Milestone	Schedule Date
NEPA Completion Date:	March 18, 2024
Planned Draft Plan Completion Date:	June 30, 2026
Planned Final Plan Completion Date:	October 30, 2026
Planned Final Plan Adoption Date:	March 26, 2027
Planned SS4A Final Report Date:	December 17, 2027

Demonstration Activity Schedule

Milestone	Schedule Date
NEPA Completion Date:	March 18, 2024

Planned Construction Start Date	July 1, 2025
Planned Evaluation Period End Date:	December 19, 2025
Planned SS4A Final Report Date:	December 17, 2027

3.3 Project's Estimated Costs.

(a) Eligible Project Costs

Eligible Project Costs	
SS4A Grant Amount:	\$200,000
Other Federal Funds:	\$0
State Funds:	\$0
Local Funds:	\$50,000
In-Kind Match:	\$0
Other Funds:	\$0
Total Eligible Project Cost:	\$250,000

(b) Cost Classification Table – Planning and Demonstration Grants with demonstration activities and Implementation Grants Only

Cost Classification	Total Costs	Non-SS4A Previously Incurred Costs	Eligible Costs
Architectural and engineering fees	\$150,000		\$150,000
Equipment	\$100,000		\$50,000
Project Total	\$250,000		\$200,000

(c) Indirect Costs

Indirect costs are allowable under this Agreement in accordance with 2 CFR part 200 and the Recipient's approved Budget Application. In the event the Recipient's indirect cost rate changes, the Recipient will notify FHWA of the planned adjustment and provide supporting documentation for such adjustment. This Indirect Cost provision does not operate to waive the limitations on Federal funding provided in this document. The Recipient's indirect costs are allowable only insofar as they do not cause the Recipient to exceed the total obligated funding.

ARTICLE 4

RECIPIENT INFORMATION

4.1 Recipient Contact(s).

Nicholas Ross
Director of Transportation and Engineering
City of Bozeman

4.2 Recipient Key Personnel.

Name	Title or Position
Taylor Lonsdale	City Transportation Engineer
Jamie Grabinski	City Grants Coordinator

4.3 USDOT Project Contact(s).

Safe Streets and Roads for All Program Manager
Federal Highway Administration
Office of Safety
HSSA-1, Mail Stop: E71-117
1200 New Jersey Avenue, S.E.
Washington, DC 20590
202-366-2822
SS4A.FHWA@dot.gov

and

Agreement Officer (AO)
Federal Highway Administration
Office of Acquisition and Grants Management
HCFA-33, Mail Stop E62-310
1200 New Jersey Avenue, S.E.
Washington, DC 20590
HCFASS4A@dot.gov

and

Division Administrator – Montana Division
Agreement Officer's Representative (AOR)
585 Shepard Way, Suite 2
Helena, MT 59601
(406) 441-3900
hdamt@dot.gov

and

Gene Kaufman
Montana Division Office Lead Point of Contact
Program and Project Delivery Engineer
585 Shepard Way, Suite 2
Helena, MT 59601
406-441-3915
Gene.kaufman@dot.gov

ARTICLE 5
USDOT ADMINISTRATIVE INFORMATION

5.1 Office for Subaward and Contract Authorization.

USDOT Office for Subaward and Contract Authorization: FHWA Office of Acquisition and Grants Management

SUBAWARDS AND CONTRACTS APPROVAL

Note: See 2 CFR § 200.331, Subrecipient and contractor determinations, for definitions of subrecipient (who is awarded a subaward) versus contractor (who is awarded a contract).

Note: Recipients with a procurement system deemed approved and accepted by the Government or by the Agreement Officer (the “AO”) are exempt from the requirements of this clause. See 2 CFR 200.317 through 200.327.

In accordance with 2 CFR 200.308(f)(6), the recipient or subrecipient shall obtain prior written approval from the USDOT agreement officer for the subaward, if the subaward activities were not proposed in the application or approved in the Federal award. This provision is in accordance with 2 CFR 200.308 (f) (6) and does not apply to procurement transactions for goods and services. Approval will be issued through written notification from the AO or a formal amendment to the Agreement.

The following subawards and contracts are currently approved under the Agreement by the AO. This list does not include supplies, material, equipment, or general support services which are exempt from the pre-approval requirements of this clause.

5.2 Reimbursement Requests

- (a) The Recipient may request reimbursement of costs incurred within the budget period of this agreement if those costs do not exceed the amount of funds obligated and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall use the DELPHI iSupplier System to submit requests for reimbursement to the payment office. When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit supporting cost detail with the SF-270 (Request for Advance or Reimbursement) or SF-271 (Outlay Report and Request for Reimbursement for Construction Programs) to clearly document all costs incurred.
- (c) The Recipient’s supporting cost detail shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, travel, etc., and the Recipient shall identify the Federal share and the Recipient’s share of costs. If the Recipient does not provide sufficient detail in a request for reimbursement, the Agreement Officer’s Representative (the “AOR”) may withhold processing that request until the Recipient provides sufficient detail.
- (d) The USDOT shall not reimburse costs unless the AOR reviews and approves the costs to ensure that progress on this agreement is sufficient to substantiate payment.
- (e) In the rare instance the Recipient is unable to receive electronic funds transfers (EFT), payment by EFT would impose a hardship on the Recipient because of their inability to manage an account at a financial institution, and/or the Recipient is unable to use the DELPHI iSupplier System to submit their requests for disbursement, the FHWA may waive the requirement that the Recipient use the DELPHI iSupplier System. The Recipient shall contact the Division Office Lead Point of Contact for instructions on and requirements related to pursuing a waiver.

- (f) The requirements set forth in these terms and conditions supersede previous financial invoicing requirements for Recipients.

ARTICLE 6 SPECIAL GRANT TERMS

- 6.1** SS4A funds must be expended within five years after the grant agreement is executed and DOT obligates the funds, which is the budget period end date in section 10.3 of the Terms and Conditions and section 2.4 in this agreement.
- 6.2.** The Recipient demonstrates compliance with civil rights obligations and nondiscrimination laws, including Titles VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. Recipients of Federal transportation funding will also be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements.
- 6.3** SS4A Funds will be allocated to the Recipient and made available to the Recipient in accordance with FHWA procedures.
- 6.4** The Recipient of a Planning and Demonstration Grant acknowledges that the Action Plan will be made publicly available and agrees that it will publish the final Action Plan on a publicly available website.
- 6.5** The Recipient of a Planning and Demonstration Grant that involves a demonstration activity agrees to provide an assessment of each demonstration activity and update the existing Action Plan, which will incorporate the information gathered in the Action Plan's list of projects or strategies and/or inform another part of the existing Action Plan. The Recipient also agrees that demonstration activities are temporary in nature and must be removed and/or ended following the conclusion of the project if the assessment of the demonstration activities does not affirm that the activities provide safety benefits.
- 6.6** The Recipient acknowledges that it is required to conduct certain environmental analyses and to prepare and submit to FHWA, or State with applicable NEPA Assignment authority, documents required under NEPA, and other applicable environmental statutes and regulations before the Government will obligate funds for Option Phase 1 under this agreement and provide the Recipient with a written notice to proceed with Option Phase 1.
- 6.7** The Government's execution of this agreement does not in any way constitute pre-approval or waiver of any of the regulations imposed upon Recipient under the applicable Federal rules, regulations and laws regarding SS4A projects undertaken in accordance with the terms and conditions of this agreement. The Recipient shall comply with all applicable Federal requirements before incurring any costs under this agreement.
- 6.8** There are no other special grant requirements.

ATTACHMENT A

PERFORMANCE MEASUREMENT INFORMATION

Study Area: The Safety Plan will encompass the entirety of the City of Bozeman. The demonstration portion of the project will be isolated to four specific arterial street intersections that will be identified at the start of plan development.

Baseline Measurement Date: December 2024

Baseline Report Date: February 2025

Table 1: Performance Measure Table

Measure	Category and Description	Measurement Frequency and Reporting Deadline
Safety Performance	Fatalities: Total annual fatalities in the project location(s)	Annually and within 120 days after the end of the period of performance
Safety Performance	Serious Injuries: Total annual serious injuries in the project location(s) [if available]	Annually and within 120 days after the end of the period of performance
Safety Performance	Crashes by Road User Category: Total annual crashes in the project location(s) broken out by types of roadway users involved (e.g., pedestrians, bicyclists, motorcyclist, passenger vehicle occupant, commercial vehicle occupant)	Annually and within 120 days after the end of the period of performance
Costs	Project Costs: Quantification of the cost of each eligible project carried out using the grant	Within 120 days after the end of the period of performance
Outcomes and Benefits	Quantitative Project Benefits: Quantification of evidence-based projects or strategies implemented (e.g., miles of sidewalks installed, number of pedestrian crossings upgraded, etc.)	Within 120 days after the end of the period of performance
Outcomes and Benefits	Qualitative Project Benefits: Qualitative description of evidence-based projects or	Within 120 days after the end of the

Measure	Category and Description	Measurement Frequency and Reporting Deadline
	strategies implemented (e.g., narrative descriptions, testimonials, high-quality before and after photos, etc.)	period of performance
Outcomes and Benefits	Project Location(s): GIS/geo coordinate information identifying specific project location(s)	Within 120 days after the end of the period of performance
Lessons Learned and Recommendations	Lessons Learned and Recommendations: Description of lessons learned and any recommendations relating to future projects or strategies to prevent death and serious injury on roads and streets.	Within 120 days after the end of the period of performance

ATTACHMENT B CHANGES FROM APPLICATION

Describe all material differences between the scope, schedule, and budget described in the application and the scope, schedule, and budget described in Article 3. The purpose of Attachment B is to clearly and accurately document any differences in scope, schedule, and budget to establish the parties' knowledge and acceptance of those differences. See Article 11 for the Statement of Work, Schedule, and Budget Changes. If there are no changes, please insert "N/A" in Section 3.3 of the table.

Scope: N/A

Schedule: The schedule has been changed to account for the time between the application and the completion of the agreement. The Period of Performance has been lengthened from the one year in the SF-424 submitted in the application materials to the 36 months in this agreement to account for a recalibration of the time necessary for procurement and full completion of the projects.

Budget: N/A

The table below provides a summary comparison of the project budget.

Fund Source	Application		Section 3.3	
	\$	%	\$	%
Previously Incurred Costs (Non-Eligible Project Costs)				
Federal Funds				
Non-Federal Funds				
Total Previously Incurred Costs			N/A	N/A
Future Eligible Project Costs				
SS4AFunds			N/A	N/A
Other Federal Funds				
Non-Federal Funds			N/A	N/A
Total Future Eligible Project Costs			N/A	N/A
Total Project Costs			N/A	N/A

ATTACHMENT C

[RESERVED]

ATTACHMENT D

[RESERVED]

ATTACHMENT E LABOR AND WORK

1. Efforts to Support Good-Paying Jobs and Strong Labor Standards

The Recipient states that rows marked with “X” in the following table align with the application:

X	The Recipient or a project partner promotes robust job creation by supporting good-paying jobs directly related to the project with free and fair choice to join a union. <i>(Describe robust job creation and identify the good-paying jobs in the supporting narrative below.)</i>
	The Recipient or a project partner will invest in high-quality workforce training programs such as registered apprenticeship programs to recruit, train, and retain skilled workers, and implement policies such as targeted hiring preferences. <i>(Describe the training programs in the supporting narrative below.)</i>
	The Recipient or a project partner will partner with high-quality workforce development programs with supportive services to help train, place, and retain workers in good-paying jobs or registered apprenticeships including through the use of local and economic hiring preferences, linkage agreements with workforce programs, and proactive plans to prevent harassment. <i>(Describe the supportive services provided to trainees and employees, preferences, and policies in the supporting narrative below.)</i>
	The Recipient or a project partner will partner and engage with local unions or other worker-based organizations in the development and lifecycle of the project, including through evidence of project labor agreements and/or community benefit agreements. <i>(Describe the partnership or engagement with unions and/or other worker-based organizations and agreements in the supporting narrative below.)</i>
	The Recipient or a project partner will partner with communities or community groups to develop workforce strategies. <i>(Describe the partnership and workforce strategies in the supporting narrative below.)</i>
	The Recipient or a project partner has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. <i>(Describe those actions in the supporting narrative below.)</i>
	The Recipient or a project partner has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the Project, will take relevant actions described in schedule B. <i>(Identify the relevant actions from schedule B in the supporting narrative below.)</i>
	The Recipient or a project partner has not taken actions related to the Project to improve good-paying jobs and strong labor standards and will not take those actions under this award.

2. Supporting Narrative.

In accordance with state and federal laws, The City of Bozeman supports the free and fair choice to join a union. The City has collective bargaining agreements with Teamsters Local No. 2, Montana Federation of Public Employees, Bozeman Police Protective Association, and IAFF Local 613. All collective bargaining agreements are publicly available on the City’s website at <https://www.bozeman.net/departments/human-resources/employee-information/union-agreements>. Each of the collective bargaining agreements cover wages, hours, and other terms and conditions of employment, all providing competitive compensation, benefits, and high labor standards for covered employees.

Other applicable employment policies, including the City's Employee Handbook and Hiring Practices are also publicly available on the City's website at <https://www.bozeman.net/departments/human-resources/employee-information/employment-policy>. These additional policies describe benefits, labor standards, and other terms and conditions of employment that pertain to both represented and non-represented employees.

ATTACHMENT F
CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

1. Efforts to strengthen the Security and Resilience of Critical Infrastructure against both Physical and Cyber Threats.

The Recipient states that rows marked with “X” in the following table are accurate:

X	The Recipient demonstrates, prior to the signing of this agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the activities.
	The Recipient appropriately considered and addressed physical and cyber security and resilience in the planning, design and oversight of the project, as determined by the Department and the Department of Homeland Security.
X	The Recipient complies with 2 CFR 200.216 and the prohibition on certain telecommunications and video surveillance services or equipment.

2. Supporting Narrative.

The project will implement proven technology for collecting safety performance measures at intersections. The equipment will be installed in existing systems with existing protections addressing cybersecurity risks. The installation of the new equipment poses no physical risk to users of the transportation system.

U.S. DEPARTMENT OF TRANSPORTATION

GENERAL TERMS AND CONDITIONS UNDER THE

FISCAL YEAR 2023 SAFE STREETS AND ROADS FOR ALL (“SS4A”) GRANT

PROGRAM (INCLUDING TITLE 23 FUNDS):

FHWA PROJECTS

Date: January 4, 2024
Revised: October 1, 2024
Revised: March 17, 2025

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GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act (IIJA; Pub. L. 117–58, November 15, 2021) established the Safe Streets and Roads for All (the “SS4A”) Discretionary Grant Program (IIJA Section 24112) and appropriated funds to the United States Department of Transportation (the “USDOT”) under Division J, Title VIII of IIJA to implement the program. The funds are available to provide Federal financial assistance to support local initiatives to prevent death and serious injury on roads and streets, commonly referred to as “Vision Zero” or “Toward Zero Deaths” initiatives.

The USDOT published a Notice of Funding Opportunity (the “NOFO”) to solicit applications for Federal financial assistance in Fiscal Year 2023 for the SS4A Discretionary Grant Program (88 Fed. Reg. 22090, April 12, 2023).

These general terms and conditions are incorporated by reference in a project-specific grant agreement under the fiscal year 2023 SS4A grant program. Articles 1–6 are in the project-specific portion of the agreement. The term “Recipient” is defined in the project-specific portion of the agreement. Attachments A through F are project-specific attachments.

ARTICLE 7 PURPOSE

7.1 Purpose. The purpose of this award is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries through safety action plan development or projects focused on all users, including pedestrians, bicyclists, public transportation users, motorists, personal conveyance and micromobility users, and commercial vehicle operators. The parties will accomplish that purpose by achieving the following objectives:

- (1) timely completing the Project; and
- (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Grant Application, as modified by section 3.3 and Attachment B.

ARTICLE 8 USDOT ROLE

8.1 Division of USDOT Responsibilities.

- (a) The Office of the Secretary of Transportation is ultimately responsible for the USDOT’s administration of the SS4A Grant Program.
- (b) The Federal Highway Administration (the “FHWA”) will administer this grant agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means the FHWA.

8.2 USDOT Program Contact.

Safe Streets and Roads for All
Federal Highway Administration
Office of Safety
1200 New Jersey Avenue SE
HSSA-1, Mail Drop E71-117
Washington, DC 20590
SS4A.FHWA@dot.gov
(202) 366-2822

ARTICLE 9 RECIPIENT ROLE

9.1 Statements on the Project. The Recipient states that:

- (1) all material statements of fact in the Grant Application were accurate when that application was submitted; and
- (2) Attachment B documents all material changes in the information contained in that application.

9.2 Statements on Authority and Capacity. The Recipient states that:

- (1) it has the authority to receive Federal financial assistance under this agreement;
- (2) it has the legal authority to complete the Project, including either ownership and/or maintenance responsibilities over a roadway network; safety responsibilities that affect roadways; or has an agreement from the agency that has ownership and/or maintenance responsibilities for the roadway within the applicant's jurisdiction; if applicable;
- (3) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
- (4) not less than the difference between the "Total Eligible Project Cost" and the "SS4A Grant Amount" listed in section 3.3 are committed to fund the Project;
- (5) it has sufficient funds available, or an agreement with the agency that has ownership and/or maintenance responsibilities for the roadway within the recipient's jurisdiction, to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law; and

- (6) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 9 and in section 24.7 on behalf of the Recipient.

9.3 USDOT Reliance. The Recipient acknowledges that:

- (1) the USDOT relied on statements of fact in the Grant Application to select the Project to receive this award;
- (2) the USDOT relied on statements of fact in both the Grant Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO;
- (3) the USDOT relied on statements of fact in both the Grant Application and this agreement to establish the terms of this agreement; and
- (4) the USDOT's selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

9.4 Project Delivery.

- (a) The Recipient shall complete the Project under the terms of this agreement.
- (b) The Recipient shall ensure that the Project is financed, constructed, operated, and maintained in accordance with all applicable Federal laws, regulations, and policies.
- (c) The Recipient shall provide any certifications or assurances deemed necessary by the USDOT in ensuring the Recipient's compliance with all applicable laws, regulations, and policies.
- (d) The Recipient shall provide access to records as provided at 2 C.F.R. 200.337.

9.5 Rights and Powers Affecting the Project.

- (a) The Recipient shall not take or permit any action that deprives it of any rights or powers necessary to the Recipient's performance under this agreement without written approval of the USDOT.
- (b) The Recipient shall act, in a manner acceptable to the USDOT, promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under this agreement.

9.6 Notification of Changes to Key Personnel. The Recipient shall notify all USDOT representatives who are identified in Section 4.3 in writing within 30 calendar days of any change in key personnel who are identified in Section 4.2.

ARTICLE 10

AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

10.1 Federal Award Amount The USDOT hereby awards a SS4A Grant to the Recipient in the amount listed in section 2.2 as the SS4A Grant Amount.

10.2 Federal Obligations.

This agreement obligates funds for the period of performance listed on Page 1, Block 6 of the grant agreement.

(a) If the Federal Obligation Type identified in section 2.3 is “Single,” then the project-specific agreement obligates for the budget period the amount listed in section 2.2. as the Grant Amount and sections 10.2 (c)–10.2(f) do not apply to the project specific agreement.

(b) If the Federal Obligation Type identified in section 2.3 is “Multiple,” (for phased agreements) then an amount up to the Grant Amount listed in section 2.2 will be obligated with one initial obligation and one or more subsequent, optional obligations, as described in sections 10.2(c)–10.2(f).

(c) The Obligation Condition Table in section 2.3 allocates the Grant funds among separate phases of the Project for the purpose of the Federal obligation of funds. The scope of each phase of the Project that is identified in that table is described in section 2.3.

(d) The project-specific agreement obligates for the budget period only the amounts allocated in the Obligation Condition Table in section 2.3 to portions of the Project for which that table does not list an obligation condition.

(e) The project-specific agreement does not obligate amounts allocated in the Obligation Condition Table in section 2.3 to portions of the Project for which that table lists an obligation condition. The parties may obligate the amounts allocated to those portions of the Project only by modifying the project specific agreement under section 21.

(f) For each portion of the Project for which the Obligation Condition Table in section 2.3 lists an obligation condition, the amount allocated in that table to that portion of the Project will be obligated if the condition is met not later than the date listed in Section 2.4 of the project-specific agreement.

(g) For any portion of the Project for which the Obligation Condition Table in section 2.3 lists an obligation condition, if the obligation condition is satisfied, the parties amend this agreement documenting that:

(1) the FHWA determines that the obligation condition listed in that table for that portion of the Project is satisfied; and

(2) the FHWA determines that all applicable Federal requirements for obligating the amount are satisfied.

(h) The Recipient shall not request reimbursement of costs for a portion of the Project for which the Obligation Condition Table in section 2.3 lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 10.2(c)-(f).

(i) Reserved.

(j) The Recipient acknowledges that:

(1) the FHWA is not liable for payments for a portion of the Project for which the Obligation Condition Table in section 2.3 lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 10.2(c)-(f);

(2) any portion of the Grant that is not obligated under this section 10.2 by the budget period end date identified in the project-specific agreement for those funds lapses on the day after that date and becomes unavailable for the Project; and

(3) the FHWA may consider the failure to obligate funds by the budget period end date identified in the project-specific agreement as applicable to the Grant Program for those funds to be a basis for terminating the project-specific agreement under section 16.

10.3 Budget Period

The budget period for this award begins on the effective date of this agreement and ends on the budget period end date that is listed in section 2.4, which shall be no later than 5 years from the date of grant execution. In this agreement, “budget period” is used as defined at 2 C.F.R. 200.1.

10.4 Period of Performance.

(a) The period of performance for this award begins on the effective date of award listed in page 1 item 2 and ends on the period of performance end date that is listed in Page 1, Block 6.

(b) In this agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

ARTICLE 11

STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 11.1 Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 4.4 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient's plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 11.1 is separate from any requirements under this article 11 that the Recipient request amendment of this agreement.
- 11.2 Statement of Work Changes.** If the Project's activities differ from the statement of work that is described in section 3.1 and Attachment B, then the Recipient shall request an amendment of this agreement to update section 3.1.
- 11.3 Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request an amendment of this agreement to update the relevant dates:
- (1) a substantial completion date for the Project or a component of the Project that is listed in section 3.2 and the Recipient's estimate for that milestone changes to a date that is more than six months after the date listed in section 3.2; or
 - (2) a schedule change would require the period of performance to continue after the period of performance end date listed on Page 1, Block 6. (i.e., for projects with multiple phases, changes to the base phase budget period end date for projects with two phases, or changes to base or secondary phase budget period end dates for projects with three phases, etc., will not trigger notification/modification requirements).

For other schedule changes, the Recipient shall request an amendment of this agreement unless the USDOT has consented, in writing consistent with applicable requirements, to the change.

11.4 Budget Changes.

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient's obligation under this agreement to complete the Project; and
 - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B if, in comparing the Project's budget to the amounts listed in section 3.3:
 - (1) the "Non-Federal Funds" amount decreases; or

- (2) the “Total Eligible Project Cost” amount decreases.
- (c) For budget changes that are not identified in section 11.4(b), the Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B unless the USDOT has consented, in writing consistent with applicable requirements, to the change.
- (d) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3, then the Recipient may propose to the USDOT, in writing consistent with applicable requirements, specific additional activities that are within the scope of this award, as defined in sections 7.1 and 3.1, and that the Recipient could complete with the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs.
- (e) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3 and either the Recipient does not make a proposal under section 11.4(d) or the USDOT does not accept the Recipient’s proposal under section 11.4(d), then:
 - (1) in a request under section 11.4(b), the Recipient shall reduce the Federal Share by the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs; and
 - (2) if that amendment reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall request to add additional project work that is within the scope of this project.

In this agreement, “**Federal Share**” means the sum of the “SS4A Grant Amount” and the “Other Federal Funds” amounts that are listed in section 3.3(a).

- (f) The Recipient acknowledges that amounts that are required to be refunded under section 11.4(e)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Standards for Administrative Collection of Claims (31 C.F.R. part 901).

11.5 USDOT Acceptance of Changes. The USDOT may accept or reject amendments requested under this article 11, and in doing so may elect to consider only the interests of the SS4A grant program and the USDOT. The Recipient acknowledges that requesting an amendment under this article 11 does not amend, modify, or supplement this agreement unless the USDOT accepts that amendment request and the parties modify this agreement under section 21.1.

ARTICLE 12 GENERAL REPORTING TERMS

- 12.1 Report Submission.** The Recipient shall send all reports required by this agreement to all USDOT contacts who are listed in section 4.4. Reports will be added to a central repository maintained by FHWA.
- 12.2 Alternative Reporting Methods.** FHWA may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the FHWA.
- 12.3 Paperwork Reduction Act Notice.**

Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). Collections of information conducted under this agreement are approved under OMB Control No. 2125-0675.

ARTICLE 13 PROGRESS AND FINANCIAL REPORTING

- 13.1 Quarterly Performance Progress Reports.** Quarterly, on or before the 20th day of the first month of each calendar year (e.g., reports due on or before January 20th, April 20th, July 20th, and October 20th) and until the end of the period of performance, the Recipient shall submit to the USDOT a Quarterly Performance Progress Report in the format and with the content described in Exhibit C. If the date of this agreement is in the final month of a calendar year, then the Recipient shall submit the first Quarterly Performance Progress Report in the second calendar year quarter that begins after the date of this agreement.
- 13.2 Quarterly Financial Status.** Quarterly, on or before the 20th day of the first month of each calendar year (e.g., reports due on or before January 20th, April 20th, July 20th, and October 20th) and until the end of the period of performance, the Recipient shall submit a Federal Financial Report using SF-425.

ARTICLE 14 PERFORMANCE REPORTING

- 14.1 Baseline Performance Measurement.** Recipients of Implementation Grants or Planning and Demonstration Grants with demonstration activities shall:
- (1) collect data for each performance measure that is identified in the Performance Measure Table in Attachment A, accurate as of the Baseline Measurement Date that is identified in Attachment A; and

- (2) on or before the Baseline Report Date that is stated in Attachment A, the Recipient shall submit a Baseline Performance Measurement Report that contains the data collected under this section 14.1 and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Performance Measure Table in Attachment A.

14.2 SS4A Final Report: The Recipient shall submit to the USDOT, not later than 120 days after the end of the period of performance, a report in the format specified by FHWA and with the content described in Attachment A that describes, consistent with sections 24112(g)-(h) of IIJA:

- (1) the costs of each eligible project and strategy carried out using the grant;
- (2) the roadway safety outcomes and any additional benefits (e.g., increased walking, biking, or transit use without a commensurate increase in serious and fatal crashes, etc.) that each such project and strategy has generated, as—
 - identified in the grant application; and
 - measured by data to the maximum extent practicable; and
- (3) [RESERVED]
- (4) the lessons learned, and any recommendations related to future projects or strategies to prevent death and serious injuries on roads and streets.

14.3 Performance Measurement Information.

For each performance measure identified to be submitted annually in the Performance Measure Table in Attachment A, not later than January 31 of each year, the Recipient shall submit to the USDOT a Performance Measurement Report containing the data collected in the previous calendar year and stating the dates when the data was collected.

14.4 Performance Reporting Survival.

The data collection and reporting requirements in this article 14 survive the termination of this agreement which is three years post period of performance

14.5 Program Evaluation.

As a condition of grant award, the recipient may be required to participate in an evaluation undertaken by USDOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, before/after photographs of the sites, qualitative activities such as videos describing the project and its impact on the community, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect

data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or USDOT staff.

ARTICLE 15 NONCOMPLIANCE AND REMEDIES

15.1 Noncompliance Determinations.

- (a) If the USDOT determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, the USDOT may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the USDOT must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- (b) If the USDOT notifies the Recipient of a proposed determination of noncompliance under section 15.1(a), the Recipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
 - (1) accept the remedy;
 - (2) acknowledge the noncompliance, but propose an alternative remedy; or
 - (3) dispute the noncompliance.

To dispute the noncompliance, the Recipient must include in its response documentation or other information supporting the Recipient's compliance.

- (c) The USDOT may make a final determination of noncompliance only:
 - (1) after considering the Recipient's response under section 15.1(b); or
 - (2) if the Recipient fails to respond under section 15.1(b), after the time for that response has passed.
- (d) To make a final determination of noncompliance, the USDOT must provide a notice to the Recipient that states the basis for that determination.

15.2 Remedies.

- (a) If the USDOT makes a final determination of noncompliance under section 15.1(d), the USDOT may impose a remedy, including:

- (1) additional conditions on the award;
 - (2) any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to USDOT; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or
 - (3) any other remedy legally available.
- (b) To impose a remedy, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
 - (c) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 15.2(a), before making a final determination of noncompliance under section 15.1(d). If it does so, then the notice provided under section 15.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
 - (d) In imposing a remedy under this section 15.2 or making a public interest determination under section 15.2(c), the USDOT may elect to consider the interests of only the USDOT.
 - (e) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under this section 15.2 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Standards for Administrative Collection of Claims (31 C.F.R. part 901).

15.3 Other Oversight Entities.

Nothing in this article 15 limits any party's authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

ARTICLE 16 AGREEMENT TERMINATION

16.1 USDOT Termination.

- (a) The USDOT may terminate this agreement and all its obligations under this agreement if any of the following occurs:
 - (1) the Recipient fails to obtain or provide any non-SS4A Grant contribution (all eligible project costs other than the SS4A Grant Amount, as described in section 3.3(a) of the grant agreement) or alternatives approved by the USDOT as provided in this agreement and consistent with article 3;

- (2) a construction start date for the project or strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
 - (3) a substantial completion date for the project or strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
 - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the schedule in section 3.2 even if it is beyond the reasonable control of the Recipient; or,
 - (5) the USDOT determines that termination of this agreement is in the public interest.
 - (6) the Recipient fails to expend the funds within 5 years after the date on which the government executes the grant agreement, which is the date funds are provided for the project.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
 - (c) This section 16.1 does not limit the USDOT's ability to terminate this agreement as a remedy under section 15.2.
 - (d) The Recipient may request that the USDOT terminate the agreement under this section 16.1.

16.2 Closeout Termination.

- (a) This agreement terminates on Project Closeout.
- (b) In this agreement, "**Project Closeout**" means the date that the USDOT notifies the Recipient that the award is closed out. Under 2 C.F.R. 200.344, Project Closeout should occur no later than one year after the end of the period of performance.

16.3 Post-Termination Adjustments. The Recipient acknowledges that under 2 C.F.R. 200.345–200.346, termination of the agreement does not extinguish the USDOT's authority to disallow costs, including costs that USDOT reimbursed before termination, and recover funds from the Recipient.

16.4 Non-Terminating Events.

- (a) The end of the period of performance described under section 10.4 does not terminate this agreement or the Recipient's obligations under this agreement.
- (b) The liquidation of funds under section 20.1 does not terminate this agreement or the Recipient's obligations under this agreement.

- 16.5 Other Remedies.** The termination authority under this article 16 supplements and does not limit the USDOT’s remedial authority under article 15 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340.

ARTICLE 17

MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

17.1 Recipient Monitoring and Record Retention.

- (a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:
 - (1) that those activities comply with this agreement; and
 - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(e).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

17.2 Financial Records and Audits.

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the project, and the amount or nature of that portion of the cost of the project supplied by other sources, and any other financial records related to the project.
- (b) The Recipient shall keep accounts and records described under section 17.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.302–200.307, 2 C.F.R. part 200, subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the fiscal year 2023 SS4A grants program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
 - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. part 200, subpart F, including “FY 2023” in the program name; and
 - (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2023” in column c (“Additional Award Identification”).

- 17.3 Internal Controls.** The Recipient shall establish and maintain internal controls as required under 2 C.F.R. 200.303.
- 17.4 USDOT Record Access.** The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.
- 17.5 Oversight Responsibilities.** This award is subject to the oversight requirements of title 23, United States Code.

ARTICLE 18 CONTRACTING AND SUBAWARDS

- 18.1 Build America, Buy America.** This award term implements § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtitle A, 135 Stat. 429, 1294 (2021), 2 CFR part 184, and Office of Management and Budget (OMB) Memorandum M-24-02, “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.”

Requirement to Use Iron, Steel, Manufactured Products, and Construction Materials Produced in the United States.

The Recipient shall not use funds provided under this award 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; 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.

Inapplicability.

The domestic content procurement preference in this award term 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, the Recipient may apply for, and the USDOT may grant, a waiver from the domestic content procurement preference in this award term.

A request to waive the application of the domestic content procurement preference must be in writing. The USDOT will provide instructions on the waiver process and 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 Office of Management and Budget (OMB) Made in America Office.

When the USDOT has made a determination 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 USDOT 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.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

Definitions

“Construction materials” means articles, materials, or supplies—that consist of only one of the items listed below in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent that one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material:

- (1) The listed Items are:
 - non-ferrous metals;
 - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - glass (including optic glass);
 - fiber optic cable (including drop cable)
 - optical fiber;

- lumber;
- engineered wood; and
- drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

“Manufactured products” means:

(1) Articles, materials, or supplies that have been: (i) Processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forging utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“**Project**” means temporary or permanent construction, alteration, maintenance, or repair of infrastructure in the United States.

“Section 70917(c) materials” cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

(a) Steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. 313, as applicable, as implemented by the Federal Highway Administration. The Recipient acknowledges that this agreement is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).

(b) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act,

Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1294 (2021), as implemented by OMB, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(c) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

- 18.2 Small and Disadvantaged Business Requirements.** The Recipient shall expend all funds under this award in compliance with the requirements at 2 C.F.R. 200.321 including any amendments thereto.
- 18.3 Engineering and Design Services.** The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 U. S. C. 1101-1104 as implemented in 23 U. S. C. 112(b)(2), as applicable, or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by the USDOT
- 18.4 Foreign Market Restrictions.** The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 18.5 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232, 2 C.F.R. 200.216 and 2 C.F.R. 200.471 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.
- 18.6 Recipient Responsibilities for Subawards.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.
- 18.7 Subaward and Contract Authorization.** If the USDOT Office for Subaward Authorization identified in section 5.1 is “FHWA Office of Acquisition and Grants Management,” then the Recipient must follow the requirements in 2 C.F.R. 200.308 (f)(6) and 2 C.F.R. 200.333, as applicable, for the subaward of any SS4A Grant work under the Project-Specific Agreement. Approvals under 2 CFR 200.308(f)(6) do not apply to the procurement acquisition of goods and services.

- 18.8 Minimum Wage Rates.** The Recipient shall include, in all contracts in excess of \$2,000 for work on the Project that involves labor, provisions establishing minimum rates of wages, to be predetermined by the United States Secretary of Labor, in accordance with 23 U. S. C. 113, that contractors shall pay to skilled and unskilled labor, and such 19 of 33 minimum rate shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

ARTICLE 19 COSTS, PAYMENTS, AND UNEXPENDED FUNDS

- 19.1 Limitation of Federal Award Amount.** Under this award, the USDOT shall not provide funding greater than the amount obligated on the SS4A Grant cover page, Item 11, Federal Funds Obligated. The Recipient acknowledges that USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.
- 19.2 Projects Costs.** This award is subject to the cost principles at 2 C.F.R. part 200 subpart E, including provisions on determining allocable costs and determining allowable costs.
- 19.3 Timing of Project Costs.**
- (a) The Recipient shall not charge to this award costs that are incurred after the period of performance.
 - (b) The Recipient shall not charge to this award costs that were incurred before the effective date of award of this agreement, unless there has been an approval of pre-award costs under 2 C.F.R. 200.458.
- 19.4 Recipient Recovery of Federal Funds.** The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if the USDOT determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this award. The Recipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by the USDOT.
- 19.5 Unexpended Federal Funds.** Any Federal funds that are awarded at section 10.1 but not expended on allocable, allowable costs remain the property of the United States.
- 19.6 Timing of Payments to the Recipient.** When reimbursement is used, the Recipient shall not request reimbursement of a cost before the Recipient has entered an obligation for that cost.
- 19.7 Payment Method.**
- (a) If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then the Recipient shall use the DELPHI eInvoicing System to request reimbursement

or advance payment under this award unless the USDOT agreement officer provides written approval for the Recipient to use a different request and payment method.

(b) The USDOT may deny a payment request that is not submitted using the method identified in section 5.2.

19.8 Information Supporting Expenditures

(a) If the USDOT Payment System identified in section 5.2 is “DELPHI iSupplier,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit the SF-270 (Request for Advance or Reimbursement) or SF-271 (Outlay Report and Request for Reimbursement for Construction Programs), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.

(b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

19.9 Reimbursement Frequency. If the USDOT Payment System identified in section 5.2 is “DELPHI iSupplier,” then the Recipient shall not request reimbursement more frequently than monthly.

19.10 Match. The recipient should show on each request for reimbursement that at least 20 percent of the incurred costs will count towards match. If the recipient intends to vary the match percentage over the life of the project, it must communicate its plan to USDOT. The recipient is responsible for tracking match according to the plan. At the completion of the grant award, the cost share requirement must be met, and Federal funds must not exceed the project's Federal share.

ARTICLE 20 LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

20.1 Liquidation of Recipient Obligations.

(a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) the statutory availability to eligible entities date, which shall be 5 years after the date on which the grant is provided.

(b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.344–200.346.

ARTICLE 21 AGREEMENT MODIFICATIONS

- 21.1 Bilateral Amendments.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 21.2 Unilateral Contact Modifications.**
- (a) The USDOT may update the contacts who are listed in sections 4.4 by written notice to all of the Recipient contacts who are listed in section 4.3.
- 21.3 USDOT Unilateral Modifications.**
- (a) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
 - (b) To unilaterally modify this agreement under this section 21.3(a), the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.
- 21.4 Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under sections [21.1](#), [21.2](#), or 21.3. If an amendment, modification, or supplement is not permitted under section [21.1](#), not permitted under section [21.2](#), and not permitted under section 21.3, it is void.

ARTICLE 22 [RESERVED]

ARTICLE 23 [RESERVED]

ARTICLE 24 FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

- 24.1 Uniform Administrative Requirements for Federal Awards.** The Recipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.
- 24.2 Federal Law and Public Policy Requirements.**
- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States 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; and Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.

- (b) Pursuant to Executive Order 14173, Ending Illegal Discrimination And Restoring Merit-Based Opportunity, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.
- (c) Pursuant to Executive Order 14173, Ending Illegal Discrimination And Restoring Merit-Based Opportunity, by entering into this agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.
- (d) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.

24.3 Federal Freedom of Information Act.

- (a) The USDOT is subject to the Freedom of Information Act, 5 U.S.C. 552.
- (b) The Recipient acknowledges that the Technical Application and materials submitted to the USDOT by the Recipient related to this agreement may become USDOT records subject to public release under 5 U.S.C. 552.

24.4 History of Performance. Under 2 C.F.R 200.206, any Federal agency may consider the Recipient's performance under this agreement when evaluating the risks of making a future Federal financial assistance award to the Recipient.

24.5 Whistleblower Protection.

- (a) The Recipient acknowledges that it is a "grantee" within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related this this award.
- (b) The Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

24.6 External Award Terms and Obligations.

- (a) In addition to this document and the contents described in article 29, this agreement includes the following additional terms as integral parts:
 - (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;

- (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
- (3) 2 C.F.R part 175: Award Term for Trafficking in Persons; and
- (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient shall comply with:

- (1) 49 C.F.R. part 20: New Restrictions on Lobbying;
- (2) 49 C.F.R. part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
- (3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
- (4) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

24.7 Incorporated Certifications. The Recipient makes the statements in the following certifications, which are incorporated by reference:

- (1) Appendix A to 49 C.F.R. part 20 (Certification Regarding Lobbying).

ARTICLE 25 ASSIGNMENT

25.1 Assignment Prohibited. The Recipient shall not transfer to any other entity any discretion granted under this agreement, any right to satisfy a condition under this agreement, any remedy under this agreement, or any obligation imposed under this agreement.

ARTICLE 26 WAIVER

26.1 Waivers.

- (a) A waiver granted by USDOT under this agreement will not be effective unless it is in writing and signed by an authorized representative of USDOT.
- (b) A waiver granted by USDOT under this agreement on one occasion will not operate as a waiver on other occasions.

- (c) If USDOT fails to require strict performance of a provision of this agreement, fails to exercise a remedy for a breach of this agreement, or fails to reject a payment during a breach of this agreement, that failure does not constitute a waiver of that provision or breach.

ARTICLE 27

ADDITIONAL TERMS AND CONDITIONS

- 27.1 Effect of Planning and Demonstration or Implementation Award.** Based on information that the Recipient provided to the USDOT, including the Grant Application, as indicated in section 2.5, this agreement designates this award as a Planning and Demonstration award or an Implementation award, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation as listed in the FY 2023 Notice of Funding Opportunity for Safe Streets and Roads for All.
- 27.2 Disclaimer of Federal Liability.** The USDOT shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this agreement.
- 27.3 Environmental Review**
- (a) In this section, “**Environmental Review Entity**” means:
- (1) if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and
 - (2) for all other cases, the FHWA.
- (b) Except as authorized under section 27.3(c), the Recipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:
- (1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and
 - (2) if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.
- (c) If the Recipient is using procedures for early acquisition of real property under 23 C.F.R. 710.501 or hardship and protective acquisitions of real property 23 C.F.R. 710.503, the Recipient shall comply with 23 C.F.R. 771.113(d)(1).
- (d) The Recipient acknowledges that:

- (1) the Environmental Review Entity's actions under section 27.3(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
 - (2) applicable environmental statutes and regulation may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- (e) Consistent with 23 C.F.R. 771.105(a), to the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (f) The activities described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align information in this agreement, then:
- (1) the parties may amend this agreement under section 21.1 for consistency with the selected build alternative; or
 - (2) if the USDOT determines that the condition at section 16.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 16.1(a)(5).
- (g) The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.

27.4 Railroad Coordination. If the agreement includes one or more milestones identified as a "Railroad Coordination Agreement," then for each of those milestones, the Recipient shall enter a standard written railroad coordination agreement, consistent with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad's right-of-way.

27.5 Relocation and Real Property Acquisition.

- (a) The Recipient shall comply with the land acquisition policies in 49 C.F.R. part 24 subpart B and shall pay or reimburse property owners for necessary expenses as specified in that subpart.
- (b) The Recipient shall provide a relocation assistance program offering the services described in 49 C.F.R. part 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. part 24 subparts D–E.
- (c) The Recipient shall make available to displaced persons, comparable replacement dwellings in accordance with 49 C.F.R. part 24.

27.6 Equipment Disposition.

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project that entity shall request disposition instructions from the FHWA.
- (b) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.310–200.316 and 2 C.F.R. 1201.313.
- (c) The Recipient shall ensure compliance with this section (27.6) for all tiers of subawards under this award.

ARTICLE 28 MANDATORY AWARD INFORMATION

28.1 Information Contained in a Federal Award. For 2 C.F.R. 200.211:

- (1) the “Federal Award Date” is the date of this agreement, as defined under section 30.2;
- (2) the “Assistance Listings Number” is 20.939 and the “Assistance Listings Title” is “Safe Streets and Roads for All Grant Program”; and
- (3) this award is not for research and development.

ARTICLE 29 CONSTRUCTION AND DEFINITIONS

29.1 Attachments. This agreement includes the following attachments as integral parts unless Attachment D is not required for certain Grants:

Attachment A	Performance Measurement Information
Attachment B	Changes from Application
Attachment C	[RESERVED]
Attachment D	[RESERVED]
Attachment E	Labor and Workforce
Attachment F	Critical Infrastructure Security and Resilience

29.2 Exhibits. The following exhibits, which are in the document titled “Exhibits to FHWA Grant Agreements Under the Fiscal Year 2023 SS4A Grant Program”, dated March 17, 2025 and available at <https://www.transportation.gov/grants/ss4a/grant-agreements>, are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Additional Standard Terms

Exhibit C Quarterly Performance Progress Reports: Format and Content
Exhibit D Form for Subsequent Obligation of Funds

- 29.3 Construction.** If a provision in the exhibits or the attachments conflicts with a provision in articles 1–2830, then the provision in articles 1–2830 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.
- 29.4 Integration.** This agreement constitutes the entire agreement of the parties relating to the SS4A grant program and awards under that program and supersedes any previous agreements, oral or written, relating to the SS4A grant program and awards under that program.
- 29.5 Definitions.** In this agreement, the following definitions apply:
- “**Program Statute**” means the IIJA section 24112 and statutory text under the heading “Safe Streets and Roads for All Grants” in title I of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (November 15, 2021), and all other provisions of that act that apply to amounts appropriated under that heading.
- “**Project**” means the project proposed in the Grant Application, as modified by the negotiated provisions of this agreement.
- “**SS4A Grant**” means an award of funds that were made available under the SS4A NOFO.
- “**Grant Application**” means the application identified in section 2.1, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

ARTICLE 30

AGREEMENT EXECUTION AND EFFECTIVE DATE

- 30.1 Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.
- 30.2 Effective Date.** The agreement will become effective when all parties have signed it. The effective date of this agreement will be the date this agreement is signed by the last party to sign it. This instrument constitutes a SS4A Grant when the USDOT’s authorized representative signs it.

U.S. DEPARTMENT OF TRANSPORTATION
EXHIBITS TO FHWA GRANT AGREEMENTS UNDER THE
FISCAL YEAR 2023 SAFE STREETS AND ROADS FOR ALL (SS4A) GRANT
PROGRAM

January 4, 2024
Revised: March 17, 2025

EXHIBIT A

APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this agreement for a FY 2023 Safe Streets and Roads for All Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

General Federal Legislation

- a. Federal Fair Labor Standards Act – 29 U.S.C. 201, et seq.
- b. Hatch Act – 5 U.S.C. 1501, et seq.
- c. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – 42 U.S.C. 4601, et seq.
- d. National Historic Preservation Act of 1966 - Section 106 – 54 U.S.C. 306108
- e. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. 312501, et seq.
- f. Native American Graves Protection and Repatriation Act – 25 U.S.C. 3001, et seq.
- g. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. 7401, et seq.
- h. Section 404 of the Clean Water Act, as amended – 33 U.S.C. 1344
- i. Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. 1536
- j. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. 1451, et seq.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) – 42 U.S.C. 4012a
- l. Age Discrimination Act of 1975 – 42 U.S.C. 6101, et seq.
- m. American Indian Religious Freedom Act, P.L. 95-341, as amended
- n. Drug Abuse Office and Treatment Act of 1972, as amended – 21 U.S.C. 1101, et seq.
- o. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended – 42 U.S.C. 4541, et seq.
- p. Sections 523 and 527 of the Public Health Service Act of 1912, as amended – 42 U.S.C. 290dd through 290dd-2
- q. Architectural Barriers Act of 1968 – 42 U.S.C. 4151, et seq.
- r. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 – 42 U.S.C. 8373
- s. Contract Work Hours and Safety Standards Act – 40 U.S.C. 3701, et seq.
- t. Copeland Anti-kickback Act, as amended – 18 U.S.C. 874 and 40 U.S.C. 3145
- u. National Environmental Policy Act of 1969 – 42 U.S.C. 4321, et seq.
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. 1271, et seq.
- w. Federal Water Pollution Control Act, as amended – 33 U.S.C. 1251-1376
- x. Single Audit Act of 1984 – 31 U.S.C. 7501, et seq.
- y. Americans with Disabilities Act of 1990 – 42 U.S.C. 12101, et seq.
- z. Title IX of the Education Amendments of 1972, as amended – 20 U.S.C. 1681 through 1683 and 1685 through 1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended – 29 U.S.C. 794
- bb. Title VI of the Civil Rights Act of 1964 – 42 U.S.C. 2000d, et seq.
- cc. Title IX of the Federal Property and Administrative Services Act of 1949 – 40 U.S.C. 1101 -1104, 541, et seq.
- dd. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and

- Financial Transactions – 31 U.S.C. 1352
- ee. Freedom of Information Act – 5 U.S.C. 552, as amended
 - ff. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. 1855
 - gg. Farmland Protection Policy Act of 1981 – 7 U.S.C. 4201, et seq.
 - hh. Noise Control Act of 1972 – 42 U.S.C. 4901, et seq.
 - ii. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. 661, et seq.
 - jj. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 – 33 U.S.C. 401 and 525
 - kk. Section 4(f) of the Department of Transportation Act of 1966 – 49 U.S.C. 303
 - ll. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. 9601, et seq.
 - mm. Safe Drinking Water Act – 42 U.S.C. 300f to 300j-26
 - nn. Wilderness Act – 16 U.S.C. 1131-1136
 - oo. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. 6901, et seq.
 - pp. Migratory Bird Treaty Act – 16 U.S.C. 703, et seq.
 - qq. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
 - rr. Cargo Preference Act of 1954 – 46 U.S.C. 55305
 - ss. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232
 - tt. Bringing in and harboring certain aliens – 8 U.S.C. 1324
 - uu. Aiding or assisting certain aliens to enter – 8 U.S.C. 1327

Executive Orders

- a. Executive Order 11990 – Protection of Wetlands
- b. Executive Order 11988 – Floodplain Management
- c. Executive Order 12372 – Intergovernmental Review of Federal Programs
- d. Executive Order 12549 – Debarment and Suspension
- e. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers
- f. Executive Order 14025 – Worker Organizing and Empowerment
- g. Executive Order 14149, Restoring Freedom of Speech and Ending Federal Censorship
- h. Executive Order 14154, Unleashing American Energy
- i. Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing
- j. Executive Order 14168 Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- k. Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity

Presidential Policy Directives and Memorandums

- a. Presidential Policy Directive 21 – Critical Infrastructure Security and Resilience
- b. National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Systems

General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21, including any amendments thereto
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26, including any amendments thereto (as applicable under section 18.3 of this agreement)

Office of Management and Budget Circulars

- a. Any applicable OMB Circular based upon the specific FY 2023 Safe Streets and Roads for All Grant Recipient.

Highway Federal Legislation

- a. Agreements relating to the use of an access to rights-of-way—Interstate System, 23 U.S.C. 111

- b. Planning, 23 U.S.C. 134 and 135 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- c. Tolls, 23 U.S.C. 301 (to the extent the recipient wishes to toll an existing free facility that has received Title 23 funds in the past); except as authorized by 23 U.S.C. 129 and 166.
- d. Efficient Environmental Reviews - 23 U.S.C. 139
- e. Policy on lands, wildlife and waterfowl refuges, and historic sites - 49 U.S.C. 303

Federal Highway Regulations

- a. Planning – 23 C.F.R. Part 450 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- b. National Highway System Design Standards – 23 C.F.R. Part 625
- c. Location and Hydraulic Design of Encroachments on Flood Plains – 23 C.F.R. Part 650 Subpart A
- d. Manual on Uniform Traffic Control Devices – 23 C.F.R. Part 655
- e. Environmental Impact and Related Procedures – 23 C.F.R. Part 771
- f. Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)) – 23 C.F.R. Part 774
- g. Permitting Requirements under the National Pollutant Discharge Elimination System – 40 C.F.R. Part 122

Specific assurances required to be included in the FY 2023 Safe Streets and Roads for All Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

EXHIBIT B
ADDITIONAL STANDARD TERMS

TERM B.1
TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED
PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL
FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities
Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37, and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By signing and submitting the Technical Application and by entering into this agreement under the FY 2023 Safe Streets and Roads for All (SS4A) grant program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- 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);
- 49 C.F.R. Part 21, including any amendments thereto (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2023 SS4A grant program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. Part 21, including any amendments thereto, will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2023 SS4A Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer

of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to FHWA, or its designee in a timely,

complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2023 SS4A grant program. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2023 SS4A grant program.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21, including any amendments thereto.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as

the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Specific Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), 49 U.S.C. § 6702, the Regulations for the Administration of FY 2023 SS4A grant program, and the policies and procedures prescribed by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, including any amendments thereto, pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto Recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Recipient, its successors and assigns.

The Recipient, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the Recipient will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, including any amendments thereto, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Specific Assurance 7(a):

- A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Recipient pursuant to the provisions of Specific Assurance 7(b):

- A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- 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); and 49 C.F.R. Part 21, including any amendments thereto.
- 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);
- 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 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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 Section 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);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

TERM B.2

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 C.F.R. Parts 180 and 1200

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements,

consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 C.F.R. Parts 180 and 1200.

By signing and submitting the Technical Application and by entering into this agreement under the FY 2023SS4A grant program, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2023 SS4A Grant, as set out below.

1. Instructions for Certification – First Tier Participants:

a. The prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms “covered transaction,” “civil judgment,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for 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; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are 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 enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms “covered transaction,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

TERM B.3
REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY
CONVICTION UNDER ANY FEDERAL LAW

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

“**Covered Transaction**” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“**Felony Conviction**” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“**Participant**” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“**Tax Delinquency**” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “**SAM**”) at <http://www.sam.gov/> for an entry describing that entity.

3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:

- (1) Certify whether the entity has a Tax Delinquency; and
- (2) Certify whether the entity has a Felony Conviction.

- 4 **Prohibition.** If:

- (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (2) an entity provides an affirmative response to either certification in section 3; or
- (3) an entity's certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. **Mandatory Notice to the USDOT.**

- (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
- (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
- (c) If the Recipient knows that a Participant's certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.

6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:

- (1) require the SAM check in section 2;
- (2) require the certifications in section 3;
- (3) include the prohibition in section 4; and
- (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

TERM B.4
RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.4, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

- (1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—
 - (i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
 - (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- (2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts*. To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

EXHIBIT C
QUARTERLY PERFORMANCE PROGRESS REPORTS:
FORMAT AND CONTENT

1. Purpose. The purpose of the Quarterly Performance Progress Reports under this agreement for the FY 2023 SS4A grant program is to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.

2. Format and Content. The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. The first Quarterly Performance Progress Report should include a detailed description of the items funded.

(a) Project Information. This section provides the name of the project, the State, the federal agency to which the report is submitted, submission date, award number, name of the recipient, report year and quarter and NOFO funding year.

(b) Project Overall Status. This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any significant activities and issues, action items and outstanding issues.

i. **Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable IJA or NOFO requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.

ii. **Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

(c) Milestones. This section documents progress of the milestones outlined in Section 3.2. The Recipient should include the baseline date (when the project is projected to begin) of each milestone, amendments to those dates (if applicable) and the actual/expected date of completion. There are Milestone charts for action plans, supplemental planning activities, demonstration activity projects and implementation (both construction and non-construction) projects.

EXHIBIT D
FORM FOR SUBSEQUENT OBLIGATION OF FUNDS

The USDOT and **[recipient name]** entered a grant agreement for the **[project name]** that was executed by the USDOT on **[date of USDOT signature on original agreement]** (the “**Agreement**”).

This instrument obligates **[\$XXX]** for **[insert portion of project listed in the Agreement]**.

[Recipient name] states that:

- (1) the Agreement accurately describe the Project’s activities;
- (2) for each completion date listed in the Agreement, the Recipient’s estimate for that milestone is not more than six months after the date listed in the Agreement;
- (3) comparing the Project’s current budget with the amounts listed in the Agreement, the “Non-Federal Funds” amount has not decreased and the total eligible project costs amount has not decreased; and
- (4) under the terms of article 21 of the General Terms and Conditions, the Recipient is not presently required to request a modification to the Agreement.

[Recipient name] acknowledges that USDOT is acting in reliance on the Recipient’s statements above.

By:

Date

Signature of Recipient’s Authorized Representative

[insert name]

Name

[insert title]

Title

The USDOT has determined that all applicable Federal requirements for obligating these funds are satisfied.

	By
Date	Signature of USDOT's Authorized Representative
	[insert name]
	Name
	[insert title]
	Title



Grant Instructions and Grant Routing Form

To ensure appropriate use, consistency and tracking of grants use this set of general instructions and Grant Routing Form are provided. All grants regardless of amount are required to be approved by The City of Bozeman Commission prior to receiving the grant award.

Step One: Giving Notice of Intent to Apply

Give notice of your intent to apply for the grant by submitting the Grant Routing Form. Submit the form via DocuSign* to the appropriate supervisor (typically department Director) and the Finance Director. Save a copy of the submittal. The grant tracking number field can be left blank until the grant is awarded.

Per [Administrative Order 2014-01](#) the City Manager and City Commission are required to be notified within 30 days of all grant applications exceeding \$20,000.

Step Two: Obtain Grant Tracking Number for Awarded Grants

Once a grant is *awarded*, contact the City Clerk's office at 406-582-2030 to request a grant tracking number. The official grant acceptance is contingent on City Commission approval.

Step Three: Re-Route for Final Signatures

Insert the grant tracking number on the Grant Routing Form and reroute the form via

*DocuSign for signatures.

Step Four: Commission Approval

Work with Division Director, City Manager, and the City Clerk to get the awarded grant prepared for City Commission approval. If you need assistance in reviewing the grant terms, contact the City Attorney's Office to request a review of the grant terms before placing the item on the Consent agenda.

All agreements require City Commission authorization regardless of dollar amount.

Agreements will be retained by the City Clerks' Office.

*Each Division has staff assigned with DocuSign access. Using a single DocuSign "envelope" will allow the same tracking form to move through the steps of the process and the signature matrix. Reach out to the City Clerk's Office for initial assistance sending your envelope.

Grant Not Awarded: If your application is NOT awarded, the application materials must be retained by the applying department in accordance with [Records Retention Schedule 8](#).



Grant # (issued by City Clerk) 2023-13

City of Bozeman
Grant Routing Form

Grant Name

2023 Safe Streets and Roads For All Planing and Demonstration Grant

Grant Project Manager

Taylor Lonsdale

Department

Transportation and Engineering

Person Responsible for Financial Reporting

Taylor Lonsdale

Person Responsible for Performance Reporting & Close Out

Taylor Lonsdale

*Note: this person is also reseponsible for record retention requirements.

Grant Source

Federal

☒

State

☐

Other

☐

CDFA # (Federal Only)

20.939

Fiscal year of award

2025

Grant Amount

\$200,000

Included in Budget?

No

Match Requirement (%)

20.00%

Budget Account Code

111-4120-433. - -

Match Amount

\$ 50,000.00

Cost reimbursement basis?

Yes

☐

Select yes if the City needs to apply for reimbursement after expenditures occur.

New account codes and/or project codes required to track revenue and expenses?

No

Work with finance if unsure.

Describe the nature of the grant and eligible uses:

The Safe Streets for All (SS4A) grant program is administered by the Federal Highway Administration (FHWA). The SS4A program has two different activities -planning and demonstration. The City of Bozeman Transportation and Engineering Division received notice of award for this SS4A grant to develop a comprehensive safety action plan. The action plan will use a data driven approach to identify systemic safety needs and then identify strategies to address the identified needs with proven countermeasures. The demonstration activity portion of the grant will add ITS equipment to the existing signal system at key intersections to collect supplemental data on red light running, speeding, and near misses.

Describe the requirements for grant reporting, reimbursements, and how they are completed (i.e. through a website? Email?):

The grant performance reports are due to the FHWA project manager via email. Financial reports/requests for reimbursements are requested via Delphi.

Process Phase / Signature Matrix

	Department Director (I understand and will carry out the provisions of the grant)	Finance Director	City Manager	City Clerk	Commission Date
Notice of Intent	n/a	n/a	n/a	n/a	n/a
Application	n/a	n/a	n/a	n/a	n/a
Award/Contract	Signed by: Nicholas Ross 2A2F92F6AAB2439...	DocuSigned by: Melissa Hodnett BFFE34AA317C47D...	Signed by: Chuck Winn 509880919BDA472...	DocuSigned by: Mike Maas F41F922895AB475...	12/10/2024

Memorandum

REPORT TO: City Commission

FROM: Jon Henderson, Assistant City Manager
Gail Jorgenson, GIS Program Manager

SUBJECT: Authorize the City Manager to Sign a Small Municipal and County Enterprise License Agreement with VertiGIS for Annual Software Subscription

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Agreement - Vendor/Contract

RECOMMENDATION: Authorize the City Manager to Sign a Small Municipal and County Enterprise License Agreement with VertiGIS for Annual Software Subscription.

STRATEGIC PLAN: 1.1 Outreach: Continue to strengthen and innovate in how we deliver information to the community and our partners.

BACKGROUND: The City of Bozeman uses proprietary software distributed by VertiGIS to host a variety of public web mapping applications available through the City's [GIS Division website](#). The City has a longstanding relationship with VertiGIS for the use of their software as a subscription service through an Enterprise License Agreement with VertiGIS which expires August 31st, 2025. This agreement renews our Small Municipal and County Enterprise License Agreement with VertiGIS for a three year period.

UNRESOLVED ISSUES: None.

ALTERNATIVES: As directed by the City Commission.

FISCAL EFFECTS: The total project cost to the City will be \$32,775 over three fiscal years. Adequate funding exists for fees associated with the current fiscal year using \$10,925 allocated within the Strategic Services Department FY26 budget.

Attachments:

[VertiGIS SMC ELA_City of Bozeman_20250729.pdf](#)

Report compiled on: July 31, 2025



SMALL MUNICIPAL AND COUNTY ENTERPRISE LICENSE AGREEMENT

VertiGIS North America Ltd., 300 – 1117 Wharf St., Victoria, BC, Canada V8W 1T7 · Tel: (250) 381-8130 · Fax: (250) 381-8132

ELA Agreement No. 2025-07-846

This Small Municipal and County Enterprise License Agreement (hereafter "ELA") is between the licensee printed below ("Licensee") and VertiGIS North America Ltd. ("VERTIGIS NA"), as licensor of the Software, Data, Online Services and Documentation licensed under this Agreement. This ELA grants Licensee certain rights to use specific VERTIGIS NA Software, Data, Online Services, and Documentation and provides maintenance and basic technical support over a limited, fixed period of time from the effective date subject to payment of fees and the terms of this ELA. The Agreement includes (i) this signature page, (ii) the ELA Terms and Conditions, (iii) the Exhibits and (iv) VERTIGIS NA's ordering document, if applicable. The parties acknowledge that they have read and understood this Agreement and agree to be bound by the terms and conditions hereof as applicable to each party.

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter, and any terms on Licensee's purchase order. Any modification(s) or amendment(s) to this Agreement must be accepted by an authorized representative of each party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the last date written below.

ACCEPTED AND AGREED:

CITY OF BOZEMAN
(Licensee)

VERTIGIS NORTH AMERICA LTD.
(VERTIGIS NA)

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: _____

Printed Name: Stephanie Payne

Title: _____

Title: Vice President, Operations

Date: _____

Date: _____

Licensee Contact Information

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, ZIP: _____

E-mail: _____

Exhibit 1: Scope of Use

Exhibit 2: Enterprise Software and Fee Schedule

ELA TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

Definitions. The terms used are defined as follows:

- “Data”, except as otherwise provided herein, means any digital data set(s) owned by VERTIGIS NA or its licensor(s), including, but not limited to, geographic, vector data coordinates, raster data reports, or associated tabular attributes.
- “Deploy,” “Deployed,” or “Deployment” means to redistribute and install or the redistribution and installation of the Enterprise Software or its having been redistributed and installed by Licensee on Licensee’s hardware.
- “Documentation” means all of the printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- “ELA Maintenance” means Tier 2 Support, updates, and patches provided by the ELA Maintenance Provider to Licensee for the Enterprise Software as described under Article 11 of the ELA.
- “ELA Fee” means the fee set forth in the ELA Quotation.
- “ELA Maintenance Provider” shall mean the provider of ELA Maintenance for Enterprise Software licensed under the ELA.
- “ELA Quotation” means the Small Local Government ELA sales quote.
- “Enterprise Software” means the Software, Data, Online Services, and Documentation identified in the ELA Quotation as Enterprise Software.
- “Incident” means a failure of the Software to operate according to the Documentation in which such failure substantially impacts operational or functional performance.
- “Licensee Content” means data submitted by Licensee to VERTIGIS NA through the Online Services.
- “Online Services” means the VERTIGIS NA computing and data services, and other software services, that are accessed over the internet and subscribed to by Licensee, including without limitation, third party software services or data components that perform GIS functions, tasks, or data services.
- “Product(s)” means the Software, Data, Online Services, and Documentation.
- “Software” means VERTIGIS NA’s proprietary and licensed software technology, computer software code, components, dynamic link libraries (DLLs), underlying organization, object model, and programs delivered on any media, including any release provided in source, object, or executable code format(s), inclusive of backups, updates, service packs, patches, hot fixes, sample code, sample application, sample extension, or merged copies permitted hereunder, excluding the Online Services and all related software and technology.
- “Samples” means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Online Services.
- “Technical Support” means a technical assistance process to troubleshoot and attempt to resolve reported Incidents through patches; hot fixes; workarounds; or any other type of Software issue resolution as specified in the most current applicable software maintenance policy of the ELA Maintenance Provider.
- “Tier 1 Help Desk” means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- “Tier 1 Support” means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- “Tier 2 Support” means the Technical Support as described under Article 11 of the ELA which is provided by the ELA Maintenance Provider to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.

ARTICLE 2. INTELLECTUAL PROPERTY RIGHTS AND RESERVATIONS OR OWNERSHIP

VERTIGIS NA is the owner and/or authorized licensee of all intellectual property rights in the Product(s), including, without limitation, written materials, logos, names and other support materials provided pursuant to this ELA and prior to the execution of this ELA. Subject to the licenses expressly granted by VERTIGIS NA herein, these terms of use do not transfer from VERTIGIS NA to Licensee any interest in the Product(s), all right, title and interest in which remains solely with VERTIGIS NA or its licensors. The Product(s) are licensed and not sold. VERTIGIS NA does not and has not transferred any ownership interests in any form or manner to the Licensee. VERTIGIS NA and its licensors own the Product(s), which are protected by Canadian law and applicable international laws, treaties, and conventions regarding intellectual property or proprietary rights, inclusive of trade secrets. From the date of receipt or access, Licensee agrees to use reasonable means to protect the Product(s) from unauthorized use, reproduction, distribution, or publication. VERTIGIS NA and its licensors reserve all rights not specifically granted in this ELA including the right to change and improve or discontinue Products.

ARTICLE 3. GRANT OF LICENSE

3.1 Grant of License. Subject to the terms and conditions of this ELA, VERTIGIS NA grants to Licensee a limited term, personal, nonexclusive, nontransferable license solely to

- a. Use, copy, and Deploy an unlimited quantity of the Enterprise Software (1) for the term identified in this ELA and (2) for Licensee's own internal use.
- b. Access and use any secure VERTIGIS NA Web site resources made available to Licensee for Licensee's internal use, provided that Licensee follows VERTIGIS NA's terms of use policy specified therein. All password or controlled access information provided by VERTIGIS NA shall be treated as VERTIGIS NA confidential information.

3.2 Consultant Access. Subject to 3.1, Licensee may provide access to the Enterprise Software to any consultant or contractor of Licensee, provided consultants and contractors use is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities or (ii) remotely using/accessing Enterprise Software from Licensee's on-site computers or machines. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require consultant or contractor to discontinue use of and access to Enterprise Software upon completion of work for Licensee.

3.3 Third-Party Software. Unless included in the software for the Products, Licensee will be responsible for purchasing licenses for any third-party software that is required in connection with the use of the Products, from the third-party licensors. Use of any third-party software will be subject to the terms of the applicable third-party license agreement, and VERTIGIS NA and/or its licensors and/or its Distributor provide no warranties and will have no liability in connection with Licensee's or any other party's use of such third-party software.

ARTICLE 4. SCOPE OF USE

4.1 Permitted Uses

- a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
- b. Licensee may make one (1) copy of the Software, Data and Documentation for archival purposes. Licensee may make routine computer backups.
- c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
- d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of VERTIGIS NA and its licensor(s): "Portions of this document include intellectual property of VERTIGIS NA and its licensor(s) and are used herein under license. Copyright © *[Insert the actual copyright date(s) from the source materials]* VertiGIS North America Ltd. and its licensor(s). All rights reserved."

4.2 Uses Not Permitted

Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, **Licensee shall not:**

- a. Sell, rent, lease, sublicense, lend, assign, transfer, translate, export, or time-share the Product(s).
- b. Act as a service bureau or commercial Application Service Provider (ASP) that allows third-party access to the Product(s). A commercial ASP means a licensee who uses Product(s) for a site or service, and operates the site or the service for a profit, or generates revenue by charging for access to the site or service. Licensee may only use the Product for Commercial ASP Use provided that Licensee acquires a Commercial ASP Use License.
- c. Distribute the Software to third-parties, in whole or in part, including, but not limited to, extensions, components, or DLLs without prior written approval of VERTIGIS NA.
- d. Reverse engineer, decompile, cross-assemble, or disassemble the Product(s).
- e. Remove or obscure any VERTIGIS NA (or its licensor(s)) patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder.

- f. Make any attempt to circumvent the technological measure(s) that controls access to, or use of, the Product(s).
- g. Distribute Product authorization codes or user credentials to third parties, except as provided in this Agreement.
- h. Use Products in violation of VERTIGIS NA's, its licensor(s)', or a third party's rights, including intellectual property rights, privacy rights, non-discrimination laws, or any other applicable law or government regulation.
- i. Unbundle individual or component parts of the Software or Data for independent use.
- j. Incorporate any portion of Product into any product or service that competes with any Product.
- k. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with any Product in a manner that would subject such code or any part of the Product to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.
- l. Use the Online Services to transmit spam, spoof, phish or junk email or messages, transmit offensive or defamatory material, or stalk or make threats of physical harm.
- m. Introduce any kind of malware, including but not limited to viruses, worms, Trojan horses or other harmful code that may damage the operation of the Online Services or the systems of other users of the Online Services.
- n. Attempt to gain unauthorized access to the Online Services or their related systems or networks.
- o. Use the Online Services in any manner that could damage, disable, overburden or impair any part of the Online Services, or interfere with any other user's ability to access or use the Online Services.
- p. Probe, scan or test the vulnerability of the Online Services or breach any security or authentication measures used by the Online Services.
- q. Benchmark the availability, performance, or functionality of the Online Services for competitive purposes.

ARTICLE 5. ONLINE SERVICES

5.1 User Activity. Licensee is responsible for any use of the Online Services through Licensee's account or other means of accessing the Online Services specific to Licensee, whether authorized or unauthorized.

5.2 Unauthorized Access. Licensee will use all reasonable efforts to prevent unauthorized access to or use of the Online Services and will not share any passwords, usernames, access keys or other login credentials for the Online Services. Licensee will promptly notify VERTIGIS NA of any known or suspected unauthorized access to or use of the Online Services or any loss, theft or unauthorized use of login credentials.

5.3 Modification of Online Services. VERTIGIS NA may implement updates to modify the features or functions of the Online Services ("Update") at any time and at its sole discretion. In the event an Update results in the removal of material functionality of the Online Services, VERTIGIS NA shall endeavor to provide Licensee with at least sixty (60) days notice of the Update and Licensee may, within 60 days of receiving such notice, terminate the subscription by providing written notice to VERTIGIS NA and receive a refund of any prepaid subscription fees prorated for the remainder of the subscription term following the termination date.

5.4 Suspension of Online Services. VERTIGIS NA reserves the right to temporarily suspend Licensee's access to or use of the Online Services in the event: (i) VERTIGIS NA reasonably believes that Licensee's access to or use of the Online Services may result in liability to VERTIGIS NA or adversely affect the integrity, functionality or usability of the Online Services, including without limitation, interfering with the access to or use of the Online Services by other users; (ii) Licensee is in breach of this Agreement, including without limitation, a failure to pay any amounts due under this Agreement; or (iii) the Online Services are undergoing scheduled maintenance. VERTIGIS NA shall not be responsible for any damages, liabilities or losses of Licensee in connection with any suspension of the Online Services that result from the foregoing.

5.5 Licensee Content. Licensee shall at all times remain the owner of Licensee Content. Licensee hereby grants to VERTIGIS NA a non-exclusive, royalty-free, perpetual, irrevocable, transferable, world-wide license (with the right to sublicense) to access, use, reproduce, modify, transmit, display, store, index and archive the Licensee Content solely for the purposes of: (i) providing the Online Services to Licensee, and (ii) generating and exploiting aggregated and/or statistical data, provided that such data does not contain information that is personally identifiable or identifiable with Licensee.

5.6 Transmission of Data. Licensee acknowledges that hosting data online involves risks of unauthorized access and disclosure and that such risk is inherent in Licensee's access to and use of the Online Services. Licensee agrees that VERTIGIS NA will not be responsible or liable in any manner for any Licensee Content or other data which is

lost, altered or intercepted without authorization due to errors or actions of third parties, and VERTIGIS NA offers no representations or warranties with respect to the foregoing.

5.7 Third Party Products and Services. Licensee acknowledges that the Online Services are provided in part through the use of third-party software, hardware, and hosting and storage services. While VERTIGIS NA has used reasonable efforts to engage high-quality third-party product and services providers, neither VERTIGIS NA nor its third-party suppliers shall be responsible for, and provide no representations or warranties with respect to, any third party hardware, software or services used in connection with the delivery of the Online Services.

ARTICLE 6. PRIVACY

6.1 Privacy Policy. Licensee acknowledges it has been informed about the VERTIGIS NA Privacy Policy located at <https://vertigisstudio.com/legal> (the "Privacy Policy"), which is applicable to the collection, use and disclosure by VERTIGIS NA of personal information relating to Licensee and/or its representative(s) in the context of VERTIGIS NA performing this Agreement and related purposes which is incorporated by reference into this Agreement.

6.2 Personal Data. Licensee acknowledges that Licensee Content may be capable of identifying individual users of the Online Services or other natural persons ("Personal Information"). Personal Information is collected and used by VERTIGIS NA for the purpose of providing the Online Services to Licensee in accordance with this Agreement.

6.3 Legal Compliance. Licensee shall comply with all applicable privacy laws in connection with its use of the Products and this Agreement. Without limiting the generality of the foregoing, Licensee will notify all of its personnel and other individuals using the Online Services about the information handling practices detailed in this Article 6 and the Privacy Policy and will obtain all necessary consents required under applicable privacy law from such individuals with respect to the foregoing. Licensee acknowledges and agrees that: (i) the Online Services are only offered in jurisdictions in which the Online Services are not in violation of applicable privacy laws, including without limitation, any "do not track" legislation, (the "Legal Jurisdictions"); (ii) Licensee is responsible for determining the legality of the Online Services in the Licensee's jurisdiction; and (iii) all licenses and subscriptions granted to Licensee hereunder are not valid outside the Legal Jurisdictions.

ARTICLE 7. TERM AND TERMINATION AND EXPIRATION

7.1 Term. The term of the ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA.

7.2 Termination for Lack of Funds. Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

7.3 Termination for a Material Breach. Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

7.4 No Use Upon Expiration or Termination. Upon expiration or termination of this ELA, all Enterprise Software Deployed, shall terminate. Licensee shall cease access and use of Online Services and clear Online Services client-side data cache and uninstall, remove, and destroy all Deployed Software, Data, and Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to VERTIGIS NA. ELA Maintenance and any other products or services provided as part of this Agreement shall also terminate.

ARTICLE 8. LIMITED WARRANTIES AND DISCLAIMERS

8.1 Limited Warranties. For a period of ninety (90) days from the date of receipt of Software or Online Services authorization or keycode file(s) by Licensee, VERTIGIS NA warrants that (i) the unmodified Software and Online Services will substantially conform to the published Documentation and (ii) the media upon which the Software, Data, and Documentation is provided will be free from defects in materials and workmanship under normal use and service.

8.2 Data Disclaimer. If included under this ELA, Licensee acknowledges and agrees that the Data has been obtained from sources believed to be reliable, but the accuracy and completeness of the Data are not guaranteed and the Data may contain some nonconformities, defects, errors, or omissions. VERTIGIS NA AND ITS LICENSOR(S) MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE DATA, AND THE

DATA IS PROVIDED "AS IS." Without limiting the generality of the preceding sentence, VERTIGIS NA and its licensor(s) do not warrant that the Data will meet Licensee's needs or expectations, that the use of the Data will be uninterrupted, or that all nonconformities can or will be corrected. VERTIGIS NA and its licensor(s) are not inviting reliance on the Data, and Licensee should always verify Data before any such reliance.

8.3 Fault Tolerance Disclaimer

The Product(s) are not fault-tolerant and are not designed, manufactured, or intended for resale or use in insurance underwriting or with critical health and safety or online control equipment in hazardous environments that require fail-safe performance, such as, but not limited to, in the operation of nuclear facilities, aircraft navigation, or communication systems, air traffic control, real-time emergency response, real-time terrorism prevention or response, life support, or weapons systems ("Fault-Intolerant Activities"). VERTIGIS NA, ITS DISTRIBUTOR, AND ITS LICENSOR(S) SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR USE IN FAULT-INTOLERANT ACTIVITIES.

8.4 Special Disclaimer. SAMPLES AND HOT FIXES ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLES AND HOT FIXES.

8.5 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (1) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (2) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (3) NONE OF THE PARTIES ARE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OR OPERATION OR SERVICE INTERRUPTIONS TO ANY PORTION OF THE INTERNET OR RELATED INFRASTRUCTURE OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE ONLINE SERVICES. LICENSEE FURTHER ACKNOWLEDGES THAT USE OF THE ONLINE SERVICES INVOLVES RISKS OF UNAUTHORIZED ACCESS AND DISCLOSURE AND THAT SUCH RISK IS INHERENT IN LICENSEE'S ACCESS TO AND USE OF THE ONLINE SERVICES. LICENSEE AGREES THAT VERTIGIS NA WILL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY LICENSEE CONTENT OR OTHER DATA WHICH IS LOST, ALTERED OR INTERCEPTED WITHOUT AUTHORIZATION DUE TO THE ERRORS OR ACTIONS OF THIRD PARTIES AND VERTIGIS NA OFFERS NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE FOREGOING.

8.6 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, VERTIGIS NA AND ITS LICENSOR(S) DISCLAIM ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. VERTIGIS NA DOES NOT WARRANT THAT THE PRODUCT(S) WILL MEET LICENSEE'S NEEDS, OR THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, FAIL-SAFE OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. PRODUCT(S) ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE.

8.7 Exclusive Remedy. Licensee's exclusive remedy and VERTIGIS NA's entire liability for breach of the limited warranties set forth in this Article 8 shall be limited, at VERTIGIS NA's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or provision of a work-around for the defective Software or Online Services such that it substantially conforms to the published Documentation; or (iii) a refund of the License fees actually paid by Licensee for the defective Software or Online Services, provided that the Licensee uninstalls, removes, or destroys all copies of the Software and ceases access to and use of the Online Services, and executes and delivers evidence of such actions to VERTIGIS NA or its Distributor.

ARTICLE 9. LIMITATION OF LIABILITY

9.1 Disclaimer of Certain Types of Liability. VERTIGIS NA, AND ITS LICENSOR(S) SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF THE ENTERPRISE SOFTWARE, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT VERTIGIS NA, OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 9—INFRINGEMENT INDEMNITY, VERTIGIS NA'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR ENTERPRISE SOFTWARE PURSUANT TO THIS ELA.

9.3 Applicability of Disclaimers and Limitations. . Licensee agrees that the limitations of liability and disclaimers set forth in this ELA will apply regardless of whether Licensee has accepted the Product(s) or any other product or service delivered by VERTIGIS NA or its distributor. The parties agree that VERTIGIS NA or its distributor has set its prices and entered into this ELA or agreed to the supply of the Product(s) or maintenance and/or technical support services for Products licensed under this ELA in reliance upon the disclaimers and limitations set forth herein, and that the same form an essential basis of the bargain between the parties.

THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. VERTIGIS NA DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

ARTICLE 10. INFRINGEMENT INDEMNITY

10.1 VERTIGIS NA shall defend, indemnify as described below, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorney's fees, arising out of any claims, actions, or demands by a third party alleging that Licensee's use of the Software or Online Services infringes a U.S. or Canadian patent, copyright, or trademark provided:

- a. Licensee promptly notifies VERTIGIS NA in writing of the claim;
- b. Licensee provides VERTIGIS NA documents describing the allegations of infringement;
- c. VERTIGIS NA has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
- d. Licensee reasonably cooperates fully in the defense of the claim at VERTIGIS NA's request.

10.2 If the Software or Online Services is found to infringe a Canadian or US patent, copyright, or trademark, VERTIGIS NA, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or Online Services, or (ii) modify the allegedly infringing elements of the Software or Online Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, the License shall terminate, and Licensee shall cease accessing or using the infringing Software or Online Services, and shall uninstall and return to VERTIGIS NA or its Distributor any infringing item(s). VERTIGIS NA's entire liability shall then be to indemnify Licensee pursuant to Article 10.1 and refund the License fees paid with respect to the remainder of the Term.

10.3 VERTIGIS NA shall have no obligation to indemnify or defend Licensee or to pay any resultant costs, damages, or attorney's fees for any claims or demands alleging direct or contributory infringement to the extent arising out of (i) the combination or integration of the Software or the Online Services with a product, process, or system not supplied by VERTIGIS NA or specified by VERTIGIS NA in its Documentation; (ii) material alteration of the Software or the Online Services by anyone other than VERTIGIS NA or its subcontractors; or (iii) use of the Software or the Online Services after modifications have been provided by VERTIGIS NA for avoiding infringement or use after a return is ordered by VERTIGIS NA under Article 10.2.

10.4 THE FOREGOING STATES THE ENTIRE OBLIGATION OF VERTIGIS NA, ITS LICENSOR(S) AND ITS DISTRIBUTOR WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 11. ELA MAINTENANCE

ELA Maintenance for Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable software maintenance policy of the ELA Maintenance Provider available at <https://vertigisstudio.com/legal> as modified by this Article 11—ELA Maintenance.

a. Tier 1 Support Provided by Licensee

- (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
- (2) The Tier 1 Help Desk shall use analysts fully trained in the Software they are supporting.
- (3) At a minimum, Tier 1 Support shall include those activities that assist Licensee in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts shall be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from Licensee. This may include obtaining any customizations, code samples, or Data involved, if applicable, to the Incident. Analysts shall also use any other information and databases they may develop to satisfactorily resolve Incidents.
- (5) If the Tier 1 Help Desk cannot resolve the Incident, and authorized Tier 1 Help Desk individual may contact Technical Support of the ELA Maintenance Provider. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
- (6) The Licensee may assign up to two (2) Tier 1 Help Desk individuals who will be the only individuals authorized to contact the ELA Maintenance Provider directly for Tier 2 Support. The Licensee shall identify such individuals in writing to the ELA Maintenance Provider. Licensee may revise such individuals upon written notice to the ELA Maintenance Provider.

b. Tier 2 Support Provided by the ELA Maintenance Provider

- (1) ELA Maintenance Provider shall log calls received from the Tier 1 Help Desk individuals.
- (2) ELA Maintenance Provider shall attempt to resolve the Incident by assisting the Tier 1 Help Desk individuals.
- (3) When the Incident is resolved, ELA Maintenance Provider shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to Licensee.
- (4) Tier 2 Support does not include Technical Support for troubleshooting access to Online Services, including access to Software licensed as software-as-a-service (SaaS). Incidents specific to a SaaS version of the Software are eligible for Tier 2 Support.

VERTIGIS NA may, at VERTIGIS NA's sole discretion, make patches, hot fixes, or updates available for downloading from VERTIGIS NA's Web site or through any other means authorized by VERTIGIS NA.

ARTICLE 12. ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

12.1 Purchase Orders, Delivery, and Deployment

- a. Licensee shall issue a Purchase Order payable to VERTIGIS NA or Distributor upon execution of the ELA and annually thereafter in accordance with the payment schedule. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA.
- b. Upon receipt of the initial Purchase Order from Licensee, VERTIGIS NA shall make available for access the Software, Data, and Documentation to Licensee for Deployment activities.
- c. VERTIGIS NA shall provide registration numbers or keycodes, as applicable, to activate the Software.
- d. Licensee shall Deploy, install, configure, and track installation of the Software.

12.2 Purchase Order Requirements

- a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
- b. The following information shall be included in each Purchase Order:
 - (1) Licensee name, VERTIGIS NA customer number, if known, and bill-to and ship-to addresses
 - (2) Purchase Order number
 - (3) Applicable annual payment due
 - (4) On the face page of its Purchase Order (or ordering document), Licensee shall insert: THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE SMALL MUNICIPAL AND COUNTY ELA, AND ANY DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS IN OR WITH THIS PURCHASE ORDER SHALL NOT APPLY.

ARTICLE 13. GENERAL PROVISIONS

13.1 Future Versions. Updated or new Enterprise Software may require additional or revised terms and conditions. Terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use and Exhibit 1—Scope of Use (L300), or any term as required by law. VERTIGIS NA may provide notice of the revisions to Licensee in writing. The revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Software. Should Licensee reject the revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

13.2 Renewal. Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and conditions and pricing then in effect and based upon Licensee's then current population count.

13.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport or provide the Enterprise Software in whole or in part, to (i) with the exception of Cuba, any country to which Canada or the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any export control laws or regulations including amendments and supplemental additions as they may occur from time to time.

13.3 Taxes and Fees. License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

13.4 No Implied Waivers. The failure of a party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

13.5 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

13.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without VERTIGIS NA's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

13.7 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, VERTIGIS NA or Distributor shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

13.8 Force Majeure. Except with respect to payment obligations under this ELA, none of the parties shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this ELA for failure or delay in fulfilling or performing any obligation under this ELA when such failure or delay is caused by or results from, directly or indirectly, causes beyond the reasonable control of the affected party, including but not limited to fire, floods, earthquakes, epidemic, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, cyberattacks, disruptions or outages of third party services, acts of God or acts, omissions or delays in acting by any governmental authority; provided, however, that the affected party shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall resume performance hereunder as commercially reasonable whenever such causes are removed. The affected party shall provide the other parties with prompt written notice of any delay or failure to perform that occurs by reason of Force Majeure.

13.9 Survival of Terms. The provisions of Articles 2, 6, 8, 9, 10 and 13 of this ELA shall survive the expiration or termination of this ELA.

13.10 Governing Law, Arbitration

This ELA shall be governed by and construed in accordance with the laws of the Province of British Columbia without reference to its conflict of laws principles. Any dispute arising out of or relating to this ELA, or the breach thereof, which cannot be settled through negotiation, shall be finally settled by arbitration administered by the Canadian Commercial Arbitration Centre (in Canada). Judgment on the award rendered by the arbitrator may be entered into a court of competent jurisdiction.

EXHIBIT 1
SCOPE OF USE (SMC)
(L300 02/2025)

The scope of use for each VERTIGIS NA Software identified below is described in the applicable footnotes listed in parentheses.

VertiGIS Studio Enterprise Edition (1, 2, 3, 5, 6, 7, 8)

- VertiGIS Studio Workflow (15, 16, 19)
- VertiGIS Studio Reporting (15, 16, 19, 22)
- VertiGIS Studio Printing (15, 16, 19, 22)
- VertiGIS Studio Workflow Builder Edition (15, 17, 19)
- VertiGIS Studio Reporting Builder Edition (15, 17, 19, 22)
- VertiGIS Studio Printing Builder Edition (15, 17, 19, 22)
- VertiGIS Studio Mobile (GXM) (15, 19, 20, 21)
- VertiGIS Studio Web (GXW) (15, 19, 20)
- VertiGIS Studio Access Control (16, 19)

Geocortex Analytics (5, 7, 8, 19)

VertiGIS Studio Analytics (5, 7, 8, 19)

VertiGIS Studio Item Manager (19, 23)

1. "Development Server License." Licensee may install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
2. "Staging Server License." Licensee may use and install the Software for the following purposes; user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data update, and training activities.
3. "Production Server License." Licensee may install and use the Software or Data to provide services to multiple users on the same or other computer(s).
4. "Single Application License." Licensee may install and use the Software or Data for one (1) web-GIS application serving multiple users on the same or other computer(s). An application is defined as a discrete web-GIS viewer with a specific URL.
5. "License." Licensee may use the subscription(s), Software, Online Services and Data for a limited time period. When the license term expires Licensee must either stop using the subscription(s), Software, Online Services, and Data, or renew or extend the license upon payment of applicable fees. Licensing is based on the greater of the number of Licensee's activated ArcGIS® Identities (Online and Portal combined) or the number of ArcGIS® Enterprise GIS Server ArcGIS® Server and ArcGIS® Enterprise cores deployed by Licensee.
6. Extensions to Software programs and GEDS Software follow the same scope of use as that granted for the corresponding Software programs.
7. The administrative tools for the Software may be copied and redistributed throughout the Licensee's organization.
8. Redundant Software installation(s) for failover operations may be implemented during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant except for system maintenance and updating of databases while the primary site or any other site is operational.
9. Reserved.
10. Reserved.
11. Reserved.
12. Reserved.
13. Reserved.
14. Reserved.
15. For Commercial ASP Licensees, Commercial ASP Use is restricted to on premise deployment.
16. Licensed for use with a VertiGIS Studio. Not for use with Esri's Experience Builder for ArcGIS®.
17. Licensed for use with Esri's Experience Builder for ArcGIS®. Not for use with a VertiGIS Studio.
18. Reserved.
19. Active VertiGIS Studio subscription required to use this Product.

20. Value-Added Applications:

- i. Value-Added Applications built with the Product are subject to the terms of use of ArcGIS Runtime Standard Level. Value-Added Application means an application developed by Licensee for use in conjunction with the authorized use of the Products.
- ii. Licensee may use the Product to create Value-Added Applications and distribute and license those Value-Added Applications to its end users in accordance with this Agreement to use anywhere not prohibited under export regulation or in violation of applicable privacy regulations and laws. Licensee is responsible compliance with applicable export control regulations and laws.
- iii. Licensee is responsible for the development, operation, and technical support of Licensee Content and Value-Added Applications.

21. Licensee may not use the Product to develop Internet or server-based Value-Added Applications.

22. Subscription license includes a SaaS consumption limit of 1GB per month. Licensee consumption in excess of 1GB per month may result in additional consumption costs to Licensee.

23. VERTIGIS NA disclaims and makes no representations or warranties whatsoever and provides no indemnities to Licensee for this Product or Licensee's use thereof. The Product is offered as-is and is available for use at Licensee's own risk. There is no maintenance or technical support provided for this Product. VERTIGIS NA reserves the right to discontinue this Product in its sole discretion without providing notice to Licensee.

EXHIBIT 2
ENTERPRISE SOFTWARE AND FEE SCHEDULE

Licensee may Deploy the Software, Data, and Documentation and access Online Services up to the total quantity of licenses indicated below to Licensees. The quantities identified are the cumulative quantities available in any given year for the term of this ELA.

Table A
Enterprise License Software

Product	Total Qty
SMC-ELA includes: • VertiGIS Studio Workflow for use with VertiGIS Studio Web or Experience Builder for ArcGIS® • VertiGIS Studio Reporting for use for use with VertiGIS Studio Web or Experience Builder for ArcGIS® (SaaS storage consumption limit of 1GB per month) • VertiGIS Studio Printing for use with VertiGIS Studio Web or Experience Builder for ArcGIS® (SaaS storage consumption limit of 1GB per month) • VertiGIS Studio Item Manager • VertiGIS Studio Access Control • VertiGIS Studio Search • VertiGIS Studio Mobile: limited to five (5) Mobile users • VertiGIS Studio Web • VertiGIS Studio Analytics • Geocortex Analytics • Maintenance and unlimited basic technical support	Unlimited
Virtual or Self-Directed Training Courses	1 course (Year 1)
VertiGIS Studio Solutions Engineer (Year 1)	4 hours

Table B
Enterprise License Software

The ELA Fee is \$ USD. The ELA Fee is in consideration of the Enterprise License Software, inclusive of the ELA Maintenance and basic technical support for the Term of this ELA.

	Year 1 (Sept 1, 2025 to Aug 31, 2026)	Year 2 (Sept 1, 2026 to Aug 31, 2027)	Year 3 (Sept 1, 2027 to Aug 31, 2028)	ELA Fee
Payments	\$10,925	\$10,925	\$10,925	\$32,775

Memorandum

REPORT TO: City Commission

FROM: Gail Jorgenson, GIS Program Manager
Jon Henderson, Assistant City Manager

SUBJECT: Authorize the City Manager to Sign a Professional Services Agreement with Ayres Associates Inc. for Aerial Imagery and LiDAR Data Download Tool

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Agreement - Vendor/Contract

RECOMMENDATION: Authorize the City Manager to Sign a Professional Services Agreement with Ayres Associates Inc. for Aerial Imagery and LiDAR Data Download Tool

STRATEGIC PLAN: 1.1 Outreach: Continue to strengthen and innovate in how we deliver information to the community and our partners.

BACKGROUND: The City of Bozeman purchases aerial imagery and LiDAR data on an annual and three year cycle respectively. This data is used to support regulatory, land management, planning, and engineering projects. The City proactively shares its imagery and LiDAR with our contractors, Montana State University and community stake holders.

Sharing this data fosters collaboration, innovation, supports transparency and public engagement while improving operational efficiencies. However, imagery and LiDAR data sets are quite large and are difficult to share by traditional file sharing methods. Currently data is being shared via external hard drives which are expensive to purchase and are subject to failure, supply of the drives is limited and they are loaned on a handshake agreement with the hopes that the hard drive along with data will be returned to the City.

The Imagery and Download Tool being developed for the City by Ayres Associates Inc. provides a number of key advantages for sharing data including:

- Data will be stored and accessed from an Amazon Web Bucket – no internal IT resources will be used
- The application will be built using ESRI technology that will easily integrate with the City's [Open Data Portal](#)
- Application updates that need to occur to the online application will be managed by Ayres
- Ayres Associates Inc is our vendor for imagery and LiDAR data collection.

When the new data is available they will add the new data to the Amazon Web Bucket and the online mapping tool

- The Amazon Web Bucket will act as an offsite repository for the City's imagery and LiDAR (serving as backup to external drives)
- The tool will be available 24/7
- City staff will integrate the tool into the City's [Open Data Portal](#), and then Ayres Associates Inc. will be responsible for management of the application and data freeing up City GIS resources to work on other projects

UNRESOLVED ISSUES: None.

ALTERNATIVES: As directed by the City Commission.

FISCAL EFFECTS: The total project cost to the City will be \$22,364 over four fiscal years. Adequate funding exists for fees associated with the current fiscal year using \$11,800 allocated within the Strategic Services Department FY26 budget.

Attachments:

[Professional Services Agreement - Imagery and LiDAR Download Tool_2025-2028.pdf](#)

Report compiled on: July 30, 2025



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 202__ (“Effective Date”), by and between the **CITY OF BOZEMAN, MONTANA**, a self-governing municipal corporation organized and existing under its Charter and the laws of the State of Montana, 121 North Rouse Street, Bozeman, Montana, with a mailing address of PO Box 1230, Bozeman, MT 59771, hereinafter referred to as “City,” and, Ayres Associates Inc., 5201 E. Terrace Drive Suite 200, Madison, WI 53715 hereinafter referred to as “Contractor.” The City and Contractor may be referred to individually as “Party” and collectively as “Parties.”

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 enter this Agreement with Contractor to perform for City services described in the Scope of Services attached hereto as Exhibit A and by this reference made a part hereof.

2. **Term/Effective Date:** This Agreement is effective upon the Effective Date and will expire on April 30, 2029, unless earlier terminated in accordance with this Agreement.

3. **Scope of Services:**
Contractor will perform the work and provide the services in accordance with the requirements of the Scope of Services. For conflicts between this Agreement and the Scope of Services, unless specifically provided otherwise, the Agreement governs.

4. **Payment:** City agrees to pay Contractor the amount specified in the Scope of Services. Any alteration or deviation from the described services that involves additional costs above the Agreement amount will be performed by Contractor after written request by the City, and will become an additional charge over and above the amount listed in the Scope of Services. The City must agree in writing upon any additional charges.

5. **Contractor’s Representations:** To induce City to enter into this Agreement, Contractor makes the following representations:

a. Contractor has familiarized itself with the nature and extent of this Agreement, the

Scope of Services, and with all local conditions and federal, state and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress or performance of the Scope of Services.

b. Contractor represents and warrants to City that it has the experience and ability to perform the services required by this Agreement; that it will perform the services in a professional, competent and timely manner and with diligence and skill; that it has the power to enter into and perform this Agreement and grant the rights granted in it; and that its performance of this Agreement shall not infringe upon or violate the rights of any third party, whether rights of copyright, trademark, privacy, publicity, libel, slander or any other rights of any nature whatsoever, or violate any federal, state and municipal laws. The City will not determine or exercise control as to general procedures or formats necessary to have these services meet this warranty.

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

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, Montana Code Annotated (MCA), and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted by law.

Contractor shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

In the event that, during the term of this Agreement, any labor problems or disputes of any type arise or materialize which in turn cause any services to cease for any period of time, Contractor specifically agrees to take immediate steps, at its own expense and without expectation of reimbursement from City, to alleviate or resolve all such labor problems or disputes. The specific steps Contractor shall take shall be left to the discretion of Contractor; provided, however, that Contractor shall bear all costs of any related legal action. Contractor shall provide immediate relief to the City so as to permit the services to continue at no additional cost to City.

Contractor shall indemnify, defend, and hold the City harmless from any and all claims, demands, costs, expenses, damages, and liabilities arising out of, resulting from, or occurring in

connection with any labor problems or disputes or any delays or stoppages of work associated with such problems or disputes.

7. **Indemnity/Waiver of Claims/Insurance:** For other than professional services rendered, to the fullest extent permitted by law, Contractor agrees to release, defend, indemnify, and hold harmless the City, its agents, representatives, employees, and officers (collectively referred to for purposes of this Section as the City) from and against any and all claims, demands, actions, fees and costs (including attorney's fees and the costs and fees of expert witness and consultants), losses, expenses, liabilities (including liability where activity is inherently or intrinsically dangerous) or damages of whatever kind or nature connected therewith and without limit and without regard to the cause or causes thereof or the negligence of any party or parties that may be asserted against, recovered from or suffered by the City occasioned by, growing or arising out of or resulting from or in any way related to: (i) the negligent, reckless, or intentional misconduct of the Contractor; or (ii) any negligent, reckless, or intentional misconduct of any of the Contractor's agents.

For the professional services rendered, to the fullest extent permitted by law, Contractor agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or intentional misconduct of the Contractor or Contractor's agents or employees.

Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist. The indemnification obligations of this Section must not be construed to negate, abridge, or reduce any common-law or statutory rights of the City as indemnitee(s) which would otherwise exist as to such indemnitee(s).

Contractor's indemnity under this Section shall be without regard to and without any right to contribution from any insurance maintained by City.

Should the City be required to bring an action against the Contractor to assert its right to defense or indemnification under this Agreement or under the Contractor's applicable insurance policies required below, the City shall be entitled to recover reasonable costs and attorney fees incurred in asserting its right to indemnification or defense but only if a court of competent jurisdiction determines the Contractor was obligated to defend the claim(s) or was obligated to indemnify the City for a claim(s) or any portion(s) thereof.

In the event of an action filed against the City resulting from the City's performance under this Agreement, the City may elect to represent itself and incur all costs and expenses of suit.

Contractor also waives any and all claims and recourse against the City, including the right of

contribution for loss or damage to person or property arising from, growing out of, or in any way connected with or incident to the performance of this Agreement except “responsibility for [City’s] own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent” as per 28-2-702, MCA.

These obligations shall survive termination of this Agreement and the services performed hereunder.

In addition to and independent from the above, Contractor shall at Contractor’s expense secure insurance coverage through an insurance company or companies duly licensed and authorized to conduct insurance business in Montana which insures the liabilities and obligations specifically assumed by the Contractor in this Section. The insurance coverage shall not contain any exclusion for liabilities specifically assumed by the Contractor in this Section.

The insurance shall cover and apply to all claims, demands, suits, damages, losses, and expenses that may be asserted or claimed against, recovered from, or suffered by the City without limit and without regard to the cause therefore and which is acceptable to the City. Contractor shall furnish to the City an accompanying certificate of insurance and accompanying endorsements in amounts not less than as follows:

- Workers’ Compensation – statutory;
- Employers’ Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate;
- Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate;
- Automobile Liability - \$1,000,000 property damage/bodily injury per accident; and
- Professional Liability - \$1,000,000 per claim; \$2,000,000 annual aggregate.

The above amounts shall be exclusive of defense costs. The City shall be endorsed as an additional or named insured on a primary non-contributory basis on the Commercial General, Employer’s Liability, and Automobile Liability policies. The insurance and required endorsements must be in a form suitable to City and shall include no less than a thirty (30) day notice of cancellation or non-renewal. Contractor shall notify City within two (2) business days of Contractor’s receipt of notice that any required insurance coverage will be terminated or Contractor’s decision to terminate any required insurance coverage for any reason.

The City must approve all insurance coverage and endorsements prior to the Contractor commencing work.

8. Termination for Contractor's Fault:

a. If Contractor refuses or fails to timely do the work, or any part thereof, or fails to perform any of its obligations under this Agreement, or otherwise breaches any terms or conditions of this Agreement, the City may, by written notice, terminate this Agreement and the Contractor's right to proceed with all or any part of the work ("Termination Notice Due to Contractor's Fault"). The City may then take over the work and complete it, either with its own resources or by re-letting the contract to any other third party.

b. In the event of a termination pursuant to this Section 8, Contractor shall be entitled to payment only for those services Contractor actually rendered.

c. Any termination provided for by this Section 8 shall be in addition to any other remedies to which the City may be entitled under the law or at equity.

d. In the event of termination under this Section 8, Contractor shall, under no circumstances, be entitled to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature arising, or claimed to have arisen, as a result of the termination.

9. Termination for City's Convenience:

a. Should conditions arise which, in the sole opinion and discretion of the City, make it advisable to the City to cease performance under this Agreement, the City may terminate this Agreement by written notice to Contractor ("Notice of Termination for City's Convenience"). The termination shall be effective in the manner specified in the Notice of Termination for City's Convenience and shall be without prejudice to any claims that the City may otherwise have against Contractor.

b. Upon receipt of the Notice of Termination for City's Convenience, unless otherwise directed in the Notice, the Contractor shall immediately cease performance under this Agreement and make every reasonable effort to refrain from continuing work, incurring additional expenses or costs under this Agreement and shall immediately cancel all existing orders or contracts upon terms satisfactory to the City. Contractor shall do only such work as may be necessary to preserve, protect, and maintain work already completed or immediately in progress.

c. In the event of a termination pursuant to this Section 9, Contractor is entitled to payment only for those services Contractor actually rendered on or before the receipt of the

Notice of Termination for City's Convenience.

d. The compensation described in Section 9(c) is the sole compensation due to Contractor for its performance of this Agreement. Contractor shall, under no circumstances, be entitled to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature arising, or claimed to have arisen, as a result of the termination.

10. Limitation on Contractor's Damages; Time for Asserting Claim:

a. In the event of a claim for damages by Contractor under this Agreement, Contractor's damages shall be limited to contract damages and Contractor hereby expressly waives any right to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature or kind.

b. In the event Contractor wants to assert a claim for damages of any kind or nature, Contractor shall provide City with written notice of its claim, the facts and circumstances surrounding and giving rise to the claim, and the total amount of damages sought by the claim, within thirty (30) days of the facts and circumstances giving rise to the claim. In the event Contractor fails to provide such notice, Contractor shall waive all rights to assert such claim.

11. Representatives and Notices:

a. **City's Representative:** The City's Representative for the purpose of this Agreement shall be Max Ziegler, Facilities Project Coordinator, or such other individual as City shall designate in writing. Whenever approval or authorization from or communication or submission to City is required by this Agreement, such communication or submission shall be directed to the City's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when City's Representative is not available, Contractor may direct its communication or submission to other designated City personnel or agents as designated by the City in writing and may receive approvals or authorization from such persons.

b. **Contractor's Representative:** The Contractor's Representative for the purpose of this Agreement shall be Daniel Peters, Owner, or such other individual as Contractor shall designate in writing. Whenever direction to or communication with Contractor is required by this Agreement, such direction or communication shall be directed

to Contractor's Representative; provided, however, that in exigent circumstances when Contractor's Representative is not available, City may direct its direction or communication to other designated Contractor personnel or agents.

c. **Notices:** All notices required by this Agreement shall be in writing and shall be provided to the Representatives named in this Section. Notices shall be deemed given when delivered, if delivered by courier to Party's address shown above during normal business hours of the recipient; or when sent, if sent by email or fax (with a successful transmission report) to the email address or fax number provided by the Party's Representative; or on the fifth business day following mailing, if mailed by ordinary mail to the address shown above, postage prepaid.

12. **Permits:** Contractor shall provide all notices, comply with all applicable laws, ordinances, rules, and regulations, obtain all necessary permits, licenses, including a City of Bozeman business license, and inspections from applicable governmental authorities, and pay all fees and charges in connection therewith.

13 **Laws and Regulations:** Contractor shall comply fully with all applicable state and federal laws, regulations, and municipal ordinances including, but not limited to, all workers' compensation laws, all environmental laws including, but not limited to, the generation and disposal of hazardous waste, the Occupational Safety and Health Act (OSHA), the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA, all applicable City, County, and State building and electrical codes, the Americans with Disabilities Act, and all non-discrimination, affirmative action, and utilization of minority and small business statutes and regulations.

14. **Nondiscrimination and Equal Pay:** The Contractor agrees that all hiring by Contractor of persons performing this Agreement shall be on the basis of merit and qualifications. The Contractor will have a policy to provide equal employment opportunity in accordance with all applicable state and federal anti-discrimination laws, regulations, and contracts. The Contractor will not refuse employment to a person, bar a person from employment, or discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, color, religion, creed, political ideas, sex, age, marital status, national origin, actual or perceived sexual orientation, gender identity, physical or mental disability, except when the reasonable demands of the position require an age, physical or mental disability, marital status or sex distinction. The Contractor shall be subject to and comply with Title VI of the Civil Rights Act of 1964; Section 140, Title 2, United States Code, and all regulations promulgated thereunder.

Contractor represents it is, and for the term of this Agreement will be, in compliance with the requirements of the Equal Pay Act of 1963 and Section 39-3-104, MCA (the Montana Equal Pay Act).

Contractor must report to the City any violations of the Montana Equal Pay Act that Contractor has been found guilty of within 60 days of such finding for violations occurring during the term of this Agreement.

Contractor shall require these nondiscrimination terms of its subcontractors providing services under this Agreement.

15. Intoxicants; DOT Drug and Alcohol Regulations/Safety and Training: Contractor shall not permit or suffer the introduction or use of any intoxicants, including alcohol or illegal drugs, by any employee or agent engaged in services to the City under this Agreement while on City property or in the performance of any activities under this Agreement. Contractor acknowledges it is aware of and shall comply with its responsibilities and obligations under the U.S. Department of Transportation (DOT) regulations governing anti-drug and alcohol misuse prevention plans and related testing. City shall have the right to request proof of such compliance and Contractor shall be obligated to furnish such proof.

The Contractor shall be responsible for instructing and training the Contractor's employees and agents in proper and specified work methods and procedures. The Contractor shall provide continuous inspection and supervision of the work performed. The Contractor is responsible for instructing its employees and agents in safe work practices.

16. Modification and Assignability: This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Contractor may not subcontract or assign Contractor's rights, including the right to compensation or duties arising hereunder, without the prior written consent of the City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

17. Reports/Accountability/Public Information: Contractor agrees to develop and/or provide documentation as requested by the City demonstrating Contractor's compliance with the requirements of this Agreement. Contractor shall allow the City, its auditors, and other persons authorized by the City to inspect and copy its books and records for the purpose of verifying that the reimbursement of monies distributed to Contractor pursuant to this Agreement was used in compliance with this Agreement and all applicable provisions of federal, state, and local law. The Contractor shall not issue any statements, releases or information for public dissemination without prior approval of the City.

18. Non-Waiver: A waiver by either party of any default or breach by the other party of any terms or conditions of this Agreement does not limit the other party's right to enforce such term

or conditions or to pursue any available legal or equitable rights in the event of any subsequent default or breach.

19. Attorney's Fees and Costs: In the event it becomes necessary for either Party to retain an attorney to enforce any of the terms or conditions of this 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, including fees, salary, and costs of in-house counsel including the City Attorney's Office staff.

20. Taxes: Contractor is obligated to pay all taxes of any kind or nature and make all appropriate employee withholdings.

21. Dispute Resolution:

a. Any claim, controversy, or dispute between the parties, their agents, employees, or representatives shall be resolved first by negotiation between senior-level personnel from each party duly authorized to execute settlement agreements. Upon mutual agreement of the parties, the parties may invite an independent, disinterested mediator to assist in the negotiated settlement discussions.

b. If the parties are unable to resolve the dispute within thirty (30) days from the date the dispute was first raised, then such dispute may only be resolved in a court of competent jurisdiction in compliance with the Applicable Law provisions of this Agreement.

22. Survival: Contractor's indemnification shall survive the termination or expiration of this Agreement for the maximum period allowed under applicable law.

23. Headings: The headings used in this Agreement are for convenience only and are not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

24. Severability: If any portion of this Agreement is held to be void or unenforceable, the balance thereof shall continue in effect.

25. Applicable Law: The parties agree that this Agreement is governed in all respects by the laws of the State of Montana.

26. Binding Effect: This Agreement is binding upon and inures to the benefit of the heirs, legal representatives, successors, and assigns of the parties.

27. **No Third-Party Beneficiary:** This Agreement is for the exclusive benefit of the parties, does not constitute a third-party beneficiary agreement, and may not be relied upon or enforced by a third party.

28. **Counterparts:** This Agreement may be executed in counterparts, which together constitute one instrument.

29. **Integration:** This Agreement and all Exhibits attached hereto constitute the entire agreement of the parties. Covenants or representations not contained herein or made a part thereof by reference, are not binding upon the parties. There are no understandings between the parties other than as set forth in this Agreement. All communications, either verbal or written, made prior to the date of this Agreement are hereby abrogated and withdrawn unless specifically made a part of this Agreement by reference.

30. **Consent to Electronic Signatures:** The Parties have consented to execute this Agreement electronically in conformance with the Montana Uniform Electronic Transactions Act, Title 30, Chapter 18, Part 1, MCA.

31. **Extensions:** This Agreement may, upon mutual agreement, be extended for a period of one year by written agreement of the Parties. In no case, however, may this Agreement run longer than five years.

****** END OF AGREEMENT EXCEPT FOR SIGNATURES ******

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written or as recorded in an electronic signature.

CITY OF BOZEMAN, MONTANA

By _____
Chuck Winn, City Manager

CONTRACTOR (Type Name Above)

By _____

Print Name: _____

Print Title: _____

APPROVED AS TO FORM:

By _____
Greg Sullivan, Bozeman City Attorney

July 18th, 2025

Gail Jorgenson, GISP
GIS Program Manager
City of Bozeman, MT
406-582-2972

Re: Lidar and Orthoimagery Online Data Downloading Tool

Dear Mrs. Jorgenson:

Thank you for the opportunity to submit this proposal for professional services for an online data download tool supporting lidar and imagery deliverable files collected over 2024 through 2027. This letter presents our proposed scope of services, time schedule and fees.

Project Description

Ayres understands that the City of Bozeman is seeking to obtain an interactive web-based lidar and orthoimagery download application to allow for both the City of Bozeman staff and the public to download the 2024 lidar and orthoimagery products. In addition to the currently available 2024 lidar and orthoimagery, the 2025 orthoimagery, 2026 orthoimagery, and the 2027 lidar and orthoimagery will be added to the application as data deliverables become available.

Proposed Scope of Service

We appreciate the opportunity to present our lidar and orthoimagery data download management solution, which includes utilizing ArcGIS Online (AGOL) and web-apps. The AGOL lidar and orthoimagery download application will be public facing and not require any user accounts or login/passwords. Utilizing AGOL will allow for easy to use, out-of-the box and custom applications to be tested and implemented with quick turnaround times.

1. AGOL Download Application Development

Ayres services will include the development of an AGOL Experience Builder web map with data download functions, management and hosting of data, and publishing of lidar point clouds tiles, lidar DEMs tiles, lidar hillshade tiles, lidar derived contours and orthoimagery tiles from the 2024 City of Bozeman Lidar and Orthoimagery project. The 2024 lidar and orthoimagery files are approximately 417 GB in size. Data hosting estimates for 2024 data incorporate 500 GB of data hosted. Management, hosting and publishing of 2025, 2026 and 2027 data will occur as data deliverables become available. The interactive webmap application will contain out-of-the box and customizable tools and widgets, which Ayres and the City of Bozeman will work together to finalize.

The files made available for public downloading will include the following lidar and orthoimagery datasets on a tile by tile basis:

- 2024 4-band (RGB+NIR) Orthoimagery Geotiff tiles
- 2024 Lidar Point Cloud .LAS tiles
- 2024 DEM Geotiff tiles
- 2024 Hillshade Geotiff tiles
- 2024 1-ft Contour shapefile tiles

All files will be made available in both Montana State Plane NAD83 (2011)meters, NAVD88 meters and UTM Zone 12 NAD83 (2011) meters coordinate systems on a tile by tile basis.

As new orthoimagery and lidar are collected, the following datasets will be published and made available for public downloading. The fees for hosting, publishing and maintenance of the 2025, 2026 and 2027 data are described in the Annual Maintenance, Hosting and Support section of this document.

- 2025 4-band (RGB+NIR) Orthoimagery Geotiff tiles
- 2026 4-band (RGB+NIR) Orthoimagery Geotiff tiles
- 2027 4-band (RGB+NIR) Orthoimagery Geotiff tiles
- 2027 Lidar Point Cloud .LAS tiles
- 2027 DEM Geotiff tiles
- 2027 Hillshade Geotiff tiles
- 2027 1-ft Contour shapefile tiles

Ayres will work with the City of Bozeman staff to incorporate the lidar and orthoimagery download application into the City of Bozeman's Data Portal.

Final Deliverables will include:

- Public facing AGOL Experience Builder lidar and imagery data download webmap application.

AGOL Download Application Development Fees: \$ 11,800.00*

*Includes Maintenance, Hosting and Support fees for 2024 data for 1 year (through April of 2026)

2. Annual Maintenance, Hosting and Support

Ayres will provide annual maintenance, hosting and support of the developed AGOL Experience Builder data download web mapping application. Annual maintenance will include cloud hosting of City of Bozeman lidar and orthoimagery data, publishing of new data, and management of the web mapping applications. Updates implemented by ESRI will be managed and troubleshooted by Ayres staff. City of Bozeman staff and Ayres will work together to coordinate and implement any additions, changes or edits to the web mapping application which may require an amendment to include additional scope and fees. Data hosting and maintenance estimates average amounts of monthly data downloads, which is described below for each year of additional data. If necessary, data download limits can be increased for an additional fee. Annual maintenance and support can be paid as an up-front lump sum cost for a given period of years, or separately through annual amendments.

Maintenance, Hosting and Support of 2024 and 2025 data

- Approximate total file size of 622 GB including:
 - 2024 lidar and orthoimagery tiles
 - 2025 orthoimagery tiles
- Includes 700 GB of data hosted
- Hosting and maintenance through April of 2027.

2024 and 2025 Data Maintenance, Hosting and Support Fees: \$ 3,079.00

Maintenance, Hosting and Support of 2024, 2025 and 2026 data

- Approximate total file size of 822 GB including:
 - 2024 lidar and orthoimagery tiles
 - 2025 orthoimagery tiles
 - 2026 orthoimagery tiles
- Includes 1,000 GB of data hosted
- Hosting and maintenance through April of 2028.

2024, 2025 and 2026 Data Maintenance, Hosting and Support Fees: \$ 3,554.00

Maintenance, Hosting and Support of 2024 and 2025 data

- Approximate total file size of 1,274 GB including:
 - 2024 lidar and orthoimagery tiles
 - 2025 orthoimagery tiles
 - 2026 orthoimagery tiles
 - 2027 lidar and orthoimagery tiles
- Includes 1,400 GB of data hosted
- Hosting and maintenance through April of 2029.

2024, 2025, 2026 and 2027 Data Maintenance, Hosting and Support Fees: \$ 3,931.00

Responsibilities of The City of Bozeman

The City of Bozeman will identify and appoint a GIS specialist representative from The City of Bozeman to provide communication, clarification, and feedback to Ayres for effective development, deployment, and testing of the AGOL data download application.

The City of Bozeman will provide access to all information and GIS data available that may be needed to support the AGOL application.

The City of Bozeman will provide communication and project management support to aid in the deployment of the AGOL application. The City of Bozeman's GIS Program Manager and the Ayres Project Manager will participate in project kick off and status update meetings throughout the life of the project to ensure project expectations are met. Ayres expects this effort not to exceed 10 hours of the City of Bozeman's GIS Program Manager's time.

Proposed Schedule

Ayres will perform the proposed services according to the following schedule:

- Kick-off Meeting: May 2025
- AGOL Download Application Development: May-June 2025
 - Including 2024 Lidar and Orthoimagery tiles
- Publish 2025 Orthoimagery tiles Fall 2025
- Publish 2026 Orthoimagery tiles Fall 2026
- Publish 2027 Lidar and Orthoimagery tiles Fall 2027

Proposed Fees

- AGOL Application Development, Hosting, Maintenance and Support of 2024 Lidar and Imagery: \$ 11,800.00
- Hosting, Maintenance and Support of 2024 Lidar and Orthoimagery, 2025 Orthoimagery: \$ 3,079.00
- Hosting, Maintenance and Support of 2024 Lidar and Imagery, 2025 Orthoimagery, 2026 Orthoimagery: \$ 3,554.00
- Hosting, Maintenance and Support of 2024 Lidar and Imagery, 2025 Orthoimagery, 2026 Orthoimagery, 2027 Lidar and Orthoimagery: \$ 3,931.00

Application Development and Data Hosting through April 2029

Total Lump Sum Cost: \$ 22,364.00

Ayres has carefully reviewed solutions for your lidar and orthoimagery data download project and has prepared a proposal outlining our unique qualifications. We understand that completing projects means more than just the delivery of final products. We are committed to the individual mapping application needs of The City of Bozeman and look forward to discussing how we can help meet your goals. In the meantime, please contact us if you have questions or require any additional information.

Sincerely,

Ayres Associates Inc



Tyler Kaebisch
Project Manager – Geospatial Services
Direct: 262-522-4923
KaebischT@AyresAssociates.com

Attachments:

- Attachment A - Insurance

ATTACHMENT A

AYRES ASSOCIATES – INSURANCE

Workers' Compensation

Workers' Compensation insurance covering the CONSULTANT for any and all claims which may arise against the CONSULTANT because of Workers' Compensation and Occupational Disease Acts shall be carried. The Employer's Liability Section shall have limits of not less than the following:

Each Accident:	\$ 500,000
Disease, Policy Limit:	\$ 500,000
Disease, Each Employee:	\$ 500,000

Commercial General Liability

Commercial General Liability insurance protecting the CONSULTANT against any and all general liability claims which may arise in the course of performance of this Agreement shall be carried. The limits of liability shall not be less than the following:

General Aggregate:	\$ 2,000,000
Products-Completed Operations Aggregate:	\$ 2,000,000
Personal and Advertising Injury:	\$ 1,000,000
Each Occurrence:	\$ 1,000,000

Property damage liability coverage shall not exclude explosion, collapse, and underground perils if CONSULTANT is engaged in these activities.

Commercial General Liability coverage shall also protect the CONSULTANT for the same limits of liability for claims which may arise because of the indemnity or contractual liability agreement contained within this Agreement.

Business Automobile Liability

Business Automobile Liability insurance including Owned, Non-Owned, and Hired vehicles shall be carried with a limit of not less than the following:

Bodily Injury and Property Damage, Combined Single Limit:	\$ 1,000,000
--	--------------

Umbrella Excess Liability

Excess liability insurance (umbrella form) over underlying Employer's Liability, Commercial General Liability, and Business Automobile Liability shall be carried. The limits of liability shall be not less than the following:

Each Occurrence:	\$ 1,000,000
Aggregate:	\$ 1,000,000

Professional Liability - Errors and Omissions

Professional Liability insurance protecting the CONSULTANT against Professional Liability claims which may arise in the course of this Agreement shall be carried. The limits of liability shall be not less than the following:

Each Claim:	\$ 5,000,000
Aggregate:	\$ 5,000,000

Unmanned Aerial Vehicle/Unmanned Aircraft System (UAV/UAS) Liability Insurance

Unmanned Aerial Vehicle/Unmanned Aircraft System (UAV/UAS) Liability insurance, including contractual liability for liabilities assumed by Subconsultant under this Agreement and providing coverage for all liabilities arising out of UAV/UAS operations, including bodily injury, property damage for each occurrence of not less than \$2,000,000.

Valuable Papers

During the life of this Agreement, the CONSULTANT shall maintain in force Valuable Papers and Records insurance in an amount equal to the maximum exposure to loss of written, printed, or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts as shall be required and/or produced in the completion of this Agreement by the CONSULTANT.

Memorandum

REPORT TO: City Commission

FROM: Shane Miller, Facilities Project Coordinator David Arnado, Facilities Superintendent Jon Henderson, Assistant City Manager

SUBJECT: Authorize the City Manager to Sign Amendment 2 to a Professional Services Agreement with Rock Steady Movers for Bozeman City Hall Phase 3 Move Services

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Agreement - Vendor/Contract

RECOMMENDATION: Authorize the City Manager to Sign Amendment 2 to a Professional Services Agreement with Rock Steady Movers for Bozeman City Hall Phase 3 Move Services

STRATEGIC PLAN: 4.3 Strategic Infrastructure Choices: Prioritize long-term investment and maintenance for existing and new infrastructure.

BACKGROUND: The City of Bozeman is renovating City Hall to achieve the following goals: Improved safety and security through redesign of the Finance Department front counter. Additional office space for several Departments (x13 new workspaces). Increased energy efficiency through retro commissioning efforts. More efficient use of space for records storage. This will be achieved over multiple phases in 2025. As part of the City Hall Renovation project it will require the following departments to moving into new areas; Economic Development, Legal, and City Administration. For this type of complex move, it will require the City to procure professional moving service to ensure a smooth transition for all City Departments. This contract amendment with Rock Steady Movers will include internal moves between Phase 2 and 3 of the City Hall Renovation Project, relocating staff from temporary work locations on the first floor and offsite back to their renovated office areas on the second floor and moving furniture from storage back into the building. Rock Steady Movers was selected based upon an evaluation of several moving services proposals in which they presented the lowest priced proposal. It is anticipated that this will be the final amendment for moving services required at the completion of the construction project.

UNRESOLVED ISSUES: None

ALTERNATIVES: As directed by the City Commission.

FISCAL EFFECTS:

Funds are allocated in the approved Bozeman City Hall Renovation Construction Budget. Amendment = \$11,100 for phase 3.

Attachments:

[PSA Amendment 002 \(Rock Steady Movers\).pdf](#)

Report compiled on: July 28, 2025



002AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS 002 AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR Rock Steady Movers January 7, 2025 (the “Agreement”) is made and entered into this 12th day of August, 2025, by and between the **CITY OF BOZEMAN, MONTANA**, a self-governing municipal corporation organized and existing under its Charter and the laws of the State of Montana, 121 North Rouse Street, Bozeman, Montana, with a mailing address of PO Box 1230, Bozeman, MT 59771, hereinafter referred to as “City,” and Rock Steady Movers, hereinafter referred to as “Contractor.”

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

1. **Payment** Section 4 of the Agreement is altered to include an additional charge for Phase 3 moving services in the amount of \$11,100.00. Please see Exhibit A.
2. **Agreement still valid.** All remaining terms and provisions of the Agreement remain valid.

****** END OF AGREEMENT EXCEPT FOR SIGNATURES ******

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

CITY OF BOZEMAN, MONTANA

Rock Steady Movers

By _____
Chuck Winn, City Manager

By _____
Print Name: Richard Dumas
Title: Owner

APPROVED AS TO FORM

By _____
Greg Sullivan, Bozeman City Attorney

Rock Steady Movers

Itemized Description	
Shane/Bozeman City Hall	
4 crew and truck @ \$435/hr x 20 hrs	\$8,700
3 crew @ \$300/hr x 8 hrs	\$2,400
Total Estimate	\$11,100
This is only an estimate.	
We only bill for hours used.	

Memorandum

REPORT TO: City Commission

FROM: Griffin Nielsen, Water Resources Engineer
Shawn Kohtz, Director of Utilities

SUBJECT: Authorize the City Manager to sign Task Order No. 4 of the Professional Services Master Task Order Agreement with the firm of HDR Engineering, Inc., providing engineering services for the East Gallatin River Streambank Erosion Protection Project, CIP No. WW111

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Agreement - Vendor/Contract

RECOMMENDATION: Authorize the City Manager to sign Task Order No. 4 of the Professional Services Master Task Order Agreement with the firm of HDR Engineering, Inc., providing engineering services for the East Gallatin River Streambank Erosion Protection Project, CIP No. WW111.

STRATEGIC PLAN: 4.3 Strategic Infrastructure Choices: Prioritize long-term investment and maintenance for existing and new infrastructure.

BACKGROUND: HDR Engineering provides professional engineering services on an on-call basis for the Bozeman Water Reclamation Facility (WRF) and the East Gallatin River under a [Master Task Order Professional Services Agreement](#), authorized by the City Commission on June 3, 2025. Attached is Task Order 4, providing engineering services for the final design and bidding support for the East Gallatin River Streambank Erosion Protection Project, CIP No. WW111.

The City has identified the need to stabilize a section of the East Gallatin River adjacent to the plant's outfall, where continued erosion has undermined the bank, an existing gravel fines path, and caused the failure of an irrigation pipeline. The section of the river needs to be stabilized to address the current issues as well as prevent continued erosion, posing a risk to the WRF's outfall. This task order provides engineering services for the final design and bidding support for re-establishing bank stability, repairing the irrigation infrastructure, improving public safety, and reducing risk to the WRF's outfall.

UNRESOLVED ISSUES: None

ALTERNATIVES: As suggested by the City Commission.

FISCAL EFFECTS:

The negotiated costs for Task Order 4 total \$91,261. The task order costs are funded by the wastewater fund through the capital improvement plan project CIP No. WW111 - East Gallatin Streambank Erosion Protection Project. WW111 has an available budget of \$192,249 entering FY26. Sufficient funding exists to cover Task Order 4 costs.

Attachments:

[Task Order 4_WRF OnCall MPSA_HDR_East Gallatin River Restoration \(Bank 3\).pdf](#)

Report compiled on: July 24, 2025

Exhibit A to Professional Services Agreement

TASK ORDER NUMBER 04

Issued under the authority of Professional Services Agreement between the City of Bozeman and HDR Engineering, Inc. for: A range of professional and technical services related to operations and maintenance of the City of Bozeman Water Reclamation Facility and the East Gallatin River.

This Task Order is dated _____, 2025 between **City of Bozeman (City)** and **HDR Engineering, Inc. (Contractor)**.

The following representatives have been designated for the work performed under this Task Order:

City: Griffin Nielsen Contractor: Heather Nold

SCOPE OF WORK: (attach additional sheet(s) as required)

1. See Attachment No. 1 for Scope of Services for East Gallatin River (Bank 3) Design Task Order 2.
2. See Attachment No. 2 for manhour projection and expense projection.

COMPENSATION:

The anticipated level of effort for the above Task items are based upon the hour projection and expense projection presented in Attachment No. 2.

The anticipated cost for services for the above Task items, to be completed on a Time and Materials Basis not to exceed without prior authorization, are as presented in Attachment No. 2.

Contractor shall be reimbursed on a **Time and Materials** basis not to exceed the budget amounts presented, without prior written authorization from the City of Bozeman. Contractor shall notify the City of Bozeman prior to executing additional work and shall not proceed with additional work without written authorization from the City of Bozeman. Contractor shall invoice no more often than monthly for services provided in the prior month.

The provisions of the Professional Services Master Task Order Agreement and any Special Terms and Conditions and/or Exhibits or Attachments to this Task Order shall govern the Work.

IN WITNESS WHEREOF, the parties authorized to commit resources of the companies have executed this Task Order:

City of Bozeman

By: _____

Title: _____

Date: _____

HDR Engineering, Inc.

By: _____

Title: _____

Date: _____

Fed. ID. No. _____

Attachment 1 – East Gallatin River Restoration (Bank 3) Design Task Order 2

Introduction

The City of Bozeman (City or COB) discharges treated effluent from its Water Reclamation Facility (WRF) through an outfall into the main channel of the East Gallatin River. “Bank 3” is located approximately 550 ft downstream of the WRF outfall. This reach of the East Gallatin River has been reinforced with gabion baskets in the left overbank. The left overbank contains irrigation infrastructure that conveys water from the East Gallatin River, northwest to agricultural lands. The East Gallatin River splits at this location into a west channel (hereafter referred to as avulsion channel), and an eastern channel (hereafter referred to as historic channel). Over the course of the last 20 years, flow has progressively flanked and eroded the gabion basket reinforcement, and more flow has begun to overtop into the avulsion channel. Currently, Bank 3 is a 10 ft vertical bank that is quickly eroding and providing a source of sediment for the stream. The bank erosion has exposed the irrigation pipe, captured a portion of a walking trail, and created a hazard for the public. In Spring 2025 the bank erosion progressed and caused the irrigation pipe to fail. If the headcut continues to erode upstream, it poses a risk to upstream infrastructure such as the WRF outfall and previous bank stabilization projects. The COB has expressed interest in re-establishing bank and stream stability to reduce risk to upstream infrastructure and improve public safety.

The present task order is to provide engineering services and construction support to the COB for Bank 3 along the East Gallatin River. The goal of this project is to re-establish channel stability, improve public safety, reduce the sediment loading in the East Gallatin River, and limit riverine impacts to infrastructure.

General Project Assumptions

The following project assumptions were used in developing the scope of services.

- Project management is a function of the project duration and is based on anticipated Notice to Proceed in August of 2025, with work assumed to be completed by May 2026. Additional project coordination or an extended project schedule may require a contract amendment.
- Project meetings have been included in the attached budget estimate. The scope of services includes assumptions on the number of meetings, their duration, and effort associated with preparing for meetings.
- All submittals will be electronic.
- Analysis and design of infrastructure not listed within this scope is not included in the present scope.

- For visual inspections, the Engineer makes no warranties or guarantees regarding any failure to detect hidden, covered, inaccessible, or internal structural or material defects, corrosion, or damages in components, embedment, reinforcing, anchorages and parts of equipment, structures, or mechanisms being inspected, that are not readily discernible by external visual inspection through reasonable efforts.
- The use of the word “certify” or “certification” by a registered professional engineer in the practice of professional engineering or land surveying constitutes an expression of professional opinion regarding those facts or findings which are the subject of the certification, and does not constitute a warranty or guarantee, either expressed or implied. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices and owner-approved design loads. Certification of “as built” conditions is a statement that the structure(s) has been built according to specifically identified drawings, specifications and contract documents to the extent the structure(s) is readily observable, is in place, and is fully functioning.
- Structures and systems studied, reviewed, analyzed, or designed by the Engineer are dependent upon the owner’s continued operation and maintenance of the project structures and systems in accordance with all permits, laws and regulations that permit the construction and operation of the structures and systems, including any Engineer-prepared operations and maintenance plans. Any failures or incidents as the result of the owner’s inaction is not the responsibility of the Engineer.
- Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER’s experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s’) methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

Project Schedule

The engineering design and construction supports set to take place in August 2025 through May of 2026.

Assumptions:

- Notice to Proceed (NTP) will be received by HDR in August 2025.
- COB will provide review comments within 2 weeks of submission for all deliverables.

Scope of Services

Task 1: Project Management and Quality Assurance/Quality Control Services

Description of Work:

The scope, schedule, and budget will be monitored so that the project continues to move forward.

Sub Tasks:

1.1- PROJECT MANAGEMENT & COORDINATION OF WORK

This task includes project management services during the entire life of the project, including:

- Monthly Invoicing and Monthly Reports
- Project Delivery Administration: Budget & Schedule Controls
- Quality Assurance/Quality Control Services
 - Review of each deliverable according to HDR's quality management procedures.
 - Quality Assurance/Quality Control is integrated into each deliverable's budget.

Assumptions:

- Project management effort is a function of the project duration and is based on the schedule included with this scope of services. NTP is anticipated in August 2025, with participation assumed to be completed in May 2026. Additional project coordination or an extended project schedule may require a contract amendment.

Deliverables:

- Monthly invoice and project status updates.

1.2- KICK- OFF MEETING

The kickoff meeting provides an opportunity for the COB and key consulting staff to review the project goals and objectives, refine (if necessary) the work to be accomplished, clarify lines of communication, and better understand everyone's respective roles and responsibilities. A well-planned and efficiently conducted kickoff meeting allows for a better understanding of expectations and reduces the potential for miscommunication and potential delays.

Assumptions:

- All meetings are assumed to be virtual. No meeting minutes will be provided.

Deliverables:

- None.

Task 2: Data Collection

Description of Work:

This task includes wetland delineation and ordinary high-water mark (OHWM) for the project area to support permit submittals.

Sub Tasks:

2.1- WETLAND DELINEATION

A wetland delineation will be conducted for the project site. Wetland delineation will be in accordance with the 1987 USACOE Wetland Delineation Manual, along with the appropriate Western Mountains, Valleys, and Coast USACE Regional Supplement. Specific vegetation, soils, and hydrology data will be collected during this survey and wetland determination data forms prepared. Wetland boundaries will be walked and recorded using resource grade GPS equipment for the purpose of illustrating the wetland boundaries. Photos of each data plot will be taken along with ground-level wetland photos. The ordinary high-water mark of the East Gallatin River will be recorded using resource grade GPS equipment.

Assumptions:

- Wetland delineation extents include the project extents of Design Alternative 1A from the East Gallatin River Restoration Bank 3 Alternatives Analysis prepared by HDR.
- COB will obtain any required right of entry permissions for data collection.
- The wetland submittal will include a brief memo explaining methods and results, wetland data forms, OHWM maps, wetland delineation, and photos.

Deliverables:

- Wetland Delineation Memorandum Submittal

Task 3: Preliminary Design (60% Design)

Description of Work:

This task includes hydraulic modeling, design, and preparation of plans and specifications for the proposed bank design.

Sub Tasks:

3.1- HYDRAULIC MODELING

A 2-D Hydraulic model will be used to determine hydraulic design parameters and inform permit applications. This hydraulic model will be referenced in the design and used to assess project impacts for the floodplain permit application.

3.2- DESIGN AND LAYOUT

Results of the 2-D Hydraulic model will be used to prepare design, and engineer's estimate of opinion of probable construction costs (OPCC) for construction of the selected alternative from HDR's previously submitted alternatives analysis. HDR will prepare and deliver 60% plans for review and comment prior to finalizing the plans. HDR will lead a 60% design review meeting



with the COB. Upon acceptance of the 60% design, HDR will submit a joint permit application (Task 4).

Assumptions:

- The scope of work provided assumes selection of Design Alternative 1A from the East Gallatin River Restoration Bank 3 Alternatives Analysis prepared by HDR and includes replacement of the missing section of irrigation pipe.
- Topographic survey data from the Alternatives Analysis (Task Order 7) and 2024 COB LiDAR will be used for the project layout. No additional survey will be required.
- COB will provide review comments within two (2) weeks of receiving documents.
- Design Drawings will include a general notes sheet & survey control plan, proposed plan view, cross section sheet, and detail sheets.
- Design of utility relocation is not included. Design of irrigation relocation is not included in this scope of work.
- One 1-hour design review meeting is assumed. Additional design review meetings will require an amendment to the scope of work.
- All meetings are assumed to be virtual. No meeting minutes will be provided.
- COB will provide Division 00 and Division 01 template for incorporation into project manual.

Deliverables:

- 60% Design Drawings (electronic PDF copy)
- Draft Project Manual (electronic PDF copy)
- 60% OPCC (electronic PDF copy)

Task 4: Permitting

Description of Work:

HDR will prepare a Joint Permit Application (JPA) and coordinate with permitting agencies.

Sub Tasks:

4.1- PERMITTING AGENCY COORDINATION

HDR will explain project goals, design background, and construction plans. Coordination will take place after submittal of JPA to obtain permits.

4.2- JOINT PERMIT APPLICATION (JPA)

HDR will prepare a JPA for submittal to permitting agencies.

Assumptions:

- Applicable permits and agencies are: US Army Corps of Engineers (USACE) (404 Permit), Montana Fish Wildlife and Parks (MTFWP) (124 Permit), Montana Department of Environmental Quality (MTDEQ) (318 Authorization, 401 Certification), and COB (floodplain permit).
- Neither State nor Federal "Navigable River" permits will be required.

- Neither an MT-2 form nor Certified Letter of Map Revision (CLOMR) will be required. If required, this work will require an amendment.
- Receipt of a floodplain permit will not involve a submittal to or review by the Montana Department of Natural Resources and Conservation (DNRC) or the Federal Emergency Management Agency (FEMA). Hence, there is assumed to be no effort involved in corresponding with either DNRC or FEMA.
- Permit application fees are included in the project budget and will be invoiced to the City of Bozeman.
- Construction stormwater permits are not included and will be obtained by the selected contractor.
- Based on the information available, it is assumed that a no-rise is probable with the proposed design.
- The City of Bozeman will issue the floodplain permit.
- A floodplain permit review from Gallatin County will not be required. Per previous correspondence (4/18/2025), Gallatin County will be notified that the City of Bozeman is reviewing and issuing the floodplain permit for awareness.
- Floodplain technical process was discussed in a meeting held 1/31/2025. Deviations from the technical process described in that meeting will require an amendment to the scope of work.
- Existing conditions in the no-rise analysis will be defined as the time of survey data collection in October-November of 2024.
- A 2-D model will be sufficient to document impacts to the floodplain. The model domain is anticipated to be from Springhill Road to the confluence of the avulsion and historic channel. The no-rise will be documented using the difference of the average water surface elevation between the existing and proposed conditions simulations.
- No additional updates to the 1-D effective model will be required for the floodplain permit.
- It is assumed that a technical memorandum will be sufficient to document the no-rise analysis and methodology. The technical memorandum is anticipated to be approximately 2 pages. The technical memorandum will document the hydraulic modeling methods and hydraulic modeling results (cross sections and average water surface elevations).
- SPA 124 Permit will be issued by Fish Wildlife and Parks. Conceptual designs were discussed on 12/19/2024. Deviations from the feedback provided during that meeting will require an amendment.
- Section 404 Permit will be issued by USACE. Conceptual designs were discussed on 1/6/2025. Deviations from the feedback provided during that meeting will require an amendment.
- The level of effort to address permitting agency requests for additional information is assumed to require 2 hours of time for budgetary purposes. A greater level of effort will require a contract amendment.
- It is assumed that agencies will respond to coordination requests within 5 business days. Additional effort to coordinate or discuss with agencies will require an amendment.



- It is assumed that permitting agencies will respond and provide comments (if any) within the outlined timeframe (COB- 30 days, USACE- 60 days, MTFWP- 30 days). If agencies neglect to respond to submittals within the specified time, an amendment may be required.

Deliverables:

- Project Joint Permit Application
- Floodplain Technical Memorandum
- 2-D HEC-RAS Hydraulic Model

Task 5: Final Design (95%, 100% Design)

Description of Work:

This task involves finalizing preliminary design and preparation of plans and specifications for the proposed restoration work.

Sub Tasks:

5.1- 95% DESIGN

This task involves preparation of plans for submittal and review by COB.

5.2- 100% DESIGN

This task involves preparation of final engineering plans and OPCC.

Assumptions:

- The COB will provide comments within two (2) weeks of submittal. Additional comments provided after that time will require an amendment.
- Comments on design changes will require an amendment. Comments on design must be provided at the 60% design submittal.
- It is anticipated that COB comments will require no more than 5 design hours to address and make necessary adjustments.
- One 1-hour final design review meeting is included in the scope of work. Additional coordination and design review will require an amendment.
- Plans will be stamped by engineer of record when issued for bid.

Deliverables:

- 95% Design Drawings (electronic PDF)
- 95% Project Manual (electronic PDF)
- 100% OPCC (electronic PDF)
- 100% Design Drawings (electronic PDF)
- 100% Project Manual (electronic PDF)



Task 6: Bidding Support

Description of Work:

HDR will assist the City of Bozeman with contractor selection and bidding support, up until notice of award is made.

Sub Tasks:

6.1- CONTRACTOR SELECTION ASSISTANCE

HDR will prepare contract documents, conduct a pre-bid project walk through with potential contractors, review bids received by the City of Bozeman and make a recommendation for contractor selection.

Assumptions:

- COB to advertise the project and collect contractor bids.

Deliverables:

- Recommendation of Contractor



Billing Rates		\$162.00	\$201.00	\$176.00	\$276.00	\$120.00	\$192.00						
		Engineer Water Resources	Engineer Water Resources Sr	Digital Design Coordinator	Area Business Group Director	Project Accountant 2	Environment al Scientist 1		Total Hours	Escalation	Labor	TOTAL DIRECT EXPENSES	Total Fee
Task	Task Description												
1	Project Management												
001.1	Project Management and Coordinaton of Work	11			4	16							
001.2	Kick Off Meeting	1	1										
Subtotal Project Management		12.00	1.00		4.00	16.00					5,169.00		
2	Data Collection												
002.1	Wetland Delineation	2					33		35				
Subtotal Data Collection		2.00					33.00		35.00		6,660.00		
3	Preliminary Design (60%)												
003.1	Hydraulic Modeling	55							55				
003.2	Design and Layout	126	26	80					232				
Subtotal Preliminary Design (60%)		181.00	26.00	80.00					287.00		48,067.00		
4	Permitting												
004.1	Permitting Agency Coordination	6	2						8				
004.2	Join Permit Application (JPA)	24	6						30				
Subtotal Permitting		30	8						38.00		6,420.00		
5	Final Design (95%, 100%)												
005.1	95% Design	20	7	25					52				
005.2	100% Design	8	2	25					35				
Subtotal Final Design (95%, 100%)		28	9	50					87.00		15,049.00		
6	Bidding Support												
006.1	Contractor Selection Assistance	20	10						30				
Subtotal Bidding Support		20	10						30.00		5,130.00		
Total Hours		273.00	54.00	130.00	4.00	16.00	33.00		477.00				
Total Fee										\$ 2,892	\$ 86,495	\$ 1,874	\$ 91,261



**MONTANA AREA
2025 HOURLY RATE SCHEDULE**

BILLING CLASSIFICATION		RATE RANGES		
ENGINEERS				
Design Engineers	\$	120.00	-	\$ 245.00
Project Engineers / Project Managers	\$	160.00	-	\$ 290.00
Sr Engineers / Sr Project Managers	\$	210.00	-	\$ 350.00
Project Principal / Sr Technical Advisors	\$	250.00	-	\$ 350.00
DESIGNERS / TECHNICIANS / INSPECTORS	\$	80.00	-	\$ 250.00
CADD / BIM Specialist	\$	80.00	-	\$ 210.00
Project Support	\$	80.00	-	\$ 230.00

2025 CHARGEABLE EXPENSE SCHEDULE

Direct project expenses will be charged at the rates listed below unless a separate rate is negotiated for a specific project.

SUBSISTENCE (PER DIEM)

Subsistence such as meals and lodging while out on a project will be charged at actual cost or at the per diem rate negotiated for a specific project.

TRAVEL

Travel expenses will be charged at the following rates unless a separate rate is negotiated for a specific

Vehicles	\$	0.75 /mile
Rental Vehicles & Aircraft	\$	Actual Cost /mile

Memorandum

REPORT TO: City Commission

FROM: Bob Murray, Project Engineer
Shawn Kohtz, Utilities Director

SUBJECT: Resolution adopting authorization of Change Order No. 1 with CK May Excavating, Inc. for the Sourdough Intake Improvements Project

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Resolution

RECOMMENDATION: Adopt a resolution authorizing Change Order No. 1 with CK May Excavating, Inc. for the Sourdough Intake Improvements Project.

STRATEGIC PLAN: 4.3 Strategic Infrastructure Choices: Prioritize long-term investment and maintenance for existing and new infrastructure.

BACKGROUND: Attached is a copy of a resolution and change order number 1 for the above referenced project. During the design of the project, the elevation of the existing pipe from the intake was estimated based on the best available information. The contractor was required to excavate this main when work began to verify the elevation. When the main was excavated, it was determined that the elevation was significantly different than anticipated. In order for the connection to work properly, the tie in location needed to be moved approximately 140-feet from the planned location which in turn required an additional 140-feet of pipeline be installed.

The cost of this change for the additional pipeline installation is \$41,300.00. There is no change in contract time associated with this change. The final recommended change in cost and time for these items is reasonable and commensurate with the work involved.

UNRESOLVED ISSUES: None.

ALTERNATIVES: As suggested by the City Commission.

FISCAL EFFECTS: Increase of \$41,300.00 from \$4,477,000.00 to \$4,518,300.00. The project funding is from the American Rescue Plan Act (ARPA) funds (\$2,550,125) with the remainder coming from the Water Fund. The Water Fund in the Capital Improvement Plan budgeted \$5,100,000 (W107) for this project. Therefore, there is sufficient funding in the existing budget for the change order.

Attachments:

[CO1-resolution.docx](#)

[Sourdough Intake Change Order No 1.pdf](#)

Report compiled on: July 28, 2025



RESOLUTION

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, APPROVING ALTERATION/MODIFICATION OF CONTRACT WITH CK MAY EXCAVATING, INC., BELGRADE, MONTANA.

WHEREAS, the City Commission did, on the 17th day of December 2024, authorize award of the bid for the Sourdough Intake Improvements Project to CK May Excavating, Inc., Belgrade, Montana; and

WHEREAS, Section 7-5-4308, Montana Code Annotated, provides that any such alterations or modifications of the specifications and/or plans of the contract be made by resolution; and

WHEREAS, it has become necessary in the prosecution of the work to make alterations or modifications to the specifications and/or plans of the contract.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Bozeman, Montana, to wit: that the proposed modifications and/or alterations to the contract between the City of Bozeman, a municipal corporation, and CK May Excavating, Inc., as contained in Change Order No. 1, attached hereto, be and the same are hereby approved; and the City Manager is hereby authorized and directed to execute the contract change order for and on behalf of the City; and the City Clerk is authorized and directed to attest such signature.

PASSED, ADOPTED, AND APPROVED by the City Commission of the City of Bozeman, Montana, at a regular session thereof held on the 12th day of August, 2025.

TERENCE CUNNINGHAM
Mayor

ATTEST:

MIKE MAAS

City Clerk

APPROVED AS TO FORM:

GREG SULLIVAN

City Attorney

CHANGE ORDER

No. 1DATE OF ISSUANCE July 24, 2025 EFFECTIVE DATE _____OWNER City of Bozeman CONTRACTOR CK May Excavating, Inc.Contract: Sourdough Creek Intake Improvements ProjectProject: Schedule 1, 2, and 3 and Additive Alternate No. 1 OWNER's Contract No. _____ENGINEER Morrison Maierle ENGINEER's Contract No. 0417.095

You are directed to make the following changes in the Contract Documents:

Description:

1. Add 140 feet of 24" pipe per Work Change Directive No. 2 in the amount of \$41,300.00

Reason for Change Order: The additional pipe is required due to elevations of the existing pipe.

Attachments: (List documents supporting change) Work Change Directive No. 2

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price \$ <u>4,477,000.00</u>	Original Contract Times: Substantial Completion: <u>November 1, 2025</u> Ready for final payment: <u>November 30, 2025</u> (days)
Net Increase (Decrease) from previous Change Orders No. <u>0</u> to <u>0</u> : \$ <u>0</u>	Net change from previous Change Orders No. <u>0</u> to No. <u>0</u> : Substantial Completion: <u>0</u> Ready for final payment: <u>0</u> (days)
Contract Price prior to this Change Order: \$ <u>4,477,000.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>November 1, 2025</u> Ready for final payment: <u>November 30, 2025</u> (days)
Net increase (decrease) of this Change Order: \$ <u>41,300.00</u>	Net increase (decrease) this Change Order: Substantial Completion: <u>0</u> Ready for final payment: <u>0</u> (days)
Contract Price with all approved Change Orders: \$ <u>4,518,300.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>November 1, 2025</u> Ready for final payment: <u>November 30, 2025</u> (days)

Contractor certifies and agrees that there are no additional costs or claims for extra work, additional time, delays or omitted items, of any nature whatsoever, associated with the subject change order items, except as identified and set forth herein and unless expressly stated otherwise in the Change Order. And further, that the price agreed-upon herein represents the full cost and value for the subject work performed and the materials supplied under the terms of the contract and that the work quantities and value were properly determined and are correct.

CONTRACTOR (Authorized Signature) _____ Date _____

RECOMMENDED BY:

APPROVED BY:

(ENGINEER - Signature) _____ Date _____

EJCDC 1910-8-B (1996 Edition)

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

OWNER (Authorized Signature) _____ Date _____

Work Change Directive

No. 02

Date of Issuance: June 26, 2025

Effective Date: June 26, 2025

Project: Sourdough Creek Intake Improvements	Owner: City of Bozeman	Owner's Contract No.:
Contract: Schedules 1, 2 and 3 and Additive Alternate No. 1		Date of Contract: January 29, 2025
Contractor: CK May Excavating, Inc.		Engineer's Project No.: 0417.095

You are directed to proceed promptly with the following change(s):

Item No.	Description
1	Install an additional 140 feet of 24-inch Class 50 DIP at the intake site.

Attachments (list documents supporting change):
Summary Sheet WCD 1

Purpose for Work Change Directive:

- ☒ Authorization for Work described herein to proceed on the basis of Cost of the Work due to:
- ☐ Non-agreement on pricing of proposed change.
- ☐ Necessity to expedite Work described herein prior to agreeing to changes on Contract Price and Contract Time.
- ☒ Necessity to expedite Work described herein prior to executing a Change Order.

Estimated change in Contract Price and Contract Times:

Contract Price \$ 41,300.00 ☒ Increase ☐ Decrease Contract Time 0 ☐ Increase ☐ Decrease
days

If the change involves an increase, the estimated amounts are not to be exceeded without further authorization.

Recommended for Approval by Engineer:	Date <u>07/01/2025</u>
Authorized for Owner by:	Date <u>7/1/25</u>
Accepted for Contractor by: <u>James Blair</u>	Date <u>07/01/2025</u>
Approved by Funding Agency (if applicable):	Date:

Summary Sheet WCD 2

The following items are included in WCD 2:

1. To meet design pipe grades based on existing conditions 140 feet of additional 24-inch DIP is required. Due to material availability the pipe will be Class 50. Pricing is based on unit pricing provided in the Schedule of Values. This has been reviewed relative to installation cost and found to be reasonable and CK May has provided justification for utilizing the same material price for the Class 50 pipe vs. the specified pipe class. Unit price on the Schedule of Values is \$295.00 per foot.

Total Change in Contract Time is 0 days.

Total Change in Contract Value is \$41,300.00.

Memorandum

REPORT TO: City Commission

FROM: Judge Karolina Tierney

SUBJECT: Food for Fines Inaugural Event

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Administration

RECOMMENDATION: Participate in presentation from the Municipal Court on the Food for Fines Event.

STRATEGIC PLAN: 1.1 Outreach: Continue to strengthen and innovate in how we deliver information to the community and our partners.

BACKGROUND: The Bozeman Municipal Court will hold a Food for Fines event on September 5, 2025. This event will provide an opportunity for defendants to make donations to the Food Bank for credit towards their fines and fees. Food for Fines is intended to help defendants who are struggling to pay fines and fees to the court while assisting the community through donations to the Food Bank. This is the inaugural year for this program.

UNRESOLVED ISSUES: None.

ALTERNATIVES: As suggested by the Commission.

FISCAL EFFECTS: N/A

Report compiled on: August 11, 2025

Memorandum

REPORT TO:	City Commission
FROM:	Nicholas Ross, Director of Transportation and Engineering
SUBJECT:	Fowler Avenue Connection 60% Design Special Presentation
MEETING DATE:	August 12, 2025
AGENDA ITEM TYPE:	Citizen Advisory Board/Commission
RECOMMENDATION:	Participate in update from city staff on the Fowler Avenue Connection project.
STRATEGIC PLAN:	4.3 Strategic Infrastructure Choices: Prioritize long-term investment and maintenance for existing and new infrastructure.
BACKGROUND:	The city of Bozeman has recently concluded the 60% design phase for the Fowler Avenue Connection project. The project will complete Fowler Avenue from Oak to Huffine as a 2-lane minor arterial with shared-use paths in both directions, roundabout intersection control at Annie and Durston, and a traffic signal at Babcock. Substantial revisions from the 30% design phase in spring of 2024 include removal of landscaped median and narrowing of boulevards from Oak to Durston reducing the proposed typical section by 36', a reduction in local street connections, complete connection of shared-use paths, and implementation of traffic calming. The project is planned to be completed in segments from Oak to Durston (2025 Final Design, 2026 Construction), Durston to Babcock (2026 Final Design, 2027 Construction), and Babcock to Huffine (2027 Final Design, 2028 Construction). Staff will present the updated design, cost estimate, and results of recent public engagement. City Commission and members of the public are invited to review public engagement material and project plans here: https://engage.bozeman.net/fowler.
UNRESOLVED ISSUES:	None.
ALTERNATIVES:	As suggested by the Commission.

FISCAL EFFECTS:

Appropriations for final design, right of way acquisition, and construction of Oak to Durston have been approved in the FY25 and FY26 operating budget.

60% Design Construction Cost Estimate:

Oak to Durston (2026)

\$7.04m Durston to Babcock (2027)

\$3.62m Babcock to Huffine (2028) - \$3.77m

Total: \$14.43m

Report compiled on: July 8, 2025

Memorandum

REPORT TO: City Commission

FROM: Tom Rogers, Senior Planner
Chris Saunders, Community Development Manager
Erin George, Director of Community Development

SUBJECT: Annexation and Zone Map Amendment Requesting Annexation and the Establishment of an Initial Zoning Designation of R-1 on 0.903 Acres, the 1727 Kenyon Drive Annexation, Application 25051

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Community Development - Legislative

RECOMMENDATION: **Recommended Annexation Motion:**
Having reviewed and considered the staff report, application materials, public comment, and all information presented, I hereby adopt the findings presented in the staff report for application 25051 and move to approve the Kenyon Drive Annexation with recommended terms of annexation, and direct staff to prepare an annexation agreement for signature by the parties.

Recommended Zoning Motion:
Having reviewed and considered the staff report, application materials, public comment, recommendation of the Zoning Commission, and all information presented, I hereby adopt the findings presented in the staff report for application 25051 and move to approve the Kenyon Drive Zone Map Amendment, with contingencies required to complete the application processing.

STRATEGIC PLAN: 4.2 High Quality Urban Approach: Continue to support high-quality planning, ranging from building design to neighborhood layouts, while pursuing urban approaches to issues such as multimodal transportation, infill, density, connected trails and parks, and walkable neighborhoods.

BACKGROUND: The applicant, Constructive Solutions, and property owner, Mr. Stanley, seek to annex a portion of an existing parcel into the City limits and establish initial zoning of R-1, Low Density Residential, for the purpose of constructing an additional dwelling unit on the newly annexed part of the property.

The property is currently zoned R-S, Residential Suburban, in the Gallatin County Bozeman Area Zoning district. There are no structures on the property to be annexed. Annexed property adjacent are zoned R-1 and other un-annexed properties are also zoned R-S in the County, including a portion of the Burk Park (Peets Hill).

The Bozeman Community Plan 2020 (BCP2020) designates this and the surrounding property as Urban Residential on the Future Land Use Map. The R-1 district is an implementing district of this land use classification.

This application was originally scheduled for August 4, 2025, before the Community Development Board. Due to quorum issues the meeting was cancelled and a special meeting was convened on Monday, August 11, 2025, one day before the Commission hearing. The original separation between the Community Development board and City Commission was shorter than normal because of Commission agendas and staff availability. Therefore, no summary of the Community Development Board discussion or video link is available for this agenda item. A summary will be provided at the Commission hearing.

UNRESOLVED ISSUES: There are no identified conflicts on this application.

ALTERNATIVES:

1. Approve the application with contingencies as presented;
2. Approve the application with modifications to the recommended zoning;
3. Deny the application based on findings of non-compliance with the applicable criteria contained within the staff report; or
4. Open and continue the public hearing, with specific direction to staff or the applicant to supply additional information or to address specific items.

FISCAL EFFECTS: No unusual fiscal effects have been identified. No presently budgeted funds will be changed by this Annexation or Zone Map Amendment.

Attachments:

[25051 1727 Kenyon Drive ANNEX - ZMA CC SR.pdf](#)

Report compiled on: July 31, 2025

25051 Staff Report for the 1727 Kenyon Drive Annexation & ZMA

Public Hearings: Community Development Board (map amendment only) August 4, 2025, continued to August 11, 2025

City Commission (Annexation and map amendment) August 12, 2025

Project Description: Annexation of 0.903 acres and amendment of the City Zoning Map for the establishment of a zoning designation of R-1 (Residential Low Density).

Project Location: Property is addressed as 1727 Kenyon Drive and more particularly described as being a portion of Lot C, Aldworth's Rearrangement (Plat J-287), located in the East Half of the Southeast One-Quarter SE ¼) of Section 18, Township Two South (T2S), Range Five East (R5E), P.M.M., Gallatin County, Montana.

Recommendation: Meets standards for approval with contingencies.

Zoning Commission Motion: Having reviewed and considered the staff report, application materials, public comment, and all information presented, I hereby adopt the findings presented in the staff report for application 25051 and move to recommend approval of the Kenyon Drive Zone Map Amendment, with contingencies required to complete the application processing.

Recommended Annexation Motion: Having reviewed and considered the staff report, application materials, public comment, and all information presented, I hereby adopt the findings presented in the staff report for application 25051 and move to approve the Kenyon Drive Annexation with recommended terms of annexation, and direct staff to prepare an annexation agreement for signature by the parties.

Recommended Zoning Motion: Having reviewed and considered the staff report, application materials, public comment, recommendation of the Zoning Commission, and all information presented, I hereby adopt the findings presented in the staff report for application 25051 and move to approve the Kenyon Drive Zone Map Amendment, with contingencies required to complete the application processing.

Report: August 5, 2025

Staff Contact: Tom Rogers, Senior Planner

Agenda Item Type: Action – **Legislative**

EXECUTIVE SUMMARY

This report is based on the application materials submitted and public comment received to date. This report addresses both the zoning amendment for Community Development Board acting in their capacity as the Zoning Commission, as well as the annexation and the zoning amendment for the City Commission. The application materials are available on the City's website in the [laserfiche archive](#).

Unresolved Issues

There are no identified conflicts between the City and application regarding the annexation or zoning.

Project Summary

The applicant, Constructive Solutions, and property owner, Mr. Stanley, seek to annex a portion of an existing parcel into the City limits and establish initial zoning of R-1, Low Density Residential, for the purpose of constructing an additional dwelling unit on the newly annexed part of the property.

The property is currently zoned R-S, Residential Suburban, in the Gallatin County Bozeman Area Zoning district. There are no structures on the property to be annexed. Annexed properties adjacent are zoned R-1 and other un-annexed properties are also zoned R-S in the County, including a portion of the Burke Park (Peets Hill).

The Bozeman Community Plan 2020 (BCP2020) designates this and the surrounding property as Urban Residential on the Future Land Use Map. The R-1 district is an implementing district of this land use classification.

In determining whether the criteria applicable to this application are met, Staff considers the entire body of plans and regulations for land development. Standards which prevent or mitigate possible negative impacts are incorporated in many locations in the municipal code but are principally in Chapter 38, Unified Development Code. References in the text of this report to Articles, Divisions, or in the form XX.XXX.XXX are to the Bozeman Municipal Code.

Community Development Board (Zoning Commission) Summary

The Community Development Board acting in their capacity as the Zoning Commission will hold a public hearing on August 4, 2025, continued to August 11, 2025, and will forward a recommendation on the application to the City Commission.

No public comment has been received on this application.

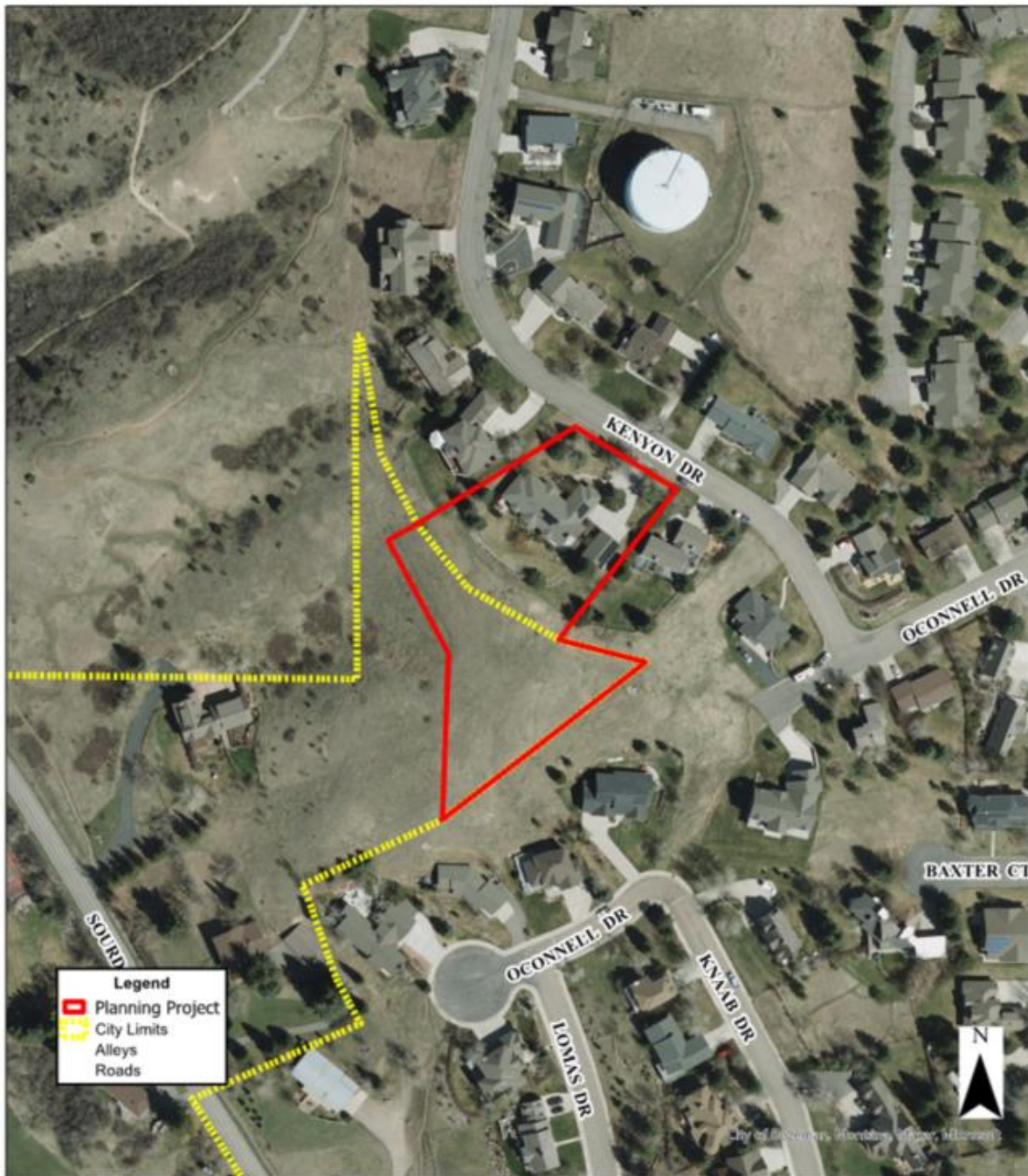
Alternatives

1. Approve the application with contingencies as presented;
2. Approve the application with modifications to the recommended zoning;
3. Deny the application based on findings of non-compliance with the applicable criteria contained within the staff report; or
4. Open and continue the public hearing, with specific direction to staff or the applicant to supply additional information or to address specific items.

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SECTION 1 - MAP SERIES



This map was created by the
City of Bozeman
Planning Division
Intended for Planning purposes only.

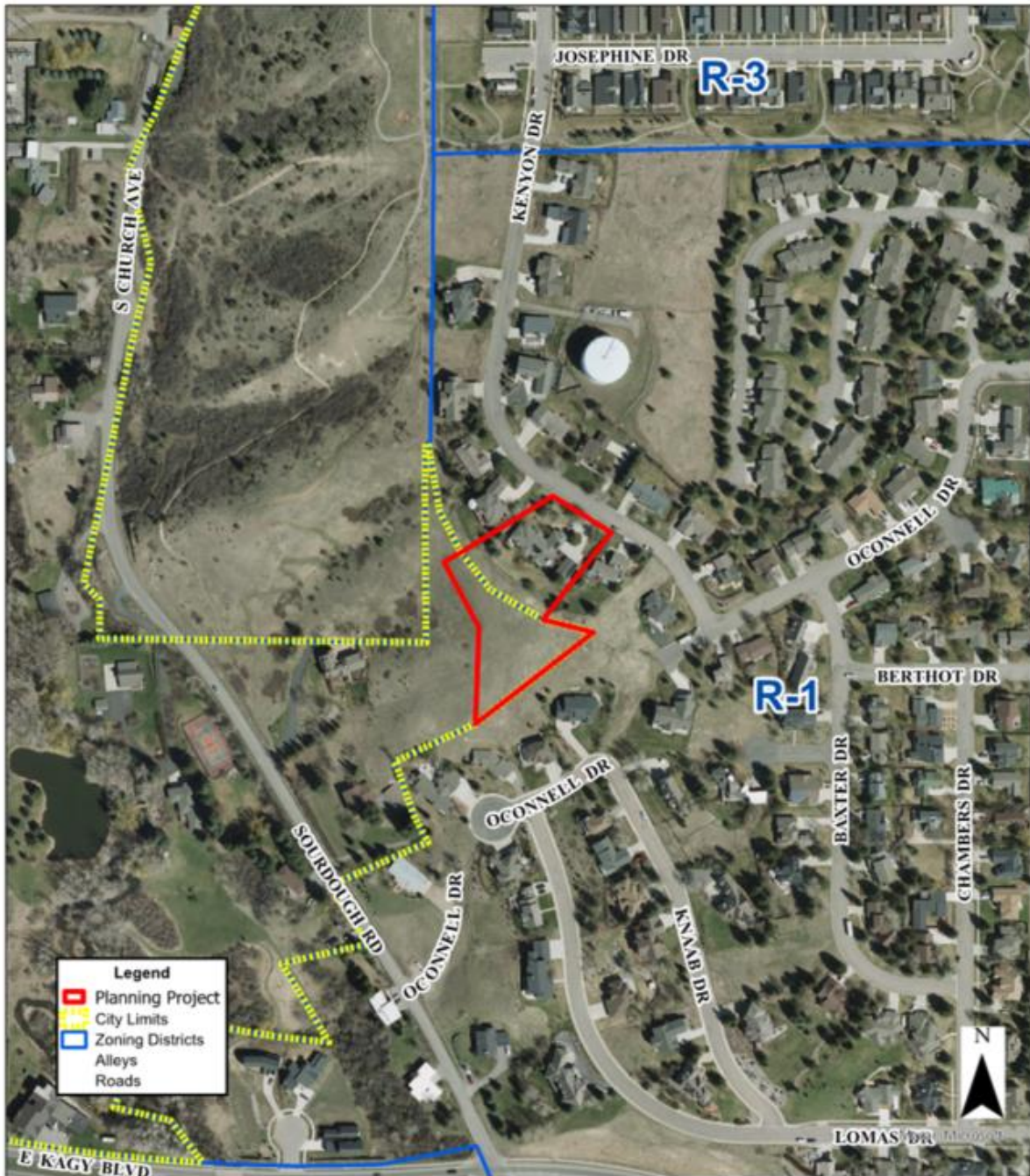
Revised: 5/23/2025

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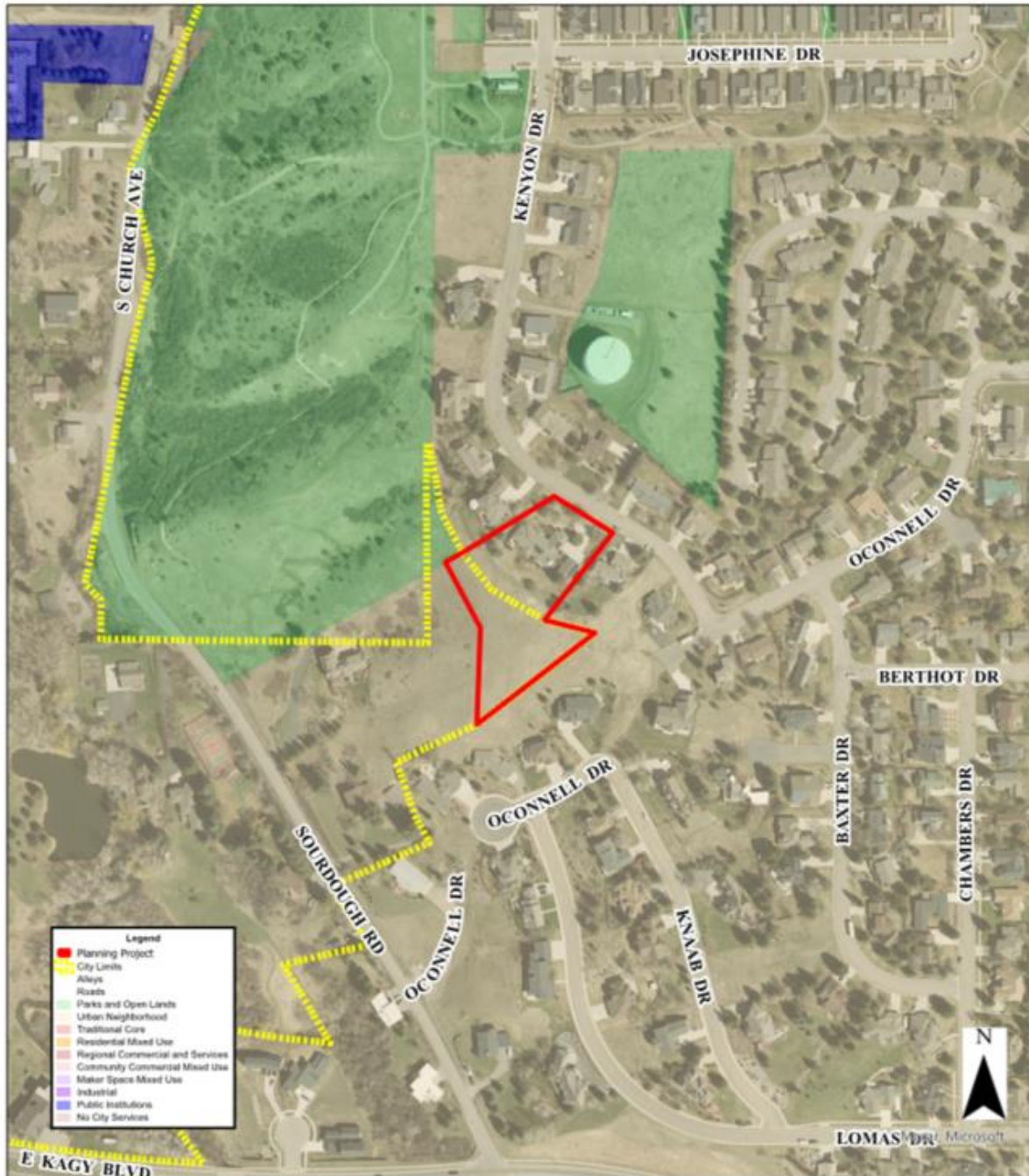
1727 Kenyon Dr
Proposed Annexation
Application 25-051

BOZEMAN^{MT}
Planning

Project Vicinity Map



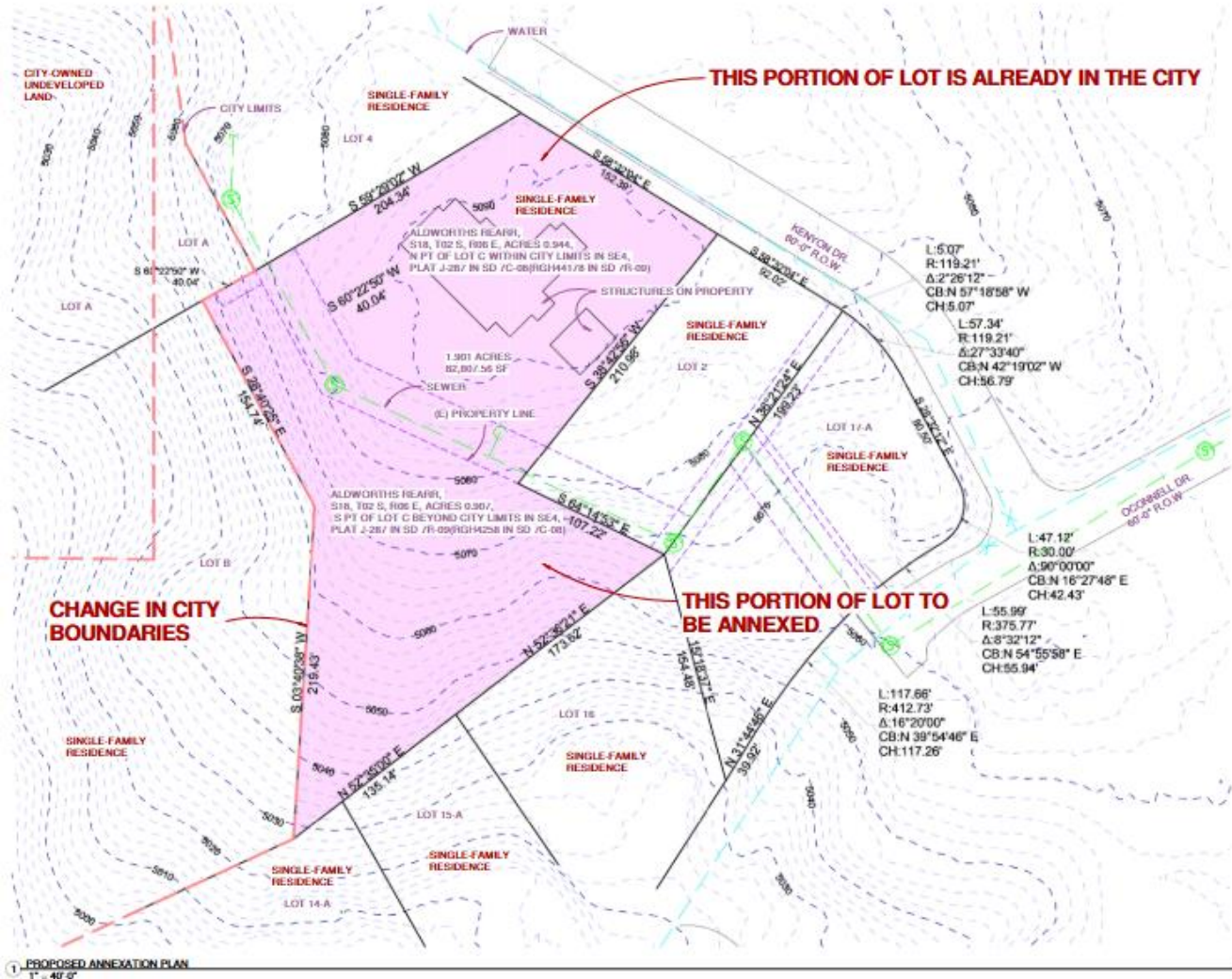
Zoning Map



1727 Kenyon Dr Proposed Annexation Application 25-051

BOZEMAN^{MT}
Planning

Future Land Use Map



Annexation Detail

SECTION 2 - RECOMMENDED TERMS OF ANNEXATION

The following terms of annexation are recommended to enable the application to comply with the City's Annexation Policy and the requirements of state law for the provision of services.

Recommended terms of annexation:

1. The documents and exhibits to formally annex the subject property must be identified as the "1727 Kenyon Drive Annexation".

2. An Annexation Map, titled “1727 Kenyon Drive Annexation Map” with a legal description of the property and any adjoining un-annexed rights-of-way and/or street access easements must be submitted by the applicant for use with the Annexation Agreement. The map must be supplied as a PDF for filing with the Annexation Agreement at the County Clerk & Recorder, and a digital copy for the City Engineer’s Office. This map must be acceptable to the Director of Transportation and Engineering and must be submitted with the signed Annexation Agreement.
3. The applicant must execute all contingencies and terms of said Annexation Agreement with the City of Bozeman within 60 days of the distribution of the annexation agreement from the City to the applicant or annexation approval shall be null and void.
4. The landowners and their successors must pay all fire, street, water and sewer impact fees at the time of connection; and for future development, as required by Chapter 2, Bozeman Municipal Code, or as amended at the time of application for any permit listed therein.
5. If they do not already exist, the applicant must provide executed Waivers of Right to Protest Creation of Special Improvement Districts (SID’s) for the following:
 - a) Street improvements to Kenyon Drive between Josephine and O’Connell Drive, including lighting, signalization, paving, curb/gutter, sidewalk, and storm drainage.
 - b) Intersection improvements at Church Street/Sourdough Road and West Kagy Boulevard, including lighting, signalization/channelization, paving, curb/gutter, sidewalk, and storm drainage.
 - c) Intersection improvements at Highland Boulevard and West Kagy Boulevard, including lighting, signalization/channelization, paving, curb/gutter, sidewalk, and storm drainage.

The applicant may obtain a copy of the template SID waiver from the City Engineering Department. The document filed must specify that in the event an SID is not utilized for the completion of these improvements, the applicant agrees to participate in an alternate financing method for the completion of said improvements on a fair share, proportionate basis as determined by square footage of property, taxable valuation of the property, traffic contribution from the development, or a combination thereof. The SID waiver will be included with the annexation agreement and filed with the County Clerk and Recorder at annexation.

6. The Annexation Agreement must include notice that the applicant must connect to municipal services and will be responsible for installing any facilities required to provide full municipal services to the property in accordance with city policy at the time of connection.

7. The applicant must contact the City Engineering Department to obtain an analysis of cash-in-lieu of water rights for the proposed annexation. The determined amount must be paid prior to annexation.
8. A legal instrument, signed by the property owner, must be filed in the Office of the Gallatin County Clerk and Recorder concurrently with the annexation agreement stating that the subject property may not be sold or transferred separately from the parent parcel without prior written approval of the City. The City will prepare the instrument for final signing and recordation with the Gallatin County Clerk and Recorder Office.

SECTION 3 - RECOMMENDED CONTINGENCIES OF ZONE MAP AMENDMENT

Please note that these contingencies are necessary for the City to complete the process of the proposed amendment. These contingencies only apply if the related annexation request has previously been approved.

Recommended Contingencies of Approval:

1. The Ordinance for the Zone Map Amendment must not be approved until the Annexation Agreement is signed by the applicant and formally approved by the City Commission. If the Annexation Agreement is not approved, the Zone Map Amendment application is null and void.
2. All documents and exhibits necessary to establish an initial municipal zoning designation must be identified as the “1727 Kenyon Drive Zone Map Amendment”.
3. The applicant must submit a zone amendment map, titled “1727 Kenyon Drive Zone Map Amendment”, as PDF and a digital copy of the area to be zoned, acceptable to the Director of Public Utilities, which will be utilized in the preparation of the Ordinance to officially amend the City of Bozeman Zoning Map. The map must contain a metes and bounds legal description of the perimeter of the subject properties, zoning district, and total acreage of the property.
4. The Ordinance for the Zone Map Amendment shall not be drafted until the applicant provides an editable metes and bounds legal description prepared by a licensed Montana surveyor.

SECTION 4 – ADVISORY COMMENTS

1. Future Impact Fees - Please note that future building permit applications will require payment of the required transportation, water, sewer and fire impact fees according

to the City of Bozeman adopted impact fee schedule in place at the time of building permit issuance. If you desire an estimate of the required impact fees according to current rates, please contact the Department of Community Development and/or visit www.bozeman.net.

SECTION 5 - RECOMMENDATION AND FUTURE ACTIONS

Annexation

Having considered the criteria established for an annexation, the Development Review Committee (DRC) did not find any deficiencies that prohibit annexation at this time that could not be addressed through future development review processes and adopted City Codes.

The City Commission will hold a public meeting on the annexation on August 12, 2025. The meeting will begin at 6 p.m.

Zone Map Amendment

Having considered the criteria established for a zone map amendment, the Staff found the requested zoning meets standards for approval as submitted. The Zone Map Amendment (ZMA) is in conjunction with an annexation request. **Staff's recommendation and staff responses are predicated on approval of the annexation, application 25051.**

The Development Review Committee (DRC) considered the amendment. The DRC did not identify any infrastructure or regulatory constraints that would impede the approval of the application that cannot be addressed with adopted standards and requirements for future development.

The Community Development Board acting in their capacity as the Zoning Commission will hold a public hearing on this zone map amendment on August 4, 2025, continued to August 11, 2025, and will forward a recommendation to the City Commission on the zone map amendment. The meeting will begin at 6 p.m. in the Commission Room at City Hall, 121 N. Rouse Ave, Bozeman, Montana.

The City Commission will hold a public meeting on the zone map amendment on August 12, 2025. The meeting will begin at 6 p.m. in the Commission Room at City Hall, 121 N. Rouse Ave, Bozeman, Montana. **The City Commission** will conduct a public hearing on the proposed Zone Map Amendment application.

SECTION 6 - ANNEXATION STAFF ANALYSIS AND FINDINGS

In considering applications for approval of the requested annexation, the advisory boards and City Commission shall consider the following:

Commission Resolution No. 5076 Criteria

In evaluating compliance with the following Goals and Policies, Staff considers the application materials, Terms of Annexation, and adopted standards of the City to determine whether the Goal or Policy can be met.

Commission Resolution No. 5076 Goals

Goal 1: The City of Bozeman encourages annexations of land contiguous to the City.

This criterion is met. The property in question is contiguous to the City limits. The property is bounded on the south and east sides by City limits.

Goal 2: The City encourages all areas that are totally surrounded by the City to annex.

The subject property is wholly surrounded although part of a larger inholding within city limits.

Goal 3: The City encourages all properties currently contracting with the City for City services such as water, sanitary sewer, and/or fire protection to annex.

Not applicable. The subject property is not currently contracting for services.

Goal 4: The City of Bozeman requires annexation of all land proposed for development lying within the existing and planned service area of the municipal water and sewer systems as depicted in their respective facility plans, any land proposed for development that proposes to utilize municipal water or sewer systems.

This criterion is met. The subject property lies within the planned service area of the municipal water and sewer services. Existing sewer and systems are installed in the adjacent street right-of-way. As noted above, the area in question is an inholding with nearby properties currently being served by full City services included emergency services, and streets.

Goal 5: The City encourages annexations within the urban area identified on the future land use map in the current Bozeman Growth Policy.

This criterion is met. As shown in Section 1, the subject property is planned as Urban Neighborhood and is within the urban area of the growth policy. See the discussion under Criterion A of Section 7 of the report for more information on the growth policy.

Goal 6: The City of Bozeman encourages annexations to make the City boundaries more regular rather than creating irregular extensions which leave unannexed gaps between annexed areas or islands of annexed or unannexed land.

This criterion is met. The subject property is one of several inholdings wholly surrounded by City Limits. The annexed area will reduce the inholding and incrementally decrease the irregularity.

Goal 7: The City of Bozeman encourages annexations which will enhance the existing traffic circulation system or provide for circulation systems that do not exist at the present time.

Neutral. The subject property will not measurably improve the traffic circulation system. If the proposed second home on the property is constructed, it will gain access to the street network by a driveway from O'Connell Drive. No additional right-of-way is dedicated or required for the annexation or any possible development onsite.

Goal 8: The City prefers annexation of parcels of land larger than five (5) acres in size, but will allow annexation of smaller parcels if factors such as topographic limitations, sanitary disposal needs, fire access, maintenance of public facilities, etc., justify a smaller annexation.

The subject property is 0.907 acres. The area to be annexed is a part of another privately held parcel. The annexation allows an additional residential unit not otherwise possible. The property is steeply sloped with limited access options.

Goal 9: The City seeks to obtain water rights adequate for future development of the property with annexation.

This criterion is met. After annexation, the subject property will be bound to the provisions of [38.410.130](#) which require evaluation of water adequacy and provision of water if needed at time of development. The municipal code section requires water rights or an equivalent to be provided. Exact timing and amounts will be evaluated during development review. There are several methods to address the requirements of 38.410.130. The annexation agreement will provide notice of this requirement, see Term of Annexation 7. The landowner will consent to this requirement by signature on the annexation agreement.

Goal 10: The City of Bozeman encourages annexations for City provision of clean treated water and sanitary sewer.

This criterion is met. The subject property is located within the City's planned water and sewer service area. See Goal 4 above. The applicant proposes zoning for future development of homes. There is an existing home on the property which uses city water and sewer. Any new construction must connect with initial construction to the municipal system.

The City's water and sewer systems are adjacent to the property. Per Term of Annexation 6, the Annexation Agreement required to finalize the requested annexation will require the applicant to design extensions of services to meet the City's adopted infrastructure standards. These include provisions for minimum water pressure and volumes, adequate sewer flows by volume, gravity flow of sewers, and other standards necessary to protect public health and safety and ensure functional utilities.

Resolution No. 5076 Policies

Policy 1: Annexations must include dedication of all easements for rights-of-way for collector and arterial streets, adjacent local streets, public water, sanitary sewer, or storm or sewer mains, and Class I public trails not within the right of way for arterial or collector streets. Annexations must also include waivers of right to protest the creation of special or improvement districts necessary to provide the essential services for future development of the City.

This policy is met. There are no collector, arterial, adjacent local streets, public water, sanitary sewer, storm or sewer mains, or Class I public trails not within the right of way for arterial or collector streets adjacent to the property requiring additional easements.

Waivers of right to protest special improvement districts are included in Term of Annexation 5 for streets affected by the future development of the property.

Policy 2: Issues pertaining to master planning and zoning must be addressed prior to or in conjunction with the application for annexation.

This policy is met. The subject property is planned for Urban Residential. No change to the growth policy is required. The application includes a request for initial zoning of R-1. See the zone map amendment section of this report for analysis of the zone map amendment criteria

Policy 3: The application for annexation must be in conformance with the current Bozeman Growth Policy. If a Growth Policy Amendment is necessary to accommodate anticipated uses, the amendment process must be initiated by the

property owner and completed prior to any action for approval of the application for annexation.

This policy is met. The property is designated “Urban Residential” on the future land use map. No growth policy amendment is required. See discussion under zone map amendment Criterion A.

Policy 4: Initial zoning classification of the property to be annexed will be determined by the City Commission, in compliance with the Bozeman Growth Policy and upon a recommendation of the City Zoning Commission, simultaneously with review of the annexation petition.

This policy is met. The property proposed for annexation requests a zoning designation of R-1. See the zone map amendment section of this report for review of the zoning criteria. The Zoning Commission will hold a public hearing on August 11, 2025. A recommendation will be forwarded to the City Commission once the hearing is complete.

Note: The annexation and the placement of a zoning district designation on the property by the City does not guarantee available services or approval of a specific development. Section 38.300.020.C of the Unified Development Code states: “Placement of any given zoning district on an area depicted on the zoning map indicates a judgment on the part of the city that the range of uses allowed within that district are generally acceptable in that location. It is not a guarantee of approval for any given use prior to the completion of the appropriate review procedure and compliance with all applicable requirements and development standards of this chapter and other applicable policies, laws and ordinances. It is also not a guarantee of immediate infrastructure availability or a commitment on the part of the city to bear the cost of extending services.”

Policy 5: The applicant must indicate their preferred zoning classification as part of the annexation petition.

This policy is met. The applicant has requested R-1, Low Density Residential District. See Section 7 of this report for analysis of the requested zoning.

Policy 6: Fees for annexation processing will be established by the City Commission.

This policy is met. Applicant has paid required application fees.

Policy 7: It is the policy of the City that annexations will not be approved where unpaved county roads will be the most commonly used route to gain access to the

property unless the landowner proposes a method to provide for construction of the road to the City's street standards.

This policy is met. The property proposed for annexation is accessed from O'Connell Drive, a local Street, which is paved to the edge of an adjacent property. The property owner is required to secure public access to the property prior to construction of any residential buildings.

Policy 8: Prior to annexation of property, the City will require the property owner to acquire adequate and usable water rights, or an appropriate fee in lieu thereof, in accordance with Section 38.410.130 of the municipal code, as amended.

This policy is met. The property owner shall provide usable water rights, or cash in-lieu of water rights thereof, in an amount to be determined by the Director of Public Utilities, as outlined by Section 38.410.130 of the municipal code. The calculated amount will be determined by the Director of Public Utilities and based on the zoning designation approved by the City Commission. This will be addressed with the annexation agreement.

Policy 9: Infrastructure and emergency services for an area proposed for annexation will be reviewed for the health, safety and welfare of the public and conformance with the City's adopted facility plans. If the City determines adequate services cannot be provided to ensure public health, safety and welfare, the City may require the property owner to provide a written plan for accommodation of these services, or the City may reject the petition for annexation. Additionally, the parcel to be annexed may only be provided sanitary sewer service via the applicable drainage basin defined in the City Wastewater Collection Facilities Plan.

This policy is met. City infrastructure and emergency services are available to the subject property. A water main is in Kenyon Drive in front of the primary house. A sewer main is trenched in the rear yard of the primary house and just upslope from the parcel being annexed. The property is located adjacent to residential development that is currently served by Bozeman Fire Department.

Recommended Term of Annexation 6 includes the provision that the applicant will be responsible for installing facilities required to provide full municipal services to the property in accordance with city policy at the time of connection.

Policy 10: The City may require annexation of any contiguous property for which city services are requested or for which city services are currently being provided. In addition, any person, firm, or corporation receiving water or sewer service outside of the City limits is required as a condition of initiating or continuing such service, to consent to annexation of the property serviced by the City. The City Manager may enter into an agreement with a property owner for connection to the City's sanitary sewer or water system in an emergency conditioned upon the submittal by the property owner of a petition for annexation and filing of a notice of consent to annexation with the Gallatin County Clerk and Recorder's Office. The contract for connection to city sewer and/or water must require the property owner to annex or consent to disconnection of the services. Connection for purposes of obtaining City sewer services in an emergency requires, when feasible as determined by the City, the connection to City water services.

The property is not currently provided City services. No emergency connection is requested. City services will be required to be provided concurrent with future development. Terms of Annexation 6 address connection to services.

Policy 11: The annexation application shall be accompanied by mapping to meet the requirements of the Director of Public Works. Where an area to be annexed can be entirely described by reference to a certificate of survey or subdivision plat on file with the Gallatin County Clerk and Recorder the mapping may be waived by the Director of Public Works.

Mapping to meet the requirements of the Director of Director of Transportation and Engineering must be provided with the Annexation Agreement. Typically, this includes a Portable Document File (PDF) for filing with the Annexation Agreement at the County Clerk & Recorder, an electronic map with a metes and bounds description for the property to be annexed for the City Engineer's Office, and must be submitted with the signed Annexation Agreement. Mapping requirements are addressed in Recommended Term of Annexation 2.

Policy 12: The City will assess system development/ impact fees in accordance with Montana law and Chapter 2, Article 6, Division 9, Bozeman Municipal Code.

This annexation does not require immediate payment of fees. The annexation agreement will provide notice of obligations to pay impact fees at times as required in ordinance. See Term of Annexation 4.

Policy 13: Public notice requirements: Notice for annexation of property must be coordinated with the required notice for the zone map amendment required

with all annexation. The zone map amendment notice must contain the materials required by 38.220.410, BMC.

Notices of the public hearing have been mailed, published in the Bozeman Daily Chronicle, and posted on the site as set forth under this policy. See Appendix A for more details.

Policy 14: Annexation agreements must be executed and returned to the City within 60 days of distribution of the annexation agreement by the City, unless another time is specifically identified by the City Commission.

This policy will be implemented only if the Commission acts to grant preliminary approval. If the application is denied, then no annexation agreement will be necessary.

Policy 15: When possible, the use of Part 46 annexations is preferred.

This annexation is being processed under Part 46 provisions.

Policy 16: Where a road improvement district has been created, the annexation does not repeal the creation of the district. The City will not assume operations of the district until the entirety of the district has been annexed. Any funds held in trust for the district will be used to benefit the district after transfer to the City. Inclusion within a district does not lessen the obligation to participate in general city programs that address the same subject.

No road improvement district is associated with this application.

Policy 17: The City will notify the Gallatin County Planning Department and Fire District providing service to the area of applications for annexation.

The necessary agencies were notified and provided copies of the annexation.

Policy 18: The City will require connection to and use of all City services upon development of annexed properties. The City may establish a fixed time frame for connection to municipal utilities. Upon development, unless otherwise approved by the City, septic systems must be properly abandoned and the development connected to the City sanitary sewer system. Upon development, unless otherwise approved by the City, water wells on the subject property may be used for irrigation, but any potable uses must be supplied from the City water distribution system and any wells disconnected from structures. The property owner must contact the City Water and Sewer Superintendent to verify disconnects of wells and septic systems.

No individual septic or water systems are present. The existing home is on property annexed into the city and utilizes city water and sewer service. Future development will

be required to connect to city services. A term of annexation requires connection to municipal water and sewer implements this policy. Terms of Annexation 6 address this issue.

SECTION 7 - ZONE MAP AMENDMENT STAFF ANALYSIS AND FINDINGS

In considering applications for approval under this title, the advisory boards and City Commission must consider the following criteria (letters A-K). As an amendment is a legislative action, the Commission has discretion to determine a policy direction. The burden of proof that the application should be approved lies with the Applicant. See the application materials for the Applicant's response to the criteria

A zone map amendment must be in accordance with the growth policy (criteria A) and be designed to secure safety from fire and other dangers (criteria B), promote public health, public safety, and general welfare (criteria C), and facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements (criteria D). Therefore, to approve a zone map amendment the Commission must find Criteria A-D are met.

In addition, the Commission must also consider criteria E-K and may find the zone map amendment to be positive, neutral, or negative with regards to these criteria. To approve the zone map amendment, the Commission must find the positive outcomes of the amendment outweigh negative outcomes for criteria E-K. In determining whether the criteria are met, Staff considers the entire body of regulations for land development. Standards which prevent or mitigated negative impacts are incorporated throughout the entire municipal code but are principally in Chapter 38, Unified Development Code.

Section 76-2-304, MCA (Zoning) Criteria

A. Be in accordance with a growth policy.

Criterion Met. The BCP 2020, Chapter 5, p. 73, in the section titled Review Criteria for Zoning Amendments and Their Application, discusses how the various criteria in 76-2-304 MCA are applied locally. Application of the criteria varies depending on whether an amendment is for the zoning map or for the text of Chapter 38, BMC. The first criterion for a zoning amendment is accordance with a growth policy.

Future Land Use Map

The proposed amendment is a change to the zoning map. Therefore, it is necessary to analyze compliance with the future land use map. Chapter 3 of the BCP 2020 addresses the future land use map. The introduction to that chapter discusses the importance of the chapter. Following are some excerpts.

“Future land use is the community’s fundamental building block. It is an illustration of the City’s desired outcome to accommodate the complex and diverse needs of its residents.”

“The land use map sets generalized expectations for what goes where in the community. Each category has its own descriptions. Understanding the future land use map is not possible without understanding the category descriptions.”

The area of this application has been within in the anticipated growth area of the City. As shown on the maps in Section 1, on the excerpt of the current future land use map, the property is designated as Urban Neighborhood. The Urban Neighborhood designation description reads:

“This category primarily includes urban density homes in a variety of types, shapes, sizes, and intensities. Large areas of any single type of housing are discouraged. In limited instances, an area may develop at a lower gross density due to site constraints and/or natural features such as floodplains or steep slopes. Complementary uses such as parks, home-based occupations, fire stations, churches, schools, and some neighborhood-serving commerce provide activity

CORRELATION WITH ZONING

The zoning districts which implement each future land use category are shown in relation to each future land use category in chart below. For zoning district intent, see [38.300](#). For permitted uses, see [38.310](#).

Urban Neighborhood	
R-S, R-1, R-2, R-3, R-4, R-5, R-O, REMU RMH, B-1, PLI	
Residential Mixed Use	
R-3, R-4, R-5, R-O, REMU, B-1, PLI	
Community Commercial Mixed Use	
R-O, REMU, B-1, B-2, B-2M, UMU, NEHMU PLI	
Traditional Core	
B-2M, B-3, PLI	
Regional Commercial & Services	
B-2, B-2M, UMU, PLI	
Maker Space Mixed Use	
BP, M-1, NEHMU, PLI	
Industrial	
M-1, M-2, BP, PLI	
Parks & Open Lands	
PLI	
Public Institutions	
PLI	

LEGEND	
	Low Density Housing
	Moderate Density Housing
	Medium Density Housing
	High Density Housing & Mixed Use
	Neighborhood & Community Commercial & Business
	Office
	Downtown Business & Mixed Use
	Large Commercial & Business
	Maker Space
	Manufacturing & Artisan
	Public Lands, Parks, & Open Space
	Educational Facilities
	Civic Buildings & Institutions

centers for community gathering and services. The Urban Neighborhood designation indicates that development is expected to occur within municipal boundaries. This may require annexation prior to development.

Applying a zoning district to specific parcels sets the required and allowed density. Higher density residential areas are encouraged to be, but are not required or restricted to, proximity to commercial mixed use areas to facilitate the provision of services and employment opportunities without requiring the use of a car.”

The correlation between the future land use map of the growth policy and the zoning districts is presented in Table 4 of the Bozeman Community Plan 2020. As shown in the following Correlation with Zoning Table, the R-1 district is an implementing district of the Urban Neighborhood category.

Goals and Policies

A zoning amendment is also evaluated against the goals and policies of the BCP 2020. Most of the goals and policies are not applicable to this application. Relevant goals and objectives have been identified by the applicant and staff. Conflict with the text of the growth policy has not been identified.

The Applicant lists several goals and policies used to evaluate map amendments starting on page 1 of the Applicant Submittal Annexation Narrative and notes that the R-1 zone is an implementing district for the Urban Neighborhood future land use designation.

Additional analysis is needed to overcome the burden of proof to adopt the proposed zoning designation. The R-1 zone is the least intense district correctly available for initial zoning and is lower than most recent requests. While the city, as a general policy, encourages gradual increase of intensity even in established residential areas, this location is uniquely suited for a lower intensity zone.

The first is limited accessibility. Due to prior decisions outside the city control the area was haphazardly subdivided creating inholdings with little or no access to the street network. In this case the City Engineering team devised a unique access solution to allow the construction of a residential structure and use an access from the termination point of upper O’Connell Road that was for all intents and purpose, a alley connecting future development to the transportation system. This is permissible in city code because the area to be annexed is a part of the parent tract hosting the exiting house. In other words, with sufficient area property owners are allowed to construct as many homes as the minimum area per dwelling unit and other applicable standards permit.

Secondly, slope. The property is topographically challenged. Measuring slope in two locations illustrates the issue. Taking measurements on the northern part of the property shows a run of 45 feet and an elevation loss of 26 feet which is a slope of 30 degrees. Measuring the widest part of the property has a slope of 11.5 degrees. The area with less slope is proposed for the building location.

Also, as noted above, the area to be annexed is constrained by historical development patterns which limits access. Addressing stormwater, parking, residential open space, and other city standards would limit development on the property.

Finally, the existing neighborhood is nearly fully built out after the original subdivision completed in 1961. The area is zoned R-1. Graff's First Addition totaled 18.1 acres with 39 lots. Area analysis was not required in 1961, assuming approximately 25 percent of the area was dedicated as streets, density is calculated at 2.9 units per acre, well below modern expectations.

With this context in mind staff provides additional findings in support of the proposed zoning designation.

RC-3.3 Prioritize annexations that enable the incremental expansion of the City and its utilities.

Comment: The annexation request incrementally expands the city boundary and allows current and future development to utilize city utilities. Further, unannexed inholdings use city streets without financially supporting their use.

RC-3.4 Encourage annexation of land adjacent to the City prior to development and encourage annexation of wholly Wastewater Collection Facilities surrounded areas.

Comment: The subject property is adjacent to the city and wholly within the city's service area for wastewater collection and water distribution. Annexation allows the property access to city services including wastewater collection. As noted in the terms of annexation, when the property connects to city services the existing septic system will be required to be disconnected and abandoned.

Theme 5 | Influenced by regional cooperation and defined edges - Explore the annexation of inholdings to promote efficiency of services The Zone Map Amendment is proposed in association with an Annexation. The subject property is located directly adjacent to land already in the City of Bozeman. This application would reduce the size of the island of unannexed parcels that are surrounded by Annexed land and will result in a regular-shaped City boundary. Furthermore, the property is located within the urban services boundary and can be serviced with utilities.

Goal DCD-1: Support urban development within the City.

Comment: The annexation will allow an area previously undevelopable to be developed, even at a lower density than generally found in the city.

The property is wholly surrounded by the City. The property owner is seeking annexation and municipal zoning for the purpose of maintaining the use and intensity of the site. The application is in accordance with the growth policy.

B. Secure safety from fire and other dangers.

Criterion Met. The existing home is being served by city emergency services while the back half of the lot is served by Hyalite Rural Fire District. The annexation will allow harmonization of emergency services. Any renovations, expansions, or removal and replacement must meet the development standards of the City and, in some cases, might require retrofitting to ensure the building is safe for occupants and neighboring properties.

The 2017 Fire and EMS Master Plan shows this property within the acceptable response reach of the Fire Department. Fire protection water supply will be provided by the City of Bozeman water system. The property is not within any delineated floodplain. Upon annexation the subject property will be provided with City emergency services including police, fire and ambulance. The initial zoning of R-1 is not likely to adversely impact safety from fire and other dangers. The property will be required to conform to all City of Bozeman public safety, building and land use requirements. The City provides emergency services to adjacent properties and there will be no difficulty extending service to this parcel

C. Promote public health, public safety, and general welfare.

Criterion Met. The proposed zoning designation will promote general welfare by implementing the future land use map in the Bozeman Community Plan. Public health and safety will be positively affected as the proposed annexation will require any residential structures to connect to the city sewer system.

As noted in criterion B, further development and redevelopment must be in accordance with modern building, access, stormwater, pedestrian circulation, ingress and egress to the site, and full connection to the greater transportation network for users ensuring the promotion of public health, safety and general welfare.

Public health and safety will be positively affected by requiring new and redevelopment to connect to municipal sanitary sewer and water systems, which will prevent groundwater pollution and depletion by wells and septic systems.

D. Facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements.

Criterion Met. The BCP 2020, page 74, says regarding evaluation of Criteria B – D for zoning amendments:

“For a map amendment, all three of the above elements are addressed primarily by the City’s long range facility Plans, the City’s capital improvements program, and development standards adopted by the City. The standards set minimum sizing and flow requirements, require dedication of parks, provision of right of way for people and vehicles, keep development out of floodplains, and other items to address public safety, etc. It is often difficult to assess these issues in detail on a specific site.

For example, at the time of annexation, the final intensity of development is unknown, and it may be many years before development occurs and the impacts are experienced. The availability of other planning and development review tools must be considered when deciding the degree of assurance needed to apply an initial zoning at annexation.”

The City conducts extensive planning for municipal transportation, water, sewer, parks, and other facilities and services provided by the City. The adopted plans allow the City to consider existing conditions and identify enhancements needed to provide additional service needed by new development. The City implements these plans through its capital improvements program that identifies individual projects, project construction scheduling, and financing of construction. Private development must demonstrate compliance with standards.

The application site is located within the City’s land use, transportation, parks, and utility planning areas and those plans show this property as developing within the City when development is proposed. Adequacy of all these public requirements is evaluated during the subdivision and site development process. As stated in 38.300.020.C, the designation of a zoning district does not guarantee approval of new development until the City verifies the availability of needed infrastructure. All zoning districts in Bozeman enable a wide range of uses and intensities. At time of future subdivision or site plan review the need for individual services can be more precisely determined. No subdivision or site plan is approved without demonstration of adequate capacity.

38.300.020.C, “Placement of any given zoning district on an area depicted on the zoning map indicates a judgment on the part of the city that the range of uses allowed within that district are generally acceptable in that location. It is not a

guarantee of approval for any given use prior to the completion of the appropriate review procedure and compliance with all of the applicable requirements and development standards of this chapter and other applicable policies, laws and ordinances. It is also not a guarantee of immediate infrastructure availability or a commitment on the part of the city to bear the cost of extending services.”

The development of public infrastructure improvements to serve the property will be required to conform to the City of Bozeman’s adopted standards, which require properties to construct public infrastructure and/or pay impact fees, assessments, and taxes to support transportation, water, sewer, school, parks, and other public requirements. City water and sewer lines are located adjacent to the property in the Kenyon Drive (water) and in the rear of the annexed portion of the lot (sewer) and the terms of annexation require the applicant to connect to municipal services and install any facilities required to provide full municipal services to the property. The property is accessed from Kenyon Drive (local street).

Park dedication is not required at this time. However, if additional residential units are constructed on the site, then parkland dedication, improvements or cash-in-lieu, or a combination thereof may be required. Any future development of the property will be evaluated for additional required improvements during the plan review process.

The street grid in this area is complete. Due to steep slopes the connection from O’Connell to Church Street / Sourdough Road has not been constructed.

E. Reasonable provision of adequate light and air.

Criterion Met. The R-1 zoning designation has requirements for setbacks, height, and lot coverage, which provide for the reasonable provision of adequate light and air. Any future development of the property will be required to conform to City standards for setbacks, height, lot coverage, and buffering.

In addition to the zoning standards, adopted building codes contain more detailed requirements for air circulation, window placement, and building separation that further ensure the intent of this criterion is satisfied.

F. The effect on motorized and non-motorized transportation systems.

Criterion met. Potential development on the annexed area will have minimal impacts on the motorized and non-motorized transportation system. Due to environmental constraints and access, city codes and standards will limit the number of residential units built on the property. Further, the R-1 zoning, considering recently passed state laws, only permit minor increase in density. The existing transportation system is

underutilized and the additional transportation generated by development on site would not negatively impact the transportation system.

No additional right-of-way is needed. However, a waiver for the creation of special improvement districts is required for Kenyon Drive, O'Connell Drive, and the intersections of Sourdough Road and Highland Boulevard and West Kagy Boulevard. See Annexation Term 5.

The recommended terms of annexation and City's development approval processes the waiver of the right to protect special improvement districts related to transportation, and construction of future roads are expected to sufficiently address impacted transportation systems because of the map amendment.

On page 74-75 of the BCP 2020 in the discussion of application of the zoning criteria it says:

“Development creates or funds many of the City's local streets, intersection upgrades, and trails. Therefore, although a text or map amendment may allow more intense development than before, compliance with the adopted Plans and standards will provide adequate capacity to offset that increase.”

As the zoning designation itself does not change traffic flow or transportation demand, and the compliance of future development with adopted standards will offset impacts from development.

G. Promotion of compatible urban growth.

Criterion Met. Individuals may have widely varying opinions about what constitutes compatibility. Compatible development and Compatible land use are defined in [Article 38.7](#) BMC to establish a common reference for consideration of this criterion and application of development standards. They are defined as:

“Compatible development. The use of land and the construction and use of structures which is in harmony with adjoining development, existing neighborhoods, and the goals and objectives of the city's adopted growth policy. Elements of compatible development include, but are not limited to, variety of architectural design; rhythm of architectural elements; scale; intensity; materials; building siting; lot and building size; hours of operation; and integration with existing community systems including water and sewer services, natural elements in the area, motorized and non-motorized transportation, and open spaces and parks. Compatible development does not require uniformity or monotony of architectural or site design, density or use.

Compatible land use. A land use which may by virtue of the characteristics of its discernible outward effects exist in harmony with an adjoining land use of differing character. Effects often measured to determine compatibility include, but are not limited to, noise, odor, light and the presence of physical hazards such as combustible or explosive materials.”

As noted in the definition of Compatible development, there are many elements that contributed to compatibility. The final sentence of the definition deserves emphasis “Compatible development does not require uniformity or monotony of architectural or site design, density or use.” Compatible development can be different than what is already in place. The City has adopted a variety of standards to implement compatibility.

The proposed R-1 zone is the same as nearby properties within the municipal boundaries of the city. The property is 1.901 acres. Minimum lot size in the R-1 zone is 4,000 square feet; there is no maximum lot size. If there were no constraints onsite the simple calculation would allow up to 20 dwelling units to be constructed. However, steep slopes and the existing home size and location restrict the total number of possible homes on the property. The existing neighborhood is nearly fully built out after the original subdivision completed in 1961. Graff’s First Addition totaled 18.1 acres with 39 lots. Area analysis was not required in 1961, assuming approximately 25 percent of the area was dedicated as streets, density is calculated at 2.9 units per acre, well below modern expectations. If one additional dwelling unit is constructed on the property, the result would be one dwelling unit per acre.

Considering environmental constraints, the existing neighborhood, access, staff finds the proposed R-1 zone is compatible urban growth.

H. Character of the district.

Criterion Met. Section 76-2-302, MCA says “...legislative body may divide the municipality into districts of the *number, shape, and area* as are considered best suited to carry out the purposes [promoting health, safety, morals, or the general welfare of the community] of this part.” Emphasis added.

This proposal amends the zoning map and not the text. Therefore, no element of this amendment modifies the standards of any zoning district. The character of the districts as created by those standards remains intact.

As noted above, the City Commission has latitude in considering the geographical extents of a zoning district. It is not expected that zoning freeze the character of an area in perpetuity. Rather, it provides a structured method to consider changes to the character.

The City has defined compatible development as:

“The use of land and the construction and use of structures which is in harmony with adjoining development, existing neighborhoods, and the goals and objectives of the city's adopted growth policy. Elements of compatible development include, but are not limited to, variety of architectural design; rhythm of architectural elements; scale; intensity; materials; building siting; lot and building size; hours of operation; and integration with existing community systems including water and sewer services, natural elements in the area, motorized and non-motorized transportation, and open spaces and parks. Compatible development does not require uniformity or monotony of architectural or site design, density or use.”

The City has adopted many standards to identify and avoid or mitigate demonstrable negative impacts of development.

As with every application, staff considers the unique characteristics of each area, and the area considered may change depending on the scale of the area or the possible intensity of development allowed by the zoning district. Surrounding properties are generally low-density suburban style not generally seen in newer developments. This proposal creates an interesting conundrum. One on hand the R-1 zone tends not to fully realize desired density and provide housing for anticipated growth, even with the state mandated increase in density in all zones. On the other hand, the property cannot develop in the county due to environmental health rules and standards. Therefore, the additional of even one home is desirable although the result will likely be beyond the economic means of most Bozeman residents.

The area is dominated by larger lot single household detached homes of considerable size. The one exception is the Highwood Estates condominium development up the road from the subject property which is a 13 two-attached rowhouses and one three-attached rowhouse development on a single lot.

Therefore, staff concludes the R-1 zoning furthers the character of the district.

I. Peculiar suitability for particular uses.

Criterion Met. Page 14 of the Applicant Narrative states, “The new zoning addresses the affected area’s particular suitability for particular uses. The lot will comply with the authorized uses for the zoning. The surrounding area is predominantly single-family residential. In a future phase of this lot, a single-family residence will be proposed. The zoning is R-1, Residential Low Density District. The intent of a future phase with a single- family residence is to expand upon the low-density residences in this area.”

The Future Land Use Map shows the area as Urban Residential which the R-1 is an implementing district. The allowed uses for Bozeman's R-1 district are set in [Table 38.310.030.A](#), BMC.

Staff concludes R-1 zone is suitable urban growth as called for in the growth policy. See also discussion for Criteria A & H.

J. Conserving the value of buildings.

Neutral. No change to the existing residential structure is required with annexation. The additional area annexed into the city will allow the potential for residential structure. As noted earlier in this report, there are site specific constraints that will limit the amount of development on the property. It is unlikely the construction of an additional residential unit on the property will negatively impact other properties in the area.

Any future development on the property will be subject to standards in the R-1 zoning district which will ensure the conservation of adjacent building values including but not limited to standards set forth in the Unified Development Code for fire safety, setbacks, buffers and building heights, which will help alleviate any potential negative impacts to the values of adjacent buildings as a result of future development on the subject property. Therefore, this criterion is met.

K. Encourage the most appropriate use of land throughout the jurisdictional area.

Criterion Met. As discussed in Criteria A above, this property has been planned for residential uses. The proposed R-1 zoning designation will encourage the most appropriate use of land as the property is surrounded by lower density residential development, which is generally consistent with the intent of the BCP2020 goals and objectives. Furthermore, the proposed R-1 zoning designation is consistent with the Bozeman Community Plan's future land use map designation of "Urban Residential."

PROTEST NOTICE FOR ZONING AMENDMENTS

IN THE CASE OF WRITTEN PROTEST AGAINST SUCH CHANGES SIGNED BY THE OWNERS OF 25% OR MORE OF THE AREA OF THE LOTS WITHIN THE AMENDMENT AREA OR THOSE LOTS OR UNITS WITHIN 150 FEET FROM A LOT INCLUDED IN A PROPOSED CHANGE, THE AMENDMENT SHALL NOT BECOME EFFECTIVE EXCEPT BY THE FAVORABLE VOTE OF TWO-THIRDS OF THE PRESENT AND VOTING MEMBERS OF THE CITY COMMISSION.

The City will accept written protests from property owners against the proposal described in this report until the close of the public hearing before the City Commission. Pursuant to 76-2-305, MCA, a protest may only be submitted by the

owner(s) of real property within the area affected by the proposal or by owner(s) of real property that lie within 150 feet of an area affected by the proposal. The protest must be in writing and must be signed by **all** owners of the real property. In addition, a sufficient protest must: (i) contain a description of the action protested sufficient to identify the action against which the protest is lodged; and (ii) contain a statement of the protestor's qualifications (including listing all owners of the property and the physical address), to protest the action against which the protest is lodged, including ownership of property affected by the action. Signers are encouraged to print their names after their signatures. A person may in writing withdraw a previously filed protest at any time prior to final action by the City Commission. **Protests must be delivered to the Bozeman City Clerk, 121 North Rouse Avenue, PO Box 1230, Bozeman, MT 59771-1230.**

APPENDIX A - NOTICING AND PUBLIC COMMENT

Notice was published in the Bozeman Daily Chronicle on June 21 and 28, 2025. The site was posted on site and notices mailed by the applicant as required by [38.220](#) and the required confirmation provided to the Planning Office. Notice was or will be provided at least 15 and not more than 45 days prior to any public hearing.

No public comment has been received.

APPENDIX B - PROJECT GROWTH POLICY AND PROPOSED ZONING

Adopted Growth Policy Designation:

The property is designated as “Urban Neighborhood” in the Bozeman Community Plan 2020.

1. URBAN NEIGHBORHOOD.

This category primarily includes urban density homes in a variety of types, shapes, sizes, and intensities. Large areas of any single type of housing are discouraged. In limited instances, an area may develop at a lower gross density due to site constraints and/or natural features such as floodplains or steep slopes. Complementary uses such as parks, home-based occupations, fire stations, churches, schools, and some neighborhood-serving commerce provide activity centers for community gathering and services. The Urban Neighborhood designation indicates that development is expected to occur within municipal boundaries. This may require annexation prior to development. Applying a zoning district to specific parcels sets the required and allowed density. Higher density residential areas are encouraged to be, but are not required or

restricted to, proximity to commercial mixed use areas to facilitate the provision of services and employment opportunities without requiring the use of a car.

Proposed Zoning Designation and Land Uses:

The applicant has requested zoning of R-1, “Residential Moderate Density” in association with the annexation of the property. According to Sec. 38.300.100(B) of the Unified Development Code, the intent of the R-1 residential low density district is to provide for primarily single-household residential development and related uses within the city at urban densities. These purposes are accomplished by:

1. Providing for a minimum lot size in developed areas consistent with the established development patterns while providing greater flexibility for clustering lots and housing types in newly developed areas.
2. Providing for such community facilities and services as will serve the area's residents while respecting the residential character and quality of the area.

APPENDIX C - OWNER INFORMATION AND REVIEWING STAFF

Owner: Museum of the Rockies, 600 West Kagy Blvd., Bozeman, MT 597

Applicant: Intrinsik Architecture, 106 E Babcock, Suite 1A, Bozeman, MT 59715

Representative: Intrinsik Architecture, 106 E Babcock, Suite 1A, Bozeman, MT 59715

Report By: Tom Rogers, Senior Planner, Community Development Department

FISCAL EFFECTS

No unusual fiscal effects have been identified. No presently budgeted funds will be changed by this Annexation or Zone Map Amendment. Future development will incur costs and generate review according to standard City practices.

ATTACHMENTS

The full application and file of record can be viewed at the Community Development Department at 20 E. Olive Street, Bozeman, MT 59715.

Application materials:

<https://weblink.bozeman.net/WebLink/Browse.aspx?id=299568&dbid=0&repo=BOZEMAN>

Memorandum

REPORT TO: City Commission

FROM: David Fine, Economic Development Manager for Housing and Urban
Renewal
Brit Fontenot, Economic Development Director

SUBJECT: Fowler Avenue Community Housing Work Session

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Policy Discussion

RECOMMENDATION: Provide feedback on next steps for the project.

STRATEGIC PLAN: 4.5 Housing and Transportation Choices: Vigorously encourage, through a wide variety of actions, the development of sustainable and lasting housing options for underserved individuals and families and improve mobility options that accommodate all travel modes.

BACKGROUND: Please see attached staff memorandum.

UNRESOLVED ISSUES: Please see attached staff memorandum.

ALTERNATIVES: Please see attached staff memorandum.

FISCAL EFFECTS: Please see attached staff memorandum.

Attachments:

[Fowler Work Session Commission Memo 20250812 v2.pdf](#)

Report compiled on: August 1, 2025

Commission Memorandum

To: Honorable Mayor and City Commission
From: David Fine, Economic Development Manager
Meeting Date: August 12, 2025

Subject: Fowler Avenue Affordable Housing Project Work Session

Overview

The City of Bozeman purchased 10.3 acres of land over a decade ago in order to construct Fowler Ave. Once the necessary road right-of-way is removed from the parcel, there remains a 5.5-acre remainder parcel. Since the city acquired the parcel at a low cost basis, a unique opportunity exists to explore community housing options on the parcel while removing land costs as a variable. The property is an unannexed and unzoned wholly surrounded county inholding. Staff strongly suggest annexing and zoning the property as the next step prior to pursuing any options related to the future development of the property.

This opportunity is well-suited to the development of affordable units offered for sale. The major driver of the site's suitability for this purpose is its low land cost basis, but other considerations include that the rental market has delivered numerous units, while only two homes offering long-term affordability have been offered for sale in the last 4 years. Additionally, a housing project with smaller buildings can integrate better into the site's context.

Several options for developing the property for affordable housing exist on a continuum from low-cost, low-risk, low control to higher cost, higher risk, higher control. On the low-cost, low-risk, low-control side of this continuum is annexing and zoning the property and selling it for its market value to a developer. On the other end of the continuum is the city fully developing the property itself.

Staff is proposing an option that is somewhere in the middle of the continuum. In this option, the city maintains design control over the project but selects a developer to assist

with capitalizing and financing the project, constructing the project and selling the units. The city would also select a community land trust partner to ensure the long-term affordability of the dwellings and to steward the major public subsidy required for delivering affordable for sale homes.

Staff provided four opportunities for public engagement leading up to this work session including two open houses with the design team in June, a town hall style meeting with the Harvest Creek HOA in late July and a meeting of the Economic Vitality Board in August.

Next Steps:

Annexation and Zoning

Annexation and zoning is the next step in the development process. Consultants from Cushing Terrell, Sanbell, and A&E Architects explored the development potential of the site with various zoning districts including options with apartments (5 or more dwellings per building) in R-5 and R-4, and options with 4 or fewer dwellings per building in R-3. A goal of this exercise was to maximize the number of housing units placed on the site in each zoning district, and to visualize each development scenario in the context of surrounding residential.

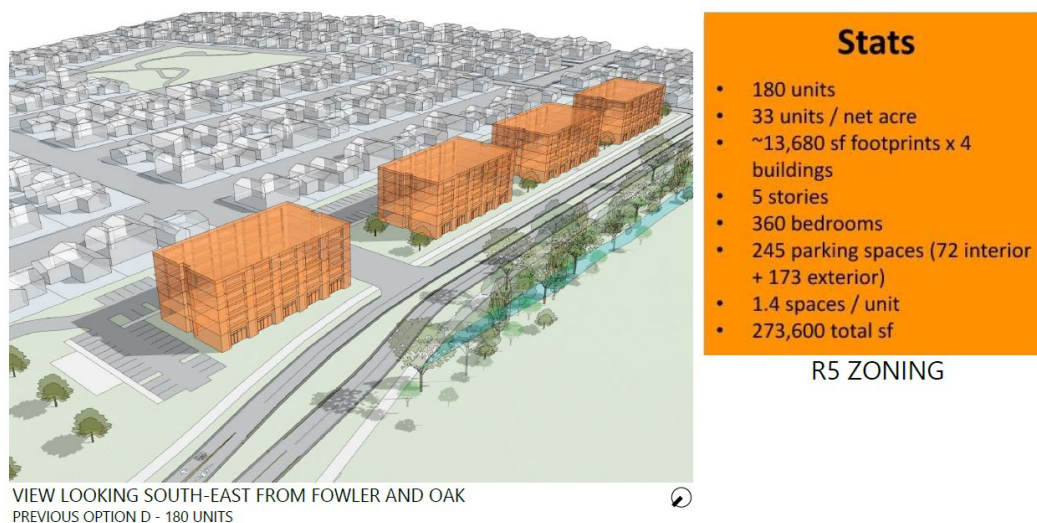


Figure 1: R5 maximum density massing study. A&E Architects.





VIEW LOOKING SOUTH-EAST FROM FOWLER AND OAK
PREVIOUS OPTION B - 68 UNITS

Stats

- 68 units
- 12 units / net acre
- ~700 sf footprints
- 2 stories
- 136 bedrooms
- 100 parking spaces
- 1.5 spaces / unit
- 95,200 total sf

R3 ZONING

Figure 3: R3 density massing study. A&E Architects.



VIEW LOOKING SOUTH-EAST FROM FOWLER AND OAK
PREVIOUS RB DENSITY - 114 UNITS

STATS

- 114 UNITS
- 24.9 UNITS/ NET AREA
- ~1,219 SF FOOTPRINTS
- 3- OR 4-STORIES
- 149 PARKING SPACES
- 1.3 SPACES / UNIT
- 138,970 TOTAL SF

R3 DENSITY (FUTURE RB)

Figure 4: Maximum townhome density in R3/RB. Cushing Terrell.

As you can see in the images above, R-5 zoning would yield the highest number of units, followed by R-4. However, the 3 and 4 story apartment options that are possible in R-5 and

R-4 zoning would have greater visual impacts to neighboring areas and would not be as desirable as for-sale units. To integrate better with the surrounding neighborhood, staff is recommending a less intensive option than apartments. It is worth noting, however, that decreases in site density correspond to fewer affordable dwellings that are available for Bozeman households. The embedded tension between more affordable housing units and greater site density is an important part of the policy decision under consideration by the city commission.

Staff directed the consultant to consider an additional massing study that focused on the zone edge transition between the existing Harvest Creek neighborhood and a potential city project. The goal was to step down the scale of buildings adjacent to the neighborhood (2 story homes next to 2 story homes), while allowing for greater mass adjacent to the proposed Fowler Ave. Both Fowler Ave. and Oak St. are classified as arterials and the growth policy suggests that greater density is most appropriate near arterials. In this proposal, the architects proposed all 3-bedroom homes that provide more flexibility for residents to work from home or increase their household size, while putting down long-term roots. The concept was designed to balance creating more affordable home ownership opportunities for Bozeman residents, while respecting the adjacent neighborhood. This concept is intended as a starting place to inspire community conversation and frame this work session, but it does not reflect a final project.



Figure 5: Landscaped massing study of 2 and 4 story townhomes with a R3 PDZ or R5 zoning. Cushing Terrell.



VIEW LOOKING NORTH EAST TO OPEN SPACE
CURRENT CONCEPT



Conceptual Perspective
Fowler Site Study | Bozeman, MT
06.04.2025



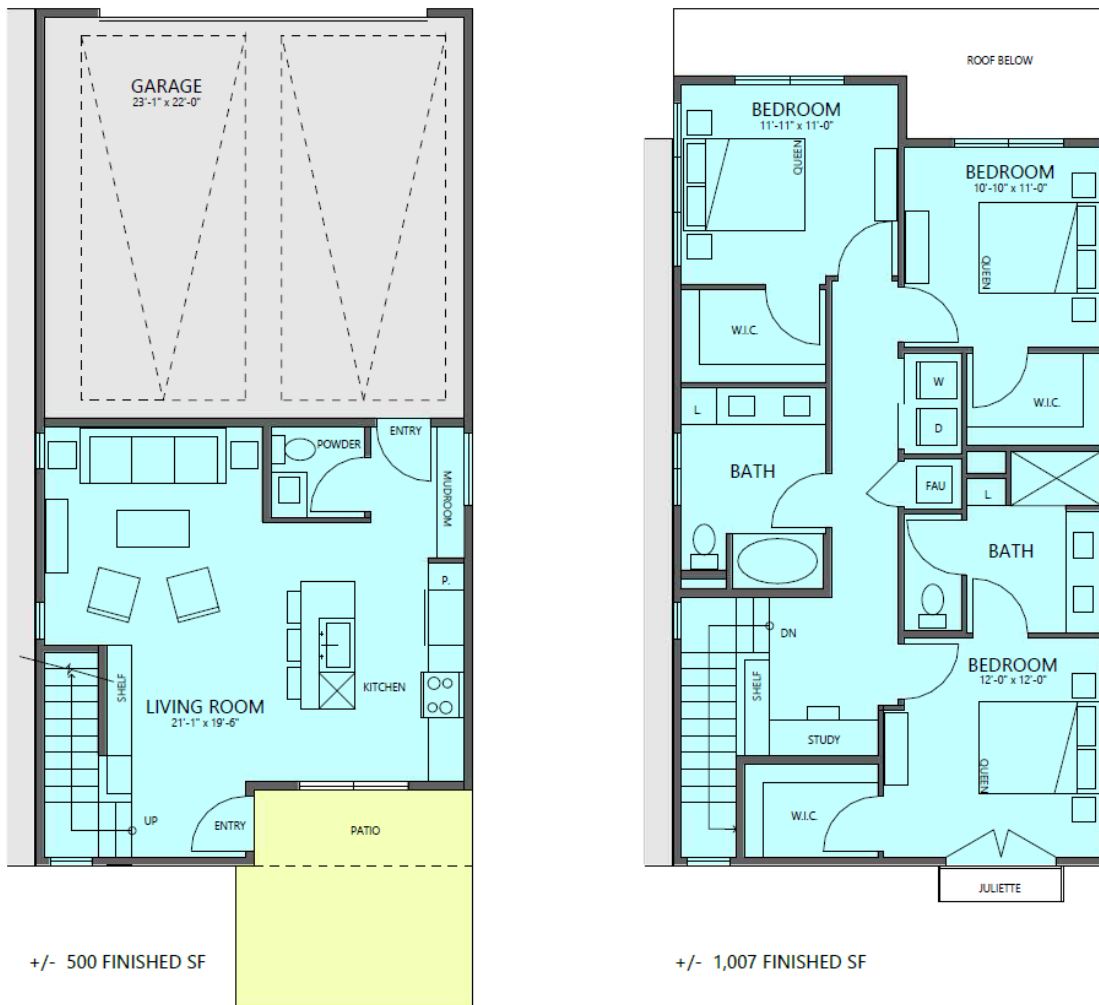
VIEW LOOKING SOUTH TO RESIDENT BUFFER
CURRENT CONCEPT



Conceptual Perspective
Fowler Site Study | Bozeman, MT
06.04.2025



Figure 6: 2 story townhome floorplan. Cushing Terrell.



UNIT T1

+/- 1,507 FINISHED SF

+/- 539 GARAGE SF

21 OCCURENCES

SCALE: 3/16" = 1'-0"

The other floor plan includes 3 bedrooms, 2.5 bathrooms, 1 car garage, a roof deck and 1,592 SF of finished space.



Figure 7: 4 story townhome floor plan. Cushing Terrell.

222

Zoning Considerations

Framing Question: What zoning district or modified zoning district should staff pursue to facilitate affordable housing on this site?

The proposed project is designed to take advantage of the Type A incentives in the affordable housing ordinance (AHO) as they are applied to R3. However, the proposed units are too spacious to take advantage of the townhouse and rowhouse incentives in 38.380.040.2.d., which means that R-3 zoning may be limiting in the following ways.

- Lot width reduction from 15ft to 12 ft is not available for townhomes over 1,200 SF.
- Exemption from floor area ratio standards
- Lot coverage minimums

These factors would not be an issue in R-3 with units that are 1,200 SF or smaller.

The current AHO is only designed to encourage affordable *rental* housing. To take advantage of its provisions for the Type A incentives to build for-sale housing, at least 5% of the proposed dwellings would need to be rentals that are affordable to households making 60% of the area median income (AMI). As a result, to do a project that is similar to the one being proposed, the city commission would need to select an option that is more permissive than standard R-3 zoning.

The fact that the Unified Development Code (UDC) is currently in the process of an update adds uncertainty to the project. Three story townhomes are currently legal in R-3 zoning. The current UDC draft's 3 story, 25-foot wall plate height requirement has an unclear interaction with the AHO as it relates to townhomes. The graphic below provided by Cushing Terrell depicts how R-B (which is slated to replace R-3) impacts the legality of three-story townhomes in the new proposed RB.

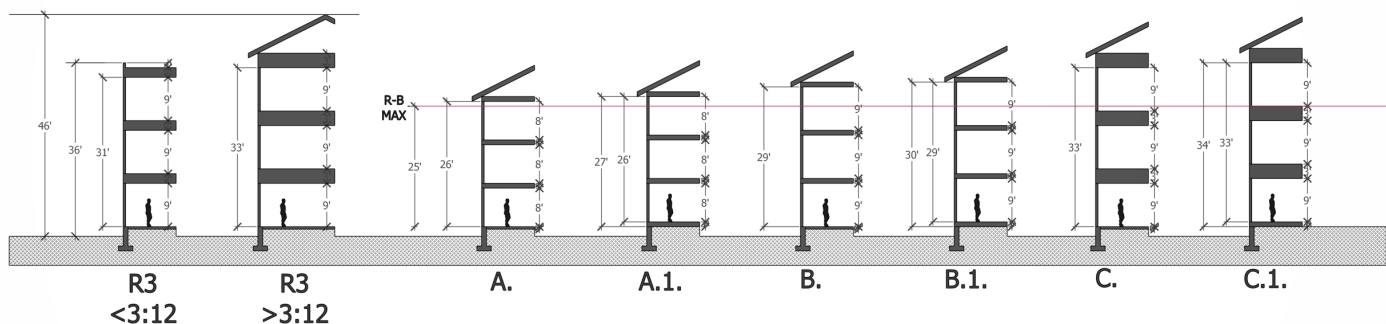


Figure 9: R3 vs RB Zoning impact on 3 story townhomes at ground level and 1 foot above ground level with 8-foot and 9-foot ceilings and 1 and 3 foot structural/mechanical separation between floors. Cushing Terrell.

Option 1: Planned Development Zone (PDZ) with R-3 reference base zoning

Planned development zones allow applicants to propose modifications to a reference base zoning district in exchange for defined public benefits.

Sec. 38.430.010. Purpose.

The purpose of the planned development zone (PDZ) district is to provide a general structure and plan for specific properties to encourage flexibility and innovation that:

- A. Create distinct neighborhoods with quality urban design and mutually supportive uses; and
- B. Support implementation of community plans and goals, including but not limited to the city's adopted growth policy; and
- C. Provide community benefits through the creation of affordable housing, inclusion of environmentally sustainable design features, and retention of historic structures; and
- D. Protect and promote the health, safety, and general welfare of the community.

(Ord. No. 2104, § 20, 9-27-2022)

Since the creation of affordable housing is a key goal of the project, the PDZ is an appropriate tool for requesting modifications to a city zoning district.

If a PDZ is utilized for this project, suggested modifications to R-3 may include:

- Require a zone edge transition with adjacent property.
- Allow smaller lot sizes for a for-sale project.
- Allow 4 stories with a 50 ft height limit, but only with a zone edge transition to ensure lower heights directly abutting the existing neighborhood:
 - R3 currently allows heights of 36ft or 48ft depending on roof pitch
 - R3 with the AHO currently allows 45ft or 57ft depending on roof pitch.
 - The modification splits the difference between base R-3 zoning and what is allowed in R3 with the AHO. It is 2 ft more than is allowed in base R-3, but 7 ft less than could be allowed in R-3 with the AHO.
- Modify lot width minimum from 15ft to 12 ft. (Allowed by the AHO for 1200 SF or smaller townhomes.)
- Modify lot coverage to exceed 40%. (Allowed by the AHO for 1200 SF or smaller townhomes.)
- Modify floor area ratio (FAR) standards. (Allowed by the AHO for 1200 SF or smaller townhomes.)

The PDZ option is not without costs to any developer, including when the city is the developer. Consulting fees for a PDZ are expected to exceed \$150,000 to complete the PDZ process including project planning activities completed to date. The PDZ process is also

time consuming. It takes around 6 months to zone property to a standard zoning district. The PDZ process takes 12+ months.

Option 2: Standard R-5 Zoning.

R-5 zoning is often associated with projects with large volume mass and scale, such as the one from our massing study with four 5-story buildings with 180 units. R-5 also offers far more flexibility for townhome development than any of the other residential zoning districts. The proposed project is not inhibited by R-5.

Standard zoning districts are easier for applicants and zoning administrators. A standard application for annexation and zoning costs around \$25,000 in consultant fees and takes around 6 months.

If the City Commission proceeds with creating a site plan for this project as the property owner and developer, the City would be able to control what actually occurs on the property, including by placing restrictive covenants on the property in the event of a sale or transfer to a community land trust, limiting height, number of dwellings per building, or other variables.

While R-5 zoning allows for a more cost-effective choice for a typical affordable housing developer, including allowance for more mass and scale than we are proposing with this project, staff is not recommending R-5 in response to public comment received. Whereas, this project provided an interesting opportunity to show how the city's base zoning districts can encourage or discourage townhome and missing middle home construction by assessing the feasibility of a project like this one. It is worth noting that we don't have a medium-high density, low mass zoning district that would enable a project like this other than R-5. And we understand that since R-5 allows so much more mass and scale, it is sometimes challenging to approve in similar contexts.

Project Design Considerations

As a property owner and applicant, seeking a zoning district is a chicken-or-the-egg problem. A developer seeks a zoning designation based on what kind of project they want to develop, but a developer can't have certainty on the project they can develop until zoning is in place. To date, the city staff have explored the kinds of projects that can be done in various zoning districts, but until the property is annexed and zoned, continuing with more detailed project design could be costly and potentially wasteful. Staff went further than a developer might ordinarily go with site design, massing and renderings in order to facilitate a community conversation about design early in the process. Nevertheless, these decisions are entirely dependent on future zoning. With these caveats,

staff are seeking guidance on a few elements of project design as they could guide future applications.

Building Height: Four Story Townhomes

Framing question: Should a future development of this site maintain the ability to consider narrow 4-story townhomes?

Narrow four-story townhomes would balance a number of mutually exclusive design choices, such as:

- Parking
- Offering more 3-bedroom units
- Offering more private open space
- Allowing the greatest possible number of affordable dwellings

As a policy choice, any of the 12 ft wide, 4 story, 3-bedroom townhomes can become a 3-story 2-bedroom townhome, but this has the impact of limiting the flexibility for households to grow in place.

Parking

These units are a full story taller because a parking space is provided on site under each home. To add a second parking space to each home would require making the home almost twice as wide, which has a major impact on the number of affordable homes offered on the site.

3-Bedroom Units

Any of the 12 ft wide, 4 story, 3-bedroom townhomes can become a 3-story 2-bedroom townhome. While the home is less costly to produce, these units do not allow as much flexibility for working arrangements or household growth. The fourth floor is necessary to add the third bedroom.

Private Open Space

The fourth floor allows for the inclusion of a roof deck which increases the private open space available to each unit.

More Affordable Dwellings

The narrower townhome design allows more homes of up to 3 bedrooms to fit on the site.

Lot Coverage

Land cost is a major driver of the cost of housing. The townhome designs presented for your consideration cover more of the lot area than is currently allowed in R-3 zoning.

Reducing the allowable lot coverage would dramatically decrease the number of dwellings that could fit on this parcel. No proposed building is wider than 48 feet, so this initial proposal has many narrower buildings of varied heights, which breaks up the overall mass of any one building compared to larger apartment buildings.

Parking

Parking is not a major issue for zoning for this site, but it is a major issue for overall site design. State law recently changed to preempt local governments from requiring (in their zoning code) more than 1 parking space per dwelling for any housing and preempts local government from requiring on-site parking at all for affordable housing projects. This law becomes effective in October 2026. The affordable housing ordinance (AHO) as written today allows for a reduction in onsite parking requirements to 1 space per dwelling. As the property owner and developer, the city can choose to exceed these minimum standards. Requiring more parking is mutually exclusive to building more affordable housing units, since it is a very land consumptive use.

Long-Term Affordability / Stewardship

The current market price of this land is estimated between \$6-7 million dollars. In addition to the land value, it is likely the city will commit millions in additional subsidy, through site development soft costs and direct subsidies to keep sales prices low. Staff is currently exploring the community land trust (CLT) stewardship model that was recently employed at the Bridger View Development to ensure the long-term affordability of the housing units, thereby stewarding the large public investment in these housing units. We are currently targeting initial sales price that are affordable to households who make 120% of the area median income (AMI) or \$142,800 for a four-person household. This income level corresponds to a \$488,300 initial sales price. These numbers will vary as the project proceeds, as AMI fluctuates.

In addition to stewarding long-term affordability, the CLT model allows for placing restrictions on residents, such as primary employment in Gallatin County, limiting rentals and vacation rentals and other criteria.

The City Commission could do an entire work session on stewardship, but this is the model that seems best suited to this project for stewarding for-sale affordable homes with significant subsidy. We can return to a conversation on stewardship during the annexation and zoning process.

Memorandum

REPORT TO: City Commission

FROM: Alex Newby, Deputy City Clerk
Mike Maas, City Clerk
Jon Henderson, Assistant City Manager
Chuck Winn, City Manager

SUBJECT: Appointment to the Library Board of Trustees

MEETING DATE: August 12, 2025

AGENDA ITEM TYPE: Citizen Advisory Board/Commission

RECOMMENDATION: **Consider the Motion:** *I move to appoint one member to the Library Board of Trustees for a term ending June 30, 2029.*

STRATEGIC PLAN: 1.2 Community Engagement: Broaden and deepen engagement of the community in city government, innovating methods for inviting input from the community and stakeholders.

BACKGROUND: The Library Board of Trustees currently has one vacancy due to a term expiring on June 30, 2025. The current position holder is the only application received.

The Library Board of Trustees is created under Section [22-1-308](#) of the Montana Code Annotated and [Section 2.05.350](#) of the Bozeman Municipal Code. Under Section 2.05.350 of the B.M.C., the Board of Trustees of the Public Library shall be composed of five persons and shall be appointed by the Mayor, with the advice and consent of the Commission, and shall serve without pay. The trustees shall hold their office for the term of five years, and one trustee shall be appointed annually at the beginning of each fiscal year (July 1) for the term of five years, and until his/her successor is appointed and qualifies. Trustees shall serve no more than two full terms in succession.

They shall have power to select librarians and other employees as they may determine and fix the amount of any bond which they may require to be given by the librarian and other employees. They shall have power to receive books from all sources for the use and benefit of the library and to purchase books therefore with any money available for that purpose and power to prescribe all rules and regulations for the use of books and the preservation of the same. The board shall keep a record of its transactions and shall make a report to the City Commission at the close of each calendar year, covering the business transacted by it during the year (Ordinance No. 1163, 1984;

Ordinance No. 1094 S 1, 1982; prior code S 2.08.200). No residency requirements are contained in either the M.C.A. or the B.M.C. Under state statutes, this Board is administrative.

This board currently has one vacancy. The City Clerk's Office has received one application with their relevant qualifications below.

1. One position with a term expiring June 30, 2030 | Qualifies: S. Mohr

Applicant:

Stew Mohr

UNRESOLVED ISSUES: Commissioner Jennifer Madgic is the City Commission liaison for this board.

Library Board of Trustees appointments are Mayoral appointments with the advice and consent of the Commission.

ALTERNATIVES: As suggested by the City Commission.

FISCAL EFFECTS: None.

Attachments:

[Stewart Mohr 05-27-25.pdf](#)

Report compiled on: August 12, 2025

WELCOME

Thank you for your interest in joining a City Board. The City of Bozeman elected officials and staff believe in the value of public participation and local governance in the decision-making process and encourage all interested members of our community to apply. As set forth in [Resolution 5323](#), the City is committed to building Boards that advance the City's goals of increasing diversity, equity, and inclusion. Because of this goal, the City is actively working to achieve membership that reflects, at the least, the demographics of our community. Women, minorities, individuals with disabilities, veterans, and other underrepresented groups are encouraged to apply.

CONTACT INFORMATION

The City will need to communicate with all board members via email for a number of annual communications, so a valid email address is required for all applicants. Please notify the City Clerks' Office if your email address changes for any reason.

The City will need to communicate with all board members via email for a number of annual communications, so a valid email address is required for all applicants. Please notify the City Clerks' Office if your email address changes for any reason.

Please note that your application will become public information. All required fields are marked with a red asterisk *.

STANDARDS OF CONDUCT

Each official and employee serving on a multimember agency is expected to devote the time and effort necessary to ensure the successful functioning of such agency ([Bozeman Municipal Code, Section 2.03.490.C.](#)). Additional standards of conduct and norms are included in [Resolution 5323](#) and [Ordinance 2157](#).

Applicant Information

* Full Name
Stewart M Mohr

* Residential Address
3300 E Graf St., Number 82
Bozeman MT 59715

* Primary Phone
(406) 551-3830

* **Current Occupation**
Retired

* **Employer**
None

* **Email**
smohr1029@charter.net

Which position are you applying for?
Library Board of Trustees

Do you live in City Limits? (Some positions do require you live within Bozeman city limits, while others do not.)
Yes

How long have you lived in the Bozeman Area?
11 years or more

* Have you ever served on a City or County Board or Commission?
Yes

Where, how long, and what Board?
Bozeman Public Library Board of Trustees, 2019 - present

* **Please describe your professional and personal experiences, interest, and qualifications that make you a good fit for this board.**
I currently serve on the Board filling the role of chairperson, am approaching the end of my five-year term, and would like to be considered for re-appointment to a second term. My qualifications include earning masters and doctoral degrees in library and information science (1970 and 2007), work experience in libraries (Youngstown State Univ., 1972 - 1974; Agere Systems, 2000 - 2004), and most recently, as a volunteer in the technical services dept. of the Bozeman Public Lib. (2012 - 2019).

* **The City of Bozeman strongly values diversity, equity and inclusion (DEI). Describe any efforts you have engaged in to expand your understanding of DEI.**
Despite all the controversy associated with DEI at the present time, the idea of having governmental agencies and boards be representative of the communities which they serve is still a valid and worthwhile guiding principle, and one to which I work to achieve. While working at Rutgers University, I submitted and had approved by the National Science Foundation a grant request for funding for scholarships for female STEM students, demonstrating, I hope, actually doing something about DEI.

References

Please provide name, phone, and email contact information for two references.

* Reference #1 Full Name

Stephen Gerdes

* Phone

(406) 577-2042

* **Email**

stephenlindag@aol.com

* Reference #2 Full Name

Michael Redburn

* Phone

(404) 600-4677

* **Email**

mredburn26@gmail.com

* The Bozeman City Charter, voted in by the citizens of Bozeman in 2008, requires annual ethics training. If appointed, do you understand you will be expected to take online and in person ethics training?

Yes

How did you hear about this board or vacancy?

I currently serve on the Board and am aware of when openings occur.

Is there any other information that you feel we need to know?

I am a veteran and served on active duty from 1970 - 1972. In addition to my volunteer work at the library, I also volunteer at Bozeman Deaconess Hospital one day a week, mentor a fifth grader at Sacajawea Middle School and have committed to continue next school year, and serve as a hike leader for Wild Montana.

If you have a disability that requires assistance or need accommodations, please contact our ADA Coordinator, Max Ziegler, at [406.582.2439](tel:406.582.2439).

Please note that for most City Boards, materials are distributed electronically for each meeting.

Your application and all information submitted is considered a public record. All applications are included in the City Commission's Meeting materials for consideration which are electronically archived and available to the public.

WRF MCC Upgrade - Installation																																				
Name:	Contractor #:	Affirmation Form:	Addendum 1 & 2 Acknowledged	Non-Collusion	Bid Bond:	Base Bid Total:																														
The Third Element Inc 28 Intrepid Drive Bozeman MT 59718	ELE UCO LIC 16041	X	X	X	X	\$539,473.00																														
Colstrip Electric Inc 647 S. 18th St W Billings MT 59012		X	X	X	X	\$561,489.00																														
These bids were opened and read before the undersigned at 2:30 pm on Thursday, July 24, 2025 DocuSigned by: Mike Maas F41E922095AB475  DocuSigned by: Brian Heaston 6A3571248984456... Mike Maas City Clerk Brian Heaston Engineer <table><tbody><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr></tbody></table> BOZEMAN City Clerk MT																																				