

# BOZEMAN<sup>MT</sup>

THE CITY COMMISSION OF BOZEMAN, MONTANA

## REGULAR MEETING AGENDA

**Tuesday, October 25, 2022**

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

### **Via Webex:**

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  
+1-650-479-3208  
Access code: 2551 332 1631

*If you are interested in commenting in writing on items on the agenda please send an email to [agenda@bozeman.net](mailto:agenda@bozeman.net) prior to 12:00pm on the day of the meeting.*

*Public comments will be accepted in-person during the appropriate agenda items.*

*You may also comment by visiting the Commission's [comment page](#).*

*You can also comment by joining the Webex meeting. If you do join the Webex meeting, we ask you please be patient in helping us work through this hybrid meeting.*

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

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

**B. Pledge of Allegiance and a Moment of Silence**

**C. Changes to the Agenda**

**D. Authorize Absence**

D.1 [Authorize the absence of Mayor Andrus](#) (Chambers)

**E. FYI**

**F. Commission Disclosures**

**G. Consent**

G.1 [Accounts Payable Claims Review and Approval](#) (Waters)

G.2 [Appoint a Sub-committee of Two Commissioners to Review Pledged Securities as of](#)

September 30, 2022(Clark)

- G.3 Authorize the City Manager to Sign a Task Order 5 with Baker Tilly for Financial Feasibility and Needs Analysis on Tax Increment Financing Assistance Request from Virga Capital(Fine )
- G.4 Authorize the City Manager to Sign a Fire Station Two Land Lease Agreement with Montana State University(Waldo )
- G.5 Authorize the City Manager to Sign a Professional Services Agreement with Morten Group for the Development of a Equity and Inclusion Plan(Hess)
- G.6 Authorize the City Manager to Sign a Professional Services Agreement with Yellowstone Pavement Solutions for the Cleaning and Restriping of the Four Downtown Surface Lots and the Bridger Parking Garage(Tucker)
- G.7 Authorize City Manager to Sign a Professional Services Agreement with Invoice Cloud, Inc. for Utility Billing Software(McMahan)
- G.8 Authorize the City Manager to Sign a First Amendment to the Professional Services Agreement with Advantage Spraying Services, Inc. for Snow Removal Services in the Parks and Trails District(Kline )
- G.9 Authorize the City Manager to Sign Modification 1 to the Funding, Construction, and Maintenance Agreement with MDT for the North 7th Avenue and Griffin Drive Intersection Project(Lonsdale)
- G.10 Resolution 5448 to Establish Compliance with IRS Reimbursement Bond Regulations(Hodnett)

#### **H. Public Comment**

*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. 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 address 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](#).*

#### **I. Action Items**

- I.1 The Haggerty Lane Zone Map Amendment Requesting Amendment of the City Zoning Map for Two Existing Lots Consisting of Approximately 0.55 Acres and the Accompanying Adjacent Rights-of-way From B-2 (Community Business District) to B-2M (Community Business District-Mixed)(Rogers)

#### **J. Appointments**

- J.1 Appointment to the Mental Health Local Advisory Council (Chambers)

J.2 [Appointment to the Urban Parks and Forestry Board \(Maas\)](#)

K. **FYI / Discussion**

L. **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, Mike Gray, at 582-3232 (TDD 582-2301).

Commission meetings are televised live on cable channel 190 and streamed live at

[www.bozeman.net](http://www.bozeman.net).

***In order for the City Commission to receive all relevant public comment in time for this City Commission meeting, please submit via [www.bozeman.net](http://www.bozeman.net) or by emailing [agenda@bozeman.net](mailto:agenda@bozeman.net) no later than 12:00 PM on the day of the meeting. Public comment may be made in person at the meeting as well.***

# Memorandum

**REPORT TO:** City Commission

**FROM:** Taylor Chambers, Deputy City Clerk  
Mike Maas, City Clerk  
Jeff Mihelich, City Manager

**SUBJECT:** Authorize the absence of Mayor Andrus

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Administration

**RECOMMENDATION:** I move to authorize the absence of Mayor Andrus.

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

**BACKGROUND:** Mayor Andrus informed staff on October 17 that she will be absent from the meeting on October 25.

**UNRESOLVED ISSUES:** None

**ALTERNATIVES:** As determined by the Commission.

**FISCAL EFFECTS:** None

Report compiled on: October 17, 2022

# Memorandum

**REPORT TO:** City Commission

**FROM:** Nadine Waters, Accounts Payable Clerk  
Nicole Armstrong, Accounts Payable Clerk  
Levi Stewart, Assistant City Controller  
Aaron Funk, City Controller  
Melissa Hodnett, Finance Director

**SUBJECT:** Accounts Payable Claims Review and Approval

**MEETING DATE:** October 25, 2022

**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 the City Commission to review claims prior to payment. 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. Additionally, the Department confirmed all expenditures were appropriately coded and within the current fiscal year allocated budget.

**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: October 13, 2022

# Memorandum

**REPORT TO:** City Commission

**FROM:** Laurae Clark, Treasurer  
Melissa Hodnett, Finance Director

**SUBJECT:** Appoint a Sub-committee of Two Commissioners to Review Pledged Securities as of September 30, 2022

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Finance

**RECOMMENDATION:** I move to appoint Commissioner Madgic and Commissioner Coburn to review the depository bonds and pledged securities as of September 30, 2022.

**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:** **17-6-102. Insurance on deposits.** (1) Deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration may not be made unless the bank, building and loan association, savings and loan association, or credit union first delivers to the state treasurer or deposits in trust with some solvent bank, as security therefore, bonds or other obligations of the kinds listed in [17-6-103](#), having a market value equal to at least 50% of the amount of the deposits in excess of the amount insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

(2) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The substituted collateral must conform to [17-6-103](#) and have a market value at least sufficient for compliance with subsection (1). If the substituted securities are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state

treasurer and to the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution.

**UNRESOLVED ISSUES:** None

**ALTERNATIVES:** As suggested by the City Commission

**FISCAL EFFECTS:** The city is sufficiently pledged.

Attachments:

[Depository Bonds & Securities 0922.pdf](#)

Report compiled on: October 11, 2022

**DEPOSITORY BONDS AND SECURITIES**  
**AS OF**  
**September 30, 2022**

	<u>MATURITY</u>	<u>CUSIP NO/LOC NO.</u>	<u>TOTAL AMOUNT</u>
<b>US BANK</b>			
<b>All Accounts</b>			
Federal Deposit Insurance Corporation-Operating Accts			\$ 250,000.00
LOC-FHLB Cincinnati	08/15/2022	567478	<u>\$ 15,000,000.00</u>
<b>TOTAL – US Bank</b>			<u>\$ 15,250,000.00</u>

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 the First Security Bank and 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 September 30, 2022, by the banks of Bozeman and approve and accept the same.

\_\_\_\_\_  
 CYNTHIA L. ANDRUS, Mayor

\_\_\_\_\_  
 TERRY CUNNINGHAM, Deputy Mayor

\_\_\_\_\_  
 I-HO POMEROY, Commissioner

\_\_\_\_\_  
 CHRISTOPHER COBURN, Commissioner

\_\_\_\_\_  
 JENNIFER MADGIC, Commissioner

# PLEGGED SECURITIES AND CASH IN BANK

As of  
September 30, 2022

## US BANK

Total Cash on Deposit	<u>\$3,777,318.86</u>
FDIC Coverage	\$250,000.00
Amount Remaining	<u>\$3,527,318.86</u>
Pledges Required 104%	<u>\$3,668,411.61</u>
Actual Pledges	\$15,000,000.00
Over (Under) Pledged	<u>\$11,331,588.39</u>

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

# Memorandum

**REPORT TO:** City Commission

**FROM:** Jesse DiTommaso, Economic Development Specialist  
David Fine, Economic Development Program Manager  
Brit Fontenot, Economic Development Director

**SUBJECT:** Authorize the City Manager to Sign a Task Order 5 with Baker Tilly for Financial Feasibility and Needs Analysis on Tax Increment Financing Assistance Request from Virga Capital

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Agreement - Vendor/Contract

**RECOMMENDATION:** Authorize the City Manager to sign a task order 5 with Baker Tilly for financial feasibility and needs analysis on tax Increment financing assistance request from Virga Capital.

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

**BACKGROUND:** The City of Bozeman received a request for TIF assistance from Virga Capital for the proposed construction of the Lumberyard, a planned ground-up development and related public infrastructure within the Midtown Urban Renewal District. The Developer has indicated there is a financial gap based on the current project scope to support the costs of infrastructure and tax increment financing could be a tool to assist with closing a gap. Baker Tilly is currently under contract with the City to advise staff on financial matters related to TIF assistance. Services specific to this request for TIF assistance are outlined in the attached scope of work.

**UNRESOLVED ISSUES:** None at this time.

**ALTERNATIVES:** At the recommendation of the City Commission.

**FISCAL EFFECTS:** The work as described will be completed with an estimated fee in the range of \$6,000-\$7,500, which is available in the Economic Development Department budget.

Attachments:

[Bozeman Proposed Lumberyard Virga Capital TIF Project Financial Needs Analysis Scope of Work 100322.pdf](#)

Report compiled on: October 11, 2022



## Scope of Work

### The Lumberyard Project within Midtown Urban Renewal District TIF Assistance Request from Virga Capital to the City of Bozeman, Montana

#### Financial Feasibility and Needs Analysis

October 2022

The City of Bozeman (the “City”) received a request for TIF assistance from Virga Venture I LLC/Virga Capital (the “Developer”) for the proposed development of The Lumberyard, a planned ground-up development located at the northwest corner of N. 11th Avenue and Patrick Street, extending west to N. 15th Avenue and north to Tschache Lane. The project site, situated in the Midtown Urban Renewal District, is currently a vacant parcel of land. The project includes a mix of uses at completion, including approximately 303 market rate multifamily housing units and 90 units of LIHTC housing. Unit mixes will include studio, 1-bedroom, 2-bedroom and 3-bedroom units. The total development cost is estimated to be approximately \$145 million. The Developer has indicated there is a financial gap of approximately \$8.7 million based on the current project scope and budget. Tax increment financing could be a tool the City may consider utilizing to assist with financing a portion of the project costs and closing the financing gap. The purpose of this document is to outline a scope of work, estimated fee and time frame for completion. Baker Tilly’s proposed scope of work includes the following activities:

#### Phase 1: Preliminary Revenue Projections and Financial Feasibility

##### **Objectives**

- To prepare preliminary tax increment revenue projections based on developer provided information
- To provide initial project financial feasibility

##### **Analysis**

- 1) Preparation of tax increment revenues
  - a. Review developer-supplied information for reasonableness
  - b. Forecast the projected tax increment revenues to be generated over the life of the district based on those assumptions
    - i. Developer provided total development costs and project assumptions
    - ii. Tested against available comparable-type developments
    - iii. Estimated range of available revenues based on valuations
  - c. Financial Feasibility Review
    - i. Assess the sufficiency of tax increment revenues to support costs

##### **Deliverable**

- Summary of preliminary revenue projections and initial feasibility
- Preliminary financial feasibility analysis

## **Phase 2: Financial Review and Needs Analysis and Development Agreement**

### **Objectives**

- To review and analyze the request for assistance as related to the proposed development project to determine necessity and appropriateness
- To assist in negotiations of the development agreement, as applicable
- To provide draft term sheet

### **Analysis**

- 1) Financial Feasibility Review
  - a. Suggest alternative assumptions and provide sensitivity analysis
  - b. Assess the sufficiency of the tax increment revenues to support costs with considerations for timing of bond issuance to provide financial support
  - c. Prepare cash flow analysis based on sensitivity analysis
- 2) Financial Needs (But For) Analysis
  - a. Review developer information and comment on the reasonableness of assumptions
    - i. Suggest alternative assumptions and provide sensitivity analysis as necessary
  - b. Complete a rate of return calculation
    - i. Cash-on-Cash Return
    - ii. Internal Rate of Return
    - iii. Identify alternative assumptions if appropriate
    - iv. Recalculate the return with alternative assumptions, as necessary
    - v. Define appropriate level of assistance based on developer's rate of return
  - c. Compare developer rate of return to the "market" return for similar projects, comment on reasonableness of return considering type of project, current market and developer at risk equity
  - d. Complete sensitivity analysis with respect to developer return and need for assistance (as appropriate)
- 3) Development Agreement Negotiations
  - a. Provide proposed business points between the City and the developer in conjunction with City staff
  - b. Assist City staff with review of developer request as it relates to business points for the development agreement to maximize redevelopment and maintain City security – including:
    - i. Pay as You Go Financing shifts financing risk from City to developer
    - ii. Look Back Provisions to verify actual returns to projected returns following project commencement
    - iii. Claw Back Provisions to ensure developer proceeds as proposed
  - c. Assist in negotiation of the development agreement, and prepare financing exhibits as necessary

### **Deliverable**

- Financial analysis with determination of need for public assistance
- Preliminary term sheet with recommended public assistance amounts

### **Compensation**

The work as described will be completed with an estimated fee in the range of \$6,000 - \$7,500. Excluded from the fee indicated above is any out-of-pocket expenses such as travel, copies, faxes, conference calls, or other expenses necessary to complete the project. Additional work

requested and authorized by the City outside the scope of services described in this proposal will be invoiced at our standard hourly rates.

**Completion Date**

Upon full receipt of the requested information, Baker Tilly will complete Phase 1 of the above work processes and outcomes within 1-3 weeks, subject to receipt of all information. The remaining phases and steps of analysis will be subject to outcomes of phase 1 and timing needs of both the City and developer. We will be successful in meeting the requested time frames for completion recognizing it is highly dependent on the timing and completeness of the information received. A delay in receipt of critical material may result in an extension of the completion date.

Sincerely,

Mikaela Huot, Director

Signature Section:

The services and terms as set forth in this Scope Appendix are agreed to on behalf of the Client by:

City of Bozeman

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

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

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

## **Financial Feasibility Review: Additional Details for Financial Analysis**

### **Project Details**

- To include # of hotel rooms, commercial square footage, etc.
- To include cost of construction for each development type
- To include information for any commercial, civic or other uses
- To include site improvement and public infrastructure costs
- To include detailed breakdown of all costs

### **Project Phasing**

- To include commencement and completion for each building construction, or each site improvement, or public infrastructure
- To include date for sale of unit or lease of unit, occupancy start and full occupancy, etc.

### **Project Financing**

- To include development of complete sources and uses of funds
- To include detail on bank financing, i.e., principal, term, rate
- To include equity amount and timing of equity in project
- To include take-out source of bank financing for construction period, if applicable
- To include letters of commitment or interest from financial institutions
- To include amount of public financing request, and form of request, i.e., bonds, pay-go-note, etc.
- To include gap amount to match public financing request (all equity and private sources are insufficient to pay all costs)
- To include description of and rationale behind proposed governmental financial assistance

### **Public Financing Revenue Assumptions**

- To include estimated assessed value per type of construction
- To include sales per s.f. estimates (if applicable)
- To include any growth assumptions

### **Project Operation**

- To include operating assumptions, etc.
- To include revenue and expense assumptions and increases
- To include reserve assumptions (capital, operating, etc.)
- To include rent and/or sale assumptions
- To include lease commission, sales commission assumptions
- To include complete operating pro-forma calculating internal rate of return with and without requested financial assistance
- To include sale assumptions in appropriate future year (10 or 15), including capitalization rate
- To include proposed tenants, job and wage information

### **General Information/Assumptions**

- Provide sources of data used in any of the above

# Memorandum

**REPORT TO:** City Commission

**FROM:** Josh Waldo, Fire Chief

**SUBJECT:** Authorize the City Manager to Sign a Fire Station Two Land Lease Agreement with Montana State University

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Agreement - Property

**RECOMMENDATION:** Authorize the City Manager and his / her designees to sign land lease agreement with Montana State University for Fire Station 2.

**STRATEGIC PLAN:** 3.1 Public Safety: Support high quality public safety programs, emergency preparedness, facilities, and leadership.

**BACKGROUND:** The City of Bozeman and Montana State University (MSU) have been working on a joint project to relocate Fire Station 2 to MSU campus. MSU has secured Board of Regents approval for a combined total of a 50 year lease for the proposed property and the City of Bozeman successfully passed a bond in November 2021 to construct the new station. The land lease agreement outlines all of the terms of the property lease and allows for the continuation of the construction project with an anticipated ground breaking set for Spring of 2023.

**UNRESOLVED ISSUES:** None at this time.

**ALTERNATIVES:** As suggested by the Commission

**FISCAL EFFECTS:** The land lease agreement calls for an annual lease payment in the amount of \$53,840.16 for the initial term which is 20 years.

Attachments:

[Fire Station 2 Ground Lease.pdf](#)

Report compiled on: October 4, 2022

## LAND LEASE AGREEMENT

This Land Lease Agreement made and entered into by and between MONTANA STATE UNIVERSITY (hereinafter referred to as "MSU") and the CITY OF BOZEMAN, a self-governing municipality operating pursuant to its Charter and the laws of the state of Montana, (hereinafter referred to as City):

WITNESSETH:

MSU hereby leases to City, and City hereby takes from MSU that portion of the land consisting of approximately 1.2 acres to the east of the intersection of S. 7<sup>th</sup> Ave. and Kagy Blvd., further depicted on Exhibit A attached hereto, (the property leased by City is referred to herein as the "Leased Premises") which includes a building to be constructed, the grounds surrounding the building, parking areas, and driveways, and other appurtenant structures affiliated with the primary building (the "Improvements"). Exact street address will be determined upon completion of Improvements. At the time of commencement of the term of the lease, the property will be vacant and will not contain any improvements.

- In Process
1. **LEASE TERM:** The initial term for the lease shall be for 20 years with three automatic 10-year extensions as approved by the MUS Board of Regents in Exhibit B. Neither party is required to take any action for an extension to be effective. The initial term will commence on October 1, 2022. (the "Commencement Date").
  
  2. **RENTAL RATE:**
    - a. City agrees to pay MSU without any prior demand therefore and without any deduction or set-off whatsoever, a Fixed Minimum Rent, as shown in subsection b, below, in advance on the first day of each Lease Year. Payment(s) will be prorated for the length of this agreement until the City of Bozeman receives a Certificate of Occupancy for the facility.
  
    - b. During the Lease Term the annual "Fixed Rent" for the initial term shall be \$53,840.16 or \$1.03 PSF. For each renewal, the parties shall conduct negotiations starting no later than 90 days prior to the renewal term to negotiate a fair rental rate.
  
    - c. The term "Lease Year" shall mean each twelve (12) consecutive calendar month period of the Lease Term, however, the first Lease Year shall commence on the Commencement Date, provided that if the Commencement Date shall be on any day other than the first of the month the first Lease Year shall include said partial month and the twelve (12) succeeding calendar months.
  
    - d. City shall pay all payments, expenses, costs, and charges of every kind and nature in connection with the operation, maintenance, upkeep, and preservation of the Leased Premises and Improvements and all payments required to be made and to

keep said Lease free and clear of and from all liens and encumbrances of every description, and the preservation and maintenance of the Leased Premises and every part thereof in a good condition and repair and such costs shall be borne and paid by City during the entire Lease Term, or any extension thereof.

3. **ACCEPTANCE OF PREMISES:** City acknowledges that it has fully inspected the Leased Premises and City hereby accepts the Leased Premises as suitable for the purposes for which the same are leased. MSU is not obligated hereunder to perform any construction for City, other than what is described on said Exhibit "B," if any.
4. **USE OF PREMISES:** The Leased Premises shall be used and occupied only for the purpose of construction and operation of a fire station/public safety center or for other public uses reasonably related to the same.
5. **COMPLIANCE WITH LAW:** City, at its sole cost and expense, shall comply with all governmental laws, ordinances, and regulations applicable to the use of the Leased Premises, and at its sole cost and expense shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances in or upon, or connected with the Leased Premises.
6. **MAINTENANCE:**
  - a. Except as specifically set forth herein, all maintenance of the Leased Premises shall be done by City at City's sole cost and expense.
  - b. City shall at its sole cost and expense and risk maintain all parts of the Leased Premises and the grounds as delineated on Exhibit A. City shall provide MSU with copies of all inspections and reports of maintenance upon reasonable request. City shall be responsible for all damage caused by City, its employees, agents, or its invitees to the Leased Premises, including but not limited to the parking lot area.
  - c. City shall, throughout the Lease term, take good care of the Leased Premises and keep it free from waste and nuisance; and, except as may be agreed upon by the Parties, shall deliver up the premises clean and neat at the termination of this Lease in as good repair and condition as of the date of execution of this lease, damage by fire, tornado, or other casualty excepted. City shall maintain and repair all aspects of the Leased Premises including but not limited to light poles, driveways, asphalt, as well as snow removal from all driveways, sidewalks and other paved areas and maintenance of the driveway, gravel, sidewalks, truck aprons, exterior fencing, dolly pads and paved areas including asphalt resurfacing and seal coating as may be required, debris removal, concrete repair, and all landscaping and weed control and any underground utilities and detention pond repairs.

- d. In the event City should neglect to maintain the Premises as set forth herein and fails to commence repairs within 90 days after written notice, MSU shall have the right (but not the obligation) to cause repairs or corrections to be made and any reasonable costs therefore shall be payable by City to MSU as additional rental on the next rental installment date.

7. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS:

- a. No additional alterations, additions or improvements beyond the approved construction plans depicted on Exhibit C, except for alterations, additions, or improvement the City determines necessary to address emergency conditions or that, in the discretion of the City, are necessary to provide fire and emergency response or are supportive of City functions on the Lease Premises shall be made by City without MSU's written approval. Alternations, additions, or other improvements beyond the above must be approved by MSU which approval shall not be unreasonably withheld or delayed.
- b. City, at its sole cost and expense, shall complete all of City's Improvements. City's Improvements shall be done in a good and workmanlike manner with materials of good quality and pursuant to appropriate governmental permits and in compliance with applicable laws.
- c. City's construction shall not unreasonably interfere with the conducting of business by MSU; however, MSU recognizes the City's construction of Improvements on the Leased Premises and operation of the Leased Premises as a fire and public safety facility will create noise, dust, glare, and others normal and incidental to the operation of a fire station, public safety facility, and related operations.
- d. During the Lease Term, and only upon request by MSU, City shall provide MSU with waivers of liens for any improvements done by City or City's contractors to the Leased Premises or shall bond or insure over any mechanic's liens with bonding or insurance companies reasonably acceptable to MSU. In the event City fails to provide said requested lien waivers or bond or insurance and MSU is required to pay for such improvements to remove or avoid the filing of liens, then any such sums paid by MSU shall be payable by City to MSU on demand.
- e. All of City's contractors and subcontractors of its contractors must carry liability insurance with at least \$1,000,000 single limit broad form coverage and worker's compensation insurance, and each such insurance policy shall name MSU as an additional insured. Each such contractor and subcontractor must submit to MSU proof of such insurance before the same may begin work on the Leased Premises.
- f. During construction of improvements, City shall carry property coverage for construction of the Improvements, liability coverage, and worker's compensation coverage, in such amounts as are reasonably acceptable to MSU, provided that the



Premises to its original condition. If, however, the City and MSU desire to leave all or a portion of the Improvements in place upon lease termination MSU shall collaborate with City to achieve legislative approval related to transition and operation of the Improvements.

- b. Extension. MSU recognizes the significant public investment made by the City in constructing the Improvements and as such will use best efforts to work with the City in a reasonable time prior to the expiration of the Lease term to seek administrative or legislative approval, if necessary, to continue or extend this Lease, if so desired by the City.

13. **HOLDING OVER:** City shall pay MSU the latest fixed minimum rent then applicable for each month or portion thereof City retains possession of the Leased Premises, or any portion thereof, after the expiration or termination of this Lease. The provisions of this Article shall not constitute a waiver by MSU of any re-entry rights of MSU hereinbefore or by law provided.

14. **DEFAULT BY CITY:**

- a. The following events shall be deemed to be events of default by City under this Lease:
  - i. City shall fail to pay any installment of Fixed Minimum Rent on the date that same is due and such failure shall continue for a period of sixty (60) days after MSU delivers written notice to City.
  - ii. City shall fail to comply with any term, condition or covenant of this Lease, other than the payment of rent, and shall not cure such failure within 90 days of delivery of written notice provided, however, that if the default cannot with due diligence be cured prior to the expiration of said 90 day period and if City commences within 180 days from the date of delivery of said notice to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default, then City shall not be in default.
- b. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to MSU hereunder or of any damages accruing to MSU by reason of the violation of any of the terms, conditions, and covenants herein contained.

15. **QUIET ENJOYMENT:** MSU warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that City, on payment of all Fixed Minimum Rent and performing the covenants herein contained, shall peaceably and quietly have, hold, and enjoy the Leased Premises during the full term of this Lease and any extension or renewal hereof.

16. **WAIVER OF DEFAULT:** The waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall not be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition, or covenant contained herein.

17. **FORCE MAJEURE:** The Parties shall be allowed to delay the performance of any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean delays occasioned or caused by MSU, Acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the Parties and which by the exercise of due diligence the Parties are unable, wholly or in part, to prevent or overcome.

18. **ENVIRONMENTAL:**

- a. City, in the regular course of its business on the Leased Premises, may receive and distribute merchandise containing Hazardous Materials (as defined herein). City will indemnify, defend and save MSU harmless from any and all actions, proceedings, claims, costs, expenses and losses of any kind, including, but not limited to, those arising from injury to any person, including death, damage to or loss of use or value of real or personal property, and costs of investigation and cleanup or other environmental remedial work, which may rise in connection with the existence of Hazardous Materials brought on to the Leased Premises since the Commencement Date.

The term "Hazardous Materials" when used herein, shall include, but shall not be limited to any substances, materials or wastes that are regulated by any local governmental authority, the state of Montana, or the United States of America because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including asbestos and including any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table, as amended 49 CFR 172.101, or in the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 USC sections 9601 et seq., or the Resources Conservation and Recovery Act, as amended, 42 USC sections 6901 et seq., or any other applicable governmental regulation imposing liability or standards of conduct concerning any hazardous, toxic or dangerous substances, waste or material, now or hereafter in effect.

City shall comply with applicable laws related to any fuel and oil leakage or spills and disposal of any solvents, soaps and chemicals used in truck washing operations, arising from or out of City's use of the Leased Premises. For the purposes of this section, the Leased Premises shall include all buildings and improvements, all loading platform areas, all parking and driveway areas, any

sidewalks adjacent on the Leased Premises, the subsurface of the Leased Premises or the forgoing, including without limitation, the ground water.

- b. City does hereby indemnify, defend and hold harmless MSU from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge or release of Hazardous Materials that occurs during the Lease Term, at or from the Leased Premises, or which arises at any time from City's or City's agents, employees, or contractor's use or occupancy of the Leased Premises, or from City's or City's agents, employees, or contractor's failure to provide all information, make all submissions, and take all steps required by all applicable governmental authorities. City's obligations and liabilities under this paragraph shall survive the expiration of the Lease Term.
- c. City shall promptly advise MSU in writing as to any deposit, spill, discharge, or release of Hazardous Materials that occurs, or which arises from City's use or occupancy of the Leased Premises.
- d. City will use the Leased Premises in accordance with all applicable federal, state, and local laws and regulations, including but not limited to the storm water discharge rules and permits. This will include registration fees, monitoring, and all improvements, alterations and devices as may be required by the governmental authorities responsible for monitoring and controlling said regulations and laws.

19. EXHIBITS: All exhibits, attachments, annexed instruments, and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied at full length herein.

**EXHIBIT "A" -- SITE PLAN**

**EXHIBIT "B" – CONSTRUCTION PLANS**

- 20. USE OF LANGUAGE: Words of any gender used in the Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.
- 21. CAPTIONS: The captions or headings of paragraphs in this Lease are inserted for convenience only and shall not be considered in construing the provisions hereof if any questions of intent should arise.
- 22. SUCCESSORS: The terms, conditions, and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities, and duties of MSU under this Lease, including but not limited to any notices required or permitted to be delivered by MSU to

City hereunder, may, at MSU's option, by exercised or performed by MSU's agent or attorney.

23. REPRESENTATIVES AND NOTICES:

- a. City's Representative: The City's Representative for the purpose of this Agreement shall be the Bozeman City Manager 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, MSU 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. MSU's Representative: The MSU's Representative for the purpose of this Agreement shall be the Associate Vice President of Facilities Management or such other individual as MSU shall designate in writing. Whenever direction to or communication with MSU is required by this Agreement, such direction or communication shall be directed to MSU's Representative; provided, however, that in exigent circumstances when MSU's Representative is not available, City may direct its direction or communication to other designated MSU 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.

24. SEVERABILITY: If any term or provision of this Lease shall to any extent be held to be invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

25. LATE CHARGE: In the event MSU does not receive from City any installment of rent due hereunder on or before the fifteenth day after such payment is due, City shall be liable for a late charge in an amount equal to ten percent (10%) of the amount past due.

26. NO WAIVER OF RIGHTS: MSU's delay in enforcing any of its rights and remedies hereunder shall not be deemed a waiver of said rights and remedies and shall not preclude MSU from enforcing any of said rights and remedies at a later date.

27. 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.

28. APPLICABLE LAW: The parties agree that this Agreement is governed in all respects by the laws of the State of Montana.

29. 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.

30. 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.

Dated:

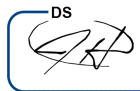
Montana State University:

City of Bozeman:

By: Terry Leist  
 Its: Vice President of Administration and Finance

By: Jeff Mihelich  
 Its: City Manager

Initialed By:  
**MSU**  
 John How  
 AVP of Facilities Management



**COB**  
 Josh Waldo  
 Fire Chief

Aurora Dreyer  
 Real Estate Manager



Greg Sullivan  
 City Attorney

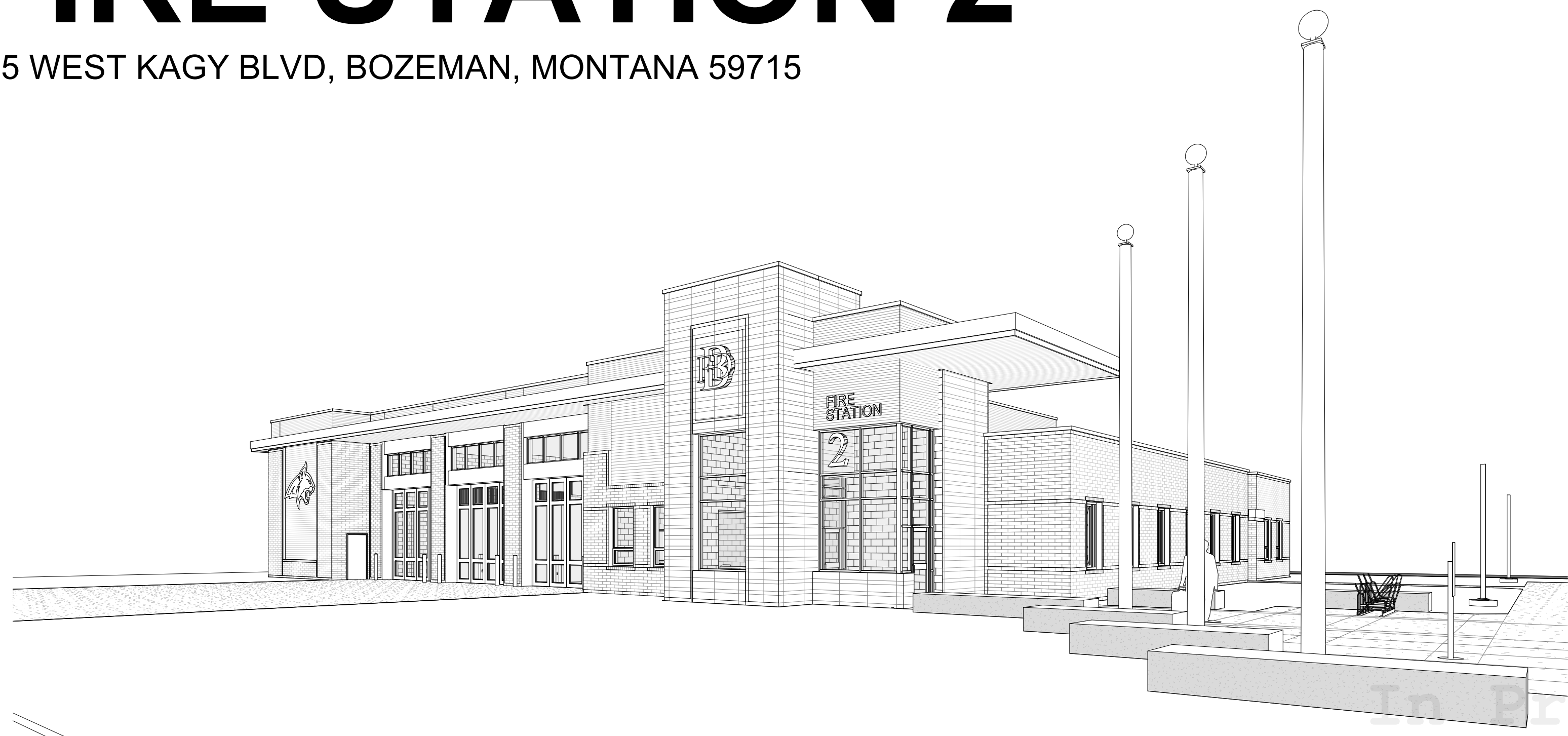
Kellie Petersen  
 Legal Counsel



# EXHIBIT A

# CITY OF BOZEMAN FIRE STATION 2

575 WEST KAGY BLVD, BOZEMAN, MONTANA 59715



FIRE STATION ENTRY PERSPECTIVE

**OWNER:**  
CITY OF BOZEMAN  
121 NORTH ROUSE AVENUE, BOZEMAN, MONTANA 59715

**ARCHITECT:**  
THINKONE  
101 EAST MAIN STREET, SUITE A, BOZEMAN, MONTANA 59715

**ASSOCIATE ARCHITECT:**  
TCA ARCHITECTURE + PLANNING  
6211 ROOSEVELT WAY NORTHEAST, SEATTLE, WASHINGTON 98115

**CIVIL:**  
MORRISON-MAIERLE, INC  
2880 TECHNOLOGY BOULEVARD, BOZEMAN, MONTANA 59715

**STRUCTURAL:**  
MORRISON-MAIERLE, INC  
2880 TECHNOLOGY BOULEVARD, BOZEMAN, MONTANA 59715

**MECHANICAL/PLUMBING/ELECTRICAL:**  
ASSOCIATED CONSTRUCTION ENGINEERING, INC  
12 NORTH BROADWAY, BELGRADE, MONTANA 59714

**FIRE PROTECTION:**  
PYRALIS SPRINKLER DESIGN, LLC  
601 NIKLES DRIVE, SUITE 3, BOZEMAN, MONTANA 59715

**TECHNOLOGY:**  
ACCESS CONSULTING, PC  
2300 REGENT STREET, SUITE 207, MISSOULA, MONTANA 59801

## SCHEDULE OF DRAWINGS:

GENERAL	
NO	DRAWING SHEET
A0.0	COVER SHEET
A0.1	CODE PLANS
SITE DEVELOPMENT	
NO	DRAWING SHEET
SD1.0	SITE PLAN
SD1.0F	SITE PLAN - FUTURE KAGY RECONSTRUCTION
CIVIL	
NO	DRAWING SHEET
C0.0	SITE TOPO WITH AERIAL
C1.0	CIVIL TOPOGRAPHIC AND UTILITY SURVEY
C2.0	SITE AND UTILITY PLAN
C3.0	SITE GRADING AND DRAINAGE PLAN
LANDSCAPE	
NO	DRAWING SHEET
L1.0	SCHEMATIC LANDSCAPE PLAN
STRUCTURAL	
NO	DRAWING SHEET
S1.0	SCHEMATIC STRUCTURAL PLANS
ARCHITECTURAL	
NO	DRAWING SHEET
A1.0	FIRST FLOOR PLAN
A1.1	SECOND FLOOR PLAN
A1.2	SCHEMATIC FLOOR FINISH PLANS
A1.3	SCHEMATIC CEILING FINISH PLANS
A1.4	SCHEMATIC WALL/PARTITION PLANS
A2.0	EXTERIOR ELEVATIONS
A2.1	EXTERIOR ELEVATIONS
A2.2	EXTERIOR PERSPECTIVES
A3.0	BUILDING SECTIONS
A3.1	WALL SECTIONS
MECHANICAL AND PLUMBING	
NO	DRAWING SHEET
M1.0	SCHEMATIC MECHANICAL AND PLUMBING PLANS

## GENERAL NOTES

ALL WORK INCLUDED IN THIS CONTRACT, SHALL COMPLY WITH THE LATEST EDITION OF INTERNATIONAL BUILDING CODE, INTERNATIONAL PLUMBING CODE, INTERNATIONAL MECHANICAL CODE, ICC ELECTRICAL CODE, AND ALL OTHER LAWS, CODES, OF LOCAL, COUNTY, STATE, AND LOCAL JURISDICTION INVOLVED.

THE GENERAL CONTRACTOR SHALL VISIT THE SITE PRIOR TO STARTING THE WORK. THE CONTRACTOR SHALL VERIFY GRADES, SITE CONDITIONS, AND COMPARE THAT WITH THE DIMENSIONS SHOWN ON THE DRAWINGS. WHERE CONFLICT EXISTS, THE CONTRACTOR SHALL NOTIFY THE ARCHITECT UPON RECOGNITION OF ANY DISCREPANCY.

THE CONTRACTOR SHALL CAREFULLY STUDY ALL PLANS AND DRAWINGS, AND SHALL REPORT IMMEDIATELY TO THE ARCHITECT ANY ERRORS, INCONSISTENCIES OR OMISSIONS THEY MAY DISCOVER. THE CONTRACTOR SHALL NOT WORK WITHOUT DRAWINGS. THE CONTRACTOR SHALL CONSULT THE ARCHITECT OR SUBMIT SHOP DRAWINGS AND/OR LITERATURE TO THE ARCHITECT FOR APPROVAL PRIOR TO STARTING THE WORK.

THE GENERAL CONTRACTOR SHALL GIVE ALL NOTICES AND SHALL COMPLY WITH ALL LAWS, ORDINANCES, RULES, REGULATIONS, AND ORDERS OF PUBLIC AUTHORITY BEARING ON THE PERFORMANCE OF THE WORK. IF THE CONTRACTOR OBSERVES THAT ANY OF THE ONTRACT DOCUMENTS ARE AT VARIANCE THEREWITH IN ANY RESPECT THEY SHALL PROMPTLY NOTIFY THE ARCHITECT OF ANY CHANGES REQUIRING ADJUSTMENT WITH APPROPRIATE MODIFICATION.

ONLY APPROVED 'CONSTRUCTION SET' MARKED DRAWINGS INCORPORATING ALL ADDENDUM AND DIMENSION CLARIFICATIONS SHALL BE USED DURING THE EXECUTION OF THE WORK.

THE CONTRACTOR SHALL USE WRITTEN DIMENSIONS ONLY, OR AS DIRECTED BY ARCHITECT. THE CONTRACTOR SHALL NOT SCALE DRAWINGS.

CROSS REFERENCES SHOWN ON DRAWINGS DO NOT NECESSARILY INDICATE ALL LIKE CONDITIONS AND DO NOT LIMIT APPLICATION OF ANY DRAWING OR DETAIL. THEY MAY APPLY TO OTHER, SAME, OR SIMILAR CONDITIONS NOT REFERENCED.

INTERIOR WALL DIMENSIONS (FOR NEW WALLS ONLY) ARE TO FACE OF STUD FRAMING UNLESS OTHERWISE NOTED.

SECTION AND INTERIOR ELEVATION DIMENSIONS ARE TO THE TOP OF CONCRETE OR METAL DECKING UNLESS OTHERWISE NOTED.

CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFICATION AND COORDINATION OF SUBCONTRACTORS WORK TO SECURE COMPLIANCE OF DRAWINGS AND SPECIFICATIONS, THE ACCURATE LOCATION OF STRUCTURE MEMBERS, AND OPENINGS FOR MECHANICAL, ELECTRICAL, STAIRS, ELEVATORS, AND MISCELLANEOUS EQUIPMENT.

CONTRACTOR SHALL VERIFY SIZES AND LOCATIONS OF ALL OPENINGS FOR MECHANICAL AND ELECTRICAL EQUIPMENT WITH RESPECTIVE SUB-CONTRACTORS, AS WELL AS SHOP DRAWINGS REVIEWED BY THE ARCHITECT.

CONTRACTOR SHALL VERIFY ALL ROUGH-IN DIMENSIONS FOR EQUIPMENT AND PROVIDE ALL BUCK-OUT BLOCKING AND BACKING REQUIRED BY THIS CONTRACT AND OTHERS.

WHERE PIPING, CONDUIT, AND/OR DUCTS PASS THROUGH FIRE RATED WALLS, PACK AROUND OPENINGS WITH SAFING OR SPRAY INSULATION. PROVIDE FIRE DAMPERS WHERE NECESSARY.

## NOTES AND SYMBOLS

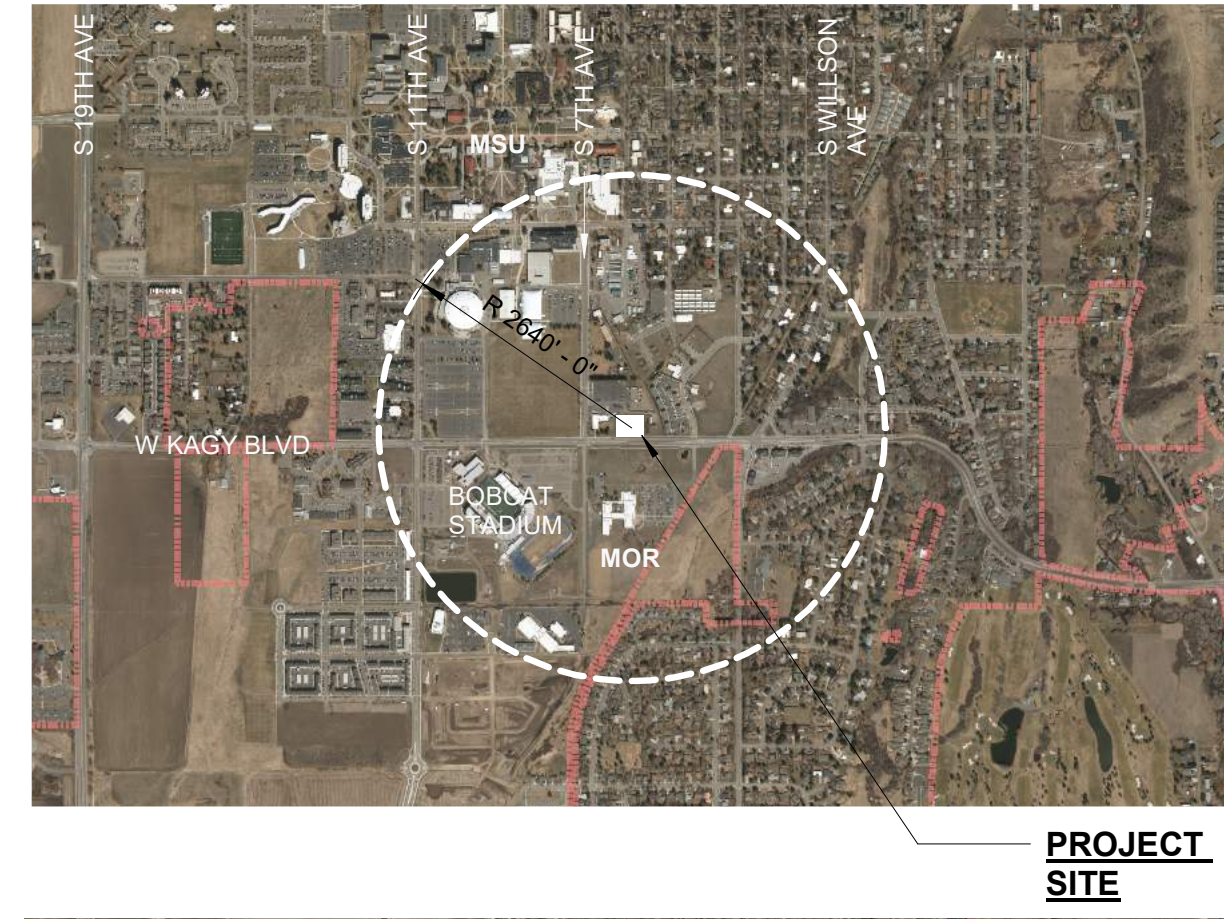
	DETAIL REFERENCE		DOOR NUMBER
	SECTION CUT		WINDOW TYPE
	INTERIOR ELEVATION		NOTE REFERENCE
	ROOM NUMBER		WALL TYPE

## ABBREVIATIONS

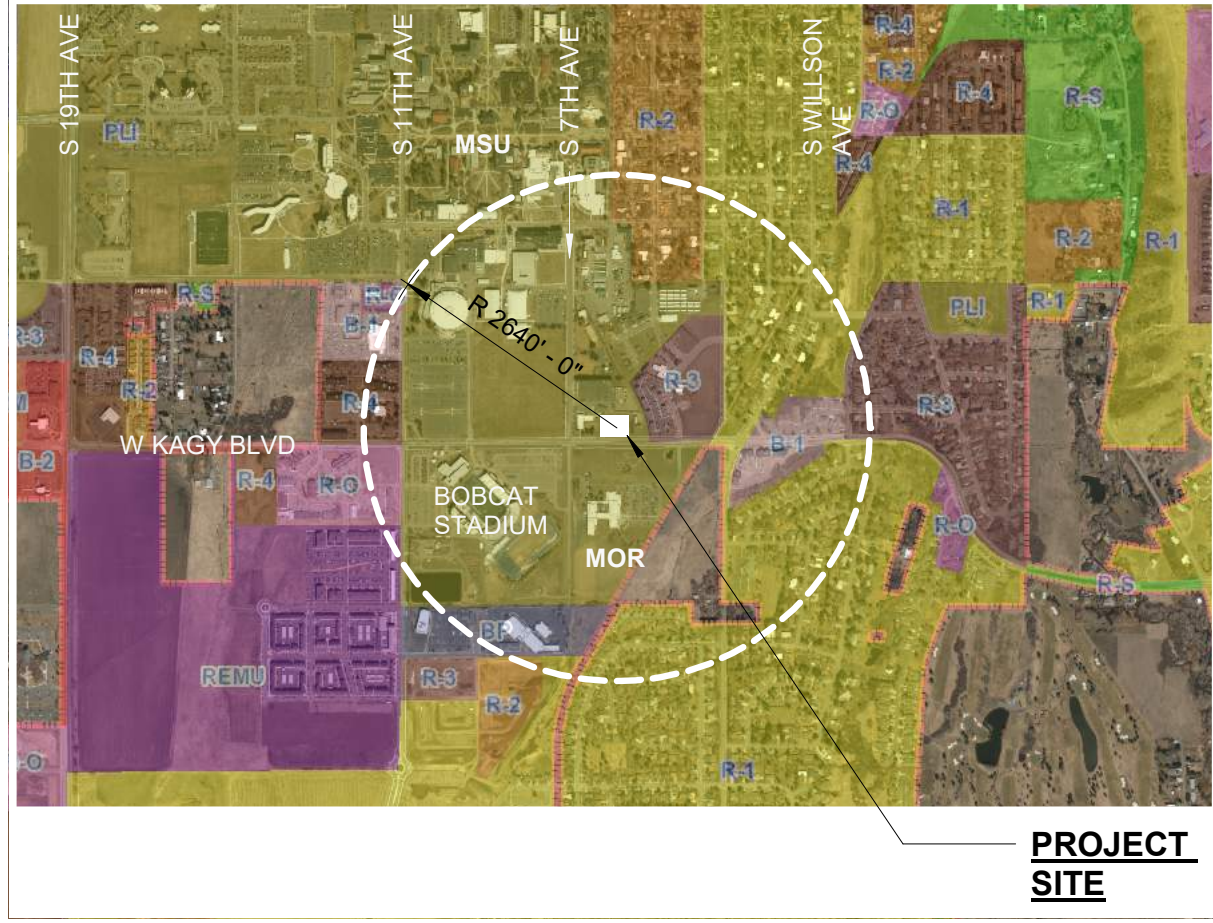
ALUM. ANN.	ALUMINUM ANNUNCIATOR	MECH. MFG. M.R. MTL.	MECHANICAL MANUFACTURER MOISTURE RESISTANT METAL
BD. BLCK'G.	BOARD BLOCKING	N.I.C.	NOT IN CONTRACT
CAB. CLR.	CABINET CLEARANCE	O.C.	ON CENTER
BOARD COMP. CONC.	COMPOSITE CONCRETE	O.S.B.	ORIENTED STRAND
INSTALLED CONF. CORR.	CONFERENCE CORRIDOR	O.F.C.I.	OWNER FURNISHED CONTRACTOR
C.M.U. C.T. CUST.	CONCRETE MASONRY UNIT CERAMIC TILE CUSTOM	O.F.O.I.	OWNER FURNISHED OWNER INSTALLED
D.F. DISP. D.M. DR.	DRINKING FOUNTAIN DISPENSER DRYMARK BOARD DRAWER	P. P. LAM. P.T. PRE-FIN. PVC.	PAINT PLASTIC LAMINATE PAPER TOWEL PRE-FINISHED POLYVINYLCHLORIDE
E.I.F.S.	EXTERIOR INSULATION FINISH SYSTEM	R. REC.	RADIUS RECESSED RESTROOM REQUIRED
E.P.S. ELEV.	EXTRUDED POLYSTYRENE ELEVATION	S. S.C. S.F. S.V. SIM. SPECS. STOR.	STAIN SOLID CORE SQUARE FEET SHEET VINYL SIMILAR SPECIFICATIONS STORAGE
F.D. F.E. F.F. F.S. FLR. FDN. F.O.	FLOOR DRAIN FIRE EXTINGUISHER FINISH FLOOR FLOOR SINK FLOORING FOUNDATION FACE OF	T.B. T.O. T.P. TYP. V.B. V.C.T.	TACK BOARD TOP OF TOILET PAPER TYPICAL VAPOR BARRIER VINYL COMPOSITION
G.B. GWB. GYP. BD.	GYP. WALLBOARD GYP. WALLBOARD GYP. WALLBOARD	VER. W/ W/O	VERIFY WITH WITHOUT
TILE HC. H.M.	HANDICAPPED HOLLOW METAL	JAN.	JANITOR

## MATERIALS LEGEND

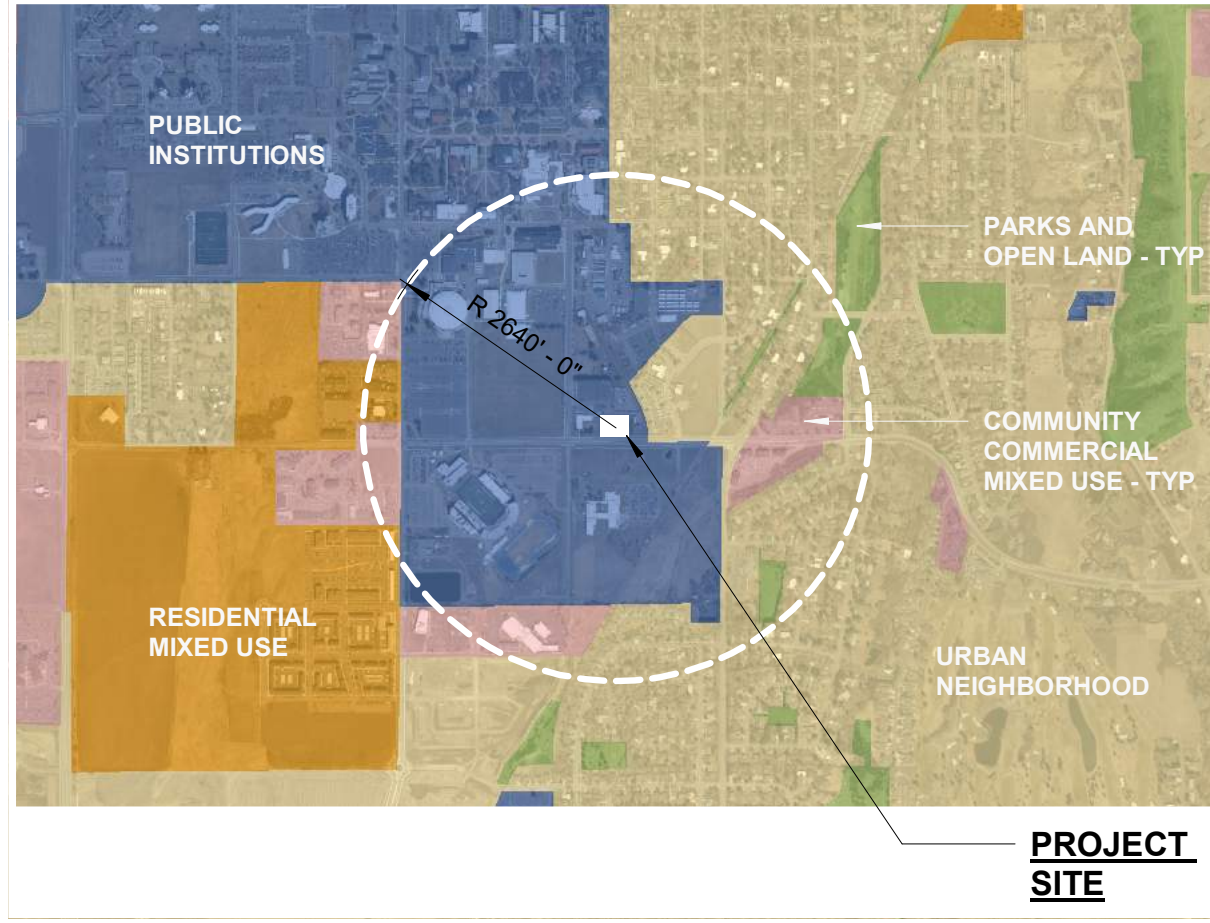
	STEEL		FINISH WOOD
	COMPACTED GRAVEL		RIGID INSUL.
	CONCRETE		BATT INSUL.
	BRICK		GYP. BD.
	C.M.U.		



VICINITY MAP  
1:24000



ZONING MAP  
1:24000



COMMUNITY PLAN FUTURE LAND USE MAP  
1:24000

## UDC SITE INFORMATION:

**PROPERTY ADDRESS:**  
575 WEST KAGY BOULEVARD, BOZEMAN, MONTANA, 59715

**LEGAL DESCRIPTION:**  
S13, T02, R05, E, COS 2728, PARCEL 1, ACRES 63.865 (MONTANA STATE UNIVERSITY)

**PROPOSED SITE AREA:**  
1.16 ACRES (50,384 SF)

**ZONING:**  
PLI (PUBLIC LANDS & INSTITUTIONAL)

**PERMITTED USE:**  
ESSNTIAL SERVICES (TYPE III)

**DEVELOPMENT AREA:**  
ENTIRE SITE AREA

**FORM & INTENSITY STANDARDS:**

**FLOOR AREA RATIO (FAR):**

FLOOR AREA	= 14,500 SF
SITE AREA	= 50,384 SF
FAR	= 0.29:1

**LOT COVERAGE:**

EXIST BUILDINGS	0 SF	0%	24%
PROPOSED BUILDINGS	12,100 SF	37%	
DRIVEWAY, CIRCULATION, PARKING	18,784 SF	37%	
LANDSCAPE	19,500 SF	38%	
PUBLIC ROW	0	0%	
TOTAL SITE	50,384 SF	100%	

**LOT AND FLOOR AREA STANDARDS:**  
NO REQUIREMENT

**BUILDING HEIGHT STANDARDS:**  
NO REQUIREMENT

**MINIMUM SETBACKS:**  
NO REQUIREMENT - ADJACENT DISTRICTS ARE PLI

**PARKING TABLE/CALCULATION:**

ACTUAL FLOOR AREA 14,500 SF

REDUCTIONS PER 38,540.010.1

(2) STORAGE	= 2,780 SF
(4) TOILETS/RESTROOMS/KITCHEN/BREAK ROOMS	= 1,608 SF
(7) STAIRWAYS	= 414 SF
(8) CORRIDORS	= 1,851 SF
(9) ENCLOSED AREAS FOR PARKING VEHICLES	= 4,851 SF
TOTAL:	= 11,504

TOTAL REDUCTIONS = NOT USED

MINIMUM PARKING 14,500-11,504=3,000SF / 250 = 12 SPACES

MAXIMUM PARKING (12 X 1.25 SPACES) = 15 SPACES

PROPOSED PARKING 15 SPACES + 1 VAN ACCESSIBLE

BICYCLE PARKING MIN REQUIRED PROPOSED = 4



FIRE STATION 2  
575 WEST KAGY BLVD, BOZEMAN, MONTANA 59715  
OWNER: CITY OF BOZEMAN

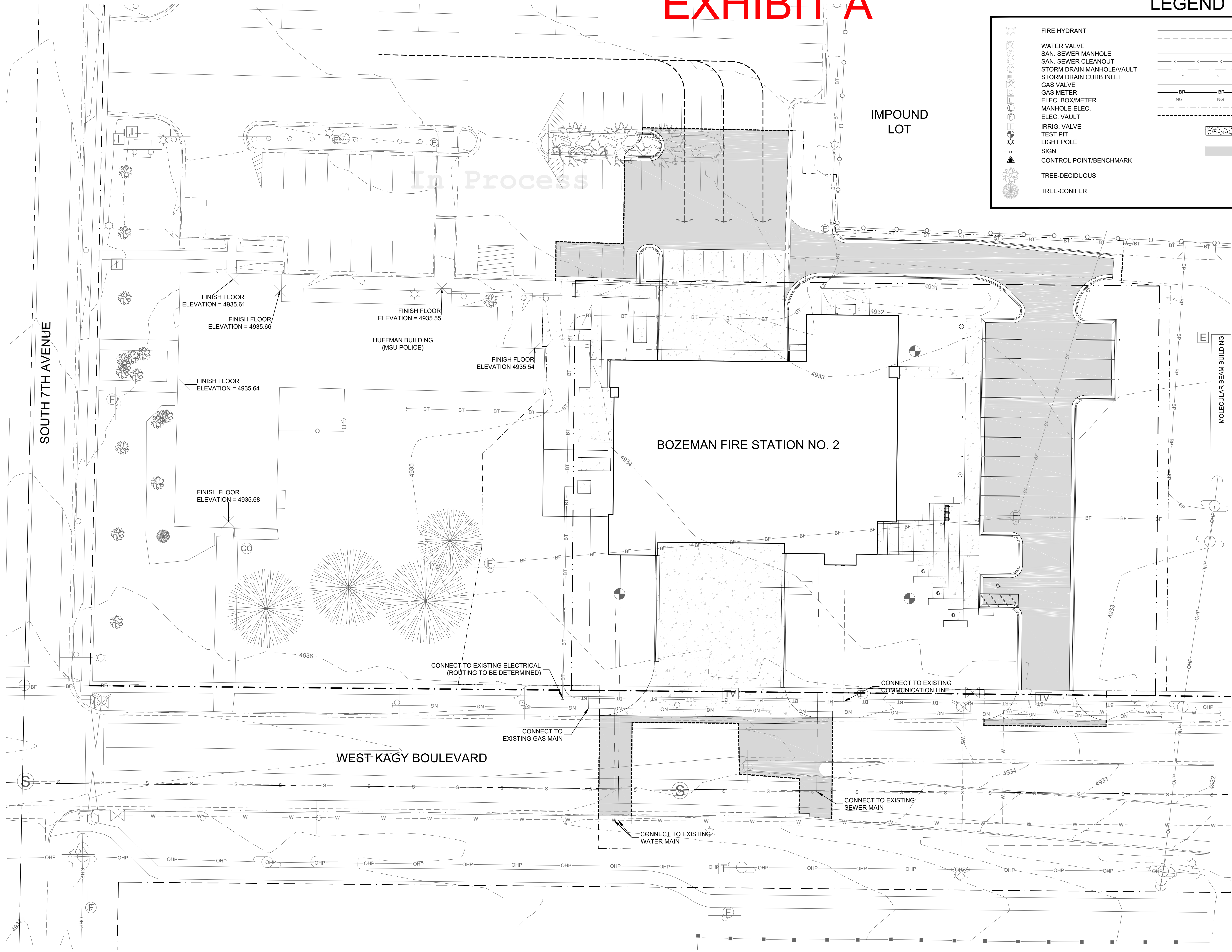
COPYRIGHT 2022 2105  
FEB 7, 2022  
SCHEMATIC DESIGN

# A0.0

# EXHIBIT A

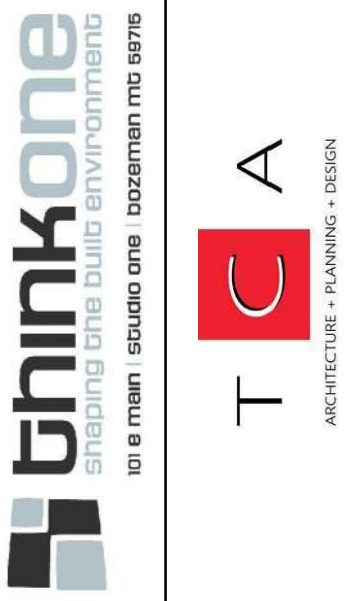
## LEGEND

	FIRE HYDRANT		BUILDING
	WATER VALVE		CULVERT
	SAN. SEWER MANHOLE		FLOWLINE
	SAN. SEWER CLEANOUT		BACK OF CURB/VERT CURB
	STORM DRAIN MANHOLE/VAULT		FENCE
	STORM DRAIN CURB INLET		STREAM
	GAS VALVE		ASPHALT EDGE
	GAS METER		SIDEWALK/CONCRETE
	ELEC. BOX/METER		ELEC. LINE
	MANHOLE-ELEC.		GAS LINE
	ELEC. VAULT		PROPOSED GRADING LIMITS
	IRRIG. VALVE		SAWCUT LINE
	TEST PIT		REMOVE EXISTING CONCRETE
	LIGHT POLE		REMOVE EXISTING ASPHALT
	SIGN		
	CONTROL POINT/BENCHMARK		
	TREE-DECIDUOUS		
	TREE-CONIFER		



### GENERAL NOTES

- ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH MONTANA PUBLIC WORKS STANDARD SPECIFICATIONS (MPWSS), SIXTH EDITION, AND CITY OF BOZEMAN MODIFICATIONS TO MPWSS, LATEST EDITION.
- UTILITIES ARE SHOWN THEIR APPROXIMATE LOCATIONS WITHOUT THE BENEFIT OF A "ONE CALL" DESIGN LOCATE, WHICH HAS NOT BEEN COMPLETED AT THIS TIME. UTILITY LOCATIONS REFLECT OBSERVED SURFACE STRUCTURES, SUPPLEMENTED BY MSU AND CITY OF BOZEMAN UTILITY MAPPING.
- LOCATIONS OF EXISTING OVERHEAD AND BURIED UTILITIES SHALL BE VERIFIED AND MARKED UNDER THE DIRECTION OF THE CONTRACTOR PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES AND SHALL REPAIR ANY FACILITIES DAMAGED DURING PERFORMANCE OF THE WORK.
- BEFORE WORKING IN THE PUBLIC RIGHT-OF-WAY, THE CONTRACTOR SHALL OBTAIN THE NECESSARY PERMITS, PROVIDE TRAFFIC CONTROL AND SCHEDULE ROAD CLOSURES, ALL IN ACCORDANCE WITH STATE AND LOCAL REGULATIONS AND PERMIT REQUIREMENTS.



PRELIMINARY DRAWINGS  
NOT FOR CONSTRUCTION



ISSUE	DATE	DESCRIP.

CITY OF BOZEMAN  
FIRE STATION 2  
TBD KAGY BLVD, BOZEMAN, MONTANA 59715  
SITE AND UTILITIES PLAN

COPYRIGHT 2022 2105  
02-04-2022  
SCHEMATIC DESIGN

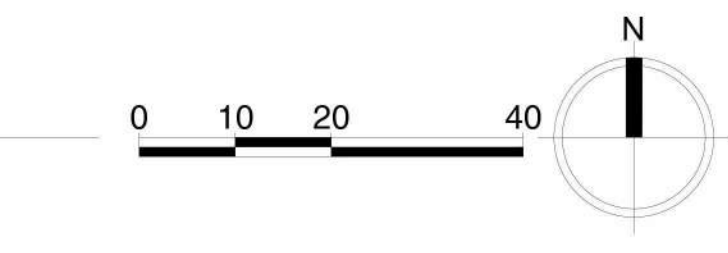
C-2

# EXHIBIT A

In Process



ORNAMENTAL GRASS DRIFT



filename: z:\bfd station 2\autocad\01\_sheets\1000\_bfd2\_landscape.dwg

checked by: TMS

drawn by: KHM/HU

1  
L000  
Landscape Plan  
1" = 20'-0"

Bozeman Fire Department Station #2  
Bozeman, Montana



date issue  
1/31/2022 Schematic Plan

Site Plan

# L1.0

March 11-12, 2021

**ITEM 193-2005-R0321****Request for Authorization to Lease Land to Bozeman Fire Department; Montana State University**

---

**THAT**

Consistent with BOR Policy 1003.6, the Board of Regents authorizes Montana State University to lease campus property for a new Bozeman Fire Station on MSU land.

---

**EXPLANATION**

1. Montana State University requests authority to enter into a lease with the City of Bozeman to lease land for a new, full-service fire station on MSU property near the Huffman Building (MSU Police Headquarters). The facility will be located along Kagy Boulevard, east of 7<sup>th</sup> Avenue.
2. MSU has requested a valuation for the land consistent with BOR Policy 1003.6.III.A and is awaiting the brokers appraisal to determine the fair market value of the land. Once the appraisal is completed, MSU will enter into formal negotiations with the City of Bozeman for a lease rate and term.
3. The proposed lease encompasses 1.1 acres of land and will accommodate a fire station approximately 13,500 square feet serving south Bozeman residential and commercial structures, as well as benefitting the MSU campus and the Montana University System.
4. Because this lease will be entered into with another public entity (City of Bozeman), MSU is requesting a one-time exception to BOR Policy 1003.6.III.A.2 and wishes to negotiate a lease for 20 years, with options to renew up to three ten-year terms for a total of 30 additional years.
5. The City of Bozeman will present concept development to MSU in late spring of 2021, followed by a formal bond issuance request to the City of Bozeman voters in fall 2021. Pending the outcome of the vote, MSU will finalize the lease terms of the agreement including rate, length and ancillary items such as triple net costs (custodial, landscaping, utilities).
6. The facility will reduce response times to under 1 minute for campus calls and will improve facilitating coverage at the Bobcat Stadium, Brick Breeden Fieldhouse and campus events. Additional benefits include potential fire cadet programs and/or full-time student interns in the fire station, as well as potential lower insurance premiums for the MSU campus.
7. BOR Policy 1003.6.III.A requires Regents approval when the lease is for a term in excess of two years.

---

**ATTACHMENTS**

None

EXHIBIT C

TO BE ADDED AS AN ADDENDUM ONCE CONSTRUCTION DOCUMENTS ARE  
COMPLETED

In Process

# Memorandum

**REPORT TO:** City Commission

**FROM:** Dani Hess, Community Engagement Coordinator  
Jeff Mihelich, City Manager

**SUBJECT:** Authorize the City Manager to Sign a Professional Services Agreement with Morten Group for the Development of a Equity and Inclusion Plan

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Agreement - Vendor/Contract

**RECOMMENDATION:** Authorize the City Manager to sign a Professional Services Agreement with Morten Group for the development of the Equity & Inclusion Plan

**STRATEGIC PLAN:** 3.3 Friendly Community: Ensure Bozeman continues to welcome diversity through policies and public awareness.

**BACKGROUND:** The City of Bozeman is developing our region's first Equity & Inclusion Plan! With community input, this plan will guide policy, programs, and partnerships to help us create a Bozeman where everyone belongs. Our goal is to ensure that all residents, visitors, and City of Bozeman employees can thrive regardless of their race, identity, or life circumstance.

The plan will be guided by [Resolution 5384](#) establishing the city as a City for CEDAW (The Convention on the Elimination of all Forms of Discrimination Against Women) and the City's [Equity Indicators Project](#) that identified gaps in our community related to basic needs like housing, healthcare, economic security, and education. We found that not all experience the same access to opportunities or resources they need in order to thrive. In order to address these gaps, we need to coordinate ongoing data collection, co-create a shared vision and desired outcomes, and build a roadmap for how to turn that vision into reality through action.

Some of the actions and strategies in the plan will fall to the responsibility of the City of Bozeman. Some will rely on other local organizations, and strong partnerships and involvement from community members. The Morten Group will support the City of Bozeman in developing the plan with input from community partners and individuals. Engagement will center those with lived experience and have faced or continue to face marginalization due to their race, identity, language spoken, or life circumstance.

**UNRESOLVED ISSUES:** None

**ALTERNATIVES:** As directed by City Commission

**FISCAL EFFECTS:** \$50,000 has been approved in the FY23 budget for this effort.

Attachments:

[10122022 PSA Equity and Inclusion Plan\\_Morten Group.pdf](#)

Report compiled on: August 11, 2022



## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into this **25<sup>th</sup> day of October 2022** (“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, Morten Group, 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 the 30th day of December, 2023, 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.

**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 Dani Hess 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 Mary Morten 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 by written agreement of the Parties.

**\*\*\*\* 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**

Morten Group, LLC  
**CONTRACTOR (Type Name Above)**

By \_\_\_\_\_  
**Jeff Mihelich, City Manager**

By \_\_\_\_\_  
**Print Name:** Mary Morten  
**Print Title:** President

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**Greg Sullivan, Bozeman City Attorney**



# Mortén Group

20 Years of assessment,  
education, and action

## PROPOSAL TO THE CITY OF BOZEMAN

# BOZEMAN<sup>MT</sup>

## EQUITY AND INCLUSION PLAN DEVELOPMENT

**UPDATED: 10/4/22**

**PREPARED BY**

Mortén Group, LLC  
P.O. Box 408974  
Chicago, IL 60640

**PROPOSAL CONTACT**

Sarah Menke  
*Client Relations Director*  
sarah@mortengroup.com  
708-601-3955

# UPDATED SCOPE OF PROJECT

## PHASE ONE: CONNECT

During this initial project phase, Morten Group will meet with the Belonging in Bozeman (BIB) Core Team and City of Bozeman Steering Committee (SC) to introduce the firm, explain the process we'd be embarking upon together, and take the temperature of the group in regards to its members' analysis of equity and inclusion.

Also in this initial phase, Morten Group will perform a thorough review of the background materials listed in the provided RFP, as well as any additional relevant materials to better understand Bozeman's current landscape. Morten Group will collaborate with the BIB Core Team to develop a timeline for the project..

### COMMUNITY ENGAGEMENT PLAN

Morten Group will work with BIB to develop a community engagement plan for this work using a previously developed template from the City of Bozeman team. Morten Group plans to partner with local nonprofits in the development and implementation of the community engagement plan.

## PHASE TWO: PLAN

During this initial phase, Morten Group will work in collaboration with the City of Bozeman's Steering Committee and BIB to develop capacity areas and priorities therein when considering the Equity and Inclusion Plan (E&IP). Using the predetermined equity indicators as a guide, Morten Group will create drafts of the plan for approval from the Steering Committee. The following tasks will be completed during this phase.

### 1. **Development of capacity areas and priorities**

Morten Group will facilitate a two-hour session with the City of Bozeman's Steering Committee and Belonging in Bozeman (SC/BIB) to brainstorm and develop priorities and capacity areas for the E&IP using the predetermined equity indicators as a guide.

### 2. **Draft(s) of Equity and Inclusion Plan (E&IP) goals + review meeting(s)**

Morten Group will provide a draft of 2-3 goals per capacity area for review by the SC/BIB. Consultants will facilitate a review and feedback session which will be followed by additional drafts of the goals.

### **3. Development of tasks**

Morten Group will facilitate a second two-hour brainstorming session with the SC/BIB to discuss and prioritize tasks related to each of the finalized plan goals.

### **4. Draft(s) of E&IP tasks + review meeting(s)**

Morten Group will provide a draft of 3-5 tasks per goal in each capacity area for review by the SC. They will then facilitate an additional review and feedback session(s) which will be followed by additional drafts of the goals.

### **5. Completion of E&IP**

Morten Group will send a finalized plan to SC/BIB for review and facilitate a session that supports SC/BIB members in fine-tuning the timeline and success metrics for each task outlined in the plan. Morten Group will then review the timeline for common pitfalls (i.e. frontloading tasks into the first year, unrealistic metrics for success, etc.) and return the draft to the SC.

### **6. Finalization of E&IP and summary document development**

Once the plan has been finalized and approved by city management, Morten Group will work with the SC/BIB to develop a summary document that can be shared publicly.

## **PHASE THREE: IMPLEMENT AND ROLL OUT**

Following completion and approval of the E&IP, Morten Group will provide feedback to BIB and the SC/BIB during the development of talking points for plan rollout and implementation as well as the extension of Phase One's community engagement plan.

# SCOPE OF PROJECT SUMMARY

ACTIVITIES	TASKS	DELIVERABLES	MILESTONES
<b>PHASE ONE</b>			
Project launch and development of community engagement plan  <b>October - December 2022</b>	Launch meeting with Belonging in Bozeman (BIB) and Steering Committee (SC): <ul style="list-style-type: none"> <li>• Meeting prep and agenda generation</li> <li>• Meeting facilitation</li> <li>• Meeting follow-up</li> </ul> In collaboration with BIB, prepare for the project launch:: <ul style="list-style-type: none"> <li>• A review of background materials</li> <li>• Development of final project timeline</li> </ul> Support the creation of the Comm. Engagement Plan: <ul style="list-style-type: none"> <li>• Monthly meetings with BIB working group</li> <li>• Technical support for special working group to support plan development (not to exceed 15 hours)</li> </ul>	<ul style="list-style-type: none"> <li>• Fully executed contract</li> <li>• Final project timeline</li> <li>• Final Community Engagement Plan</li> </ul>	<ul style="list-style-type: none"> <li>• Materials review completed</li> <li>• Delivery and approval of Community Engagement Plan</li> </ul>
<b>PHASE TWO</b>			
Development of the E&IP  <b>January 2023 - June 2023</b>	Development of the E&IP: <ul style="list-style-type: none"> <li>• Two 2-hour generative working sessions with the SC/BIB to develop goals and tasks for the E&amp;I Plan</li> <li>• Drafts of goals and tasks (see Scope of Services)</li> <li>• Plan development review meetings</li> <li>• E&amp;I Plan summary document development</li> </ul>	<ul style="list-style-type: none"> <li>• Final E&amp;IP</li> <li>• E&amp;IP summary document</li> </ul>	<ul style="list-style-type: none"> <li>• Capacity areas and goals finalized</li> <li>• Tasks finalized</li> <li>• Delivery/approval of E&amp;IP and summary doc</li> </ul>

ACTIVITIES	TASKS	DELIVERABLES	MILESTONES
<b>PHASE THREE</b>			
Recommendations for implementation  <b>June - July 2023</b>	Facilitate the development of tools, recommendations, and resources for BIB: <ul style="list-style-type: none"> <li>● One meeting with SC/BIB and BIB to review:                             <ul style="list-style-type: none"> <li>○ Talking points and documents for D&amp;I plan roll out and implementation</li> <li>○ Communication channels to facilitate continued collaboration and plan progress</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Monitoring document and timeline for regular periodic updates of the action plan</li> </ul>	<ul style="list-style-type: none"> <li>● Continuous monitoring and evaluation of the action plan</li> </ul>

# PROJECT TEAM MEMBERS



## MARY MORTEN | **PRESIDENT**

Mary Morten is widely recognized as a bridge builder and connector guiding disparate voices together toward common goals and mutual accountability. Morten Group was built with an intentional focus on the inclusion of a multiracial, cross-generational group of professionals that remains at the heart of the firm's commitment to social justice while centering diversity, racial equity and inclusion, executive placements, and research. Mary's podcast "[Gathering Ground](#)" covering topics on nonprofit management, foundations, and equity and inclusion can be heard on Apple Podcasts, Google Podcasts, and wherever you listen to podcasts.

Previous positions include Associate Director, Interim Executive Director, and Board President of Chicago Foundation for Women, the region's largest women's fund; as well as the past Director of the Office of Violence Prevention for the Chicago Department of Public Health. Prior to this position, Mary was an appointee for Mayor Richard M. Daley as a Director in the Chicago Commission on Human Relations.

In collaboration with [Geneva Porter](#), Morten Group's Senior Project Director, she recently contributed to "Leading Systems Change in Public Health: A Field Guide for Practitioners," a new book from the de Beaumont Foundation and Springer Publishing offering readers a practice-based guide that examines systems change in public health. Their chapter, "Organizational Leadership: 'We Are the Ones We Have Been Waiting For,'" focuses on fostering equitable organizational change through power transfer and a grounding in community and collaboration.

Mary has been recognized by many organizations ranging from Women in Film to Equality Illinois, the YWCA of Evanston/Northshore to About Face Theater. In 2020, the [Public Health Institute of Metropolitan Chicago](#) established the Mary F. Morten Justice Award in recognition of Mary's long term work as an activist, advocate, and champion of social justice.

Mary holds a Bachelor of Arts degree in communications with an emphasis in radio and television from Loyola University Chicago.

## VINCE PAGÁN | **PROJECT DIRECTOR**



Vince Pagán is proud to have been working with Morten Group for over 10 years, having joined the team in 2012 as a Project Assistant. Previously, Vince served as Morten Group's Project and Operations Manager, where his responsibilities focused on finance, office administration, systems and infrastructure, and project management. Now one of Morten Group's Project Directors, Vince works with clients in the areas of systems and operations, strategic planning, and racial equity integration. Vince recently served as the Project Manager for the facilitation of a community roundtable to review the City of Bozeman's Equity Indicators Report. He also oversees marketing and communications for the firm and serves as Producer for many of the company's media projects, including the [Gathering Ground](#) podcast.

Vince spent the early part of his career as a teaching artist in the areas of theatre and storytelling with additional experience as a development professional and fundraising event planner. In 2017, he was selected as one of Windy City Times' 30 Under 30 in honor of his work supporting Chicago's LGBTQ youth. Vince holds a BA in Theatre Studies from Ithaca College and is fluent in Spanish.

## JESSICA KADISH-HERNÁNDEZ | **CONSULTANT**



Jessica serves as a Consultant with Morten Group. She co-facilitates knowledge-building opportunities and listening sessions with the firm's Equity Institute; provides data analysis and writing services for READI (racial equity, access, diversity, & inclusion) organizational assessments; and supports equity action planning.

She joined Morten Group in 2011 as the firm's project coordinator for the Chicago LGBT Community Needs Assessment under the research leadership of Dr. Keisha Farmer-Smith and later managed the second iteration of the project in 2018-2019. As a project manager, she also supported a wide variety of client initiatives including strategic planning, executive searches, and board development.

She's also an actor, writer, and teaching artist. She's a company member with Aguijón Theater and the storytelling collective 2nd Story. As a teaching artist, she has taught in college, community, and K-12 contexts for over fifteen years, including with 2nd Story, Roosevelt University, University of Illinois at Urbana-Champaign, Goodman Theatre, Chicago Public Schools, and more in the US and Argentina. She holds a BA from the University of Chicago and an MFA from the University of Illinois at Urbana-Champaign. She's fluent in Spanish.

## ADDITIONAL TEAM MEMBERS

In addition to the individuals listed above, who will be the primary contacts for this project, the following team members may participate in or serve as advisors to this work:

- [Ben Brownson](#), Project Manager
- [Keisha Farmer-Smith](#), Research Director
- [Sarah Menke](#), Client Relations and Project Management Director
- [Lisa Gilmore](#), Senior Trainer and Consultant
- [Alexis Turntine](#), Special Projects Assistant

## BUDGET

### PHASE ONE: CONNECT

ACTIVITIES	TASKS	COST
Launch project	Launch meeting with Steering Committee and Belonging in Bozeman (SC/BIB), includes:	\$2,500.00
Development of the Community and Engagement Plan	<ul style="list-style-type: none"> <li>• Meeting prep and agenda generation</li> <li>• Meeting facilitation</li> <li>• Meeting follow-up</li> </ul>	
<b>October - December 2022</b>	In collaboration with Belonging in Bozeman, prepare for the project launch, including:	\$3,000.00
	<ul style="list-style-type: none"> <li>• A review of background materials</li> <li>• Development of final project timeline</li> </ul>	
	Support the creation of the Community and Engagement Plan, including two to three planning meetings with BIB	\$6,000.00
	<b>PHASE ONE TOTAL</b>	<b>\$11,500</b>

### PHASE TWO: PLAN

ACTIVITIES	TASKS	BUDGET
Development of the E&IP	Support the creation of the E&IP, including:	\$36,000
<b>January 2023 - June 2023</b>	<ul style="list-style-type: none"> <li>• Two 2-hour generative working sessions with the SC/BIB to develop goals and tasks for the E&amp;I Plan</li> <li>• Drafts of goals and tasks (see Scope of Services for</li> </ul>	

	details) <ul style="list-style-type: none"> <li>• Plan development review meetings</li> <li>• E&amp;I Plan summary document development</li> </ul>	
	<b>PHASE TWO TOTAL</b>	<b>\$36,000</b>

### PHASE THREE: IMPLEMENT AND MONITOR

ACTIVITIES	TASKS	BUDGET
Recommendations for implementation  <b>June - July 2023</b>	Facilitate the development of tools, recommendations, and resources for BIB, including one meeting with SC/BIB to review: <ul style="list-style-type: none"> <li>○ Talking points and documents for D&amp;I plan roll out and implementation</li> <li>○ Communication channels to facilitate continued collaboration and plan progress</li> </ul>	\$2,500
	<b>PHASE THREE TOTAL</b>	<b>\$2,500</b>

### TOTAL BUDGET: \$50,000

#### BUDGET TOTAL

The budget above outlines the associated cost of each project task, including an hourly consultant rate of \$200/hr, as well as stipends for community participation and additional technical assistance hours (detailed below). The total budget amount *does not* include Morten Group’s travel expenses, which will be billed separately at economies of scale due to our current client partner engagement in Montana (currently expected to be completed by December 2022). Please note, the fees in this proposal are good for 60 days and are subject to change thereafter.

If the current phase has exceeded three (3) months past the initially proposed project timeline or if the scope of the project changes significantly, an addendum may be required at the discretion of Morten Group’s President and Client Relations and Project Management Director.

#### SCHEDULE OF RATES

For this project, Morten Group requires a fully executed contract and a payment of **\$15,000** before the commencement of work and the expenditure of resources. This amount will cover Phase One through the end of the 2022 calendar year. The resulting balance of **\$35,000** will be divided into

**seven (7) equal payments of \$5,000** due during 2023 (January - July). Invoices will be submitted four weeks prior to each payment due date.

#### **LATE PAYMENT POLICY**

If a payment is more than ten (10) days late, a 5% late fee of that invoice's amount will be due on the following month's invoice. If payment is not submitted within thirty (30) days of the due date stated on the initial invoice, all work will halt on the project until payment has been received and the client partner's account is up to date.

# Memorandum

**REPORT TO:** City Commission

**FROM:** Ryan Tucker, Parking Enforcement Officer  
Mike Veselik, Economic Development Program Manager  
Brit Fontenot, Economic Development Director

**SUBJECT:** Authorize the City Manager to Sign a Professional Services Agreement with Yellowstone Pavement Solutions for the Cleaning and Restriping of the Four Downtown Surface Lots and the Bridger Parking Garage

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Agreement - Vendor/Contract

**RECOMMENDATION:** I move to authorize the City Manager to sign a Professional Services Agreement with Yellowstone Pavement Solutions for the cleaning and restriping of the four downtown surface lots and the Bridger Parking Garage

**STRATEGIC PLAN:** 7.3 Best Practices, Creativity & Foresight: Utilize best practices, innovative approaches, and constantly anticipate new directions and changes relevant to the governance of the City. Be also adaptable and flexible with an outward focus on the customer and an external understanding of the issues as others may see them.

**BACKGROUND:** Cleaning and restriping parking facilities is a routine maintenance task. A properly striped parking lot leads to a better customer experience and the most efficient use of our limited parking assets. This contract would allow for the cleaning a restriping of each surface lot downtown and the Bridger Parking Garage.

**UNRESOLVED ISSUES:** No unresolved issues

**ALTERNATIVES:** Alternatives as proposed by the Commission

**FISCAL EFFECTS:** The project will cost approximately \$15,000. This type of maintenance is included in the FY23 Commission Approved Budget

Attachments:

[Professional Services Agreement with Yellowstone Pavement Solutions for Parking Lot Restriping and Cleaning.docx](#)

Report compiled on: October 13, 2022



## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into this 25th day of October, 2022 (“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, Yellowstone Pavement Solutions, 5150 Thorpe Road, Belgrade, MT 59714, 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, B, C, and D and by this reference made a part hereof.
2. **Term/Effective Date:** This Agreement is effective upon the Effective Date and will expire on the 31<sup>st</sup> day of December, 2022, 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. The scope of services is attached as Appendix A, B, C, and D.
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

indemnatee(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 both the Commercial General 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 Ryan Tucker, Parking Enforcement Officer I (406.551.8346, rtucker@bozeman.net) 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 Will (406.595.7471, 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.

**\*\*\*\* 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**

**YELLOWSTONE PAVEMENT SOLUTIONS**

By \_\_\_\_\_  
Jeff Mihelich, City Manager

By \_\_\_\_\_  
Abigail Kissell, Administrative Coordinator

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Greg Sullivan, Bozeman City Attorney

**APPENDIX A**  
**Yellowstone Pavement Solutions**

5150 Thorpe Road  
Belgrade, Montana 59714  
(406) 595-7471  
www.YellowstonePavementSolutions.com



**RECIPIENT:**

**Bozeman Parking Services**

26 E Mendenhall st  
Bozeman, MT 59715

<b>Estimate #22707</b>	
Sent on	Oct 05, 2022
<b>Total</b>	<b>\$934.80</b>

**SERVICE ADDRESS:**

South Rouse Avenue  
Bozeman, Montana 59715

PRODUCT / SERVICE	DESCRIPTION	QTY.	UNIT PRICE	TOTAL
Line Striping	Clean surface thoroughly. Apply code compliant lines to parking lot surface and allow to dry. Line colors, thickness and length will be based on all local, regional and state specifications and codes.	972	\$0.90	\$874.80
Accessible Stalls	Clean the surface and add code compliant accessible spaces. Includes painted stencil. Does not include signage. Typical Spaces: Van Accessible: 11' wide minimum with 5' access aisle or 8' wide space with 8' access aisle; Car: 8' wide space with 5' access aisle.	2	\$30.00	\$60.00
			<b>Total:</b>	<b>\$934.80</b>

## APPENDIX B

5150 Thorpe Road  
 Belgrade, Montana 59714  
 (406) 595-7471  
 www.YellowstonePavementSolutions.com

### Yellowstone Pavement Solutions



**RECIPIENT:**

**Bozeman Parking Services**

26 E Mendenhall st  
 Bozeman, MT 59715

**Estimate #22706**

Sent on

Oct 05, 2022

**\$1,707.60**

**SERVICE ADDRESS:**

North Willson Avenue  
 Bozeman, Montana 59715

PRODUCT / SERVICE	DESCRIPTION	QTY.	UNIT PRICE	TOTAL
Line Striping - North Lot	Clean surface thoroughly. Apply code compliant lines to parking lot surface and allow to dry. Line colors, thickness and length will be based on all local, regional and state specifications and codes.	954	\$0.90	\$858.60
Accessible Stalls - North Lot	Clean the surface and add code compliant accessible spaces. Includes painted stencil. Does not include signage. Typical Spaces: Van Accessible: 11' wide minimum with 5' access aisle or 8' wide space with 8' access aisle; Car: 8' wide space with 5' access aisle.	2	\$30.00	\$60.00
Line Striping - South Lot	Clean surface thoroughly. Apply code compliant lines to parking lot surface and allow to dry. Line colors, thickness and length will be based on all local, regional and state specifications and codes.	810	\$0.90	\$729.00
Accessible Stalls - South Lot	Clean the surface and add code compliant accessible spaces. Includes painted stencil. Does not include signage. Typical Spaces: Van Accessible: 11' wide minimum with 5' access aisle or 8' wide space with 8' access aisle; Car: 8' wide space with 5' access aisle.	2	\$30.00	\$60.00

**Total** **\$1,707.60**

APPENDIX C

Yellowstone Pavement Solutions

5150 Thorpe Road  
Belgrade, Montana 59714  
(406) 595-7471  
www.YellowstonePavementSolutions.com



RECIPIENT:

**Bozeman Parking Services**

26 E Mendenhall st  
Bozeman, MT 59715

<b>Estimate #22705</b>	
Sent on	Oct 05, 2022
<b>Total</b>	<b>\$837.60</b>

SERVICE ADDRESS:

North Black Avenue  
Bozeman, Montana 59715

PRODUCT / SERVICE	DESCRIPTION	QTY.	UNIT PRICE	TOTAL
Line Striping	Clean surface thoroughly. Apply code compliant lines to parking lot surface and allow to dry. Line colors, thickness and length will be based on all local, regional and state specifications and codes.	864	\$0.90	\$777.60
Accessible Stalls	Clean the surface and add code compliant accessible spaces. Includes painted stencil. Does not include signage. Typical Spaces: Van Accessible: 11' wide minimum with 5' access aisle or 8' wide space with 8' access aisle; Car: 8' wide space with 5' access aisle.	2	\$30.00	\$60.00

**Total** \$837.60

APPENDIX D

**Yellowstone Pavement Solutions**

5150 Thorpe Road  
Belgrade, Montana 59714  
(406) 595-7471  
www.YellowstonePavementSolutions.com



**RECIPIENT:**

**Bozeman Parking Services**

26 E Mendenhall st  
Bozeman, MT 59715

**Estimate #22702**

Sent on Oct 05, 2022

**\$10,231.80**

**SERVICE ADDRESS:**

26 E Mendenhall st  
Bozeman, MT 59715

PRODUCT / SERVICE	DESCRIPTION	QTY.	UNIT PRICE	TOTAL
Line Striping	Clean surface thoroughly. Apply code compliant lines to parking lot surface and allow to dry. Line colors, thickness and length will be based on all local, regional and state specifications and codes.	10152	\$0.90	\$9,136.80
Arrow Stencil (Large)	Clean area for stencil. Layout and paint with waterborne paint, color to be specified by owner.	8	\$75.00	\$600.00
Slow Stencil (Large)	Blue/white in color.	3	\$75.00	\$225.00
Accessible Stalls	Clean the surface and add code compliant accessible spaces. Includes painted stencil. Does not include signage. Typical Spaces: Van Accessible: 11' wide minimum with 5' access aisle or 8' wide space with 8' access aisle; Car: 8' wide space with 5' access aisle.	9	\$30.00	\$270.00

**\$10,231.80**



# Memorandum

**REPORT TO:** City Commission

**FROM:** Scott McMahan, IT Director

**SUBJECT:** Authorize City Manager to Sign a Professional Services Agreement with Invoice Cloud, Inc. for Utility Billing Software

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Agreement - Vendor/Contract

**RECOMMENDATION:** Authorize City Manager to sign a Professional Services Agreement with Invoice Cloud, Inc. for Utility Billing Software.

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

**BACKGROUND:** The City has used the Click2Gov platform for online utility bill payments for many years. It is a legacy product that is not being updated to modern standards. Our citizens and staff are frustrated with the many recurring issues that the vendor has not been able to resolve. We are seeking to move to a modern tool to replace this software and give our staff and citizens a streamlined and dependable process for paying bills.

**UNRESOLVED ISSUES:** None

**ALTERNATIVES:** Stay with Click2Gov product we currently have and continue to fight the many issues we are having and deal with ongoing frustration from our citizens.

**FISCAL EFFECTS:** The annual subscriptions for Invoice Cloud are higher than our current vendor, however our current vendor is causing issues with auto pay that have not been resolved. The majority of the increase in annual subscription costs will be offset by collection of credit card charges. The City currently pays credit card fees on behalf of Utility customers. With the implementation of Invoice Cloud customers who choose to pay by credit card will be charged 2.95% of the amount due, or a minimum charge of \$1.95. Customers can still pay by Auto-Pay with a checking or savings account and avoid any additional fees.

Attachments:

[Invoice Cloud Bozeman Agreement 10132022.pdf](#)

Report compiled on: October 13, 2022



**1. License Grant & Restrictions.** Subject to execution by Biller of the Invoice Cloud Biller Order Form incorporating this Agreement, Invoice Cloud hereby grants Biller a non-exclusive, non-transferable, worldwide right to use the Service described on the Biller Order Form until termination as provided herein, solely for the following purposes, and specifically to bill and receive payment from Biller’s own customers, for Services that are referenced in the Biller Order Form. All rights not expressly granted to Biller are reserved by Invoice Cloud and its licensors.

Biller will provide to Invoice Cloud all Biller Data generated for Biller’s Customers. Unless otherwise expressly agreed to in writing by Invoice Cloud to the contrary, Invoice Cloud will process all of Biller’s Customers’ Payment Instrument Transactions requirements related to the Biller Data and will do so via electronic data transmission according to our formats and procedures for each electronic payment type selected in the Biller Order Form. In addition, Biller will execute all third-party applications and enter into all agreements required for the Service without unreasonable delay, including without limitation Payment Processing Agreements and merchant agreements that may be required upon implementation, or later at such time as the Service operates with different or multiple payment processors. Throughout the Term of this Agreement, for “Invoice Types” listed on the Biller Order Form (e.g., real estate taxes, utility bills, parking tickets, insurance premium, loans, etc.), Biller will not use the credit card processing, ACH or check processing of any bank, payment processor, entity, or person, other than Invoice Cloud via electronic data transmission or the authorization for processing of Biller’s Customers’ Payment Instrument Transactions, for each electronic payment method selected in the Biller Order Form.

Biller shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) recreate, "frame" or "mirror" any portion of the Service on any other server or wireless or Internet-based device; (iv) reverse engineer or access the Service; or (v) copy any features, functions or graphics of the Service.

**2. Privacy & Security.** Invoice Cloud's privacy and security policies may be viewed at <http://www.invoicecloud.com/privacy.html>. Invoice Cloud reserves the right to modify its privacy and security policies in its reasonable discretion from time to time which modification shall not materially adversely impact such policies. Invoice Cloud will maintain compliance with current required Payment Card Industry (PCI) standards and Cardholder Information Security standards.

**3. Account Information and Data.** Invoice Cloud does not and will not own any Customer Data, in the course of providing the Service. Biller, not Invoice Cloud, shall have sole responsibility for the accuracy, quality, integrity, legality, and reliability of, and obtaining the intellectual property rights to use and process all Customer Data. In the event this Agreement is terminated, Invoice Cloud will make available to Biller a file of the Customer Data (to the extent that Invoice Cloud is permitted to provide pursuant to applicable law and PCI-DSS standards), within 30 days of termination of this Agreement (or at a later time if required by applicable law), if Biller so requests at the time of termination. Invoice Cloud will retain Customer Data for a period from its creation for the time frame that is listed in the Biller Order under “Data Retention”, and reserves the right to remove and/or delete remaining Customer Data no less than 60 days after termination or expiration except as prohibited by applicable law or in the event of exigent circumstances.

**4. Confidentiality / Intellectual Property Ownership.** Invoice Cloud agrees that it may be furnished with or otherwise have access to Customer Data that the Biller’s customers consider confidential. Invoice Cloud agrees to secure and protect the Customer Data in a manner consistent with the maintenance of Invoice Cloud’s own Confidential Information, using at least as great a degree of care as it uses to maintain the confidentiality of its

own confidential information, but in no event use less than commercially reasonable measures. Invoice Cloud agrees to promptly notify Biller if there is a misuse or misappropriation of Biller's confidential information. Invoice Cloud will not sell, transfer, publish, disclose, or otherwise make available any portion of the Customer Data to third parties, except as permitted under this Agreement or required to perform the Service or otherwise required by applicable law.

Invoice Cloud (and its licensors, where applicable) owns all right, title and interest, including all related Intellectual Property Rights, in and to the Invoice Cloud Technology, the Content and the Service and any enhancement requests, feedback, integration components, suggestions, ideas, and application programming interfaces, recommendations or other information provide by Biller or any other party relating to the Service. In the event any such intellectual property rights in the Invoice Cloud Technology, the Content or the Service do not fall within the specifically enumerated works that constitute works made for hire under applicable copyright laws or are deemed to be owned by Invoice Cloud, Biller hereby irrevocably, expressly and automatically assigns all right, title and interest worldwide in and to such intellectual property rights to Invoice Cloud. The Invoice Cloud name, the Invoice Cloud logo, and the product names associated with the Service are trademarks of Invoice Cloud or third parties, and no right or license is granted to use them.

Biller agrees that during the course of using or gaining access to the Service (or components thereof) it may be furnished with or otherwise have access to information that Invoice Cloud considers to be confidential including but not limited to Invoice Cloud Technology, the Agreement, customer and/or prospective customer information, product features and plans, the marketing/sales collateral, pricing and financial information of the parties which are hereby deemed to be Invoice Cloud Confidential Information, or any other information that by its very nature constitutes information of a type that any reasonable business person would conclude was intended by Invoice Cloud to be treated as proprietary, confidential, or private (the "Confidential Information"). Biller agrees to secure and protect the Confidential Information in a manner consistent with the maintenance of Invoice Cloud's rights therein, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information, but in no event use less than reasonable efforts. Biller will not sell, transfer, publish, disclose, or otherwise make available any portion of the Confidential Information of the other party to third parties (and will ensure that its employee and agents abide by the requirements hereof), except as expressly authorized in this Agreement or otherwise required by applicable law.

**5. Billing.** Invoice Cloud fees for the Service are provided on the Biller Order Form. Invoice Cloud's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities. Invoice Cloud may assess and/or collect such taxes, levies, or duties against Biller and Biller shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Invoice Cloud's income. All payment obligations are either auto debited from the Biller Bank Account or payable on receipt of invoice from Invoice Cloud, and are non-cancellable, and all amounts or fees paid are non-refundable. Unless Invoice Cloud in its discretion determines otherwise, all fees will be billed in U.S. dollars. If Biller believes Biller's bill or payment is incorrect, Biller must provide written notice to Invoice Cloud within 60 days of the earlier of the invoice date, or the date of payment, with respect to the amount in question to be eligible to receive an adjustment or credit; otherwise such bill or payment is deemed correct. Invoice Cloud reserves the right to modify pricing with respect to applicable fees to be paid under this Agreement, at any time upon thirty days written notice to Biller: a) based on increases incurred by Invoice Cloud on Network Fees from credit card processors, bank card issuers, payment associations, ACH and check processors; or b) if, during the Term, the average credit card payment processed by Invoice Cloud for any three (3) consecutive month period exceeds 110% of the Average Credit Card Transaction \$ specified on the corresponding Invoice Parameter Sheet(s), to the extent that Invoice Cloud incurs increases in Network Fees. Invoice Cloud, on at least 30 days written notice to Biller, may also increase any or all fees referenced in the Biller Order Form (including any Invoice Parameter Sheets), by no more than the greater of CPI

for the preceding period or 5%, provided, however, that such increase may not apply during the first year after the execution date of the Biller Order Form and may not occur more than once per year thereafter.

**6. Term and Termination.** The initial term of this Agreement shall commence as of the execution date of the Biller Order Form and continue for a period of five (5) years after the Go Live Date (“Initial Term”), and will automatically renew for each of additional successive three (3) year terms (“Renewal Term”) unless terminated as set forth herein. “Term” as used herein shall mean the Initial Term and any Renewal Term. This Agreement may be terminated by either party effective at the end of the Initial Term or any Renewal Term by such party providing written notice to the other party of its intent not to renew no less than ninety (90) days prior to the expiration of the then-current term. Additionally, this Agreement may be terminated by either party with cause in the event of a material breach of the terms of this Agreement by the other party and the breach remains uncured for a period of 30 days following receipt of written notice by the breaching party. Upon any early termination of this Agreement by Invoice Cloud as a result of breach, Biller shall remain liable for all fees and charges incurred, and all periodic fees owed through the end of the calendar month following the effective date of termination. Upon any termination or expiration of this Agreement, Biller’s password and access will be disabled and Biller will be obligated to pay the balance due on Biller’s account. Biller agrees that Invoice Cloud may charge such unpaid fees to Biller’s Debit Account or credit card or otherwise invoice Biller for such unpaid fees.

**7. Invoice Cloud Responsibilities.** Invoice Cloud represents and warrants that it has the legal power and authority to enter into this Agreement. Invoice Cloud warrants that the Service will materially perform the functions that the Biller has selected on the Biller Order Form and the Statement of Work, attached hereto and incorporated herein by reference (the “Statement of Work”), under normal use and circumstances, and that Invoice Cloud shall use commercially reasonable measures with respect to Customer Data to the extent that it retains such, in the operation of the Service; provided, that the Biller shall maintain immediately accessible backups of the Customer Data (to the extent that Biller is permitted pursuant to applicable law and PCI-DSS standards). In addition, Invoice Cloud will, at its own expense, as the sole and exclusive remedy with respect to performance of the Service, correct any Transaction Data to the extent that such errors have been caused by Invoice Cloud or by malfunctions of Invoice Cloud’s processing systems.

**8. Limited Warranty.** EXCEPT AS PROVIDED IN SECTION 7, THE SERVICE AND ALL CONTENT AND TRANSACTION DATA IS PROVIDED WITHOUT ANY EXPRESS, OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY INVOICE CLOUD AND ITS LICENSORS AND PAYMENT PROCESSORS. INVOICE CLOUD AND ITS LICENSORS AND PAYMENT PROCESSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THAT THE SERVICE WILL NOT EXPERIENCE DELAYS IN PROCESSING OR PAYING, OR (C) THE SERVICE WILL MEET REQUIREMENTS WITH RESPECT TO SIZE OR VOLUME. Invoice Cloud's service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Invoice cloud is not responsible for any delays, delivery failures, or other damage resulting from such problems.

**9. Biller’s Responsibilities.** Biller represents and warrants that it has the legal power and authority to enter into this Agreement. Biller is responsible for all activity occurring under Biller’s accounts and shall abide by all applicable laws, and regulations in connection with Biller’s and/or its customers’ and/or any payers’ use of the Service, including those related to data privacy, communications, export or import of data and the transmission of technical, personal or other data. Biller represents and warrants that Biller has not falsely identified itself nor provided any false information to gain access to the Service and that Biller’s billing information is correct. Biller

shall: (i) notify Invoice Cloud immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Invoice Cloud and immediately stop any copying or distribution of Content that is known or suspected to be unauthorized by Biller or Biller's Users; and (iii) obtain consent from Biller's customers and payers to receive notifications and invoices from Invoice Cloud. Invoice Cloud is not responsible for any Biller postings in error due to delayed notification from credit card processors, ACH, bank and other related circumstances. Biller agrees and acknowledges that in the event that Biller has access to, receives from, creates, or receives protected health information, or Biller has access to, creates, receives, maintains or transmits on behalf of electronic protected health information (as those terms are defined under the privacy or security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), during the performance under this Agreement, it will comply with all such law, regulations and rules related thereto.

Biller is required to ensure that it maintains a fair policy with regard to the refund, return or cancellation of payment for services and adjustment of Transactions. Biller is also required to disclose all refund, return and cancellation policies to Invoice Cloud and any applicable payment processors and Biller's Customers, as requested. Any change in a return/cancellation policy must be submitted to Invoice Cloud, in writing, not less than 21 days prior to the effective date of such change. If Biller allows or is required to provide a price adjustment, or cancellation of services in connection with a Transaction previously processed, Biller will prepare and deliver to Invoice Cloud Transaction Data reflecting such refund/adjustment within 2 days of resolution of the request resulting in such refund/adjustment. The amount of the refund/adjustment cannot exceed the amount shown as the total on the original Transaction Data. Biller may not accept cash or any other payment or consideration from a Customer in return for preparing a refund to be deposited to the Customer's account; nor may Biller give cash/check refunds to a Customer in connection with a Transaction previously processed by credit card, debit card, ACH, or other electronic payment method, unless required by applicable law. Biller shall cooperate with Invoice Cloud to effect a timely Implementation by Biller allocating sufficient and properly trained personnel to support the implementation process and fully cooperating with Invoice Cloud and by securing the cooperation of Biller's software and service providers and providing to Invoice Cloud the information required to integrate with Biller's billing, CIS and other applicable systems.

**10. Indemnification.** Invoice Cloud shall indemnify and hold Biller and Biller's employees, attorneys, and agents, harmless from any losses, liabilities, and damages (including, without limitation, Biller's costs, and reasonable attorneys' fees) arising out of: (i) failure by Invoice Cloud to implement commercially reasonable measures against the theft of Customer Data; (ii) its total failure to deliver funds processed by Invoice Cloud as required hereunder (which relates to payments due from Invoice Cloud for Transaction data); or (iii) the negligent, reckless, or intentional misconduct of Invoice Cloud or its agents. This indemnification does not apply to any claim or complaint relating to Biller's failure to resolve a payment dispute concerning debts owed to Biller or Biller's negligence or willful misconduct or violation of any applicable agreement or law.

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

Invoice Cloud's indemnity under this Section must be without regard to and without any right to contribution from any insurance maintained by Biller.

Should the Biller be required to bring an action against Invoice Cloud to assert its right to defense or indemnification under this Agreement or under Invoice Cloud's applicable insurance policies required below, the Biller must 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 Invoice Cloud was obligated to defend the claim(s) or was obligated to indemnify the Biller for a claim(s) or any portion(s) thereof.

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

Invoice Cloud also waives any and all claims and recourse against the Biller, 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 [Biller'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 must survive termination of this Agreement and the services performed hereunder.

## 11. Fees.

Invoice Cloud will charge the Biller and/or payer, payment transaction and other fees as provide in the Biller Order Form. In addition, Invoice Cloud will charge the fees set forth on the Biller Order Form for the initial platform setup, configuration, implementation and integration with Biller system(s) of its standard Service as set forth in the Statement of Work (the "Implementation"). Invoice Cloud reserves the right to also charge for changes and additions to the Implementation, and for any requests by Biller following the implementation which are agreed in writing by the parties, including without limitation for the following services, at its then standard rates:

- Custom development and features which are not stated in the Statement of Work and Biller Order Form, and change requests and modifications to existing platform functionality not stated in the Statement of Work and Biller Order Form;
- Additional integrations or integration modifications after the Go Live Date that are not provided for in the Biller Order Form or Statement of Work;
- Changes to bill presentment (web and PDF templates), billing system integrations, and other Service components coded or configured to Biller's specifications after Biller has signed off on the relevant specification or Service is live;
- Custom data extracts and file requests that are not part of the Implementation signed off on by both parties; and
- Data conversion not listed in the Statement of Work, or repetitive re-loading of data due to Biller error.

**12. Limitation of Liability.** INVOICE CLOUD'S AGGREGATE LIABILITY SHALL BE UP TO AND NOT EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM BILLER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO DAMAGES CAUSED BY INJURY TO PERSONS OR TANGIBLE PROPERTY BY INVOICE CLOUD, OR ARISING FROM ANY INVOICE CLOUD INDEMNIFICATION UNDER THIS AGREEMENT, INVOICE CLOUD'S AGGREGATE LIABILITY SHALL BE UP TO AND NOT EXCEED THE GREATER OF: (A) AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM BILLER IN THE TWENTY-FOUR (24) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM TRIGGERING INVOICE CLOUD'S LIABILITY; OR (B) THE TOTAL SUM PAID ON BEHALF OF OR TO INVOICE CLOUD BY INVOICE CLOUD'S INSURERS IN SETTLEMENT OR SATISFACTION OF THE CLAIM GIVING RISE TO INVOICE CLOUD'S LIABILITY UNDER THE TERMS AND CONDITIONS OF INVOICE CLOUD'S INSURANCE POLICIES APPLICABLE THERETO. IN NO EVENT SHALL INVOICE CLOUD AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL,

CONSEQUENTIAL (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) DAMAGES ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, EVEN IF THE PARTY FROM WHICH SUCH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Biller.

**13. Export Control.** The Biller agrees to comply with United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies.

**14. Notice.** Either party may give notice by electronic mail to the other party's email address (for Biller, that address on record on the Biller Order Form) or by written communication sent by first class mail or pre-paid post to the other party's address on record in Invoice Cloud's account information for Biller, and for Invoice Cloud, to Invoice Cloud, Inc., 30 Braintree Hill Office Park, Suite 101, Braintree, MA 02184 Attention: Client Services or [helpdesk@invoicecloud.com](mailto:helpdesk@invoicecloud.com). Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

**15. Assignment.** This Agreement may not be assigned by either party without the prior written approval of the other party, but may be assigned without such party's consent to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

**16. Insurance.**

Invoice Cloud agrees to maintain in full force and effect during the Term of the Agreement, at its own cost, the following coverages:

- a. Commercial General or Business Liability Insurance with minimum combined single limits of One Million (\$1,000,000) each occurrence and Two Million (\$2,000,000) general aggregate.
- b. Umbrella Liability Insurance with minimum combined single limits of Five Million (\$5,000,000) each occurrence and Five Million (\$5,000,000) general aggregate.
- c. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million (\$1,000,000) for any one occurrence, with respect to each of the Invoice Cloud's owned, hired or non-owned vehicles assigned to or used in performance of the Services.
- d. Errors and Omissions Insurance (Professional Liability and Cyber Insurance) with limits of liability of at least One Million Five Hundred Thousand Dollars (\$1,500,000) per claim and in the aggregate.

**17. Immigration Laws.** Invoice Cloud represents and warrants that it has complied and will comply with all applicable immigration laws with respect to the personnel assigned to the Biller.

**18. Beta Products.** Biller presently declines to utilize any Beta Products associated with the delivery of Services contemplated in this Agreement. The parties agree that Invoice Cloud shall not include Beta Products in the delivery of any Service provided to Biller unless separately agreed to by the parties, in writing. In the event that there is any functionality later added by such separate agreement and labelled "Beta" on the Biller Order Form, such functionality is provided "AS IS" WITHOUT ANY EXPRESS, OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY INVOICE CLOUD

AND ITS LICENSORS AND PAYMENT PROCESSORS. INVOICE CLOUD'S AGGREGATE LIABILITY WITH RESPECT TO SUCH FUNCTIONALITY SHALL BE UP TO AND NOT EXCEED \$10.

## 19. General.

- a. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: 1) this Agreement, excluding its Exhibits; 2) the Exhibits to this Agreement as of the Effective Date; and 3) any other documents incorporated herein by reference.
- b. Permits. Invoice Cloud must provide all notices, comply with all applicable laws, ordinances, rules, and regulations, obtain all necessary permits, licenses, including a City of Bozeman business license as applicable, and inspections from applicable governmental authorities, and pay all fees and charges in connection therewith.
- c. Laws and Regulations. Invoice Cloud must 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.
- d. Nondiscrimination and Equal Pay. Invoice Cloud agrees that all hiring by Invoice Cloud of persons performing this Agreement must be on the basis of merit and qualifications. Invoice Cloud will have a policy to provide equal employment opportunity in accordance with all applicable state and federal anti-discrimination laws, regulations, and contracts. Invoice Cloud 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. Invoice Cloud must 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.

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

Except as set forth in Section 15 above, Invoice Cloud agrees that it will not delegate, subcontract, or assign all or any portion of this agreement to a third party ("subcontractor") without prior written consent of Biller.

- e. Force Majeure. In no event must a Party to this Agreement be liable to another Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond one Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo ("Force Majeure Event"); *provided, however*, that under no circumstance will a Force Majeure Event excuse an obligation of the Party invoking Force Majeure under this Section to make payments when due under this Agreement.
- f. Modification and Assignability. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. Except as set forth in Section 15 above, Invoice Cloud may not subcontract or assign Invoice Cloud's rights, including the right to compensation or duties arising hereunder, without the prior written consent of the Biller. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.
- g. Reports/Accountability/Public Information. Invoice Cloud agrees to develop and/or provide documentation as requested by the Biller demonstrating Invoice Cloud's compliance with the requirements of this Agreement. Invoice Cloud must allow the Biller, its auditors, and other persons authorized by the Biller, at Biller's expense, to inspect and copy its books and records for the purpose of verifying that the reimbursement of monies distributed to Invoice Cloud pursuant to this Agreement was used in compliance with this Agreement and all applicable provisions of federal, state, and local law. Invoice Cloud must not issue any public statements, releases or information for public dissemination pertaining to this Agreement without prior approval of the Biller. Biller agrees that Invoice Cloud can disclose the fact that Biller is a paying customer and the version of the Service that Biller is using.
- h. 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.
- i. Attorney's Fees and Costs. Subject to the limitations of Section 12 above, 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 must be entitled to reasonable attorney's fees and costs.
- j. Employee Withholdings. Invoice Cloud is obligated to make all appropriate employee withholdings with respect to its employees.
- k. Dispute Resolution.
  - i. Any claim, controversy, or dispute between the Parties, their agents, employees, or representatives must 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.
  - ii. 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.

## Biller Agreement

- l. Survival. Invoice Cloud's indemnification must survive the termination or expiration of this Agreement for the maximum period allowed under applicable law. Additionally, Sections 4, 6, 10, 12, 14, and 18 shall survive the termination or expiration of this Agreement.
- m. 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.
- n. Severability. If any portion of this Agreement is held to be void or unenforceable, the balance thereof must continue in effect.
- o. Applicable Law. The Parties agree that this Agreement is governed in all respects by the laws of the State of Montana.
- p. Binding Effect. This Agreement is binding upon and inures to the benefit of the heirs, legal representatives, successors, and assigns of the Parties.
- q. 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.
- r. Integration. This Agreement and all exhibits attached hereto, together with any other documents incorporated herein by reference, 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.
- s. Counterparts. This Agreement may be executed in counterparts, which together constitute one instrument.
- t. 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.
- u. Independent Contractor Status. No joint venture, partnership, employment, or agency relationship exists between Biller and Invoice Cloud as a result of this Agreement or use of the Service.
- v. Incorporation by Reference. The following exhibits, documents, and terms and conditions are hereby incorporated herein and made a part hereof by this reference: (i) the Biller Order Form, (ii) the Statement of Work, and (iii) the Biller Terms and Conditions available at [www.invoicecloud.com/biller-terms-and-conditions](http://www.invoicecloud.com/biller-terms-and-conditions) (the "Biller T+C").

# Invoice Cloud Statement of Work City of Bozeman

## Overview

The Invoice Cloud (IC) suite of services (The Service) will give the **City of Bozeman** (Biller) and its customers the ability to accept online payments for invoiced and non-invoiced items. The Service will allow the **City of Bozeman** to offer online payment processing in a securely hosted real-time environment. Customers will be able to locate, view and print bills or invoices and payment records online and pay using credit cards, debit cards, and electronic checks.

## Definitions:

1. Biller – Merchant / **City of Bozeman**
2. Payer – Client customer, resident, person paying a bill or invoice
3. EBPP – Electronic Bill Presentment & Payment
4. Bill – Bill and Invoice are used synonymously throughout this document
5. RTDR - Real-Time Data Refresh – collects and aggregates the data as soon as a user accesses a specific function
6. NTDR – Near-Time Data Refresh – integration that happens periodically; the data is collected immediately but it is not aggregated until later – data can be processed every day, every hour or even every few minutes

## 1. Security and Industry Compliance

Invoice Cloud maintains full compliance with current applicable Payment Card Industry (PCI) standards, Cardholder Information Security Program (CISP) regulations and National Automated Clearinghouse Association (NACHA) rules and guidelines. Invoice Cloud will abide by such guidelines for the security of all cardholder data that Invoice Cloud possesses.

- a. **PCI** - Invoice Cloud will provide compliant storage of Biller's customer payment information that is certified by Visa/MasterCard. Data security measures are addressed during collection and transmission via SSL with our patent pending encryption technology. All confidential information will be treated in accordance with the PCI standards.
- b. **Software as a Service (SaaS) Architecture** – All Biller customer financial and payment information and the invoice presentment and payment processing application is housed offsite from Biller.
- c. **Browser Compatibility** - Invoice Cloud supports the most current version of the industry's most common browsers.

## 2. Data Integration

Invoice Cloud does maintain an integration with **CentralSquare Technologies**. The integration for the **City of Bozeman** will include the functionality found in Appendix B.

## 3. Payer Portal

The Payer Portal is an electronic bill presentment and online payment portal where a Biller's customer (Payer) can view a bill and then proceed, within the same user interface, to make an online payment.

- a. Invoice Cloud will present bills electronically through a payer portal that is branded for Biller or via an email notification, if the Payer provides an email address.
- b. The electronic invoice presentment will simulate the paper invoice Biller uses and will be available in PDF and/or html format.
- c. The Service may provide the Payer the option of making a payment via credit card (Visa, MasterCard, American Express and Discover) or electronic check (also referred to as ACH, e-check, EFT).

- d. The Service provides the Payer a one-time online payment option without registration, and the capability to register to access Payer's account history, schedule a payment, or set up AutoPay payments.
- e. A Payer will have the ability to choose their payment date (also known as scheduled payments).
- f. The system will accept partial, full, or overpayments as defined by the Biller.
- g. The Payer will register with the Service using the authentication method designated by Biller.
- h. Linking Accounts - After registering with the Service, the Payer will be able to login into their account(s). If the Payer has multiple accounts and uses the same authentication information for all accounts, the Payer will be able to link their account and view from a single registration. The Payer will then have the option to choose which account they would like to pay or view in further detail.
- i. The Payer will receive an email confirmation of payment after any payment process.
- j. The Payer will have the ability to search and access historical bills once they register with the Service. The Service will store twenty-four (24) months of rolling history from the point of Biller's first invoice file upload to the Service. This includes invoice history and account history.
- k. Biller has the option of allowing the Payer to pay via different payment methods which include online, IVR, IC Biller Portal, Pay by Text, CloudCSRConnect and CloudPOSConnect.
- l. Payers who have scheduled a payment or registered for AutoPay will receive email notification from the Service of pending payments.
- m. The Service includes shopping cart functionality.
- n. The Service will allow the Payer the option to elect paperless billing.
- o. A Payer registered for paperless billing will be automatically placed back on paper billing if their email address is undeliverable; notification of the Payer's undeliverable email address will be sent to Biller via email.
- p. The Service complies with Federal E-Signature Act for paperless billing and AutoPay by providing a system in which a Payer must confirm enrollment in paperless billing and/or AutoPay by responding to an email sent after the Payer registers for paperless billing and/or AutoPay through online self-service.

#### 4. **Biller Portal**

The Biller Portal is an administrative portal where Biller staff will have access to reporting, search customers, search invoices, search payments, initiate payments or credits, login as a Payer, modify email templates, etc.

- a. Biller can log in as the Payer on either the Biller or Payer Portal and make a payment on behalf of the Payer. There is an audit trail for who made the payment, and the source of every payment (CSR, Pay by Text, AutoPay, Web, IVR, etc.).
- b. Biller will have the capability of blocking future payments by specific Payer and payment method type (i.e. Credit Card or E-Check (ACH)).
- c. **Permissions** – The Biller Portal includes a table of role based permissions, determined by the Biller's System Administrator. Each permission is applied to a user ID on an individual basis to maximize flexibility. The system administrator can allow or disallow access to functions such as viewing data, creating reports, resending email notices, processing payments, credits or refunds, editing email templates and more. Since it is controlled by Biller administrator, changes can be made quickly on an as needed basis.
- d. **Administrative Email Notifications** - Biller may set up the system to send several administrative notifications and request system notifications be sent to multiple staff members. This allows different departments to get the information they need in a timely manner. The notifications include:
  - ACH Reject Notifications
  - Batch Close Notifications
  - Daily Management Report
  - File Processing Notifications
  - Month End Billing Invoice
  - Paperless Customer Email Bounce Daily Report

- Request System Notifications (this is the ticketing system available in the Invoice Cloud payer portal).
  - Status Notifications (notifications of planned outages, new features, etc.)
- e. **Biller Controlled Configuration Options** – The Biller Portal includes several Biller controlled configurable options to customize the way payments and customer accounts are handled. The Biller will be able to configure for:
- allowing Auto-Pay and scheduled payments
  - allowing customers to update their phone or mailing address through the payer portal
  - allowing customers to pay less than, or more than the balance due based on receivable type
  - updating Refund Policy description
  - updating customer service phone number

## 5. **Biller Portal - Reporting**

Biller can access a selection of pre-configured reports. Biller can request reports for daily, monthly, or date range activity. Most reports can be exported to excel files or scheduled for download as a custom report, as indicated by asterisk (\*) in the report name. All stored payment data is truncated, and this is reflected in all reports.

- a. Reports:
- b. Search Customers\*
- c. Search Invoices
- d. Search Payment Transactions\*
- e. Monthly Summary
- f. Registration Report\*
- g. Autopay Report\*
- h. Paperless Report\*
- i. Data Synchronization History
- j. EFT/ACH Rejects\*
- k. View Scheduled Payments\*
- l. Invoice File History
- m. Import Errors
- n. Daily Payments Received\*
- o. Total Outstanding Invoices
- p. Email Notification Summary
- q. Email Statistics
- r. Email Tracking
- s. Bounced Email Report
  - Email Statistics
  - Email Tracking
  - Bounced Email Report

## 6. **Payer Email Notifications**

Invoice Cloud provides a set of customizable email notification templates for each invoice type that are delivered for numerous events surrounding electronic invoice presentment and payment activity. Email notifications may be customized through the Biller Portal using a Word style editor and options to insert secure hyperlinks to website, links to electronic documents such as newsletter or bill inserts, and/or variable fields selected from the Biller's data file.

- a. Three (3) email notifications can be scheduled. The first notification is based on the number of days from the invoice due date. Second and third notifications will only be sent to Payers with an outstanding balance, not those with a scheduled payment, or Payers who have signed up for Auto-Pay.
- b. At the discretion of Biller, Payer email notifications can be delivered for each of the following events.

- First Invoice Email Notification
- Second Invoice Email Notification
- Third Invoice Email Notification
- Payment Transaction Receipt
- Declined Auto Pay Transaction
- Late Fee Email Notification
- Declined Scheduled Payment Notification
- Registered Customer Welcome Email
- AutoPay Registration Notification
- Paperless Registration Notification
- ACH Reject/Chargeback Notices (with reason codes and descriptors)
- Credit Card Expiration Notification
- Scheduled Payment Confirmation
- AutoPay Reminder Notification
- FlexPay Confirmation Notification
- Scheduled Payment Reminder
- Paperless Off Confirmation
- Online Bank Direct Payment Receipt
- Linked Accounts First Notice Notification
- Linked Accounts Second Notice Notification
- Linked Accounts Third Notice Notification
- AutoPay Off Confirmation
- Conveyed Customer Notification
- Multiple Registered Customers Welcome Email
- Recurring Scheduled Payment Confirmation
- Recurring Scheduled Payment Canceled

## 7. **Business Rules**

The Invoice Cloud solution is designed for flexibility for customers and Billers. There are many rules currently available and we will also undertake the creation of new business rules as we both agree. Each bill type operates independently and can accept different payment types as well as other business rules. At Biller's option, multiple business rules can be applied to each bill type. Invoice Cloud provides flexibility regarding business rules to support specific needs, including:

- a. Ability to allow partial payments, over payments, full balance only, or late fees.
- b. Ability to allow payments beyond the due date - The service is designed to accommodate Biller specific business rules like allowing payments beyond their due date.
- c. Ability to allow for multiple payment types for one customer for the same bill - The service allows multiple payment types from one customer for the same bill when partial payments are allowed. Credit/debit card and e-check (ACH) can be run separately and an unlimited number of remittance types can be used. For example, a customer can pay part of a bill with a checking account, another part with a credit card and the remainder with a second credit card of a different type.

## 8. Implementation Process

Invoice Cloud assigns an Implementations Manager (IM) to each Biller. The IM will be the Biller's primary contact during the implementation process and coordinates all necessary resources from Biller, Biller software company, Invoice Cloud, and any sub-contractors. The IM will provide the Biller with the following documents to facilitate the project:

- a. **New Biller Questionnaire & Questionnaire Key** – Documents critical information needed to setup and initiate the service including information on business rules and feature selection.
- b. **Project Timeline** – Details project schedule and milestones.
- c. **Testing & Training Plan** – This plan walks the Biller through a set of user acceptance testing criteria and facilitates training on the service.

## 9. Support & Training

- a. **Business Hours** – The business hours will be Monday through Friday from 8 a.m. to 8 p.m. Eastern Standard Time. Note: Biller Support hours are 8 a.m. to 8 p.m. EST. Payer Support hours are currently 8 a.m. to 4 p.m. EST.
- b. **Help Desk** - The Service will provide a helpdesk ticketing system for Biller within the Biller Portal to get help from Invoice Cloud client support team. This tool will allow Biller to track and retain resolutions for historical reference.
- c. **Payer Support** – The Payer Support is two tiered with Biller staff as the first line of support regarding account, registration and billing questions. Issues with the Invoice Cloud service operation or incorrect credit card charges will be routed to Invoice Cloud Client Support via telephone or a Biller helpdesk ticket.
- d. **Biller Support** - If Biller encounters an inquiry which they cannot resolve Biller will create a helpdesk support ticket. Invoice Cloud Customer Support will address the issue and if applicable provide training to Biller to allow the address of tickets in a timely matter; often within twenty-four (24) business hours. Biller and technical support is available during business hours.
  - i. **Routine Technical Support** - Technical Support is available during business hours. Biller may call customer support directly; however, the use of the helpdesk ticketing system is encouraged as the preferred method of contact. Invoice Cloud staff views all tickets as they are submitted and routes them to the appropriate person for resolution.
  - ii. **Emergency After-Hours Support** – The helpdesk service is monitored after business hours and emergency support issues are addressed within one (1) hour. An emergency support issue is defined as an issue involving the system being down and inoperable and does not include Payer payment issues. Biller may request email notification be provided in the event the system is down and inoperable.
- e. **Service Enhancements** - Most enhancements do not require action on the part of Biller. Upgrades as agreed are done at the Invoice Cloud server level, so there are no mandatory actions for Biller to take. Support levels are not affected by enhancements.
- f. **Biller Training**- Biller staff will be guided in how to use the system through in-house training, documentation, remote live sessions, and access to our client support team.
  - All standard training will be done remotely. Invoice Cloud's training personnel will provide sessions for both Payer and Biller portals for Biller's staff.
  - Separate training is conducted for Biller's technical staff regarding the uploading of bill files and any other applicable processes.
  - Ongoing phone and Go-To-Meeting training will be provided during the first *month of use at no additional cost to Biller.*

## 10. Marketing

Invoice Cloud provides free marketing resources that billers can use to promote EBPP payment solutions to their payers. Billers will receive a comprehensive document outlining proven marketing best practices. In addition, billers will be granted access to Invoice Cloud's proprietary Marketing Resource Center. This online tool allows billers to easily and simply download and/or customize marketing materials on demand. These materials include:

- Bill inserts
- Envelope teasers
- Onsite posters
- Counter displays and clear acrylic stands
- Social media and website graphics
- Content for newsletters and press releases
- Pay buttons
- Email content and layout suggestions
- Communications plans
- and more

Billers also have access to weekly live training sessions where they will learn about our recommended best practices for effectively communicating the many benefits of making payments electronically and have the ability to ask questions. We'll outline simple steps to help improve online payment adoption among their customers. We'll also review the Marketing Resource Center which will enable billers to create many of the materials mentioned above

#### **11. CloudIVRConnect™**

The IC CloudIVRConnect allows Billers to accept payments via our interactive voice response system. It provides customers with 24-hour access to account status and billing information (total balance due, past due amount, last payment made, next billing date etc.). The following options are available:

- Provides for a toll-free call and a caller ID number set by the Biller
- Supports messaging in both English and Spanish
- Provides for a customizable initial greeting (includes City/County/Company name) – all remaining prompts are standard
- Ability to pay with credit card (Visa, MasterCard, Discover, American Express), debit card, or eCheck (ACH)
- Replays information with Invoice Cloud generated confirmation #

#### **12. CloudSMSConnect™**

The IC CloudSMSConnect allows Billers to accept payments via SMS text messaging. The following options are available:

- Provides interactive registration and service sign-up confirmation
- Sends notification when new bills are available for payment
- Ability to pay with credit card (Visa, MasterCard, Discover, American Express), debit card, or eCheck (ACH)
- Allows for payment utilizing a stored-payment method

#### **13. AgentConnect™**

The IC AgentConnect allows Billers (Agent/CSR/Other) to login to the Customer Portal and perform actions on behalf of a specific customer/account. The following options are available:

- Ability to pay with credit card (Visa, MasterCard, Discover, American Express), debit card, or eCheck (ACH)
- Ability to enroll customer in AutoPay
- Ability to enroll customer in Paperless

- Ability to enroll customer in Pay by Text
- Option to require authorization/disclosure statement before Customer Portal entry
- Option to enable card swipe functionality at point of sale
- Provides built-in auditing to track Agent/CSR activity in the Biller Portal

**14. CloudStore™**

The IC CloudStore allows Billers to accept payments for non-invoiced services like books, t-shirts, etc., fire, police, building permits, or activity programs. The following options are available:

- Accept electronic check and or credit/debit cards.
- Customer receives immediate email confirmation of payment.
- Department receives email notification of purchase event for instant fulfillment services.
- Ability to apply convenience fees, if required.
- Reporting by service type.
- Linked to Biller branded payment portal.
- Each service type can have its own online registration form.
- Can be setup to accept payments over the counter.

**15. Online Bank Direct™**

The IC Online Bank Direct (OBD) allows Billers to electronically import echeck (ACH) payments initiated from consumer bank bill sites. The following options are available:

- Auto-matching of payments with open invoices
- Email consumer a payment notification for those customers with an email address on file
- Ability to apply a single payment to multiple invoices
- Custom search capabilities to locate matching invoice(s)
- Electronic deposit of corresponding echecks

This SOW contains many products, services and payment methods. Only the specific products, services and payment methods selected by the **City of Bozeman**, as outlined in the Biller Order Form, are included in the delivery of products, services and payment methods.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

**City of Bozeman**

**Invoice Cloud, Inc.**

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

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

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

Printed Name: Kevin W. O'Brien

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

Title: President

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

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

## **Appendix A: System Modifications**

As outlined below, Invoice Cloud has agreed to make the following changes to the setup and functionality of our platform:

**NONE**

## Appendix B: Integration Supported Features – Central Square/Real Time

Modules & Features	
<b>PRODUCTS</b>	
Invoice Types	Utilities
EBPP	Supported
Cloud IVR Connect	Supported
Pay by Text	Supported
Apple Pay	Supported
Google Pay	Supported
PayPal	Supported
<b>DATA EXCHANGE</b>	<b>Method</b> <b>Frequency</b>
Invoices	Invoice Cloud FTP As Needed
Payments	Data Pump (Near Time) Near Time
AutoPay Flags	Data Pump (Near Time) Near Time
Paperless Flags	Data Pump (Near Time) Near Time
Account Balances	Real Time Data Refresh As Requested
Block Payment Method (Credit/ACH)	Real Time Data Refresh RTDR Near Time
<b>INVOICE FILES</b>	
IC Translates file	Supported
Historical Data (2 years shown online)	Supported
<b>BILL PRESENTMENT</b>	
PDF Extraction (Partial/Full)	Supported
Link to PDFs	Preferred
<b>BATCH CLOSE</b>	
Standard or Custom	Custom
<b>CUSTOM OPTIONS</b>	
Branded Biller Portal	Supported
Branded Payer Portal	Supported

## Appendix C: Biller Deliverables

Deliverable
Sample Invoice File (BIF)
Access to Webservices
Sample Images of Bills
Auto Pay Conversion data if applicable
Paperless conversion data if applicable

SALES INFORMATION			
IC Sales Rep	Matthew McKinley	Vertical	Local Gov (Util, Tax, Misc)
Order Date	10/12/2022	Billing Software	Central Square (Sungard)

BILLER INFORMATION			
Ownership Type	Government	Phone	406-582-2300 Fax
Legal Name	City of Bozeman	Website URL	https://www.bozeman.net/home
Address 1	121 North Rouse Avenue	Bus. Open Date	
Address 2		Federal Tax ID	
City	Bozeman	<i>*Federal Tax ID and Legal Name must match on all documents</i>	
State	MT ZIP	59715	

BILLER CONTACT	
Primary Contact Name	Laurae Clark
Phone	406-582-2326
Email Address	lclark@bozeman.net

SIGNING AUTHORITY			
Name	Jeff Mihelich	Title	City Manager
Phone	406-582-2300 Fax	Email Address	jmihelich@bozeman.net

BILLER BANK ACCOUNT (FOR INVOICE CLOUD AND NETWORK FEES, AND AS PROVIDED IN THE BILLER AGREEMENT)	
<b>Note: Must include voided business check or bank letter for each unique account</b>	
Billing Method	Monthly Invoice
Routing #	Last 4 Acct #

PAYMENT METHODS ACCEPTED	
Payment Methods	[American Express] [VISA/Mastercard/Discover] [PayPal] [ACH/EFT]

BILLER PRICING (see Invoice Type Parameter Sheet(s) for invoice-type-specific pricing)*			
Description	Interval	Cost Type	Cost
Chargeback Fee Non-Submitter (Chase)	Per Transaction	Fixed (\$)	\$10.00
Biller Portal Access Fee	Monthly	Fixed (\$)	\$0.00
ACH Reject Fee Non-Submitter (Chase)	Per Transaction	Fixed (\$)	\$10.00
PayPal Brands - Chargeback Fee (PayPal Brands)	Per Transaction	Fixed (\$)	\$10.00
Invoice Presentment For Paperless Customers	Per Transaction	Fixed (\$)	\$0.40
Online Bank Direct - OBD Access Fee	Monthly	Fixed (\$)	\$0.00

HARDWARE					
Card Reader Type	Swipe Only	Quantity	2	Cost per Reader	\$0.00

Card Reader	IDTech SREDKey		Billing Interval	Monthly	
Shipping Address (if different than location address)					

DATA RETENTION		
Months to Keep	24	*Additional Fees apply if greater than 24 months

IMPLEMENTATION CHARGES			
Description	Interval	Cost	
Implementation (per SOW)	One-Time	\$0.00 (WAIVED)	

NOTES/SPECIAL HANDLING

[signature page follows]

CERTIFICATION AND AGREEMENT

- A. By signing below, the Biller hereby ratifies its authorization for Invoice Cloud, Inc. ("Invoice Cloud") to execute debit/credit entries to the Biller Bank Account(s) indicated above at the depository financial institution(s) named above and to debit/credit the same such account(s). The Biller acknowledges that the origination of ACH transactions to its account(s) must comply with the provisions of U.S. law. This authority is to remain in full force and effect until (i) Invoice Cloud has received written notification (by electronic or U.S. mail) from the Biller of its revocation in such time and manner as to allow Invoice Cloud a reasonable opportunity to act on it, but not less than 10 business days notice; and (ii) all obligations of the Biller to Invoice Cloud that have arisen under this Agreement and all other agreements have been paid in full. The Biller must also notify Invoice Cloud, in writing, (by electronic or U.S. mail) when a change in Biller Bank Account account number(s) or bank has occurred at which time this authorization shall apply to such new/changed Biller Bank Account. This notification must be received no less than 10 business days in advance of any change. A fee will be charged for any returned or rejected ACH debits.
- B. By signing below, the Biller named: (1) has read, agreed to, ratifies the Biller Agreement, Biller T+Cs (referenced in the Biller Agreement) and other Order Forms previously executed by the Biller, and (2) certifies to Invoice Cloud that he/she is authorized to sign this Order Form; (3) certifies that all information and documents submitted in connection with this Order Form are true and complete; (4) authorizes Invoice Cloud or its agent to verify any of the information given, including credit references, and to obtain credit reports ; (5) agrees to pay the Monthly Access Fee through the last day of the month following the effective date of termination as provided in the Billing Agreement; (6) agrees that Biller and each transaction submitted will continue to be bound by the Order Form and the Biller Agreement in its entirety and any new agreement forms executed herewith; (7) agrees that Biller will submit transactions only in accordance with the information in this Biller Order Form and Biller Agreement and will immediately inform Invoice Cloud, by email (contracts@invoicecloud.com) if any information in this Order Form changes, and (8) In the event of non-payment of any sums due, Invoice Cloud reserves the right to withdraw such sums from the Biller Bank Account at any time to ensure payment of the same.
- C. Pay by Text: Standard data rates and text messaging rates may apply based on the payer's plan with their mobile phone carrier. Payer can opt out of text messaging at any time with Invoice Cloud. Partial payment or overpayment is not supported. Biller may not use the service for activities that violate any law, statute, ordinance or regulation.
- D. This Biller Order Form will become effective only when signed by Invoice Cloud.

In WITNESS WHEREOF, the parties have executed this Agreement as of this day

Accepted by Biller:

X

Corporate Officer/Authorized Official

Jeff Mihelich

Printed Name

City Manager

Title

Accepted by Invoice Cloud, Inc.:

X

Corporate Officer

Kevin W. O'Brien

Printed Name

President

Title

**BILLER ORDER FORM  
INVOICE TYPE PARAMETER SHEET**

*Invoice Type Parameters must be completed for each invoice type*

Invoice Type	Utility	Pricing Model	Submitter
--------------	---------	---------------	-----------

**CURRENT BILLING DETAILS**

Please indicate how many bills are sent monthly by placing the bill count for each month below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
17052	17052	17052	17052	17052	17052	17052	17052	17052	17052	17052	17052

Avg CC Transaction \$	109.00	Max Invoice \$	100000.00	Bill Frequency	Monthly	Avg. Bills Per Month	17052
-----------------------	--------	----------------	-----------	----------------	---------	----------------------	-------

**PRODUCTS AND SERVICES**

Products and Services	[EBPP] [IVR] [OBD]
-----------------------	--------------------

**TRANSACTIONAL PRICING (Paid by Biller)**

Payment Source Description	Payment Method	Fee Rate %	Fee Amount \$	Additional Fee \$	Biller Pays Network Fees
Online Bank Direct	All Payment Methods		\$0.15		No
Migrated ACH Auto Pay	ACH/EFT		\$0.40		No
IVR	All Payment Methods		\$0.95		No

**TRANSACTIONAL PRICING EXCEPTIONS**

**SERVICE FEES (Paid by Payer)**

Payment Source Description	Payment Method	Fee Amount	Calculation Type	Max Payment \$	Min. Fee (\$) per Transaction
All Payment Sources	Credit/Debit/PayPal	2.95 %	Percent (%)	\$110000.00	\$1.95
All Payment Sources	ACH/EFT	\$0.75	Fixed (\$)	\$110000.00	

**SERVICE FEE EXCEPTIONS**

Auto Pay	ACH/EFT	\$0.00	Fixed (\$)	\$11000.00	
----------	---------	--------	------------	------------	--

**BILLER BANK ACCOUNT (FOR DEPOSITS AND CHARGEBACKS)**

*Note: must include voided business check or bank letter for each unique account*

Routing #		Last 4 Acct #	
-----------	--	---------------	--

**NOTES / SPECIAL HANDLING**

--



# Memorandum

**REPORT TO:** City Commission

**FROM:** Luke Kline, Parks and Recreation Contracts Coordinator Mitch Overton, Parks and Recreation Department Director Chuck Winn, Assistant City Manager

**SUBJECT:** Authorize the City Manager to Sign a First Amendment to the Professional Services Agreement with Advantage Spraying Services, Inc. for Snow Removal Services in the Parks and Trails District

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Agreement - Vendor/Contract

**RECOMMENDATION:** Authorize the City Manager to sign First Amendment to the Professional Services Agreement with Advantage Spraying Services, Inc. for Snow Removal Services in the Parks and Trails District.

**STRATEGIC PLAN:** 6.5 Parks, Trails & Open Space: Support the maintenance and expansion of an interconnected system of parks, trails and open spaces.

**BACKGROUND:** On June 1, 2020, the Bozeman City Commission approved Resolution 5180 creating the Bozeman Parks and Trails Special District (District). To accomplish the District objectives the City has developed a multi-year District implementation plan designed to achieve steady calculated increases in level of service standards and sustainable maintenance practices in all City Parks. Beginning July 1, 2020 City's Parks and Recreation Department assumed full responsibility for all of the District's designated park properties including the addition of 235 acres of park land located within subdivision parks previously maintained by home owners/community associations.

In September 2021, the Parks and Recreation Department conducted a request for proposals process to acquire professional services required to complete snow removal and additional maintenance services on parks in the District. After careful evaluation and review, Advantage Spraying Services, Inc. was determined to be a qualified, responsive and responsible vendor for Parks and Trails District Snow Removal Services contract.

On November 16, 2021, the City entered into the Agreement with Advantage Spraying Services, Inc. The Agreement is effective for one year after the date of execution with the option to extend the agreement an additional year upon mutual agreement. Advantage Spraying Services, Inc. has demonstrated the ability to provide comprehensive snow removal maintenance services for the City's Parks and Trials District and will continue complete the services as defined and described in Attachment B: PSA

Advantage Spraying Services Inc.

The Attachment A PSA Amendment 1 Advantage Spraying Services, Inc. will extend the Agreement for an additional one (1) year period and shall terminate on November 16, 2023. In no case, however, may this agreement run longer than five (5) years from the original effective date.

**UNRESOLVED ISSUES:** None.

**ALTERNATIVES:** As suggested by the City Commission.

**FISCAL EFFECTS:** Funding is currently allocated for this maintenance within the FY22 and FY23 budget in the Parks and Trails District Maintenance Fund account.

Attachments:

[Attachment A PSA Amendment 1 Advantage Spraying Services Inc..pdf](#)

[Attachment B PSA Advantage Spraying Services Inc. Snow Removal Service.pdf](#)

Report compiled on: October 13, 2022



## **FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT**

**THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR Parks and Trials District Snow Removal Services** dated November 16, 2021 (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, 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 Advantage Spraying Services Inc., 144 Wildcat Way, Bozeman MT 59718 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. **Section 31 of the Agreement is replaced in its entirety with the following:**  
31. Extensions: This Agreement may, upon mutual agreement, be extended for a period of one (1) year by written agreement of the Parties. In no case, however, may this Agreement run longer than five years.
2. **Extension of Term:** Section 31. Extensions: Professional Service Agreement between City and Contractor dated November 16, 2021 and completed November 16, 2022 is extended for an additional one (1) year period. The Agreement shall terminate on November 16, 2023.
3. **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**

**ADVANTAGE SPRAYING SERVICES INC.**

By \_\_\_\_\_  
**Jeff Mihelich, City Manager**

By \_\_\_\_\_  
**Print Name:**  
**Title:**

**APPROVED AS TO FORM**

By \_\_\_\_\_  
**Greg Sullivan, Bozeman City Attorney**



## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into this 16<sup>th</sup> day of November, 2021 (“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, Advantage Spraying Services Inc., 144 Wildcat Way, Bozeman MT 59718, 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 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 in Exhibit A. 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 and attached hereto as Exhibit B. 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.

Contractor shall post a legible statement of all wages and fringe benefits to be paid to the Contractor's employees and the frequency of such payments (i.e., hourly wage employees shall be paid weekly). Such posting shall be made in a prominent and accessible location at the Contractor's normal place of business and shall be made no later than the first day of services provided under this Agreement. Such posting shall be removed only upon expiration or termination of this Agreement.

In performing the services under this Agreement, Contractor shall give preference to the employment of bona fide residents of Montana, as required by §18-2-403, MCA, as such term is defined by §18-2-401(1), MCA. When making assignments of work, Contractor shall use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned.

Pursuant to §§18-2-403 and 18-2-422, MCA, Contractor shall pay wages, fringe benefits, and expenses, including travel allowances as set forth in the current Montana Prevailing Wage Rate for Non Construction Services in effect and applicable to Gallatin County, Montana, which schedule is incorporated herein. Contractor shall pay all hourly wage employees on a weekly basis. Violation of the requirements set forth in the above State of Montana schedule of prevailing wage rates may subject the Contractor to the penalties set forth in §18-2-407, MCA. Contractor shall maintain payroll records during the term of this Agreement and for a period of three (3) years following termination of this Agreement.

The Contractor shall ensure that any person, firm or entity performing any portion of the services under this Agreement for which the contractor, subcontractor or employer is responsible, is paid the applicable standard prevailing rate of wages.

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 and for any claims regarding underpaid prevailing wages.

**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 Luke Kline, Contracts 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 Patrick Doran 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 three 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

Advantage Spraying Services, Inc

DocuSigned by:  
By Jeff Mihelich  
251607FD8A824A6...  
Jeff Mihelich, City Manager



DocuSigned by: **CONTRACTOR (Type Name Above)**

DocuSigned by:  
By Patrick Doran  
C9FA0127A5F040C...  
Patrick Doran  
Print Name: \_\_\_\_\_  
Print Title: Vice-President

APPROVED AS TO FORM:

DocuSigned by:  
By Anna Saverud  
A153E6BAA29C4F5...  
Anna Saverud, Assistant City Attorney

**Exhibit A**



**REQUEST FOR PROPOSAL (RFP)**

PARKS & TRAILS DISTRICT SNOW REMOVAL SERVICES

**CITY OF BOZEMAN**

Bozeman, MT

City of Bozeman  
PO Box 1230  
Bozeman, MT 59771-1230

**September 2021**

## **Exhibit A**

### **I. INTRODUCTION**

The City of Bozeman (Owner), is seeking proposals from qualified contractors to provide snow and ice removal services for the Parks and Recreation Department.

The Owner intends to enter into a contract with the selected firm that will include snow and ice removal services on an “as-needed” basis beginning October 15, 2021 through April 30, 2022. Work is to be completed within 24 hours of notification from the Parks and Recreation Superintendent.

This RFP shall not commit the Owner to enter into an agreement, to pay any expenses incurred in preparation of any response to this request, or to procure or contract for any supplies, goods or services. The Owner reserves the right to accept or reject all responses received as a result of this RFP if it is in the Owner’s best interest to do so.

This procurement is governed by the laws of the State of Montana and venue for all legal proceedings shall be in the 18<sup>th</sup> Judicial District Court, Gallatin County. By offering to perform services under this RFP, all Submitters agree to be bound by the laws of the State of Montana and of the Owner, including, but not limited to, applicable wage rates, payments, gross receipts taxes, building codes, equal opportunity employment practices, safety, non-discrimination, etc.

### **II. PROJECT BACKGROUND AND DESCRIPTION**

On May 5, 2020, the City of Bozeman approved the Bozeman Parks and Trails Special District (District). With the endorsement of Bozeman resident’s the District granted the City authorization to conduct annual levy assessments for funding to maintain and operate all of the City owned parks and trails. To accomplish the District objectives the City has developed a multi-year Parks and Trails District implementation plan designed to achieve steady calculated increases in level of service standards and sustainable maintenance practices in all City Parks.

On July 1, 2020, the City’s Parks and Recreation Department assumed full responsibility for all of the District’s designated park properties including the addition of 217 acres of park land located within subdivision parks previously maintained by home owners/community associations. To address the requirements for all maintenance, operations, capital and deferred maintenance needed in the new District the City will establish contracts for professional services with qualified contractors.

The City of Bozeman is seeking proposals from contractors to perform grounds and landscape maintenance for parks, trails and amenities within the District. Contractor will provide services to ensure that City landscapes are effectively and efficiently maintained for the benefit of the city and its residents. The selected contractor will begin snow removal services in October 2021 and continue services through the completion of the winter season at the end of April 2022.

## **Exhibit A**

The routine services will be conducted for approximately a 28 week period in total or approximately 7 months per year.

### **III. SCOPE OF SERVICES**

The City of Bozeman Parks and Recreation Department is in need of a contractor to remove snow and ice from sidewalks and park areas within the Bozeman city limits. Snow removal will be performed on an “as needed” schedule during 2021-2022 winter season.

The scope of services includes:

1. The Contractor is to perform snow and ice removal of sidewalks, pedestrian crossings any other areas as determined by the Parks Superintendent. Services shall be completed through various methods such as, but not limited to: chipping, ice melts, blowing, shoveling, plowing, etc.
2. The Contractor shall use equipment no wider than the sidewalk which is being cleaned. Equipment shall be of a weight that will not damage the sidewalk or adjacent property. The contractor shall maintain his operation within the public right of way.
3. Snow and ice must be completely removed from the sidewalks before payment will be made to the contractor and shall not be moved into streets. If salt or other chemicals are used to loosen ice, only the minimum amount of salt or other chemicals will be used to adequately perform this function and the contractor shall refrain from depositing any resulting salt/ice mixture onto private property, grassed, or landscaped area.
4. Snow and ice removal shall commence within twenty-four (24) hours after notice by the City is given to the contractor. The Contractor may be required to work on any day of the week, including holidays.

Other related services may be requested on an as needed basis. Locations may be added or removed from the contract at any time. The final scope of services may change and will be contained in a professional services agreement to be executed by the City and the selected Contractor.

### **IV. PROPOSAL REQUIREMENTS**

Firms interested in providing the services described above are requested to submit the following information. Responses to each item should appear in the same order as listed in this RFP and should identify the item to which the responses applies.

Proposal shall provide the following information, include, at a minimum, the following items:

**Exhibit A**

1. An executive summary not exceeding two pages which summarizes key points of the proposal and which is signed by an officer of the firm who is responsible for committing the firm's resources.
2. A narrative describing the contractor's qualifications as they relate to the Scope of Services, including the contractor's availability of staffing to perform the tasks and response times for work requests submitted by the City Parks and Recreation Department.
3. Provide a quote for **fixed per hour rate** for services listed within Scope of Services. Cost must include and define all equipment, labor, materials provided and description for all service provided at fixed per hour rate.
4. Provide a quote for **fixed per hour rate** for additional services available if not listed in the scope of services. Include description of all equipment, labor and materials provided at fixed per hour cost. Provide additional information is needed to describe all services.
5. Contractor shall include any current industry professional certifications, relevant expertise or experience, three (3) references for similar completed work and work previously/currently being performed for the City of Bozeman.

**Affirmation of Nondiscrimination (see Appendix A)**

Non-completion of the Affirmation of Nondiscrimination is cause for disqualification of firms.

**V. TIMELINES, DELIVERY DEADLINE, AND INSTRUCTIONS**

<b>EVENT</b>	<b>DATE/TIME</b>
Publication dates of RFQ	Sunday, September 19, 2021 Sunday, September 26, 2021
Deadline for receipt of proposals	No later than 2 PM, MST, October 7, 2021
Evaluation of proposals	TBD
Interviews (if necessary) and Selection of consultants	TBD

With the exception of the advertising dates and advertised due date, the City reserves the right to modify the above timeline.

Deliver RFPs via email to the City Clerk ([agenda@bozeman.net](mailto:agenda@bozeman.net)) by **October 7<sup>th</sup> at 2PM MST**. It is the sole responsibility of the proposing party to ensure that proposals are received prior to the closing time as late submittals will not be accepted and will be returned unopened. All proposals must be provided as a single, searchable PDF document file and be submitted digitally as an email attachment to the RFP Recipient email address [agenda@bozeman.net](mailto:agenda@bozeman.net). Respondents are advised that Recipient's email attachment size limit is 25MB and that only one

## **Exhibit A**

PDF file will be allowed per response. The subject line of the transmittal email shall clearly identify the RFP title, company name and due date/time. File sizes greater than 25MB in size may be uploaded to [bzncld.bzeman.net](http://bzncld.bzeman.net) upon special arrangement of the Recipient; however, it is the respondent's sole responsibility to ensure the file upload is completed, and that the Recipient is separately notified via email of same, prior to the given deadline.

### **VI. AMENDMENTS TO SOLICITATION**

Any interpretation or correction of this request will be published on the City's webpage. The deadline for questions related to this document is 2 PM MST on September 30<sup>th</sup>, 2021.

### **VII. CONTACT INFORMATION**

Any administrative questions regarding proposal procedures should be directed to: Mike Maas, City Clerk, (406) 582-2321, [agenda@bozeman.net](mailto:agenda@bozeman.net)

Questions relating to scope of services should be directed to: Luke Kline, Contracts Coordinator, [lkline@bozeman.net](mailto:lkline@bozeman.net), and (406) 582-2290.

### **VIII. SELECTION PROCEDURE**

A review committee will evaluate all responses to the RFP that meet the submittal requirements and deadline. Submittals that do not meet the requirement or deadline will not be considered. The review committee will rank the proposals and may arrange interviews with the finalist(s) prior to selection. Selection may be made directly based on the written RFP submission.

If interviews occur, the selection of finalists to be interviewed will be made by a selection committee representing the City of Bozeman. The selection of interview candidates will be based on an evaluation of the written responses to the RFPs.

All submitted proposals must be complete and contain the information required as stated in the "Request for Proposals."

### **IX. SELECTION CRITERIA**

Proposals will be evaluated based on the following criteria:

- [10 points] Executive Summary
- [60 points] Qualifications of the Firm for Scope of Services; Cost
- [30 points] Related Experience with Similar Projects

## **Exhibit A**

### **X. FORM OF AGREEMENT**

The Contractor will be required to enter into a contract with the City in substantially the same form as the professional services agreement attached as Appendix B.

### **XI. CITY RESERVATION OF RIGHTS / LIABILITY WAIVER**

All proposals submitted in response to this RFP become the property of the City and public records and, as such, may be subject to public review.

A SUBMISSION IN RESPONSE TO THIS REQUEST FOR QUALIFICATIONS CONFERS NO RIGHTS UPON ANY RESPONDENTS AND SHALL NOT OBLIGATE THE CITY IN ANY MANNER WHATSOEVER. THE CITY RESERVES THE RIGHT TO MAKE NO AWARD AND TO SOLICIT ADDITIONAL REQUEST FOR QUALIFICATIONS AT A LATER DATE.

- A. This RFP may be canceled or any or all responses may be rejected in whole or in part, as specified herein, when it is in the best interests of the City. If the City cancels or revises this RFP, all Respondents who submitted will be notified using email.
- B. The City reserves the right to accept or reject any and all proposals; to add or delete items and/or quantities; to amend the RFP; to waive any minor irregularities, informalities, or failure to conform to the RFP; to extend the deadline for submitting proposals; to postpone award for up to 60 days; to award one or more contracts, by item or task, or groups of items or tasks, if so provided in the RFP and if multiple awards or phases are determined by the City to be in the public interest.
- C. The City of Bozeman reserves the right to reject the proposal of any person/firm who previously failed to perform properly to the satisfaction of the City of Bozeman, or complete on time agreements of similar nature, or to reject the proposal of any person/firm who is not in a position to perform such an agreement satisfactorily as determined by the City of Bozeman.
- D. The City of Bozeman reserves the right to determine the best qualified Contractor and negotiate a final scope of service and cost, negotiate a contract with another Contractor if an agreement cannot be reached with the first selected Contractor, or reject all proposals.
- E. The professional services contract between the City of Bozeman and the successful Contractor will incorporate the Contractor's scope of service and work schedule as part of the agreement (see Appendix B for form of professional services agreement. The professional services agreement presented to the Contractor may differ from this form as appropriate for the scope of services).
- F. This RFP does not commit the City to award a contract. The City assumes no liability or responsibility for costs incurred by firms in responding to this request for proposals or

## **Exhibit A**

request for interviews, additional data, or other information with respect to the selection process, prior to the issuance of an agreement, contract or purchase order.

**The Contractor, by submitting a response to this RFP, waives all right to protest or seek any legal remedies whatsoever regarding any aspect of this RFP.**

G. The City reserves the right to cancel, in part or in its entirety, this RFP including, but not limited to: selection procedures, submittal date, and submittal requirements. If the City cancels or revises this RFP, all Contractors who submitted proposals will be notified using email.

H. Projects under any contract are subject to the availability of funds.

### **XII. NONDISCRIMINATION AND EQUAL PAY POLICY**

The City of Bozeman requires each entity submitting under this notice shall affirm, on a separate form provided, that it will not discriminate on the basis of race, color, religion, creed, sex, age, marital status, national origin, or because of actual or perceived sexual orientation, sexual preference, gender identity, or disability in fulfillment of a contract entered into for the services identified herein and that this prohibition on discrimination shall apply to the hiring and treatment of the submitting entity's employees and to all subcontracts it enters into in the fulfillment of the services identified herein. Failure to comply with this requirement shall be cause for the submittal to be deemed nonresponsive.

The City also requires each entity submitting under this notice shall affirm it will abide by the Equal Pay Act of 1963 and Section 39-3-104, MCA (the Montana Equal Pay Act), and has visited the State of Montana Equal Pay for Equal Work "best practices" website, <https://equalpay.mt.gov/BestPractices/Employers>, or equivalent "best practices publication and has read the material.

### **XIII. MISCELLANEOUS**

A. **No Oral Agreements.** No conversations or oral agreements with any officer, employee, or agent of the City shall affect or modify any term of this solicitation. Oral communications or any written/email communication between any person and City officer, employee or agent shall not be considered binding.

B. **No Partnership/Business Organization.** Nothing in this solicitation or in any subsequent agreement, or any other contract entered into as a result of this solicitation, shall constitute, create, give rise to or otherwise be recognized as a partnership or formal business organization of any kind between or among the respondent and the City.

C. **Employment Restriction and Indemnity.** No person who is an owner, officer, employee, contractor, or consultant of a respondent shall be an officer or employee of the City. No rights of the City's retirement or personnel rules accrue to a respondent,

## **Exhibit A**

its officers, employees, contractors, or consultants. Respondents shall have the responsibility of all salaries, wages, bonuses, retirement, withholdings, worker's compensation and occupational disease compensation, insurance, unemployment compensation other benefits and taxes and premiums appurtenant thereto concerning its officers, employees, contractors, and consultants. Each Respondent shall save and hold the City harmless with respect to any and all claims for payment, compensation, salary, wages, bonuses, retirement, withholdings, worker's compensation and occupational disease compensation, insurance, unemployment compensation other benefits and taxes and premiums in any way related to each respondent's officers, employees, contractors and consultants.

- D. **Accessibility.** Upon reasonable notice, the City will provide assistance for those persons with sensory impairments. For further information please contact the ADA Coordinator Mike Gray at 406-582-3232 or the City's TTY line at 406-582-2301.
  
- E. **Procurement.** When discrepancies occur between words and figures in this solicitation, the words shall govern. No responsibility shall attach to a City employee for the premature opening of an RFP not properly addressed and identified in accordance with these documents.
  
- F. **Governing Law.** This solicitation and any disputes arising hereunder or under any future agreement shall be governed and construed and enforced in accordance with the laws of the State of Montana, without reference to principles of choice or conflicts of laws.

## **XIV. ATTACHMENTS**

The following exhibits are incorporated in this RFP:

- Appendix A: Non-Discrimination Affirmation
- Appendix B: Form of Professional Services Agreement

**END OF RFP**

## **Exhibit B**

### Executive Summary



Advantage LandCare is a large HOA, commercial, and residential snow removal company. A large grouping of our customers are located within the City of Bozeman. Our mission is to provide our customers with a professional snow removal service, and to exceed the expectations of our customers.

At Advantage LandCare, we have been providing snow removal services for commercial accounts, residential homeowners, and large HOA's within the City of Bozeman since 2008. Our approach to these projects is to provide a timely and high level of service on these properties. We do this by extensive training of our employees, as well as purchasing and maintaining proper equipment to handle projects of this size.

We require a professional appearance from our staff, and keep our equipment in proper working order at all times. This is done by providing year-round salaried positions to our employees, proper equipment, as well as consistent upkeep and repair of our snow removal equipment. As owners we handle all maintenance duties to keep our equipment running smoothly throughout the winter season. Safety training for our employees, as well as proper personal protective equipment is also provided for their use at all times. Snow removal services from Advantage LandCare operate from November 1<sup>st</sup> through March 31<sup>st</sup>. However, we are available before and after those dates if requested.

Patrick Doran

Steve Lee

## **Exhibit B**

### Contractor Narrative



Advantage Landcare has been providing snow removal within the city of Bozeman since 2008. Before that Patrick Doran & Steve Lee (owners) were working for a local company providing snow removal for the previous 6 years. As owners of the company, we are directly involved with our snow removal operations during every event. We consider snow removal to be an emergency service, and because of that it must be completed in a consistent, timely, and professional manner. Our services include residential, commercial, and large HOA snow removal from parking lots & sidewalks. We also offer ice melt services on parking lots and sidewalks at our client's request.

At Advantage Landcare we are consistently providing training to our employees, as well as offering advancement within our company. Labor shortages in Bozeman have been a challenge throughout the past year. However, we have been able to remain fully staffed throughout these challenging times. We accomplish this through advertising, and offering competitive wages with benefits to our employees.

## **Exhibit B**

### Scope Of Services



Following Is A List Services With An Hourly Rate For These Services.

- Snow Plowing From Sidewalks & Pedestrian Cross Walk Ramps: \$125.00 Per Hour
- Snow Blowing From Sidewalks & Pedestrian Cross Walk Ramps: \$125.00 Per Hour
- Ice Melt Services On Sidewalks & Pedestrian Cross Walk Ramps: \$65.00 Per Bag Of Ice Melt Applied. Price Includes Labor & Materials.
- Chipping Of Ice From Sidewalks & Pedestrian Cross Walk Ramps: \$50.00 Per Hour

Following Is A List Of Equipment Advantage Landcare Uses For Sidewalk Snow & Ice Removal.

- (2) Ventrac 4500 Z's with snow plow, broom, & snow blower.
- (3) Boss Snowrators with plow
- (1) Bobcat Toolcat with plow & blower
- (2) ATV's with plow
- (10) Walk behind snow blowers
- (1) Walk behind push spreader

City Of Bozeman Accounts That Advantage Landcare Can Provide Service For

- Any accounts in zone 1 that we are currently providing landscape maintenance on.

## **Exhibit B**

### Professional References



Kevin Black - Account Manager for Cook Development

(406)579-0560 [kblack@cookdevelopmentmt.com](mailto:kblack@cookdevelopmentmt.com)

Kathi Thorsen – Property Manager/Owner Legacy Properties

(406)577-1470 [kathi@bozemanlegacy.com](mailto:kathi@bozemanlegacy.com)

Tom White or Luke Kline – City Of Bozeman Parks Department

[TWhite@bozeman.net](mailto:TWhite@bozeman.net)

[lkline@bozeman.net](mailto:lkline@bozeman.net)

**Exhibit B**

**NONDISCRIMINATION AND EQUAL PAY AFFIRMATION**

Advantage Landcare (name of entity submitting) hereby affirms it will not discriminate on the basis of race, color, religion, creed, sex, age, marital status, national origin, or because of actual or perceived sexual orientation, gender identity or disability and acknowledges and understands the eventual contract will contain a provision prohibiting discrimination as described above and this prohibition on discrimination shall apply to the hiring and treatments or proposer's employees and to all subcontracts.

In addition, Advantage Landcare (name of entity submitting) hereby affirms it will abide by the Equal Pay Act of 1963 and Section 39-3-104, MCA (the Montana Equal Pay Act), and has visited the State of Montana Equal Pay for Equal Work "best practices" website, <https://wayback.archive-it.org/499/20210701223409/https://equalpay.mt.gov/>, or equivalent "best practices publication and has read the material.

Patrick Doran Vice-President

Name and title of person authorized to sign on behalf of submitter

# Memorandum

**REPORT TO:** City Commission

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

**SUBJECT:** Authorize the City Manager to Sign Modification 1 to the Funding, Construction, and Maintenance Agreement with MDT for the North 7th Avenue and Griffin Drive Intersection Project

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Agreement - Agency/Non-profit

**RECOMMENDATION:** Authorize the City Manager to Sign Modification #1 to the Funding, Construction, and Maintenance Agreement with MDT for the North 7th Avenue and Griffin Drive intersection project.

**STRATEGIC PLAN:** 1.3 Public Agencies Collaboration: Foster successful collaboration with other public agencies and build on these successes.

**BACKGROUND:** The North 7th Avenue and Griffin Drive intersection project, CMDP-TA-STPP 118-1(3)1 N 7TH & GRIFFIN DRIVE-BOZ, UPN 9312000, is a Montana Department of Transportation (MDT) project. Commission previously authorized the City Manager to sign the Funding, Construction, and Maintenance Agreement with MDT for this project. This modification to that agreement accomplishes two things. It revises the project phase where the city match will be paid. This is requested by MDT to simplify the payment of the local match. It also updates the city match amount based on the changes to available state funding for the project. The city match amount increased by \$735.00. Staff has reviewed the modification and recommends that Commission authorize the City Manager to sign Modification #1.

**UNRESOLVED ISSUES:** None.

**ALTERNATIVES:** None identified or recommended.

**FISCAL EFFECTS:** The modification updates the city match on this project to \$27,662.00. This will be paid from the Street Impact Fee Fund through SIF113 Griffin (7th to Rouse) - Construction.

Attachments:

[20221018\\_N7th and Griffin\\_Mod-1\\_revising phase and amount of local match\\_for commission.pdf](#)

Report compiled on: October 13, 2022

# Funding, Construction, and Maintenance Agreement

## MODIFICATION #1

**CMDP-TA-STPP 118-1(3)1  
N 7TH & GRIFFIN DRIVE-BOZ  
UPN 9312000**

- A. The City of Bozeman (City) and the Montana Department of Transportation (MDT, Department, State) entered into the attached Funding, Construction, and Maintenance Agreement on September 16, 2022 to develop the N 7<sup>th</sup> & Griffin Drive-Boz project in Bozeman (Agreement).
- B. The parties acknowledge and agree that a change to the funding table, as set forth in Article V of the Agreement, is necessary. The original funding table is hereby revised with the following funding table:

<b>Project Phase</b>	<b>Total Cost of Phase</b>	<b>Federal CMAQ Funds</b>	<b>Federal STPP Funds</b>	<b>Federal TA Funds</b>	<b>State Matching Funds</b>	<b>City Matching Funds</b>
Preliminary Engineering (PE)	\$966,636	\$805,535	\$0	\$31,384	\$124,853	\$4,864
Construction (CN)	\$4,003,164	\$2,935,664	\$400,000	\$130,276	\$517,031	\$20,193
Construction Engineering (CE)	\$400,316	\$346,594	\$0	\$0	\$53,722	\$0
Right-of-Way (RW)	\$82,072	\$71,058	\$0	\$0	\$11,014	\$0
Incidental Construction (Utility Relocation) (IC)	\$275,000	\$238,095	\$0	\$0	\$36,905	\$0
<b>Subtotal</b>	<b>\$5,727,188</b>	<b>\$4,396,946</b>	<b>\$400,000*</b>	<b>\$161,660*</b>	<b>\$743,525</b>	<b>\$25,057*</b>
<b>IDC</b>	<b>\$613,382</b>	<b>\$470,913</b>	<b>\$42,840</b>	<b>\$17,314</b>	<b>\$79,632</b>	<b>\$2,605</b>
<b>Grand Total</b>	<b>\$6,340,570</b>	<b>\$4,867,859</b>	<b>\$442,840</b>	<b>\$178,974</b>	<b>\$823,157</b>	<b>\$27,662</b>

The above costs are estimates and include inflation, current IDC, and materials test rate, which is included in the CN phase.  
\*STPP, TA, and City Matching funds are capped at the subtotal amounts shown above, IDC rates will be billed at the current IDC rate at time of billing.

- C. Except as expressly amended herein, the Agreement remains unmodified and in full force and effect. In the event of any inconsistency between the terms of the Agreement and the terms of this Modification, the terms of this Modification shall control.

**STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_ Date \_\_\_\_\_  
Montana Department of Transportation

\_\_\_\_\_  
Approved for Legal Content

\_\_\_\_\_  
Approved for Civil Rights

**CITY OF BOZEMAN**

\_\_\_\_\_  
Jeff Mihelich  
City Manager

Attest:

\_\_\_\_\_  
Mike Maas  
City Clerk

# **Funding, Construction, and Maintenance Agreement**

## **CMDP-TA-STPP 118-1(3)1 N 7TH & GRIFFIN DRIVE-BOZ UPN 9312000**

This Agreement by and between the City of Bozeman (City), and the Montana Department of Transportation (MDT, Department, or State), establishes the responsibilities and duties of the parties in respect to project activities which include roadway reconstruction on a portion of North 7<sup>th</sup> Avenue, Griffin Drive, and Mandeville Lane located within the City of Bozeman, Montana.

**Whereas**, the construction will be accomplished through Uniform Project Number 9312000, Federal-Aid Project Number CMDP-TA-STPP 118-1(3)1, titled N 7TH & GRIFFIN DRIVE-BOZ (Project) located on North 7th Avenue (P-118) between RP 1.359 and 1.539; on Griffin Drive (U-1217) between RP 0.0 and 0.125; and on Mandeville Lane (L-16-2358) between RP 0.0 and 0.038; and,

**Whereas**, State and/or Federal Highway Administration (FHWA) funds will be used to pay for the construction, the City and State must ensure that federal and state requirements are met in fulfilling its obligations to the FHWA and for the project to remain eligible for state and/or federal funding; and,

**Whereas**, a portion of the Project lies on the designated Primary and Urban Highway System (on-system) (North 7<sup>th</sup> Avenue and Griffin Drive) under the jurisdiction of the Montana Transportation Commission and MDT as per Mont. Code Ann. 60-2-110, and a portion of the project is not on the designated State and Federal Highway System (off-system) (Mandeville Lane); and,

**Whereas**, Congestion Mitigation and Air Quality funds (CMAQ), Surface Transportation Program Primary (STPP), and Federal Transportation Alternatives (TA) funds will be used for the construction of the project; and

**Whereas**, the State and City recognize the need to construct the Project, and are willing to share in its costs in accordance with Article V, Funding; and,

**Whereas**, the City and MDT recognize the need to construct the Project and to duly execute this Agreement in advance of construction phase programming; and,

**Whereas**, the City desires to have the Project constructed, the City deeming it to be a valuable and beneficial consideration, and it will perform the functions, duties and responsibilities as set forth in Agreement;

Now, therefore, the parties agree as follows:

### **ARTICLE I. GENERAL OBLIGATIONS OF MDT**

1. MDT will design and award a Contract to construct the Project.
2. MDT will provide the City opportunities to participate in the Project's development, including invitation to the final inspection of the project.
3. The City will maintain all items within the roadway right of way for the off-system and Urban routes (Mandeville Lane and Griffin Drive) including the roadway surface (pavement repair,

pavement preservation, and snowplowing), and will maintain all features, including signals (if present) and non-decorative roadway lighting, unless otherwise noted herein.

4. MDT will maintain the roadway surface for the on-system route (North 7<sup>th</sup> Avenue), including pavement repair, pavement preservation, and snowplowing, and will maintain all features, including signals (if present) and non-decorative roadway lighting, within the roadway prism unless otherwise noted herein, except for storm drain.
5. The City will maintain all storm drain features on the entire project (both on- and off-system sections).
6. If the City does not fulfill any maintenance requirements stated herein, MDT may complete the required maintenance and seek compensation from the City. In doing so, MDT must first provide thirty (30) days' notice to the City allowing time to complete any such maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the City.
7. MDT may complete any maintenance required due to a public emergency and seek compensation from the City for any costs incurred. In doing so, MDT may first provide notice to the City, when possible, allowing time to complete any such maintenance. If MDT performs maintenance under this section, it must provide detailed invoices of such costs to the City.
8. For any maintenance requirements that are the obligation of the City, as stated herein, MDT may complete any maintenance required due to a public emergency and seek compensation from the City for any costs incurred. In doing so, MDT may first provide notice to the City, when possible, allowing time to complete any such maintenance. If MDT performs maintenance under this section, it must provide detailed invoices of such costs to the City.
9. The City is responsible for issuing all future encroachment and approach permits for the off-system and Urban routes (Mandeville Lane and Griffin Drive) and ensuring the resulting actions do not interfere with roadway or pedestrian travel or decrease safety.
10. The State is responsible for issuing all future encroachment and approach permits for the on-system routes (North 7<sup>th</sup> Avenue) and ensuring the resulting actions do not interfere with roadway or pedestrian travel or decrease safety.

## **ARTICLE II. GENERAL OBLIGATIONS OF THE CITY**

1. The City agrees to conform in all regards to Mont. Code Ann. Title 61, Chapter 8, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Mont. Code Ann. Title 61, Chapter 8.
2. The City will provide appropriate and timely input during the Project's development.
3. The City will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operations of the project.
4. The City, at its sole expense, will maintain the City signs installed as part of this project. For the purposes of this Agreement, "maintenance of signs", is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, the wind, or other means.

5. The City, at its sole expense, must obtain and maintain all federal, state and local building permits or other permits of any type or nature required by a governing authority, except as noted in this Agreement.
6. The City agrees that no new permanent feature shall be permitted within the roadway right-of-way.
7. Unless specified otherwise herein, the City agrees it will fund any additional costs MDT may incur on future MDT projects due to any amenities the City places in the MDT right-of-way.
8. The City agrees that any City-performed maintenance that occurs within MDT right-of-way must be reviewed and approved by the appropriate MDT District Maintenance Office prior to initiation of the maintenance.
9. The City agrees to regulate utility occupancy on the right-of-way of Griffin Drive and Mandeville Lane in conformance with occupancy regulations that comply with or are more restrictive than the requirements of the Administrative Rule of Montana, 18.7.201 thru 18.7.241, governing "Right of Way Occupancy by Utilities."

### **ARTICLE III. PROJECT-SPECIFIC PROVISIONS**

#### **1. Construction Storm Water General Permit**

- a. Upon completion of all physical work associated with construction activity, the parties will inspect the temporary erosion and sediment control measures and devices as part of MDT's final inspection with MDT's Contractor. MDT will provide the City with the Storm Water Pollution Prevention Plan (SWPPP) package for City review. Within ten (10) days of receiving the package, the City will provide MDT with an itemized list of any outstanding records or deficiencies associated with the SWPPP. Upon MDT's and the City's approval of site conditions and Contractor records, MDT will provide the City a Permit Transfer Notification (PTN) form. The City must return the signed PTN form to MDT within ten (10) business days. MDT will forward the completed PTN form and transfer fees to the Montana Department of Environmental Quality (DEQ).
- b. Once DEQ transfers the Construction Storm Water General Permit Authorization, the City will inspect, maintain, and revise the Best Management Practice devices (BMPs) in accordance with DEQ permit requirements until final stabilization is met and permit coverage is terminated.
- c. MDT agrees to pay annual fees associated with permit coverage until termination. To assure payment, the City must forward invoices to the MDT's Environmental Services Bureau for payment.

## **2. Small Municipal Separate Storm Sewer System (MS4) Permit**

- a. MDT concludes, and the City agrees, the project work is designed in compliance with applicable Small MS4 Permit requirements.
- b. The City agrees to operate, monitor and maintain storm water management features in compliance with applicable MS4 requirements.

### **ARTICLE IV. PROJECT-SPECIFIC FEATURES**

#### **1. Sidewalks**

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair, and pay the cost of operating the sidewalk within the project limits, such that it does not negatively impact the operation of the sidewalk or the safety of the traveling public. If all or part of the Project becomes unsafe for use, the City agrees to restrict access to the affected area until the condition has been remedied.
- b. For the purposes of this Agreement, “maintenance of a sidewalk” is defined as: grinding or milling down displacements; surface patching; crack sealing; sweeping; cleaning; washing; replacing portions of damaged sidewalk; removal of snow and ice; repair of chipped, fractured, or broken surface from any cause, including but not limited to frost heaving, landscaping, tree roots, or encroachments; removal of debris and other obstructions or impediments to safe pedestrian travel; and any and all other normally accepted maintenance practices.

#### **2. Shared-Use Path**

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair, and pay the cost of operating the path within the project limits, such that it does not negatively impact the operation of the path or the safety of the traveling public. If all or part of the shared use path becomes unsafe for use, the City agrees to restrict access to the affected area until the condition has been remedied.
- b. For the purposes of this Agreement, “maintenance of a shared-use path” is defined as: grinding or milling down displacements; surface patching; crack sealing; sweeping; cleaning; washing; replacing portions of damaged path; removal of snow and ice; repair of chipped, fractured, or broken surface from any cause, including but not limited to frost heaving, landscaping, tree roots, or encroachments; removal of debris and other obstructions or impediments to the safe travel of pedestrians or other path users; maintenance of all associated drainage features; maintenance of path-related signs; and any and all other normally accepted maintenance practices.
- c. For the purposes of this Agreement, “maintenance of shared-use path signs,” is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, wind, and other means.

### **3. Lighting**

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair and pay the costs of operating (including utility costs) the decorative and/or pedestrian lighting installed as part of this project.
- b. For the purposes of this Agreement, "maintenance of street lighting", is defined as: the inspection of the lighting system for operation, cleaning lamps, lenses and reflectors, stocking of replacement parts, bulb replacement, and repairs to and replacement of damaged fixtures.
- c. Any major repair costs for lighting damage not recoverable from third parties shall be the responsibility of the City.
- d. If the cost of energy is raised by the utility company, the City, town or special improvement district shall pay their proportionate share of the rate increase.

### **4. City of Bozeman Signage**

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to maintain the City signs within the Project.
- b. For the purposes of this Agreement, "maintenance of signs," is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, wind, or other means.

## **ARTICLE V. FUNDING**

1. The City agrees to pay the requisite 13.42% non-federal matching funds associated with the TA funding of the project and associated indirect costs.
2. The City is responsible for 100% of non-federal aid eligible costs and for the payback of state and federal funds expended on non-federal aid eligible elements of the Project, if required.
3. It is understood and agreed between the parties that Section 17-1-106, MCA, requires any state agency that receives non-general funds, including MDT, to identify and recover its indirect costs. These costs are in addition to the direct Project costs.
4. The City will be billed in advance for its local funds, including indirect costs and materials test rate. The billing for the Project's preliminary engineering (PE phase) has already occurred. The billing for the Project's construction (CN & CE phases) will be sent no fewer than sixty (60) days prior to the Project's anticipated advertisement for letting.
5. The City will submit payment to the State within thirty (30) days of billing. Payments to this Project will be provided to the State in the form of a check to be credited to the Project. The payment(s) should be sent to MDT's Administration Division at:

Montana Department of Transportation

Attention: Collections  
2701 Prospect Avenue  
P.O. Box 201001  
Helena, MT 59620-1001

6. MDT will not submit programming requests to FHWA for individual project phases until the required local funds have been transferred to MDT. The Project will not advance past the Preliminary Engineering (PE) phase until a funding package (CN & CE) for all improvements, including contingencies and overruns, is in place to MDT's satisfaction.
7. If payment is not made by the City within the thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year and continue to accrue until paid in full.
8. MDT will not participate in any future funding Agreement with the City until full payment, including any interest, is received from the City.
9. City agrees that, if the City terminates project development at any time, it will reimburse MDT for all costs incurred by MDT up to the date of the stoppage, including any required payback of Federal funds already expended on the Project.
10. If, after initial payment is made for the Project's construction (CN & CE phases), the bid opening or award by the State is delayed or postponed by thirty (30) days or more or canceled for any reason, the State agrees to refund the City initial payment within thirty (30) days, upon the City written request.
11. The current Project cost estimate, including IDC, materials test rate, and inflation, is shown in Table 1. This estimate will be updated, until Project closeout, at Project milestones and/or as more refined estimates become available. Any such revisions will be incorporated into this Agreement via Amendment, in accordance with the General Terms and Conditions.
12. The State's Project Manager will inform the City point of contact as soon as possible of anything that it appears will result in a cost increase and will discuss with the City the need for any possible additional funds, alternative designs, and/or reduction of the Project's scope and will consider the City comments and concerns about the additional costs and/or alteration in scope or design. None of this will prevent, delay, or excuse the City from paying for any additional costs deemed necessary by State.
13. The State agrees to award the Project using Federal, State, and City matching funds, provided that the lowest responsive bid does not exceed the allowable overrun percentage shown in Table 2.
14. If the lowest responsive bid exceeds the allowable overrun percentage, as listed in Table 2, the State will contact the City to determine a funding solution agreeable to both Parties.
15. The Parties understand that it is possible that the estimated cost of the Project's construction may be exceeded once the Project has begun.

Project Phase	Total Cost of Phase	Federal CMAQ Funds	Federal STPP Funds	Federal TA Funds	State Matching Funds	City Matching Funds
Preliminary Engineering (PE)	\$966,636	\$805,535	\$0	\$31,384	\$124,853	\$4,864
Construction (CN)	\$4,003,164	\$2,961,326	\$400,000	\$104,614	\$521,009	\$16,215
Construction Engineering (CE)	\$400,316	\$325,670	\$0	\$20,924	\$50,479	\$3,243
Right-of-Way (RW)	\$82,072	\$71,058	\$0	\$0	\$11,014	\$0
Incidental Construction (Utility Relocation) (IC)	\$275,000	\$238,095	\$0	\$0	\$36,905	\$0
<b>Subtotal</b>	\$5,727,188	\$4,401,684	\$400,000*	\$156,922*	\$744,260	\$24,322*
<b>IDC</b>	\$613,382	\$471,420	\$42,840	\$16,806	\$79,410	\$2,605
<b>Grand Total</b>	\$6,340,570	\$4,873,104	\$442,840	\$173,728	\$823,670	\$26,927

The above costs are estimates and include inflation, current IDC, and materials test rate, which is included in the CN phase.

\*STPP, TA, and City Matching funds are capped at the subtotal amounts shown above, IDC rates will be billed at the current IDC rate at time of billing.

**Table 2 - MDT Guidelines for Awarding Construction Agreements**  
(Used to determine allowable overrun cost participation based on construction bid award amount)

LOWEST RESPONSIVE BID	ALLOWABLE OVERRUN %
UNDER \$50,000	30%
\$50,000 - \$200,000	25%
\$200,000 - \$500,000	20%
\$500,000 - \$2,000,000	15%
OVER \$2,000,000	10%

## **ARTICLE VI. GENERAL TERMS AND CONDITIONS**

- Term** – The term of this Agreement shall be ten (10) years. After the initial ten (10) year term, this Agreement will renew automatically, for successive one (1) year terms, unless superseded by a new Agreement between the parties.
- Termination** – This Agreement may be terminated by MDT if the City violates or breaches any term, condition, or article of this Agreement and the City has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the City's representative, of such violation or breach of any term, condition, or article of this Agreement. If this Agreement is terminated, the improvements become the property of MDT, without reimbursement. MDT will maintain the property as it sees fit and may remove the improvements without City or landowner approval. MDT may seek compensation for maintenance or removal of the improvements from the City.
- Other Agreements** – Other Agreements pertaining to the project area remain in full force and effect. In the case of a conflict between this Agreement and a previously executed Agreement, the terms of this Agreement apply.

#### 4. Hold Harmless & Indemnification

- a. The City agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments ( including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the City's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the City, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.
- b. The State and Department of Transportation agrees to protect, defend, indemnify, and hold the City, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments ( including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this Agreement, except the negligence of the City.

#### 5. Insurance

- a. General Requirements: Each party shall maintain for the duration of this Agreement, at its own cost and expense, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the duties and obligations in this Agreement by each party, its agents, employees, representatives, assigns, or sub-contractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
- b. General Liability Insurance: Each party shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1 million per occurrence and \$2 million aggregate per year to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this Agreement, or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.
- c. General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each party must notify the other immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. Each party reserves the right to request complete copies of the other party's insurance policy or self-insured memorandum of coverage at any time.
- d. Workers' Compensation Insurance: The City must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§39-71-401 and 39-71-405. Neither the contractor nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

## 6. Public Safety

It is agreed, if any repairs to the elements of the Project must be performed to address or prevent a public hazard, the City will immediately protect the area from public access, contact the appropriate MDT District Maintenance Office, and make reasonable and timely effort to correct or repair the hazard.

## 7. Invoicing and Indirect Cost (IDC)

- a. If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the City and the City shall pay the same within thirty (30) days of its receipt of such invoices.

Mont. Code Ann. §17-1-106, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct project costs. MDT's IDC rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's IDC as defined by 2 CFR Part 200, Appendix VII. MDT's current IDC rate is 10.71% for fiscal year 2022 (July 1, 2022 to June 30, 2023). If the work occurs or extends into fiscal year 2023 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

- i. Invoice will be sent to:

City of Bozeman  
 Attn: Nicholas Ross, Director of Transportation and Engineering  
 PO Box 1203  
 Bozeman, MT 59771  
[nross@bozeman.net](mailto:nross@bozeman.net)  
 (406) 582-2280

- ii. Payments shall be made to:  
 Montana Department of Transportation  
 Attention: Collections  
 2701 Prospect Avenue  
 PO Box 201001  
 Helena, MT 59620-1001

8. Choice of Law and Venue – This Agreement shall be governed by the laws of Montana. The parties agree that any litigation concerning this Agreement must be brought in the First Judicial District Court, in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees except as otherwise noted in this agreement. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.
9. Binding Effect -- The benefits and obligations set forth in this Agreement shall be binding upon, and inure to the benefit of, their respective successors, administrators and assigns of the Parties.
10. Relationship of Parties -- Nothing contained in this Agreement shall be deemed or construed (either by the parties hereto or by any third party) to create the relationship of principal and agent or create any partnership joint venture or other association between the Parties.
11. Non-Discrimination – The City will require that during the performance of any work arising out of this Agreement the City, for itself, assignees, and successors shall comply with all applicable non-

discrimination regulation set forth in Attachment "A" attached hereto and made part of this Agreement.

12. ADA - MDT requires that any construction resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT standards for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessibility Design, United States Access Board Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (2011 PROWAG), and MDT's detailed drawings, 608 series.
13. Audit – The City grants to the Legislative Auditor and the Legislative Fiscal Analysts the right, without prior notice and during normal business hours, to audit, at their own costs and expense, all records, reports, and other documents, the City maintains in connection with this Agreement.
14. Utilities -- This Agreement is subject to the right of any private or public utility entity now lawfully occupying the right-of-way to continue to operate and maintain utility facilities thereupon. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
15. Amendment and Modification -- This Agreement may be modified or amended only by written Addendum signed by the parties. In addition to the terms and conditions contained herein, the provisions of any Addendum may be incorporated and made a part hereof by this reference in the terms of the amendment so provided. In the event of any conflict between the terms and conditions hereof and the provisions of any Addendum, the provision of the Addendum shall control, unless the provisions thereof are prohibited by law.
16. Representatives
  - a. City's Representative: The City's Representative for this Agreement shall be the City Manager or designee 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, MDT may direct its communication or submission to other designated City personnel or agents.
  - b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Maintenance Chief or such other individual as MDT shall designate in writing. Whenever direction to or communication with MDT is required by this Agreement, such direction or communication shall be directed to MDT's Representative; provided, however, that in exigent circumstances when MDT's Representative is not available, City may direct its direction or communication or submission to other designated MDT personnel or agents.
17. Counterpart Execution – This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

IN WITNESS WHEREOF, MDT’s authorized representative has hereunto signed on behalf of the State of Montana, and the City’s authorized representative on behalf of the City, has signed and affixed hereto the seal of the City.

**STATE OF MONTANA DEPARTMENT OF TRANSPORTATION**

By DocuSigned by: Dustin Rouse 9/16/2022  
A5C4600DFD3C478...  
Montana Department of Transportation Date

DocuSigned by: Hannah Woolsey  
39AC92066FFD4B7...  
Approved for Legal Content

DocuSigned by: Megan Handl  
4EE5888EF563494...  
Approved for Civil Rights

**CITY OF BOZEMAN**

DocuSigned by: Jeff Mihelich  
251607FD8A824A6...  
Jeff Mihelich  
City Manager

Attest:  
DocuSigned by: Mike Maas  
F41F922095AB475...  
Mike Maas  
City Clerk

**ATTACHMENT A: MDT  
NONDISCRIMINATION AND  
DISABILITY ACCOMMODATION  
NOTICE**

## MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

### Federal protected classes

Race, color, national origin, sex, sexual orientation, gender identity, age, disability, income-level & Limited English Proficiency

### State protected classes

Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status, vaccination status or possession of immunity passport

For the duration of this contract/agreement, the PARTY agrees as follows:

**(1) Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, 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:**

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
  - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
  - ii. A statement that the PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
  - iii. Contact information for the PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
  - iv. Information on how to request information in alternative accessible formats.

- c. In accordance with Mont. Code Ann. § 49-3-207, the PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that the PARTY does not discriminate on the grounds of any protected class.

**(3) Participation by Disadvantaged Business Enterprises (DBEs):**

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at [mdt.mt.gov/business/contracting/civil/dbe.shtml](http://mdt.mt.gov/business/contracting/civil/dbe.shtml)
- b. By signing this agreement, the PARTY assures MDT that:

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

- c. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

**(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY 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 PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

**(5) Information and Reports:** The PARTY will provide all information and reports required by the Acts, 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 MDT or relevant US DOT Administration 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 PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(6) Sanctions for Noncompliance:** In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

**(7) Pertinent Non-Discrimination Authorities:** During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

*Federal*

- 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 CFR Part 21;
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways 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 prohibits 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 CFR 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);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- 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.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

*State*

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

**(8) Incorporation of Provisions:** The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

# Memorandum

**REPORT TO:** City Commission

**FROM:** Melissa Hodnett, Finance Director

**SUBJECT:** Resolution 5448 to Establish Compliance with IRS Reimbursement Bond Regulations

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Resolution

**RECOMMENDATION:** Approve Resolution 5448 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:** In order for the City to reimburse itself for expenditures with debt proceeds, treasury regulations require a Commission resolution declaring the official intent to reimburse expenditures with bond proceeds. Project expenditures for the Swim Center, Westside Campus facilities and construction of the Riverside Lift Station and Force Main projects have either begun or are anticipated to begin by November. The proposed resolution is presented solely for purposes of establishing compliance with treasury regulations and does not bind the City to make any expenditures, incur any indebtedness, or proceed with projects.

**UNRESOLVED ISSUES:** None

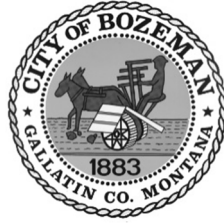
**ALTERNATIVES:** City financial plans assume debt funding for all three projects presented and additional funding would need to be identified if Resolution 5448 is not approved.

**FISCAL EFFECTS:** None

Attachments:

[Resolution 5448 Reimbursement Resolution 25-10-22.docx](#)

Report compiled on: October 12, 2022



RESOLUTION NO. 5448

**RESOLUTION RELATING TO THE FINANCING OF EXPENDITURES INCURRED FROM FACILITIES INFRASTRUCTURE IMPROVEMENT PROJECTS AND WASTEWATER INFRASTRUCTURE IMPROVEMENT PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE**

BE IT RESOLVED by the City Commission (the “Commission”) of the City of Bozeman, Montana (the “City”), as follows:

**Section 1**

**Recitals.**

The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that bonds be issued and the reimbursement allocation be made from the proceeds of such bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

1.01. The City desires to comply with requirements of the Regulations with respect to certain projects and costs hereinafter identified.

## Section 2

### **Official Intent Declaration.**

2.01. The City intends to expend funds related to design and construction of facilities infrastructure projects and wastewater infrastructure projects, including renovations at the Swim Center, Westside Campus facilities and the construction of the Riverside Lift Station and Force Main and related sewer improvements. (collectively, the “Projects”).

2.02. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

2.03. The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of proceeds of bonds, in one or more series, in an estimated maximum aggregate principal amount of \$8 million (the “Bonds”) after the date of payment of all or a portion of the costs of the Project. All reimbursed expenditures shall be capital expenditures or extraordinary working capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

2.04. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the portion of the Projects expected to be financed, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

2.05. The City Finance Director shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

**PASSED, ADOPTED, AND APPROVED** by the City Commission of the City of Bozeman, Montana, at a regular session thereof held on the 25<sup>th</sup> day of October, 2022.

---

**CYNTHIA ANDRUS**  
Mayor

ATTEST:

---

**MIKE MAAS**  
City Clerk

APPROVED AS TO FORM:

---

**GREG SULLIVAN**  
City Attorney

**CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE**

I, the undersigned, being the duly qualified and acting recording officer of the City of Bozeman, Montana (the “City”), hereby certify that the attached resolution is a true copy of Resolution No. 5448 entitled: **“RESOLUTION RELATING TO THE FINANCING OF EXPENDITURES INCURRED FROM FACILITIES INFRASTRUCTURE IMPROVEMENT PROJECTS AND WASTEWATER INFRASTRUCTURE IMPROVEMENT PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE”** (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Commission of the City at a regular meeting on October 25, 2022, and that the meeting was duly held by the City Commission and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Commission members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_  
\_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_; or  
were absent: \_\_\_\_\_.

WITNESS my hand and seal officially this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL)

\_\_\_\_\_  
**MIKE MAAS**  
City Clerk

# Memorandum

**REPORT TO:** City Commission

**FROM:** Tom Rogers, Senior Planner  
Anna Bentley, Interim Director of Community Development

**SUBJECT:** The Haggerty Lane Zone Map Amendment Requesting Amendment of the City Zoning Map for Two Existing Lots Consisting of Approximately 0.55 Acres and the Accompanying Adjacent Rights-of-way From B-2 (Community Business District) to B-2M (Community Business District-Mixed)

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Community Development - Legislative

**RECOMMENDATION:** 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 22189 and move to deny of the Haggerty Lane Zone Map Amendment.

**STRATEGIC PLAN:** 4.1 Informed Conversation on Growth: Continue developing an in-depth understanding of how Bozeman is growing and changing and proactively address change in a balanced and coordinated manner.

**BACKGROUND:** The owner, Haggerty Property Investments, LLC, Box 850, Bozeman, MT 59718 submitted application to rezone a property totaling 0.55 acres, including adjacent right-of-way, from B-2 to B-2M. The property is currently vacant. No future development plans were submitted or required with the application. Under the proposed use item in the application it states the proposed use will be “mixed.”

Haggerty Lane is a designated Minor Arterial according to the Bozeman Area Master Transportation Plan, 2017 Update. East Main Street is a designated Principal Arterial according to the Bozeman Area Master Transportation Plan, 2017 Update and is a designated National Highway (non-interstate) by Montana Department of Transportation. The intersection of Haggerty Lane and East Main Street currently operates below a level “C” in function, see Section 1 Figure 4 LOS. Pursuant to section 38.400.060 Street Improvement Standards (B) (4) - all arterial and collector streets and intersections within one-half mile of the site must operate at a minimum Level of Service (LOS) C unless specifically exempted by the review authority.

The intersection of Haggerty Lane and Main Street is located on a state controlled highway, in which the Montana Department of Transportation retains the review authority and approval to access as well as

improvements. Currently, the City has the intersection of Haggerty Lane and Main Street in the City's adopted Capital Improvement Program, but is unscheduled in terms of future time. MDT has provided comment on this application. The existing B-2 zoning was established prior to the intersection reaching a state where functional requirements are not met.

The primary differences between the B-2 and B-2M districts is development intensity. There is a differences in building height, more permissive residential use, and reduction of parking requirements. Building height in the B-2 district is between 50-60 feet, depending on roof pitch while building height in B-2M is five (5) stories or 60 feet which results in an addition story. Residential use is allowed on the ground floor in without a Conditional Use Permit in the B-2M zone and may be permitted in the B-2 district with an approved CUP. The CUP option has evolved to the SUP process.

**UNRESOLVED ISSUES:** None identified at this time.

**ALTERNATIVES:**

1. Approve the recommendation not to approve the application with contingencies as presented;
2. Approve the application with modifications to the recommended zoning;
3. Approve the application based on findings of 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 zone map amendment.

Attachments:

[22189 Haggerty ZMA CC SR.pdf](#)

Report compiled on: October 14, 2022

---

***22189, Staff Report for the Haggerty Lane Zone Map Amendment***

**Public Hearing Date(s):** Community Development Board acting in their capacity as the Zoning Commission will hold a public hearing on October 3, 2022 at 6:00 pm.

City Commission public hearing will be held on October 25, 2022 at 6:00 pm.

**Project Description:** The Haggerty Lane zone map amendment requesting amendment of the City Zoning Map on approximately 0.55 acres and the accompanying adjacent right-of way from B-2 (Community Business District) to B-2M (Community Business District-Mixed).

**Project Location:** The property is addressed as 219 Haggerty Lane and more thoroughly described as Lot 2A1 of the corrected plat of the amended subdivision plat of Minor Subdivision 16-b, located in the Southwest One-Quarter (SW ¼) of Section 8, Township Two South (T2S), Range Six East (R6E) of P.M.M., Gallatin County, Montana.

**Recommendation:** Does not meet standards for approval

**Community Development Board 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 22189 and move to recommend approval of the Haggerty Lane Zone Map Amendment, with contingencies required to complete the application processing.

**Recommended City Commission 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 22189 and move to deny the Haggerty Lane Zone Map Amendment.

**Report Date:** October 14, 2022

**Staff Contact:** Tom Rogers, Senior Planner

Lance Lehigh, City Engineer

**Agenda Item Type:** Action – **Legislative**

---

## ***EXECUTIVE SUMMARY***

### ***Unresolved Issues***

None identified at this time.

### ***Project Summary***

The owner, Haggerty Property Investments, LLC, Box 850, Bozeman, MT 59718 submitted application to rezone a property totaling 0.55 acres, including adjacent right-of-way, from B-2 to B-2M. The property is currently vacant. No future development plans were submitted or required with the application. Under the proposed use item in the application it states the proposed use will be “mixed.”

Haggerty Lane is a designated Minor Arterial according to the Bozeman Area Master Transportation Plan, 2017 Update. East Main Street is a designated Principal Arterial according to the Bozeman Area Master Transportation Plan, 2017 Update and is a designated National Highway (non-interstate) by Montana Department of Transportation. The intersection of Haggerty Lane and East Main Street currently operates below a level “C” in function, see Section 1 Figure 4 LOS. Pursuant to section 38.400.060 Street Improvement Standards (B) (4) - all arterial and collector streets and intersections within one-half mile of the site must operate at a minimum Level of Service (LOS) C unless specifically exempted by the review authority.

The intersection of Haggerty Lane and Main Street is located on a state controlled highway, in which the Montana Department of Transportation retains the review authority and approval to access as well as improvements. Currently, the City has the intersection of Haggerty Lane and Main Street in the City’s adopted Capital Improvement Program, but is unscheduled in terms of future time. MDT has provided comment on this application. The existing B-2 zoning was established prior to the intersection reaching a state where functional requirements are not met.

The primary differences between the B-2 and B-2M districts is development intensity. There is a differences in building height, more permissive residential use, and reduction of parking requirements. Building height in the B-2 district is between 50-60 feet, depending on roof pitch while building height in B-2M is five (5) stories or 60 feet which results in an addition story. Residential use is allowed on the ground floor in without a Conditional Use Permit in the B-2M zone and may be permitted in the B-2 district with an approved CUP. The CUP option has evolved to the SUP process.

Application materials can be viewed on the City’s development map at the following link.

<https://weblink.bozeman.net/WebLink/Browse.aspx?startid=262088>

***Community Development Board (Zoning Commission) Summary***

The Community Development Board acting in their capacity as the Zoning Commission held a public hearing on October 3, 2022 and voted (8:1) to recommend approval of the requested zone change.

The Board discussed a variety of issues including if the recently adopted code changes would allow the development intensity the applicant is requesting, if there is any development potential on the property with the existing intersection deficiencies, and issues related to traffic, intersection level of service and how improvements could be made. In conclusion the Board rejected staff's findings of non-compliance, revised the suggested motion to state the Board is recommending approval of the requested zoning change, and voted to recommend approval to the City Commission on an 8:1 vote.

The video recording of the public hearing is available at the following link:

[https://bozeman.granicus.com/player/clip/1233?view\\_id=1&redirect=true&h=523343071b142cd26dc6fbc6ba94a373](https://bozeman.granicus.com/player/clip/1233?view_id=1&redirect=true&h=523343071b142cd26dc6fbc6ba94a373)

	Time Stamp
Staff Presentation	1:27:45
Applicant Presentation	2:03:50
Public Comment	No public comment
Board questions & discussion	2:29:15

Public comment has been received and can be reviewed at the following link.

<https://weblink.bozeman.net/WebLink/DocView.aspx?id=265161&dbid=0&repo=BOZEMAN>

***Alternatives***

1. Approve the recommendation not to approve the application with contingencies as presented;
2. Approve the application with modifications to the recommended zoning;
3. Approve the application based on findings of 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.

**TABLE OF CONTENTS**

EXECUTIVE SUMMARY ..... 2

    Unresolved Issues ..... 2

    Project Summary..... 2

    Community Development Board (Zoning Commission) Summary ..... 3

    Alternatives ..... 3

SECTION 1 - MAP SERIES ..... 5

SECTION 2 - RECOMMENDED CONTINGENCIES OF ZONE MAP AMENDMENT... 10

SECTION 3 - RECOMMENDATION AND FUTURE ACTIONS ..... 11

SECTION 4 - ZONE MAP AMENDMENT STAFF ANALYSIS AND FINDINGS ..... 11

    Section 76-2-304, MCA (Zoning) Criteria ..... 12

PROTEST NOTICE FOR ZONING AMENDMENTS ..... 25

APPENDIX A - DETAILED PROJECT DESCRIPTION AND BACKGROUND ..... 26

APPENDIX B - NOTICING AND PUBLIC COMMENT ..... 27

APPENDIX C - PROJECT GROWTH POLICY AND PROPOSED ZONING ..... 27

APPENDIX D - OWNER INFORMATION AND REVIEWING STAFF..... 39

FISCAL EFFECTS ..... 40

ATTACHMENTS ..... 40

### SECTION 1 - MAP SERIES



Figure 1: Vicinity Map (2021 image)

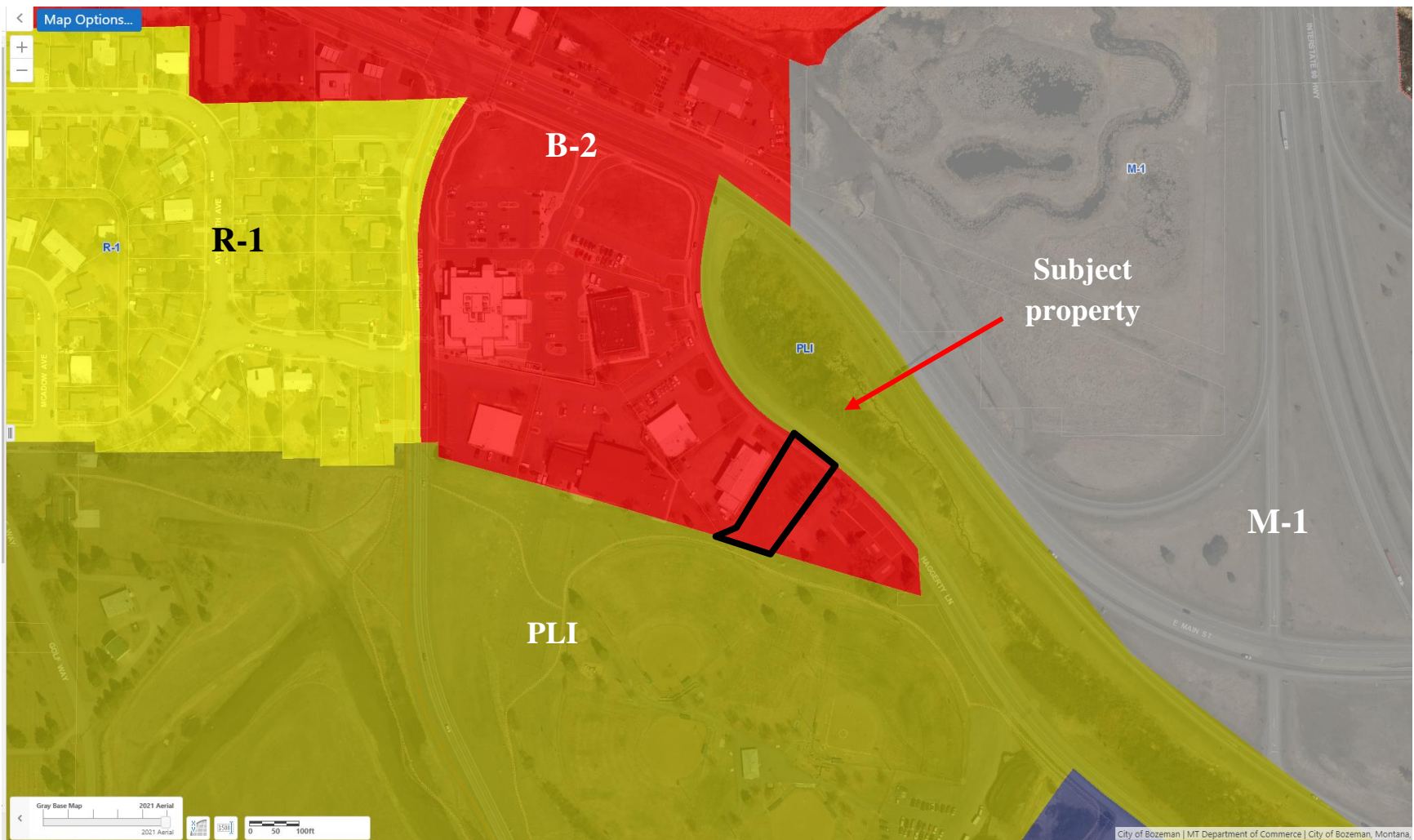


Figure 2: Current Zoning Map (2021 image)

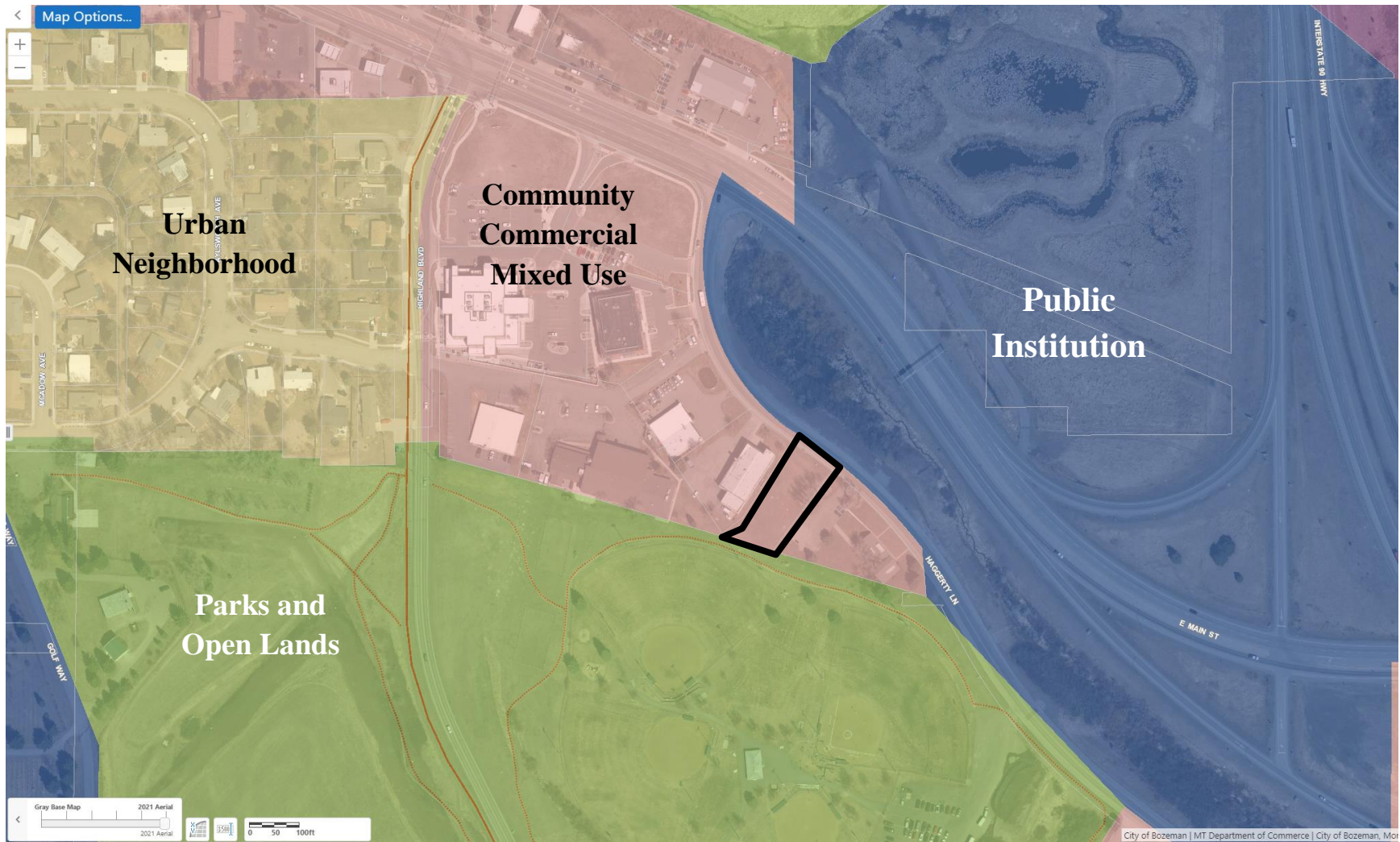


Figure 3: Future Land Use Designations (2021 image)

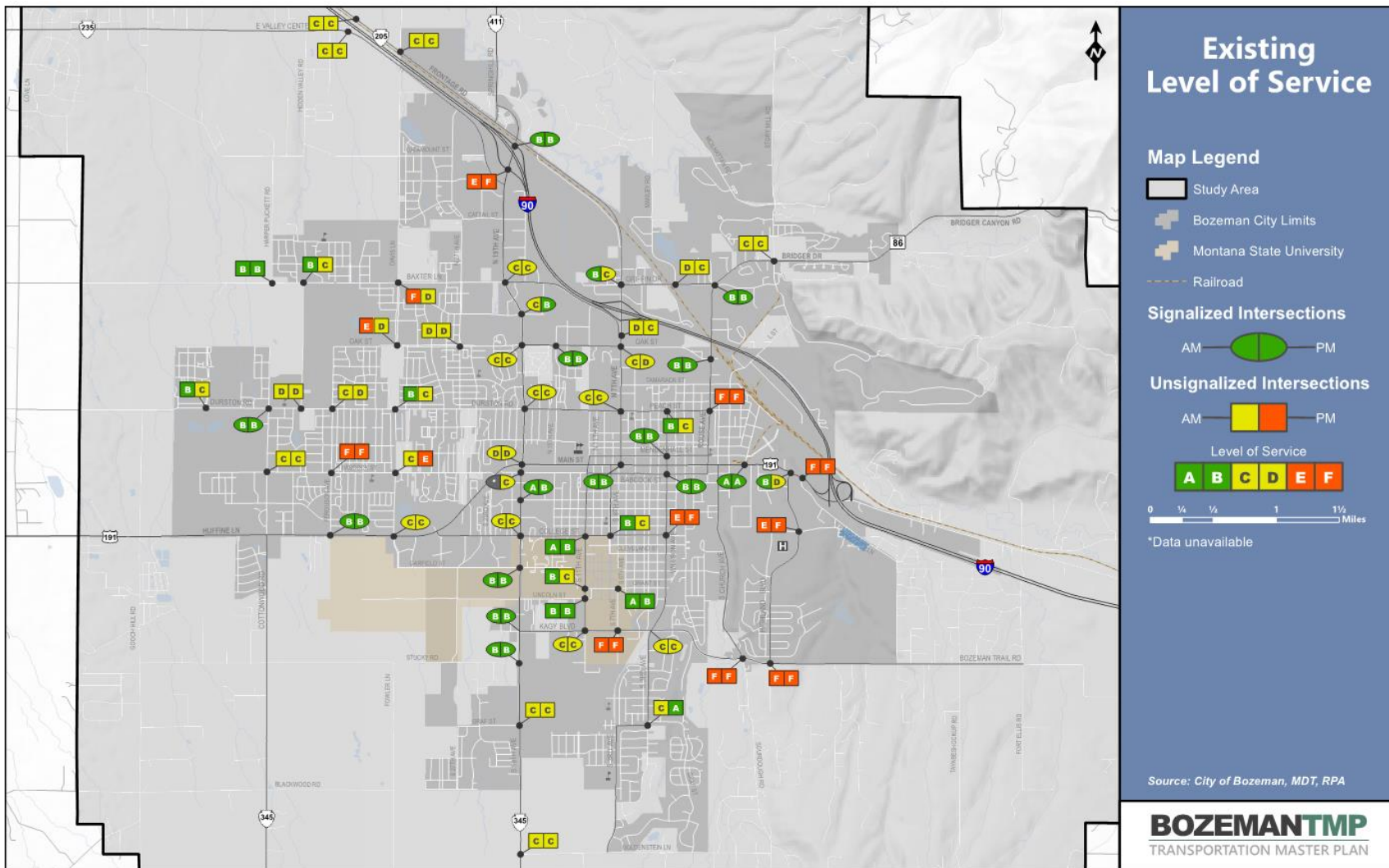


Figure 2.13: Existing Intersection Level of Service

Figure 4: Existing Level of Service Map – Bozeman Transportation Master Plan, 2017 Update, April 25, 2017, page 47.

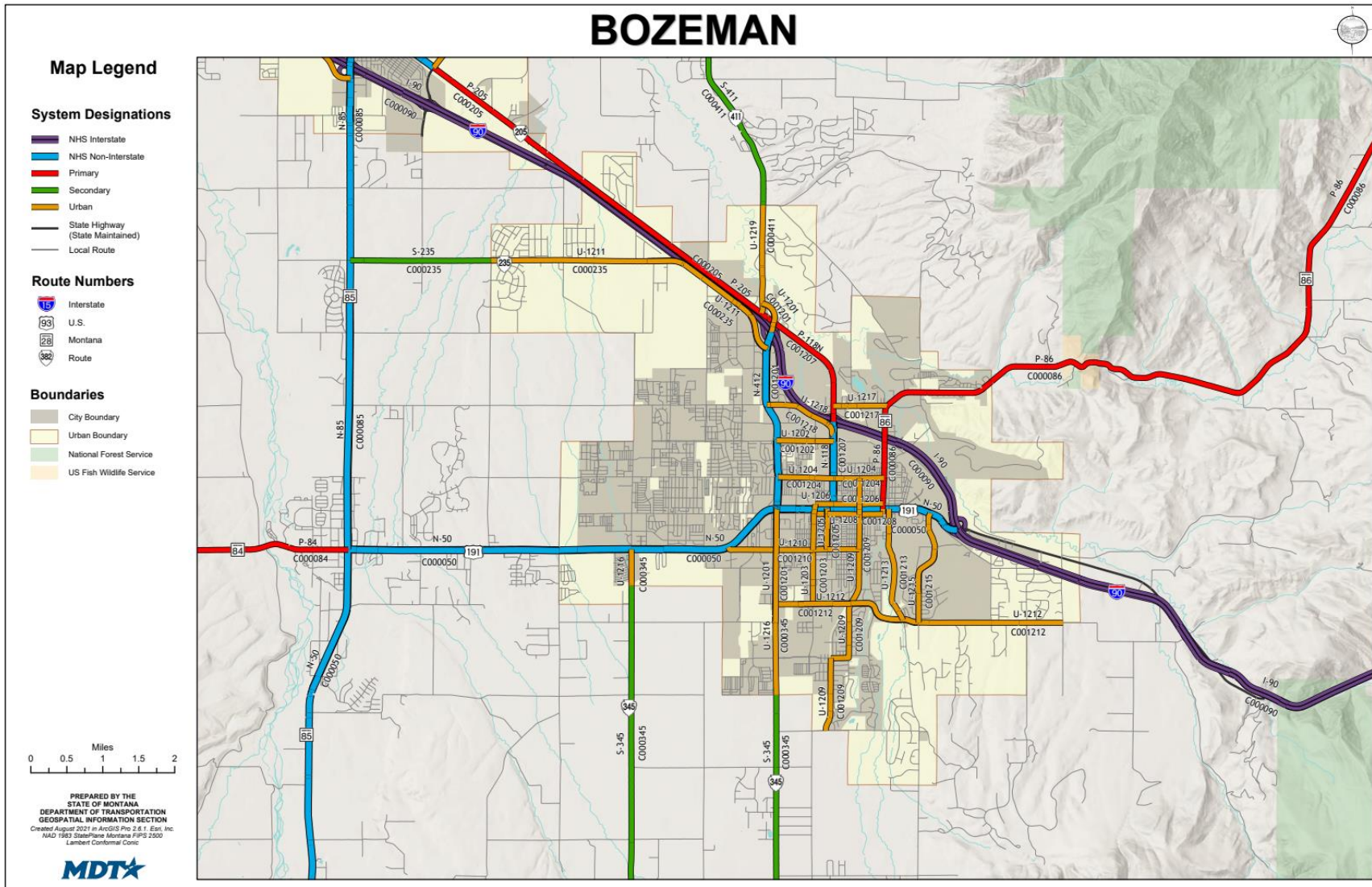


Figure 5: [MDT Systems Designation Map](#)

***SECTION 2 - RECOMMENDED CONTINGENCIES OF ZONE MAP  
AMENDMENT***

Please note that these contingencies are necessary for the City to complete the process of the proposed amendment. Should the application not be approved these contingencies are not required.

**Recommended Contingencies of Approval:**

1. That all documents and exhibits necessary to establish the amended municipal zoning designation of B-2M shall be identified as the “Haggerty Lane Zone Map Amendment”.
2. The applicant must submit a zone amendment map, titled “Haggerty Lane Zone Map Amendment”, acceptable to the Director of Public Works, as a PDF which will be utilized in the preparation of the Ordinance to officially amend the City of Bozeman Zoning Map. Said map shall contain a metes and bounds legal description of the perimeter of the subject property including adjacent rights-of-way, and total acreage of the property.
3. 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.

**Advisory Comments:**

1. BMC 38.400.060 Street Improvement Standards (B) (4) - All arterial and collector streets and intersections within one-half mile of the site must operate at a minimum Level of Service (LOS) C unless specifically exempted by the review authority.

The applicant is advised that the intersection of Haggerty Lane and Main Street is located within one-half mile of the subject property, which has been determined to operate below a minimum LOS C (Existing LOS is F per the City of Bozeman Transportation Plan April 25, 2017).

The proposed zoning change would allow the applicant to increase the amount of development density associated with the subject property. An increase in density would directly intensify the number of vehicular and pedestrian trips from the subject property. Moreover, the primary intersection that will be utilized by the subject property to access the greater transportation network will be the intersection of Haggerty Lane and Main Street.

The applicant is advised that the City will require a formal traffic impact study (TIS) with future development submittals. The TIS will need to satisfy the requirements outlined within the BMC, which will require the evaluation of the Haggerty Lane & Main Street intersection. The TIS must analyze the associated impacts of future development in relation to the Haggerty & Main intersection well as any mitigation measures necessary to improve the LOS at the intersection. The review authority may approve the development only if the

LOS requirements are met in the design year, which must be completed if mitigation measures are required to maintain LOS. The intersection must have a minimum acceptable LOS of C for the intersection as a whole.

The applicant is advised that the intersection of Haggerty Lane and Main Street is a state highway, in which the Montana Department of Transportation retains the review authority and approval to intersection improvements and access. Currently, the City has the intersection of Haggerty Lane and Main Street unscheduled for improvement within the City's current Capital Improvement Program. This means that no City funds are expected to be invested in the intersection for at least six years.

### ***SECTION 3 - RECOMMENDATION AND FUTURE ACTIONS***

Having considered the criteria established for a zone map amendment, the Staff does not recommend approval as submitted. The Development Review Committee (DRC) considered the amendment on July 13, 2022. The DRC identified infrastructure or regulatory constraints that would impede the approval of the application.

The Community Development Board acting in their capacity as the Zoning Commission held a public hearing on this zone map amendment on October 3, 2022 and forwarded a recommendation to approve the zone map amendment to the City Commission. The meeting was held at 6 p.m. in the Commission Room at City Hall, 121 N. Rouse Ave, Bozeman, Montana. Members of the public has an opportunity to participate in person and remotely via WebEx. Instructions for joining the WebEx meeting was included on the meeting agenda which is published on the City's website at least 48 hours prior to the meeting.

The City Commission will hold a public meeting on the zone map amendment on October 25, 2022. 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. Members of the public will also be able to participate remotely via WebEx. Instructions for joining the WebEx meeting will be included on the meeting agenda which is published on the City's website at least 48 hours prior to the meeting.

### ***SECTION 4 - ZONE MAP AMENDMENT STAFF ANALYSIS AND FINDINGS***

In considering applications for plan 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 broad latitude to determine a policy direction. The burden of proof that the application should be approved lies with the applicant.

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 is within the annexed area of the City and where there is anticipated redevelopment within the City as discussed below. As shown on the maps in Section 1, on the excerpt of the current future land use map, the property is designated as Community Commercial Mixed-Use. The Community Commercial Mixed-Use designation description reads:

“The Community Commercial Mixed Use category promotes commercial areas necessary for economic health and vibrancy. This includes professional and personal services, retail, education, health services, offices, public administration, and tourism establishments. Density is expected to be higher than it is currently in most commercial areas in Bozeman and should include multi-story buildings. Residences on upper floors, in appropriate circumstances, are encouraged. The urban character expected in this designation includes urban streetscapes, plazas, outdoor seating, public art, and hardscaped open space and park amenities. High density residential areas are expected in close proximity.

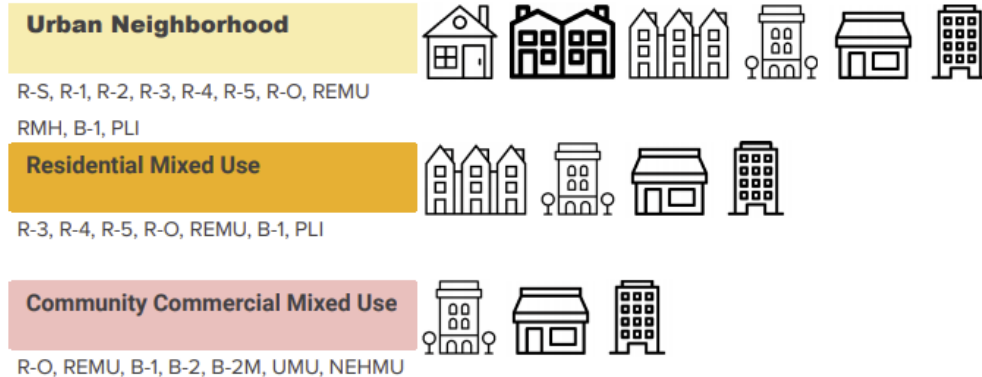
Developments in this land use area should be located on one or two quadrants of intersections of the arterial and/or collector streets and integrated with transit and non-automotive routes. Due to past development patterns, there are also areas along major streets where this category is organized as a corridor rather than a center. Although a broad range of uses may be appropriate in both types of locations, the size and scale is to be smaller within the local service areas. Building and site designs made to support easy reuse of the building and site over time is important. Mixed use areas should be developed in an integrated, pedestrian friendly manner and should not be overly dominated by any single use. Higher intensity uses are encouraged in the core of the area or adjacent to significant streets and intersections. Building height or other methods of transition may be required for compatibility with adjacent development.

Smaller neighborhood scale areas are intended to provide local service to an area of approximately one half-mile to one mile radius as well as passersby. These smaller centers support and help give identity to neighborhoods by providing a visible and distinct focal point as well as employment and services. Densities of nearby homes needed to support this scale are an average of 14 to 22 dwellings per net acre.”

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, both B-2 and B-2M districts are implementing district of the Community Commercial Mixed-Use category.

## 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](#).



### 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 staff. Conflict with the text of the growth policy hasn't been identified.

The Short Term Action list on page 63 of the BCP 2020 describes 14 items to implement the growth policy. The first two relate to direct changes to the zoning map in support of listed goals and objectives. These include increasing the intensity of zoning districts in already developed areas. Beginning on page 71 of the BCP 2020 in the section titled Zoning Amendment Review, the document discusses how the City implements zoning for new areas, amendments to areas, and revisions to existing text. This section includes a discussion of when the City may initiate a zoning change to a more intensive district to increase development opportunities. This section demonstrates that the City, as a matter of policy, is supportive of more intensive zoning districts and development, even within already developed areas. This policy approach does not specify any individual district but does lean towards the more intensive portion of the zoning district spectrum.

The Applicant argues the proposed zone change in accordance with the Growth Policy by arguing, "... one of the central themes of the growth policy is high density residential growth in appropriate areas to maximize efficiency of new development and quality of life for new residents. The larger height allowance of the B-2M zoning will allow an additional floor and 13 more units to the proposed development. This increases density efficiently based on the "infill" style of the development and amenity rich location. The proposed project fit well in this location because:

- *The high-density blends well with an established commercial district while elevating the quality and amount of housing supply.*

- *The location promotes walkability given the proximity to the Streamline bus stop at the Town & Country Grocery (800 ft.), Bozeman Deaconess Hospital (.8 miles), and major employers' downtown (.9 miles).*
- *There are many nearby Amenities and employers within walking distance: Bridger Orthopedic (.6 miles), Bridger Ear Nose & Throat (.7 miles), Bozeman Softball Complex (400ft), and Sunset hills Nordic Trails (.3 miles).*
- *10+ miles of walking trails can be accessed directly from the back of the property extending to the Triple Tree trail south of town.*

*The proposed zoning change fits neatly within the use description of the Future Land Use Map (FLUM). The FLUM lists this property as Community Commercial Mixed Use which includes B-2M and is described in part as "High Density Housing and Mixed use".*

*The project will significantly increase housing supply nearly doubling the current inventory of one and two bedroom units (see April 2022 Big Sky MLS report)."*

It should be noted that according to the Tables 38.310.040.A, B, and C there are no differences in uses between the B-2 and the B-2M zoning districts. There are however, important differences between the two districts. The primary differences between these two districts is that B-2M requires less parking for most uses, the ease in which residential uses may be established on the ground floor, and minor increase in building mass through setbacks and building height.

The Bozeman Community Plan 2020 focuses on these differences between the B-2 and B-2M as desired outcomes to adapt to the needs of the community. This mix of development at densities appropriate for a growing urban area is therefore grounded on tenets of the Community Plan. Moreover, the B-2M zoning proposed through this application fosters flexibility to address both current market trends and long term land use goals for the subject property. The Community Plan includes several goals and objectives that are broadly served through this application, including:

Goal N-2: Pursue simultaneous emergence of commercial nodes and residential development through diverse mechanisms in appropriate locations.

N-2.3 Investigate and encourage development of commerce concurrent with, or soon after, residential development. Actions, staff, and budgetary resources relating to neighborhood commercial development should be given a high priority.

DCD-1.7 Coordinate infrastructure construction, maintenance, and upgrades to support infill development, reduce costs, and minimize disruption to the public.

DCD-2.5 Identify and zone appropriate locations for neighborhood-scale commercial development.

DCD-2.7 Encourage the location of higher density housing and public transit routes in proximity to one another.

M-1.1 Prioritize mixed-use land use patterns. Encourage and enable the development of housing, jobs, and services in close proximity to one another.

M-1.4 Develop safe, connected, and complementary transportation networks for pedestrians, bicyclists, and users of other personal mobility devices (e-bikes, electric scooters, powered wheelchairs, etc.).”

N-1.11 Enable a gradual and predictable increase in density in developed areas over time.

**B. Secure safety from fire and other dangers.**

Criterion not met. The subject property is currently served by City of Bozeman Fire and Police Departments. Future development of the property will be required to conform to all City of Bozeman public safety, building, transportation, and land use requirements, which will generally ensure this criterion is met. However, in this case, the known infrastructure deficiencies (see discussion below) render finding that granting increased potential development on this site, and any adjoining properties, is not secure from other dangers contrary to a reasonable doubt. Although the change from B-2 to B-2M is small in uses increased intensity allowed by B-2M will exacerbate the existing infrastructure deficiencies (see discussion below).

**C. Promote public health, public safety, and general welfare.**

Criterion not met. City development standards included in Chapter 38, Unified Development Code, building codes, and engineering standards all ensure that this criterion is met. Adequate water and sewer supply and conveyance provide for public health through clean water. Rapid and effective emergency response provides for public safety. The City’s standards ensure that adequate services are provided prior to building construction which advances this criterion. General welfare has been evaluated during the adoption of Chapter 38 and found to be advanced by the adopted standards. Provision of parks, control of storm water, and other features of the City’s development standards also advance the general welfare. Compliance with the BCP 2020 as described in Section 4, Criterion A, shows advancement of the Plan but not necessarily the well-being of the community as a whole.

The subject property is not well connected to the City’s transportation system and is served by an intersection known not to meet minimum service standards. There are no sidewalks adjacent to the property and while those will be required to be constructed with the future development there are no sidewalks connecting to nearby services and residential development. It is unlikely development on this site would trigger construction of a full street section (Minor Arterial) of Haggerty Lane as required by the Bozeman Transportation Plan due to a reasonable proportionality.

The intersection of Haggerty Lane and East Main Street is listed on the Bozeman Capital Improvement Plan (CIP), see SIF144, the improvement is not scheduled and is without funding. In addition, street improvements for Haggerty Lane are listed in the CIP for at least an additional six years.

See also Criterion B.

**D. Facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements.**

Criterion not met. The BCP 2020, page 74, says the following regarding evaluation of Section 4, Criteria B, C, & 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, sustainability, 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 service to new development. See page 19 of the BCP 2020 for a listing. The City implements these plans through its capital improvements program (CIP). The CIP identifies individual projects, project construction scheduling, and financing of construction for infrastructure. Private development must demonstrate compliance with standards prior to construction. Dedication of school facilities is not required by municipal zoning standards. However, School District 7 will have opportunity to review and comment on future development.

The subject properties are within the City’s land use, transportation, parks, and utility planning areas. Those plans show this property as developing within the City when development is proposed.

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.

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.”

Water and sewer is available to the site. A 10” sewer line under the property within an easement. The sewer line is part of the Elks Club Property Sanitary Sewer Improvement district. In addition, the Front Street 18” Interceptor is located on the north side of Haggerty Lane. Finally, an 8” water supply adjacent to the property on the south

However, the subject property is not well connected to the City’s transportation system and is served by an intersection known to not meet minimum service standards. There are no sidewalks adjacent to the property and while those will be required to be constructed with the future development there are no sidewalks connecting to nearby services and residential development. It is unlikely development on this site would trigger construction of a full street section (Minor Arterial) of Haggerty Lane as required by the Bozeman Transportation Plan. Such a large project may be beyond the capacity of such a small site for development. Coordination with other properties required to address the scale of the necessary project and meet standards for development exactions would be quite difficult. The intersection of Highland Boulevard and East Main Street was recently upgraded to full signalization and functionality. As a result of this improvement the City has an impact fee reimbursement due in FY 2026 totaling as additional \$850,000 (see SIF112) as a result of MDT required design changes. Installation of full signalization cost approximately \$1,500,000 not including curb, gutter, stormwater water facilities, grading, road improvements, additional lanes, and other ancillary infrastructure associated with the signal installation.

An advisory comment is included to place future development on notice of known deficiencies in the transportation network serving this property. BMC 38.400.060 Street Improvement Standards (B) (4) - All arterial and collector streets and intersections within one-half mile of the site must operate at a minimum Level of Service (LOS) C unless specifically exempted by the review authority. Therefore, the applicant is advised that the intersection of Haggerty Lane and Main Street is located within one-half mile of the subject property, which has been determined to operate below a minimum LOS C (Existing LOS is F per the City of Bozeman Transportation Plan April 25, 2017).

This analysis would likely come to a different conclusion upon infrastructure improvements and a broader geographic area proposing up zoning.

#### **E. Reasonable provision of adequate light and air.**

Criterion met. This criterion is not about individual preferences for a given degree of visual openness but about preservation of public health. The B-2M district provides adequate light and air through the Bozeman Unified Development Code’s standards for park and recreation

requirements, on-site open space for residential uses, maximum building height, lot coverage, and setback requirements.

The form and intensity standards, [Division 38.320](#), provide minimum lot areas, lot widths, lot coverage and maximum floor area ratios, and prescribe require minimum separation from property lines and limits building heights. [Section 38.520.030](#) requires building placement to ensure access to light and air. [Division 38.420](#) and [Section 38.520.060](#) require dedication of parks and on-site open spaces to meet needs of residents. The standards provide a reasonable provision of adequate light and air.

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.

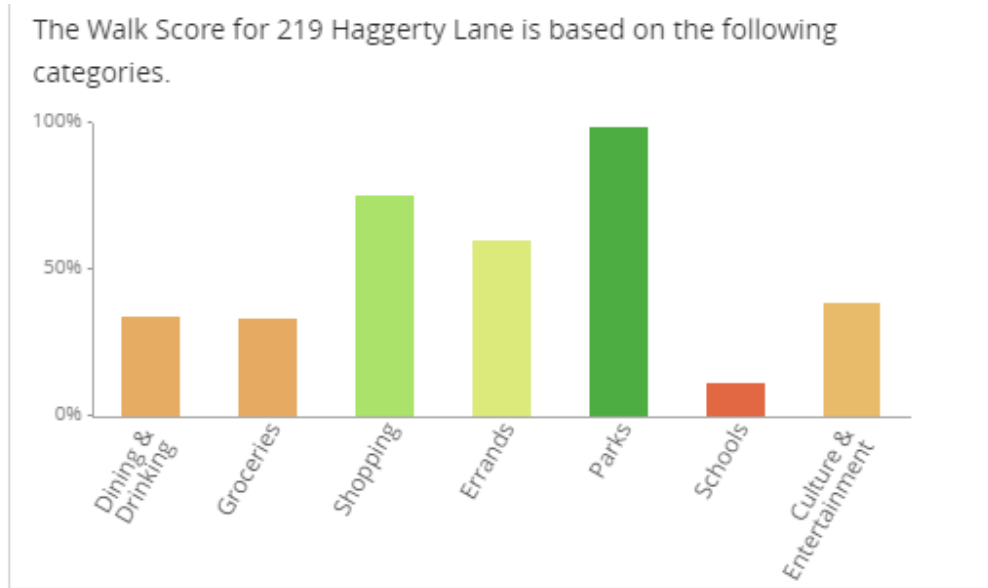
**F. The effect on motorized and non-motorized transportation systems.**

Criterion not met. The street section is not fully constructed and there are known deficiencies in the transportation system. The proposed zone changes in itself does not create impacts on city systems increasing potential impacts though a zoning change exacerbates potential impacts. As noted in other evaluation criteria development of this site may not trigger sufficient nexus or reasonable proportionality to require construction of a compete street to serve the property. Therefore, development of the property is restricted.

Future development and redevelopment of the property will be required to comply with transportation-related standards and reviewed for impacts on the surrounding streets, intersections, and sidewalks, and improvements to the transportation network to serve the site, which will improve the overall transportation system. These improvements include provisions for non-motorized transportation systems. The change in zoning district will increase offsite impacts.

The site has a Walk Score of 36, a Transit score of 20, and Bike Score of 57. Average walk score for the city as a whole is 47 out of 100. According to Walk Score® the walks score measures the walkability of any address based on the distance to nearby places and pedestrian friendliness.

90 – 100	Walker’s Paradise. Daily errands do not require a car.
70 – 89	Very Walkable. Most errands can be accomplished on foot.
50 – 69	Somewhat walkable. Some errands can be accomplished on foot.
25 – 49	Car-Dependent. Most errands require a car.
0 – 24	Car-Dependent. Almost all errands require a car.



These values are provided by Walk Score, a private organization which presents information on real estate and transportation through [walkscore.com](http://walkscore.com). The algorithm which produces these numbers is proprietary. A score is not an indication of safety or continuity of services or routes. Scores are influenced by proximity of housing, transit, and services and expected ability, as determined by the algorithm, to meet basic needs without using a car. Sites located on the edge of the community have lower scores than those in the center of the community as the area is still under development and therefore diversity of uses is less than in fully established areas. There are no adopted development standards relating to the walk score.

The subject property is not well connected to the City’s transportation system and is served by an intersection known to not to meet minimum service standards. There are no sidewalks adjacent to the property and while those will be required to be constructed with the future development there are no sidewalks connecting to nearby services and residential development. It is unlikely development on this site would trigger construction of a full street section (Minor Arterial) of Haggerty Lane as required by the Bozeman Transportation Plan. See also discussion under Criterion F.

An advisory comment is included to place future development on notice of known deficiencies in the transportation network serving this property. BMC 38.400.060 Street Improvement Standards (B) (4) - All arterial and collector streets and intersections within one-half mile of the site must operate at a minimum Level of Service (LOS) C unless specifically exempted by the review authority. Therefore, the applicant is advised that the intersection of Haggerty Lane and Main Street is located within one-half mile of the subject property, which has been determined to operate below a minimum LOS C (Existing LOS is F per the City of Bozeman Transportation Plan, 2017 Update).

As noted earlier, the intersection of Haggerty Lane and Main Street is located within one-half mile of the subject property, which has been determined to operate below a minimum LOS C.

Future development will increase in overall density, which will directly increase the number of vehicular and pedestrian trips from the subject property. Moreover, the primary intersection that will be utilized to access the greater transportation network will be the intersection of Haggerty Lane and Main Street. Development analysis. Future development must determine the associated impacts of the development in relation to the Haggerty & Main intersection as well as any mitigation measures necessary needed to mitigate the developments impacts. The review authority may approve the development only if the LOS requirements are met in the design year, which must be completed if mitigation measures are required to maintain LOS. The intersection must have a minimum acceptable LOS of C for the intersection as a whole.

The intersection of Haggerty Lane and Main Street is located on a state controlled highway, in which the Montana Department of Transportation retains the review authority and approval to access as well as improvements. Currently, the City has the intersection of Haggerty Lane and Main Street in the City's adopted Capital Improvement Program, but is unscheduled in terms of future time.

#### **G. Promotion of compatible urban growth.**

Criterion met. The Bozeman Community Plan establishes a preferred and compatible development pattern. *"The land use map sets generalized expectations for what goes where in the community... The land use categories and descriptions provide a guide for appropriate development and redevelopment locations for civic, residential, commercial, industrial, and other uses. The future land use designations are important because they aim to further the vision and goals of the City through promoting sustainability, citizen and visitor safety, and a high quality of life that will shape Bozeman's future."* (Community Plan p. 51).

The City's future land use map designates the properties as Community Commercial Mixed-Use. These designations correlate with several zoning districts including the B-2M district proposed by the applicants. The districts were developed by the City to promote appropriate urban growth compatible with the areas of the City as identified on the future land use map. Based on the land use map designations and correlated zoning districts in the plan and proposed by the applicants, the zone map amendment would promote compatible urban growth. Also see the discussion in (H) below.

The applicant provides additional support by stating, "The designation this site as B-2M offers additional design flexibility to and will offer future development to unfold compatible with development adjacent to the existing zones. The flexibility offered by B-2M zoning will allow the site to respond to and meet the demands of the surrounding neighborhoods, providing complimentary retail, commercial uses, offices, and restaurants to serve the needs of the community of Central Bozeman. All future design and construction will be compatible with the UDC site and design standards, further ensuring compatibility for this site."

**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. This is especially true when applying zoning to undeveloped areas as any new construction will alter the physical characteristics of the area.

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. These will support the ability of future development in the proposed B-2M district to be compatible with adjacent development's mixed-use characteristics and uphold the unique character of the area. The site has an existing commercial building, parking area, other commercial businesses, and undeveloped area. There are a wide variety of uses adjacent to the site including residential and commercial. A review of the uses allowed in the proposed zones shows many similarities with existing and authorized uses in the surrounding area. Therefore, the change in zoning does not appear to conflict with the character of the area.

**I. Peculiar suitability for particular uses.**

Criterion met. Future uses for construction on the site are not finalized at this time, so the suitability of the site for particular uses is not easily evaluated. However, considering the context of the site with a robust transportation system, large park area directly adjacent, major streets serving the property, existing city services established, and the variety of land uses in

the immediate area, the proposed B-2M district allows for more similar configuration of uses as the surrounding area, even though the B-2M district is a more intensive district than the existing B-2 zoning generally allows.

As shown in Figure 2, the property is bounded by B-2 zoning on the east and west and PLI to the north and south. The Softball Complex is directly to the south and Haggerty Lane and right-of-way for I-90 to the north.

The proposed B-2M district can support many types of urban development that are likely to serve the immediate area and region as a result of its location and proximity to major transportation networks. Final determination of suitability will occur during the site development process.

#### **J. Conserving the value of buildings.**

Criterion met. The site is vacant. B-2M zoning will allow for new and diverse development patterns on the subject parcel that compliment development on adjacent sites as does the existing B-2 designation. Future development must comply with the Bozeman Unified Development Code which will ensure an appropriate scale and intensity of uses. As a result, the proposed zone map amendment is not anticipated to negatively impact nearby building values as the development pattern will be appropriate to the surrounding character of the district.

The values of some buildings may improve in the future as new and improved amenities are provided to the area as the site is developed according to the proposed B-2M district, while other buildings' values are unlikely to be impacted largely due to a robust real estate market and lack of unmitigated offensive uses allowed by the proposed zoning district.

#### **K. Encourage the most appropriate use of land throughout the jurisdictional area.**

Criterion met. As stated above, the BCP 2020 illustrates the most appropriate use of the land through the future land use map. This application complies with the BCP 2020 by proposing zone map amendments of districts that continue to implement the future land use map designations. In this case, urban mixed-use development have been identified by the community as the most appropriate types of development for the property. The Unified Development Code contains standards, protections and review processes to ensure the land is developed in ways that are appropriate to a site's context and according to the BCP 2020.

Similarly, as stated by the applicant, "... the Bozeman Community Plan illustrates the most appropriate use of the land. In this case Community Commercial Mixed Use development has been identified by the community as the most appropriate types of development for the property. The Unified Development Code contains standards, protections and review processes to ensure the land is developed in ways that protect and promote public health, safety, and general welfare."

## Spot Zoning Criteria

Rezoning may, in certain factual circumstances, constitute impermissible “spot zoning.” The issue of whether a rezoning constitutes spot zoning was discussed by the Montana Supreme Court in *Plains Grains LP v. Board of County Comm’rs of Cascade County and Little v. Bd. Of County Comm’rs*, in which the Court determined that the presence of the following three conditions generally will indicate that a given situation constitutes spot zoning, regardless of variations in factual scenarios. Montana law employs the three-part *Little* test to evaluate whether a zoning designation constitutes unlawful spot zoning:

The first prong of the three-part *Little* test examines whether the requested use would differ significantly from the prevailing land uses in the area. The second prong explores whether the area requested for the rezone would be "rather small" in terms of the number of landowners benefitted by the requested zone change. Finally, the third prong analyzes whether the requested zone change would be in the nature of "special legislation" designed to benefit one or a few landowners at the expense of the surrounding landowners or the public.

*Plains Grains Ltd. P'ship v. Bd. Of Cty. Comm'rs of Cascade Cty.*, 2010 MT 155, 58-59, 357 Mont. 61, 238 P.3d 332 (internal citations omitted). As explained in *Little*, "[i]f spot zoning is invalid, usually all three elements are present or, said another way, the three statements may merely be nuances of one another." *Little v. Bd. Of Cty. Comm'rs of Flathead Cty.*, 193 Mont. 334,346,631 P.2d 1282, 1289 (1981).

*Is the proposed use significantly different from the prevailing land uses in the area?*

No. This criterion includes the modifier ‘significantly.’ It is not prohibited to have uses that are different. To be a Yes, the reviewer must demonstrate a ‘significant difference.’

The differences between B-2 and B-2M are small and not significant. Allowed uses are identical although their integration into a single building does vary. As noted above, parking requirements are less in the B-2M district than the B-2 district. As a result, the proposed B-2M zoning designation would not result in primary uses of the site which are significantly different from prevailing land uses in the area.

1. *Is the area requested for the rezone rather small in terms of the number of separate landowners benefitted from the proposed change?*

Yes. In order to determine whether or not this condition is present both this question and the following point must be analyzed in concert. There is only one property involved with the application. As noted above there are no differences in uses between the B-2 and the B-2M zoning districts there is a difference in intensity. B-2M allows additional height, more permissive parking standard, and more flexibility in the configuration of uses within the development. These characteristics are only benefitting the property owner in this instance because increased intensity on this site will contribute negatively to the safety and

general welfare of adjacent properties. On the other hand, if multiple property owners and a larger geographic area were proposing such a zoning change it may indicate a larger cross section of the community that may benefit from the change.

In addition, most of the adjacent properties are partially developed and would benefit from transportation improvements, those that would benefit most are those undeveloped properties served by the intersection of Haggerty Lane and East Main Street. If multiple properties were involved in up-zoning the resulting development may have a larger impact on economic activity and housing (likely) and contribute to the construction of necessary infrastructure to support the increased intensity allowed by the B-2M district.

It remains that the B-2M zoning designation is an implementing district to the commercial land use designation and promotes a variety of land uses that are needed for the function and vitality of the immediate neighborhood and the greater community.

2. *Would the change be in the nature of “special legislation” designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public?*

Yes. The aforementioned analysis identifies negative impacts to the surrounding landowners and the general public due to this amendment. The number of landowners who will directly benefit from the proposed zone map amendment is small (one), the proposed amendment will exacerbate existing infrastructure deficiencies at the expense of surrounding landowners and the general public. As discussed above in the various review criteria, a number of negative impacts have been identified due to this amendment. However, the proposed B-2M zoning designation will allow for a variety of uses conducive to the Community Commercial Mixed Use land use designation.

Further, as discussed in Criterion A, the application is consistent both the City’s growth policy. The growth policy is the overall land use policy for the community. Consistency with the growth policy demonstrates benefit to the general public. As discussed under Criterion D, the City’s development standards will require the applicant to provide the needed infrastructure to support any proposed development prior to construction. While concurrency and adequacy of infrastructure remove most potential injury to others, proportionality of impacts supersedes the ability of this property owner to fully mitigate impacts. This is due to the fact that Montana Department of Transportation has authority of the design, construction, and timing of any improvements to this intersection rendering the ability address this issue and has not indicated improvements will be considered at this time.

### ***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 and legal description of the property), 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 Ave., PO Box 1230, Bozeman, MT 59771-1230.**

### ***APPENDIX A - DETAILED PROJECT DESCRIPTION AND BACKGROUND***

A zone map amendment requesting amendment of the City Zoning Map for an existing lot consisting of approximately 0.55 acres from B-2 (Community Business District) to B-2M (Community Business District-Mixed).

The owner, Haggerty Property Investments, LLC, Box 850, Bozeman, MT 59718 submitted application to rezone a property totaling 0.55 acres, including adjacent right-of-way, from B-2 to B-2M. The property is currently vacant. No future development plans were submitted or required with the application. Under the proposed use item in the application it states the proposed use will be “mixed.”

Haggerty Lane is a designated Minor Arterial according to the Bozeman Area Master Transportation Plan, 2017 Update. The intersection of Haggerty Lane and East Main Street currently operates below a level “C” in function and would require improvements prior to development of this or other sites in the vicinity. East Main Street is a Montana Department of Transportation (MDT) route and would require coordination with this state agency to make any improvements. MDT has provided comment on this application.

The primary differences between the B-2 and B-2M districts are slight differences in building height, more permissive residential use, and reduction of parking requirements. Building height in the B-2 district is between 50-60 feet, depending on roof pitch. Building height in B-

2M is five (5) stories or 60 feet. Residential use is allowed on the ground floor in without a Conditional Use Permit in the B-2M zone and may be permitted in the B-2 district with an approved CUP.

### ***APPENDIX B - NOTICING AND PUBLIC COMMENT***

Notice was sent via US first class mail to all owners of property located inside the site and within 200 feet of the perimeter of the site. The project site was posted with a copy of the notice. The notice was published in the Legal Ads section of the *Bozeman Daily Chronicle* on September 18, 2022 and October 2, 2022. The Community Development Board acting in their capacity as the Zoning Commission hearing is scheduled for October 3, 2022 and the City Commission public hearing is scheduled for October 25, 2022.

Public comment has been received.

<https://weblink.bozeman.net/WebLink/DocView.aspx?id=265161&dbid=0&repo=BOZEMAN>

### ***APPENDIX C - PROJECT GROWTH POLICY AND PROPOSED ZONING***

#### **Adopted Growth Policy Designation:**

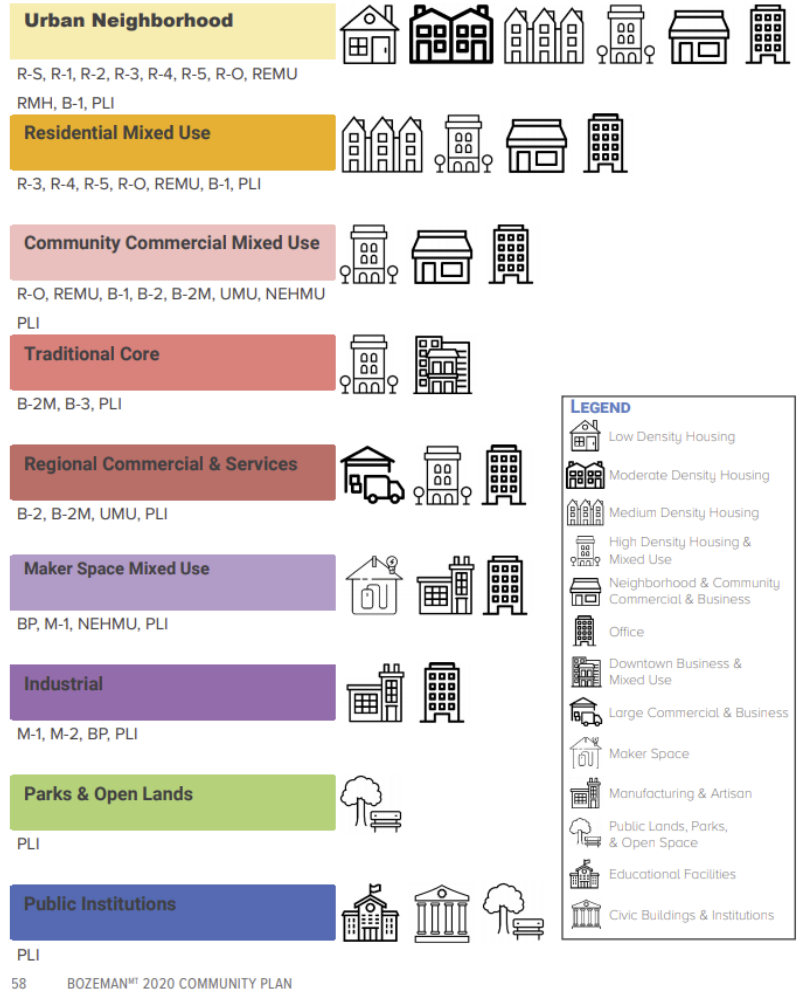
The property is designated as community commercial mixed use in the Bozeman Community Plan 2020 future land use map – see descriptions below.

**“Community Commercial Mixed Use.”** The growth policy states that, “activities within this land use category are the basic employment and services necessary for a vibrant community. Establishments located within these categories draw from the community as a whole for their employee and customer base and are sized accordingly. A broad range of functions including retail, education, professional and personal services, offices, residences, and general service activities typify this designation. In the “center-based” land use pattern, Community Commercial Mixed Use areas are integrated with significant transportation corridors, including transit and non-automotive routes, to facilitate efficient travel opportunities. The density of development is expected to be higher than currently seen in most commercial areas in Bozeman

and should include multi-story buildings...High density residential areas are expected in close proximity. Including residential units on sites within this category, typically on upper floors, will facilitate the provision of services and opportunities to persons without requiring the use of an automobile... Mixed use areas should be developed in an integrated, pedestrian friendly manner and should not be overly dominated by any single land use. Higher intensity employment and residential uses are encouraged in the core of the area or adjacent to significant streets and intersections. As needed, building height transitions should be provided to be compatible with adjacent development.”

**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.



The Zoning Correlation Table on Page 58 of the Bozeman Community Plan, 2020 correlates zoning districts with the Growth Policy’s land use categories, demonstrating that the proposed zoning designation of B-2M correlates with the Growth Policy’s future land use designation of “Community Commercial Mixed Use”.

**Proposed Zoning Designation and Land Uses:**

The applicant has requested zoning of B-2M (Community Business District-Mixed). The intent of the B-2M district is “...to function as a vibrant mixed-use district that accommodates substantial growth and enhances the character of the city. This district provides for a range of commercial uses that serve both the immediate area and the broader trade area and encourages the integration of multi-household residential as a secondary use. Design standards emphasizing pedestrian

oriented design are important elements of this district. Use of this zone is appropriate for arterial corridors, commercial nodes and/or areas served by transit”.

**Table 38.310.040.A Permitted general and group residential uses in residential zoning districts**

**Table clarifications:**

1. Uses: P = Principal uses; C = Conditional uses; S = Special uses; A = Accessory uses; — = Uses which are not permitted.
2. If a \* appears after the use, then the use is defined in article 7.
3. Where a code section is referenced after the use, then the use is subject to the additional standards specific to the subject use in that code section.
4. If a number appears in the box, then the use may be allowed subject to development condition(s) described in the footnotes immediately following the table.

Uses	Zoning Districts										
	Commercial				Mixed Use			Industrial			PLI
	B-1 <sup>1</sup>	B-2	B-2M	B-3	UMU	RE MU	NEHMU <sup>2</sup>	BP	M-1	M-2	
<b>General sales</b>											
Automobile, boat or recreational vehicle sales, service and/or rental	—	—	—	—	—	—	P	—	P	P	—
Automobile fuel sales or repair (38.360.070)*	S	S	S	S	S	S	P	—	P	P	—
Convenience uses (38.360.100)*	—	P	P	C	C	P	P	—	—	—	—
Heavy retail establishment (Retail, large scale - 38.360.150)*	—	P	P	C	P	C	P	—	P	P	—

Restaurants*	P <sup>3</sup>	P	P	P	P	P	P 1,500sf	—	P <sup>3</sup>	P <sup>3</sup>	—
Retail*											
• 0-5,000sf GFA	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4,5</sup>	A <sup>6</sup> C <sup>7</sup>	A <sup>6</sup>	A <sup>6</sup> C <sub>7</sub>	A <sup>6</sup> C <sub>7</sub>	—
• 5,001-24,999sf GFA	—	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4,5</sup>	A <sup>6</sup> C <sup>7</sup>	A <sup>6</sup>	A <sup>6</sup> C <sub>7</sub>	A <sup>6</sup> C <sub>7</sub>	—
• 25,000sf-39,999sf GFA	—	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	—	A <sup>6</sup> C <sup>7</sup>	A <sup>6</sup>	A <sup>6</sup> C <sub>7</sub>	A <sup>6</sup> C <sub>7</sub>	—
• Over 40,000sf GFA (Retail, large scale - 38.360.150)*	—	P <sup>4</sup>	P <sup>4</sup>	—	S	—	—	—	—	—	—
Sales of alcohol for on-premises consumption (38.360.060)	S <sup>8</sup>	S <sup>8</sup>	S <sup>8</sup>	S <sup>8</sup>	S <sup>8,9</sup>	S <sup>8,9</sup>	S <sup>8</sup>	—	C <sup>8,10</sup>	C <sup>8,10</sup>	—

**Notes:**

1. In the B-1 district, the footprint of individual buildings must not exceed 5,000 square feet.
2. Authorized uses in the NEHMU district include those uses allowed in the R-2 district (see table 38.310.030 for those not listed in this table).
3. Occupying not more than 20 percent of the gross floor area of a building or 1,500 square feet, whichever is less, or occupying not more than 45 percent of the gross floor area of a food processing facility.
4. Excluding adult businesses as defined in section 38.700.020 of this chapter.
5. Special REMU district conditions based on the amount of on-site retail uses:
  - a. Retail uses greater than 5,000 square feet and less than or equal to 12,000 square feet are limited to no more than four structures per 100 acres of contiguous master planned development and subject to section 38.310.060.C.
  - b. Retail uses greater than 12,000 square feet and less than or equal to 25,000 square feet are limited to no more than two structures per 100 acres of contiguous master planned development and subject to section 38.310.060.C.
6. Retail sales of goods produced or warehoused on site and related products, not to exceed 20 percent of gross floor area or 10,000 square feet, whichever is less.
7. Retail establishments as a primary use are conditionally permitted.
8. Also subject to chapter 4, article 2.

- 9. No gaming allowed.
- 10. Sales of alcohol for on-premises consumption in the M-1 and M-2 districts are permitted with the following conditions:
  - a. Restaurants serving alcoholic beverages are limited to those with state beer and wine licenses issued since 1997, prohibiting any form of gambling and occupying not more than 45 percent of the total building area of a food processing facility; and/or
  - b. Retail sales for on-premises consumption of alcohol produced on site, not to exceed 10,000 square feet or 50 percent of the facility, whichever is less.

**Table 38.310.040.B**  
**Permitted services and temporary lodging uses in commercial, mixed-use, and industrial zoning districts**

Uses	Zoning Districts										
	Commercial				Mixed Use			Industrial			PLI
	B-1 <sup>1</sup>	B-2	B-2M	B-3	UMU	REMU	NEHMU <sub>2</sub>	BP	M-1	M-2	
<b>Personal and general service</b>											
Animal shelters	—	—	—	—	—	—	C	—	S	S	—
Automobile washing establishment*	—	P	P	C	C	C	P	—	P	P	—

Daycare—Family, group, or center*	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	S/A	S/A <sup>4</sup>	C/A <sup>4</sup>	C/A <sup>4</sup>	C
General service establishment*	P	P	P	P	P	P	P	C	P	C	—
Health and exercise establishments*	P S	P	P	P	P	P	P	C	P	P	—
Heavy service establishment*	—	P	P	C	P	C	P	—	P	P	—
Medical and dental offices, clinics and centers*	P <sup>3</sup> S	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P	P	P	P	—
Mortuary	—	S	S	S	S	—	—	—	—	—	—
Offices*	P <sup>3</sup> S	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P	P <sup>5</sup>	P	P	—
Personal and convenience services*	P	P	P	P	P	P	A	A	A	A	—
Truck repair, washing, and fueling services	—	—	—	—	—	—	C	—	C	P	—
<b>Temporary lodging</b>											
Bed and breakfast*	—	—	—	—	—	P	C	—	—	—	—
Short Term Rental (Type 1)*	—	P	P	P	P	P	P	—	—	—	—
Short Term Rental (Type 2)*	—	P	P	P	P	P	P	—	—	—	—
Short Term Rental (Type 3)*	—	P	P	P	P	P	—	—	—	—	—

Hotel or motel*	—	P	P	P	P	P 40,000sf	P	—	P	P	—
-----------------	---	---	---	---	---	---------------	---	---	---	---	---

**Notes:**

1. In the B-1 district, the footprint of individual buildings must not exceed 5,000 square feet.
2. Authorized uses in the NEHMU district include those uses allowed in the R-2 district (see table 38.310.030 for those not listed in this table).
3. Only lobbies for the applicable use are allowed on designated Storefront block frontages as set forth in section 38.510.020.
4. If primarily offering services to a single business or group of businesses within the same building or building complex.
5. Professional and business offices only.

**Table 38.310.040.C**  
**Permitted residential uses in commercial, mixed-use, and industrial zoning districts**

<b>Table clarifications:</b>												
1. Uses: P = Principal uses; C = Conditional uses; S = Special uses; A = Accessory uses; — = Uses which are not permitted.												
2. If a * appears after the use, then the use is defined in article 7.												
3. Where a code section is referenced after the use, then the use is subject to the additional standards in that code section.												
4. If a number appears in the box, then the use may be allowed subject to development condition(s) described in the footnotes immediately following the table. If there are multiple numbers, then the use is subject to all applicable development conditions.												
Uses	Zoning Districts											
	Commercial				Mixed Use			Industrial			PLI	
	B-1 <sup>1</sup>	B-2	B-2M	B-3	UMU	REMU	NEHMU <sub>2</sub>	BP	M-1	M-2		
General residential												
Accessory dwelling unit (38.360.040)	—	—	—	—	—	P	P	—	—	—	—	
Apartments* <sup>3</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>5</sup>	P <sup>5</sup>	P	P	A <sup>6</sup>	—	A <sup>6</sup>	A <sup>6</sup>	—	

Apartment buildings* <sup>3</sup>	—	C	P	P <sup>5</sup>	P	P	—	—	—	—	—
Cottage housing* (38.360.110)	—	—	—	—	—	P	—	—	—	—	—
Single household dwelling (38.360.210)	—	—	—	—	—	P	P	—	—	—	—
Three household dwelling or four-household dwelling (38.360.210)	—	—	—	—	—	P	—	—	—	—	—
Townhouses* <sup>3</sup> & rowhouses* (38.360.240)	—	C <sup>7</sup>	P <sup>7</sup>	P <sup>7</sup>	—	P <sup>8</sup>	P	—	—	—	—
Two-household dwelling (38.360.210)	—	—	—	—	—	P	P	—	—	—	—
Live-work units*	P	P	P	P	P	P	P	—	—	—	—
Ground floor residential		C	P <sup>5</sup>	P <sup>5</sup>	—	—	—	—	—	—	—
<b>Group residences</b>											
Community residential facilities with eight or fewer residents*	P <sup>4</sup>	P <sup>4,5</sup>	P <sup>4,5</sup>	P <sup>4,5</sup>	P <sup>4,5</sup>	P	P	—	—	—	—
Community residential facilities serving nine or more residents*	-	C	C	—	P	P	—	—	—	—	—
Cooperative household*	—	—	—	—	—	P	C	—	—	—	—
Group living (38.360.150)*	P <sup>4</sup>	P <sup>4</sup>	P <sup>5</sup>	P <sup>4</sup>	—	P	P	—	—	—	—
Lodging houses*	—	C	C <sup>5</sup>	C <sup>3</sup>	P	P	—	—	—	—	—

Transitional and emergency housing and related services (38.360.135)*	—	S	S	S	S	S	S	S	S	—	S
---	---	---	---	---	---	---	---	---	---	---	---

**Notes:**

1. In the B-1 district, the footprint of individual buildings must not exceed 5,000 square feet.
2. Authorized uses in the NEHMU district include those uses allowed in the R-2 district (some of which aren't addressed in this table).
3. May be subject to the provisions of chapter 38, article 380.
4. When located on the second or subsequent floor, or basement as defined in section 38.700.030 of this chapter. Lobbies associated with residential uses are allowed on the ground floor.
5. Non-residential uses (except for lobbies associated with residential uses) are required on the ground floor to a minimum depth of 20 feet from front building façade on properties adjacent to designated storefront streets per section 38.500.010.
6. For the purpose of this section, accessory means less than 50 percent of the gross floor area of the building, and not located on the ground floor.
7. Five or more attached units.
8. Five or fewer attached units.

**Table 38.310.040.D**  
**Permitted industrial and wholesale uses in commercial, mixed-use, and industrial zoning districts**

<b>Table clarifications:</b>											
1. Uses: P = Principal uses; C = Conditional uses; S = Special uses; A = Accessory uses; — = Uses which are not permitted.											
2. If a * appears after the use, then the use is defined in article 7.											
3. Where a code section is referenced after the use, then the use is subject to the additional standards in that code section.											
4. If a number appears in the box, then the use may be allowed subject to development condition(s) described in the footnotes immediately following the table. If there are multiple numbers, then the use is subject to all applicable development conditions.											
<b>Uses</b>	<b>Zoning Districts</b>										
	<b>Commercial</b>				<b>Mixed Use</b>			<b>Industrial</b>			<b>PLI</b>
	<b>B-1 <sup>1</sup></b>	<b>B-2</b>	<b>B-2M</b>	<b>B-3</b>	<b>UMU</b>	<b>REMU</b>	<b>NEHMU <sup>2</sup></b>	<b>BP</b>	<b>M-1</b>	<b>M-2</b>	
<b>Industrial and Wholesale</b>											

Junk salvage or automobile reduction/salvage yards	—	—	—	—	—	—	—	—	—	C	—
Manufacturing, artisan*	P	P	P	P <sup>3</sup>	P	P	P	P	P	P	—
Manufacturing (light)*	—	S	S	C <sup>4</sup>	P <sup>5</sup>	P <sup>6</sup>	P	P <sup>5</sup>	P <sup>5</sup>	P	—
Manufacturing (moderate)*	—	C	C	—	—	—	P	P	P	P	—
Manufacturing (heavy)*	—	—	—	—	—	—	—	—	C	P	—
Outside storage	—	—	—	—	—	—	P	A	P	P	—
Refuse and recycling containers	A	A	A	A	A	A	A	A	A	A	—
Warehousing*	—	—	—	—	—	—	P	—	P	P	—
Warehousing, residential storage (mini warehousing) (38.360.180)*	—	—	—	—	—	—	P	—	P	P	—

**Notes:**

1. In the B-1 district, the footprint of individual buildings must not exceed 5,000 square feet.
2. Authorized uses in the NEHMU district include those uses allowed in the R-2 district (some of which aren't addressed in this table).
3. For uses in the downtown core as described below, a high volume, pedestrian-oriented use adjoining the building's entrance on Main Street is required. The downtown core includes those properties along Main Street from Grand to Rouse Avenues and to the alleys one-half block north and south from Main Street.
4. Except on the ground floor in the downtown core (those properties along Main Street from Grand to Rouse Avenues and to the alleys one-half block north and south from Main Street).
5. Completely enclosed within a building.
6. Limited to 5,000 square feet in gross floor area.

Additional uses for telecommunication facilities are provided for in division 38.370 of this article.

**Table 38.310.040.E  
Permitted public, regional, recreational, cultural and accessory uses in commercial, mixed-use, and industrial zoning districts**

**Table clarifications:**

1. Uses: P = Principal uses; C = Conditional uses; S = Special uses; A = Accessory uses; — = Uses which are not permitted.
2. If a \* appears after the use, then the use is defined in article 7.
3. Where a code section is referenced after the use, then the use is subject to the additional standards in that code section.
4. If a number appears in the box, then the use may be allowed subject to development condition(s) described in the footnotes immediately following the table. If there are multiple numbers, then the use is subject to all applicable development conditions.
5. Where a number with a "sf" reference appears below a P or C in the box, it means that the use is permitted or conditionally permitted up to the (maximum) listed square footage in gross building area.

Uses	Zoning Districts										
	Commercial				Mixed Use			Industrial			PLI
	B-1 <sup>1</sup>	B-2	B-2M	B-3	UMU	REMU	NEHMU <sup>2</sup>	BP	M-1	M-2	
<b>Public, educational, government and regional</b>											
Business, trade, technical or vocational school	—	P	P	P <sup>3</sup>	P	P	P	P	P	P	—
Cemeteries*	—	—	—	—	—	—	—	—	—	—	P
Essential services (38.360.140)											
• Type I	A	A	A	A	A	A	A	A	A	A	A
• Type II	P	P	P	P	P	P	P	P	P	P	P
• Type III	C <sup>4</sup>	P	P	C <sup>4</sup>	C	C <sup>4</sup>	P C	P	P	P	P
Meeting hall	-	P	P	P	P	P	—	—	—	—	—

Production manufacturing and generation facilities (electric and gas)	—	—	—	—	—	—	—	—	—	S	—
Public and nonprofit, quasi-public institutions, e.g. universities, elementary junior and senior high schools and hospitals	—	—	—	—	—	—	—	—	—	—	P
Public buildings and publicly owned land used for parks, playgrounds and open space	P—	P—	P	P	P	P	P	P	P	P	P
Solid waste transfer station	—	—	—	—	—	—	—	—	—	C	P
Solid waste landfill	—	—	—	—	—	—	—	—	—	—	C
Truck, bus and rail terminal facilities	—	—	—	—	—	—	P	—	P	P	—
<b>Recreational, cultural and entertainment</b>											
Adult business (38.360.050)*	—	—	—	—	—	—	—	—	P	P	—
Amusement and recreational facilities	—	P	P	—	P	—	P	—	P	C	—
Arts and entertainment center*	P	P	P	P	P	P 12,000sf	—	—	—	—	—
Casinos	—	—	—	—	—	—	—	—	C	C	—
Community centers (38.360.080)*	P	P	P	P	P	P	P	P	P	P	P
<b>Accessory and/or other uses</b>											
Agricultural uses*	—	—	—	—	—	—	—	—	—	P	—

Home-based businesses (38.360.140)*	A	A	A	A	A	A	A	A	A	A	—
Other buildings and structures (typically accessory to permitted uses)	A	A	A	A	A	A	A	A	A	A	A
Temporary buildings and yards incidental to ongoing construction work	—	—	—	—	—	—	A	A	A	A	—
Any use, except adult businesses and casinos, approved as part of a planned unit development subject to the provisions of division 38.430	C	C	C	C	C	C	C	C <sup>5</sup>	C <sup>5</sup>	C <sup>5</sup>	—

**Notes:**

1. In the B-1 district, the footprint of individual buildings must not exceed 5,000 square feet.
2. Authorized uses in the NEHMU district include those uses allowed in the R-2 district (some of which aren't addressed in this table).
3. Only lobbies for the applicable use are allowed on designed Storefront block frontages as set forth in section 38.510.020. Otherwise, the applicable use is permitted when located on the second or subsequent floor, or basement, as defined in section 38.700.030 of this chapter.
4. Only allowed when service may not be provided from an alternative site or a less intensive installation or set of installations.
5. Also excludes retail, large scale uses.

Additional uses for telecommunication facilities are provided for in division 38.370 of this article.

***APPENDIX D - OWNER INFORMATION AND REVIEWING STAFF***

**Owner:** Haggerty Property Investments, LLC, Box 850, Bozeman, MT 59718

**Applicant:** Cadius Partners Limited, 23 Apex Drive, Bozeman, MT 59718

**Representative:** Cadius Partners Limited, 23 Apex Drive, Bozeman, MT 59718

**Report By:** Tom Rogers, Senior Planner

***FISCAL EFFECTS***

No unusual fiscal effects have been identified. No presently budgeted funds will be changed by this zone map amendment.

***ATTACHMENTS***

The full application and file of record can be viewed at the Community Development Department at 20 E. Olive Street, Bozeman, MT 59715. In addition, application materials can be viewed on the City's development map at the following link.

<https://weblink.bozeman.net/WebLink/Browse.aspx?startid=262088&cr=1>

# Memorandum

**REPORT TO:** City Commission

**FROM:** Taylor Chambers, Deputy City Clerk  
Mike Maas, City Clerk  
Jeff Mihelich, City Manager

**SUBJECT:** Appointment to the Mental Health Local Advisory Council

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Administration

**RECOMMENDATION:** I move to appoint one voting member to the Mental Health Local Advisory Council.

**STRATEGIC PLAN:** 3.2 Health & Safety Action: Work with our partners to improve education, public awareness, and to coordinate programs concerning emergency services, criminal justice, and important social services.

**BACKGROUND:** As the Mental Health Advisory Committee is discussing policy, City Staff is of the opinion that those discussions are best given by an elected official. The Chief Prosecutor can attend meetings in an advisory capacity.

The Gallatin County Mental Health Local Advisory Council (MHLAC) is established under the mental health care system developed by the Department of Public Health and Human Services (DPHHS) pursuant to Mont. Code Ann. Section 53-21-702, which provides for local advisory councils that shall report to and meet on a regular basis with the Mental Health Oversight Advisory Council (MHOAC) formed by the DPHHS.

The purpose of this committee is to assist in strengthening mental public health services in the Gallatin County and to provide recommendations and input to MHOAC, Department of Public Health and Human Services (DPHHS) and the Service Area Authority (SAA).

For more information, please visit the [Gallatin County Website](#).

**UNRESOLVED ISSUES:** none

**ALTERNATIVES:** As determined by Commission

**FISCAL EFFECTS:** none

Attachments:

[LAC Bylaws.pdf](#)

Report compiled on: October 7, 2022

# GALLATIN COUNTY MENTAL HEALTH LOCAL ADVISORY COUNCIL BYLAWS

## ARTICLE ONE Creation

**Section 1. Statutory Authority.** The Gallatin County Mental Health Local Advisory Council (MHLAC) is established under the mental health care system developed by the Department of Public Health and Human Services (DPHHS) pursuant to Mont. Code Ann. Section 53-21-702, which provides for local advisory councils that shall report to and meet on a regular basis with the Mental Health Oversight Advisory Council (MHOAC) formed by the DPHHS.

**Section 2. Resolutions Creating the Task Force.** The Gallatin County Board of County Commissioners (County Commission) created the MHLAC by Resolution 2001-89, adopted July 24, 2001 and passed Resolution No. 2009-053 confirming the creation of the MHLAC on April 21, 2009 and Resolution No. 2013 - 011 ratifying and reforming the MHLAC on January 29, 2013.

## ARTICLE TWO Purpose

**Section 1. Purpose.** The purpose of the MHLAC is to assist, in a manner it determines to be most productive, in strengthening public mental health services in the Gallatin County and to provide input and recommendations to MHOAC, DPHHS and the Service Area Authority (SAA) serving the community.

**Section 2. Objectives.** Specific objectives include some or all of the following related to public mental health services:

- a) Examine gaps in child and adult services.
- b) Identify potential additions to services within the community.
- c) Analyze and discuss local problems with local service providers, advocacy groups, public officials and the general public.
- d) Facilitate accurate and timely communications between the local community and MHOAC, DPHHS and the regional SAA.
- e) Assess the effectiveness of local mental health services and suggest ways of making services more effective.
- f) Serve as a catalyst and facilitator in solving local mental health service problems.
- g) Organize and coordinate needed services in the community.
- h) Educate the local community on mental health issues.

## ARTICLE THREE Membership

**Section 1. Members.** The MHLAC is comprised of 21 members, including consumers of mental health services equal to 50% of membership, and one member from each of the following entities:

- a) One (1) County Commissioner or their designee
- b) One (1) City Commissioner or their designee
- c) One (1) provider of adult mental health services
- d) One (1) provider of child mental health services

- e) One (1) representative from criminal justice
- f) One (1) representative from the Bozeman Deaconess Health Services
- g) One (1) representative from Alcohol and Drug Services of Gallatin County
- h) One (1) representative from Community Health Partners
- i) One (1) representative from Public Health
- j) One (1) representative from Law Enforcement

Consumers of mental health services may include persons with serious mental illness who are receiving public mental health services, other recipients of mental health services, former recipients of mental health services, and immediate family members of recipients of mental health services. All members must be residents of Gallatin County.

**Section 2. Members at Large.** Members at large (non-voting) may be included as determined by the MHLAC.

**Section 3. Terms.** Members, except elected officials, are appointed for four-year terms, the terms are staggered, with 50% of initial members serving two (2) year terms, and 50% serving four (4) year terms. Elected officials shall serve one (1) year terms, which shall be reviewed for appointment annually by each Commission.

**Section 4. Absenteeism.** The proper functioning of the MHLAC is seriously impaired by the absence of its members. If a member has three (3) unexcused absences from regularly scheduled meetings during a twelve (12) -month period, the County Commission shall be informed and a replacement requested.

**Section 5. Vacancies.** Vacancies shall be filled by the County Commission for the unexpired portion of the term. Prospective vacancies shall be posted at least one (1) month prior to filling the vacancy.

**Section 6. Compensation.** Members are not entitled to salary or per diem, are not reimbursed for mileage or expenses, and are not otherwise compensated.

**Section 7. Conflict of Interest.** A transaction in which any member has a conflict of interest must be disclosed on the record. A conflict of interest may include, but is not limited to, a financial stake in the outcome of the decision. That member may not participate in discussion of the matter or motion being considered, and shall not attempt to exert personal influence with respect to the matter, either at or outside the meeting. Such non-participation may necessarily include leaving the meeting.

## **ARTICLE FOUR**

### **Meetings**

**Section 1. Regular Meetings.** The MHLAC shall meet on the second Monday of every month at 12PM in the Community Room, Gallatin County Courthouse, 311 West Main Street, Bozeman, Montana.

**Section 2. Special Meetings.** The Chair of the MHLAC may convene a special meeting by written and public notice provided at least forty-eight (48) hours in advance.

**Section 3. Staff Support.** The Executive Assistant of the County Commission (Executive Assistant) will serve as the Assistant to the MHLAC and will prepare, distribute, and store minutes of the meetings.

**Section 4. Quorum.** Nine members constitutes a quorum and must be present in order to conduct business and exercise powers and responsibility. Action may be taken by a majority vote of members present and voting. There is no proxy voting.

**Section 5. Voting.** Each MHLAC member has one vote.

**Section 6. Parliamentary Authority.** The most recent edition of Robert's Rules of Order, revised, governs all MHLAC meetings. The MHLAC may, by a vote of two-thirds of the quorum, suspend the Rules at any time.

**Section 7. Public Involvement.** All meetings of the MHLAC are open to the public in accordance with the Public Participation and Open Meetings laws of the State of Montana, Title 2, Section 3, Parts 1 and 2, Montana Code Annotated. Adequate notice and an opportunity for public comment on any matter not on the agenda shall be provided at each meeting.

**Section 8. Notice.** The Executive Assistant shall notify all members of all regularly scheduled meetings either in person, telephonically, electronically, or in writing. No special meeting shall be held unless diligent efforts have been made to notify all members. To comply with the spirit and intent of the Open Meeting Law, public notice shall be posted for all regular and special meetings at least forty-eight (48) hours in advance.

**Section 9. Agenda.** Agenda items shall be submitted to the Executive Assistant the Monday before a meeting. The Executive Assistant shall post and publish the agenda forty-eight (48) hours prior to a regular or special meeting. An agenda item shall be included allowing public comment on any public matter that is not on the agenda and which is within the jurisdiction of the MHLAC.

**Section 10. Minutes.** Minutes of all MHLAC meetings shall be kept by the Executive Assistant, and shall be signed by the Chair after approval at the next meeting. The Minutes need not have detailed reports of discussions but shall include the date, time and place of meetings, substance of all matters proposed, discussed, or decided, all motions and a vote summary, including the final vote on all actions and the vote of each member, as well as the names of members present, members absent, staff, and public present.

Minutes shall be kept available for inspection by the public. Minutes and any other Board records shall be preserved consistent with public records law and Gallatin County policies.

## **ARTICLE FIVE**

### **Committee Structure**

**Section 1. Officers.** A Chair and Vice Chair will be elected by a majority of the members to serve a two (2) year term, and may be re-elected to a second term. Election of these two (2) positions will take place every even numbered year at the regular August Meeting.

**Section 2. Duties.** The Chair is the parliamentary chair of the MHLAC; will preside over all meetings; and will set the agenda with the advice of the members. The Vice Chair shall perform the duties of the Chair in case of absence or disability.

**Section 3. Subcommittees.** To expedite business, the Chair may appoint subcommittees with the majority vote or consensus of the members.

**ARTICLE SIX**  
**Compensation**

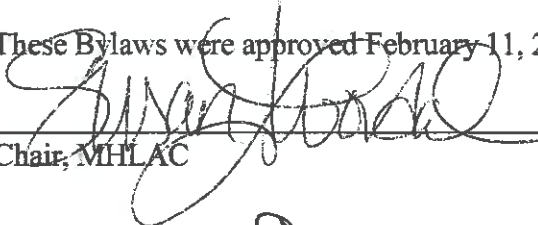
Members shall serve without compensation and shall not be reimbursed for mileage or expenses, nor granted a per diem or salary.

**ARTICLE SEVEN**  
**Amendments to the Bylaws**

MHLAC members will review the Bylaws each July, and submit proposed amendments for action at the regular August meeting. Any action will become effective immediately following consent and approval by the County Commission.

**ARTICLE EIGHT**  
**Approval of Bylaws**

These Bylaws were approved February 11, 2013.

  
\_\_\_\_\_  
Chair, MHLAC

  
\_\_\_\_\_  
Chair, Gallatin County Commission

January 29, 2013  
\_\_\_\_\_  
Date

Copies:  
Gallatin County Commissioners  
MHLAC  
County Attorney

# Memorandum

**REPORT TO:** City Commission

**FROM:** Taylor Chamber, Deputy City Clerk  
Mike Maas, City Clerk  
Jeff Mihelich, City Manager

**SUBJECT:** Appointment to the Urban Parks and Forestry Board

**MEETING DATE:** October 25, 2022

**AGENDA ITEM TYPE:** Citizen Advisory Board/Commission

**RECOMMENDATION:** I move to appoint Reno Walsh to the Urban Parks and Forestry Board to a term ending December 31, 2023.

**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 Urban Parks and Forestry (UPF) Board has one vacancy due to a resignation with a term expiring December 31, 2023.

The City Clerks Office posted the vacant position online and ran a legal ad in the Bozeman Daily Chronicle. Applications were open and accepted until September 23, 2022. One application was received.

An interview panel was held in conformance with Resolution 5323 on October 13 consisting of the Staff Liaison, Mitch Overton, and the UPF Board Chair, Angie Kociolek; Commissioner Pomeroy was unavailable due to travel. The panel recommends appointment of Reno Walsh to the vacant position.

**UNRESOLVED ISSUES:** None

**ALTERNATIVES:** As per the Commission

**FISCAL EFFECTS:** None

Attachments:  
[Reno Walsh.pdf](#)

Report compiled on: October 18, 2022

**From:** [City of Bozeman, MT](#)  
**To:** [Agenda](#)  
**Subject:** \*NEW SUBMISSION\* Citizen Advisory Board Application  
**Date:** Friday, August 26, 2022 1:16:53 PM

---

### **Citizen Advisory Board Application**

**Submission #:** 1924605  
**IP Address:** 174.45.255.236  
**Submission Date:** 08/26/2022 1:16  
**Survey Time:** 7 minutes, 5 seconds

You have a new online form submission.

Note: all answers displaying "\*\*\*\*\*" are marked as sensitive and must be viewed after your login.

### **Read-Only Content**

#### **Applicant Information**

##### **Full Name**

Reno Walsh

##### **Physical Address**

724 N Bozeman Ave.  
Bozeman, MT 59715

##### **Primary Phone**

4065805919

##### **Additional Phone**

##### **Current Occupation**

Entrepreneur

##### **Employer**

Bozeman Montana Vacation Rentals

##### **Email**

renowalsh@gmail.com

##### **Which position are you applying for?**

Urban Parks & Forestry Board

##### **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?**

No

**Where, how long, and what Board?**

**Please describe your professional and personal experiences, interest, and qualifications that make you a good fit for this board.**

I am the current President of Bozeman's Northeast Neighborhood. I have two children one in Hawthorne and the other in a neighborhood Montessori. We spend a lot of time in parks. I have advocated for the creation/preservation of two pocket parks. One on the west end of the city shop. The other, on the north side of Tamarack just north of the Church Street Trail that intersects with Tamarack. I have participated in numerous city discussions related to parks, parking, and development...

**The City of Bozeman strongly values diversity, equity and inclusion (DEI). Describe any efforts you have engaged in to expand your understanding of DEI.**

I share the City of Bozeman's strong values diversity, equity and inclusion.

**References**

**Read-Only Content**

**Reference #1 Full Name**

Addi Jadin

**Phone**

0645822908

**Email**

AJadin@bozeman.net

**Section Break**

**Reference #2 Full Name**

Alex Nordquest

**Phone**

4065823225

**Email**

ANordquest@BOZEMAN.NET

**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 was notified by the city via email.

**Is there any other information that you feel we need to know?**

**Read-Only Content**

Thank you,

**City Of Bozeman**

---

**This is an automated message generated by Granicus. Please do not reply directly to this email.**