CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
1005 BAKER AVENUE
TUESDAY, JANUARY 19, 2016, 6:00 PM

1. Call to order

2. Review of proposed Whitefish Trail Easement in Haskill Basin with F.H. Stoltze Land and Lumber Company

   (see the documents in the packet under the Public Hearing for agenda item #6(a)(v) - Resolution No. 16-___; A Resolution approving the terms of a public recreational trail easement with F.H. Stoltze Land & Lumber Company)

3. Public Comment

4. Direction to City Manager and City Attorney on above topic

5. Adjourn

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CITY COUNCIL REGULAR MEETING AGENDA

The following is a summary of the items to come before the
City Council at its regular session to be held on Tuesday,
January 19, 2016, at **7:10 p.m.** at Interim City Hall, 1005 Baker Avenue.

Ordinance numbers start with 16-03. Resolution numbers start with 16-01.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

3) COMMUNICATIONS FROM THE PUBLIC – (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

5) CONSENT AGENDA
   a) Minutes from the January 4, 2016 Council executive session (p.21)
   b) Minutes from the January 4, 2016 Council regular meeting (p.21)
   c) Ordinance No. 16-01; An Ordinance rezoning approximately 1.177 acres of land located at 2422 and 2424 Carver Bay Road, in Section 14, Township 31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone (Second Reading) (p.33)
   d) Ordinance No. 16-02; An Ordinance rezoning approximately 1.391 acres of land located at 1750 and 1770 US Highway 93 West, in Section 35, Township 31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone (Second Reading) (p.36)
   e) Confirm the appointment of Chase Garner as a police officer pursuant to Section 7-32-4113 Montana Code Annotated (p.39)

6) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))
   a) Seven Resolutions related to the purchase of a Conservation Easement on approximately 3,020 acres of land in Haskill Basin from the F.H. Stoltze Land and Lumber Company
      i) Resolution No. 16-___; A Resolution authorizing the purchase of a conservation easement in Haskill Basin (p. 42)
      ii) Resolution No. 16-___; A Resolution approving the Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement (p.126)

iii) Resolution No. 16-___; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company (p.140)
iv) Resolution No. 16-___; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system (p.158)
v) Resolution No. 16-___; A Resolution approving the terms of a public recreational trail easement with F.H. Stoltze Land & Lumber Company (p.168)
vi) Consideration of approving a Letter of Intent to modify the trail easement on the Iron Horse Homeowners Association to accommodate a new trail alignment for the Whitefish Trail (p.184)
vii) Consideration of approving a Letter of Intent to modify the trail easement on the Winter Sports, Inc. property to accommodate a new trail alignment for the Whitefish Trail (p. 189)
viii) Resolution No. 16-___; A Resolution approving the terms of an agreement with Whitefish Legacy Partners with respect to a Boundary Line Adjustment with Howard A. Murr and Bonnie Murr (p.194)
ix) Resolution No. 16-___; A Resolution approving a Real Estate Buy-Sale Agreement with respect to a 0.54 acre of land as an addition to the Water Treatment Plant site from a Boundary Line Adjustment with Howard A. Murr and Bonnie Murr (p.199)

b) Ordinance No. 16-___; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2 (First Reading) (p. 212)

7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
a) Consideration of approving a contract with WGM Group for a Pedestrian – Bicycle Master Plan update (p. 368)

8) COMMUNICATIONS FROM CITY MANAGER
a) Written report enclosed with the packet. Questions from Mayor or Council? (p.385)
b) Other items arising between January 13th and January 19th
c) City Hall and Parking Structure Project: (p. 390)
i) revise total budget number for the City Hall/Parking Structure;
ii) approve Amendment #4 with Martel Construction and set a Guaranteed Maximum Price;
iii) give staff direction on funding options for the budget gap

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
a) Mayoral consideration of appointment of Jim Laidlaw as Flathead County designee to Whitefish Planning Board as extra-territorial member pursuant to Ordinance No. 14-08 (p. 459)

10) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)

The following Principles for Civil Dialogue are adopted on 2/20/2007 for use by the City Council and by all boards, committees and personnel of the City of Whitefish:

- We provide a safe environment where individual perspectives are respected, heard, and acknowledged.

- We are responsible for respectful and courteous dialogue and participation.

- We respect diverse opinions as a means to find solutions based on common ground.

- We encourage and value broad community participation.

- We encourage creative approaches to engage public participation.

- We value informed decision-making and take personal responsibility to educate and be educated.

- We believe that respectful public dialogue fosters healthy community relationships, understanding, and problem-solving.

- We acknowledge, consider and respect the natural tensions created by collaboration, change and transition.

- We follow the rules and guidelines established for each meeting.

Adopted by Resolution 07-09
February 20, 2007

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January 13, 2016

The Honorable Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and City Councilors:

Tuesday, January 19, 2016 City Council Agenda Report

There will be a work session at 6:00 p.m. to review the proposed easement for the Whitefish Trail in the 3,020 acre F.H. Stoltze Land and Lumber Company Conservation Easement. Food will be provided.

The regular Council meeting will begin at 7:10 p.m.

CONSENT AGENDA

a) Minutes from the January 4, 2016 Council executive session (p.21)
b) Minutes from the January 4, 2016 Council regular meeting (p.21)
c) Ordinance No. 16-01; An Ordinance rezoning approximately 1.177 acres of land located at 2422 and 2424 Carver Bay Road, in Section 14, Township 31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone (Second Reading) (p. 33)
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e) Confirm the appointment of Chase Garner as a police officer pursuant to Section 7-32-4113 Montana Code Annotated (p.39)

RECOMMENDATION: Staff respectfully recommends the City Council approve the Consent Agenda.

Items a and b are administrative matters. Items c and d are quasi-judicial matters. Item e is an administrative matter.

PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))

a) Seven Resolutions related to the purchase of a Conservation Easement on approximately 3,020 acres of land in Haskill Basin from the F.H. Stoltze Land and Lumber Company
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   ii) Resolution No. 16-___; A Resolution approving the Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement (p.126)
   iii) Resolution No. 16-___; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company (p.140)
   iv) Resolution No. 16-___; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system (p.158)
   v) Resolution No. 16-___; A Resolution approving the terms of a public recreational trail easement with F.H. Stoltze Land & Lumber Company (p.168)
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Introduction/History

City officials have had discussions back to at least 2009 and likely before then with the F.H. Stoltze Land and Lumber Company regarding ways to preserve their timberlands in the Haskill Basin watershed for our water supply and for their timber management purposes. Some of their timberlands were sold and developed into subdivisions in the past. Development could increase sedimentation for our municipal water supply and if such development was not on a public sewer system, our water supply could be threatened as occurred when we had to shut down the water intake on 1st Creek in the past. However, the cost for the City to purchase a conservation easement on as much as 3,020 acres of land in the past was too high for us to afford.

The Trust for Public Land (TPL) became interested in this project in 2013 given their recent, successful efforts at protecting timberlands in the Swan/Blackfoot area and in Lincoln County. They entered into negotiations with the F.H. Stoltze Land and Lumber Company and negotiated an option for the purchase of a Conservation Easement for a net estimated cost of $16,700,000.00, for 3,020 acres. The option for the Conservation Easement expires on December 31, 2015. The F.H. Stoltze Land and Lumber Company will also donate the difference between the value of the Conservation Easement appraisal (estimated at $22,000,000) and the estimated $16,700,000 cost.

Since that time, TPL, assisted by the Montana Department of Fish, Wildlife, and Parks, has secured a $7,000,000.00 federal Forest Legacy grant and a $2,000,000.00 Cooperative Endangered Species Conservation Fund Grant. That leaves $7,700,000.00 of the estimated $16,700,000.00 cost remaining to be funded in the local area of Whitefish.

At the request of the City for technical assistance, The Trust for Public Land presented a Financial Feasibility Study for local funding options at the September 15, 2014 City Council meeting and a copy of that report and presentation is in the packet with this report. At a work session on February 2, 2015, TPL also presented the results of a statistically valid telephone survey of randomly selected Whitefish registered voters on various funding options for raising this $8,000,000. At the end of the February 2, 2015 City Council meeting, the City Council directed staff to bring forward for consideration at the February 17th City Council meeting, a Resolution calling for a special election on April 28th to ask the voters to increase the Resort Tax by one percentage point, up to 3% (the maximum allowed under the Montana Code and the same exacted by the other seven resort communities in Montana), for the purposes of funding $7,700,000 of the proposed Stoltze Conservation Easement to preserve water quality and water supply in the Haskill Basin watershed.

On April 28th, the Whitefish voters passed the referendum with an approval rate of 83.71% to increase the Resort Tax up to 3% until January 31, 2025 with 70% of the proceeds of this increase to be used to pay the debt service on a $7,700,000 bond issue with financing from the State of Montana State Revolving Fund (SRF) loan program.

To provide the funding for the $7,700,000, the total SRF bond will equal $8,219,500 in order to provide the necessary debt service reserve as security for our debt service payments and to pay issuance costs. The Bond Resolution for this issuance will be on the February 1st agenda. The interest rate will be at 2.5%.

The Conservation Easement and other documents below were negotiated during 2015 between City officials, Montana FWP officials, F.H. Stoltze Land and Lumber Company officials, and staff from the Trust For Public Land (TPL). The City Council reviewed the Conservation Easement and Multi-Resource Management Plan (MRMP) documents at a work session on November 2, 2015. The Montana FWP

held a scoping public hearing on the Conservation Easement and MRMP on November 9, 2015 and the FWP approved the Environmental Assessment on November 24, 2015. The Montana Fish and Wildlife Commissioner approved the Conservation Easement and MRMP on December 20, 2015 and the State Land Board approved the documents and the transaction on December 21, 2015.

Current Report

There are seven resolutions on the agenda on January 19th related to City Council action on the Conservation Easement and associated documents. Each Resolution will be described below.

Resolution No. 16-___; A Resolution – Conservation Easement

This Resolution is the primary action and is the City's approval of the Conservation Easement on 3,020 acres. It is unchanged from the version which the City Council reviewed on November 2, 2015. The Conservation Easement removes the development rights from the 3,020 acres while the F.H. Stoltze Land and Lumber Company (Stoltze) retains ownership of the land for continued timber management. The Conservation Easement contains restrictions on both the public's use of the 3,020 acres and Stoltze's timber harvesting and uses of the land. The Conservation Easement is a perpetual easement and while it can be changed in the future, it is a difficult process to change it – see the above discussion for the state process to adopt the Conservation Easement – that would have to be repeated. The Montana FWP will be the steward and primary overseer of the Conservation Easement and the land for the public.

The Conservation Easement is now valued at $19,980,000. The "before easement value" was $7,500 per acre or $22,700,000 total. The "after easement value" or remainder value is $900 per acre or $2,720,000 total. Therefore the easement value is $19,980,000. The cash value of the purchase price remains at $16,700,000, so Stoltze's donated value is $3,280,000.

Also attached to the Resolution as Exhibit B is an Agreement to purchase the Conservation Easement from the Trust for Public Land (TPL). TPL, as intermediary, is the holder and owner of the option to purchase the Conservation Easement from the F.H. Stoltze Land and Lumber Company. This purchase agreement is for 3,022 acres because once we transfer the ownership of two orphan parcels to Stoltze (see later agenda item), the Conservation Easement will then have approximately 3,022 acres of land in it.

We reviewed the salient points of the Conservation Easement at the November 2nd work session, so I won't cover them here, however, it is important the Mayor and City Council read the Conservation Easement (and the other documents) again and be comfortable with them.

Resolution No. 16-___; A Resolution – Haskill Basin Multi-Resource Management Plan

This Resolution approves the Multi-Resource Management Plan (MRMP). The MRMP is meant to be a perpetual document as well, but it can be amended more easily than the Conservation Easement. The MRMP provides more detail and more specificity on the uses and restrictions on the land for Stoltze, the public, the City, and Montana FWP. There is a liaison team in the MRMP comprised of two representatives from Stoltze, one from FWP, and one from the City. The liaison team exists to review the conditions of the Conservation Easement annually and to resolve issues that arise on the land.

The MRMP has a slight revision from the version which the City Council reviewed on November 2nd and that is to add the following sentence: "An annual meeting will be held, open to the public and consistent with Montana's open meetings laws."

Resolution No. 16-___; A Resolution- Water System Water and Road easement

This Resolution and the following Resolution effectuate the part of this transaction whereby the City will receive a permanent easement guarantying our right to access the lands via Stoltze roads to maintain our municipal water system. Prior to these transactions, the City operated only on the verbal approval of the F.H. Stoltze Land and Lumber Company for access to our water intakes and water source pipelines. However, we had that neighborly access for approximately 100 years and there was no threat to our access. The City Council reviewed these documents at the October 19, 2015 City Council meeting. This document is unchanged from that time.

One important aspect of this Water System and Road Access Easement is that, in exchange for receiving this easement, the City will transfer ownership of our two parcels of land in Haskill Basin totaling 2.569 acres of land which are near, but not on the water intakes of Second and Third Creeks. Getting the actual physical location of the water intakes onto land owned or in an easement was also another goal of the easement negotiations. In exchange for our two parcels of land (see attachments to this memo), the City will gain the following:

- a perpetual easement on three, one acre parcels of lands on the actual physical location of the headgates and screens for the intakes at First, Second, and Third (three acres of land – see Exhibit B in the easement);
- a perpetual easement on a 40 foot swath of land along our entire system of waterlines in the Stoltze lands in Haskill Basin which equals 7.69 acres of land (see Exhibit A of the Water System and Road Access Easement);
- a perpetual easement on a 30 foot swath of land along the entire roads which Stoltze owns in the 3,020 acres of Haskill Basin land and that is subject to the future

Conservation Easement and which equals 30.99 acres of land (see Exhibit A of the Water System and Road Access Easement);

Thus, for giving up fee simple title to 2.569 acres of land in Haskill Basin, we are obtaining perpetual easements on 41.68 acres of land in Haskill Basin. Moreover, we do not want ownership of two, "orphan" parcels of land within the 3,020 acres of the Conservation and transferring the title of our two parcels of land to Stoltze consolidates all of the ownership of land within the 3,020 acres of land. Therefore, all lands in the 3,022 acres of land will have the same restrictions contained within the future Conservation Easement and MRMP.

Resolution No. 16-___; A Resolution – Agreement for sale of orphan parcels to TPL

This resolution and agreement provides for the City to transfer our title of the two orphan parcels totaling 2.569 acres of land to Stoltze in exchange for the easement on 41.68 acres of land. An appraisal of these two orphan parcels is currently underway, but is not available for this packet. Until the appraisal is available and reviewed, we will likely ask the City Council to postpone action on this item until the February 1st meeting. The City Council needs to determine that the value of the easement received is at least equivalent to or higher than the appraised value of the two orphan lots which we are transferring to Stoltze.

Resolution No. 16-___; A Resolution – Haskill Basin Trail Easement

This Resolution provides for the terms and conditions of a new easement within the 3,020 acres of land for an extension of the Whitefish Trail. Also associated with this easement are two letters of intent from the Iron Horse Homeowners Association Winter Sports Incorporated committing their approval to have the Whitefish Trail connect through their property to the trail on the 3,020 Conservation Easement lands. The City will hold the title to this trail easement as we do for other Whitefish Trail easements and Whitefish Legacy Partners will fundraise and pay for the construction and maintenance of this extension of the Whitefish Trail. Also, as part of the extension of the Whitefish Trail through these lands, the City of Whitefish will agree to the placement of a trailhead and a portion of the trail on our land just west of our water treatment plant on Reservoir Road. This trailhead and trail is also implicit in the next two Resolutions for agreements. There is also a map in the packet with the next item that shows the proposed location of the trailhead and the trail west of the water treatment plant.

Resolution No. 16-___; A Resolution – Agreement with WLP to fund Murr property Boundary Line Adjustment

As discussed at the January 4th City Council meeting, this agreement with Whitefish Legacy Partners will provide the funding for the City to do the next transaction which is a boundary line adjustment with our neighbors west of the water treatment plant.

We will purchase approximately 0.54 acres of land from the Murr family in order to accommodate a better alignment for the trail from the proposed new trailhead. By this agreement, Whitefish Legacy Partners will provide the funding for this boundary line adjustment and the City will also agree to placing the trail and trailhead on our property.

Resolution No. 16-___; A Resolution- approving buy-sell for Murr property

This Resolution approves the buy-sell agreement for the purchase of the 0.54 acres of land from the Murr family. The transaction will be done via a boundary line adjustment which is an exempt form of subdivision. The purchase price is $14,000.00 plus the cost for recording of the documents. Mayor Muhlfeld disclosed at the January 4th City Council meeting that his firm, River Design Group, is providing the surveying of the boundary line adjustment at no cost as a contribution to the project.

Financial Requirement

To provide the funding for the $7,700,000, the total SRF bond will equal $8,219,500 in order to provide the necessary debt service reserve as security for our debt service payments and to pay issuance costs. The Bond Resolution for this issuance will be on the February 1st agenda. The interest rate will be at 2.5%. The proceeds from 70% of the Resort Tax 1% increase will repay the loan between now and January 31, 2025. There may be some times where the Resort Tax collections will be slightly less than the debt service payments, but the Water Fund will provide a loan for those short term situations. Over the 10 year period, the Resort Tax collections should provide sufficient funding to pay for all the debt service costs for the SRF bond.

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the public hearing, approve all seven Resolutions and two letters of intent unless the appraisal for the orphan parcels is not yet ready for City Council review. In that case, staff recommends the City Council approve six Resolutions and two letters of intent and we will do the 7th Resolution at the February 1st meeting.

This item is a legislative matter.

b) Ordinance No. 16-___; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2 (First Reading) (p.212)

From Senior Planner Wendy Compton-Ring's transmittal letter:

Summary of Requested Action: This application is a request by the city of Whitefish to amend the zoning regulations for housekeeping items related to: the definition of bar/lounge, the requirement for a building permit for an accessory building and the addition of micro-distillery to the list of Conditional Use in the WB-1, WB-2, WB-3 and WI districts.

Planning & Building Department Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: At the public hearing, one representative spoke in opposition to the addition of micro-distilleries, as she felt a more comprehensive approach to alcohol production uses was needed. The draft minutes of the Planning Board hearing are included.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on December 17, 2015. Following this hearing, the Planning Board recommended approval (6-1, Norton voting in opposition) of the amendments and adopted the supporting findings of fact in the staff report.

There is a staff report, minutes of the Planning Board meeting and other documents in the packet.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering the testimony at the public hearing and the recommendations from staff and the Planning Board, approve an Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2 (First Reading).

This item is a legislative matter.

COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

a) Consideration of approving a contract with WGM Group for a Pedestrian – Bicycle Master Plan update (p. 368)

From Public Works Director Craig Workman's staff report:

The City of Whitefish adopted the current Whitefish Bicycle and Pedestrian Master Plan in 1998. Since its initial adoption, the City Council adopted amendments to the plan in 2003 and 2007. Although the current plan is aimed at making Whitefish an excellent place to walk and bicycle, numerous advancements in the realm of "multi-

modal" transportation have prompted the City to budget for a revised Bicycle and Pedestrian Master Plan to be drafted this year.

The City's existing Bike/Ped Master Plan laid a solid groundwork for the creation and maintenance of the current bicycle and pedestrian paths in town. However, over the past two decades there have been significant changes in the field of bicycle and pedestrian planning. These changes include a greater awareness of the different type of bicyclists, and an effort to design facilities that can be used by people of all ages and abilities. The 2016 Bicycle and Pedestrian Master Plan aims to provide the City of Whitefish with a series of actions which can be strategically implemented. These actions will add to the City's existing system of trails to create a complete walking and bicycling network throughout the City. One that appeals to a broad segment of residents and visitors alike.

In an effort to solicit proposals to draft the new plan, a Request for Proposals (RFP) was created by the Public Works Department and advertised in November, 2015. The RFP was geared towards the creation of a Bicycle and Pedestrian Master Plan that updates and expands the scope of the current plan. We were sure to specify that the consultant work closely with City Staff, the Bicycle & Pedestrian Committee, City Residents, and local agencies to create a clear vision for improving walking and bicycling conditions in the city.

Proposals were received from three consultants - WGM Group (WGM) out of Missoula, MT, Alta Planning & Design out of Bozeman, MT, and Vitruvian Planning out of Boise, ID. The proposals were reviewed by City staff and a five-member panel met on 12/17/2015 to interview the three firms.

Upon completion of the interviews, it was the unanimous recommendation of the interview committee that the City contract with WGM. The WGM team is led by planner and cycling enthusiast, BJ Grieve, who heads up their Kalispell office. BJ has been living in Flathead County for over a decade, and spent the last twelve years working for the Flathead County Planning and Zoning Department. Serving as the Flathead County Planning Director for the past five years, BJ understands the many moving pieces that must come together to develop a successful bicycle and pedestrian master plan, including the importance of public support. WGM is also responsible for the design of many successful projects in Whitefish, some of which involve components of the existing Whitefish Bicycle and Pedestrian Master Plan.

The recommendation of the interview panel was presented to the Bicycle & Pedestrian committee at their monthly meeting on 1/4/2016. The committee was highly supportive of working with WGM to draft the updated plan. They were also interested in having WGM work with them on the design of a much needed section of the City's trail system adjacent to the River Bend Condominiums. This section of trail will be an important element connecting the dead-end path on the north side of Veteran's Bridge with the Whitefish Bike and Pedestrian Trail that runs along the Whitefish River. After

additional discussion, it was the unanimous recommendation of the Bicycle & Pedestrian Committee that City Council award a contract to WGM Group to complete the master plan, and consider a possible future amendment to the contract to complete design drawings for the much needed connector trail by River Bend Condominiums. The intent of the amendment would be to complete designs in time to present the concept to the River Bend Condominium Association at their annual meeting in early July.

Subsequent to the Bicycle & Pedestrian meeting on 1/4/2016, Public Works staff has worked with WGM to come up with the enclosed scope of services. The negotiated cost to perform these services is guaranteed not exceed the $40,000 which is included in the FY16 budget as a Resort Tax expense.

RECOMMENDATION: Based on the need to update the City's existing Bicycle and Pedestrian Master Plan, and the results of the RFP process that was conducted, staff respectfully recommends that City Council authorize the City Manager to execute a consultant agreement with WGM not to exceed $40,000 to carry out the enclosed scope of services. In addition, at the recommendation of the Bicycle & Pedestrian committee, a future amendment to this contract will be presented for Council's consideration. The intent of the amendment will be to modify the delivery schedule for the plan for additional time to conduct public outreach, as well as to incorporate engineering design services for a section of trail adjacent to the River Bend Condominiums.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 385)
b) Other items arising between January 13th and January 19th
c) City Hall and Parking Structure Project: (p.390)
   i) revise total budget number for the City Hall/Parking Structure;
   ii) approve Amendment #4 with Martel Construction and set a Guaranteed Maximum Price;
   iii) give staff direction on funding options for the budget gap (p.)

Introduction/History

On November 3, 2014, the City Council approved using the Construction Manager At Risk method of bidding for the construction of the future City Hall and Parking Structure.

On January 20, 2015, the City Council approved the selection of Martel Construction as the City's General Contractor/Construction Manager (GC/CM). The motion was:

Councilor Hildner made a motion, second by Councilor Sweeney, to select Martel

Construction as the city's General Contractor/Construction Manager for the new City Hall & Parking Structure, and to authorize Manager Stearns to enter into negotiations with Martel Construction for a contract to be presented for future City Council Approval. The motion passed unanimously.

On August 17, 2015 the City Council approved a GC/CM contract with Martel Construction. That contract anticipates a number of amendments along the way, including an amendment for a Guaranteed Maximum Price contract once the construction drawings are completed.

Also on August 17, 2015, the City Council approved Amendment #1 to the Martel GC/CM contract for asbestos abatement, demolition, and Martel's General Conditions of construction. Amendment #2 to the Martel GC/CM contract for excavation and shoring was approved on November 2, 2015.

On December 7, 2015, the City Council approved Amendment #3 to the Martel GC/CM contract in the amount of $10,294,553.76 for most of the construction costs for project.

Current Report

Attached to this report are the most current spreadsheets for the project. The budget summary shows the funding gap, if the City Council approves using the lease revenue to defray costs at $850,623 with the total project cost at $15,965,29, an increase of $1,012,622 from the $14,952,637 budget approved by the City Council on June 15, 2015. There is still $150,000.00 of contingency funds in this budget and Martel Construction is going to re-bid a portion of the concrete contract to see if costs can be lowered.

These costs are up somewhat from the spreadsheet which the City Council saw on January 4th, mostly because that spreadsheet had impact fees for the project at an estimate of $2,000.00, but the actual impact fees for the building permit totaled $83,744. Please note, this is money which the City pays, but it all comes back to the City and some of it is even for the City Hall impact fee. There is a breakdown of the impact fees attached in the packet with this report.

We would like the City Council to consider the various options in both of my memos in the packet (dated November 30th and December 29th) and accept those changes (other than keeping the SW elevator which the City Council did on December 7th) and give us direction on how to fund the budget gap. Once that is done, we can approve an Amendment #4 and a Guaranteed Maximum Price.

In addition to those costs, Martel Construction is entitled to indirect costs for insurance and the 1% Gross Receipts Tax in addition to their 4.5% construction fee which was part of their proposal submitted in response to our RFP, and contingency (which will not be spent or paid unless needed). Our architect Ben Tintinger and has reviewed this amendment and found that it is proper. With Martel's contractual add-on costs, that

would bring Amendment #4 to a total of $1,034,823.24 and the total construction contract to date to $13,611,290.

Financial Requirement

The City Hall and Parking Structure Construction Fund will pay these costs. Most of that fund comes from Tax Increment Funds either set aside historically or from the upcoming TIF revenue bond which First Interstate Bank and Glacier Bank have agreed to underwrite. SID #167 for the Parking Structure will also provide $750,000 towards the cost of the Parking Structure. The sources and uses of the entire financing package are elsewhere in this packet with the Tax Increment project Ordinance. If the City Council funds the budget gap with annual Tax Increment revenues for this year and next year, we will need direction on whether to delay most of the Depot Park Master Plan Phase II project (probably can still do the gazebo) or what other costs to cut in the TIF budget.

RECOMMENDATION: Staff respectfully recommends the City Council set a new total construction budget for the City Hall/Parking Structure project, give us direction on how to fund the budget gap, and approve Amendment #4 for $1,034,823.24 to the construction contract with Martel Construction as the General Contractor/Construction Manager for the future City Hall/Parking Structure project with a Guaranteed Maximum Price of $13,611,290.00 and authorize the City Manager to sign the Amendment.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
Mayoral consideration of appointment of Jim Laidlaw as Flathead County designee to Whitefish Planning Board as extra-territorial member pursuant to Ordinance No. 14-08 (p.459)

ADJOURNMENT

Sincerely,

Chuck

Chuck Stearns, City Manager

"Cheat Sheet" for Robert's Rules						
Motion	In Order When Another has the Floor?	Second Required?	Debatable?	Amendable?	Vote Required for Adoption	Can be reconsidered?
Main Motion	N	Y	Y	Y	Majority unless other spec'd by Bylaws	Y
Adjournment	N	Y	N	Y	Majority	N
Recess (no question before the body)	N	Y	N	Y	Majority	N
Recess (question before the body)	N	Y	Y	Y	Majority	N
Accept Report	N	Y	Y	Y	Majority	Y
Amend Pending Motion	N	Y	If motion to be amended is debatable	Y	Majority	Y
Amend an Amendment of Pending Motion	N	Y	See above	N	Majority	Y
Change from Agenda to Take a Matter out of Order	N	Y	N	N	Two-thirds	N
Limit Debate Previous Question / Question	N	Y	N	Y	Two-thirds	Yes, but not if vote taken on pending motion.
Limit Debate or extend limits for duration of meeting	N	Y	Y	Y	Two-thirds	Y
Division of Assembly (Roll Call)	Y	N	N	N	Demand by a single member compels division	N
Division of Ques/ Motion	N	Y	N	Y	Majority	N
Point of Information	Y	N	N	N	Vote is not taken	N
Point of Order / Procedure	Y	N	N	N	Vote is not taken	N
Lay on Table	N	Y	N	N	Majority	N
Take from Table	N	Y	N	N	Majority	N
Suspend the Rules as applied to rules of order or, take motion out of order	N	Y	N	N	Two-thirds	N
Refer (Commit)	N	Y	Y	N	Majority	Neg. vote only

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WHITEFISH CITY COUNCIL EXECUTIVE SESSION
JANUARY 4, 2016
6:00 TO 7:00 PM

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Hildner, Feury, Barberis, Frandsen, Sweeney, and Williams. City Staff present were City Manager Stearns, City Attorney Jacobs, and Planning and Building Director Taylor.

2. CLOSED EXECUTIVE SESSION

a) Pursuant to Section 2-3-203 (4) M.C.A. - Quarterly litigation update and strategy with City Attorney.

3. ADJOURNMENT – The meeting adjourned at 6:54 p.m.

WHITEFISH CITY COUNCIL
JANUARY 4, 2016
7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Hildner, Feury, Barberis, Frandsen, Sweeney, and Williams. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney Jacobs, Finance Director Smith, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Planner Minnich, Assistant City Clerk Woodbeck, Police Chief Dial and Fire Chief Page. Approximately 20 people were in the audience.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Rick Nelson to lead the audience in the Pledge of Allegiance.

3) PRESENTATIONS – Update on City Hall/Parking Structure project – Mike Cronquist, Owner's Representative (p.20)

Mike Cronquist asked Manager Stearns to project a video on the overhead screens that demonstrated the installation of rammed aggregate piers (RAP) which is the type of foundation currently being installed for the City Hall/Parking Structure project; and is the source of the noise that people are hearing from the site. The piers are 2.5 feet in diameter and installed to a 15-foot depth. Cronquist explained the resulting foundation bears pressure both laterally and vertically. Currently about 170 are complete of the 400 piers to be installed, that project should be complete in 3 to 4 weeks. (Packet page 203 is a diagram of the RAP locations). Currently on-site activities are: the continuation of ground prep along with the RAP installation and mobilization of concrete formwork, materials and equipment. The start of the foundation work is planned within the next three weeks following receiving the permits required. Martel Construction is working on the next contract amendment that will include cost cutting measures. Communications with downtown businesses and the public is ongoing and continues to be received in a positive manner; there have been lots of questions about the noise.

4) CONSENT AGENDA (The consent agenda is a means of expediting routine matters that require the Council's action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

a) Minutes from the December 7, 2015 Council special session (p.31)
b) Minutes from the December 7, 2015 Council regular meeting (p.33)
c) Ordinance No. 15-19; An Ordinance amending Subdivisions Regulations in Whitefish City Code Title 12 to amend parkland dedication requirements (Second Reading) (p.55)
d) Consideration of an application from Ian Collins for approval of the final plat of the Enna Townhouse Subdivision located at 919 Columbia Avenue, a two lot subdivision (p.63)

Councilor Sweeney made a motion, second by Councilor Frandsen, to approve the Consent Agenda as presented. The motion passed unanimously.

5) OATHS OF OFFICE AND SEATING OF MAYOR AND COUNCIL

a) Administration of ceremonial oath of office to Mayor and three (3) City Councilors

City Attorney Jacobs administered Oaths of Office to incumbents Councilor Richard Hildner and Councilor Frank Sweeney, and newly elected Councilor Katherine (Katie) Williams. At the request of the Mayor, City Clerk Lorang administered the Oath of Office to incumbent Mayor John Muhlfeld.

Councilor Hildner requested a point of privilege to allow him to introduce his wife, Suzanne, and their daughter, Erica, who were here in the audience tonight and were his steadfast supporters.

Mayor Muhlfeld offered his thanks to staff and congratulations to all those sworn in tonight.

b) Election of Deputy Mayor

Councilor Sweeney made a motion, second by Councilor Frandsen, to elect Councilor Hildner to serve another term as Deputy Mayor. The motion passed unanimously.

6) COMMUNICATIONS FROM THE PUBLIC - – (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

Mitchell Drachman, 6002 St. Moritz Drive Unit F, said thanks everyone for your hard work and support and wished everybody a Happy New Year, he said it is great to be in a town that gets such wide public support. He spoke in favor of approving appropriation of funds for a basketball court in a park that is further down on the agenda tonight. He supported improvements for parks and recreation in this town. He said his past included planning and implementation of professional basketball courts and he would be happy to offer his knowledge and assistance; he has already contacted Parks and Recreation Director Butts about that. He said that would be affordable recreation. Secondly, he addressed another item later on the agenda; the consideration of funds requested by the Chamber of Commerce for a Workforce Housing Needs Assessment and plan; and he spoke against that request. He felt it would be better managed at the Planning Board level. He said the need for affordable housing is well known and if more studying needs to be done let it be up to staff and city council, according to the zoning in place for affordable housing. He thought there would be things the city could do to encourage contractors to develop affordable housing.

Rhonda Fitzgerald, 412 Lupfer Avenue, congratulated the new Council, and spoke addressing the City Hall item that is later on the agenda. She said there are still details that are undecided; she said she read about them in tonight's packet and she also referred to items from the last council packet, 6 items forwarded to the Council from the City Hall Steering Committee, that will be considered by Council as well. She suggested Council remove certain items from the City Hall/Parking Structure budget that are not building-related; such as operation and maintenance, equipment, and streetscapes, and find other funding sources for those – like the revenue from parking leases. She said then the buildings would come in within the budget. She said City Manager Stearns' memo in tonight's packet gives good options for the Council to consider. She said all the media that has been out there about these budget issues make it more difficult for the Council, but if the final building is not something to be proud of it will make it worse. She thinks there will be community support for them doing the right thing. Her comments went back to the list from the previous packet.

1. East façade, switching from large brick to painted concrete block. She didn't see if the painting cost had been identified. The savings was shown for the switch from brick to block but not for the painting so she wasn't sure how much of a savings it would actually be. She said the quality of the building should be considered; and she referred to some of the Architectural Guidelines regarding alley façades – they should be attractive integrated components of the building. Also in the Guidelines it is stated that exposed plain concrete block and vinyl cladding are not allowed; so she wasn't sure if that would be approved by the Architectural Review Committee.
2. The awnings on Baker Avenue – she supported awnings all along Baker Avenue, as she had stated in her public comments during the December 7, 2015 Council Meeting. She again, tonight, referred to the Architectural Guidelines, on page 21 in the Old Town District there is a list with 8 goals that she felt supported the need for awnings all along Baker Avenue. Again, the Guidelines on page 27 i), addresses awnings; and she felt it didn't give much leeway.

Erica Wirtala works for the National Association of Realtors (NMAR), and spoke in support of funding for a Workforce Housing Needs Assessment and plan. This community has been aware of this need for quite some time, many local businesses have employees driving in from outlying areas to work because they can't find affordable housing in Whitefish. She said local realtors struggle to help find homes for the local workforce. She attended the Housing Summit the Chamber held this last fall and the problems are still here, only reaching more critical levels. The need is over a broad range for year-round employees, seasonal employees, and for long-term visitors. From that summit a task force was created and subcommittees formed which have already started working towards their goals; and a cohesive study for what is needed in Whitefish will be a tool to reach those goals. The local NMAR Chapter has a close alliance with the National Association of Realtors, and she is working on getting together an application for available grant dollars through the National Association. That may be helpful in the future but she asked the Council to approve the request tonight to get things started.

Paula Green, 123 Goat Trail, wished everybody a Happy New Year. She also spoke in support of City Funds toward a Housing Needs Assessment and plan. She owns a restaurant in Whitefish. She said she was lucky and got by but knew of other restaurants that were sorely short of employees, and two new hotels are under construction so the need continues to grow. The problem is that people cannot afford to live here to work here. Those workers want to be and should be part of this community; and she agrees that the time has come to stop talking about it and move forward to get something done.

Mitchell Drachman, 6002 St. Moritz Drive Unit F, spoke, again, against giving funds to the Chamber for this request for a study and he felt in could be handled by Council and Staff.

Ken Stein, 44 Fairway View, said he has been attending several meetings on workforce housing and supported the City funding a study and a plan to address this need as soon as possible.

Marcus Duffy, 326 Somers Avenue, said he was here tonight on behalf of the Chamber of Commerce as well as for himself as a resident of Whitefish, to encourage the Council to support the request for funds requested by the Chamber for the study. The need is pretty clear and pretty consistently known by businesses owners and residents of this town. He wished everyone a Happy New Year and congratulated the reelected and newly elected officials.

Kathryn Todd, representing North Valley Hospital, said she pulled some numbers from the Hospitals' workforce for the Housing Summit; out of 405 employees 36% reside in Whitefish, 54% reside in Kalispell and Columbia Falls. In addition some employees drive in further from outlying communities much further away because they cannot afford to live in Whitefish. They have also lost employees who moved to Whitefish to work at the hospital and found it wasn't affordable and had to move out of the area; or decided not to accept job offers from the hospital after looking into housing costs in Whitefish. She spoke in support of the request for funds from the City for the study and the plan.

Doug Reid, 520 Somers, manages the Whitefish Lake Restaurant at the golf club, and is in tune with the restaurant industry in Whitefish and agrees that affordable housing has reached a crisis level. A couple restaurants, due to employee shortages, had to close down a couple nights. He said he is the chairman of the Resort Tax Monitoring Committee and knows how that impacts our community's resources. Behind the scenes, managers are asking their workforce to cover extra shifts to get the jobs done, or end up working a couple shifts in addition to their management responsibilities. He spoke in support of the Council's approval for City participation in this study.

Rick Nelson, 565 Blanchard Lake Road, and one of the owners of Nelson's Ace Hardware Store in town and said that, similar to what others have been saying, his employees struggle with local high housing costs. He also has employees who commute from the outlying areas; and he hopes the Council will support the request for funds for the study and a plan.

Tom Tornow, 309 Wisconsin Avenue, said he agreed with what others have said and expressed his hope that the Council grants the funds requested by the Chamber for the study and a plan.

7) COMMUNICATIONS FROM VOLUNTEER BOARDS (CD 43:25)

Councilor Hildner reported on this morning's Pedestrian and Bicycle Path Advisory Committee meeting that he attended. The Skye Park Bridge installation is complete but not open until paved in the spring. Likewise, the 2nd Street and the Stumptown stairs are in but final completion and painting will be done next spring. The Committee unanimously supports WGM's proposal for the update on the Pedestrian and Bicycle Path Master Plan. Some negotiations are still ongoing with BNRR for easements at Birch Point and East Lakeshore. That is progressing and Councilor Hildner complimented and thanked employee Matt Trebesch for his map work. Planning and work in accordance with the Path Master Plan update may extend into the next fiscal year to allow time needed for public input. Negotiations at Riverbend Condos are ongoing. BNRR has approved the location of the path proposed for the north side of the O'Shaughnessy Theatre.

8) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))

a) **Ordinance No. 16-01; An Ordinance rezoning approximately 1.177 acres of land located at 2422 and 2424 Carver Bay Road, in Section 14, Township 31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone (First Reading) Staff Report WZC 15-04. (p.96)** (CD 45:05)

Planner II Minnich gave the staff report from page 99 in the packet. This zone change is pursuant to the land being recently annexed into the City by Resolution 15-44 in October of 2015, and requested by the owners thereof to change the property from County Zoning (R-1) to City Zoning WSR. Staff reviewed and approved the application according to Regulations; the Planning Board considered the application following a public hearing and voted unanimously to approve the staff report and forward a recommendation for approval to the City Council.

Mayor Muhlfeld opened the public hearing and there being no public comment, closed the public hearing and turned it over to the Council for their consideration.

Councilor Hildner made a motion, second by Councilor Sweeney, to adopt the staff report, and findings of fact, and approve the first reading of Ordinance No. 16-01 rezoning 2422 and 2424 Carver Bay Road from County R-1 to City WSR. The motion passed unanimously.

b) **Ordinance No. 16-02; An Ordinance rezoning approximately 1.391 acres of land located at 1750 and 1770 US Highway 93 West, in Section 35, Township 31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone (First Reading) Staff Report WZC 15-05. (p.128)** (CD 48:54)

Planner Minnich gave the staff report from page 131 in the packet. This zone change is pursuant to the land being recently annexed into the City by Resolution 15-52 in December of 2015, and requested by the owners thereof to change the property from County Zoning (R-1) to City Zoning WSR. Staff reviewed and approved the application according to Regulations; the Planning Board considered the application following a public hearing and voted unanimously to approve the staff report and forward a recommendation for approval to the City Council.

Mayor Muhlfeld opened the public hearing and there being no public comment, closed the public hearing and turned it over to the Council for their consideration.

Councilor Feury made a motion, second by Councilor Sweeney, to adopt the staff report, and findings of fact, and approve the first reading of Ordinance No. 16-02 rezoning 1750 and 1770 Highway 93 West from County R-1 to City WSR. The motion passed unanimously.

c) **Consideration of an application from Potter's Field Ministries for a Conditional Use Permit for a "parish house" at 943 East 2nd Street to house up to six ministry staff and interns. Staff Report WCUP 15-15. (p.169)** (CD 51:47)

From the staff report, Planning and Building Director Taylor reported that a conditional use permit is required for churches including parish houses housing more than four unrelated individuals and parsonages. The subject house in this application is an existing single family house and would be associated with the Potters Field Ministries currently housed in the church across the street. The lot is 13,068 square feet, a large enough lot to encompass the home in this residential urban setting, and it is fully fenced. Director Taylor reviewed the Findings of Fact; the project is in keeping with the

neighborhood's residential use and parking can be accommodated in the current garage and driveway which is currently gravel so will have to be paved. Some of the residents might not own cars; but the plans meet parking requirements; and the proposed project will not contribute much of an increase in traffic as most of the residents will be walking back and forth between the parish house and the church. Public Comment was received both in writing prior to the Planning Board hearing and those are included in the packet; and at the Planning Board which are included in the draft minutes in the packet. In addition, City Offices received one more written comment this afternoon from the Sands who live on Park Avenue with concerns about Conditions #2 and #5 and that has been distributed to the Council and is appended to the 1-4-2016 packet as after packet materials. One of the concerns within the public's comments were that no more than six residents will ever be housed, that it should not become transient housing, and it not be used for other church functions; so the Planning Board amended Condition #5 to help address those concerns. Director Taylor reviewed the recommended Conditions of Approval from page 171 in the packet. The Planning Board has forwarded a recommendation for approval to the Council, subject to the seven (7) conditions of approval as amended by the Board. The Council had some questions for Staff, mostly addressing if parking is adequate for six residents.

Mayor Muhlfeld opened the public hearing.

Steve Venable, 4395 Hwy 93 North, is the Executive Director of Potter's Field Ministries. He said the Ministries is an international ministry that has been in existence since 1991 and came to Whitefish in the late 1990s. Many of their staff live in Whitefish. The ministry is multifaceted; with 5 international youth programs located around the world, and the domestic (local) ministry here. Local youth programs are held here during the summers and even some during the holidays to address special needs or at risk individuals. A new program is being extended on the Indian Reservation in Browning. The residents that will be living in this parish house are between 18 and 28-year olds that have been in their ministry program, and will continue to do so while they also work part time in local 'cottage industries'. The parish house will serve as affordable housing for these participants in their ministry. Some private individuals have purchased two homes for the Ministry for this purpose; one home is not large enough to house more than four individuals but the one at this location across from the church is large enough for six. To be eligible for this housing the Ministry requires a minimum of a one-year commitment, so it is not a transient-type situation. The Ministry understands the concerns of the neighborhood about adequate parking, even though some of the residents who will live there do not have cars; but the Ministry is willing to work with the City on that issue.

There being no further public comments; Mayor Muhlfeld closed the public hearing and turned the matter over to the Council for their consideration.

Council and Staff had discussion regarding regulation of the residents (length of stay) and parking. The Council asked Steve Venable if there were any parking spaces at the church that could be overflow for the parish house and he said he thought they could designate two spaces for that purpose.

Councilor Sweeney made a motion, second by Councilor Barberis, to approve the Staff Report, Findings of Fact, and approve the Conditional Use Permit for a parish house at 943 E. 2nd Street to house up to six ministry staff and interns, subject to seven (7) conditions of approval as recommended by the Whitefish Planning Board.

Councilor Hildner made an amendment, second by Councilor Sweeney, to amend Condition #2 by adding the requirement to designate two parking spaces behind the Church that is across the street for use of the occupants of the parish house. Councilor Frandsen said she could

not support a condition requiring parking off-site. **The vote on the amendment was a tie vote with Councilors Barberis, Williams and Frandsen voting against and Councilors Feury, Sweeney and Hildner voting for the motion. Mayor Muhlfeld voted for the amendment so the amendment passed on a four to three vote.**

The original motion, as amended, passed on a five to one vote with Councilor Feury voting in the negative.

9) COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

a) Consideration of a request to increase Resort Tax appropriation for Parks and Recreation capital project for a full length basketball court at Memorial Park (p.194) (CD 1:14:30)

Parks and Recreation Director Butts reported that $25,000 Resort Tax Funds were approved in the FY16 Budget for resurfacing the existing basketball courts in Memorial Park. There have been other improvement made in the Park, i.e. new playground equipment in the northwest corner, and new pickle ball courts; and the Park Board has been giving more consideration for continuing improvements to the Park. A steering committee was formed with neighbors to the Park and other community members, and School District representatives, to establish a plan for future improvements that they brought back to the Park Board. Recommendations included keeping the southeast portion of the park an open greenspace with walking paths and one or two gazebos, dismantle the baseball field in the southwest corner as it isn't used as much by the public now with the new fields at Smith Fields, and construct a full court basketball court, with 6 baskets, in the southwest corner of the Park. This would be the first full court basketball court in the community parks. (The Armory basketball courts have a low ceiling so cannot accommodate adult basketball). The projected cost for the new court is $60,000, $35,000 over the dollars set aside for resurfacing the old court. Director Butts took the proposal to the Resort Tax Monitoring Committee, and got unanimous support from that Committee to use part of the cash balance from the resort tax fund reserved for park improvements. The staff report reflects $5,000 available cash that can be reserved for a contingency and requested approval of the additional $35,000 resort tax funds for the project. Council asked and Director Butts said the old courts will stay and the new plan includes covering them in the future for another gazebo.

Councilor Barberis made a motion, second by Councilor Williams, to approve the request to increase resort tax appropriation for the Parks and Recreation Capital Project to construct a full court basketball court in Memorial Park. The motion passed unanimously.

10) COMMUNICATIONS FROM CITY MANAGER (CD 1:20:13)

a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 198)-None

b) Other items arising between December 30th and January 4th

City Manager Stearns said he had a couple items that just came in today. December Building Permits came in stronger than any December since 2005, the current year-to-date revenue is at 46%. December Permits Revenue showing continued strong construction in the community was $31,697; and as reported by Mike Cronquist, the Building Permit for the City Hall/Parking Structure will be issued in January. Also today, the November Resort Tax Collection reports show an increase of 7%, a $10,000 increase based on that 2% comparison. Both of these reports reflect good increasing trends.

c) Discussion and review of the updated budget spreadsheet for the City Hall/Parking Structure project (p.205)

Manager Stearns said there has been a lot of concern and controversy over costs for the City

Hall/Parking Structure project, just as there was past controversy over the location of the project. He said in most of the communities he has been in, building a $15-16M City Hall & Parking Structure without a general property tax increase or general obligation bonds, the public would consider it heroic and outstanding. Most communities would be very jealous that Whitefish can build this project while continually supporting other ongoing public projects in the community without raising property taxes, but sometimes we get vilified for our successes.

That being said, Manager Stearns said the Project Budget Summary spreadsheet reflects the current funding gap at $882,599 (including an increased contingency to $150,000), which is about a 5.9% cost overrun on the total project. If, as proposed by the Mayor and is supported by some, the City capitalizes three years of lease revenue from the retail space as a loan from the TIF fund and paid back over three years, reduces the gap $162,000 leaving a $720,699 gap. If not all or less of the $150,000 contingency is spent – the gap is further reduced. Cost saving measures may still come in and final costs are not yet set, the construction team is working very hard on that. The memo includes discussion points for options going forward, the city hall construction steering committee meets again this Friday as the architects, engineers and construction team continue their efforts seeking solutions with savings; but as construction continues – costs could go up or down. The memo in the packet included 10 discussion points for options for the Council's consideration as they move forward to final decisions at their next meetings; and Manager Stearns reviewed each of those 10 as they are listed on pages 206 and 207 in the packet. A couple questions from Council in follow-up and requests for rebidding was discussed; Manager Stearns said issues of fairness and equity may come up as the one current bid is now public – if the City goes out for new bids there is a known target to bid under. You would have to get agreement from the contractor as the Contract Amendment #3 that was approved in December included the concrete.

11) COMMUNICATIONS FROM MAYOR AND COUNCILORS (CD 1:35:35)

a) Consideration of a letter from Chamber of Commerce requesting TIF Funds for funding of Workforce Housing Needs Assessment and plan (p. 216)

Mayor Muhlfeld referred back to the Housing Summit held last fall, attended by many, and out of that Summit came a list of action items including the need to update the City's Housing Needs Assessment that was last updated about six or seven years ago. In addition, Affordable Housing has been on the Council' radar and on their Goal List as a top priority as long as he has been on Council and probably as far back as when Councilor Feury was the Mayor in the early 2000s. Mayor Muhlfeld said he agrees with the premise that the next step going forward is a current housing needs assessment that will define the next steps to address the issue; and the cost for that to come out of the TIF Fund is definitely appropriate and an eligible TIF Project as deteriorating housing and housing stock is a large element in the City's 1987 Urban Renewal Plan. He also agreed this is no time to delay, waiting for grant funds would cause further delay, the time to put a plan into action is now and the needs assessment will be the basis of that plan. Funding this request will hopefully get us ahead of the curve. (In addition to the letter from the Chamber of Commerce, a letter in support of the request was received after the packet from Brian Labuda, and is appended to the 1-4-2016 packet as after packet materials).

Council discussion. Councilor Hildner thought some sub-committees from the Summit were still doing research that would be helpful so he thought waiting two weeks for more information would be advisable and he wasn't ready to commit a firm dollar figure. Councilor Frandsen wanted Affordable Housing to be included in the study and Councilor Hildner said that is one of the items he wanted more information on. More discussion along these lines continued; and Manager Stearns pointed out that some public comment encouraged the study to be done in house, but if the Council wants the study to be the basis of future inclusionary zoning regulations or other regulatory

requirements it will have to be done by an out-of-house independent consultant.

Councilor Frandsen made a motion, second by Councilor Barberis, to provide up to $60,000 from the TIF Fund for a Workforce and Affordable Housing Needs Assessment and plan, with the condition that the Council approves the scope covered by either the Request for Proposal (RFP) or the Request for Qualifications (RFQ) prior to its publication.

Councilor Feury said this has been in front of the community for 20 years, and efforts providing this housing has failed for 20 years because of a number of reasons; but success will only be attained if this is embraced by the community. The community has to decide to increase density in neighborhoods and development has to embrace it and include it in new development. Councilor Hildner repeated his concerns that this is premature; should let the subcommittees do more work.

The motion passed on a 5 to 1 vote, Councilor Hildner voting in the negative.

b) Discussion of upcoming proposed Boundary Line Adjustment for property by Water Treatment Plant to accommodate extension of the Whitefish Trail (p.217) (CD 1:49:12)

Manager Stearns said this report is again just for background material for the Council to have in advance of a decision to be made at a future meeting. In conjunction with the Haskill Basin Conservation Easement a trailhead is proposed at the southwest corner of the City's water treatment plant property, seen at the bottom left hand corner of the map on page 217. Then the trail progresses north along the west boundary on the plant property (the yellow line on the map) to tie-in with the existing trail easement in Iron Horse. As proposed, a boundary line adjustment in the northwest corner of the plant property; and at the northeast corner of the property adjacent and to the west (Murr property), prevents an expensive removal and modification to the fence around the treatment plant property (estimated at up to $20,000), and the new route covers better topography for the trail. Whitefish Legacy Partners (WLP) have been negotiating with the Murrs for the boundary line adjustment, WLP will pay for the property and associated costs. Manager Stearns has signed a buy/sell agreement subject to Council's approval. This is planned to come forward to the Council along with all the other documents for the conservation easement at the January 19th meeting.

Mayor Muhlfeld said, in addition, the existing trail easement in Iron Horse was an old logging road, which isn't optimum for the single-track Whitefish Trail, so in addition to the Murr negotiation WLP has worked with Iron Horse and their homeowner's association (HOA) who have agreed for a better trail easement, also shown on the map in the packet, that takes advantage again, of better topography for the trail. He thanked the Iron Horse HOA, and staff Craig Workman and Maria Butts for all their work and assistance to WLP and himself, to help put this together. Mayor Muhlfeld said, for the record for full disclosure, the surveying of these changes to the trail and all the process to get it filed at the County is a donation from his company to the project and to WLP.

c) Email from Ron and Linda Olson regarding the City Hall/Parking Structure project (p. 218)

Councilor Feury said 'Thank you' for their support.

d) Appointments of City Council Members to Various Boards, Commissions, and Committees (p.219) (CD 1:54:22)

i) Planning Board – City Council Appointment – Frank Sweeney was previous appointee

(p.219)

Councilor Frandsen made a motion, second by Councilor Feury, to appoint Councilor Hildner as primary member and Councilor Sweeney as alternate. The motion passed unanimously.

ii) Park Board – Mayor or Mayor's Designee – Frank Sweeney was previous appointee (p. 222)

Mayor Muhlfeld appointed Councilor Sweeney and the Council indicated unanimous approval by acclamation.

iii) Resort Tax Monitoring Committee – Mayor or Councilor – Andy Feury was previous appointee (p. 226)

Councilor Sweeney made a motion, second by Councilor Frandsen, to appoint Councilor Feury. The motion passed unanimously.

iv) Montana West Economic Development Board – Previously was Jen Frandsen and Andy Feury was Alternate (p. 230)

Councilor Hildner made a motion, second by Councilor Williams, to appoint Councilor Frandsen as the primary member and Councilor Feury as the alternate. The motion passed unanimously.

v) Pedestrian & Bicycle Path Advisory Committee – Mayor or Councilor; previously was Richard Hildner (p. 231)

Councilor Sweeney made a motion, second by Councilor Barberis, to appoint Councilor Hildner. The motion passed unanimously.

vi) Whitefish Tree Advisory Committee – Mayor or Councilor; previously was Pam Barberis (p. 238)

Councilor Hildner made a motion, second by Councilor Williams, to appoint Councilor Barberis. The motion passed unanimously.

vii) Impact Fee Advisory Committee – City Councilor; previously was Jen Frandsen (p. 242)

Councilor Barberis made a motion, second by Councilor Sweeney, to appoint Councilor Frandsen. The motion passed unanimously.

viii) Flathead County Regional Wastewater Study Committee – previously was Sarah Fitzgerald with Chuck Stearns as staff/alternate (p. 245) (may be able to do away with this appointment)

Manager Stearns said this committee is not currently active nor has held any recent meetings and said the Council could skip making any appointments at this time. If the Committee starts up again he will bring it back to the Council for their appointment.

ix) 9-1-1 Administration Board – Previously Chief Dial; alternate was Sarah Fitzgerald; has to be elected officials or designees (p. 246)

Councilor Barberis made a motion, second by Councilor Sweeney, to appoint Chief Dial as the primary member and Councilor Williams as the alternate. The motion passed unanimously.

x) Insurance (Medical) Committee – Two City Councilors as Ex-Officio members; previously was Andy Feury and Frank Sweeney (p. 247)

Councilor Frandsen made a motion, second by Councilor Hildner, to appoint Councilors Feury and Sweeney. The motion passed unanimously.

xi) Whitefish Arts Council – previously was Jen Frandsen (p. 252)

Discussion between Council and Staff that this position was created by request of a local group, and not required by any City Regulations, so no appointments were made at this time. The local group can again approach the Council requesting their participation if they wish to do so.

xii) Real Estate Advisors – Mayor and One Councilor; currently is Mayor Muhlfeld and Andy Feury (p. 253)

Councilor Hildner made a motion, second by Councilor Williams, to appoint Mayor Muhlfeld and Councilor Feury. The motion passed unanimously.

xiii) Legacy Lands Advisory Committee – Mayor and One City Councilor or two Councilors; currently is Richard Hildner (Recreation/Conservation) and Frank Sweeney (Whitefish Trail Operations) (p. 255)

Councilor Hildner made a motion, second by Councilor Sweeney, to just appoint one Councilor, Councilor Williams, to represent the City in both positions. The motion passed unanimously.

xiv) City Hall Steering Ad-Hoc Committee – Mayor and One City Councilor; was Mayor Muhlfeld and Councilor Jen Frandsen with Richard Hildner as alternate (p. 255)

Councilor Sweeney made a motion, second by Councilor Barberis, to appoint Mayor Muhlfeld; and Councilor Hildner as another primary member and Councilor Frandsen as the alternate. The motion passed unanimously.

xv) Whitefish Lake Institute Board – one City elected official; previously was Pam Barberis; (p. 260)

Discussion between Council and Staff that since both Mayor Muhlfeld and Councilor Feury are seated members on the Whitefish Lake Institute Board, no other Council representation should be required at this time.

xvi) Mountain Trails Park Master Plan Committee – two City Councilors – previously was Jen Frandsen and Richard Hildner; (p. 261)

Discussion between Council and Staff that this has been an inactive committee and no appointment were made at this time. If the need should arise again it would probably be through the Park Board; and the Park Board can certainly come back to the Council for future appointments if needed.

COUNCIL COMMENTS:

Councilor Hildner welcomed Councilor Williams. Councilor Hildner asked if the City Attorney could contact the MT DEQ in follow-up to the letter from Mayor Muhlfeld that requested a 30-day extension of the comment period on the proposed BNSF Discharge Permit Renewal as there has been no response from the DEQ. City Attorney Jacobs said she would do so.

Councilor Williams thanked all for the warm welcome she has received; and said she was glad the Council approved going forward with the Housing Needs Assessment and plan.

Mayor Muhlfeld welcomed Councilor Williams and said that he was honored to be elected to serve again with this Council, and looked forward to accomplishing great things together.

Councilor Frandsen welcomed Councilor Williams and congratulated all of the returning re-elected officials. Councilor Frandsen complimented the Public Works Department on their management of snow removal.

Councilor Sweeney thanked Whitefish and its residents to allow him to serve again on the Council; and said he was pleased to have the opportunity to serve with this Mayor and Council.

Councilor Feury agreed with the others in welcoming Councilor Williams. Councilor Feury said in the last few weeks he attended the ice show at the ice rink which was a great show, he skied on the hill and at the golf course, and at all places seeing the kids in town and the visitors having such a good time in our community; he was struck with all the good accomplishments within the public and private sector here providing great activities and opportunities for participation – particularly for youth. It is worth all the hard work and this is one of the best places to live.

12) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)
(CD 2:14:40)

Mayor Muhlfeld adjourned the meeting 9:25 p.m.

_____
Mayor Muhlfeld

Attest:

_____
Necile Lorang, Whitefish City Clerk

ORDINANCE NO. 16-01

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 1.177 acres of land located at 2422 and 2424 Carver Bay Road, in Section 14, Township 31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone.

WHEREAS, the City of Whitefish initiated a rezone with respect to property located at 2422 and 2424 Carver Bay Road, and legally described as Lots 9 and 10 of Whitefish Lake Summer Homes Subdivision, in Section 14, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana; and

WHEREAS, in response to the City-initiated rezone, the Whitefish Planning & Building staff prepared Staff Report WZC 15-04, dated November 12, 2015, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on November 19, 2015, the Whitefish Planning Board reviewed Staff Report WZC 15-04, received an oral report from Planning staff, invited public comment, and thereafter voted unanimously to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on January 4, 2016, the Whitefish City Council reviewed Staff Report WZC 15-04 and letter of transmittal, received an oral report from Planning staff, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone; and

WHEREAS, the proposed rezone meets zoning procedure and the criteria and guidelines for the proposed rezone required by MCA §§76-2-303 through 76-2-305 and WCC §11-7-12.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Staff Report WZC 15-04 dated November 12, 2015, together with the December 29, 2015 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: The real property located at 2422 and 2424 Carver Bay Road, and legally described as Lots 9 and 10 of Whitefish Lake Summer Homes Subdivision, in Section 14, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, previously zoned County R-1 (Suburban Residential) is hereby rezoned to City WSR (Suburban Residential District).

Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the rezone and zoning map amendment of the real property identified on the map attached hereto as Exhibit "A", and incorporated herein by reference, shall be designated City WSR (Suburban Residential District).

Section 5: The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 6: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 7: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

LOT 4
Whitefish Lake
UNZONED LAKE
WHITEFISH LAKE SUMMER HOMES
MOUNTAIN SHADO
R-1
WSR
R-3
WLR
GREEN AREA
HP7

ORDINANCE NO. 16-02

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 1.391 acres of land located at 1750 and 1770 US Highway 93 West, in Section 35, Township 31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone.

WHEREAS, the City of Whitefish initiated a rezone with respect to property located at 1750 and 1770 US Highway 93 West, and legally described as Tracts 1DABA, 1D, and 1DHB, in Section 35, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana; and

WHEREAS, in response to the City-initiated rezone, the Whitefish Planning & Building staff prepared Staff Report WZC 15-04, dated December 10, 2015, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on December 17, 2015, the Whitefish Planning Board reviewed Staff Report WZC 15-05, received an oral report from Planning staff, invited public comment, and thereafter voted to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on January 4, 2016, the Whitefish City Council reviewed Staff Report WZC 15-05 and letter of transmittal, received an oral report from Planning staff, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone; and

WHEREAS, the proposed rezone meets zoning procedure and the criteria and guidelines for the proposed rezone required by MCA §§76-2-303 through 76-2-305 and WCC §11-7-12.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Staff Report WZC 15-05 dated December 10, 2015, together with the December 29, 2015 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: The real property located 1750 and 1770 US Highway 93 West, and legally described as Tracts 1DABA, 1D, and 1DHB, in Section 35, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, previously zoned County R-1 (Suburban Residential) is hereby rezoned to City WSR (Suburban Residential District).

Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the rezone and zoning map amendment of the real

property identified on the map attached hereto as Exhibit "A", and incorporated herein by reference, shall be designated City WSR (Suburban Residential District).

Section 5: The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 6: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

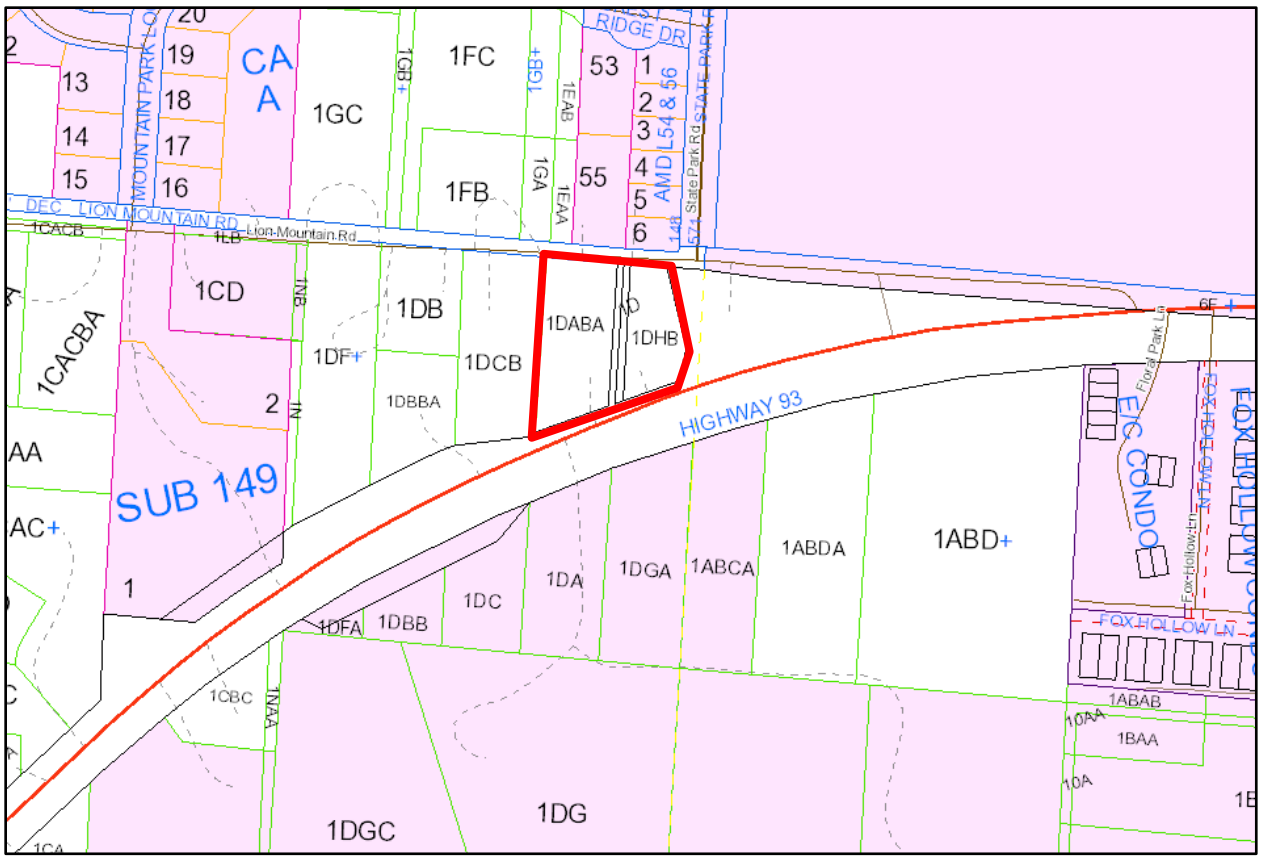
Section 7: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk


MOUNTAIN PARK LO
CA
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1GC
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AMD L54 & 56
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SUB 149
AC
1
HIGHWAY 93
Floral Park Ln
6F
FOX HOLLOW
FOX HOLLOW LN
Fox Hollow Ln
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MEMORANDUM

To: Mayor John Muhlfeld

City Councilors

From: Bill Dial, Chief of Police

Re: Certification Of Police Officer

Date: January 11, 20016

Introduction/History

Montana Code Annotated 7-32-4113 (2) requires the City Council to “confirm” police officers of their city when the police officer has successfully completed a probationary period of one year of service and has met the minimum standards required by Montana law and administrative rules.

Current Report

Officer Chase Garner has successfully completed his probationary period.

Financial requirement

None

Recommendation

I recommend that the City Council “confirm” Officer Chase Garner as a Whitefish Police Officer in accordance with State Statute.

Respectfully,

Bill Dial

Chief of Police

Confirmation of Police Officer Chase Garner

Montana Code Annotated 2015

7-32-4113. Probationary period and confirmation of appointment. (1) Every applicant who has passed the examination and received the certificate referred to in 7-32-4108 must first serve for a probationary term of not more than 1 year. At any time before the end of such probationary term, the mayor, or the manager in those cities operating under the commission-manager plan, may revoke such appointment.

(2) After the end of such probationary period and within 30 days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force and shall hold such position during good behavior unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part).

Provided by Montana Legislative Services

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, authorizing the purchase of a conservation easement in Haskill Basin.

WHEREAS, F.H. Stoltze Land & Lumber Company is the owner of approximately 3,020 acres of land located in Haskill Basin, Flathead County, Montana; and

WHEREAS, the Haskill Basin watershed currently comprises approximately ninety percent (90%) of the source drinking water for the City of Whitefish; and

WHEREAS, the City of Whitefish has relied on F.H. Stoltze Land & Lumber Company to voluntarily provide access to its municipal water supply for over 100 years, while at the same time allowing access to its private land for community recreational activities; and

WHEREAS, the City of Whitefish recognizes the benefits of protecting forest land, watersheds, riparian corridors and conserving open space that provides clean water quality and supply for the City municipal water system and clean water and habitat for native fish, wildlife and plant communities; and

WHEREAS, the 2007 Whitefish City-County Growth Policy specifically recognizes the importance of Haskill Creek and recommends that developments in the 2nd Creek and 3rd Creek watersheds be closely evaluated and conditioned to protect the City's domestic water supply source; and

WHEREAS, the City of Whitefish has determined that the conservation of the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company would satisfy a number of needs of, and provide a multiplicity of benefits to, the residents and visitors of the City, including (i) the protection and preservation of the City's water supply, including the primary source drinking water supply for the City's municipal water system, (ii) the aesthetic protection of the scenic backdrop to the City, (iii) the preservation of important wildlife and fish habitat, (iv) the securing of nearby and accessible recreational opportunities, and (v) the preservation of sustainable timber harvesting, along with all of the associated local job and economic benefits that come with such benefits; and

WHEREAS, the City of Whitefish is authorized under Montana Code Annotated ("MCA"), Title 7, Section 13, Part 43, and Title 7, Section 7, Part 44, to own, operate and maintain a municipal water system and to acquire land or rights in land or water in connection with such undertaking; and

WHEREAS, the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company has significant natural habitat, scenic and open space values as recognized in the Montana Open Space Land & Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; and

WHEREAS, the City of Whitefish has determined that the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company can best be protected through a

conservation easement jointly granted to the City and Montana Fish, Wildlife & Parks, with F.H. Stoltze Land & Lumber Company retaining fee title to and overall management of the land; and

WHEREAS, The Trust for Public Land is the holder of an exclusive and irrevocable option to purchase a conservation easement over the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company; and

WHEREAS, upon exercise of its option to purchase a conservation easement over the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company, The Trust for Public Land wishes to sell the conservation easement to the City and Montana Fish, Wildlife & Parks; and

WHEREAS, the City of Whitefish, the Montana Department of Fish, Wildlife & Parks and other partners received approval for a $7 million U.S. Forest Service Forest Legacy Grant and a $2 million Cooperative Endangered Species Conservation Fund Grant to assist in the purchase of the Haskill Basin conservation easement, leaving $7.7 million of the estimated purchase price to be funded in the local area of Whitefish; and

WHEREAS, on April 28, 2015, the Whitefish voters approved a 1% increase in the resort tax through January 31, 2025, with 70% of the proceeds of the increase to be used to pay the debt service on a $7.7 million bond issue with financing from the State of Montana State Revolving Fund; and

WHEREAS, the City of Whitefish, Montana Fish, Wildlife & Parks, and F.H. Stoltze Land & Lumber Company have negotiated the "Haskill Basin Watershed Deed of Conservation Easement," attached hereto as Exhibit A; and

WHEREAS, Montana Fish, Wildlife & Parks held a scoping public hearing on the "Haskill Basin Watershed Deed of Conservation Easement" and the associated “Multi-Resource Management Plan” on November 9, 2015 and approved the Environmental Assessment on November 24, 2015; and

WHEREAS, the Montana Fish and Wildlife Commissioner approved the "Haskill Basin Watershed Deed of Conservation Easement" and the associated “Multi-Resource Management Plan” on December 20, 2015, and the State Land Board approved the documents and the transaction on December 21, 2015; and

WHEREAS, the City of Whitefish and The Trust for Public Land have negotiated the "Agreement for Sale of an Interest in Real Property," attached hereto as Exhibit B; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants for the City to purchase a conservation easement over the approximately 3,020 acres of land in Haskill Basin in order to secure in perpetuity the City's municipal water supply and public recreation access as well as to protect the City's scenic backdrop, protect important wildlife habitat, and provide for continued sustainable timber harvest and associated local jobs,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the purchase of a conservation easement over approximately 3,020 acres in Haskill Basin and approves the terms of the "Haskill Basin Watershed Deed of Conservation Easement," attached hereto as Exhibit A, and the "Agreement for Sale of an Interest in Real Property," attached hereto as Exhibit B.

Section 2: The City Manager is authorized and directed to execute all documents necessary in connection with the purchase of the Haskill Basin conservation easement.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

HASKILL BASIN WATERSHED
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this ____ day of _____, 2016, by **F.H. STOLTZE LAND & LUMBER COMPANY** whose address is 600 Halfmoon Road, Columbia Falls, Montana, 59912 ("Landowner"), to the **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department") and to **THE CITY OF WHITEFISH**, a Montana municipal corporation whose address is 1005 Baker Avenue, P.O. Box 158, Whitefish, Montana 59937-0158 ("City"). In this Deed of Conservation Easement, the Department and the City may be referred to collectively as "Grantees", and Landowner and Grantees may be referred to collectively as "Parties", or individually as a 'Party'.

Exhibits to this Deed of Conservation Easement include the following:
Exhibit A - Legal Description of the Land
Exhibit B - Map of the Land

RECITALS

The people of the State of Montana and the City of Whitefish recognize the benefits of protecting forest land, watersheds, riparian corridors and conserving open space that provides clean water quality and supply for the City municipal water system and clean water and habitat for native fish, wildlife and plant communities, while simultaneously managing commercial forests on the land, and have authorized the Department to acquire conservation easements by voluntary, cooperative means to conserve important lands and habitat;

The Landowner is the sole owner of certain real property in Flathead County, Montana, comprising approximately 3020 acres and legally described in Exhibit A and depicted in Exhibit B, both of which are attached hereto and incorporated herein by this reference (the "Land");

The City has determined that the conservation of the Land under this Deed of Conservation Easement would satisfy a number of needs of, and provide a multiplicity of benefits to the residents and visitors of Whitefish, including (i) the protection and preservation of the City's water supply, including the primary source drinking water supply for the City's municipal water system, (ii) the aesthetic protection of the scenic backdrop to the City, (iii) the preservation of important wildlife and fish habitat, (iv) the securing of nearby and accessible recreational opportunities, and (v) the preservation of sustainable timber harvesting, along with all of the associated local job and economic benefits that come with such benefits.

The City is authorized under Montana Code Annotated ("MCA"), Title 7, Section 13, Part 43 and Title 7, Section 7, Part 44 to own, operate and maintain a municipal water system and to acquire land or rights in land or water in connection with such undertaking.

The Land also has significant natural habitat, scenic and open space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, MCA Section 76-6-101, et seq.

The Land provides significant benefit to the people of the City of Whitefish, the State of Montana, Flathead County, and the United States by preserving and providing the following important resources, in perpetuity, in compliance with Section 170(h)(4)(A) of the Internal Revenue Code and Sections 76-6-101, et seq., MCA:

Open-space lands which maintain the rural, natural scenic and agricultural qualities of the area and provide opportunities to continue traditional timber management practices and recreation opportunities in perpetuity, as encouraged and supported by the State of Montana and local land conservation policies adopted in Flathead County, Montana; and

Views of a working forest landscape that are enjoyed by members of the general public traveling along U.S. Highway 2, U.S. Highway 93 and Montana Highway 40 as well as the general public recreating on the Land and on adjacent public lands administered by the Flathead National Forest; and

Open-space lands that provide for a variety values, including:

The watershed that currently comprises approximately ninety percent (90%) of the source drinking water for the City;

Outstanding fisheries habitat and spawning grounds (provided by Haskill Creek, 1st Creek, 2nd Creek, 3rd Creek, 4th Creek and 5th Creek) for a variety of fish species, including, but not limited to, westslope cutthroat trout;

Exceptional wildlife habitat for a variety of species, including, but not limited to, grizzly bear, Canada lynx, wolverine, elk, mule deer, whitetail deer, black bear, moose, gray wolf, mountain lion, hoary bat, pileated woodpecker, black-backed woodpecker, and numerous other bird species, many of which are listed as species of Greatest Conservation Need in the Department's Comprehensive Fish & Wildlife Conservation Strategy (2014); and

Important lands, which serve as corridors for the movement of wildlife and play a central role in ensuring wildlife linkages between the North Fork of the Flathead River, Glacier National Park, the Whitefish Range and other ecologically intact areas of the Rocky Mountains of the northern United States and southern Canada.

The uses and benefits described above are collectively referred to as the Land's "Conservation Values."

The Land has a history of forest management, and maintaining the opportunity for a productive forest management program that sustains and enhances fish and wildlife habitat and protects the quality of the City of Whitefish's municipal water supply is of statewide and local importance.

The 2007 Whitefish City-County Growth Policy specifically recognizes the importance of Haskill Creek and recommends that developments in the 2nd Creek and 3rd Creek watersheds be closely evaluated and conditioned to protect the City's domestic water supply source.

The Land provides important public recreational opportunities, including, but not limited to, hunting, fishing, trapping, trail running, mountain biking, hiking, cross country skiing, huckleberry picking, and wildlife viewing.

The Conservation Values of the Land can best be protected by the Landowner granting a conservation easement to the Grantees, with the Landowner retaining fee title to and overall management of the Land, so long as management is consistent with the terms, conditions and purposes of this Easement (as described).

The Forest Legacy Program, administered by the U.S. Department of Agriculture, Forest Service ("Forest Service") pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103C) and created "to protect environmentally important private forest lands threatened with conversion to non-forest uses", has awarded a Forest Legacy grant to the Department for a portion of the purchase price of this Easement.

A portion of the value of this Easement is being provided by the City through the issuance of water revenue bonds to be repaid by an increase in the City's resort tax through January 31, 2025;

A portion of the appraised value of this Easement is being provided by U.S. Department of Interior, Fish and Wildlife Service ("USFWS") grant funds under its Habitat Conservation Plan Land Acquisition Grants Program (Section 10(a)(1)(B) of the Endangered Species Act). Such grant funds are provided for acquisition of vital habitat for threatened and endangered fish, wildlife, and plant species. This Easement will be managed so as to protect and preserve the Conservation Values of the Land, which Conservation Values are consistent with the purposes of the USFWS grant. This Easement may not be encumbered, disposed of in any manner, or used for purposes other than those for which it was acquired, without prior written approval of the USFWS, Region 6, Denver, Colorado as well the City and the Department.

If the purchase price for the Easement is less than the fair market value of the Easement, and Landowner intends that the difference between the purchase price and the fair market value shall be a charitable contribution by Landowner.

The fair market value of the Land both before and after taking into account the effect of the Easement was determined by a full appraisal in accordance with the definitions and methodologies of the Uniform Appraisal Standards for Federal Land Acquisitions, and the purchase price for the Easement is no more than the fair market value of such interest in the Land at the time of the grant of the Easement. The parties acknowledge that no part of the consideration paid for the Easement is being paid for public access to the Land since Landowner has had the long-standing practice of providing such open access and is agreeing to continue such practice as set forth herein.

AGREEMENT

In consideration of the sums paid by the Parties, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, MCA

§§76-6-101 through 76-6-211, the Department's wildlife habitat acquisition authority, §§87-1-209 *et seq*., MCA; and Title 70, Chapter 17, MCA, and the City's source water protection authority under MCA Title 7, Chapter 7, Part 44, Landowner grants and conveys to Grantees and Grantees accept this Easement in perpetuity consisting of the following rights and restrictions over and across the Land.

PURPOSES

This Easement is being acquired using the charitable contribution from Landowner described in Recital N and three different, but mutually consistent and compatible, funding sources in order to preserve and protect the Conservation Values of the Land. In the interest of protecting such Conservation Values, Landowner and Grantees agree that the purposes of this Easement (the "Purposes") are generally described as follows:

Protect the City's municipal water quality and supply in 1st Creek, 2nd Creek and 3rd Creek and ensure that the water being diverted continues to remain as pure and clean as possible, free from sedimentation and pollution that the commercial, industrial or residential development of the Land would entail.

Further the goals of the Forest Legacy Program, in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c), to protect environmentally important forest areas that are threatened by conversion to non-forest uses and therefore also protect important scenic, cultural, fish, wildlife, recreational resources, and riparian areas.

A further purpose and goal of the Forest Legacy Program and this Easement is to protect the Land's capacity to produce economically valuable forestry products and to allow Landowner and its successors and assigns to continue to conduct commercial timber and resource management activities in a sustainable manner.

Further the goals of the Habitat Conservation Plan Land Acquisition Grants Program to manage floodplain, riparian areas, and stream habitats along certain fish bearing creeks on the Land as delineated on the map attached hereto as Exhibit B in a manner suitable to the long-term conservation of certain wildlife and native fish species.

Perpetuate the use of the Land as working forestland; to ensure the opportunity for long-term, professional management of the forest resources through sustainable forestry activities permitted hereunder; and to provide that commercial production of forest products is conducted in a manner compatible with the conservation of water quality, fish and wildlife habitat, recreation, and the Conservation Values.

Continue the Landowner's current practice of allowing members of the public with reasonable access to the Land for public outdoor recreational uses as provided for in Paragraph II.C. and subject to Paragraph II.I.

To prevent the Land from being converted or diverted to any use prohibited by Paragraph II.D of this Easement pursuant to the terms of §76-6-107, MCA, or to any use otherwise inconsistent with the terms, conditions, Conservation Values or Purposes of this Easement.

LANDOWNER'S RIGHTS

Landowner reserves to itself, its successors and assigns, all rights accruing from ownership of the Land, including the right to engage in or permit others to engage in all uses of the Land that are not contrary to this Easement. Without limiting the generality of the previous statement, and subject to the specific restrictions on Landowner's activities in this Easement, the following rights are expressly reserved and are consistent with this Easement. As specified in the following paragraphs, Landowner's exercise of certain of these rights is conditioned upon prior approval by the Grantees under the procedures provided for in Paragraph II.G. of this Easement (hereafter referred to as "Prior Approval") and Landowner's exercise of other rights is subject to prior notice to Grantees also as provided for in of Paragraph II.G. (hereafter referred to as "Prior Notice"). Furthermore Landowner's exercise of many of these rights is conditioned upon their adherence to the Multi Resource Management Plan executed by Landowner and the Grantees pursuant to Section II.E. hereof (the "MRMP"). The following rights are expressly reserved and are deemed to be consistent with the Conservation Values and Purposes of this Easement:

Forest Management. The right to harvest, prepare for sale, and sell timber, timber products and other forest products or resources and to manage the Land including all aspects of commercial forestry in accordance with Applicable Law (as defined below); in accordance with good and sound silvicultural practices as addressed in the MRMP as defined in Paragraph II.E. hereof. For purposes of this Easement, the term "Applicable Law" shall mean any federal or state regulation, rule or statute which may be in effect from time to time which regulates the harvest of timber or land management with respect to the Land, including, but not limited to, Title 77, chapter 5, part 3, MCA, and the associated Administrative Rules of Montana, Title 36, Chapter 11, Sub-chapter 3, governing forest practices in the streamside management zone, as the law and rules may be revised or amended from time to time, and "Best Management Practices for Forestry in Montana, December 2015" (the "BMPs"), with such changes as the parties may agree to from time to time. In addition, Landowner will harvest the timber and manage the Land and its resources in accordance with the MRMP required pursuant to the Forest Legacy Program and further described in Paragraph II.E of this Easement.

Regulation of Public Use. The right to regulate public use of the Land at all times, subject to the public's recreational access and limits thereon as described hereinafter in this Easement. The Landowner retains the right to temporarily restrict public use as required to protect and restore environmentally sensitive areas, sites damaged by public use or natural processes, or areas undergoing timber harvest or timber management activities such as reseeding or replanting; in emergency situations; for public safety reasons subject to the provisions of Section I; and in other areas or circumstances where the Conservation Values could be adversely impacted by public use. Landowner must give Grantees written notice of areas closed to public use as soon as practical after such closure. Restrictions to protect and restore environmentally sensitive areas or to address circumstances where the Conservation Values could be adversely impacted by public use require mutual consent of the Landowner and Grantees. Consent of the Grantees is not required to restrict

motorized use of roads; provided that non-motorized use is allowed. Grantees agree to assist Landowner in enforcing Landowner's right to restrict public use as outlined in this Easement and/or in the MRMP. Further, Landowner retains the right to temporarily suspend public access subject to the provisions of Section C.6.(a), (b), and (c).

Structures and Improvements. Landowner may:

repair, renovate, remove, maintain, or replace nonresidential improvements existing at the time of the grant of this Easement, provided that such repair, renovation, maintenance, or replacement does not expand the size or materially change the use of such nonresidential improvements;

construct, remove, maintain, renovate, repair, or replace timber platforms, bridges, culverts, road ditches, and other structures necessary for land management purposes not specifically disallowed in this Easement; and

with Prior Approval, construct or place on the Land for temporary use one or more buildings or structures for resource-management purposes, including but not limited to forest management and road work. The temporary placement of equipment and machinery for log chipping, tree limbing or scaling, or otherwise preparing logs for loading or shipment from the Land is not deemed to be a "timber processing mill." However, such equipment or machinery may not be placed within the Streamside Management Zone (as defined in Paragraph II.D.1.) unless approved in writing by the Department. Any buildings allowed by this Paragraph II.B.3.c. must be removed from the property upon conclusion of the use for which the buildings were erected and the site reclaimed.

Roads, Road Maintenance, Road Easements, Trails and Bridges. Notwithstanding the provisions of Paragraph II.B.1. the Landowner:

may maintain and improve, or replace, existing roads, bridges, and culverts consistent with conditions and restrictions in the MRMP. This right includes the right to abandon or reclaim roads that are no longer used;

with Prior Notice to the Grantees, may construct and maintain new roads necessary for exercising rights retained by Landowner under this Easement that are consistent with the MRMP. Any proposed new roads not in accordance with the MRMP require Prior Approval by the Grantees;

with Prior Approval from the Grantees, may construct and maintain new roads and bridges within the Streamside Management Zone;

shall control and be responsible for road access, maintenance, management, and use regulation, subject to any maintenance, management and access provisions governing "cost-share" roads, as contained in separate agreements among the Landowner and cooperating federal and state agencies;

may grant to third parties permanent or temporary, non-exclusive access rights to cross the Land on new roads to be constructed or on roads or trails existing at the time of the grant of this Easement. Prior to issuing any such access rights, Landowner must give Prior Notice to the Grantees and also provide the Grantees with a copy of any access easement or agreement to be granted to such third party. Documentation of roads or trails existing at the time of the grant of this Easement may be established through the Easement Baseline Report provided for in Paragraph II.F. Nothing in this Easement may interfere with a third party exercising any right of legal access across the Land that was in effect at the time of the grant of this Easement;

with Prior Notice to the Grantees, may utilize roads existing at the time of the grant of this Easement or construct and maintain new roads across the Land in order to access other nearby or adjoining land owned by Landowner; and

may grant to third parties permanent or temporary non-exclusive access rights for recreational purposes across the Land on new trails to be constructed. Prior to issuing any such access rights, Landowner must give Prior Notice to the Grantees and also provide the Grantees with a copy of any access easement or agreement to be granted to such third party.

Use of Motorized Vehicles and Equipment. The right to use motor vehicles, forestry machinery and equipment, and to maintain log yards, in the ordinary course of Landowner's timber and resource management activities and in a manner consistent with Paragraph II.B.1.

Chemical and Biological Agents. The Landowner reserves the right to utilize agrichemicals, fertilizers, biological agents, or other means for silvicultural purposes and for control of noxious weeds and pests, as defined by the State of Montana or other lawful authority with jurisdiction. Subject to Prior Approval by the Grantees, Landowner may use chemical or biological agents to control other nonnative plants not listed as noxious weeds or to control plants, fish, wildlife, insects, or other life forms that threaten the Conservation Values of the Land. Any such use or application must be in accordance with Applicable Law. Notwithstanding any of the provisions of this Paragraph II.B.6., Prior Approval from the Grantees is required for aerial application of agrichemicals, fertilizers, and biological agents.

Habitat Enhancement and Restoration. The Landowner reserves the right to manipulate vegetation, conduct stream restoration projects, or engage in other habitat enhancement or restoration activities, provided that any such activity must be for the primary purpose of enhancing or maintaining fish and wildlife habitat, and such activity must be in accordance with the MRMP. If any such activity is not contained in the MRMP or otherwise specifically allowed herein, then Prior Approval by the Grantees is required.

Telecommunications Sites. The right to lease not more than one (1) additional site together no larger than one (1) acre, on the Land for the purpose of the construction and use of radio, television, cell phone or other communication signal transmission or relay facilities. Access roads to these sites must be gated and the sites must be fenced to exclude deer, elk, and bear. Landowner shall provide a copy of the lease to the Grantees. Any road construction necessary for installation and maintenance of the telecommunication facility must be consistent with conditions and

restrictions in the MRMP. Grantees acknowledge that the Landowner is already leasing a one-half acre tract to Mountain Digital Enterprise LLC for the purpose of operating and maintaining an existing tower and communications facility located in the NE¼SW¼SW¼ of Section 17, Township 31 North, Range 21 West, PMM, Flathead County, Montana.

Commercial Recreation. The right to allow non-exclusive commercial recreational activities at levels described in the MRMP. "Non-exclusive use" means that the public also has the opportunity for recreational use, consistent with the terms of this Easement and the MRMP. Notwithstanding the foregoing, the Landowner expressly reserves the right to continue leasing a portion of the northern one-third of Section 6, Township 31 North, Range 21 West, PMM, Flathead County, Montana to Winter Sports, Inc. for the use, maintenance and operation of a "Walk Through the Trees" attraction, which involves a trail and rope walk through a forested area, lying adjacent to lands owned by Winter Sports, Inc.

Cross Country Ski Trails. The right to lease or enter into license agreements permitting existing roads on the Land to be groomed and used at no cost by the general public for cross country skiing. Grantees acknowledge that the Landowner has already entered into license agreements allowing Iron Horse Golf Club Inc. to groom certain roads in parts of the S½ of Section 7, the NW¼, NE¼SW¼, SW¼ of Section 8, the N½NW¼, NE¼ of Section 17 and the Glacier Nordic Club, Inc. to groom certain roads in the NE¼ of Section 12, all in Township 31 North, Range 22 West, PMM, Flathead County, Montana.

Subdivision and Real Property Conveyance. For the purposes of regulating subdivision and real property conveyance, the Land (as described in Exhibit A) is considered a whole and undivided parcel of land at the time of the grant of this Easement, notwithstanding any section designations, aliquot parts, government lots or other legal or technical divisions or subdivisions that may exist at the time of the grant of this Easement. The following provisions apply to any division and conveyance of the Land, or any portion thereof:

> The Landowner may sell, convey, exchange, mortgage, quit-claim, devise, gift or otherwise transfer title to the Land in its entirety or in up to three (3) separate parcels designated on the Site Map attached here to as Exhibit B as Parcels A and B and C ("trail corridor" as specified in Paragraph b. below), provided that such parcels be conveyed expressly subject to all the terms, conditions, rights, restrictions, and obligations contained in this Easement (such actions all termed as "transfer").
>
> The Landowner shall grant to the City a permanent easement for a non-motorized public recreational trail corridor twenty (20) feet wide along the west boundary of the Land with such additional width as is necessary to accommodate and protect cuts and fills in accordance with the terms and conditions of a mutually acceptable easement agreement to be entered into between the City and the Landowner. The approximate location of the trail corridor is depicted as points A to B on the Site map. In the future, Landowner reserves the right to convey, quit-claim, or otherwise transfer title to the trail corridor to the City. Such grant, conveyance, quit-claim, or transfer of the trail corridor to the City is expressly subject to all the terms, conditions, rights, restrictions, and obligations contained in this Easement (such actions all termed as "transfer").

The Landowner shall provide Prior Notice to Grantees of any pending real property transfer, and such transfer must be affected with an express provision in the instrument of conveyance stating that the Land is subject to the terms and conditions of this Easement. The Grantees may provide a copy of the Easement and any related documents to the purchaser or other prospective successor in interest to the Landowner.

In the event that the Land is divided into separate ownerships as provided for in this Paragraph II.B.11, Landowner shall furnish the Grantees with a copy of the conveyance document utilized to effect the transfer of the Land within thirty (30) days of the execution of said document, and the Grantees shall record in the Public Records of Flathead County a "Notice of Exercise of Reserved Subdivision Right Under Deed of Conservation Easement " to document the exercise of such rights for the benefit and information of the Landowner, the Grantees, and the public.

Subsurface mineral rights severed prior to the grant of this Easement do not constitute a prohibited or restricted division or subdivision for purposes of this Paragraph.

The restrictions on land division and subdivision contained in this Paragraph do not apply to the right to sell stumpage, as long as the timber rights are not permanently severed.

The Land may not be used as open or natural space or park land for any subdivision or development purposes or requirements on land not covered by this Easement, nor may Landowner transfer any development rights on or to the Land separate from the Land. For purposes of this Easement, development rights include, without limitation, any and all rights, however designated, now or hereafter associated with the Land or any other property that may be used to compute development density, lot yield, or any other development variable of or pertaining to the Land or any other property.

Utility Installation and Pipelines. The right to construct or permit utility equipment, lines and pipelines and other utility facilities for any lawful purpose that may be necessary in or across the Land, provided that:

At Landowner's sole discretion, underground utility installation and pipelines shall be allowed within existing road prisms; and,

Prior Approval is required for any new utility or pipeline installation within or across the Land outside of existing road prisms; and,

Any utility or pipeline installation must be constructed in a manner that protects the Land.

If Landowner has received notice of a pending condemnation action from an appropriate authority, the provisions of Paragraph II.J. apply.

Grazing. With Prior Approval by the Grantees, Landowner may use livestock on the Land to control noxious weeds or other invasive nonnative plants, or for other land management purposes consistent with the protection and maintenance of the Land.

Fences. The right to construct, remove, maintain, repair, and replace fences on the Land for the purposes of livestock management or property protection; provided, however, that such activities and fences do not significantly impact wildlife habitat or wildlife migration on and through the Land.

Extraction of Sand, Gravel, and Rock. With Prior Notice, the right to establish one or more locations on the Land to extract sand, gravel, and rock through surface mining techniques in accordance with Applicable Law, provided that:

Each excavation site is not within a 100-year flood plain area or less than eighty (80) feet from the boundary of any Streamside Management Zone;

Any material extracted may only be used on the Land for purposes consistent with Landowner's reserved rights;

Landowner shall control noxious weeds at the site; and

The Landowner shall not disturb or affect the City's utility improvements, including water intake and diversion structures, piping, and other ancillary structures.

GRANTEES' RIGHTS; COOPERATION BETWEEN GRANTEES

The rights conveyed to the Grantees by this Easement are:

Subject to the terms hereof, including but not limited to Landowner's Rights set forth in Paragraph II.B. of this Easement, and consistent with the Purposes of this Easement, the right to preserve and protect in perpetuity the Conservation Values of the Land.

The right to enter the Land to monitor Landowner's compliance hereof and to enforce the specific restrictions on the Landowner's activities and rights granted to the Grantees by this Easement; and to observe, study, and make scientific observations of the Land's fish, wildlife, habitat, and ecosystems. In addition, the Grantees have the right to establish and maintain vegetation monitoring transects and enclosures upon prior written notice to Landowner, and in a manner that will not unreasonably interfere with the Landowner's rights under this Easement.

The right of the City to inspect, repair, renovate, remove, maintain, or replace the utility improvements including, water intake and diversion structures, piping, and other ancillary structures that the City owns and maintains under separate easement agreements with Landowner on 1st Creek (located in the NE¼SE ¼ of Section 12, Township 31 North, Range 22 West), 2nd Creek (located in the NE¼SW¼SW¼ of Section 17, Township 31 North, Range 21 West), and 3rd Creek (located in the SE¼NE¼ of Section 12, Township 31 North, Range 22 West) as well as the existing buried piping and other ancillary structures needed to deliver water to the City's water treatment plant currently located in the NW¼S½NW¼ of Section 8 and in the S½ of Section 7, Township 31 North, Range 33 West. Such right also includes the right of the City to install automated water supply gate valves, powered by electricity (including solar or hydro-electric appurtenances) at any of the intakes of 1st Creek, 2nd Creek or 3rd Creek; the right to monitor for water quality and quantity, and the right to extract sand and gravel in accordance with applicable state and federal law solely as necessary to maintain the City's water intake equipment and systems.

The right to prevent any activity on or use of the Land by the Landowner that is inconsistent with this Easement and not allowed hereby, and, to the extent practicable, to require the restoration of any areas or features of the Land that may be damaged by inconsistent activity or use by Landowner not allowed herein.

The right, on behalf of the general public, of access for the purpose of noncommercial dispersed recreation on the Land as described in the MRMP. Use of the Land by the public is subject to Landowner's right to restrict such public access pursuant to Paragraph II.B.2. of this Easement and to any limitations or restrictions contained in the MRMP.

In the event that either (a) the Landowner reasonably demonstrates that its risk of landowner-based liability has materially increased as a result of the public's access to or use of the Land due to a change in statutory or common law or (b) the Landowner is unable to continue to obtain commercially available liability insurance covering the Lands at prevailing market rates insuring the Landowner against liability for death, personal injury and/or property damage coverage comparable to that available on the date of this Easement, then, in either such event, the following provisions shall apply:

a. The Landowner shall have the right to temporarily suspend public recreational access to the Land for a period of up to three years.

b. During any period of suspension, the Parties shall negotiate in good faith and commit to finding and implementing a mutually acceptable solution that allows public recreational access to be continued on the Land, while also protecting the Landowner against increased liability, or increased liability protection cost for such public recreational access and use. This obligation to use "good faith" is binding on all Parties and may be independently enforced by any Party against any other Party until such agreement is achieved. Such agreement, when reached, shall be memorialized through revision of the MRMP and, if necessary, amendment to this Easement.

c. After the three year period, the Grantees, either individually or jointly, shall have the right to purchase the Land subject to the Easement on the following terms and conditions:

i. the Landowner shall retain the perpetual right to harvest all timber on the Land, subject to all applicable provisions of the MRMP;

ii. public recreational access shall remain suspended until Grantees close on their purchase of the Land;

iii. the purchase price for the Land shall be the fair market value thereof (subject to all easements then encumbering the Land including this Easement) determined by an applicable appraisal obtained within six (6) months of the closing on Grantees' purchase;

iv. the Grantees and the Landowner shall attempt to agree on the appraiser and, if the Grantees and the Landowner come to agreement on the appraiser, the fair market value determined by such appraiser shall be binding on all parties;

v. if the Grantees and the Landowner do not come to agreement on the appraiser within thirty (30) days, the Grantees and the Landowner shall each obtain their own appraisal of the

fair market value of the Land. In the event that the difference between such appraisals is 10% or less, the fair market value determined by such appraisals shall be averaged and such averaged fair market value shall be binding on all parties. In the event that the difference between such appraisals is more than 10%, a third appraisal shall be obtained by an appraiser selected by the first two appraisers and the fair market value determined by the two closest appraisals shall be averaged and such averaged fair market value shall be binding on all parties;

vi the purchase price for the Land shall be paid in cash by wire transfer to Landowner on the date of closing; and,

vii Landowner shall transfer its rights in the Land subject to all easements, covenants, conditions, laws, rules and restrictions then in effect, and subject to Landowner's retained timber harvesting rights.

d. The non-motorized public recreational trail corridor mentioned in Paragraph II.B.11.b. will not be subject to the terms of the temporary suspension of public recreational access described above.

The rights granted to Grantees under this Easement are enforceable by both the City and the Department acting independently or by either of them acting on behalf of both Grantees. It is anticipated that the Department will take the primary and lead role in monitoring and enforcing the terms and condition of this Easement and will be the primary contact for the Landowner. It is also anticipated that the Department will work cooperatively with the City and keep the City informed of all developments on the Land that might affect this easement and the rights conveyed under this Easement. The City and the Department may enter into a Memorandum of Agreement in which they formalize their respective roles and understandings regarding the monitoring and enforcement of the Easement; and shall provide a copy thereof to Landowner within 30 days of execution. For any matter requiring the approval or consent of Grantees, or Notice to the Grantees, under this Easement, Landowner will provide any required notice to the Department, and may rely on the Department to share such notice with the City and to have reached an agreement with the City on how to respond to Landowner prior to providing any formal response to Landowner. Landowner may rely on a written response from the Department when requesting Grantees' written consent or approval.

RESTRICTIONS ON LANDOWNER'S ACTIVITIES

The following activities and uses are expressly prohibited or restricted.

Timber Harvest in Streamside Management Zones. Timber harvest, use of mechanical equipment off of established roads, or conducting timber-management activities within the Streamside Management Zone (SMZ) along the following drainages: 1st, 2nd, 3rd, 4th and 5th Creeks and main stem Haskill Creek will be conducted in compliance with the Montana SMZ law with such additional provisions as outlined in the MRMP.

Wetland Areas. The draining, filling, dredging, or destruction of any wetland area or any other activity that has significant adverse impacts on a wetland is prohibited except as provided for in Paragraph II.B. and in compliance with the provisions of the MRMP.

Subdivision. The partition, division, subdivision or de facto subdivision of the Land is prohibited, except as specifically provided for in Paragraph II.B.11.

Residential Use. Residential use of the Land and the construction or placement of any residential building or structure on the Land is prohibited.

Water Use and Water Rights. The use or withdrawal of surface or ground water in any manner that would adversely affect the Conservation Values is prohibited, provided, however, that such prohibition shall not be deemed to apply to Landowner's lawful use of surface or ground water in connection with any of Landowner's permitted commercial forestry, silvicultural and/or resource management activities. The transfer, encumbrance, sale, lease, or other separation of water rights from the Land is prohibited unless such transfer, sale, lease or other separation specifically provides for the protection of the City's access to and source of water for its citizens and provides for protection of the Land's use as a commercial forest operation.

Soil Cultivation. Cultivation of the Land is prohibited, except as provided in Paragraph II.B.7. or in the MRMP.

Lease or Sale of Access. Except as specifically provided for in Paragraph II.B.4, II.B.9 and II.B.10, (including Landowner's "Walk in the Tree Tops" attraction), the rent, lease, sale, or charging of fees for exclusive access to the Land to others for hunting, fishing, skiing, snowmobiling, or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited without Prior Approval of the Grantees. The Landowner may not sell, assign, convey, or otherwise transfer any interest in the Land or in itself for the purpose of providing exclusive access to the Land in contravention of this Easement.

Utility Installation and Pipelines. Subject to existing utility and pipeline easements and except as provided for in Paragraph II.B.12 and II.C.3. the installation of utility lines upon or under the Land is prohibited.

Structures and Improvements.

The construction or placement of a structure or improvement of any kind is prohibited, other than as expressly allowed in Paragraph II.B.3 and Paragraph II.B.12.

The Landowner may not construct or place any residential building on the Land.

The Landowner may not construct or place any permanent building on the Land.

The Landowner may not construct or place a timber processing mill on the Land.

Grazing. Grazing of livestock is prohibited except as provided for in Paragraph II.B.13.

Alternative Livestock Ranch and other Animal Confinement. The use of the Land in connection with an alternative livestock ranch, game bird farm, feedlot, shooting preserve, fur farm, beehive or apiary, zoo or menagerie, or the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a threat to any mammalian, avian, reptilian, aquatic, or amphibian wildlife, whether or not indigenous to Montana, is prohibited.

Mineral Development.

Except for the surface extraction of sand, gravel, and rock, all as provided for in Paragraph II.B.15., the Landowner is prohibited from exploring for, developing, mining, producing or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources on or under the surface of the Land. Landowner is also prohibited from conveying any interest in mineral rights to another party for purposes of mineral exploration, development, production or extraction.

In the event that Landowner becomes aware of a third-party exercising or proposing to exercise mineral rights (including sand and gravel operations) on the Land, Landowner shall inform the Grantees as soon as possible. Grantees may each represent their interests in protecting its rights under this Easement in any proceeding related to mineral exploration or development. If Grantees rights are adversely impacted by the mining activities of third-party mineral owners, Landowner and Grantees shall be entitled to share in any compensation for damages in accordance with Paragraph II.J. of this Easement, provided that the Grantees must apply their respective shares of any such compensation as required by the terms and conditions of the grants or appropriations used by such Party to acquire their interest in the Easement.

Other Commercial and Industrial Use. Any commercial or industrial use of or activity on the Land is prohibited, other than (i) commercial recreational uses or activities that do not unreasonably interfere with the public access rights provided for in this Easement and are consistent with the Purposes of this Easement and (ii) those commercial uses or activities specifically allowed in this Easement. For purposes of this Easement, trapping of furbearing wildlife as regulated by the Department is considered a recreational activity and is not a commercial use.

Waste Disposal. The processing, dumping, storage or other disposal of waste, refuse and debris on the Land is prohibited, except for wood waste products generated through forest management activities on the Land, which may be disposed of on the Land in a manner consistent with forestry best management practices and the Montana Streamside Management Zone law, provided that such disposal does not adversely impact the Conservation Values.

MULTI-RESOURCE MANAGEMENT PLAN AND LIAISON TEAM

Concurrently with the execution of this Easement, the Landowner and the Grantees shall enter into the MRMP that, among other things, identifies Landowner's objectives and actions the Landowner will take to protect and manage water, soil, range, aesthetic quality, recreation and public access, timber, and fish and wildlife habitat and resources. The MRMP is not incorporated into this Easement, but must be in writing and signed and acknowledged by representatives of Landowner and

the Grantees who have authority to commit the respective parties to compliance with the plan. The Landowner and Grantees will comply with the MRMP.

The Landowner's resource management and timber harvesting practices that comply with the MRMP are consistent with the terms, conditions, Conservation Values, and Purposes of this Easement.

Landowner and the Grantees shall form a joint liaison team (the "Liaison Team") consisting of four total members comprised of two representatives of Landowner(s) and two representatives of the Grantees. The Liaison Team will provide a forum to review issues related to this Easement and will prepare and, as agreed upon, revise the MRMP. The Liaison Team shall meet not less than once a year as the members shall determine. If the Land is held in two ownerships, as provided for in Paragraph II.B.11, each Landowner shall appoint its own Liaison Team members. Liaison Team meetings shall include the Landowner's and the Grantees' respective representatives, unless other arrangements are mutually agreed upon.

The Liaison Team shall review and, when appropriate, amend the MRMP. Any amendment to the MRMP must be in writing and must have the signed consent and acknowledgment of the Parties. If there is any conflict or inconsistency between the terms of the MRMP and the terms of this Easement, the terms of this Easement control.

The Landowner may not convey the Land or any portion thereof unless the successor in interest has executed with the Grantees a MRMP that will come into effect upon the conveyance. The successor in interest may sign and acknowledge the MRMP that is in effect at the time of the transfer of ownership or, upon agreement with the Grantees, may sign and acknowledge a revised MRMP.

EASEMENT BASELINE REPORT

The Parties agree that an Easement Baseline Report (the "Report") will be completed by a natural resource professional familiar with the area and acceptable to the Grantees and the Landowner, reviewed by the Grantees, and Landowner, and acknowledged by them to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the Report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy.

NOTICES AND PRIOR APPROVAL

The purpose of requiring the Landowner to notify the Grantees prior to undertaking certain permitted activities described herein is to afford the Grantees an opportunity to ensure that activities are designed and carried out in a manner consistent with the Purposes of this Easement and pursuant to the terms hereof. Whenever Prior Notice only is required under this Easement, Landowner must notify the Grantees as provided for herein in writing not less than thirty (30) days prior to the date the

Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Grantees as much notice as is possible under the circumstances.

Whenever Prior Approval is required, such approval may not be unreasonably withheld. Landowner must notify the Grantees in writing not less than sixty (60) days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantees to make an informed judgment as to its consistency with the Purposes of this Easement and the other terms and provisions hereof. The Grantees have sixty (60) days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms hereof, the Grantees shall inform the Landowner of the manner in which the proposed activity may thereafter be conducted. The Grantee's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service. In the event the Grantees deny the activity the Landowner wishes to undertake, the Grantees must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

If the Grantees fail to respond to Landowner's notice of Prior Approval within sixty (60) days of their receipt of the notice, the proposed activity shall be deemed to be consistent with the terms of this Easement, and the Grantees shall have no further right to object to the activity identified by such notice. The Landowner shall be under no liability or obligation for any failure to give Prior Notice for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Grantees of any such damage as soon as practicable.

Whenever mutual written consent is required, the initiating party must follow the Prior Approval procedures set forth above.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service addressed as follows:

To Landowner:	F.H. Stoltze Land & Lumber Company Attention: General Manager 600 Halfmoon Road Columbia Falls, MT 59912
With a copy to:	F.H. Stoltze Land & Lumber Company Attention: President 2497 Seventh Avenue East, Suite 105 North St. Paul, MN 55109

To Department:	Department of Fish, Wildlife & Parks Attention: Administrator, Wildlife Division 1420 E. Sixth Avenue P.O. Box 200701 Helena, MT 59620-0701
With a copy to:	Department of Fish, Wildlife & Parks Attention: Regional Supervisor 490 North Meridian Road Kalispell, MT 59901
To City:	City of Whitefish Attention: City Manager 1005 Baker Avenue, P.O. Box 158 Whitefish, Montana 59937-0158
With a copy to:	City of Whitefish Attention: Mayor 1005 Baker Avenue, P.O. Box 158 Whitefish, Montana 59937-0158

or to such other address as the parties from time to time shall designate by written notice to the others. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five (5) business days after deposit thereof with a courier or mail service, return receipt requested.

REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Grantees determine, acting individually or jointly, that the Landowner has violated the terms of this Easement, the Grantees shall give written notice to the Landowner of the specifics of the violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Land resulting from any use or activity prohibited by the terms of this Easement and inconsistent with the Purposes of this Easement, to restore the portion of the Land so damaged where practicable. If the land cannot be restored because physical conditions have been changed to the extent that such restoration is not reasonably practicable, the Grantees and the Landowner may consider other remedies to the Land or compensation due to the Grantees; provided, however, that any such damages may not exceed the fair market value of this Easement at the time the damage occurs, prorated for the portion of the Land adversely affected by the applicable Landowner violation based upon impact to the Conservation Values. The fair market value of this Easement for the purpose of calculating remedies will be determined as provided in Paragraph II.J.

If the Landowner fails to cure the violation within thirty (30) days after receipt of notice from Grantees, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally correct, Grantees may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or

permanent injunction, and to require the restoration of the Land to the condition that existed prior to the injury.

If Grantees determine that a violation of the terms of this Easement is threatened, Grantees shall give written notice to the Landowner of the specifics of such threatened violation. Landowner shall have thirty (30) days to respond to such notice of threatened violation. If the Landowner fails to respond to such notice within thirty (30) days after its receipt of such notice, and Grantees determine that such threatened violation still exists, Grantees may bring an action in a court of competent jurisdiction to enforce the terms of this Easement and to enjoin the threatened violation, by temporary or permanent injunction.

If Grantees, in their reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Land, Grantees may pursue their remedies under this paragraph without Prior Notice to the Landowner or without waiting for the period provided for cure to expire.

Grantee's rights under this provision apply in the event of actual or threatened violation of the terms of this Easement, and the Landowner agrees that if Grantees' remedies for any threatened or actual violation of the terms of this Easement are inadequate, Grantees shall be entitled to the injunctive relief described herein, both prohibitive and mandatory, in addition to such other relief to which Grantees may be entitled, including specific performance of the terms of this Easement. Grantees' remedies described in this section shall be cumulative and in addition to all equitable remedies consistent with the foregoing. No party is entitled to punitive, indirect, special, consequential or incidental damages.

Nothing contained in this Easement shall be construed to entitle Grantees to bring any action against Landowner for any injury to or change in the Land resulting from the actions of third parties, the public, or other causes beyond Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

In any action in law or equity to enforce the terms of this Easement, all Parties shall bear their own costs and attorney's fees.

Enforcement of the terms of this Easement is at the discretion of Grantees, and any forbearance by Grantees to exercise its rights under this Easement in the event of any breach of any term of this Easement by Landowner shall not be deemed or construed to be a waiver by Grantees of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Landowner shall impair the right or remedy or be construed as a waiver, nor shall any forbearance or delay give rise to a claim of laches or prescription.

RIGHTS AND IMMUNITIES

In consideration of the terms and conditions of this Easement, Landowner and Grantees rely upon all of the rights and immunities against liability to the full extent of state law, as amended, and

any successor provisions, and any other applicable provisions of law, including, but not limited to, Mont. Code Ann. Title 27, Chapter 1, Part 7; Mont. Code Ann. Title 70, Chapter 16, Part 3 (Restriction on Liability of Landowner for Recreation), and Mont. Code Ann. Title 2, Chapter 9 (Montana Tort Claims Act).

TERMINATION, EXTINGUISHMENT, CONDEMNATION

The Parties agree that the Land includes important species, habitat, and other important ecosystem attributes, including water supply, quality, quantity, and habitat. Conservation Values and the public benefits that are provided by this Easement may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions. In response to such changes, one or more of the purposes of this Easement may not be able to be fully accomplished, or one or more of the Conservation Values of this Easement may not be able to be fully protected or achieved. If one or more of the purposes of this Easement can no longer be fully accomplished, or if one or more of the Conservation Values of the Land cannot be fully achieved, such failure shall not be deemed sufficient cause to terminate this Easement so long as any of the other purposes of the Easement may be accomplished and any of the Conservation Values may be achieved.

This Easement constitutes a real property interest immediately vested in Grantees. It is the unequivocal intention of Grantees and the Landowner that the conservation purpose of this Easement be carried out in perpetuity. If circumstances arise in the future that render all purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantees and the Landowner agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement. If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the Prior Approval of the Grantees, Grantees are entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and Grantees shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled. For the purposes of this Paragraph, the ratio of the value of this Easement to the value of the Land unencumbered by this Easement remains constant as determined as of the date of this grant. Grantees and the Landowner agree that the Department's proportional interest is _____ (_____) percent, the City's proportional interest is _____ (_____) percent, and the value of any future interest will not include any value attributable to authorized improvements to the Land made after the date of this grant, except as to improvements made by or at the expense of Grantees, unless evidence at any condemnation hearing or proceeding demonstrates actual damages to the Landowner and Grantees which vary in favor of Grantees from the proportional interest established above.

This Easement was acquired, in part, using funds provided to the Department by the USFWS, as a grant under its Endangered Species Act, Section 6 Habitat Conservation Plan Land Acquisition Grants Program. Additionally, a portion of the value of this Easement was donated by the

Landowner and is being used as part of the required non-federal share to match the USFWS grant. USFWS regulations require that the Land covered by this Easement be managed in accordance with the terms and conditions of this Easement in perpetuity, unless otherwise approved by the USFWS regional director. The Easement may not be encumbered, disposed of in any manner, or used for purposes inconsistent with the Endangered Species Act Section 6 Grant without the prior written approval of the Regional Director of the USFWS. In the event of judicial termination or extinguishment of this Easement for circumstances as described under this Paragraph, the Department shall coordinate with USFWS and shall apply any funds received in settlement for such termination or extinguishment to habitat conservation as approved by USFWS.

This Easement was acquired, in part, with federal funds under the Forest Legacy Program (P.L.101-624; 104 Stat. 3359) and that the interest acquired may not be sold, exchanged, or otherwise disposed, unless the United States is reimbursed for the market value at the time of the disposal in proportion to the original Federal investment. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the Department's tender of equal value consideration acceptable to the Secretary.

ASSIGNMENT

This Easement is transferable, but Grantees or either of them may assign this Easement only to a local or state agency. As a condition of such transfer, Grantees or either of them: (1) shall require that the conservation purposes that this grant continue to be carried out into perpetuity; and (2) shall provide ninety (90) days prior notice to Landowner of such transfer or assignment.

AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Landowner and Grantees are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including §76-6-101, et seq., MCA, and any amendment shall be consistent with the purposes of this Easement, and shall not affect its perpetual duration.

RECORDATION

Grantees shall record this Easement in the official records of Flathead County, Montana. Grantees may re-record this Easement at any time as may be required.

GENERAL PROVISIONS

Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.

Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of Mont. Code Ann. §76-6-101, *et seq*.. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

Notwithstanding the foregoing, the Parties to the Easement hereby acknowledge the rights retained by Landowner herein are consistent with the purposes of the Easement, the Conservation Values, and Mont. Code Ann. § 76-6-101, *et seq*. .

Entire Agreement. Except with respect to matters set forth in the Baseline Report and the MRMP, this instrument sets forth the entire agreement of the Parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged into this Easement.

No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.

Successors. This Easement shall be binding upon, and inure to the benefit of the parties, their heirs, administrators, successors and assigns, and shall continue as a servitude running in perpetuity with the Land.

Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected.

TO HAVE AND TO HOLD unto Grantees, their successors, and assigns forever.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Landowner and Grantees have set their hands on the day and year first above written.

LANDOWNER: F.H. STOLTZE LAND AND LUMBER CO.

By: _____
Charles W. Roady
Vice President

ACKNOWLEDGMENTS

STATE OF Montana)
) ss:
COUNTY OF Flathead)

On this __ day of _____, 2016, before me personally appeared that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of and that the seal affixed is the seal of said.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of Montana
Residing at_____
My Commission Expires _____
Printed Name: _____

DEPARTMENT: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

By: _____
M. Jeff Hagener, Director

ACKNOWLEDGMENTS

STATE OF Montana)
) ss:
COUNTY OF Lewis and Clark)

On this __ day of _____, 2016, before me personally appeared that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of and that the seal affixed is the seal of said.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of Montana
Residing at_____
My Commission Expires _____
Printed Name: _____

CITY: THE CITY OF WHITEFISH

By: _____

_____

ACKNOWLEDGMENTS

STATE OF Montana)
) ss:
COUNTY OF Flathead)

On this __ day of _____, 2016, before me personally appeared that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of and that the seal affixed is the seal of said.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of Montana
Residing at_____
My Commission Expires _____
Printed Name: _____

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:
GOVERNMENT LOT 1, THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM TRACT 1 OF CERTIFICATE OF SURVEY NO. 17142. ALSO EXCEPTING THEREFROM TRACT 1 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 2:
THAT PORTION OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, AND THE NORTH ONE-HALF OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
TRACT 1 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 3:
THAT PORTION OF THE EAST ONE-HALF OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
TRACT 2 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 4:
GOVERNMENT LOTS 1 AND 2; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER; THE WEST HALF OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 5:
GOVERNMENT LOTS 1, 2, 3 AND 4 OF SECTION 6, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 6:
GOVERNMENT LOT 4 OF SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM LOT 205 OF IRON HORSE, PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 7:
THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 8:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 9:
GOVERNMENT LOTS 1, 2 AND 3 OF SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 10:
THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THE WEST HALF OF THE SOUTHEAST QUARTER; THE EAST HALF OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF WHITEFISH IN WARRANTY DEED RECORDED AUGUST 6, 1929 IN BOOK 201, PAGE 607 AS INSTRUMENT NO. 3047, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 11:
THE SOUTH HALF OF THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 12:
THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 13:
GOVERNMENT LOT 1 OF SECTION 18, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM LOTS 205, 206, 207, 208 AND 209 OF IRON HORSE PHASE 4.

PARCEL 14:
GOVERNMENT LOT 4 OF SECTION 18, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 15:

THE EAST HALF OF THE SOUTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE NORTHEAST AND THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 16:
GOVERNMENT LOT 3 OF SECTION 19, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 17:
THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION CONVEYED TO FLATHEAD COUNTY BY DEED RECORDED NOVEMBER 8, 1976 IN BOOK 604, PAGE 806 AS INSTRUMENT NO. 12589.

PARCEL 18:
THE SOUTHWEST QUARTER; THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 31 NORTH, RANGE 21, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 19:
THE NORTH HALF OF THE NORTHWEST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION LYING WITHIN IRON HORSE PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

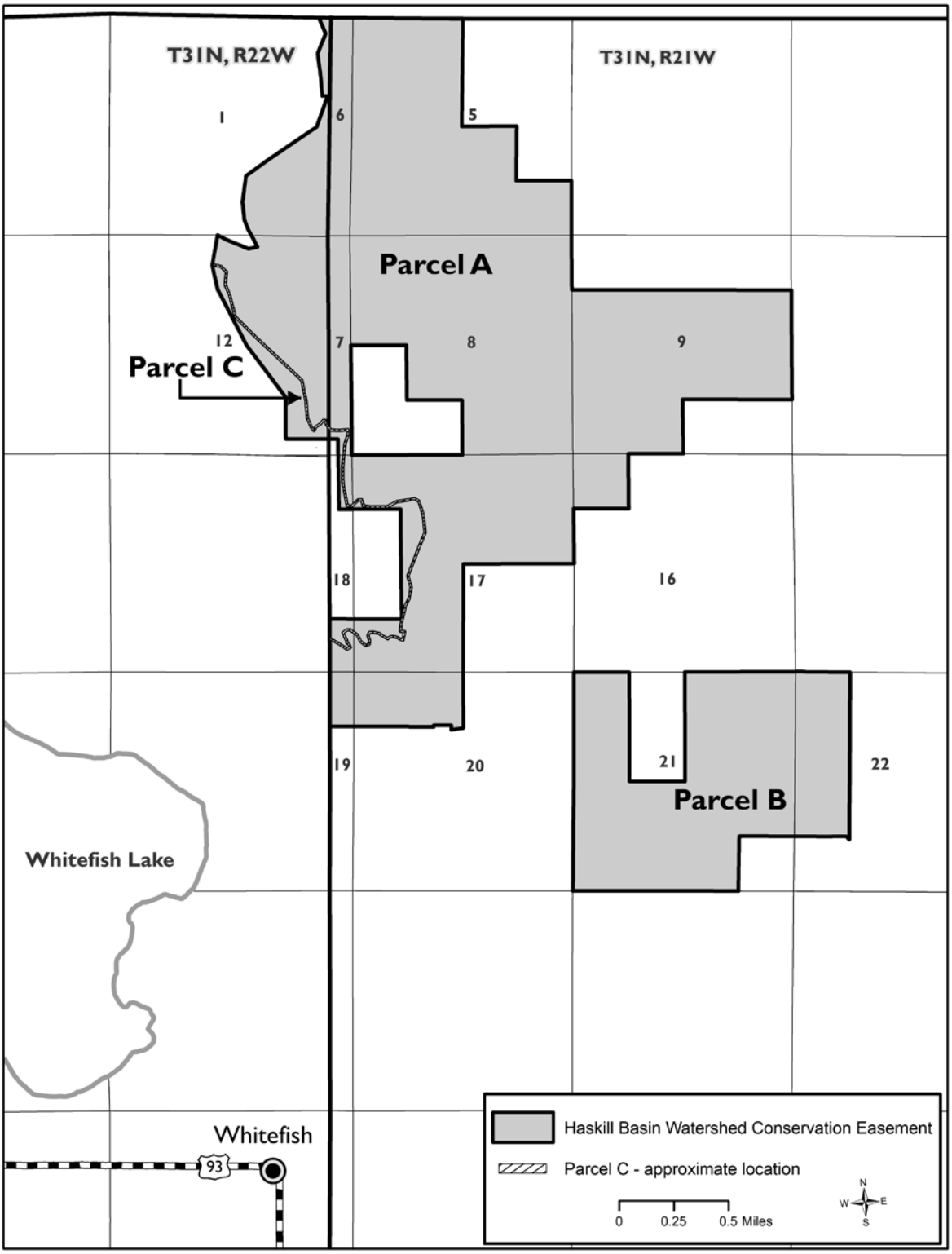
PARCEL 20:
THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM A TRACT OF LAND SHOWN AS “PORTION A” ON THE AMENDED PLAT OF LOT 2 OF THE RESUBDIVISION OF LOT 12 OF NORTHWOODS NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 21:
A TRACT OF LAND SHOWN AS “PORTION B” ON THE AMENDED PLAT OF LOT 2 OF THE RESUBDIVISION OF LOT 12 OF NORTHWOODS NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 22:
THE WEST HALF OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 22, DESCRIBED AS FOLLOWS:
TRACT B OF CERTIFICATE OF SURVEY NO. 13505.

EXHIBIT B

Map of the Land



AGREEMENT FOR SALE OF AN INTEREST IN REAL PROPERTY

This Agreement for Sale of an Interest Real Property is made this ___th day of January, 2016, between THE CITY OF WHITEFISH, a Montana municipal corporation ("Buyer"), and THE TRUST FOR PUBLIC LAND, a nonprofit California public benefit corporation ("Seller").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

BUYER:

The City of Whitefish
1005 Baker Avenue, P.O. Box 158
Whitefish, Montana 59937-0158
Attn: Chuck Stearns
City Manager
Tel: (406)
FAX: (406)

SELLER:

The Trust for Public Land
901 Fifth Avenue, Suite 1520
Seattle, WA 98164
Attn: Tom Tyner

Tel: (206) 587-2447
FAX: (206) 382-3414

B. Seller is the holder of an exclusive and irrevocable option to purchase a conservation easement over that certain real property, consisting of approximately 3,022 acres located in Flathead County, Montana, and described on Exhibit A attached hereto and hereby incorporated by this reference. A map showing the location and configuration of the above-described property is attached hereto as Exhibit B and hereby incorporated by this reference.

C. Said real property shall be referred to in this Agreement as “the Property,” and said conservation easement as "the Easement."

D. The Easement shall be in a form and substance substantially identical to the Haskill Basin Watershed Deed of Conservation Easement attached hereto as Exhibit C and incorporated herein by this reference.

E. Buyer, working collaboratively with the Montana Department of Fish, Wildlife and Parks (“MFWP”) wishes to purchase the Easement from Seller and Seller wishes to sell the Easement to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale**. Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Easement on the terms and conditions set forth herein.

2. **Purchase Terms**.

(a) Price. The purchase price for the Easement shall be Sixteen Million Seven Hundred Thousand Dollars ($16,700,000.00) (the "Purchase Price"), which price shall be subject to the review and approval of Buyer as set forth in Section 3(c) below.

(b) Method of Payment. The Purchase Price shall be payable in cash, which funds shall be deposited in escrow at or prior to the close of escrow.

(c) Joint Purchasers. Buyer and Seller acknowledge that Buyer is providing a portion of the Purchase Price for the Easement and MFWP is providing the balance of the Purchase Price, and that Buyer and MFWP shall be joint grantees of the Easement. Buyer's share of the Purchase Price is Seven Million Seven Hundred Thousand Dollars ($7,700,000.00) and MFWP's share of the Purchase Price is Nine Million Dollars ($9,000,000.00).

3. **Condition Precedent to Seller's Obligation to Sell, and Buyer's Obligation to Purchase the Easement.** Seller shall have no obligation to sell, and Buyer shall have no obligation to purchase the Easement under this Agreement unless and until:

(a) Seller, in its sole and absolute discretion, has completed its purchase of the Easement from its current owner – F. H. Stoltze Land & Lumber Company of Columbia Falls, Montana;

(b) The Montana Fish, Wildlife and Parks Commission, the Montana State Board of Land Commissioners, and the Whitefish City Council approve the acquisition of the Easement. If these approvals are not obtained, then Buyer shall have the right to terminate this agreement. Buyer represents to Seller that on the date of this Agreement these approvals have not been obtained;

(c) Buyer shall have received, reviewed (or had reviewed) and approved an independent MAI appraisal of the Easement;

(d) Buyer shall have received and have available for the acquisition of the Easement funds in an amount equal to Buyer's share of the Purchase Price; and

(e) MFWP has deposited its share of the Purchase Price into escrow.

4. **Condition of the Property.** Buyer acknowledges that it has had or will have the opportunity to conduct an investigation or inspection of the Property, and agrees to accept the same "as is" in its present condition, except as such condition may be affected by the representations and warranties made by Seller to Buyer with regard to the Property in Section 9 of this Agreement.

5. **Escrow.** Upon execution of this Agreement, or as soon thereafter as is convenient, the parties shall open an escrow with First American Title Company at its office at 704 South Main

Street, P.O. Box 1310, Kalispell, Montana, 59901, (406) 752-5388 (the "Escrow Holder") for the purpose of closing the purchase and sale of the Easement. Subject to satisfaction of the conditions precedent to closing set forth in Paragraph 3, above, Escrow shall close no later than March 31, 2016, with Buyer and Seller committing to make a diligent and good faith effort to close on or before February 15, 2016.

6. **Title.** Title shall be conveyed jointly to MFWP and Buyer by a Deed of Conservation Easement. Title to the Easement shall be subject only to: (a) a lien for non-delinquent real property taxes; and (b) any other matters approved by Buyer in writing.

7. **Title Insurance**. Seller shall provide Buyer with a standard form owner's policy of title insurance in the full amount of Buyer's share of the Purchase Price insuring that title to the Easement is vested in Buyer and MFWP upon close of escrow subject only to the exceptions noted in Section 6 above.

8. **Seller's Representations**. Seller makes the following representations:

(a) Seller has full power and authority to enter into this Agreement and the person signing this Agreement for Seller has full power and authority to sign for Seller and to bind it to this Agreement and, at closing, will have full power and authority to sell, transfer and convey all right, title and interest in and to the Easement in accordance with this Agreement.

(b) Seller is not a "foreign person" and is not otherwise subject to back-up withholding of tax under Section 1445 of the Internal Revenue Code.

(c) The conveyance of the Easement in accordance with this Agreement will not violate any provision of state or local subdivision laws.

(d) The Property has insurable vehicular access to a public road.

(e) Seller has no knowledge of any suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened (i) against the Property, or any portion thereof, or (ii) pending or threatened against Seller or the current owner of the Property which could affect Seller's title to the Easement, or any portion thereof, affect the value of the Easement, or any portion thereof, or subject an owner of the Easement, or any portion thereof, to liability.

(f) To the best of Seller's knowledge, there are no:

(i) Intended public improvements or private rights which will result in the creation of any liens upon the Property securing an obligation to pay money.

(ii) Uncured notices which have been served upon Seller or the current owner of the Property from any governmental agency notifying Seller or the current owner of the Property of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.

(iii) Actual or impending mechanics liens against the Property or any portion thereof.

(iv) Notices or other information giving Seller reason to believe that any conditions existing on the Property or in the vicinity of the Property or in ground or surface waters associated with the Property that may have a material affect on the value of the Easement or subject the owner of the Easement to potential liabilities under environmental laws.

(g) To the best of Seller's knowledge, there is no condition at, on, under or related to the Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any hazardous substance on the Property nor any release or threatened release of any hazardous substance, pollutant or contaminant into, upon or over the Property or into or upon ground or surface water at the Property. To the best of Seller's knowledge, no hazardous substance is now or ever has been stored on the Property in underground tanks, pits or surface impoundments

Each of the above representations and warranties is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the close of escrow, Seller shall notify Buyer in writing of such and thereafter Seller shall be entitled to attempt to remedy the problem before the close of escrow. If the problem is not remedied to the satisfaction of Buyer, in Buyer's sole discretion, before close of escrow, Buyer may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the Easement, or (b) defer the closing date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

9. **Buyer's Representations**. Buyer makes the following representations:

(a) Buyer has all requisite authority and power to enter into this Agreement.

(b) Neither Buyer's execution of this Agreement nor its taking any of the actions contemplated hereunder will violate any City, County, State or Federal Codes or Ordinances, or other governmental regulations.

The representations and warranties of Buyer contained herein shall be effective through the close of escrow.

10. **Closing Expenses and Fees**. One-half the escrow fee shall shared equally by Buyer and MFWP, and the other one-half of the escrow fee shall be paid by Seller. No later than the close of escrow, the owner of the Property shall ensure that real property taxes have been paid through the then current tax year. Following the close of escrow, real property taxes shall remain the responsibility of the Property's owner. Seller will be responsible for the premium on the title policy referred to in Paragraph 7.

11. **Notices**. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

12. **Attorneys' Fees**. If any legal action is brought by either party to enforce any provision of this Agreement, each party shall bear its own fees and costs.

13. **No Broker's Commission**. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.

14. **Time of the Essence**. Time is of the essence of this Agreement.

15. **Binding on Successors**. This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

16. **Additional Documents**. Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

17. **Entire Agreement; Modification; Waiver**. This Agreement constitutes the entire agreement between Seller and Buyer pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

18. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

19. **Severability**. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

20. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

THE CITY OF WHITE FISH, a a Montana municipal corporation	THE TRUST FOR PUBLIC LAND a California public benefit corporation
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

State of Montana)
) ss.
County of)

On this ___ day of_____, 2016, before me _____, the undersigned Notary Public in and for the state of Montana, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as _____, on behalf of the City of Whitefish, a Montana municipal corporation named therein and acknowledged to me that said corporation executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he/she was authorized to so execute said instrument.

_____
Print Name: Print Name: _____
Notary Public in and for the State of Montana
Residing at _____
My commission expires _____

State of Washington)
) ss.
County of King)

On this ___ day of _____, 2016, before me, Daniel K. Wilson, the undersigned Notary Public in and for the state of Washington, personally appeared Thomas E. Tyner, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Division Legal Director on behalf of The Trust for Public Land, the corporation therein named and acknowledged to me that the corporation executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he was authorized to so execute said instrument.

_____
Print Name: Print Name: Daniel K. Wilson
Notary Public in and for the State of Washington
Residing at _____
My commission expires _____

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:
GOVERNMENT LOT 1, THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM TRACT 1 OF CERTIFICATE OF SURVEY NO. 17142. ALSO EXCEPTING THEREFROM TRACT 1 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 2:
THAT PORTION OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, AND THE NORTH ONE-HALF OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
TRACT 1 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 3:
THAT PORTION OF THE EAST ONE-HALF OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
TRACT 2 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 4:
GOVERNMENT LOTS 1 AND 2; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER; THE WEST HALF OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 5:
GOVERNMENT LOTS 1, 2, 3 AND 4 OF SECTION 6, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 6:
GOVERNMENT LOT 4 OF SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM LOT 205 OF IRON HORSE, PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 7:
THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 8:
THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 9:
GOVERNMENT LOTS 1, 2 AND 3 OF SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 10:
THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THE WEST HALF OF THE SOUTHEAST QUARTER; THE EAST HALF OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF WHITEFISH IN WARRANTY DEED RECORDED AUGUST 6, 1929 IN BOOK 201, PAGE 607 AS INSTRUMENT NO. 3047, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 11:
THE SOUTH HALF OF THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 12:
THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 13:
GOVERNMENT LOT 1 OF SECTION 18, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM LOTS 205, 206, 207, 208 AND 209 OF IRON HORSE PHASE 4.

PARCEL 14:
GOVERNMENT LOT 4 OF SECTION 18, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 15:
THE EAST HALF OF THE SOUTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE NORTHEAST AND THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 16:
GOVERNMENT LOT 3 OF SECTION 19, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 17:
THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION CONVEYED TO FLATHEAD COUNTY BY DEED RECORDED NOVEMBER 8, 1976 IN BOOK 604, PAGE 806 AS INSTRUMENT NO. 12589.

PARCEL 18:
THE SOUTHWEST QUARTER; THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 31 NORTH, RANGE 21, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 19:
THE NORTH HALF OF THE NORTHWEST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION LYING WITHIN IRON HORSE PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 20:
THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM A TRACT OF LAND SHOWN AS “PORTION A” ON THE AMENDED PLAT OF LOT 2 OF THE RESUBDIVISION OF LOT 12 OF NORTHWOODS NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 21:
A TRACT OF LAND SHOWN AS “PORTION B” ON THE AMENDED PLAT OF LOT 2 OF

THE RESUBDIVISION OF LOT 12 OF NORTHWOODS NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 22:
THE WEST HALF OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 22, DESCRIBED AS FOLLOWS:
TRACT B OF CERTIFICATE OF SURVEY NO. 13505.

EXHIBIT B

Map of the Land

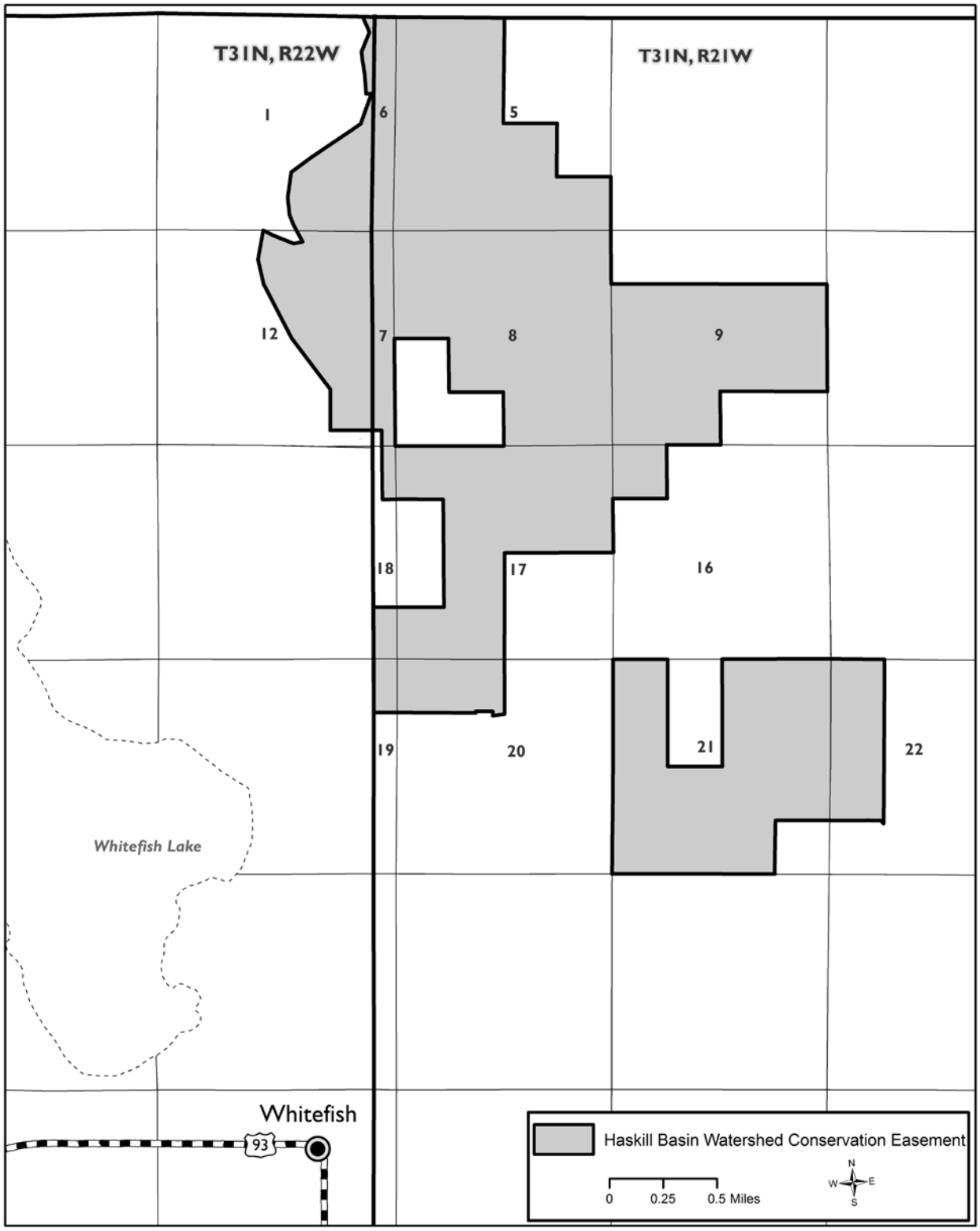


EXHIBIT C

HASKILL BASIN WATERSHED
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this ____ day of _____, 2016, by **F.H. STOLTZE LAND & LUMBER COMPANY** whose address is 600 Halfmoon Road, Columbia Falls, Montana, 59912 ("Landowner"), to the **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department") and to **THE CITY OF WHITEFISH**, a Montana municipal corporation whose address is 1005 Baker Avenue, P.O. Box 158, Whitefish, Montana 59937-0158 ("City"). In this Deed of Conservation Easement, the Department and the City may be referred to collectively as "Grantees", and Landowner and Grantees may be referred to collectively as "Parties", or individually as a 'Party'.

Exhibits to this Deed of Conservation Easement include the following:
Exhibit A - Legal Description of the Land
Exhibit B - Map of the Land

RECITALS

The people of the State of Montana and the City of Whitefish recognize the benefits of protecting forest land, watersheds, riparian corridors and conserving open space that provides clean water quality and supply for the City municipal water system and clean water and habitat for native fish, wildlife and plant communities, while simultaneously managing commercial forests on the land, and have authorized the Department to acquire conservation easements by voluntary, cooperative means to conserve important lands and habitat;

The Landowner is the sole owner of certain real property in Flathead County, Montana, comprising approximately 3020 acres and legally described in Exhibit A and depicted in Exhibit B, both of which are attached hereto and incorporated herein by this reference (the "Land");

The City has determined that the conservation of the Land under this Deed of Conservation Easement would satisfy a number of needs of, and provide a multiplicity of benefits to the residents and visitors of Whitefish, including (i) the protection and preservation of the City's water supply, including the primary source drinking water supply for the City's municipal water system, (ii) the aesthetic protection of the scenic backdrop to the City, (iii) the preservation of important wildlife and fish habitat, (iv) the securing of nearby and accessible recreational opportunities, and (v) the preservation of sustainable timber harvesting, along with all of the associated local job and economic benefits that come with such benefits.

The City is authorized under Montana Code Annotated ("MCA"), Title 7, Section 13, Part 43 and Title 7, Section 7, Part 44 to own, operate and maintain a municipal water system and to acquire land or rights in land or water in connection with such undertaking.

The Land also has significant natural habitat, scenic and open space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, MCA Section 76-6-101, et seq.

The Land provides significant benefit to the people of the City of Whitefish, the State of Montana, Flathead County, and the United States by preserving and providing the following important resources, in perpetuity, in compliance with Section 170(h)(4)(A) of the Internal Revenue Code and Sections 76-6-101, et seq., MCA:

Open-space lands which maintain the rural, natural scenic and agricultural qualities of the area and provide opportunities to continue traditional timber management practices and recreation opportunities in perpetuity, as encouraged and supported by the State of Montana and local land conservation policies adopted in Flathead County, Montana; and

Views of a working forest landscape that are enjoyed by members of the general public traveling along U.S. Highway 2, U.S. Highway 93 and Montana Highway 40 as well as the general public recreating on the Land and on adjacent public lands administered by the Flathead National Forest; and

Open-space lands that provide for a variety values, including:

The watershed that currently comprises approximately ninety percent (90%) of the source drinking water for the City;

Outstanding fisheries habitat and spawning grounds (provided by Haskill Creek, 1st Creek, 2nd Creek, 3rd Creek, 4th Creek and 5th Creek) for a variety of fish species, including, but not limited to, westslope cutthroat trout;

Exceptional wildlife habitat for a variety of species, including, but not limited to, grizzly bear, Canada lynx, wolverine, elk, mule deer, whitetail deer, black bear, moose, gray wolf, mountain lion, hoary bat, pileated woodpecker, black-backed woodpecker, and numerous other bird species, many of which are listed as species of Greatest Conservation Need in the Department's Comprehensive Fish & Wildlife Conservation Strategy (2014); and

Important lands, which serve as corridors for the movement of wildlife and play a central role in ensuring wildlife linkages between the North Fork of the Flathead River, Glacier National Park, the Whitefish Range and other ecologically intact areas of the Rocky Mountains of the northern United States and southern Canada.

The uses and benefits described above are collectively referred to as the Land's "Conservation Values."

The Land has a history of forest management, and maintaining the opportunity for a productive forest management program that sustains and enhances fish and wildlife habitat and protects the quality of the City of Whitefish's municipal water supply is of statewide and local importance.

The 2007 Whitefish City-County Growth Policy specifically recognizes the importance of Haskill Creek and recommends that developments in the 2nd Creek and 3rd Creek watersheds be closely evaluated and conditioned to protect the City's domestic water supply source.

The Land provides important public recreational opportunities, including, but not limited to, hunting, fishing, trapping, trail running, mountain biking, hiking, cross country skiing, huckleberry picking, and wildlife viewing.

The Conservation Values of the Land can best be protected by the Landowner granting a conservation easement to the Grantees, with the Landowner retaining fee title to and overall management of the Land, so long as management is consistent with the terms, conditions and purposes of this Easement (as described).

The Forest Legacy Program, administered by the U.S. Department of Agriculture, Forest Service ("Forest Service") pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103C) and created "to protect environmentally important private forest lands threatened with conversion to non-forest uses", has awarded a Forest Legacy grant to the Department for a portion of the purchase price of this Easement.

A portion of the value of this Easement is being provided by the City through the issuance of water revenue bonds to be repaid by an increase in the City's resort tax through January 31, 2025;

A portion of the appraised value of this Easement is being provided by U.S. Department of Interior, Fish and Wildlife Service ("USFWS") grant funds under its Habitat Conservation Plan Land Acquisition Grants Program (Section 10(a)(1)(B) of the Endangered Species Act). Such grant funds are provided for acquisition of vital habitat for threatened and endangered fish, wildlife, and plant species. This Easement will be managed so as to protect and preserve the Conservation Values of the Land, which Conservation Values are consistent with the purposes of the USFWS grant. This Easement may not be encumbered, disposed of in any manner, or used for purposes other than those for which it was acquired, without prior written approval of the USFWS, Region 6, Denver, Colorado as well the City and the Department.

If the purchase price for the Easement is less than the fair market value of the Easement, and Landowner intends that the difference between the purchase price and the fair market value shall be a charitable contribution by Landowner.

The fair market value of the Land both before and after taking into account the effect of the Easement was determined by a full appraisal in accordance with the definitions and methodologies of the Uniform Appraisal Standards for Federal Land Acquisitions, and the purchase price for the Easement is no more than the fair market value of such interest in the Land at the time of the grant of the Easement. The parties acknowledge that no part of the consideration paid for the Easement is being paid for public access to the Land since Landowner has had the long-standing practice of providing such open access and is agreeing to continue such practice as set forth herein.

AGREEMENT

In consideration of the sums paid by the Parties, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, MCA §§76-6-101 through 76-6-211, the Department's wildlife habitat acquisition authority, §§87-1-209 *et seq*., MCA; and Title 70, Chapter 17, MCA, and the City's source water protection authority under MCA Title 7, Chapter 7, Part 44, Landowner grants and conveys to Grantees and Grantees accept this Easement in perpetuity consisting of the following rights and restrictions over and across the Land.

PURPOSES

This Easement is being acquired using the charitable contribution from Landowner described in Recital N and three different, but mutually consistent and compatible, funding sources in order to preserve and protect the Conservation Values of the Land. In the interest of protecting such Conservation Values, Landowner and Grantees agree that the purposes of this Easement (the "Purposes") are generally described as follows:

Protect the City's municipal water quality and supply in 1st Creek, 2nd Creek and 3rd Creek and ensure that the water being diverted continues to remain as pure and clean as possible, free from sedimentation and pollution that the commercial, industrial or residential development of the Land would entail.

Further the goals of the Forest Legacy Program, in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c), to protect environmentally important forest areas that are threatened by conversion to non-forest uses and therefore also protect important scenic, cultural, fish, wildlife, recreational resources, and riparian areas.

A further purpose and goal of the Forest Legacy Program and this Easement is to protect the Land's capacity to produce economically valuable forestry products and to allow Landowner and its successors and assigns to continue to conduct commercial timber and resource management activities in a sustainable manner.

Further the goals of the Habitat Conservation Plan Land Acquisition Grants Program to manage floodplain, riparian areas, and stream habitats along certain fish bearing creeks on the Land as delineated on the map attached hereto as Exhibit B in a manner suitable to the long-term conservation of certain wildlife and native fish species.

Perpetuate the use of the Land as working forestland; to ensure the opportunity for long-term, professional management of the forest resources through sustainable forestry activities permitted hereunder; and to provide that commercial production of forest products is conducted in a manner compatible with the conservation of water quality, fish and wildlife habitat, recreation, and the Conservation Values.

Continue the Landowner's current practice of allowing members of the public with reasonable access to the Land for public outdoor recreational uses as provided for in Paragraph II.C. and subject to Paragraph II.I.

To prevent the Land from being converted or diverted to any use prohibited by Paragraph II.D of this Easement pursuant to the terms of §76-6-107, MCA, or to any use otherwise inconsistent with the terms, conditions, Conservation Values or Purposes of this Easement.

LANDOWNER'S RIGHTS

Landowner reserves to itself, its successors and assigns, all rights accruing from ownership of the Land, including the right to engage in or permit others to engage in all uses of the Land that are not contrary to this Easement. Without limiting the generality of the previous statement, and subject to the specific restrictions on Landowner's activities in this Easement, the following rights are expressly reserved and are consistent with this Easement. As specified in the following paragraphs, Landowner's exercise of certain of these rights is conditioned upon prior approval by the Grantees under the procedures provided for in Paragraph II.G. of this Easement (hereafter referred to as "Prior Approval") and Landowner's exercise of other rights is subject to prior notice to Grantees also as provided for in of Paragraph II.G. (hereafter referred to as "Prior Notice"). Furthermore Landowner's exercise of many of these rights is conditioned upon their adherence to the Multi Resource Management Plan executed by Landowner and the Grantees pursuant to Section II.E. hereof (the "MRMP"). The following rights are expressly reserved and are deemed to be consistent with the Conservation Values and Purposes of this Easement:

Forest Management. The right to harvest, prepare for sale, and sell timber, timber products and other forest products or resources and to manage the Land including all aspects of commercial forestry in accordance with Applicable Law (as defined below); in accordance with good and sound silvicultural practices as addressed in the MRMP as defined in Paragraph II.E. hereof. For purposes of this Easement, the term "Applicable Law" shall mean any federal or state regulation, rule or statute which may be in effect from time to time which regulates the harvest of timber or land management with respect to the Land, including, but not limited to, Title 77, chapter 5, part 3, MCA, and the associated Administrative Rules of Montana, Title 36, Chapter 11, Sub-chapter 3, governing forest practices in the streamside management zone, as the law and rules may be revised or amended from time to time, and "Best Management Practices for Forestry in Montana, December 2015" (the "BMPs"), with such changes as the parties may agree to from time to time. In addition, Landowner will harvest the timber and manage the Land and its resources in accordance with the MRMP required pursuant to the Forest Legacy Program and further described in Paragraph II.E of this Easement.

Regulation of Public Use. The right to regulate public use of the Land at all times, subject to the public's recreational access and limits thereon as described hereinafter in this Easement. The Landowner retains the right to temporarily restrict public use as required to protect and restore environmentally sensitive areas, sites damaged by public use or natural processes, or areas undergoing timber harvest or timber management activities such as reseeding or replanting; in emergency situations; for public safety reasons subject to the provisions of Section I; and in other areas or circumstances where the Conservation Values could be adversely impacted by public use.

Landowner must give Grantees written notice of areas closed to public use as soon as practical after such closure. Restrictions to protect and restore environmentally sensitive areas or to address circumstances where the Conservation Values could be adversely impacted by public use require mutual consent of the Landowner and Grantees. Consent of the Grantees is not required to restrict motorized use of roads; provided that non-motorized use is allowed. Grantees agree to assist Landowner in enforcing Landowner's right to restrict public use as outlined in this Easement and/or in the MRMP. Further, Landowner retains the right to temporarily suspend public access subject to the provisions of Section C.6.(a), (b), and (c).

Structures and Improvements. Landowner may:

repair, renovate, remove, maintain, or replace nonresidential improvements existing at the time of the grant of this Easement, provided that such repair, renovation, maintenance, or replacement does not expand the size or materially change the use of such nonresidential improvements;

construct, remove, maintain, renovate, repair, or replace timber platforms, bridges, culverts, road ditches, and other structures necessary for land management purposes not specifically disallowed in this Easement; and

with Prior Approval, construct or place on the Land for temporary use one or more buildings or structures for resource-management purposes, including but not limited to forest management and road work. The temporary placement of equipment and machinery for log chipping, tree limbing or scaling, or otherwise preparing logs for loading or shipment from the Land is not deemed to be a "timber processing mill." However, such equipment or machinery may not be placed within the Streamside Management Zone (as defined in Paragraph II.D.1.) unless approved in writing by the Department. Any buildings allowed by this Paragraph II.B.3.c. must be removed from the property upon conclusion of the use for which the buildings were erected and the site reclaimed.

Roads, Road Maintenance, Road Easements, Trails and Bridges. Notwithstanding the provisions of Paragraph II.B.1. the Landowner:

may maintain and improve, or replace, existing roads, bridges, and culverts consistent with conditions and restrictions in the MRMP. This right includes the right to abandon or reclaim roads that are no longer used;

with Prior Notice to the Grantees, may construct and maintain new roads necessary for exercising rights retained by Landowner under this Easement that are consistent with the MRMP. Any proposed new roads not in accordance with the MRMP require Prior Approval by the Grantees;

with Prior Approval from the Grantees, may construct and maintain new roads and bridges within the Streamside Management Zone;

shall control and be responsible for road access, maintenance, management, and use regulation, subject to any maintenance, management and access provisions governing "cost-share" roads, as contained in separate agreements among the Landowner and cooperating federal and state agencies;

may grant to third parties permanent or temporary, non-exclusive access rights to cross the Land on new roads to be constructed or on roads or trails existing at the time of the grant of this Easement. Prior to issuing any such access rights, Landowner must give Prior Notice to the Grantees and also provide the Grantees with a copy of any access easement or agreement to be granted to such third party. Documentation of roads or trails existing at the time of the grant of this Easement may be established through the Easement Baseline Report provided for in Paragraph II.F. Nothing in this Easement may interfere with a third party exercising any right of legal access across the Land that was in effect at the time of the grant of this Easement;

with Prior Notice to the Grantees, may utilize roads existing at the time of the grant of this Easement or construct and maintain new roads across the Land in order to access other nearby or adjoining land owned by Landowner; and

may grant to third parties permanent or temporary non-exclusive access rights for recreational purposes across the Land on new trails to be constructed. Prior to issuing any such access rights, Landowner must give Prior Notice to the Grantees and also provide the Grantees with a copy of any access easement or agreement to be granted to such third party.

Use of Motorized Vehicles and Equipment. The right to use motor vehicles, forestry machinery and equipment, and to maintain log yards, in the ordinary course of Landowner's timber and resource management activities and in a manner consistent with Paragraph II.B.1.

Chemical and Biological Agents. The Landowner reserves the right to utilize agrichemicals, fertilizers, biological agents, or other means for silvicultural purposes and for control of noxious weeds and pests, as defined by the State of Montana or other lawful authority with jurisdiction. Subject to Prior Approval by the Grantees, Landowner may use chemical or biological agents to control other nonnative plants not listed as noxious weeds or to control plants, fish, wildlife, insects, or other life forms that threaten the Conservation Values of the Land. Any such use or application must be in accordance with Applicable Law. Notwithstanding any of the provisions of this Paragraph II.B.6., Prior Approval from the Grantees is required for aerial application of agrichemicals, fertilizers, and biological agents.

Habitat Enhancement and Restoration. The Landowner reserves the right to manipulate vegetation, conduct stream restoration projects, or engage in other habitat enhancement or restoration activities, provided that any such activity must be for the primary purpose of enhancing or maintaining fish and wildlife habitat, and such activity must be in accordance with the MRMP. If any such activity is not contained in the MRMP or otherwise specifically allowed herein, then Prior Approval by the Grantees is required.

Telecommunications Sites. The right to lease not more than one (1) additional site together no larger than one (1) acre, on the Land for the purpose of the construction and use of radio, television, cell phone or other communication signal transmission or relay facilities. Access roads to these sites must be gated and the sites must be fenced to exclude deer, elk, and bear. Landowner shall provide a copy of the lease to the Grantees. Any road construction necessary for installation and maintenance of the telecommunication facility must be consistent with conditions and restrictions in the MRMP. Grantees acknowledge that the Landowner is already leasing a one-half acre tract to Mountain Digital Enterprise LLC for the purpose of operating and maintaining an existing tower and communications facility located in the NE¼SW¼SW¼ of Section 17, Township 31 North, Range 21 West, PMM, Flathead County, Montana.

Commercial Recreation. The right to allow non-exclusive commercial recreational activities at levels described in the MRMP. "Non-exclusive use" means that the public also has the opportunity for recreational use, consistent with the terms of this Easement and the MRMP. Notwithstanding the foregoing, the Landowner expressly reserves the right to continue leasing a portion of the northern one-third of Section 6, Township 31 North, Range 21 West, PMM, Flathead County, Montana to Winter Sports, Inc. for the use, maintenance and operation of a "Walk Through the Trees" attraction, which involves a trail and rope walk through a forested area, lying adjacent to lands owned by Winter Sports, Inc.

Cross Country Ski Trails. The right to lease or enter into license agreements permitting existing roads on the Land to be groomed and used at no cost by the general public for cross country skiing. Grantees acknowledge that the Landowner has already entered into license agreements allowing Iron Horse Golf Club Inc. to groom certain roads in parts of the S½ of Section 7, the NW¼, NE¼SW¼, SW¼ of Section 8, the N½NW¼, NE¼ of Section 17 and the Glacier Nordic Club, Inc. to groom certain roads in the NE¼ of Section 12, all in Township 31 North, Range 22 West, PMM, Flathead County, Montana.

Subdivision and Real Property Conveyance. For the purposes of regulating subdivision and real property conveyance, the Land (as described in Exhibit A) is considered a whole and undivided parcel of land at the time of the grant of this Easement, notwithstanding any section designations, aliquot parts, government lots or other legal or technical divisions or subdivisions that may exist at the time of the grant of this Easement. The following provisions apply to any division and conveyance of the Land, or any portion thereof:

> The Landowner may sell, convey, exchange, mortgage, quit-claim, devise, gift or otherwise transfer title to the Land in its entirety or in up to three (3) separate parcels designated on the Site Map attached here to as Exhibit B as Parcels A and B and C ("trail corridor" as specified in Paragraph b. below), provided that such parcels be conveyed expressly subject to all the terms, conditions, rights, restrictions, and obligations contained in this Easement (such actions all termed as "transfer").
>
> The Landowner shall grant to the City a permanent easement for a non-motorized public recreational trail corridor twenty (20) feet wide along the west boundary of the Land with such additional width as is necessary to accommodate and protect cuts and fills in accordance with the terms and conditions of a mutually acceptable easement agreement to be

entered into between the City and the Landowner. The approximate location of the trail corridor is depicted as points A to B on the Site map. In the future, Landowner reserves the right to convey, quit-claim, or otherwise transfer title to the trail corridor to the City. Such grant, conveyance, quit-claim, or transfer of the trail corridor to the City is expressly subject to all the terms, conditions, rights, restrictions, and obligations contained in this Easement (such actions all termed as "transfer").

The Landowner shall provide Prior Notice to Grantees of any pending real property transfer, and such transfer must be affected with an express provision in the instrument of conveyance stating that the Land is subject to the terms and conditions of this Easement. The Grantees may provide a copy of the Easement and any related documents to the purchaser or other prospective successor in interest to the Landowner.

In the event that the Land is divided into separate ownerships as provided for in this Paragraph II.B.11, Landowner shall furnish the Grantees with a copy of the conveyance document utilized to effect the transfer of the Land within thirty (30) days of the execution of said document, and the Grantees shall record in the Public Records of Flathead County a "Notice of Exercise of Reserved Subdivision Right Under Deed of Conservation Easement " to document the exercise of such rights for the benefit and information of the Landowner, the Grantees, and the public.

Subsurface mineral rights severed prior to the grant of this Easement do not constitute a prohibited or restricted division or subdivision for purposes of this Paragraph.

The restrictions on land division and subdivision contained in this Paragraph do not apply to the right to sell stumpage, as long as the timber rights are not permanently severed.

The Land may not be used as open or natural space or park land for any subdivision or development purposes or requirements on land not covered by this Easement, nor may Landowner transfer any development rights on or to the Land separate from the Land. For purposes of this Easement, development rights include, without limitation, any and all rights, however designated, now or hereafter associated with the Land or any other property that may be used to compute development density, lot yield, or any other development variable of or pertaining to the Land or any other property.

Utility Installation and Pipelines. The right to construct or permit utility equipment, lines and pipelines and other utility facilities for any lawful purpose that may be necessary in or across the Land, provided that:

At Landowner's sole discretion, underground utility installation and pipelines shall be allowed within existing road prisms; and,

Prior Approval is required for any new utility or pipeline installation within or across the Land outside of existing road prisms; and,

Any utility or pipeline installation must be constructed in a manner that protects the Land.

If Landowner has received notice of a pending condemnation action from an appropriate authority, the provisions of Paragraph II.J. apply.

Grazing. With Prior Approval by the Grantees, Landowner may use livestock on the Land to control noxious weeds or other invasive nonnative plants, or for other land management purposes consistent with the protection and maintenance of the Land.

Fences. The right to construct, remove, maintain, repair, and replace fences on the Land for the purposes of livestock management or property protection; provided, however, that such activities and fences do not significantly impact wildlife habitat or wildlife migration on and through the Land.

Extraction of Sand, Gravel, and Rock. With Prior Notice, the right to establish one or more locations on the Land to extract sand, gravel, and rock through surface mining techniques in accordance with Applicable Law, provided that:

Each excavation site is not within a 100-year flood plain area or less than eighty (80) feet from the boundary of any Streamside Management Zone;

Any material extracted may only be used on the Land for purposes consistent with Landowner's reserved rights;

Landowner shall control noxious weeds at the site; and

The Landowner shall not disturb or affect the City's utility improvements, including water intake and diversion structures, piping, and other ancillary structures.

GRANTEES' RIGHTS; COOPERATION BETWEEN GRANTEES

The rights conveyed to the Grantees by this Easement are:

Subject to the terms hereof, including but not limited to Landowner's Rights set forth in Paragraph II.B. of this Easement, and consistent with the Purposes of this Easement, the right to preserve and protect in perpetuity the Conservation Values of the Land.

The right to enter the Land to monitor Landowner's compliance hereof and to enforce the specific restrictions on the Landowner's activities and rights granted to the Grantees by this Easement; and to observe, study, and make scientific observations of the Land's fish, wildlife, habitat, and ecosystems. In addition, the Grantees have the right to establish and maintain vegetation monitoring transects and enclosures upon prior written notice to Landowner, and in a manner that will not unreasonably interfere with the Landowner's rights under this Easement.

The right of the City to inspect, repair, renovate, remove, maintain, or replace the utility improvements including, water intake and diversion structures, piping, and other ancillary structures that the City owns and maintains under separate easement agreements with Landowner on 1st Creek

(located in the NE¼SE ¼ of Section 12, Township 31 North, Range 22 West), 2nd Creek (located in the NE¼SW¼SW¼ of Section 17, Township 31 North, Range 21 West), and 3rd Creek (located in the SE¼NE¼ of Section 12, Township 31 North, Range 22 West) as well as the existing buried piping and other ancillary structures needed to deliver water to the City's water treatment plant currently located in the NW¼S½NW¼ of Section 8 and in the S½ of Section 7, Township 31 North, Range 33 West. Such right also includes the right of the City to install automated water supply gate valves, powered by electricity (including solar or hydro-electric appurtenances) at any of the intakes of 1st Creek, 2nd Creek or 3rd Creek; the right to monitor for water quality and quantity, and the right to extract sand and gravel in accordance with applicable state and federal law solely as necessary to maintain the City's water intake equipment and systems.

The right to prevent any activity on or use of the Land by the Landowner that is inconsistent with this Easement and not allowed hereby, and, to the extent practicable, to require the restoration of any areas or features of the Land that may be damaged by inconsistent activity or use by Landowner not allowed herein.

The right, on behalf of the general public, of access for the purpose of noncommercial dispersed recreation on the Land as described in the MRMP. Use of the Land by the public is subject to Landowner's right to restrict such public access pursuant to Paragraph II.B.2. of this Easement and to any limitations or restrictions contained in the MRMP.

In the event that either (a) the Landowner reasonably demonstrates that its risk of landowner-based liability has materially increased as a result of the public's access to or use of the Land due to a change in statutory or common law or (b) the Landowner is unable to continue to obtain commercially available liability insurance covering the Lands at prevailing market rates insuring the Landowner against liability for death, personal injury and/or property damage coverage comparable to that available on the date of this Easement, then, in either such event, the following provisions shall apply:

a. The Landowner shall have the right to temporarily suspend public recreational access to the Land for a period of up to three years.

b. During any period of suspension, the Parties shall negotiate in good faith and commit to finding and implementing a mutually acceptable solution that allows public recreational access to be continued on the Land, while also protecting the Landowner against increased liability, or increased liability protection cost for such public recreational access and use. This obligation to use "good faith" is binding on all Parties and may be independently enforced by any Party against any other Party until such agreement is achieved. Such agreement, when reached, shall be memorialized through revision of the MRMP and, if necessary, amendment to this Easement.

c. After the three year period, the Grantees, either individually or jointly, shall have the right to purchase the Land subject to the Easement on the following terms and conditions:

i. the Landowner shall retain the perpetual right to harvest all timber on the Land, subject to all applicable provisions of the MRMP;

ii. public recreational access shall remain suspended until Grantees close on their

purchase of the Land;

iii. the purchase price for the Land shall be the fair market value thereof (subject to all easements then encumbering the Land including this Easement) determined by an applicable appraisal obtained within six (6) months of the closing on Grantees' purchase;

iv. the Grantees and the Landowner shall attempt to agree on the appraiser and, if the Grantees and the Landowner come to agreement on the appraiser, the fair market value determined by such appraiser shall be binding on all parties;

v. if the Grantees and the Landowner do not come to agreement on the appraiser within thirty (30) days, the Grantees and the Landowner shall each obtain their own appraisal of the fair market value of the Land. In the event that the difference between such appraisals is 10% or less, the fair market value determined by such appraisals shall be averaged and such averaged fair market value shall be binding on all parties. In the event that the difference between such appraisals is more than 10%, a third appraisal shall be obtained by an appraiser selected by the first two appraisers and the fair market value determined by the two closest appraisals shall be averaged and such averaged fair market value shall be binding on all parties;

vi the purchase price for the Land shall be paid in cash by wire transfer to Landowner on the date of closing; and,

vii Landowner shall transfer its rights in the Land subject to all easements, covenants, conditions, laws, rules and restrictions then in effect, and subject to Landowner's retained timber harvesting rights.

d. The non-motorized public recreational trail corridor mentioned in Paragraph II.B.11.b. will not be subject to the terms of the temporary suspension of public recreational access described above.

The rights granted to Grantees under this Easement are enforceable by both the City and the Department acting independently or by either of them acting on behalf of both Grantees. It is anticipated that the Department will take the primary and lead role in monitoring and enforcing the terms and condition of this Easement and will be the primary contact for the Landowner. It is also anticipated that the Department will work cooperatively with the City and keep the City informed of all developments on the Land that might affect this easement and the rights conveyed under this Easement. The City and the Department may enter into a Memorandum of Agreement in which they formalize their respective roles and understandings regarding the monitoring and enforcement of the Easement; and shall provide a copy thereof to Landowner within 30 days of execution. For any matter requiring the approval or consent of Grantees, or Notice to the Grantees, under this Easement, Landowner will provide any required notice to the Department, and may rely on the Department to share such notice with the City and to have reached an agreement with the City on how to respond to Landowner prior to providing any formal response to Landowner. Landowner may rely on a written response from the Department when requesting Grantees' written consent or approval.

RESTRICTIONS ON LANDOWNER'S ACTIVITIES

The following activities and uses are expressly prohibited or restricted.

Timber Harvest in Streamside Management Zones. Timber harvest, use of mechanical equipment off of established roads, or conducting timber-management activities within the Streamside Management Zone (SMZ) along the following drainages: 1st, 2nd, 3rd, 4th and 5th Creeks and main stem Haskill Creek will be conducted in compliance with the Montana SMZ law with such additional provisions as outlined in the MRMP.

Wetland Areas. The draining, filling, dredging, or destruction of any wetland area or any other activity that has significant adverse impacts on a wetland is prohibited except as provided for in Paragraph II.B. and in compliance with the provisions of the MRMP.

Subdivision. The partition, division, subdivision or de facto subdivision of the Land is prohibited, except as specifically provided for in Paragraph II.B.11.

Residential Use. Residential use of the Land and the construction or placement of any residential building or structure on the Land is prohibited.

Water Use and Water Rights. The use or withdrawal of surface or ground water in any manner that would adversely affect the Conservation Values is prohibited, provided, however, that such prohibition shall not be deemed to apply to Landowner's lawful use of surface or ground water in connection with any of Landowner's permitted commercial forestry, silvicultural and/or resource management activities. The transfer, encumbrance, sale, lease, or other separation of water rights from the Land is prohibited unless such transfer, sale, lease or other separation specifically provides for the protection of the City's access to and source of water for its citizens and provides for protection of the Land's use as a commercial forest operation.

Soil Cultivation. Cultivation of the Land is prohibited, except as provided in Paragraph II.B.7. or in the MRMP.

Lease or Sale of Access. Except as specifically provided for in Paragraph II.B.4, II.B.9 and II.B.10, (including Landowner's "Walk in the Tree Tops" attraction), the rent, lease, sale, or charging of fees for exclusive access to the Land to others for hunting, fishing, skiing, snowmobiling, or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited without Prior Approval of the Grantees. The Landowner may not sell, assign, convey, or otherwise transfer any interest in the Land or in itself for the purpose of providing exclusive access to the Land in contravention of this Easement.

Utility Installation and Pipelines. Subject to existing utility and pipeline easements and except as provided for in Paragraph II.B.12 and II.C.3. the installation of utility lines upon or under the Land is prohibited.

Structures and Improvements.

The construction or placement of a structure or improvement of any kind is

prohibited, other than as expressly allowed in Paragraph II.B.3 and Paragraph II.B.12.

The Landowner may not construct or place any residential building on the Land.

The Landowner may not construct or place any permanent building on the Land.

The Landowner may not construct or place a timber processing mill on the Land.

Grazing. Grazing of livestock is prohibited except as provided for in Paragraph II.B.13.

Alternative Livestock Ranch and other Animal Confinement. The use of the Land in connection with an alternative livestock ranch, game bird farm, feedlot, shooting preserve, fur farm, beehive or apiary, zoo or menagerie, or the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a threat to any mammalian, avian, reptilian, aquatic, or amphibian wildlife, whether or not indigenous to Montana, is prohibited.

Mineral Development.

Except for the surface extraction of sand, gravel, and rock, all as provided for in Paragraph II.B.15., the Landowner is prohibited from exploring for, developing, mining, producing or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources on or under the surface of the Land. Landowner is also prohibited from conveying any interest in mineral rights to another party for purposes of mineral exploration, development, production or extraction.

In the event that Landowner becomes aware of a third-party exercising or proposing to exercise mineral rights (including sand and gravel operations) on the Land, Landowner shall inform the Grantees as soon as possible. Grantees may each represent their interests in protecting its rights under this Easement in any proceeding related to mineral exploration or development. If Grantees rights are adversely impacted by the mining activities of third-party mineral owners, Landowner and Grantees shall be entitled to share in any compensation for damages in accordance with Paragraph II.J. of this Easement, provided that the Grantees must apply their respective shares of any such compensation as required by the terms and conditions of the grants or appropriations used by such Party to acquire their interest in the Easement.

Other Commercial and Industrial Use. Any commercial or industrial use of or activity on the Land is prohibited, other than (i) commercial recreational uses or activities that do not unreasonably interfere with the public access rights provided for in this Easement and are consistent with the Purposes of this Easement and (ii) those commercial uses or activities specifically allowed in this Easement. For purposes of this Easement, trapping of furbearing wildlife as regulated by the Department is considered a recreational activity and is not a commercial use.

Waste Disposal. The processing, dumping, storage or other disposal of waste, refuse and debris on the Land is prohibited, except for wood waste products generated through forest management activities on the Land, which may be disposed of on the Land in a manner consistent with forestry best management practices and the Montana Streamside Management Zone law, provided that such disposal does not adversely impact the Conservation Values.

MULTI-RESOURCE MANAGEMENT PLAN AND LIAISON TEAM

Concurrently with the execution of this Easement, the Landowner and the Grantees shall enter into the MRMP that, among other things, identifies Landowner's objectives and actions the Landowner will take to protect and manage water, soil, range, aesthetic quality, recreation and public access, timber, and fish and wildlife habitat and resources. The MRMP is not incorporated into this Easement, but must be in writing and signed and acknowledged by representatives of Landowner and the Grantees who have authority to commit the respective parties to compliance with the plan. The Landowner and Grantees will comply with the MRMP.

The Landowner's resource management and timber harvesting practices that comply with the MRMP are consistent with the terms, conditions, Conservation Values, and Purposes of this Easement.

Landowner and the Grantees shall form a joint liaison team (the "Liaison Team") consisting of four total members comprised of two representatives of Landowner(s) and two representatives of the Grantees. The Liaison Team will provide a forum to review issues related to this Easement and will prepare and, as agreed upon, revise the MRMP. The Liaison Team shall meet not less than once a year as the members shall determine. If the Land is held in two ownerships, as provided for in Paragraph II.B.11, each Landowner shall appoint its own Liaison Team members. Liaison Team meetings shall include the Landowner's and the Grantees' respective representatives, unless other arrangements are mutually agreed upon.

The Liaison Team shall review and, when appropriate, amend the MRMP. Any amendment to the MRMP must be in writing and must have the signed consent and acknowledgment of the Parties. If there is any conflict or inconsistency between the terms of the MRMP and the terms of this Easement, the terms of this Easement control.

The Landowner may not convey the Land or any portion thereof unless the successor in interest has executed with the Grantees a MRMP that will come into effect upon the conveyance. The successor in interest may sign and acknowledge the MRMP that is in effect at the time of the transfer of ownership or, upon agreement with the Grantees, may sign and acknowledge a revised MRMP.

EASEMENT BASELINE REPORT

The Parties agree that an Easement Baseline Report (the "Report") will be completed by a natural resource professional familiar with the area and acceptable to the Grantees and the Landowner, reviewed by the Grantees, and Landowner, and acknowledged by them to be an accurate representation of the physical and biological condition of the Land and its physical improvements as

of the date of the conveyance of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the Report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy.

NOTICES AND PRIOR APPROVAL

The purpose of requiring the Landowner to notify the Grantees prior to undertaking certain permitted activities described herein is to afford the Grantees an opportunity to ensure that activities are designed and carried out in a manner consistent with the Purposes of this Easement and pursuant to the terms hereof. Whenever Prior Notice only is required under this Easement, Landowner must notify the Grantees as provided for herein in writing not less than thirty (30) days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Grantees as much notice as is possible under the circumstances.

Whenever Prior Approval is required, such approval may not be unreasonably withheld. Landowner must notify the Grantees in writing not less than sixty (60) days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantees to make an informed judgment as to its consistency with the Purposes of this Easement and the other terms and provisions hereof. The Grantees have sixty (60) days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms hereof, the Grantees shall inform the Landowner of the manner in which the proposed activity may thereafter be conducted. The Grantee's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service. In the event the Grantees deny the activity the Landowner wishes to undertake, the Grantees must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

If the Grantees fail to respond to Landowner's notice of Prior Approval within sixty (60) days of their receipt of the notice, the proposed activity shall be deemed to be consistent with the terms of this Easement, and the Grantees shall have no further right to object to the activity identified by such notice. The Landowner shall be under no liability or obligation for any failure to give Prior Notice for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Grantees of any such damage as soon as practicable.

Whenever mutual written consent is required, the initiating party must follow the Prior Approval procedures set forth above.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service

addressed as follows:

To Landowner:	F.H. Stoltze Land & Lumber Company Attention: General Manager 600 Halfmoon Road Columbia Falls, MT 59912
With a copy to:	F.H. Stoltze Land & Lumber Company Attention: President 2497 Seventh Avenue East, Suite 105 North St. Paul, MN 55109
To Department:	Department of Fish, Wildlife & Parks Attention: Administrator, Wildlife Division 1420 E. Sixth Avenue P.O. Box 200701 Helena, MT 59620-0701
With a copy to:	Department of Fish, Wildlife & Parks Attention: Regional Supervisor 490 North Meridian Road Kalispell, MT 59901
To City:	City of Whitefish Attention: City Manager 1005 Baker Avenue, P.O. Box 158 Whitefish, Montana 59937-0158
With a copy to:	City of Whitefish Attention: Mayor 1005 Baker Avenue, P.O. Box 158 Whitefish, Montana 59937-0158

or to such other address as the parties from time to time shall designate by written notice to the others. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five (5) business days after deposit thereof with a courier or mail service, return receipt requested.

REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Grantees determine, acting individually or jointly, that the Landowner has violated the terms of this Easement, the Grantees shall give written notice to the Landowner of the specifics of the violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Land resulting from any use or activity prohibited by the terms of this Easement and inconsistent with the Purposes of this Easement, to restore the portion of the Land so

damaged where practicable. If the land cannot be restored because physical conditions have been changed to the extent that such restoration is not reasonably practicable, the Grantees and the Landowner may consider other remedies to the Land or compensation due to the Grantees; provided, however, that any such damages may not exceed the fair market value of this Easement at the time the damage occurs, prorated for the portion of the Land adversely affected by the applicable Landowner violation based upon impact to the Conservation Values. The fair market value of this Easement for the purpose of calculating remedies will be determined as provided in Paragraph II.J.

If the Landowner fails to cure the violation within thirty (30) days after receipt of notice from Grantees, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally correct, Grantees may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the Land to the condition that existed prior to the injury.

If Grantees determine that a violation of the terms of this Easement is threatened, Grantees shall give written notice to the Landowner of the specifics of such threatened violation. Landowner shall have thirty (30) days to respond to such notice of threatened violation. If the Landowner fails to respond to such notice within thirty (30) days after its receipt of such notice, and Grantees determine that such threatened violation still exists, Grantees may bring an action in a court of competent jurisdiction to enforce the terms of this Easement and to enjoin the threatened violation, by temporary or permanent injunction.

If Grantees, in their reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Land, Grantees may pursue their remedies under this paragraph without Prior Notice to the Landowner or without waiting for the period provided for cure to expire.

Grantee's rights under this provision apply in the event of actual or threatened violation of the terms of this Easement, and the Landowner agrees that if Grantees' remedies for any threatened or actual violation of the terms of this Easement are inadequate, Grantees shall be entitled to the injunctive relief described herein, both prohibitive and mandatory, in addition to such other relief to which Grantees may be entitled, including specific performance of the terms of this Easement. Grantees' remedies described in this section shall be cumulative and in addition to all equitable remedies consistent with the foregoing. No party is entitled to punitive, indirect, special, consequential or incidental damages.

Nothing contained in this Easement shall be construed to entitle Grantees to bring any action against Landowner for any injury to or change in the Land resulting from the actions of third parties, the public, or other causes beyond Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

In any action in law or equity to enforce the terms of this Easement, all Parties shall bear their own costs and attorney's fees.

Enforcement of the terms of this Easement is at the discretion of Grantees, and any forbearance by Grantees to exercise its rights under this Easement in the event of any breach of any term of this Easement by Landowner shall not be deemed or construed to be a waiver by Grantees of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Landowner shall impair the right or remedy or be construed as a waiver, nor shall any forbearance or delay give rise to a claim of laches or prescription.

RIGHTS AND IMMUNITIES

In consideration of the terms and conditions of this Easement, Landowner and Grantees rely upon all of the rights and immunities against liability to the full extent of state law, as amended, and any successor provisions, and any other applicable provisions of law, including, but not limited to, Mont. Code Ann. Title 27, Chapter 1, Part 7; Mont. Code Ann. Title 70, Chapter 16, Part 3 (Restriction on Liability of Landowner for Recreation), and Mont. Code Ann. Title 2, Chapter 9 (Montana Tort Claims Act).

TERMINATION, EXTINGUISHMENT, CONDEMNATION

The Parties agree that the Land includes important species, habitat, and other important ecosystem attributes, including water supply, quality, quantity, and habitat. Conservation Values and the public benefits that are provided by this Easement may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions. In response to such changes, one or more of the purposes of this Easement may not be able to be fully accomplished, or one or more of the Conservation Values of this Easement may not be able to be fully protected or achieved. If one or more of the purposes of this Easement can no longer be fully accomplished, or if one or more of the Conservation Values of the Land cannot be fully achieved, such failure shall not be deemed sufficient cause to terminate this Easement so long as any of the other purposes of the Easement may be accomplished and any of the Conservation Values may be achieved.

This Easement constitutes a real property interest immediately vested in Grantees. It is the unequivocal intention of Grantees and the Landowner that the conservation purpose of this Easement be carried out in perpetuity. If circumstances arise in the future that render all purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantees and the Landowner agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement. If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the Prior Approval of the Grantees, Grantees are entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and Grantees shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled. For the purposes of this Paragraph, the ratio of the value of this Easement to the value of the Land

unencumbered by this Easement remains constant as determined as of the date of this grant. Grantees and the Landowner agree that the Department's proportional interest is _____ (_____) percent, the City's proportional interest is _____ (_____) percent, and the value of any future interest will not include any value attributable to authorized improvements to the Land made after the date of this grant, except as to improvements made by or at the expense of Grantees, unless evidence at any condemnation hearing or proceeding demonstrates actual damages to the Landowner and Grantees which vary in favor of Grantees from the proportional interest established above.

This Easement was acquired, in part, using funds provided to the Department by the USFWS, as a grant under its Endangered Species Act, Section 6 Habitat Conservation Plan Land Acquisition Grants Program. Additionally, a portion of the value of this Easement was donated by the Landowner and is being used as part of the required non-federal share to match the USFWS grant. USFWS regulations require that the Land covered by this Easement be managed in accordance with the terms and conditions of this Easement in perpetuity, unless otherwise approved by the USFWS regional director. The Easement may not be encumbered, disposed of in any manner, or used for purposes inconsistent with the Endangered Species Act Section 6 Grant without the prior written approval of the Regional Director of the USFWS. In the event of judicial termination or extinguishment of this Easement for circumstances as described under this Paragraph, the Department shall coordinate with USFWS and shall apply any funds received in settlement for such termination or extinguishment to habitat conservation as approved by USFWS.

This Easement was acquired, in part, with federal funds under the Forest Legacy Program (P.L.101-624; 104 Stat. 3359) and that the interest acquired may not be sold, exchanged, or otherwise disposed, unless the United States is reimbursed for the market value at the time of the disposal in proportion to the original Federal investment. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the Department's tender of equal value consideration acceptable to the Secretary.

ASSIGNMENT

This Easement is transferable, but Grantees or either of them may assign this Easement only to a local or state agency. As a condition of such transfer, Grantees or either of them: (1) shall require that the conservation purposes that this grant continue to be carried out into perpetuity; and (2) shall provide ninety (90) days prior notice to Landowner of such transfer or assignment.

AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Landowner and Grantees are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including §76-6-101, et seq., MCA, and any amendment shall be consistent with the purposes of this Easement, and shall not affect its perpetual duration.

RECORDATION

Grantees shall record this Easement in the official records of Flathead County, Montana. Grantees may re-record this Easement at any time as may be required.

GENERAL PROVISIONS

Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.

Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of Mont. Code Ann. §76-6-101, *et seq*.. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, the Parties to the Easement hereby acknowledge the rights retained by Landowner herein are consistent with the purposes of the Easement, the Conservation Values, and Mont. Code Ann. § 76-6-101, *et seq*. .

Entire Agreement. Except with respect to matters set forth in the Baseline Report and the MRMP, this instrument sets forth the entire agreement of the Parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged into this Easement.

No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.

Successors. This Easement shall be binding upon, and inure to the benefit of the parties, their heirs, administrators, successors and assigns, and shall continue as a servitude running in perpetuity with the Land.

Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected.

TO HAVE AND TO HOLD unto Grantees, their successors, and assigns forever.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Landowner and Grantees have set their hands on the day and year first above written.

LANDOWNER: F.H. STOLTZE LAND AND LUMBER CO.

By: _____
Charles W. Roady
Vice President

ACKNOWLEDGMENTS

STATE OF Montana)
) ss:
COUNTY OF Flathead)

On this __ day of _____, 2016, before me personally appeared that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of and that the seal affixed is the seal of said.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of Montana
Residing at_____
My Commission Expires _____
Printed Name: _____

DEPARTMENT: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

By: _____
M. Jeff Hagener, Director

ACKNOWLEDGMENTS

STATE OF Montana)
) ss:
COUNTY OF Lewis and Clark)

On this __ day of _____, 2016, before me personally appeared that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of and that the seal affixed is the seal of said.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of Montana
Residing at_____
My Commission Expires _____
Printed Name: _____

CITY: THE CITY OF WHITEFISH

By: _____

_____

ACKNOWLEDGMENTS

STATE OF Montana)
) ss:
COUNTY OF Flathead)

On this __ day of _____, 2016, before me personally appeared that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of and that the seal affixed is the seal of said.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of Montana
Residing at_____
My Commission Expires _____
Printed Name: _____

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:
GOVERNMENT LOT 1, THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM TRACT 1 OF CERTIFICATE OF SURVEY NO. 17142. ALSO EXCEPTING THEREFROM TRACT 1 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 2:
THAT PORTION OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, AND THE NORTH ONE-HALF OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
TRACT 1 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 3:
THAT PORTION OF THE EAST ONE-HALF OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
TRACT 2 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 4:
GOVERNMENT LOTS 1 AND 2; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER; THE WEST HALF OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 5:
GOVERNMENT LOTS 1, 2, 3 AND 4 OF SECTION 6, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 6:
GOVERNMENT LOT 4 OF SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM LOT 205 OF IRON HORSE, PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 7:
THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 8:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 9:
GOVERNMENT LOTS 1, 2 AND 3 OF SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 10:
THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THE WEST HALF OF THE SOUTHEAST QUARTER; THE EAST HALF OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF WHITEFISH IN WARRANTY DEED RECORDED AUGUST 6, 1929 IN BOOK 201, PAGE 607 AS INSTRUMENT NO. 3047, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 11:
THE SOUTH HALF OF THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 12:
THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 13:
GOVERNMENT LOT 1 OF SECTION 18, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM LOTS 205, 206, 207, 208 AND 209 OF IRON HORSE PHASE 4.

PARCEL 14:
GOVERNMENT LOT 4 OF SECTION 18, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 15:
THE EAST HALF OF THE SOUTHWEST QUARTER; THE NORTHWEST QUARTER OF THE

NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE NORTHEAST AND THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 16:
GOVERNMENT LOT 3 OF SECTION 19, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 17:
THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION CONVEYED TO FLATHEAD COUNTY BY DEED RECORDED NOVEMBER 8, 1976 IN BOOK 604, PAGE 806 AS INSTRUMENT NO. 12589.

PARCEL 18:
THE SOUTHWEST QUARTER; THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 31 NORTH, RANGE 21, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 19:
THE NORTH HALF OF THE NORTHWEST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION LYING WITHIN IRON HORSE PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

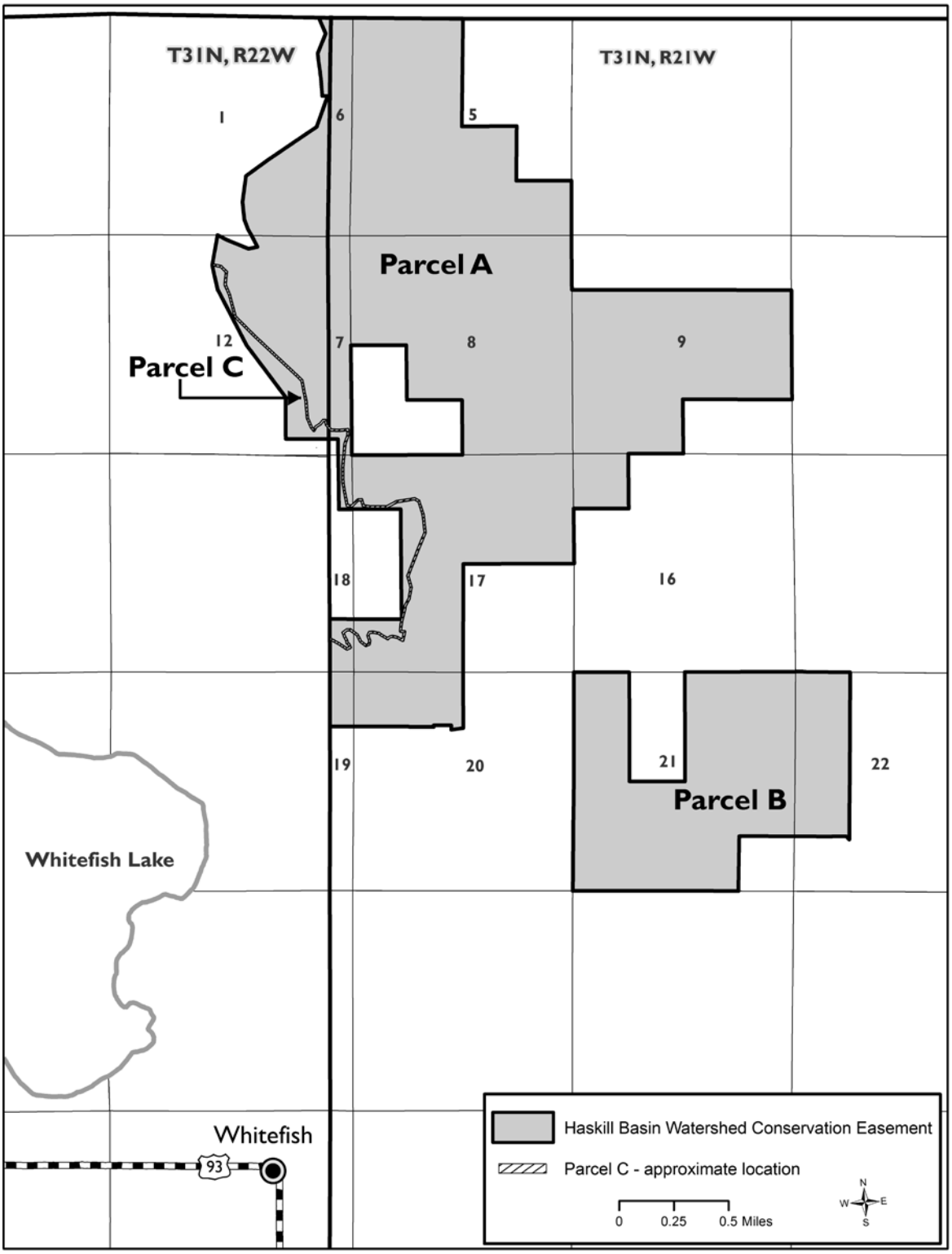
PARCEL 20:
THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM A TRACT OF LAND SHOWN AS “PORTION A” ON THE AMENDED PLAT OF LOT 2 OF THE RESUBDIVISION OF LOT 12 OF NORTHWOODS NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 21:
A TRACT OF LAND SHOWN AS “PORTION B” ON THE AMENDED PLAT OF LOT 2 OF THE RESUBDIVISION OF LOT 12 OF NORTHWOODS NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 22:
THE WEST HALF OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 22, DESCRIBED AS FOLLOWS:
TRACT B OF CERTIFICATE OF SURVEY NO. 13505.

EXHIBIT B

Map of the Land



MEMORANDUM
#2016-002

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Consideration of Seven Resolutions related to approval of various documents for the Conservation Easement with F.H. Stoltze Land and Lumber Company and Montana Fish, Wildlife, and Parks on 3,020 acres of land in Haskill Basin

Date: January 12, 2016

Introduction/History

City officials have had discussions back to at least 2009 and likely before then with the F.H. Stoltze Land and Lumber Company regarding ways to preserve their timberlands in the Haskill Basin watershed for our water supply and for their timber management purposes. Some of their timberlands were sold and developed into subdivisions in the past. Development could increase sedimentation for our municipal water supply and if such development was not on a public sewer system, our water supply could be threatened as occurred when we had to shut down the water intake on 1st Creek in the past. However, the cost for the City to purchase a conservation easement on as much as 3,020 acres of land in the past was too high for us to afford.

The Trust for Public Land (TPL) became interested in this project in 2013 given their recent, successful efforts at protecting timberlands in the Swan/Blackfoot area and in Lincoln County. They entered into negotiations with the F.H. Stoltze Land and Lumber Company and negotiated an option for the purchase of a Conservation Easement for a net estimated cost of $16,700,000.00, for 3,020 acres. The option for the Conservation Easement expires on December 31, 2015. The F.H. Stoltze Land and Lumber Company will also donate the difference between the value of the Conservation Easement appraisal (estimated at $22,000,000) and the estimated $16,700,000 cost.

Since that time, TPL, assisted by the Montana Department of Fish, Wildlife, and Parks, has secured a $7,000,000.00 federal Forest Legacy grant and a $2,000,000.00 Cooperative Endangered Species Conservation Fund Grant. That leaves $7,700,000.00 of the estimated $16,700,000.00 cost remaining to be funded in the local area of Whitefish.

At the request of the City for technical assistance, The Trust for Public Land presented a Financial Feasibility Study for local funding options at the September 15, 2014 City Council meeting and a copy of that report and presentation is in the packet with this report. At a work session on February 2, 2015, TPL also presented the results of a statistically valid telephone survey of randomly selected Whitefish registered voters on various funding options for raising this $8,000,000. At the end of the February 2, 2015 City Council meeting, the City Council directed staff to bring forward for consideration at the February 17th City Council meeting, a Resolution calling for a special election on April 28th to ask the voters to increase the Resort Tax by one percentage point, up to 3% (the maximum allowed under the Montana Code and the same exacted by the other seven resort communities in Montana), for the purposes of funding $7,700,000 of the proposed Stoltze Conservation Easement to preserve water quality and water supply in the Haskill Basin watershed.

On April 28th, the Whitefish voters passed the referendum with an approval rate of 83.71% to increase the Resort Tax up to 3% until January 31, 2025 with 70% of the proceeds of this increase to be used to pay the debt service on a $7,700,000 bond issue with financing from the State of Montana State Revolving Fund (SRF) loan program.

To provide the funding for the $7,700,000, the total SRF bond will equal $8,219,500 in order to provide the necessary debt service reserve as security for our debt service payments and to pay issuance costs. The Bond Resolution for this issuance will be on the February 1st agenda. The interest rate will be at 2.5%.

The Conservation Easement and other documents below were negotiated during 2015 between City officials, Montana FWP officials, F.H. Stoltze Land and Lumber Company officials, and staff from the Trust For Public Land (TPL). The City Council reviewed the Conservation Easement and Multi-Resource Management Plan (MRMP) documents at a work session on November 2, 2015. The Montana FWP held a scoping public hearing on the Conservation Easement and MRMP on November 9, 2015 and the FWP approved the Environmental Assessment on November 24, 2015. The Montana Fish and Wildlife Commissioner approved the Conservation Easement and MRMP on December 20, 2015 and the State Land Board approved the documents and the transaction on December 21, 2015.

<u>Current Report</u>

There are seven resolutions on the agenda on January 19th related to City Council action on the Conservation Easement and associated documents. Each Resolution will be described below.

a) Resolution No. 16-___; A Resolution – Conservation Easement

   This Resolution is the primary action and is the City's approval of the Conservation Easement on 3,020 acres. It is unchanged from the version which the City Council reviewed on November 2, 2015. The Conservation Easement removes the development rights from the 3,020 acres while the F.H. Stoltze Land and Lumber Company (Stoltze)

retains ownership of the land for continued timber management. The Conservation Easement contains restrictions on both the public's use of the 3,020 acres and Stoltze's timber harvesting and uses of the land. The Conservation Easement is a perpetual easement and while it can be changed in the future, it is a difficult process to change it – see the above discussion for the state process to adopt the Conservation Easement – that would have to be repeated. The Montana FWP will be the steward and primary overseer of the Conservation Easement and the land for the public.

The Conservation Easement is now valued at $19,980,000. The "before easement value" was $7,500 per acre or $22,700,000 total. The "after easement value" or remainder value is $900 per acre or $2,720,000 total. Therefore the easement value is $19,980,000. The cash value of the purchase price remains at $16,700,000, so Stoltze's donated value is $3,280,000.

Also attached to the Resolution as Exhibit B is an Agreement to purchase the Conservation Easement from the Trust for Public Land (TPL). TPL, as intermediary, is the holder and owner of the option to purchase the Conservation Easement from the F.H. Stoltze Land and Lumber Company. This purchase agreement is for 3,022 acres because once we transfer the ownership of two orphan parcels to Stoltze (see later agenda item), the Conservation Easement will then have approximately 3,022 acres of land in it.

We reviewed the salient points of the Conservation Easement at the November 2nd work session, so I won't cover them here, however, it is important the Mayor and City Council read the Conservation Easement (and the other documents) again and be comfortable with them.

b) Resolution No. 16-___; A Resolution – Haskill Basin Multi-Resource Management Plan

This Resolution approves the Multi-Resource Management Plan (MRMP). The MRMP is meant to be a perpetual document as well, but it can be amended more easily than the Conservation Easement. The MRMP provides more detail and more specificity on the uses and restrictions on the land for Stoltze, the public, the City, and Montana FWP. There is a liaison team in the MRMP comprised of two representatives from Stoltze, one from FWP, and one from the City. The liaison team exists to review the conditions of the Conservation Easement annually and to resolve issues that arise on the land.

The MRMP has a slight revision from the version which the City Council reviewed on November 2nd and that is to add the following sentence: "An annual meeting will be held, open to the public and consistent with Montana's open meetings laws."

c) Resolution No. 16-___; A Resolution- Water System Water and Road easement

This Resolution and the following Resolution effectuate the part of this transaction whereby the City will receive a permanent easement guarantying our right to access the

lands via Stoltze roads to maintain our municipal water system. Prior to these transactions, the City operated only on the verbal approval of the F.H. Stoltze Land and Lumber Company for access to our water intakes and water source pipelines. However, we had that neighborly access for approximately 100 years and there was no threat to our access. The City Council reviewed these documents at the October 19, 2015 City Council meeting. This document is unchanged from that time.

One important aspect of this Water System and Road Access Easement is that, in exchange for receiving this easement, the City will transfer ownership of our two parcels of land in Haskill Basin totaling 2.569 acres of land which are near, but not on the water intakes of Second and Third Creeks. Getting the actual physical location of the water intakes onto land owned or in an easement was also another goal of the easement negotiations. In exchange for our two parcels of land (see attachments to this memo), the City will gain the following:

- a perpetual easement on three, one acre parcels of lands on the actual physical location of the headgates and screens for the intakes at First, Second, and Third (three acres of land – see Exhibit B in the easement);
- a perpetual easement on a 40 foot swath of land along our entire system of waterlines in the Stoltze lands in Haskill Basin which equals 7.69 acres of land (see Exhibit A of the Water System and Road Access Easement);
- a perpetual easement on a 30 foot swath of land along the entire roads which Stoltze owns in the 3,020 acres of Haskill Basin land and that is subject to the future Conservation Easement and which equals 30.99 acres of land (see Exhibit A of the Water System and Road Access Easement);

Thus, for giving up fee simple title to 2.569 acres of land in Haskill Basin, we are obtaining perpetual easements on 41.68 acres of land in Haskill Basin. Moreover, we do not want ownership of two, "orphan" parcels of land within the 3,020 acres of the Conservation and transferring the title of our two parcels of land to Stoltze consolidates all of the ownership of land within the 3,020 acres of land. Therefore, all lands in the 3,022 acres of land will have the same restrictions contained within the future Conservation Easement and MRMP.

d) Resolution No. 16-___; A Resolution – Agreement for sale of orphan parcels to TPL

This resolution and agreement provides for the City to transfer our title of the two orphan parcels totaling 2.569 acres of land to Stoltze in exchange for the easement on 41.68 acres of land. An appraisal of these two orphan parcels is currently underway, but is not available for this packet. Until the appraisal is available and reviewed, we will likely ask the City Council to postpone action on this item until the February 1st meeting. The City Council needs to determine that the value of the easement received is at least equivalent to or higher than the appraised value of the two orphan lots which we are transferring to Stoltze.

e) Resolution No. 16-___; A Resolution – Haskill Basin Trail Easement

This Resolution provides for the terms and conditions of a new easement within the 3,020 acres of land for an extension of the Whitefish Trail. Also associated with this easement are two letters of intent from the Iron Horse Homeowners Association Winter Sports Incorporated committing their approval to have the Whitefish Trail connect through their property to the trail on the 3,020 Conservation Easement lands. The City will hold the title to this trail easement as we do for other Whitefish Trail easements and Whitefish Legacy Partners will fundraise and pay for the construction and maintenance of this extension of the Whitefish Trail. Also, as part of the extension of the Whitefish Trail through these lands, the City of Whitefish will agree to the placement of a trailhead and a portion of the trail on our land just west of our water treatment plant on Reservoir Road. This trailhead and trail is also implicit in the next two Resolutions for agreements. There is also a map in the packet with the next item that shows the proposed location of the trailhead and the trail west of the water treatment plant.

f) Resolution No. 16-___; A Resolution – Agreement with WLP to fund Murr property Boundary Line Adjustment

As discussed at the January 4th City Council meeting, this agreement with Whitefish Legacy Partners will provide the funding for the City to do the next transaction which is a boundary line adjustment with our neighbors west of the water treatment plant. We will purchase approximately 0.54 acres of land from the Murr family in order to accommodate a better alignment for the trail from the proposed new trailhead. By this agreement, Whitefish Legacy Partners will provide the funding for this boundary line adjustment and the City will also agree to placing the trail and trailhead on our property.

g) Resolution No. 16-___; A Resolution- approving buy-sell for Murr property

This Resolution approves the buy-sell agreement for the purchase of the 0.54 acres of land from the Murr family. The transaction will be done via a boundary line adjustment which is an exempt form of subdivision. The purchase price is $14,000.00 plus the cost for recording of the documents. Mayor Muhlfeld disclosed at the January 4th City Council meeting that his firm, River Design Group, is providing the surveying of the boundary line adjustment at no cost as a contribution to the project.

Financial Requirement

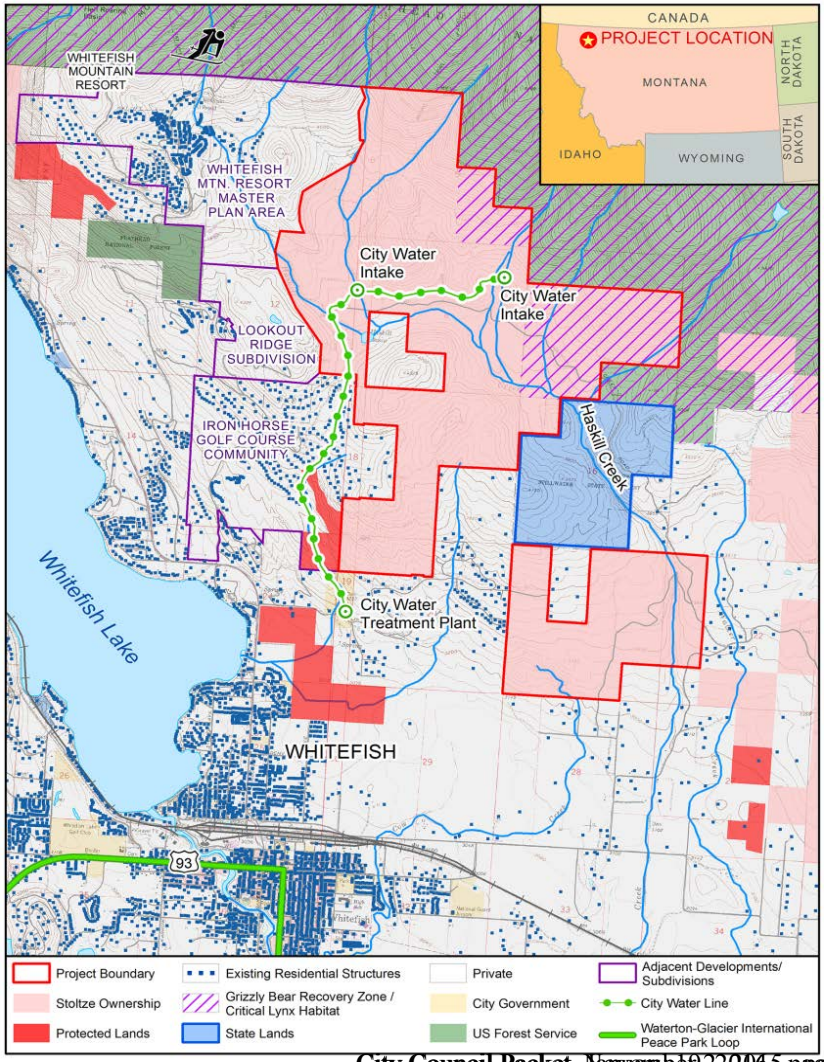
To provide the funding for the $7,700,000, the total SRF bond will equal $8,219,500 in order to provide the necessary debt service reserve as security for our debt service payments and to pay issuance costs. The Bond Resolution for this issuance will be on the February 1st agenda. The interest rate will be at 2.5%. The proceeds from 70% of the Resort Tax 1% increase will repay the loan between now and January 31, 2025. There may be some times where the Resort Tax

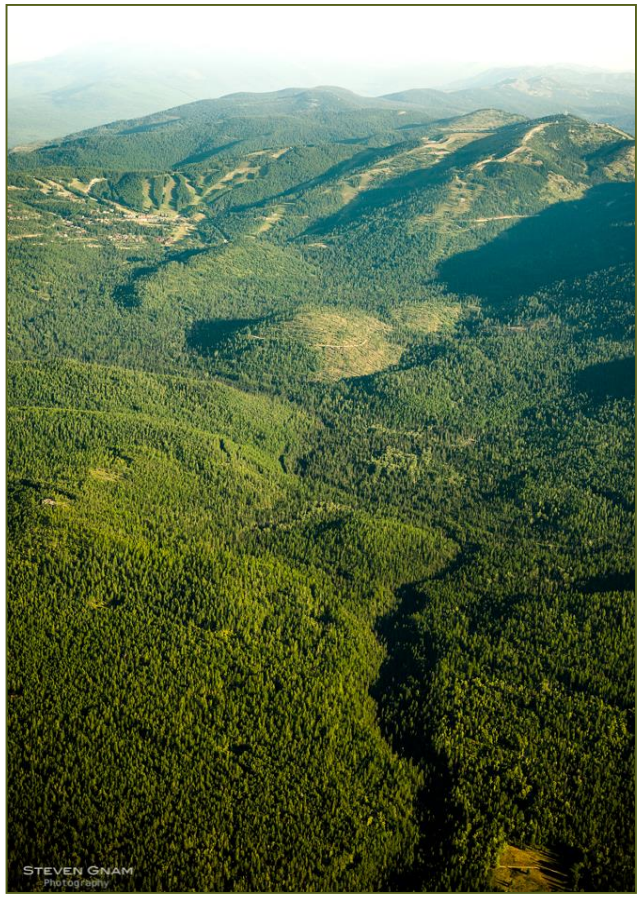
collections will be slightly less than the debt service payments, but the Water Fund will provide a loan for those short term situations. Over the 10 year period, the Resort Tax collections should provide sufficient funding to pay for all the debt service costs for the SRF bond.

Recommendation

Staff respectfully recommends that the City Council, after considering testimony at the public hearing, approve all seven Resolutions unless the appraisal for the orphan parcels is not yet ready for City Council review. In that case, staff recommends the City Council approve six Resolutions and we will do the 7th Resolution at the February 1st meeting.

Located in the City's Backyard

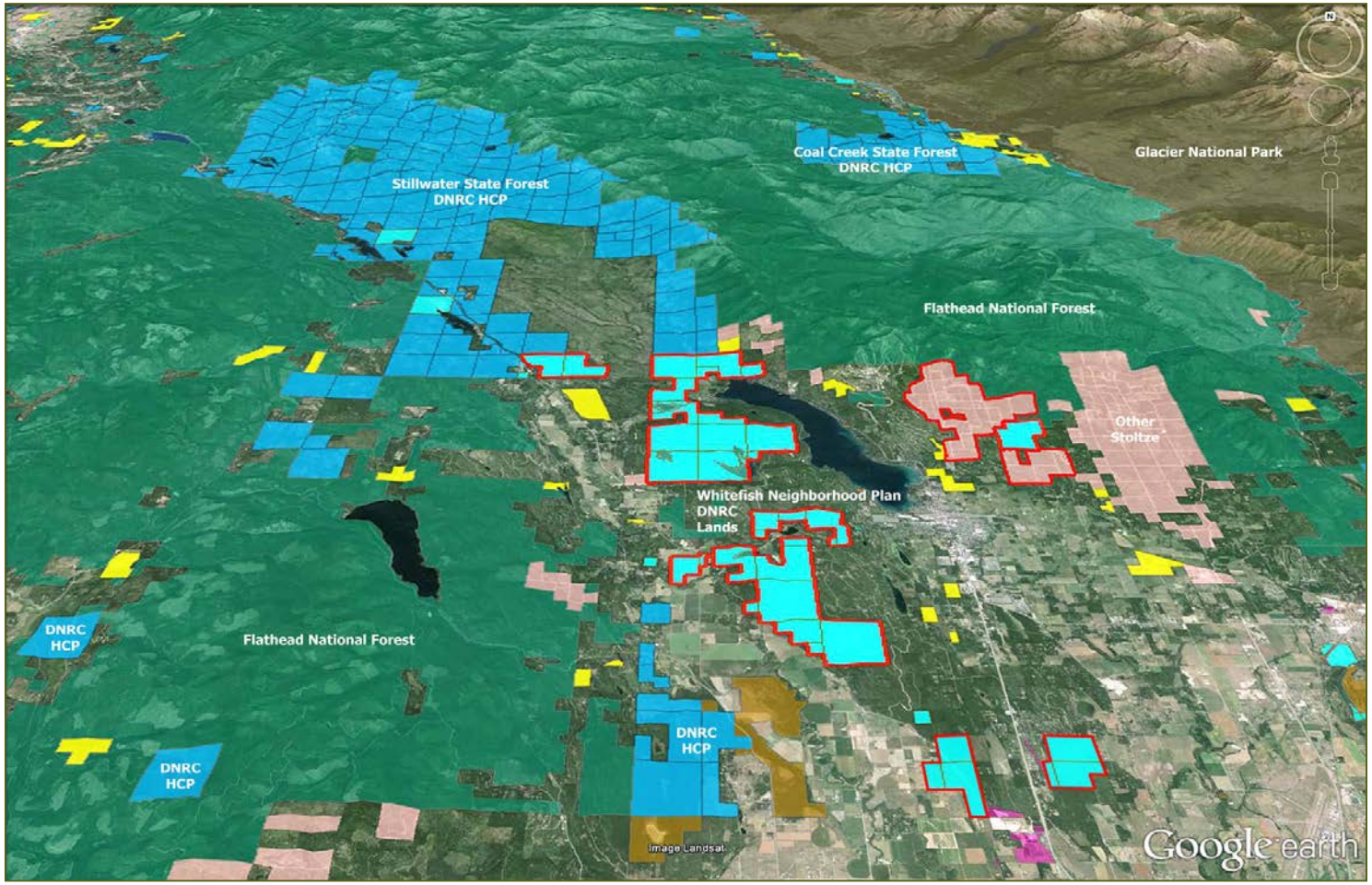




THE TRUST *for* PUBLIC LAND

CONSERVING LAND FOR PEOPLE

Part of a Larger Picture



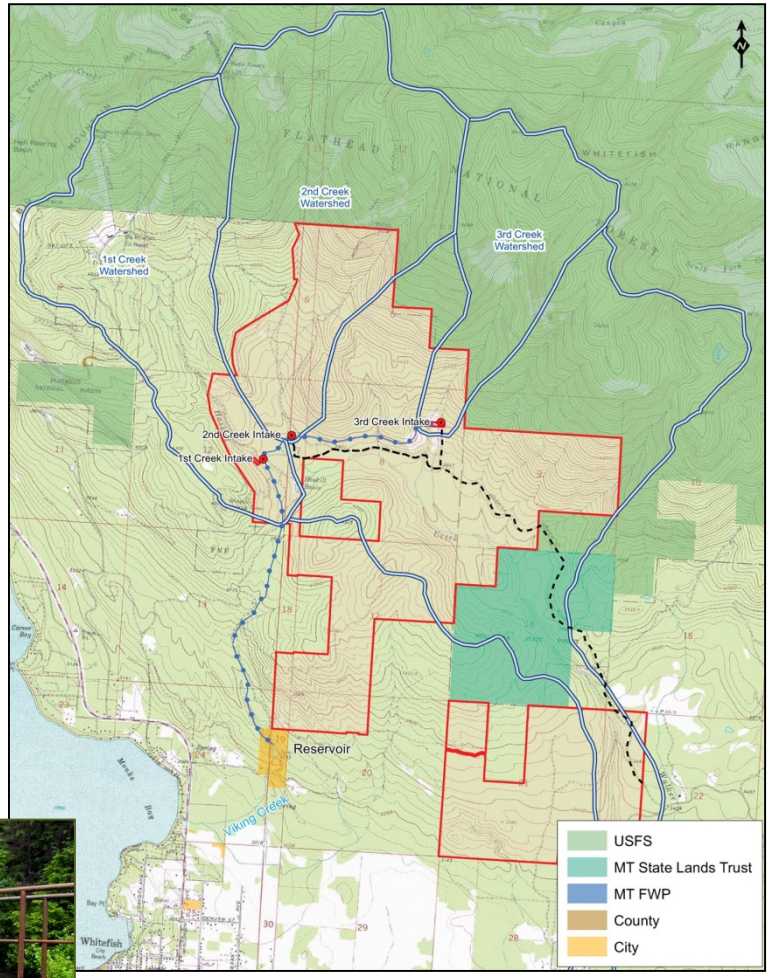
THE TRUST *for* PUBLIC LAND

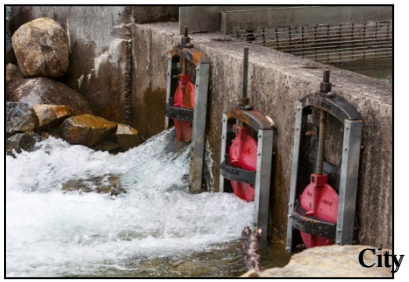
CONSERVING LAND FOR PEOPLE

Important Community Water Supply Values

The City of Whitefish gets more than 75% of its municipal water supply from the property.

Yet… despite owning the water, the city has limited legal rights to access the property, pipe water down from it or maintain the existing diversion structures.





THE TRUST *for* PUBLIC LAND

CONSERVING LAND FOR PEOPLE

Appraisal Summary

Chuck Stearns

From: illiwa bigsky.net <illiwa@bigsky.net>
Sent: Monday, January 04, 2016 10:14 PM
To: Dick Dolan; Durran, Candace; Wood, Alan; cstearns@cityofwhitefish.org; ajacobs@cityofwhitefish.org; pmckenzie@stoltzelumber.com
Subject: Haskill Basin appraisal

Hi All:

The federal review appraiser has allowed me to release the final numbers from the Haskill appraisal. The before easement value was $7,500 per acre or $22,700,000 total. The after easement value was $900 per acre or $2,720,000 total. The easement value is $19,980,000. These numbers will allow you to proceed with other closing paper work.

As you know, Alex Diekmann, is out with health issues, so Dick Dolan will fill in for him.

I will print the hard copies of the appraisal tomorrow and send two copies to the Review Appraiser. The same for the CD copies. I am not allowed to send out other copies to you folks until I get the green light from the review appraiser. I hope to get that approval later this week.

To Dick Dolan and Chuck Stearns/Angela Jacobs: Alex asked me to prepare a short appraisal to document the value of the two "orphan" lots that Whitefish will trade to Stoltze for the road and water pipe easements over Stoltze land. Do you folks still need that appraisal report and want me to do it? While I haven't started on that appraisal yet, I think the the two very small orphan lots will likely be worth a lot less that the much larger acreage of the easements. Since Alex ordered this job, I assume TPL will pay the bill. Please advise.

Here's what I have for appraisal copies: Stoltze - 2 hard copies and one CD
FWP - 4 hard copies and one CD
Whitefish - 1 hard copy and one CD
TPL - ?
Review Appraiser - 2 hard copies and one CD

The appraisal is a couple hundred pages long and will be bound in two volumes, one volume being the basic appraisal and the other volume is the Addenda.

Dick: TPL is paying for this. Do you want all copies sent to you for distribution or do you want me to hand out local copies?

Warren Illi

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, approving the Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement.

WHEREAS, the City of Whitefish has approved the purchase of a conservation easement over approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company and has approved the terms of the "Haskill Basin Watershed Deed of Conservation Easement;" and

WHEREAS, a portion of the funding for the Haskill Basin Conservation Easement is being provided through the Forest Legacy Program which is administered by the U.S. Forest Service pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990; and

WHEREAS, a portion of the funding for the Haskill Basin Conservation Easement is being provided by the City of Whitefish to ensure water quality and recreational access for the residents and visitors of the City; and

WHEREAS, the primary purposes of the Haskill Basin Conservation Easement are to: (i) protect environmentally important forest areas that are threatened by conversion to non-forest uses; (ii) protect important habitat for native wildlife and fish species; (iii) ensure the long term, sustainable, professional management of the forest resources, and to provide for commercial production of forest products in a manner compatible with the conservation of water quality, fish and wildlife habitat, and recreation; (iv) provide a multiplicity of benefits to the residents and visitors of the City Whitefish, including the protection and preservation of the City's water supply, aesthetic backdrop, wildlife and fish habitat, recreational opportunities, and local job and economic benefits; and

WHEREAS, the City of Whitefish, Montana Fish, Wildlife & Parks and F.H. Stoltze Land & Lumber Company have negotiated the terms of the "Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement," attached hereto as Exhibit A, in order to identify and describe the objectives and actions that F.H. Stoltze Land & Lumber Company will take to protect, manage, maintain, and enhance soil, water, range, aesthetic quality, recreation and public access, timber, fish, and wildlife resources within the Haskill Basin Conservation Easement; and

WHEREAS, the "Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement" is also intended to help meet the requirements of the Forest Legacy Program to protect environmentally important forest areas that are threatened by conversion to non-forest uses as well as the requirements of the HCP Land Acquisition Grants Program, and to ensure management consistent with the Standards of Sustainability of the American Tree Farm System; and

WHEREAS, Montana Fish, Wildlife & Parks held a scoping public hearing on the "Haskill Basin Watershed Deed of Conservation Easement" and the “Multi-Resource Management Plan” on November 9, 2015 and approved the Environmental Assessment on November 24, 2015; and

WHEREAS, the Montana Fish and Wildlife Commissioner approved the "Haskill Basin Watershed Deed of Conservation Easement" and the “Multi-Resource Management Plan” on

December 20, 2015, and the State Land Board approved the documents and the transaction on December 21, 2015; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants for the City to approve the "Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement."

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the terms of the "Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement" attached hereto as Exhibit A.

Section 2: The City Manager is authorized and directed to execute the "Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement" attached hereto as Exhibit A.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

MULTI-RESOURCE MANAGEMENT PLAN

Haskill Basin Watershed Conservation Easement

By Paul McKenzie
Lands and Resource Manager
F.H. Stoltze Land and Lumber Company

With input by Montana Fish, Wildlife & Parks and
The City of Whitefish

This Multi-Resource Management Plan (the "MRMP"), dated as of _____, 2016, is entered into by **F.H. Stoltze Land & Lumber Co**., a Montana corporation, whose principal address is PO Box 1429 Columbia Falls, MT 59912, (hereinafter referred to as the "Landowner" or "Stoltze"), the **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (hereinafter referred to as the "Department") and the City of Whitefish, whose address is1005 Baker Street, P.O. Box 158, Whitefish, Montana 59937-0158 (hereinafter referred to as the "City").

This MRMP is being entered into pursuant to Deed of Conservation Easement granted by Stoltze to the Department and City on _____, 2016 and recorded in Book __, Page __ of the records of Flathead County, Montana, (the "Easement").

A portion of the funding for the Easement is being provided through the Forest Legacy Program ("FLP"), which is administered by the U.S. Forest Service pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103C) created "to protect environmentally important private forest lands threatened with conversion to non-forest uses".

A portion of the funding for the Easement is provided by the City of Whitefish to ensure water quality and quantity to the residents and visitors of Whitefish.

The primary intents of this Easement are:

> To effect the purpose of the FLP in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c), by protecting environmentally important forest areas that are threatened by conversion to non-forest uses, protecting important scenic, cultural, fish, wildlife, recreational resources and riparian areas, protecting the capacity of the Land to produce economically valuable forestry products – all while allowing the Landowner and its successors and assigns to continue conducting sustainable commercial timber and resource management activities.
>
> To protect important habitat for native wildlife and fish species. To this end, the United States Fish & Wildlife Service (USFWS), pursuant to the Endangered Species Act, is providing additional funding for the Easement through its Section 6 Habitat Conservation Plan Land Acquisition Grants Program, which is specifically designed to help states conserve important habitat for federally listed and at-risk species.

To perpetuate the Land as forest land; to ensure the long term, sustainable, professional management of the forest resources through forestry activities permitted hereunder; and to provide for commercial production of forest products in a manner compatible with the conservation of water quality, fish and wildlife habitat, recreation and other Conservation Values (as defined in the Easement).

To satisfy a number of needs of, and provide a multiplicity of benefits to the residents and visitors of Whitefish, including (i) the protection and preservation of the City's water supply, including the primary source drinking water supply for the City's municipal water system, (ii) the aesthetic protection of the scenic backdrop to the City, (iii) the preservation of important wildlife and fish habitat, (iv) the securing of nearby and accessible recreational opportunities, and (v) the preservation of sustainable timber harvesting, along with all of the associated local job and economic benefits that come with such benefits.

This MRMP identifies and describes the objectives and actions that Stoltze will take to protect, manage, maintain, and enhance soil, water, range, aesthetic quality, recreation and public access, timber, fish, and wildlife resources in a manner compatible with Landowner objectives. As such, it is intended to help meet the requirements of the FLP to protect environmentally important forest areas that are threatened by conversion to non-forest uses as well as the requirements of the HCP Land Acquisition Grants Program, and to ensure management consistent with the Standards of Sustainability of the American Tree Farm System as further described below.

I. GENERAL DESCRIPTION

The Land that is the subject of the Easement and this associated MRMP consist of 3,020 acres in northwestern Montana, near the City of Whitefish (the "Land"). The Land is intermingled with other private land, State Forest lands managed by the Montana Department of Natural Resources and Conservation ("DNRC"), and public lands administered by the U.S. Forest Service, Flathead National Forest.

The Land is located primarily north and east of the City of Whitefish and are dissected by the Haskill Creek drainage. The Land consists of 10 whole or partial sections. All of the Land is located within Flathead County.

The Land is forested valley bottoms and mountains that have been managed for timber production over the last 100+ years. Elevations vary from approximately 3,500 to 5,500 feet. Haskill Creek and its tributaries cross the property. The Land contains outstanding fisheries and, habitat, and spawning grounds (provided by Haskill Creek, 1st Creek, 2nd Creek, 3rd Creek, 4th Creek, and 5th Creek) for a variety of fish species, including, but not limited to, westslope cutthroat trout. Currently, the Land comprises approximately ninety percent (90%) of the source drinking water for the City. The Land also includes numerous tributaries, streams and riparian wetland areas.

Forestland dominates the landscape. It is a mixed conifer forest with all Montana commercial timber species represented. The current forest is well stocked with vigorous growing stock of

native mixed species. The desired condition for the forest is through sustainable harvest to maintain a diversity of stand structure, age class and species mix with a preference for uneven aged stand conditions where ecological conditions permit. Dominant species are Douglas-fir, western larch, true firs, Engelmann spruce and western red cedar. Ponderosa pine, white pine, and lodgepole pine can also be found in most of the area. Limited amounts of cottonwood and aspen can be found along creeks and near wetland areas and paper birch is evident on many north-facing slopes. The timbered stands vary in age from young regeneration to commercial saw timber.

II. FOREST MANAGEMENT

Stoltze's objective is long term forest stewardship which will fully utilize its resources through innovative forestry management and harvest techniques. Wise stewardship and good business practices go hand in hand. Stoltze manages its land in accordance with its Stewardship Forestry Principals included in the Stoltze Tree Farm Management Plan. This Tree Farm Management Plan guides management activities, which are planned and implemented by professional foresters and trained contractors in ways that continue to protect riparian area and important scenic, cultural, fish, wildlife, and recreational resources on the Land.

The management goal is to practice sustainable forestry to meet the needs of the present while maximizing growth for future generations and meet the challenges of changing times. Managing for the four tenets of the American Tree Farm System, wood, water, wildlife and recreation has proven to be a good goal for over 100 years of Stoltze land management and the Tree Farm Management Plan outlines specific measures to insure that these important four tenants will continue to guide forest management practices on the land into the future. This plan will be updated periodically to maintaining flexibility necessary to adapt management to new information, technology and changing ecological, social and regulatory conditions.

Stoltze commits to managing the Land in accordance with good and sound silvicultural practices consistent with the American Tree Farm System (ATFS) program certification requirements as outlined in the American Forest Foundation *2015-2019 Standards of Sustainability for Forest Certification (*ATFS). ATFS is the United States' oldest family forest certification program. In 1941, ATFS began promoting responsible forest management on our nation's private forests. The Tree Farm sign is the sign of good stewardship. ATFS certification gives family woodland owners confidence and validation that they are doing right by their land. Stoltze maintains certification, in good standing, and will make a copy of this conformance available to the Department following each audit.

As part of the commitments to sustainable forest management, Stoltze also agrees to the following guidelines and metrics within this MRMP to measure their activities. These guidelines and metrics are not intended to restrict fiber production but to provide measures to ensure the MRMP objectives are met. If Stoltze's forest practices are found to vary from these guidelines on a landscape level, the Liaison Committee, established by the Easement, will develop, and insure that Stoltze implements, a plan to bring the practices into compliance.

The ATFS program is a comprehensive system of principles, objectives, and performance measures that integrates the perpetual growing and harvesting of trees with the protection of

wildlife, plants, soil and water quality. The participation in the program requires an independent verification process, which Stoltze has incorporated into their management of the Lands.

Stoltze's foresters and the independent contractors who work for Stoltze are committed to good stewardship. In order to operate on the Lands, contractors must participate in formal Best Management Practices ("BMP") and Streamside Management Zone ("SMZ") training. Stoltze will continue to manage the Land in a responsible manner in compliance with this MRMP and ATFS standards as they exist now or are updated in the future.

III. OTHER RESOURCES

In accordance with the Forest Legacy Program and Stoltze's Tree Farm Management Plan, outlined below, the following describes Stoltze's objectives and actions for various resources.

A. Soil

Stoltze will maintain soil and site productivity by implementing Montana State Best Management Practices minimizing soil disturbance to the extent practical and, when possible, by retaining an appropriate amount of harvest residues for soil nutrient and soil structure enhancement.

B. Water

Stoltze will implement voluntary Montana Forestry BMP's. All forest owners in Montana are required to comply with the Streamside Management Zone law, and applicable Federal Standards under the Clean Water Act. The Landowner commits to additional conservation measures outlined in this MRMP.

C. Range

None of the Land is managed as rangeland. Grazing may be allowed for weed control or other land management purposes consistent with the protection and maintenance of the Conservation Values of the Land.

D. Aesthetic Quality

Stoltze recognizes aesthetic values along the Whitefish Face area and will consider aesthetic impacts by managing these areas within the Land by using appropriate design standards and harvest methods.

E. Public Recreation

The Easement gives the public the general right of access to the Land in perpetuity for the responsible use of the Land for legal non-commercial recreation including but not limited to hunting, fishing, trapping, hiking, trail running, cross country skiing, berry picking, wildlife viewing, and subject to all applicable Montana laws and regulations. Public access for mechanized uses, both motorized and nonmotorized, is also allowed but is restricted to the existing road network. The public use of the Land is subject to certain open lands policies incorporated into this MRMP (Exhibit A) and certain rights of Landowner and Grantees to restrict or suspend public access and recreation, as more fully set forth below and in the Easement. The Department and City agree to assist the landowner in enforcement of the policies and restrictions outlined herein to ensure continuance of the conservation values of the Land.

The Parties intend to preserve the public's perpetual, general right of access to the Land along with the Easement. Public access may be temporarily suspended in accordance with Section C 6 (a), (b), and (c) of the Easement.

F. Habitat Conservation Objectives and Implementation.

ATFS *Standards of Sustainability* include specific standards for Air, Water and Soil Protection; Fish, Wildlife and Biodiversity; Forest Aesthetics and Protection of Special sites. The Standard contains Performance Measures and Indicators specific to these objectives. The Stoltze Tree Farm Management Plan and Wildlife BMP's also provide guidance for wildlife habitat management in conjunction with other land management objectives. Stoltze commits to implementing all of these measures on the Land, in addition to the Best Management Practices outlined in this MRMP. Standards in this MRMP may exceed those found in the Wildlife BMP's, when that is the case, the standards in this document will apply on the Land covered under this MRMP.

G. Fish and Wildlife

Stoltze manages its resources while considering fish and wildlife through judicious control of road access, timber harvest management, and cooperation with state and federal fish and wildlife agencies. Canada lynx and grizzly bear are both federally protected species while a pure strain of cutthroat trout also resides within the Lands. Management of Stoltze lands under the ATFS program has proven to be a successful strategy in maintaining the variety and security of habitats necessary to support viable populations of these species within the Land and surrounding area. Continued management under ATFS guidance will provide similar habitat conditions into the future.

In addition to the above, the Land is important for elk, deer, moose, black bear, wolverine, pine marten, grouse, songbirds, cavity-nesting birds, and a variety of other native and migratory wildlife species. Stoltze recognizes the value and importance of maintaining or enhancing fish and wildlife habitat to ensure stable populations. The Land shall be managed in accordance with Stoltze's Tree Farm Management Plan, which include provisions to maintain or enhance biodiversity. In consideration of the particular wildlife habitat values of the Lands, Stoltze shall apply the practices as set forth below:

1 Riparian zones and non-forested wetlands, including bogs, fens, and marshes, shall be identified prior to implementing forest management activity in a harvest unit. The draining, filling, dredging, or destruction of any wetland area or any other activity that has significant adverse impacts on a wetland is prohibited except as allowed under forest management practices described in the Easement.

2 Riparian areas will be defined and managed in accordance with State of Montana Streamside Management Zone (SMZ) law. In addition, the following best management practices will be applied on 1st, 2nd, 3rd, 4th, 5th creeks and the main stem of Haskill creek and associated wetlands adjoining such streams.

   a) 50 foot (or 100 foot when extended for slope) no equipment zones will be marked and maintained before management activities prohibited within SMZ's occur on adjoining lands.

b) On stream segments where there is evidence of movement of the active stream channel, buffer width will be measured from the outermost lateral extent of the channel migration zone and fully encompass associated wetland areas as defined in the SMZ law.
c) All deciduous hardwood trees, trees less than 8" DBH, shrub and forb vegetation will be retained to the greatest extent possible within the entire SMZ.
d) Harvest prescriptions within the SMZ shall favor bank trees, trees leaning towards the stream, trees with snag recruitment potential and ensure trees of the larger size classes are represented in a ratio similar to or greater than the pre harvest conditions.
e) Tree removal within the SMZ shall not exceed 50% of the pre harvest condition per the SMZ law. Additionally, minimum merchantable tree retention will be 10 trees per 100 lineal feet of stream within the first 25' width of SMZ and 5 trees per 100 lineal feet of stream in the second 25' width of SMZ buffer for a total minimum retention of 15 trees per 100 lineal feet of stream within the entire buffer width.

3 Stoltze shall use uneven-aged forest management practices in riparian zones and around wetlands when stand conditions allow. Wetland buffer management around isolated wetlands of one-half acre in size or larger will include:

a. No skidding through wetlands, unless during frozen ground conditions where the integrity and function of the wetland is maintained;
b. Minimizing disturbance to shrubs and non-merchantable trees within 50 feet of the wetland edge;
c. Directional felling of merchantable trees away from the wetland;
d. Favor retention of trees that are leaning into the wetland and wildlife trees within 50' of wetland boundaries. Wildlife trees include standing dead trees, green trees with broken tops and/or trees with appreciable decay within their interior;
e. Utilize skidding practices for trees felled within 50 feet of the wetland that minimize ground disturbance;
f. For the purposes of this section, the term wetland is interpreted as defined in the Montana Streamside Management Zone law. Shallow lakes and ponds, usually with emergent vegetation as a conspicuous feature, are included in the wetland definition;

4 Implementation of above policies will be reviewed annually by FWP and Stoltze and these measures may be modified as additional scientific information or technology becomes available, and as the results of these measures are monitored and reviewed for effectiveness, provided that each party agrees to the adaptations.

H. Minerals

Stoltze owns limited mineral resources on the Lands. The Easement provides the Landowner with limited rights to extract sand, gravel, and rock in accordance with provisions that minimize impacts and ensure restoration of disturbed areas as per specific Montana Department of Environmental Quality permit operating plans and the specific terms and conditions outlined in the Easement. The Easement prohibits Stoltze from exploring for, developing, mining, producing or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources on or

under the surface of the Lands. It also prohibits Stoltze from conveying any interest in mineral rights to another party for purposes of mineral exploration, development, production or extraction.

I. Outfitting/Organized/Commercial Recreation

The Easement authorizes the types of commercial and organized recreation uses allowed on the Lands. Stoltze currently authorizes winter cross country ski trail grooming with two licensees. Any future provision agreed upon by the Department, City, and Stoltze to allow commercial outfitting, organized recreation or other commercial recreational uses shall be signed and appended as an exhibit to this MRMP to the extent required by the Easement. Commercial recreational uses cannot be exclusive to permitted users nor reduce or diminish the public's general ability to access or utilize the Land for dispersed recreation. Agreements for construction, use and maintenance of recreational improvements such as trail corridors, access points or other improvements shall be approved by all parties and attached as an exhibit to the MRMP. Minor issues arising between commercial, organized and public users will be addressed through the Liaison Team described in the conservation easement.

J. Weed Management

Stoltze will manage noxious weeds in compliance with State law and best management practices, implementing an integrated pest management philosophy to meet weed control goals. Control will include a combination of chemical, mechanical and biological controls as appropriate to meet conservation goals.

IV. PLAN GUIDELINES and SELECTED METRICS

Stoltze agrees to the following guidelines and metrics to measure its activities under this MRMP and to ensure that MRMP objectives are met. It is understood that as circumstances change and new knowledge is obtained, that these guidelines and metrics may need to be adapted and modified. Accordingly, the parties agree to work cooperatively to adjust these metrics over time so as to continue to meet the spirit and intent of this MRMP.

A. Management activities on the Land will be conducted in a manner consistent with Stoltze's Tree Farm Management Plan. Stoltze commits to periodic external ATFS or other comparable audit of the Lands, as specified in current ATFS standards and to review audit recommendations with the Liaison Committee to determine if changes should be implemented. Issues of non-compliance will be addressed and remedied as directed in the audit and consistent with the easement.
B. If sites are selected, Stoltze will participate in State BMP audits on the Lands. Results of these audits will be discussed at the annual Liaison Team meetings, and Stoltze will take actions to correct any departures.
C. Stoltze recognizes cottonwood and aspen stands and individual trees provide unique wildlife habitats and will manage to provide this critical habitat in historically appropriate levels. The commercial harvest of cottonwood and aspen trees should be limited to that necessary to maintain the health of or promote new cottonwood or aspen stands. Management will strive to maintain cottonwood and aspen stands at essentially the same or greater levels as is established in the baseline survey as ecological and climate conditions allow.

D. Landowner shall retain snags to the greatest extent possible for wildlife habitat diversity where not in conflict with contractor or public safety or other land management objectives. All snags greater than 15 inches DBH that do not pose a safety hazard or fire concern shall remain uncut. Those snags greater than 15 inches DBH that must be cut, but do not have a merchantable value shall be left within the harvest unit. On a landscape level, snags should be managed with the goal of an overall density of 2 snags per acre greater than 15 inches DBH. Concentrating snags in riparian areas, around wetlands and other areas where long term snag persistence is not in conflict with public or contractor safety is encouraged. When sufficient snags do not exist within a harvest unit, management activities will retain an average of 3 trees per acre of harvest unit of size and species most suitable for long term snag recruitment. Landowner is not responsible for the unauthorized felling, removal or destruction of snags conducted by the public on the Lands.
E. Stoltze preferred stand structure is uneven-aged, mixed species with high within stand diversity. Use of even-aged management techniques, including clear cut, seed tree, and shelterwood prescriptions should be limited and based on silvicultural needs. Harvest units with these prescriptions will not exceed 40 acres in size and should be generally non-contiguous with areas that have similar treatments within the previous 5 years. With notice to Department, this standard can be exceeded in instances where wildfire, insect or disease activity, wind throw or other natural event dictates such silvicultural treatment is appropriate on a larger scale.
F. Whenever practical, preserve fruit, nut, and berry producing shrubs and trees.
G. Management shall strive to maintain downed woody debris to an average of 2 pieces/acre greater than 10 inches diameter and 6 feet or longer. Snags, trees, and logs should be concentrated near streams, wet areas, or other sensitive sites or highly erosive landscapes when such sites exist, otherwise dispersed throughout the unit to maximize the beneficial effects of these resources to wildlife.
H. Comply with all applicable state and federal laws.
I. Use only logging contractors who have been trained through Montana Logging Association to a level of Accredited Logging Professional.
J. Catastrophic events such as fire, disease, and insect infestation may require modifications of the above guidelines and such situations need to be addressed by the Liaison Committee.

V. EASEMENT MONITORING AND REPORTING REQUIREMENTS

The Easement is intended to maintain the "status quo" by providing for perpetual and responsible forest management on the Lands. The Easement will restrict the development rights on the Lands, which will preclude residential and commercial development not associated with resource management. It also provides for perpetual public access to these areas for non-commercial recreation in accordance with attached Exhibit A subject to provisions of Section III hereof.

The Department and City will monitor the Landowner's compliance with the terms of the Easement and MRMP on at least an annual basis through scheduled field inspections, water quality testing in Haskill Creek, use of flights or remote sensing, and meetings. The Department will notify the Landowner prior to each annual monitoring visit. Department employees will be allowed motorized access behind gates or closures only with permission from the Landowner and only while on-duty conducting official business of the Department.

The City will access the city utility easements, monitor for water quantity and quality, and will maintain drinking water intakes, pipeline and other improvements that serve as a source of municipal water supply for the City.

A Liaison Team representing the Department, City, and Stoltze will be established to deal with management issues that may arise over time. An annual meeting will be held, open to the public and consistent with Montana's open meetings laws. It is expected that this MRMP will be amended over time to better represent then current knowledge and conditions on the ground.

In order to track compliance with the terms of the Easement and MRMP, the Landowner will annually provide a report to the Department that summarizes the following information:

A. Acres harvested by silvicultural method.
B. Silvicultural treatments.
C. Road construction or road closure changes; and
D. Current status of excavation sites (i.e. active vs. inactive) in order to monitor re-vegetation and weed control commitments.

In addition, the Landowner will include the following information in the annual report as these reports are completed or received by the Landowner:

A. Copies of ATFS and state BMP audits as they are periodically completed, including any actions taken to meet audit recommendations.

Any amendment to this MRMP must have the consent of all parties and must be in writing and signed and acknowledged by the parties. If there is any inconsistency between the terms of this MRMP and the Easement, the terms of the Easement control. The Department and City will keep a current MRMP in their files and will make the then current MRMP available to successors in interest to the Lands.

LANDOWNER: F.H. STOLTZE LAND & LUMBER COMPANY

By: _____

DEPARTMENT: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

By: _____

CITY: CITY OF WHITEFISH, MONTANA

By: _____

Exhibit A
F.H. Stoltze Land & Lumber Company
Open Lands Policies

F.H. Stoltze Land & Lumber Company is a forest management company that allows use of its property as a *NEIGHBORLY ACCOMMODATION*. Use can be terminated. Roads are periodically subject to closure. Gated roads are closed to all passenger vehicles. Please treat these private lands with respect and use caution.

WHILE RECREATING ON STOLTZE LANDS PLEASE RESPECT THE FOLLOWING POLICIES:

- DO NOT BLOCK GATES. Vehicles blocking gates will be towed at owner's expense.
- Users must obtain permission from adjoining private landowners to access Stoltze lands where legal public access such as a county road does not exist.
- No firewood, bough or tree cutting without written permission.
- Vandalism and theft of company property will not be tolerated, violators will be prosecuted.
- No dumping or littering.
- No unauthorized passenger vehicles behind gates.
- Stoltze permits usage of off highway vehicles (OHV) on established road systems only. No motorized vehicle use is allowed off of existing road systems. Examples of allowable motorized vehicles are 4-wheelers, side by sides, motorbikes, and snowmobiles.
- Stay off road systems when roads are soft and subject to rutting and damage.
- No recreational shooting within ¼ mile (1320 feet) of a residence.
- No trail building or construction of any permanent structures is allowed.
- No campfires during periods of "High" or greater fire danger as posted by the Montana DNRC rating system. Make sure all fires are "dead out".
- No commercial use without permit.
- Furbearer trapping and recreational wolf trapping by written permission only.
- No camping over 7 days.

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company.

WHEREAS, F.H. Stoltze Land & Lumber Company is the owner of approximately 3,020 acres of land located in Haskill Basin, Flathead County, Montana; and

WHEREAS, the Haskill Basin watershed currently comprises approximately ninety percent (90%) of the source drinking water for the City of Whitefish; and

WHEREAS, the City of Whitefish has an existing water system including pipelines, gates, head gates, gate valves, and other associated structures located in and on the land owned by F.H. Stoltze Land & Lumber Company in Haskill Basin; and

WHEREAS, the City of Whitefish has relied on F.H. Stoltze Land & Lumber Company to voluntarily provide access to its municipal water supply and to its water system for many years; and

WHEREAS, the City of Whitefish is authorized under Montana Code Annotated Title 7, Section 13, Parts 43 and 44 to own, operate and maintain a municipal water system and to acquire land or rights in land or water in connection with such undertaking; and

WHEREAS, the City of Whitefish has approved the purchase of a conservation easement over the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company; and

WHEREAS, in conjunction with the purchase of the Haskill Basin conservation easement, the City and F.H. Stoltze Land & Lumber Company have negotiated the terms of the "Municipal Water System Easement and Road Access Easement," attached hereto as Exhibit A; and

WHEREAS, the easements granted to the City of Whitefish by the "Municipal Water System Easement and Road Access Easement" will preserve in perpetuity the City's right to access, use, inspect, construct, maintain, and repair its water system located on F.H. Stoltze Land & Lumber Company's land and will protect and preserve the City's water supply; and

WHEREAS, it is in the best interests of the City of Whitefish and its inhabitants for the City to accept the easements granted by the "Municipal Water System Easement and Road Access Easement."

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the terms of the "Municipal Water System Easement and Road Access Easement" attached hereto as Exhibit A and accepts the easements granted therein by F.H. Stoltze Land & Lumber Company.

Section 2: The City Manager is authorized and directed to execute the "Municipal Water System Easement and Road Access Easement."

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

Recording Requested By
F.H. Stoltze Land & Lumber Co.
And
City of Whitefish
When Recorded Mail To:
F.H. Stoltze Land & Lumber Co.
PO Box 1429
Columbia Falls, MT 59912

MUNICIPAL WATER SYSTEM EASEMENT AND ROAD ACCESS EASEMENT

THIS EASEMENT, dated this ____ day of _____, 2015, from F.H. STOLTZE LAND & LUMBER COMPANY, a Montana corporation, whose address is P.O. Box 1429, Columbia Falls, Montana 59912, hereinafter called "Grantor" or "Stoltze," to City of Whitefish, whose address is 418 E. 2nd Street, PO Box 158, Whitefish, MT 59937, hereinafter called "Grantee."

WITNESSETH:

I.

Grantor, for and in consideration of $1.00, and other valuable consideration received by Grantor, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee and its respective successors and assigns, subject to existing easements and valid rights, a perpetual, non-exclusive easement and right-of-way for a municipal "Water System" and "Maintenance" thereof (see defined terms in Section II) forty (40) feet in width, twenty (20) feet either side of the centerline of the existing water line. In addition to the linear water line easement, this easement includes three approximately one (1) acre tracts, bounds described below, at each of the water intakes at First, Second and Third Creek to allow for "Water System" and "Maintenance". The easement is along and across lands located in Flathead County, Montana and described as follows:

A Water System and Maintenance easement, in Sections 7, 8, 9, 16, 17, 18, 19, 20, & 22, Township 31 North, Range 21 West and Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County Montana, more particularly described as follows:

A 40 foot wide strip of land, 20 feet on either side of the center of the waterline in place, beginning at the 3rd creek intake; thence through the 2nd creek intake and the 1st creek screen, terminating at the boundary of the Grantors Real Property, with a length of 9,530 feet, more or less, containing 7.69 acres, more or less, as shown on Exhibit "A".

Tract 1 – First Creek "Water System": Refer to Exhibit B, Sheet B1-
Legal Description - Tract 1 Easement - F.H. Stoltze Land & Lumber Company
A portion of the Northeast Quarter of the Southeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M., being more particularly described as follows:

Commencing at the northeast corner of the Northeast Quarter of the Southeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M.; thence South 63°20'32" West 739.00 feet to the True Point of Beginning; thence South 76°31'01" West 155.00 feet; thence North 13°28'59" West 281.03 feet; thence North 76°31'01" East 155.00 feet; thence South 13°28'59" East 281.03 feet to the point of beginning, containing 1.000 acre of land, more or less.

Tract 2 - Second Creek "Water System": Refer to Exhibit B, Sheet B2
Legal Description - Tract 2 Easement - F.H. Stoltze Land & Lumber Company
A portion of the Southeast Quarter of the Northeast Quarter, Section 12, Township 31 North, Range 22 West and Government Lot 2, Section 7, Township 31 North, Range 21 West, P.M.M., being more particularly described as follows:

Commencing at the southeast corner of the Southeast Quarter of the Northeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M.; thence North 05°47'55" West 733.06 feet to the True Point of Beginning; thence North 11°21'30" East 264.00 feet; thence South 78°38'30" East 165.00 feet; thence South 11°21'30" West 264.00 feet; thence North 78°38'30" West 165.00 feet to the point of beginning, containing 1.000 acre of land, more or less.

Tract 3 – Third Creek "Water System": (-Refer to Exhibit B, Sheet B3
Legal Description - Tract 3 Easement - F.H. Stoltze Land & Lumber Company
A portion of the Northeast Quarter of the Northeast Quarter, Section 8, Township 31 North, Range 21 West, P.M.M., being more particularly described as follows:

Commencing at the southeast corner of the Northeast Quarter, Section 8, Township 31 North, Range 21 West, P.M.M.; thence North 31°54'09" West 1599.66 feet to the True Point of Beginning; thence North 76°58'11" West 165.00 feet; thence North 13°01'49" East 264.00 feet; thence South 76°58'11" East 165.00 feet; thence South 13°01'49" West 264.00 feet to the point of beginning, containing 1.000 acre of land, more or less.

The "Water System" described herein is located approximately as shown as the solid lines on **Exhibit "A"** attached hereto and incorporated herein by this reference (the Easement").

Additionally, Grantor, does hereby grant to Grantee and its respective successors and assigns, subject to existing easements and valid rights, a perpetual, non-exclusive easement and right-of-way for construction, reconstruction, use and maintenance of an existing road thirty (30) feet in width, fifteen(15) feet either side of the centerline of the existing road, along and across lands located in Flathead County, Montana and described as follows:

Access: Existing roads as depicted on Exhibit A and as described as:
An access and utility easement, in Sections 7, 8, 9, 16, 17, 18, 19, 20, & 22, Township 31 North, Range 21 West and Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County Montana, more particularly described as follows:

A 30 foot wide strip of land, 15 feet on either side of the center of the road system in place, beginning on Haskill Basin Road and Northwoods Drive, and terminating at Private, United States Forest Service and State of Montana lands, with a length of about 45,000 feet, more or less, containing 30.99 acres, more or less, as shown on Exhibit "A".

The roads described herein is located approximately as shown as lines on **Exhibit "A"** attached hereto and incorporated herein by this reference (the Easement").

The above grant and conveyance is subject to all matters of public record as of the date of this Easement.

II.

The parties hereto agree that the rights hereinabove granted shall be subject to the following terms and conditions:

1. Definitions.

a. For the purposes of this Easement, the words and terms "center line," "portion," "right of way," "road", "roadway", "water line," "water line facility," "water line segment," and "water line structure," shall refer to the plural as well as the singular.

b. Maintenance – maintenance shall be construed to mean inspection, repair, construction, reconstruction, replacement, use and maintenance of the Water System.

c. Water System – is defined as the infrastructure, associated structures, pipelines, gates, head gates, gate valves, water rights, the City's water in 1st, 2nd, and 3rd Creeks, and other appurtenances located within this easement for the supply and delivery of water from Haskill Basin for the provision of municipal water services to the citizens of Whitefish.

2. Purpose. The municipal Water System easement and right-of-way granted herein is for ingress, egress, and utilities, and locating, occupying, and Maintenance for a water System for municipal water service purposes to supply water from Haskill Basin for use by the City of Whitefish in their provision of public municipal water services.

The road access easement and right-of-way granted herein is for ingress, egress, and Maintenance of the Water System and associated structures for municipal water service purposes to supply water from Haskill Basin for use by the City of Whitefish in their provision of public municipal water services.

3. Utilities and Water Lines. All utilities and water lines within said easement and right-of-way shall be buried so that it will at all points be at a minimum of three (3) feet below the surface of the ground, and shall be installed and maintained in a manner reasonably satisfactory to Grantor. The location of such utility line and waterline shall be clearly marked, including above ground markers and traceable tape or other traceable underground marking, and the markings shall be maintained to the reasonable satisfaction of the Grantor. Grantor shall have no liability or obligation of any kind to the Grantee or other parties for losses or damages due to the interruption of operation or use of said Water System by reason of the exercise by Grantor of its rights reserved herein, if the Grantee fails to meet the requirements of this paragraph.

4. Improvements. The parties acknowledge that Grantor has no obligation to construct any improvements of any type or kind to its lands or the Easement area or assist Grantee in the exercise of any rights granted hereunder, all such improvements desired by Grantee to be done by the Grantee at its sole cost and expense.

5. Relocation. Upon prior notice to Grantee, Grantor reserves unto itself, its successors and assigns, the right at its expense to relocate the easement and right-of-way granted herein subject to the condition that, except for distance and curvature, such relocated Water System or road provides the same type and quality of service as existed prior to such relocation and does not change the point of interconnection on the boundaries of the parties respective properties.

6. Relocation By Grantee. If the Grantee loses road or easement access from other private property owners for the roads shown in Exhibit A, Grantor and Grantee agree to work together to find or build an alternative or re-routed road and easement to provide the Grantee the same access that it enjoyed prior to such loss of road or easement access, with Grantee being responsible for the expenses of road relocation and reconstruction.

7. Right of Way Crossing. Grantor reserves for itself and its successors and assigns, the right to use, cross and recross, patrol and repair said right of way for any and all purposes, in any manner that will not unreasonably interfere with the rights granted to the other party hereunder.

8. Third Parties. Grantor may grant to third parties, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such party shall be subject to the terms and conditions of this Easement and shall not unreasonably interfere with the rights granted hereunder.

9. Road Maintenance. Roadways shall be constructed and maintained at all times to be in compliance with State of Montana Best Management Practices for the Protection of Water Quality and the Streamside Management Zone law as may be effective at the time of use. Furthermore, Grantee agrees to acquire and comply with, at Grantee cost, all necessary permits, licenses, and authorizations that may be required for the construction, reconstruction, use and

maintenance of said right of way and associated facilities and structures. Noxious weeds in said right of way shall be managed to be in compliance with State of Montana law and statute.

The cost of right of way maintenance and noxious weed control shall be allocated on the basis of respective uses of said right of way. When any party uses said right of way, or a portion thereof, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of the maintenance and noxious weed control occasioned by such use as hereinafter provided. During periods when said right of way, or a portion thereof, is being used solely by one party, such party shall maintain that portion of said right of way so used to the standards existing at the time use is commenced.

During periods when more than one party is using said right of way, or a portion thereof, each party's share of maintenance and noxious weed control management shall be pro rata in proportion to its use thereof. The parties hereto shall meet on an annual basis and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

(a) The appointment of a maintainer, which may be one of the parties hereto or any third party as mutually agreed, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance and noxious weed control management of the right of way or the portion thereof being used;

(b) A method of payment by which each party using said right of way or a portion thereof shall pay its pro rata share of the cost incurred by said maintainer in maintaining, resurfacing or noxious weed control management of said right of way or portion thereof; and

For the purposes of this easement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure, road facilities, Water System, waterline structures and Water System facilities as nearly as possible in their present condition or as hereafter improved.

Notwithstanding any provision of this Section Nine, Grantor shall have no obligation for any costs or expenses of maintaining, operating, or replacing the Water System.

10. Right of Way Damage. Each party using any portion of said right of way shall repair or cause to be repaired, at its sole cost and expense, that damage to said right of ways caused by the party which is in excess of that which it would cause through normal and prudent usage of said right of ways. Should inordinate damage to said right of ways occur which is not caused by an authorized user of said right of ways, the Grantor and Grantee shall meet and agree upon the proportionate share of the cost of repair or replacement for such damage.

11. Construction and Improvement. Unless the parties hereto agree in writing to share the cost of improvements to said right of ways in advance of such improvements being made, said improvements shall be solely for the account of the improver. Each party may maintain or improve the right of ways to a higher standard at its own cost, provided that such higher standard of maintenance or improvement accommodates all existing uses at no additional cost to the party whose purposes for use do not require the higher standard.

12. Right-of-Way Timber. Grantor reserves to itself all timber now on or hereafter growing within said easement and right-of-way. Grantee shall have the right to cut timber growing within the easement and right of way herein granted to the extent necessary for constructing, reconstructing, and maintaining the right of ways. Timber so cut shall, unless otherwise agreed, shall be cut into logs of lengths specified by Grantor and decked along the right of ways for disposal by Grantor.

13. Exercise of Rights. Grantee may permit its contractors, licensees, lessees, and their agents, hereinafter individually referred to as "Permittee" and collectively referred to as "Permittees," to exercise the rights granted to it herein provided that all conditions and requirements of this easement shall apply to all “Permittees” as well.

14. Insurance. Prior to any use right of way granted herein, Grantee, if available to Grantee, and each of its Permittees, which shall include employees, agents, contractors shall obtain and, during the term of such use, maintain a policy of liability insurance in a form and by an insurance company acceptable to Grantor and providing the coverages set forth hereinafter in this Section 14. Grantor acknowledges that some of the following coverages may not be available to Grantee as a public entity, and agrees that Grantee shall not be in breach or default of this Easement by virtue of such non-availability. However, the following coverages shall apply to all other contractors, subcontractors and others using the easement area.

A. Commercial General Liability Insurance to include minimum limits of $1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extension of coverage to include, Products and Completed Operations, , Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire. Additionally, the policy shall not exclude X,C.U (Explosion, Collapse, or Underground).

B. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles (only in excess of existing insurance for a non-owned, hired and other vehicles), with a combined single limit of $1,000,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

C. Employer's Liability Insurance, for employee bodily injuries and death, with a minimum limit of $500,000 each occurrence. In the event the party obtaining the insurance has no employees, then such party shall not be required to carry Employer's Liability Insurance.

D. Contractors (or Loggers) Broad Form B Property Damage Liability Insurance with a limit of $2,000,000 per occurrence.

E. Worker's Compensation Insurance, with statutory limits as are required by the Workers' Compensation Law in the State in which work is being performed hereunder. No state exemption from workers' compensation insurance as an "owner/executive/partner" is allowed. Grantee shall obtain and maintain during the term and any extension hereof, workers' compensation insurance in an amount of not less than statutory limits for any and all of its employees. If the insuring party fails to comply with applicable workers' compensation law during the term of this agreement, then such party shall refrain from exercising its rights under this agreement until the required workers' compensation insurance is obtained. For Contractors and non-public entities, Workers Compensation and General Liability policy shall have a waiver of subrogation endorsement in favor of Grantor et al, and proof of such endorsement shall be provided to Grantor.

F. Grantor shall be named as an additional insured on all General Liability, Property Damage Liability and Comprehensive Automobile Liability policies both of Grantee and any and all contractors thereof. To the extent such coverage is available to Grantee as a public entity/municipality, the policies specified above shall include endorsements which shall name Grantor, as an additional insured for the duration of the Easement term. The additional insured endorsements must be ISO CG 20 10 07 04 and ISO CG 20 37 07 04 or other forms with like wording. Copy of such policies and all endorsements (Additionally Insured (2 forms)) shall be provided to Grantor prior to execution of any activities authorized under this easement. The endorsements shall be stapled to the Certificate of Insurance and shall be provided to Grantor.

G. The policies specified above shall include an endorsement which shall provide that Grantor, at the addresses above, will be given a 30 - day written notice prior to cancellation, coverage modification or other material change in the policy. No such cancellation, modification or change shall affect Grantee's obligation to maintain the insurance coverages required by this agreement.

H. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

I. Prior to commencement of commercial operations, Grantee or its contractors or Permittees shall furnish to Grantor a certificate of insurance, dated and signed by the stated, authorized agent for the insuring company or companies, containing a representation that coverage of the types listed above is provided with the required limits and the stated endorsements.

J. In addition to the above requirement for commercial operations, all persons using said easement and right-of-way for any purpose shall obtain and maintain a policy of Automobile Liability Insurance in a form generally acceptable in the State of Montana and customary in the area of said right-of-way.

K. Any contractor working for Grantee shall be required to maintain the insurance coverages required of Grantee set forth in this Section 14. Any such contractor shall be required to provide Grantor with a Certificate of Insurance meeting the requirements of this Section 14 prior to commencing any work on or in the Easement area.

L. The parties agree to meet as needed to review and revise the limits of insurance coverage set forth in this Section 14.

15. Indemnification.

A. Grantee shall defend, indemnify and hold harmless Grantor, its officers, employees and agents from and against any claims, demands, or actions for damages to property or injury to persons or other damages to persons or entities arising out of or resulting from any intentionally wrongful or negligent act on the part of Grantee, its officers, employees and agents in the exercise of the rights granted herein.

B. Rights and Immunities. In consideration of the terms and conditions of this Easement, Grantor and Grantee rely upon all of the rights and immunities against liability to the full extent of applicable state law, and any other applicable provisions of law, including but not limited to Montana Code Annotated Title 2, Chapter 9.

16. Liens. Grantee shall keep Grantor's property free from liens arising out of the activities of Grantee and shall promptly discharge any such liens that are asserted.

17. Taxes. Grantee shall pay all taxes and/or assessments that may become chargeable against the easement granted herein, arising from Grantee’s activities, use, and improvements, if separately assessed by statute.

18. Spill Prevention. Grantee further agrees to adhere to all state and federal laws governing the reporting and cleanup of fuel, oil, and hazardous waste spill. Additionally, the Grantee is required to report all spills to Grantor and is required to have spill kits on site and available for clean-up. Spill kits shall be of size and scope to be sufficient to handle all types and volumes of fuel, oil or hazardous waste as may be present on the site during operations. Spill kits must be maintained in a functional state at all times. The Grantee shall be trained in fuel spill clean-up and reporting requirements of Montana.

19. Fire Suppression/Control. Each time it enters upon the easement area for such purposes as allowed under this Easement, Grantee agrees to prevent and suppress fires on or in the vicinity of the easement area and agrees to immediately notify Grantor of any fires occurring on or near the easement area. Grantee further agrees to comply with all state and federal fire laws and restrictions. Grantee agrees to maintain adequate fire suppression equipment and personnel on site to control fires resulting from Grantee activities. Grantee further agrees to indemnify and hold Grantor harmless from any damages, costs, expenses, claims or causes of action, including attorney's fees and costs, which result from fires caused by the activities of Grantee. Grantor shall have the right at any time and, in its sole discretion, to suspend or condition certain access by Grantee or close its lands to all use by Grantee and others because of fire, fire risk or other emergency reasons.

20. Public Use. Nothing herein shall be construed as a grant of easement or right of way to the public or for public use or use by Grantee in a manner other than specifically identified and readily apparent as associated with the operation of the municipal water supply.

21. Compliance with Applicable Laws and Regulations. Grantee agrees to comply with all applicable laws, regulations, rules and secure such permits, license or authorizations which now exist or hereafter may be required as a result of exercise of any or all rights granted herein.

22. Termination. If Grantee decides this Easement or a portion thereof, is no longer needed to supply water to the Water System of the Grantee, Grantee shall furnish a release in recordable form to Grantor evidencing termination of Grantee's rights to utilize such right of ways or right of way segments.

23. Default. If Grantor determines Grantee has violated the terms of this Easement, Grantor shall give written notice to Grantee of the specific violation and demand corrective action sufficient to cure the violation. If Grantee fails to cure the violation within thirty (30) days after receipt of notice from Grantor, or under circumstances where the violation cannot reasonably be cured within a thirty (30) period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally corrected, Grantor may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and for any other relief to which Grantor may be entitled, including monetary damages.

24. Rights and Obligations. This grant of Easement shall be recorded at the Flathead County Clerk and Recorder's office, is binding upon the heirs, executors, personal representatives, assigns and successors of the parties hereto and shall run with the land.

25. Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Montana. Venue shall be Flathead County, Montana.

26. Integration. Old Easement (First Creek) – The terms of this easement supersede the 1912 Easement between the parties.

27. Acknowledgement of Conservation Easement. The parties acknowledge that this Easement has been entered into pursuant to the Haskill Basin Watershed Deed of Conservation Easement between Grantor, Grantee, and the Montana Department of Fish, Wildlife and Parks (the "Conservation Easement"); and in the event of any inconsistency between the Conservation Easement and this Easement, the Conservation Easement shall control.

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

GRANTOR:
F.H. STOLTZE LAND & LUMBER COMPANY

By: _____

Name: _____

Title: _____

GRANTEE:
CITY OF WHITEFISH

By: _____

Name: John M. Muhlfeld

Title: Mayor

ACKNOWLEDGMENT

STATE OF)
)ss
COUNTY OF)

On this ____ day of _____, 2015, before me personally appeared John M. Muhlfeld and to me known to be the Mayor of the City of Whitefish that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the limited partnership and that the seal affixed is the seal of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of
Residing in
My Commission Expires:
Printed Name:

ACKNOWLEDGMENT

STATE OF MONTANA)
)ss
COUNTY OF FLATHEAD)

On this ____ day of _____, 2010, before me personally appeared _____, to me known to be the _____ of F.H. Stoltze Land & Lumber Company, the Montana corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

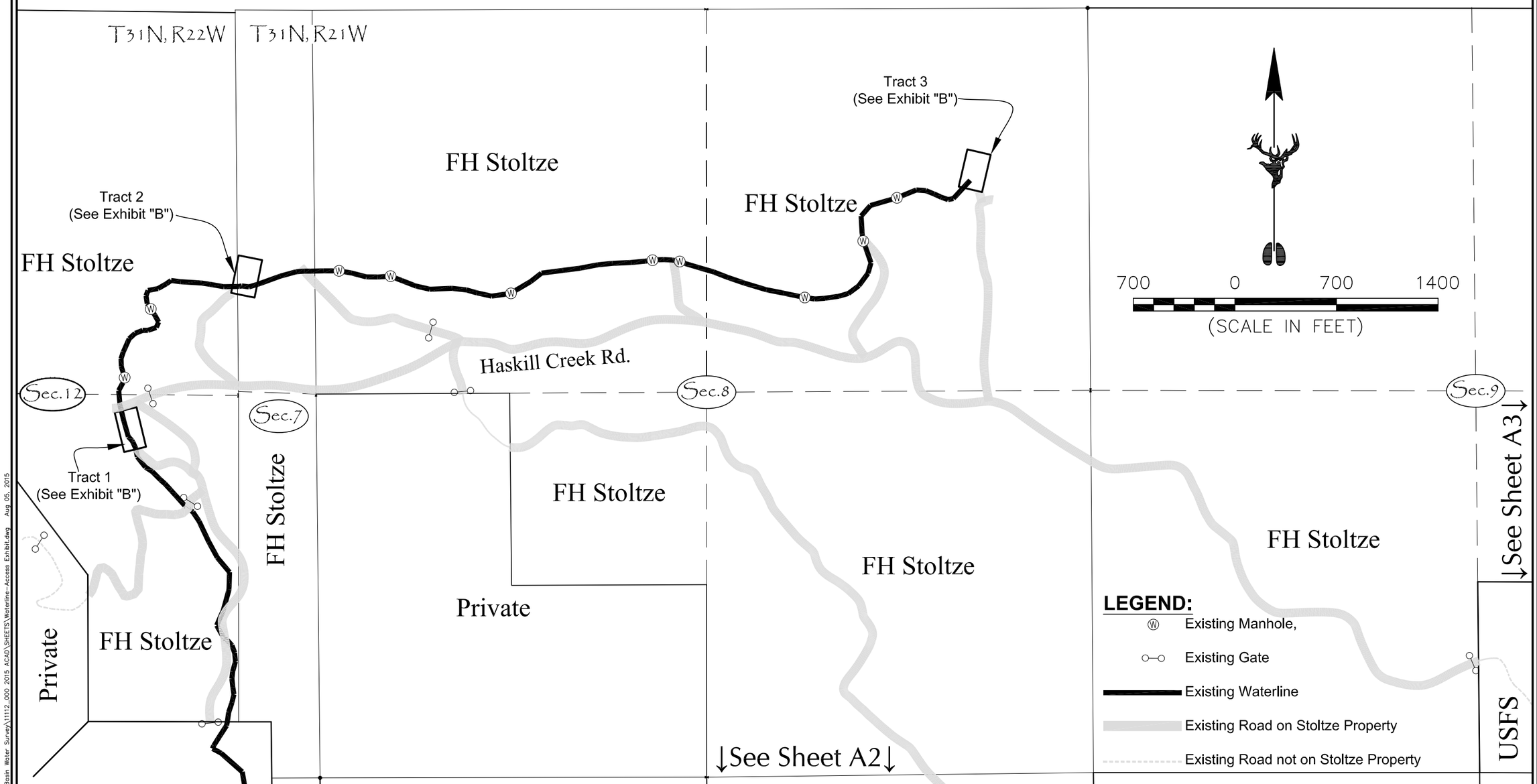
_____
Notary Public in and for the
State of Montana
Residing in _____
My Commission Expires: _____
Printed Name: _____

EXHIBIT "A"

LOCATED IN SECTIONS 7, 8, 9, 16, 17, 19, 20, & 22, T31N, R21W AND SECTION 12, T31N, R22W, P.M.,M.

FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT WATERLINE AND ACCESS EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



Legal Description - Access & Utility Easement - F.H. Stoltze Land & Lumber Company

An access and utility easement, in Sections 7, 8, 9, 16, 17, 18, 19, 20, & 22, Township 31 North, Range 21 West and Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County Montana, more particularly described as follows:

A 40 foot wide strip of land, 20 feet on either side of the center of the waterline in place, beginning at the 3rd creek intake; thence through the 2nd creek intake and the 1st creek screen, terminating at the boundary of the Grantors Real Property, with a length of 9,530 feet, more or less, containing 7.69 acres, more or less.

Together with a 30 foot wide strip of land, 15 feet on either side of the center of the road system in place, beginning on Haskill Basin Road and Northwoods Drive, and terminating at Private, United States Forest Service and State of Montana lands, with a length of about 45,000 feet, more or less, containing 30.99 acres, more or less.

RPA

SYM	REVISION	BY	APPR.	DATE

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
Waterline-Access Exhibit — FILE

PROJECT TITLE
City of Whitefish
Haskill Basin Water Supply
Whitefish, Montana

SHEET TITLE
Waterline & Access Easement Exhibit on FH Stoltze Land

SHEET
A1

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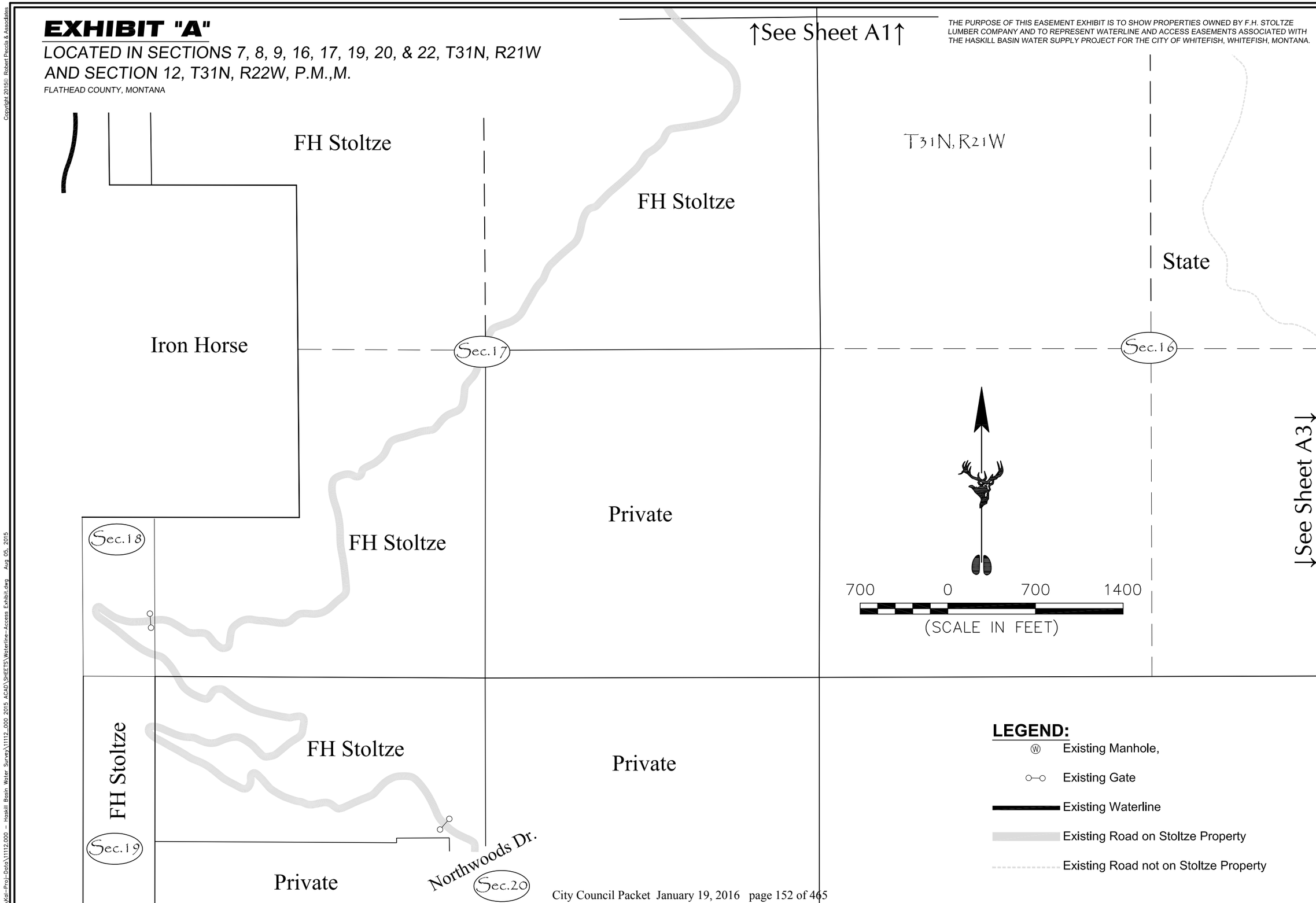
Copyright 2015©: Robert Peccia & Associates

EXHIBIT "A"

LOCATED IN SECTIONS 7, 8, 9, 16, 17, 19, 20, & 22, T31N, R21W AND SECTION 12, T31N, R22W, P.M.,M.

FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT WATERLINE AND ACCESS EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



SYM	REVISION	BY	APPR.	DATE

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
Waterline-Access Exhibit — FILE

PROJECT TITLE
City of Whitefish Haskill Basin Water Supply
Whitefish, Montana

SHEET TITLE
Waterline & Access Easement Exhibit on FH Stoltze Land

SHEET
A2

K:\Cal-Proj-Data\11112.000 – Haskill Basin Water Survey\11112_000 2015 ACAD\SHEETS\Waterline-Access Exhibit.dwg Aug 05, 2015

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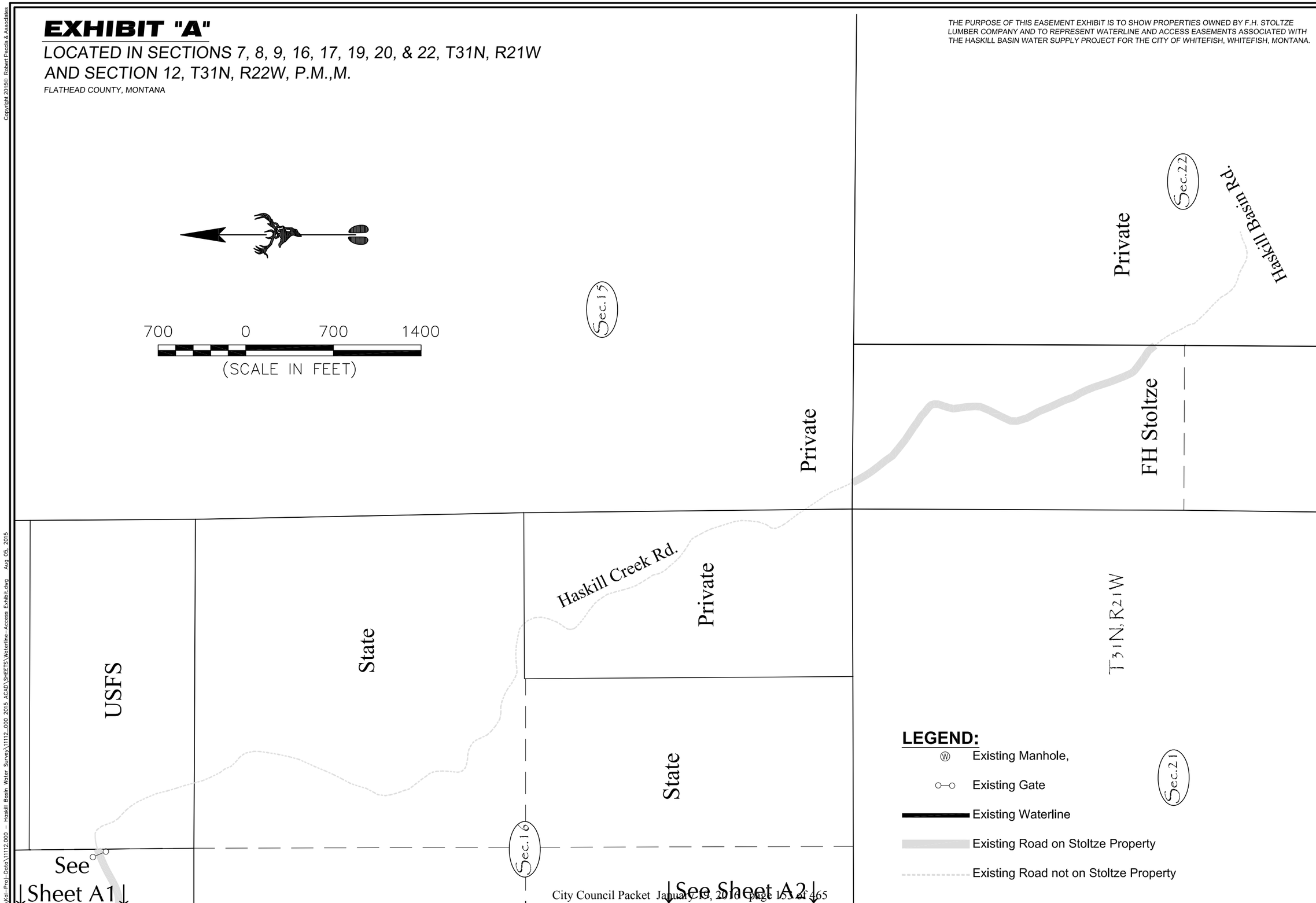
EXHIBIT "A"

LOCATED IN SECTIONS 7, 8, 9, 16, 17, 19, 20, & 22, T31N, R21W AND SECTION 12, T31N, R22W, P.M.,M.

FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT WATERLINE AND ACCESS EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



SYM	REVISION	BY	APPR.	DATE

RPA

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
Waterline-Access Exhibit — FILE

PROJECT TITLE
City of Whitefish
Haskill Basin Water Supply
Whitefish, Montana

SHEET TITLE
Waterline & Access Easement Exhibit on FH Stoltze Land

SHEET
A3

K:\Kal-Proj-Data\11112.000 - Haskill Basin Water Survey\11112.000 2015 ACAD\SHEETS\Waterline-Access Exhibit.dwg Aug 05, 2015

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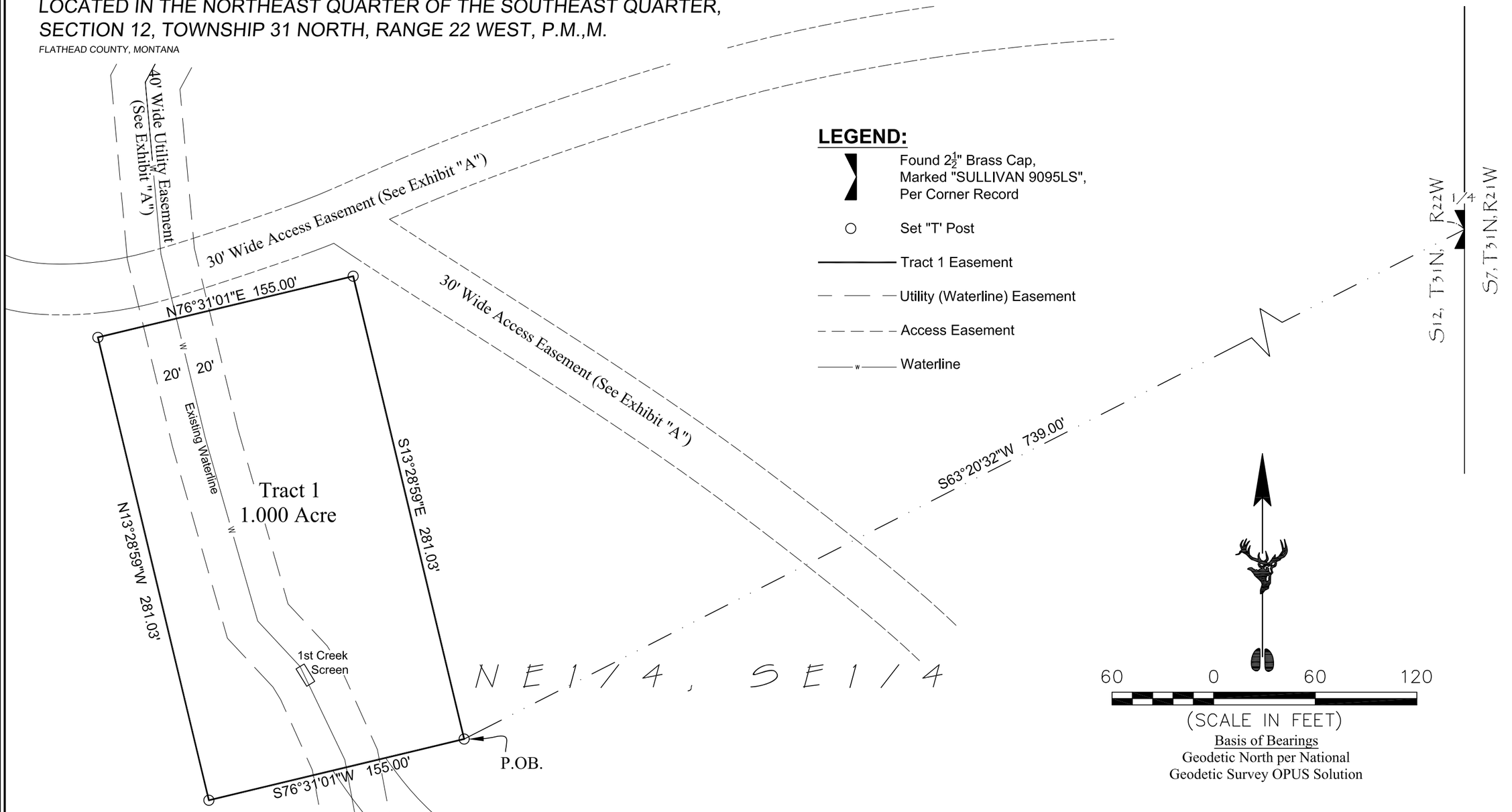
EXHIBIT "B"

LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.,M.

FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT UTILITY EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



Legal Description - Tract 1 Easement - F.H. Stoltze Land & Lumber Company

A portion of the Northeast Quarter of the Southeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M., being more particularly described as follows:

Commencing at the northeast corner of the Northeast Quarter of the Southeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M.; thence South 63°20'32" West 739.00 feet to the True Point of Beginning; thence South 76°31'01" West 155.00 feet; thence North 13°28'59" West 281.03 feet; thence North 76°31'01" East 155.00 feet; thence South 13°28'59" East 281.03 feet to the point of beginning, containing 1.000 acre of land, more or less.

SYM	REVISION	BY	APPR.	DATE

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
1st-Creek-Easement — FILE

PROJECT TITLE: **City of Whitefish Haskill Basin Water Supply** *Whitefish, Montana*

SHEET TITLE: **Utility (Water) Easement on FH Stoltze Land**

SHEET: **B1**

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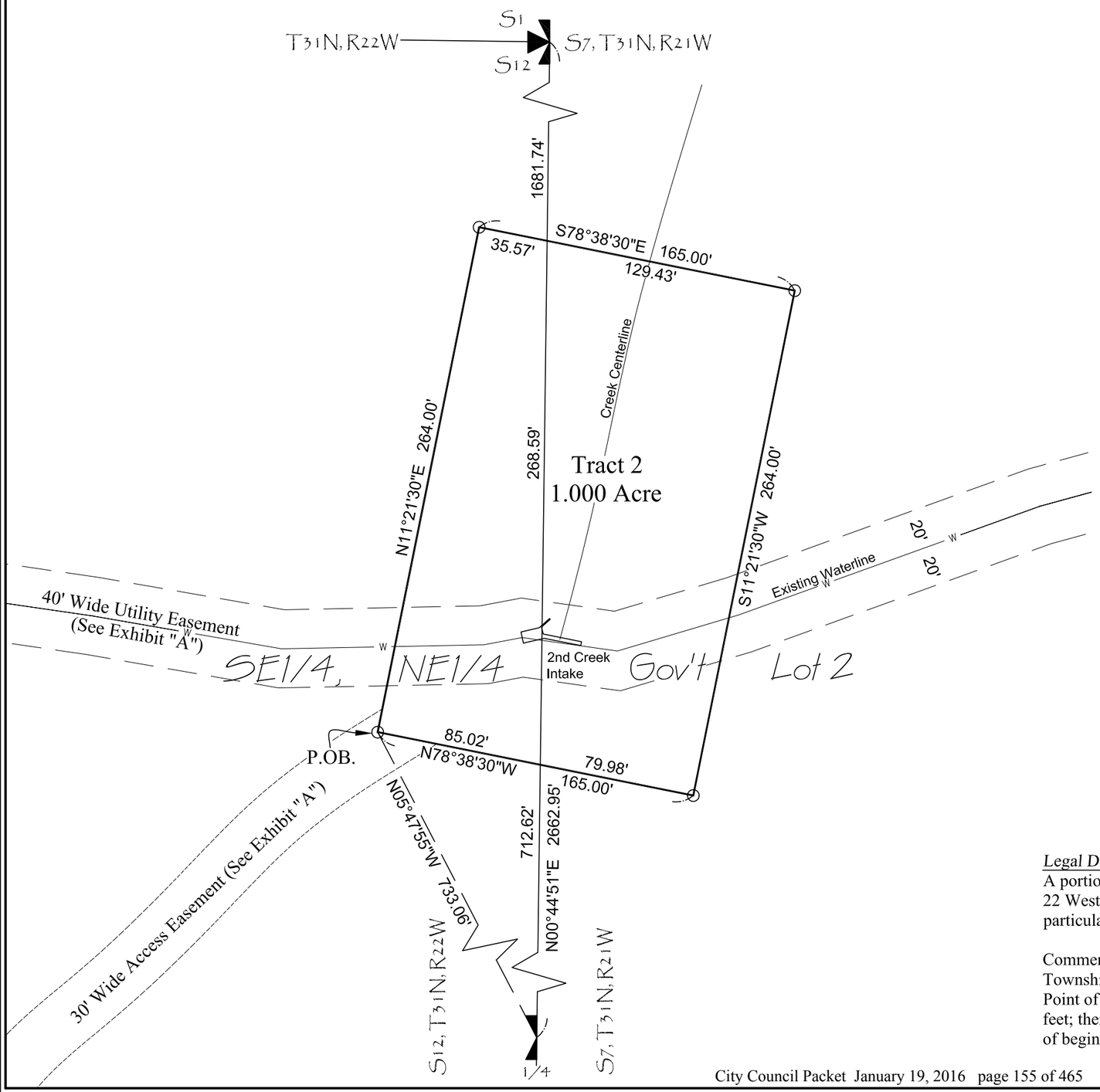
EXHIBIT "B"

LOCATED IN THE SE1/4 NE1/4, SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST & GOV'T LOT 2, SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.,M.

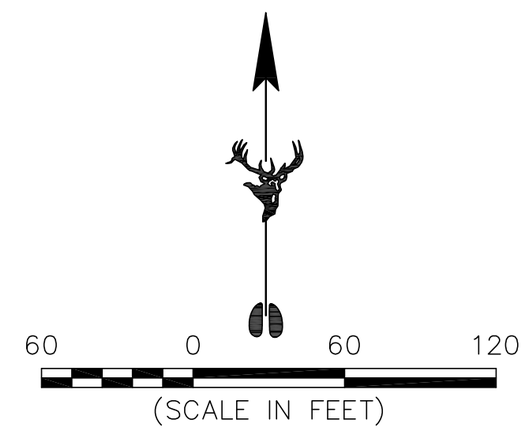
FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT UTILITY EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



LEGEND:

- Found $2\frac{1}{2}$" Brass Cap, Marked "SULLIVAN 9095LS" as Section Corner to Sections 1 & 12, Per Corner Record.
- Found $2\frac{1}{2}$" Brass Cap, Marked "SULLIVAN 9095LS" as Quarter Corner to Section 12, Per Corner Record.
- Set "T' Post
- Tract 1 Easement
- Utility (Waterline) Easement
- Access Easement
- Waterline



Basis of Bearings
Geodetic North per National
Geodetic Survey OPUS Solution

Legal Description - Tract 2 Easement - F.H. Stoltze Land & Lumber Company

A portion of the Southeast Quarter of the Northeast Quarter, Section 12, Township 31 North, Range 22 West and Government Lot 2, Section 7, Township 31 North, Range 21 West, P.M.M., being more particularly described as follows:

Commencing at the southeast corner of the Southeast Quarter of the Northeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M.; thence North 05°47'55" West 733.06 feet to the True Point of Beginning; thence North 11°21'30" East 264.00 feet; thence South 78°38'30" East 165.00 feet; thence South 11°21'30" West 264.00 feet; thence North 78°38'30" West 165.00 feet to the point of beginning, containing 1.000 acre of land, more or less.

SYM	REVISION	BY	APPR.	DATE

J. Smith	DESIGNED BY
J. Smith	DRAWN BY
R. Mitchell	CHECKED BY
August 2015	DATE
11112.000	PROJECT NO.
2nd-Creek-Easement	FILE

PROJECT TITLE
City of Whitefish Haskill Basin Water Supply
Whitefish, Montana

SHEET TITLE
Utility (Water) Easement on FH Stoltze Land

SHEET
B2

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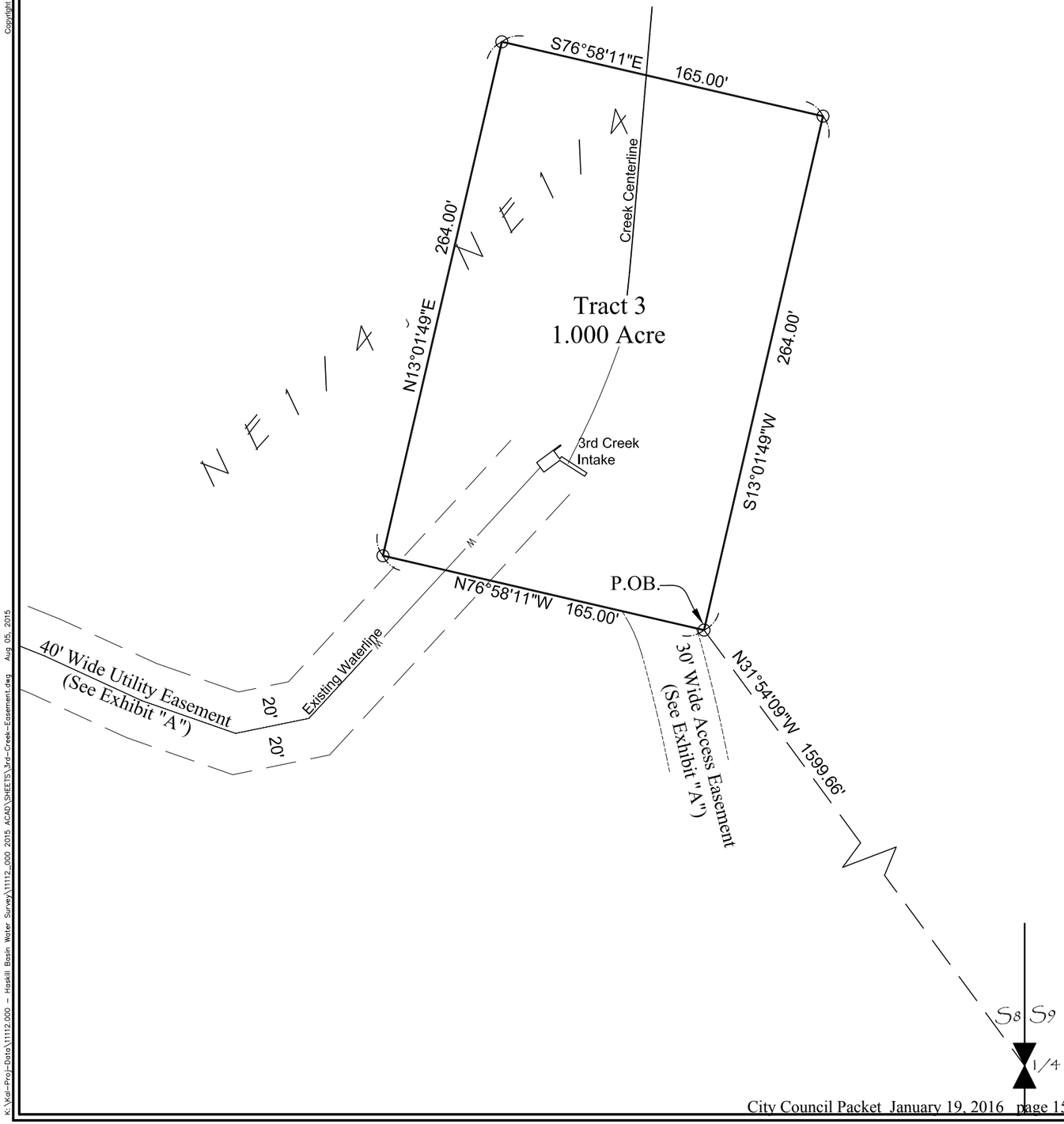
EXHIBIT "B"

LOCATED IN THE SORTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.,M.

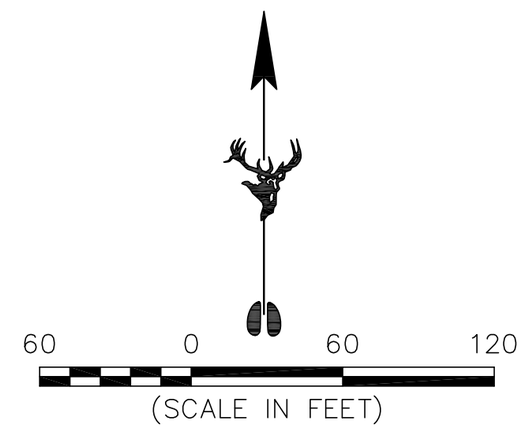
FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT UTILITY EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



LEGEND:

- Found $2\frac{1}{2}$" Diameter Iron Pipe with a $3\frac{1}{4}$" Diameter B.L.M. "1979"
- Set "T' Post
- Tract 1 Easement
- Utility (Waterline) Easement
- Access Easement
- Waterline



Basis of Bearings
Geodetic North per National
Geodetic Survey OPUS Solution

Legal Description - Tract 3 Easement - F.H. Stoltze Land & Lumber Company

A portion of the Northeast Quarter of the Northeast Quarter, Section 8, Township 31 North, Range 21 West, P.M.M., being more particularly described as follows:

Commencing at the southeast corner of the Northeast Quarter, Section 8, Township 31 North, Range 21 West, P.M.M.; thence North 31°54'09" West 1599.66 feet to the True Point of Beginning; thence North 76°58'11" West 165.00 feet; thence North 13°01'49" East 264.00 feet; thence South 76°58'11" East 165.00 feet; thence South 13°01'49" West 264.00 feet to the point of beginning, containing 1.000 acre of land, more or less.

SYM.	REVISION	BY	APPR.	DATE

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
3rd-Creek-Easement — FILE

PROJECT TITLE: **City of Whitefish Haskill Basin Water Supply** *Whitefish, Montana*

SHEET TITLE: **Utility (Water) Easement on FH Stoltze Land**

SHEET: **B3**

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, authorizing the transfer of two parcels of land in Haskill Basin to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system.

WHEREAS, F.H. Stoltze Land & Lumber Company is the owner of approximately 3,020 acres of land located in Haskill Basin, Flathead County, Montana; and

WHEREAS, the Haskill Basin watershed currently comprises approximately ninety percent (90%) of the source drinking water for the City of Whitefish; and

WHEREAS, the City of Whitefish has an existing water system including pipelines, gates, head gates, gate valves, and other associated structures located in and on the land owned by F.H. Stoltze Land & Lumber Company in Haskill Basin; and

WHEREAS, the City of Whitefish has relied on F.H. Stoltze Land & Lumber Company to voluntarily provide access to its municipal water supply and to its water system for many years; and

WHEREAS, the City of Whitefish has approved the purchase of a conservation easement over the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company and a Multi-Resource Management Plan ("MRMP") governing the management of the land; and

WHEREAS, in 1907, the State Lumber Company, now F.H. Stoltze Land & Lumber Company, deeded an approximately one and one-tenth acre parcel of land located within the boundaries of the Haskill Basin conservation easement to the City of Whitefish to be used as an intake site for the City's water system; and

WHEREAS, in 1929, the City was deeded an approximately two acre parcel of land located within the boundaries of the Haskill Basin conservation easement; and

WHEREAS, the City of Whitefish's water intakes are not actually located on either of the two parcels of land located within the boundaries of the Haskill Basin conservation easement that are now owned by the City; and

WHEREAS, in conjunction with the purchase of the Haskill Basin conservation easement, the City and F.H. Stoltze Land & Lumber Company negotiated the terms of a "Municipal Water System Easement and Road Access Easement" which preserves in perpetuity the City's right to access, use, inspect, construct, maintain, and repair its water system located on F.H. Stoltze Land & Lumber Company's land and will protect and preserve the City's water supply; and

WHEREAS, in exchange for the 41.68 acres of perpetual easements granted to the City of Whitefish under the "Municipal Water System Easement and Road Access Easement," and to consolidate ownership of the property within the conservation easement and ensure it is all subject

to the MRMP, the City agreed to transfer its two parcels of land to F.H. Stoltze Land & Lumber Company; and

WHEREAS, Montana has established a statutory process and procedure pursuant to §7-8-4201, MCA, for the transfer of municipal property which requires a resolution of the City Council of the City of Whitefish passed by a two-thirds vote of all members of the Council; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants for the City to transfer its two parcels of land located within the Haskill Basin conservation easement to F.H. Stoltze Land & Lumber Company in order to provide compensation for the 41.68 acres of perpetual easements granted to the City under the "Municipal Water System Easement and Road Access Easement," to consolidate ownership of the property within the conservation easement, and ensure all property within the conservation easement is subject to the MRMP.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the transfer of its two parcels of property located within the Haskill Basin conservation easement to F.H. Stoltze Land & Lumber Company.

Section 2: The City Manager is authorized and directed to execute all documents necessary in connection with the transfer of the City's two parcels of land located within the Haskill Basin conservation easement, including the warranty deeds attached hereto as Exhibits A and B.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

Return to:
F.H. Stoltze Land & Lumber Co.
600 Halfmoon Road
Columbia Falls, Montana 59912

WARRANTY DEED

FOR VALUABLE CONSIDERATION, including approximately 7.69 acres of a water system and maintenance easement and approximately 30.99 acres of a road system easement, the receipt of which is acknowledged, the CITY OF WHITEFISH, a Montana municipal corporation, of P.O. Box 158, Whitefish, Montana 59937 ("Grantor") hereby grants to F.H. Stoltze Land & Lumber Company, of 600 Halfmoon Road, Columbia Falls, Montana 59912 (“Grantee") all its right, title and interest in the following real property:

That portion of the northeast quarter of the southeast quarter of Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, described as follows:

Tract 2A as shown on Certificate of Survey No. 16877.

The complete legal description of the property is attached hereto as Exhibit A.

SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of record.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies and assessment and except U.S Patent reservations, restrictions, easements of record, and easements visible upon the premises and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated this ___ day of _____, 2016.

CITY OF WHITEFISH, a
municipal corporation

By: _____
Charles C. Stearns, City Manager

STATE OF Montana)
) ss.
COUNTY OF Flathead)

This instrument was acknowledged before me on _____ by Charles C. Stearns.

_____
Notary Public for the State of Montana
Residing at:
My Commission Expires:

EXHIBIT A

Beginning at a point in the northeast quarter of the southeast quarter of Section 12, Township 31 North, Range 22 West, Montana Meridian, bearing south eighty-four degrees thirty-seven minutes west, one thousand one hundred twenty and five tenths feet from the quarter corner on the east line of said section twelve; running thence south forty-seven degrees one minute west, fifty feet to the northwest corner; thence south forty-two degrees fifty-nine minutes east two hundred forty-eight feet to the southwest corner; thence north forty-seven degrees one minute east one hundred feet to the southeast corner; thence north forty-two degrees fifty-nine minutes west two hundred forty-eight feet to the northeast corner; thence south forty-seven degrees one minute, west, fifty feet to the place of beginning.

Return to:
F.H. Stoltze Land & Lumber Co.
600 Halfmoon Road
Columbia Falls, Montana 59912

WARRANTY DEED

FOR VALUABLE CONSIDERATION, including approximately 7.69 acres of a water system and maintenance easement and approximately 30.99 acres of a road system easement, the receipt of which is acknowledged, the CITY OF WHITEFISH, a Montana municipal corporation, of P.O. Box 158, Whitefish, Montana 59937 ("Grantor") hereby grants to F.H. Stoltze Land & Lumber Company, of 600 Halfmoon Road, Columbia Falls, Montana 59912 (“Grantee") all its right, title and interest in the following real property:

A tract of land particularly described as follows:

Beginning at the southwest corner of the northeast quarter of the northeast quarter of Section 8, Township 31 North, Range 21 West, P.M.M., Flathead County, Montana, thence running East forty rods; thence North eight rods; thence West forty rods and thence South eight rods to the point of beginning.

SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of record.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies and assessment and except U.S Patent reservations, restrictions, easements of record, and easements visible upon the premises and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated this ___ day of _____, 2016.

CITY OF WHITEFISH, a
municipal corporation

By: _____
Charles C. Stearns, City Manager

STATE OF Montana)
) ss.
COUNTY OF Flathead)

This instrument was acknowledged before me on _____ by Charles C. Stearns.

_____
Notary Public for the State of Montana
Residing at:
My Commission Expires:

May 14, 2012

John Wilson, PE
City of Whitefish
Public Works Director
PO Box 158
Whitefish, MT 59937

Subject: Draft Certificates of Survey's (COS's) and Easements for Haskill Basin (RPA Job # 11112.000)

John:

RPA has completed the preliminary survey and research for the Haskill Basin Water Intakes and Water Line Project. We have drafted three (3) COS's and an Easement Exhibit. We would like to have a meeting with the following people to review these documents:

City of Whitefish:
- John Wilson
- Greg Acton
- Mary VanBuskirk
- Dave Taylor

RPA:
- Ryan Mitchell
- Jason Smith

Below is a narrative of what we have found, regarding record information and what we have proposed with the three COS's and the Easement Exhibit.

The City of Whitefish owns two (2) tracts of land in Haskill Basin. The first is in the 1st Creek Area and the second is in the 3rd Creek Area.

1st Creek Screen Box: Deed per Book 170, Page 151. This is for the 1st Creek Intake, which is now a screen box. The deed calls for 1.10 acres, but is actually only 0.569 acre (248' x 100'). It is proposed to perform a Boundary Line Adjustment here so that the property is centered on the screen box and rotated to the waterline.

HELENA - CORPORATE OFFICE
P.O. Box 5653
825 Custer Avenue
Helena, MT 59604
(406) 447-5000
FAX (406) 447-5036

KALISPELL
P.O. Box 5100
102 Cooperative Way, Suite 300
Kalispell, MT 59903
(406) 752-5025
FAX (406) 752-5024

2nd Creek Intake: No deed or easement exists. It is proposed to create a utility site of 1.00 acre, centered on the 2nd Creek Intake. This will be exempt from subdivision review, but needs zoning acceptance.

3rd Creek Intake: Deed per Book 201, Page 607. The City owns a 2.00 acre site. The 3rd Creek Intake is not located within the deeded property. It is proposed to perform a Boundary Line Adjustment here so that a new 1.00 acre piece of property is centered on the 3rd Creek Intake. The remaining 1.00 acre will be transferred back to Stoltz Land and Lumber, and be used to offset the 1.00 acre that was created for the 2nd Creek Intake. There will be no change in total ownership acreage.

Access and Utility Easement: No existing access or utility easement could be found from 3rd Creek to 1st Creek and from 1st Creek to Iron Horse. Exhibit "A" shows the location of the waterline and existing roads in the area. We need to review both the map and the easement language to make sure it is what the City wants.

Please review and we look forward to discussing this project with you.

Thank you and please call if you have any questions.

Sincerely
ROBERT PECCIA & ASSOCIATES

Ryan Mitchell, PE, PLS
Office Manager

K:\Kal-Proj-Data\11112.000 - Haskill Basin Water Survey\D. Correspondence\1. Client\120514jw.Ltr - Draft COS's & Easement For Review.Docx

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, approving the terms of a public recreational trail easement with F.H. Stoltze Land & Lumber Company.

WHEREAS, in 2004, following two years of study and public input, the City of Whitefish with the Montana Board of Land Commissioners and Flathead County adopted the Whitefish Area School Trust Lands Neighborhood Plan; and

WHEREAS, in 2005, the City of Whitefish and Whitefish Legacy Partners initiated the Whitefish Neighborhood Plan's recommendation to establish a recreational trail system to connect various State Trust Land parcels and adjacent public and private parcels to create a trail corridor encircling the greater Whitefish area; and

WHEREAS, in 2006, the State of Montana, through the DNRC, the City of Whitefish, and other partners developed the Trail Runs Through It Master Plan to guide the development and execution of the conservation, recreation and revenue-generation concepts of the Whitefish Trail; and

WHEREAS, the City of Whitefish and Whitefish Legacy Partners entered into a Memorandum of Understanding in 2011 to create the Legacy Lands Advisory Committee, responsible for the development of the Whitefish Trail, utilization of the Whitefish Trail Grant Fund, and investment of the donated funds with the Whitefish Community Foundation to accomplish the larger comprehensive objectives of the Neighborhood Plan, and the Whitefish Trail Operations Committee, responsible for overseeing the Whitefish Trail and advising the Legacy Lands Advisory Committee on the planning, design, construction and management of the Whitefish Trail; and

WHEREAS, the Whitefish Trail continues to be a community-driven project supported by unprecedented partnerships with the goal of planning, designing, constructing, and maintaining a public trail system; and

WHEREAS, the City of Whitefish has approved the purchase of a conservation easement over approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company and the terms of the "Haskill Basin Watershed Deed of Conservation Easement;" and

WHEREAS, the "Haskill Basin Watershed Deed of Conservation Easement" provides that F.H. Stoltze Land & Lumber Company will grant the City of Whitefish a permanent easement for a non-motorized public recreational trail and may, in the future, transfer fee ownership of the trail corridor to the City; and

WHEREAS, in accordance with the terms of the "Haskill Basin Watershed Deed of Conservation Easement," and to carry out the goals of the Neighborhood Plan, the City of Whitefish and F.H. Stoltze Land & Lumber Company negotiated a "Public Recreational Trail Easement," attached hereto as Exhibit A, under which F.H. Stoltze Land & Lumber Company agrees grant to the City a non-exclusive easement and right-of-way over its land for the construction, installation, maintenance, repair, improvement and use of an extension of the Whitefish Trail;

WHEREAS, to secure public access in perpetuity, the "Public Recreational Trail Easement" provides that F.H. Stoltze Land & Lumber Company may donate fee ownership to the extension of the Whitefish Trail to the City of Whitefish within four years and, if it does not do so, fee ownership shall transfer automatically to the City at the expiration of the four-year period; and

WHEREAS, Whitefish Legacy Partners will fundraise and pay for the design, construction and maintenance of the extension of the Whitefish Trail; and

WHEREAS, it is in the best interests of the City of Whitefish and its inhabitants for the City to approve the terms of the "Public Recreational Trail Easement" and accept the easement granted therein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the terms of the "Public Recreational Trail Easement" attached hereto as Exhibit A and accepts the easement granted therein.

Section 2: The City Manager is authorized and directed to execute the "Public Recreational Trail Easement" and is authorized to execute any additional documents necessary for acceptance of the easement granted therein.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

Recording Requested By
F.H. Stoltze Land & Lumber Co.
And
City of Whitefish
When Recorded Mail To:
F.H. Stoltze Land & Lumber Co.
PO Box 1429
Columbia Falls, MT 59912

PUBLIC RECREATIONAL TRAIL EASEMENT

THIS EASEMENT, dated this ____ day of _____, 2016, from F.H. STOLTZE LAND & LUMBER COMPANY, a Montana corporation, whose address is P.O. Box 1429, Columbia Falls, Montana 59912, hereinafter called "Grantor" or "Stoltze," to City of Whitefish, whose address is P.O. Box 158, Whitefish, MT 59937, hereinafter called "Grantee."

WITNESSETH:

Grantor, for and in consideration of $1.00, and other valuable consideration received by Grantor, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee and its respective successors and assigns, subject to existing easements and valid rights, a non-exclusive easement and right-of-way for the construction, installation, maintenance, repair, improvement and use of a non-motorized recreational trail for the benefit of the general public. The easement is along and across lands located in Flathead County, Montana and described as follows:

> A public recreational trail system easement, in Sections 7, 8, 17, 18, Township 31 North, Range 21 West and Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County Montana, consisting of:
>
> A 20 foot wide strip of land, 10 feet on either side of the center of the trail with a length of 20,064 feet, more or less, containing 9.10 acres, more or less, as shown on Exhibit "A".

The "Trail System" described herein is located approximately as shown as the solid lines on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Easement Area"). Parties agree to accept the centerline of the trail as constructed as the true centerline of the easement. The Easement Area shall include any and all improvements.

The above grant and conveyance is subject to all matters of public record as of the date of this Easement.

The parties hereto agree that the rights hereinabove granted shall be subject to the following terms and conditions:

1. Definitions.

a. For the purposes of this Easement, the words and terms "center line," "portion," "segment," "right of way," "trail" and "trail corridor" shall refer to the plural as well as the singular.

b. Maintenance. maintenance shall be construed to mean inspection, repair, construction, reconstruction, replacement, use and maintenance of the Trail System.

c. Trail System. is defined as the trail corridors, trailhead, trail related amenities such as steps, railings, bridges, culverts, benches, and small unlighted trail signs for the use and benefit of the general public.

2. Purpose. The Easement granted herein is for the purpose of constructing, using, maintaining, repairing and improving a non-motorized recreational trail for the use and benefit of the general public.

3. Design, Construction, Maintenance and Management. Grantee is responsible for the design, construction, maintenance and management of the Trail System. Trail design, construction, maintenance and management activities will take place in accordance with the standards and guidelines outlined in the "Haskill Basin Whitefish Trail Management and Operations Plan" (Trail Plan). Parties will develop and execute the Trail Plan concurrently with the execution of this Easement. Such Trail Plan will be periodically reviewed and updated as necessary as agreed to by both parties.

Soil, rock and vegetative resources may be removed, cut or otherwise disturbed only to the extent reasonably necessary to accommodate the purpose of this Easement.

Vehicular access may be required to facilitate trail related activities and to respond in case of emergency in the Easement Area.

Prior to the installation of the trail within the Easement Area, Grantee must (a) provide Grantor with at least 30 days' notice of its intent to install; (b) mark the approximate location of the trail and consider any reasonable adjustment of the trail location suggested by Grantor; (c) obtain and provide

copies to Grantor all certificates evidencing liability insurance coverage as provided in Section 13 herein; and (d) obtain all permits and approvals required for construction or installation activities and provide copies of such to Grantor prior to construction activities.

4. Prohibited Uses. The following shall be prohibited in the Easement Area:

a. Blocking gates or roadways;

b. Firewood, bough or tree cutting without prior permission of the Grantor;

c. Use of any motorized vehicle or similar mechanical means of locomotion, including automobiles, motorcycles, snowmobiles, or other all-terrain vehicles, except as necessary for the construction and maintenance of the trail, or in case of emergency;

d. Smoking of tobacco or other substances, or lighting of fires of any kind;

e. Trapping or hunting with firearms, bow and arrows, or any other form of arms or weapons within the Easement Area;

f. Discharging of firearms within the Easement Area;

g. Overnight camping or sleeping;

h. Dumping or littering; and

i. Charging a fee for use by the general public.

5. Improvements. The parties acknowledge that Grantor has no obligation to construct any improvements of any type or kind to the Easement Area or assist Grantee in the exercise of any rights granted hereunder except as specifically set forth in this Easement. Grantor may maintain existing roads and other improvements that exist within the Easement Area. Construction of new improvements or roads within the Easement Area by Grantor is allowed upon notice to Grantee and so long as such construction does not unreasonably interfere with Grantee's use of the Easement Area.

6. Temporary Closure. Grantor has the right to temporarily restrict public access on limited portions of the Easement Area in case of emergency, including extreme fire danger and for safety purposes during active timber harvesting or other permitted management activities that may pose a hazard to recreational users. Unless otherwise agreed by the parties, such period of closure shall not exceed 5 days. Requests for longer term closures should be accompanied with alternative routes for trail users. Prior to closure, Grantor must provide 30 days' advance notice to Grantee and an opportunity to comment, except in case of emergency, in which case notice shall be provided to Grantee as soon thereafter as possible.

7. Relocation by Grantor. Upon prior notice to Grantee, Grantor reserves unto itself, its successors and assigns, the right at its expense to relocate the easement and right-of-way granted herein subject to the condition that Grantor will allow Grantee to design and construct an alternate route that provides a similar type and quality of recreational experience as existed prior to such relocation and does not change the point of interconnection on the boundaries of the parties' respective properties.

8. Relocation By Grantee: If the Grantee loses the right to use roads or easements over private property as shown in Exhibit A, Grantor and Grantee agree to work together to find or build an alternative or re-routed road and easement to provide the Grantee similar access that it enjoyed prior to such loss of road or easement access, with Grantee being responsible for the expenses of road and easement relocation and reconstruction.

9. Right of Way Crossing. Grantor reserves for itself and its successors and assigns, the right to use, cross and recross the easement and right of way for any and all purposes, in any manner that will provide for the safety of Trail System users and will not unreasonably interfere with the rights granted to Grantee hereunder. Grantor agrees (a) to plan such crossings in a manner that have a minimal interference with trail use (b) to provide prior notice to Grantee of its plan; and (c) to restore any damage to the Trail System promptly after each crossing at its own expense. At all locations where the easement crosses Grantor's roads Grantee shall appropriately sign trail and provide trail design elements that recognize that road users have right of way over trail users.

10. Third Parties. Grantor may grant to third parties, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such party shall be subject to the terms and conditions of this Easement and shall not unreasonably interfere with the rights granted hereunder.

11. Right-of-Way Timber. Grantor reserves to itself all timber now on or hereafter growing within said easement and right-of-way. Grantee shall have the right to cut timber growing within the easement and right of way herein granted to the extent necessary for constructing, reconstructing, and maintaining the right of ways. Timber so cut, unless otherwise agreed, shall be cut into logs of lengths specified by Grantor and decked along the right of ways for disposal by Grantor.

12. Organized or Commercial Use. Grantee agrees to notify Grantor 30 days prior to all organized or commercial uses of the Easement Area. Grantee shall provide proof of adequate insurance coverage equal to, but not limited to the insurance requirements described in Section 14, protecting Grantor from liability that may arise from such uses.

13. Exercise of Rights. Grantee may permit its contractors, licensees, and their agents, hereinafter individually referred to as "Permittee" and collectively referred to as "Permittees," to exercise the rights granted to it herein provided that all terms and conditions of this easement shall apply to all "Permittees."

14. Insurance. Prior to any use of the easement and right of way granted herein, Grantee, if available to Grantee, and each of its Permittees shall obtain and, during the term of such use, maintain a policy of liability insurance in a form and by an insurance company acceptable to Grantor and providing the coverages set forth hereinafter in this Section 13. Grantor acknowledges that some of the following coverages may not be available to Grantee as a public entity, and agrees that Grantee shall not be in breach or default of this Easement by virtue of such non-availability. However, the following coverages shall apply to all other Permittees using the Easement Area.

A. Commercial General Liability Insurance to include minimum limits of $1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extension of coverage to include, Products and Completed Operations, , Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire. Additionally, the policy shall not exclude X.C.U. (Explosion, Collapse, or Underground).

B. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles (only in excess of existing insurance for a non-owned, hired and other vehicles), with a combined single limit of $1,000,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

C. Employer's Liability Insurance, for employee bodily injuries and death, with a minimum limit of $500,000 each occurrence. In the event the party obtaining the insurance has no employees, then such party shall not be required to carry Employer's Liability Insurance.

D. Contractors (or Loggers) Broad Form B Property Damage Liability Insurance with a limit of $2,000,000 per occurrence.

E. Worker's Compensation Insurance, with statutory limits as are required by the Workers' Compensation Law in the State in which work is being performed hereunder. No state exemption from workers' compensation insurance as an "owner/executive/partner" is allowed. Grantee and Permittees shall obtain and maintain during the term and any extension hereof, workers' compensation insurance in an amount of not less than statutory limits for any and all of their employees. If the insuring party fails to comply with applicable workers' compensation law during the term of this agreement, then such party shall refrain from exercising its rights under this agreement until the required workers' compensation insurance is obtained. For Permittees that are non-public entities, Workers Compensation and General Liability policy shall have a waiver of subrogation endorsement in favor of Grantor et al, and proof of such endorsement shall be provided to Grantor.

F. Grantor shall be named as an additional insured on all General Liability, Property Damage Liability and Comprehensive Automobile Liability policies both of Grantee for the entire duration of this Easement, and any and all Permittees for as long as they are on or in the Easement Area. The policies specified above shall include endorsements which shall name Grantor, as an additional insured for the duration of the Easement Term. The

additional insured endorsements must be ISO CG 20 10 07 04 and ISO CG 20 37 07 04 or other forms with like wording. Copy of such policies and all endorsements (Additionally Insured (2 forms)) shall be provided to Grantor prior to execution of any activities authorized under this easement. The endorsements shall be stapled to the Certificate of Insurance and shall be provided to Grantor.

G. The policies specified above shall include an endorsement which shall provide that Grantor, at the addresses above, will be given a 30-day written notice prior to cancellation, coverage modification or other material change in the policy. No such cancellation, modification or change shall affect Grantee's obligation to maintain the insurance coverages required by this agreement.

H. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

I. Prior to commencement of commercial operations, Grantee or Permittees shall furnish to Grantor a certificate of insurance, dated and signed by the stated, authorized agent for the insuring company or companies, containing a representation that coverage of the types listed above is provided with the required limits and the stated endorsements.

J. In addition to the above requirement for commercial operations, Grantee and all Permittees shall obtain and maintain a policy of Automobile Liability Insurance in a form generally acceptable in the State of Montana and customary in the area of said right-of-way.

K. Any Permittee working for Grantee shall be required to maintain the insurance coverages required of Grantee set forth in this Section 13. Any such Permittee shall be required to provide Grantor with a Certificate of Insurance meeting the requirements of this Section 13 prior to commencing any work on or in the Easement Area.

L. The parties agree to meet as needed to review and revise the limits of insurance coverage set forth in this Section 13 to provide at least the level of coverage as is provided on the date this Easement is granted taking into account inflation and any increase in risk levels or exposures.

15. Rights and Immunities. In consideration of the terms and conditions of this Easement, Grantor and Grantee rely upon all of the rights and immunities against liability to the full extent of applicable state law, and any other applicable provisions of law, including but not limited to Montana Code Annotated Title 2, Chapter 9.

16. Liens. Grantee shall keep Grantor's property free from liens arising out of the activities of Grantee and shall promptly discharge any such liens that are asserted.

17. Taxes. Grantee shall pay all taxes and/or assessments that may become chargeable against the easement granted herein, arising from Grantee's activities, use, and improvements, if separately assessed by statute.

18. Spill Prevention: Grantee agrees to adhere to all state and federal laws governing the reporting and cleanup of fuel, oil, and hazardous waste spill. Additionally, the Grantee is required to report all spills to Grantor and, during any work by Grantee or its subcontractors on or in the Easement Area, is required to have spill kits on site and available for clean-up. Spill kits shall be of size and scope to be sufficient to handle all types and volumes of fuel, oil or hazardous waste as may be present on the site during operations. Spill kits must be maintained in a functional state at all times. The Grantee shall be trained in fuel spill clean-up and reporting requirements of Montana.

19. Fire Suppression/Control: Each time it enters upon the Easement Area for such purposes as allowed under this Easement, Grantee agrees to prevent and suppress fires on or in the vicinity of the Easement Area and agrees to immediately notify Grantor of any fires occurring on or near the Easement Area. Grantee further agrees to comply with all state and federal fire laws and restrictions. During the period of any work by the Grantee or its subcontractors on or in the Easement Area, Grantee agrees to maintain adequate fire suppression equipment and personnel on site to control fires resulting from Grantee activities. Grantor shall have the right at any time and, in its sole discretion, to suspend or condition certain access by Grantee and others because of fire, fire risk or other emergency reasons.

20. Compliance with applicable laws and regulations: Grantee agrees to comply with all applicable laws, regulations, rules and secure such permits, license or authorizations which now exist or hereafter may be required as a result of exercise of any or all rights granted herein.

21. Termination. If Grantee decides this Easement or a portion thereof, is no longer needed for public recreational purposes, Grantee shall furnish a release in recordable form to Grantor evidencing termination of Grantee's rights to utilize such right of ways or right of way segments.

22. Recreational Use. This Agreement is intended to be interpreted so as to convey to Grantor and Grantee all of the protections from liability provided by the Montana Recreational Use Statute, §§ 70-16-301, -302, MCA, or any other applicable law that provides immunity or limitation of liability.

23. Transfer of Fee Ownership.

Grantor may transfer the underlying fee title to the Easement Area to Grantee at any time from the date of this Agreement to the date four years from the date of this Agreement upon the following terms and conditions:

a. Grantor shall notify Grantee of its intent to transfer the underlying fee title to the Easement Area by delivery of written notice to Grantee;

b. The transfer of the underlying fee title shall be a donation from Grantor to Grantee and Grantee shall pay no consideration for such transfer;

c. Grantee shall be solely responsible for obtaining all governmental approvals of the transfer of the Easement Area (including any subdivision approvals);

d. Grantee shall be solely responsible for all costs and expenses of both Grantor and Grantee in connection with transfer of the Easement Area including transfer taxes, survey expenses, document preparation costs and title company charges. Each party shall pay its own respective attorney fees incurred in connection with the transfer of the Easement Area;

e. All documents related to the transfer of the Easement Area must be acceptable to both Grantor and Grantee;

f. The deed transferring title to the Easement Area:

i. shall be subject to all easements, covenants, conditions, laws, rules and restrictions then in effect;

ii. shall reserve the following rights to the Grantor and/or any of its assigns:

A. The right to cross the Easement Area at any place desired by Grantor including the right to maintain, improve, repair, replace and relocate roads and rights of way for crossings. Provided, however, that such right does not unreasonably interfere with Grantee's use of the Easement Area.

B. The right to temporarily close the Easement Area for safety during timber harvesting and other forest management activities as set forth in Section 6 of this easement.

C. The first right of refusal for any timber to be harvested in the Easement Area.

D. The right to require the Grantee to enforce the prohibitions on use of the Easement Area set forth in Section 4 of the Easement, which prohibitions shall continue as restrictions on the use of the Easement Area.

iii. shall contain a reversionary clause providing that title to the Easement Area shall automatically revert to the Grantor in the event that Grantee acknowledges in writing that it abandons use of the Easement Area as a non-motorized recreational trail for the benefit of the general public.

If Grantor has not transferred the underlying fee title to the Easement Area at the expiration of the four year period set forth above, the fee title shall automatically transfer to the Grantee upon all of the terms and conditions contained in Section 23 hereinabove. The parties agree to cooperate to effectuate the transfer and to execute any and all necessary documents.

Upon the closing of the transfer of the underlying fee title to the Easement Area, this Easement shall be terminated and extinguished except the provisions in Section 4 specifically incorporated by reference in the deed and except for any claims or liabilities that may arise based upon actions or events occurring prior to closing.

24. Default. If Grantor determines Grantee has violated the terms of this Easement, Grantor shall give written notice to Grantee of the specific violation and demand corrective action sufficient to cure the violation. If Grantee fails to cure the violation within thirty (30) days after receipt of notice from Grantor, or under circumstances where the violation cannot reasonably be cured within a thirty (30) period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally corrected, Grantor may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and for any other relief to which Grantor may be entitled, including monetary damages.

25. Rights and Obligations. This grant of Easement shall be recorded at the Flathead County Clerk and Recorder's office, is binding upon the heirs, executors, personal representatives, assigns and successors of the parties hereto and shall run with the land.

26. Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Montana. Venue shall be Flathead County, Montana.

27. Amendment. Any amendment of this Agreement must be in writing, signed by Grantor and Grantee, and recorded at the Flathead County Clerk and Recorder's Office.

28. Severability. If any provision of this Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Easement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Easement invalid, illegal, or unenforceable in any respect.

29. Acknowledgement of Conservation Easement. The parties acknowledge that this Easement has been entered into pursuant to the Haskill Basin Watershed Deed of Conservation Easement between Grantor, Grantee, and the Montana Department of Fish, Wildlife and Parks and in the event of any inconsistency between the Conservation Easement and this Easement, the Conservation Easement shall control. In case of inconsistency between the Trail Plan and this Easement, this Easement shall control.

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

GRANTOR:
F.H. STOLTZE LAND & LUMBER COMPANY

By: _____
Name: _____
Title: _____

GRANTEE:
CITY OF WHITEFISH

By: _____
Name: Charles C. Stearns
Title: City Manager

ACKNOWLEDGMENT

STATE OF _____)
) ss
COUNTY OF _____)

On this ____ day of _____, 2015, before me personally appeared John M. Muhlfeld and to me known to be the Mayor of the City of Whitefish that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the limited partnership and that the seal affixed is the seal of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of
Residing in
My Commission Expires:
Printed Name:

ACKNOWLEDGMENT

STATE OF MONTANA)
)ss
COUNTY OF FLATHEAD)

On this ____ day of _____, 2010, before me personally appeared _____, to me known to be the _____ of F.H. Stoltze Land & Lumber Company, the Montana corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of Montana
Residing in _____
My Commission Expires: _____
Printed Name: _____

HASKILL BASIN PROJECT AREA
PROPOSED WT RECREATION CORRIDOR

3,020 acre Conservation Easement - F H Stoltze
(CE held by FWP & City of Whitefish)

Whitefish Trail Corridor in CE - 3.6 miles

Proposed WT Corridor - south — *City (including BLA) - 0.5 mi. Iron Horse - 1 mi.*

Proposed WT Corridor - north — *WSI main WT - 0.5 mi. WSI one way Nordic trail - 0.5 mi.*

Fence Line - City Water Treatment Plant

City of Whitefish

City of WF Water Treatment Plant

Existing Conservation Easements

N W E S

0 1:5,000 0.35

Miles

For more information, please contact Heidi Van Everen at Whitefish Legacy Partners 406.862.3880, www.whitefishlegacy.org

Winter Sports Inc.

Private

Proposed WT Trailhead

WT Proposed Trail Corridor via WSI, Inc Trail Easement

Lookout Ridge Subdivision

Haskill Creek - 2nd Creek

Haskill Creek - 1st Creek

Haskill Creek

Four Corners

Private Property 120 acres

Private

F H Stoltze Land & Lumber 3,020 acre Conservation Easement

Existing Dispersed Recreation

Iron Horse Subdivision

Private

Viking Creek

Proposed Trail Corridor Iron Horse/City Trail Easement

Iron Horse CE (Flathead Land Trust)

Existing Iron Horse/City Hiking Trail Easement

Proposed Private ~1/2 acre Boundary Line Adjustment to City

Existing Recreation Access (5 car parking)

Private

City of WF

Reservoir Rd

Whitefish Lake

Murdock Easement

Proposed WT Trailhead

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Haskill Basin - Whitefish Trail Corridor Easements

To: Michelle Irelan, Iron Horse Homeowners Association, Inc.
Date: January 11, 2016
From: Heidi Van Everen, Whitefish Legacy Partners
RE: Letter of Intent, City of Whitefish and Iron Horse Homeowners Association, Inc.

The Whitefish Trail is currently comprised of thirty-six (36) miles of single-track trails and gated roads located at Lion Mountain, Skyles Lake, Beaver Lakes, Lupfer, Swift Creek, and Spencer Mountain. The vision of the Whitefish Trail is to create a 55+ mile recreational loop surrounding Whitefish that provides easy access trails and trailheads and connects to the City of Whitefish's paved trail network.

The City of Whitefish, in partnership with Whitefish Legacy Partners, is currently planning a new segment of the Whitefish Trail in Haskill Basin. The proposed trail corridor will be located primarily on the 3,020 acre Conservation Easement on F. H. Stoltze Land and Lumber Company (Stoltze) with connections and trailheads on the north and south. The trail corridor will be comprised of multiple segments and will involve multiple landowners including the City of Whitefish (City), an adjacent private landowner, Iron Horse Homeowners Association, Inc. (Iron Horse) and Whitefish Mountain Resort/Winter Sports, Inc. (WSI) in addition to the Whitefish Trail Easement with Stoltze.

The proposed Iron Horse segment begins at the 2 tract-80 acre parcel owned by Iron Horse (see attached map) with an associated conservation easement held by Flathead Land Trust (September 2000, #200033410560). This parcel currently provides for a Hiking Trail Easement (Flathead County recorded document #199927409020) and the location of the existing trail is shown on Certificate of Survey No. 13988, as recorded with Flathead County. The perpetual, non-exclusive easement is fifteen feet (15') in width over and across the trail for the purpose of constructing, maintaining, and using a hiking trail to be known as the Iron Horse Hiking Trail. The easement allows for a variety of non-motorized recreational activities, may permit public use, requires dogs are leashed at all times, prohibits horses, llamas, and other livestock from using the easement and recognizes that the trail itself is not fifteen feet wide, but that the easement upon which the trail is located shall be 7 ½' on either side of the center of the actual trail as located on the ground.

The parties agree the Hiking Trail Easement document requires modifications including, but not limited to, the following changes:

1. the Hiking Trail Easement should be relocated from the existing surveyed location to the new location as identified by GPS route and shown on the attached map #1 (~ 1.0 mile),

2. the proposed corridor should be known as the Whitefish Trail, and

3. as a result of the addition of the proposed new segments of the Whitefish Trail in Haskill Basin, the City of Whitefish shall abandon any and all rights it may have to use the trail along the eastern edge of the Iron Horse Subdivision property boundary (see attached map) identified in Phase 4 of the Iron Horse Plat as a "15' Hiking Trail Easement" for a public use trail.

The parties agree to work in good faith to modify the existing document as outlined above and Iron Horse is in full support of the development of the new Whitefish Trail in Haskill Basin. Iron Horse recognizes the connector trail corridor through Iron Horse is an important aspect of the Whitefish Trail project in Haskill Basin. All parties understand that any relocation, modification or construction of the Hiking Trail through the portion of Iron Horse Homeowners Association, Inc. property which is subject to the Flathead Land Trust Conservation Easement is subject to Flathead Land Trust's review and approval of the final plans for the trail. All parties further acknowledge that the final relocation of the Hiking Trail through the Iron Horse Homeowners Association Inc. property will be reviewed and approved by the Iron Horse Homeowners Association, Inc. and Flathead Land Trust in spring 2016 prior to construction.

IRON HORSE HOMEOWNERS ASSOCIATION, INC.

ANDREW T. MOSHIER

By: ANDREW T. MOSHIER

Its: PRESIDENT

Date: 1/12/2016

CITY OF WHITEFISH

By:

Its:

Date:

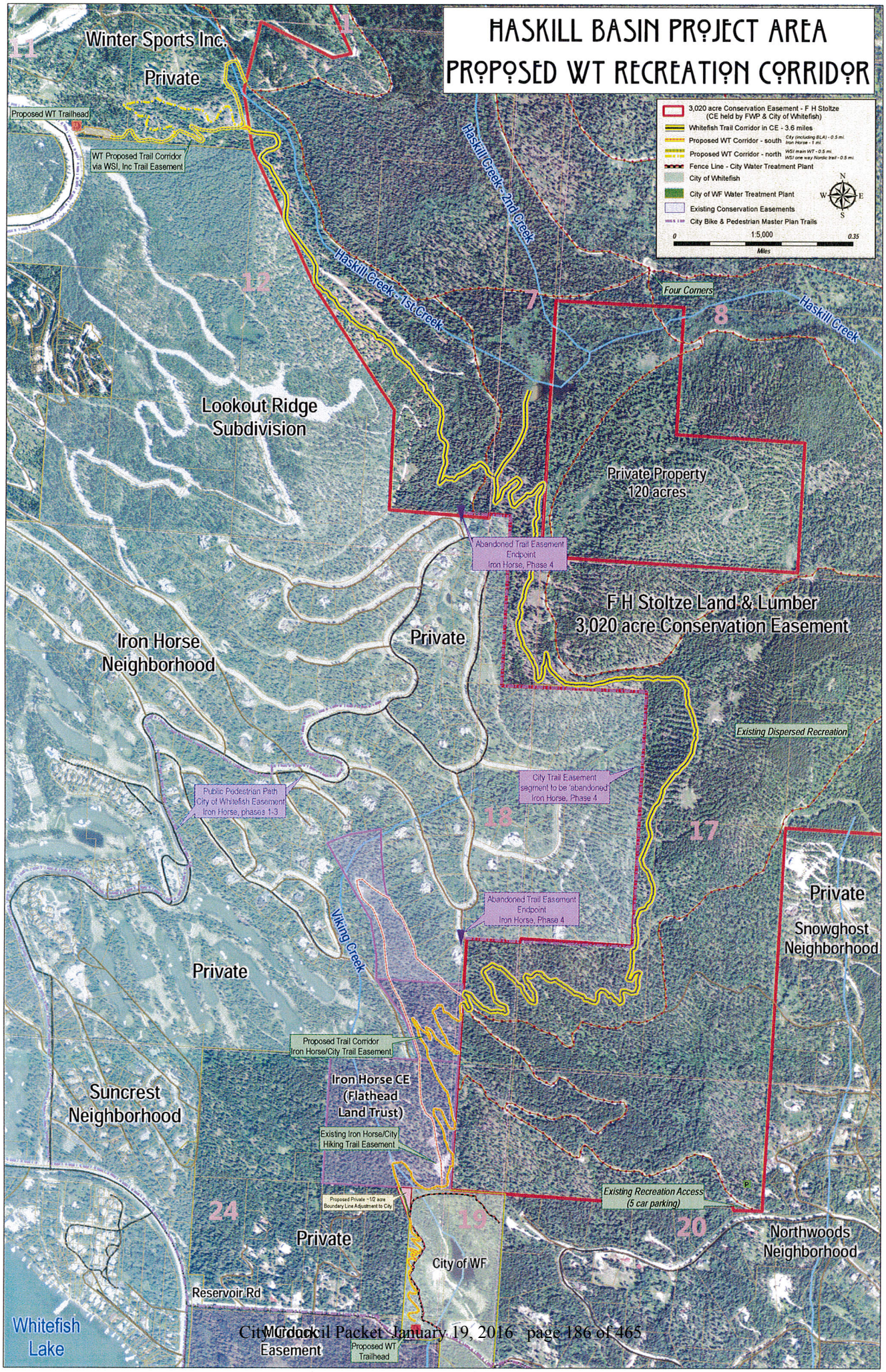
WHITEFISH LEGACY PARTNERS, INC.

Heidi VanKeuren

By: HEIDI VAN KEUREN

Its: EXECUTIVE DIRECTOR

Date: 01.13.2016


HASKILL BASIN PROJECT AREA
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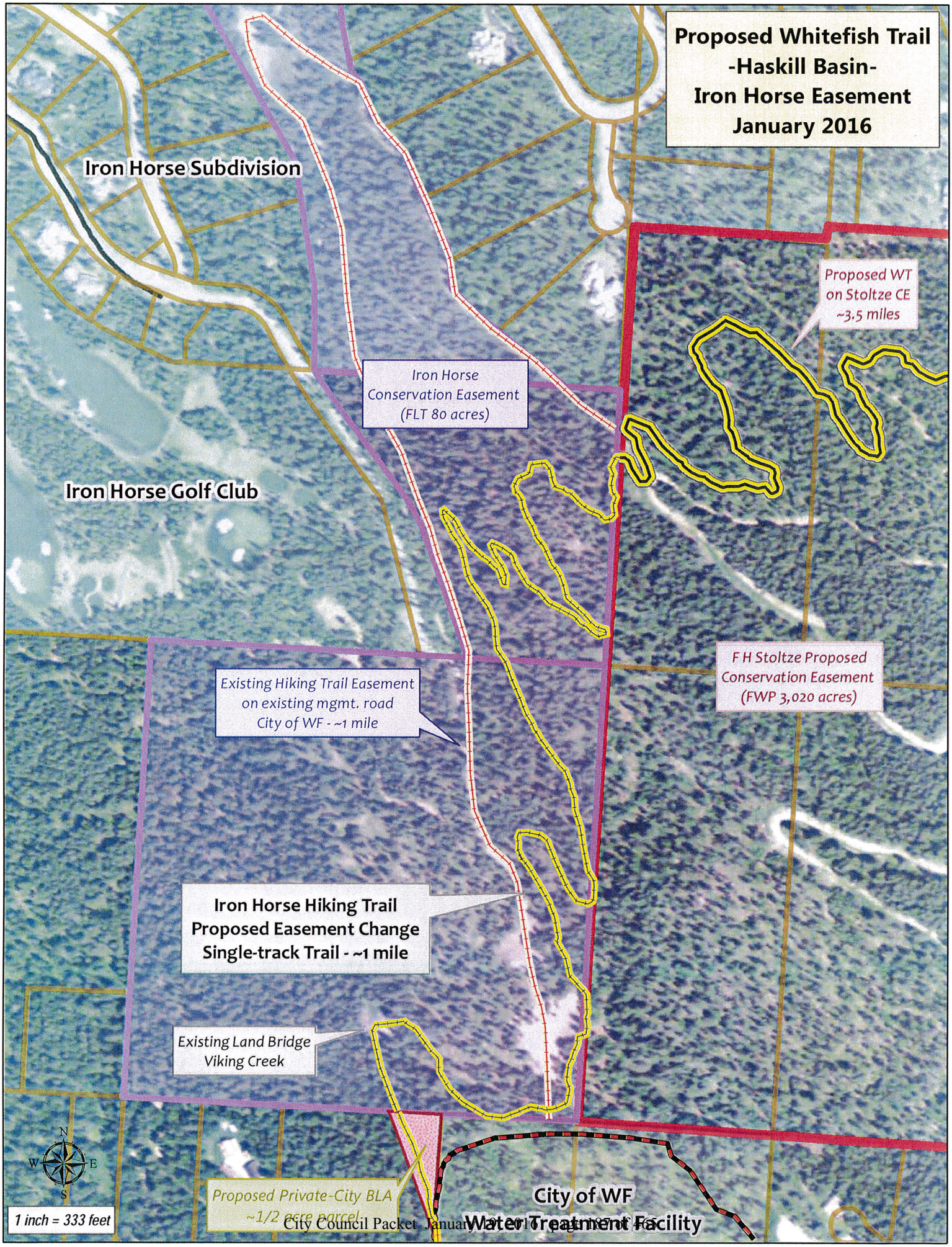
City of Whitefish
City of WF Water Treatment Plant
Existing Conservation Easements
City Bike & Pedestrian Master Plan Trails
1:5,000
Miles
Winter Sports Inc.
Private
Proposed WT Trailhead
WT Proposed Trail Corridor via WSI, Inc Trail Easement
Haskill Creek - 2nd Creek
Haskill Creek - 1st Creek
Four Corners
Haskill Creek
Lookout Ridge Subdivision
Private Property 120 acres
Abandoned Trail Easement Endpoint Iron Horse, Phase 4
F H Stoltze Land & Lumber 3,020 acre Conservation Easement
Iron Horse Neighborhood
Private
Existing Dispersed Recreation
City Trail Easement segment to be 'abandoned' Iron Horse, Phase 4
Public Pedestrian Path (City of Whitefish Easement) Iron Horse, phases 1-3
Abandoned Trail Easement Endpoint Iron Horse, Phase 4
Viking Creek
Private
Snowghost Neighborhood
Private
Proposed Trail Corridor Iron Horse/City Trail Easement
Iron Horse CE (Flathead Land Trust)
Suncrest Neighborhood
Existing Iron Horse/City Hiking Trail Easement
Proposed Private - 1/2 acre Boundary Line Adjustment to City
Existing Recreation Access (5 car parking)
Private
City of WF
Northwoods Neighborhood
Reservoir Rd
Whitefish Lake
Proposed WT Trailhead


Proposed Whitefish Trail
-Haskill Basin-
Iron Horse Easement
January 2016
Iron Horse Subdivision
Iron Horse Golf Club
Iron Horse
Conservation Easement
(FLT 80 acres)
Proposed WT
on Stoltze CE
~3.5 miles
F H Stoltze Proposed
Conservation Easement
(FWP 3,020 acres)
Existing Hiking Trail Easement
on existing mgmt. road
City of WF - ~1 mile
Iron Horse Hiking Trail
Proposed Easement Change
Single-track Trail - ~1 mile
Existing Land Bridge
Viking Creek
Proposed Private-City BLA
~1/2 acre parcel
City of WF
Water Treatment Facility
N
W
E
S
1 inch = 333 feet

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Haskill Basin - Whitefish Trail Corridor Easements

To: Michelle Irelan, Iron Horse Homeowners Association, Inc.
Date: January 11, 2016
From: Heidi Van Everen, Whitefish Legacy Partners
RE: Letter of Intent, City of Whitefish and Iron Horse Homeowners Association, Inc.

The Whitefish Trail is currently comprised of thirty-six (36) miles of single-track trails and gated roads located at Lion Mountain, Skyles Lake, Beaver Lakes, Lupfer, Swift Creek, and Spencer Mountain. The vision of the Whitefish Trail is to create a 55+ mile recreational loop surrounding Whitefish that provides easy access trails and trailheads and connects to the City of Whitefish's paved trail network.

The City of Whitefish, in partnership with Whitefish Legacy Partners, is currently planning a new segment of the Whitefish Trail in Haskill Basin. The proposed trail corridor will be located primarily on the 3,020 acre Conservation Easement on F. H. Stoltze Land and Lumber Company (Stoltze) with connections and trailheads on the north and south. The trail corridor will be comprised of multiple segments and will involve multiple landowners including the City of Whitefish (City), an adjacent private landowner, Iron Horse Homeowners Association, Inc. (Iron Horse) and Whitefish Mountain Resort/Winter Sports, Inc. (WSI) in addition to the Whitefish Trail Easement with Stoltze.

The proposed Iron Horse segment begins at the 2 tract-80 acre parcel owned by Iron Horse (see attached map) with an associated conservation easement held by Flathead Land Trust (September 2000, #200033410560). This parcel currently provides for a Hiking Trail Easement (Flathead County recorded document #199927409020) and the location of the existing trail is shown on Certificate of Survey No. 13988, as recorded with Flathead County. The perpetual, non-exclusive easement is fifteen feet (15') in width over and across the trail for the purpose of constructing, maintaining, and using a hiking trail to be known as the Iron Horse Hiking Trail. The easement allows for a variety of non-motorized recreational activities, may permit public use, requires dogs are leashed at all times, prohibits horses, llamas, and other livestock from using the easement and recognizes that the trail itself is not fifteen feet wide, but that the easement upon which the trail is located shall be 7 ½' on either side of the center of the actual trail as located on the ground.

The parties agree the Hiking Trail Easement document requires modifications including, but not limited to, the following changes:

1. the Hiking Trail Easement should be relocated from the existing surveyed location to the new location as identified by GPS route and shown on the attached map #1 (~ 1.0 mile),

2. the proposed corridor should be known as the Whitefish Trail, and

3. as a result of the addition of the proposed new segments of the Whitefish Trail in Haskill Basin, the City of Whitefish shall abandon any and all rights it may have to use the trail along the eastern edge of the Iron Horse Subdivision property boundary (see attached map) identified in Phase 4 of the Iron Horse Plat as a "15' Hiking Trail Easement" for a public use trail.

The parties agree to work in good faith to modify the existing document as outlined above and Iron Horse is in full support of the development of the new Whitefish Trail in Haskill Basin. Iron Horse recognizes the connector trail corridor through Iron Horse is an important aspect of the Whitefish Trail project in Haskill Basin. All parties understand that any relocation, modification or construction of the Hiking Trail through the portion of Iron Horse Homeowners Association, Inc. property which is subject to the Flathead Land Trust Conservation Easement is subject to Flathead Land Trust's review and approval of the final plans for the trail. All parties further acknowledge that the final relocation of the Hiking Trail through the Iron Horse Homeowners Association Inc. property will be reviewed and approved by the Iron Horse Homeowners Association, Inc. and Flathead Land Trust in spring 2016 prior to construction.

IRON HORSE HOMEOWNERS ASSOCIATION, INC.

Andrew T. Moshier

By: ANDREW T. MOSHIER

Its: PRESIDENT

Date: 1/12/2016

CITY OF WHITEFISH

Charles C. Stearns

By: Charles C. STEARNS

Its: City Manager

Date: 1/19/16

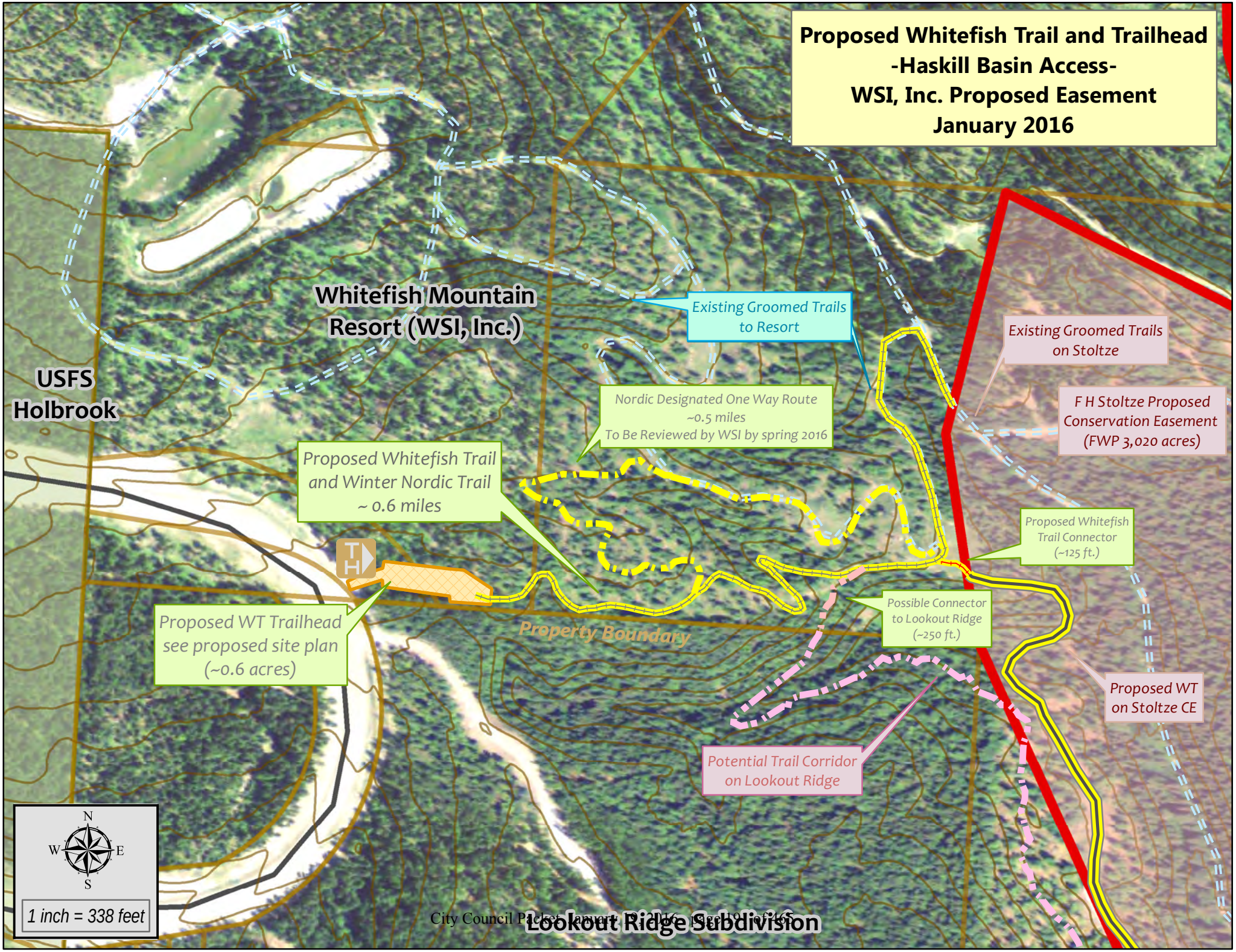
WHITEFISH LEGACY PARTNERS, INC.

Heidi Van Ekeren

By: HEIDI VAN EKEREN

Its: EXECUTIVE DIRECTOR

Date: 01.13.2016


Proposed Whitefish Trail and Trailhead
-Haskill Basin Access-
WSI, Inc. Proposed Easement
January 2016
Whitefish Mountain Resort (WSI, Inc.)
USFS Holbrook
Existing Groomed Trails to Resort
Existing Groomed Trails on Stoltze
F H Stoltze Proposed Conservation Easement (FWP 3,020 acres)
Nordic Designated One Way Route ~0.5 miles To Be Reviewed by WSI by spring 2016
Proposed Whitefish Trail and Winter Nordic Trail ~ 0.6 miles
Proposed Whitefish Trail Connector (~125 ft.)
TH
Proposed WT Trailhead see proposed site plan (~0.6 acres)
Property Boundary
Possible Connector to Lookout Ridge (~250 ft.)
Proposed WT on Stoltze CE
Potential Trail Corridor on Lookout Ridge
N
W
E
S
1 inch = 338 feet
Lookout Ridge Subdivision

HASKILL BASIN PROJECT AREA
PROPOSED WT RECREATION CORRIDOR

3,020 acre Conservation Easement - F H Stoltze
(CE held by FWP & City of Whitefish)

Whitefish Trail Corridor in CE - 3.6 miles

Proposed WT Corridor - south — *City (including BLA) - 0.5 mi. Iron Horse - 1 mi.*

Proposed WT Corridor - north — *WSI main WT - 0.5 mi. WSI one way Nordic trail - 0.5 mi.*

Fence Line - City Water Treatment Plant

City of Whitefish

City of WF Water Treatment Plant

Existing Conservation Easements

N W E S

0 1:5,000 0.35

Miles

For more information, please contact Heidi Van Everen at Whitefish Legacy Partners 406.862.3880, www.whitefishlegacy.org

Winter Sports Inc.

Private

Proposed WT Trailhead

WT Proposed Trail Corridor via WSI, Inc Trail Easement

Lookout Ridge Subdivision

Haskill Creek - 2nd Creek

Haskill Creek - 1st Creek

Haskill Creek

Four Corners

Private Property 120 acres

Private

F H Stoltze Land & Lumber 3,020 acre Conservation Easement

Existing Dispersed Recreation

Iron Horse Subdivision

Private

Viking Creek

Private

Proposed Trail Corridor Iron Horse/City Trail Easement

Iron Horse CE (Flathead Land Trust)

Existing Iron Horse/City Hiking Trail Easement

Proposed Private ~1/2 acre Boundary Line Adjustment to City

Existing Recreation Access (5 car parking)

Private

City of WF

Reservoir Rd

Whitefish Lake

Murdock Easement

Proposed WT Trailhead

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, approving the terms of an agreement with Whitefish Legacy Partners with respect to a Boundary Line Adjustment with Howard A. Murr and Bonnie Murr.

WHEREAS, as part of the Haskill Basin Conservation Easement project with the Montana Fish, Wildlife, & Parks and the F.H. Stoltze Land & Lumber Company, there will be an extension of the Whitefish Trail constructed through the 3,020 acre Conservation Easement lands; and

WHEREAS, there is a need for additional public trailheads for parking and access to this portion of the Whitefish Trail so that neighboring properties to the 3,020 acre Conservation Easement are not unfairly affected by Whitefish Trail users; and

WHEREAS, Whitefish Legacy Partners, as the organization spearheading and helping manage the Whitefish Trail, has a proposed layout of the Whitefish Trail in Haskill Basin which includes a trail along the west side of the City's Water Treatment Plant property and a trailhead on the City's Water Treatment Plant property west of the Water Treatment Plant gate and fence; and

WHEREAS, Whitefish Legacy Partners has obtained Letters of Intent from the Iron Horse Homeowners Association and Winter Sports, Inc. for trails to connect the Whitefish Trail and to connect the Whitefish Trail to this trail along the west side of the City's Water Treatment Plant property; and

WHEREAS, to improve the trail alignment and eliminate the need to relocate a portion of the fence on the City's Water Treatment Plant property, Whitefish Legacy Partners has negotiated and will provide funding of $14,000.00 plus other costs for the City's acquisition of a 0.54 acre parcel of land on the west edge of the City's Water Treatment Plant parcel via a Boundary Line Adjustment exemption subdivision process with Howard A. Murr and Bonnie Murr; and

WHEREAS, the City of Whitefish and Whitefish Legacy Partners have negotiated an Agreement, attached hereto as Exhibit A, under which Whitefish Legacy Partners agrees to provide all funding for the Boundary Line Adjustment with Howard A. Murr and Bonnie Murr and the City of Whitefish agrees to hold fee ownership of the approximately 0.54 acres parcel in perpetuity to accommodate the Whitefish Trail and to designate a portion of its Water Treatment Plant to allow for construction of a trailhead; and

WHEREAS, it is in the best interests of the City of Whitefish and its inhabitants for the City to approve the terms of the Agreement with Whitefish Legacy Partners.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: The City Council hereby approves all of the terms of the Agreement with Whitefish Legacy Partners, attached hereto as Exhibit A.

Section 3: The City Manager or his designated official is authorized and directed to execute the Agreement attached hereto as Exhibit A.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

AGREEMENT

This Agreement, entered into this _____ day of January 2016 by and between the City of Whitefish, a municipal corporation ("City"), and Whitefish Legacy Partners, Inc. ("WLP"), a Montana nonprofit corporation, with respect to the following facts:

A. In 2005, the City and WLP initiated the Whitefish Neighborhood Plan recommendation to establish a recreational trail system to connect various State Trust Land parcels and adjacent public and private parcels to create a trail corridor encircling the greater Whitefish area.

B. The City and WLP currently desire to establish a trailhead and a trail corridor as a new segment of the Whitefish Trail connecting the City's parcel at the Water Treatment Plant on Reservoir Road to the Iron Horse Homeowners Association/Flathead Land Trust parcel to the F H Stoltze Haskill Basin Conservation Easement and connecting to Winter Sports Inc.'s property to the north (attached maps).

C. It is the City's intent to designate a portion of its Water Treatment Plant parcel on Reservoir Road to allow for the construction of a Whitefish Trail trailhead.

D. It is the City's intent to designate a portion of its Water Treatment Plant parcel to allow for the construction of a Whitefish Trail connecting trail corridor.

E. In order to achieve optimal location of the trail corridor, WLP has negotiated with a private property owner for a boundary line adjustment to encompass the trail corridor.

F. It is the parties' intent that the City hold fee ownership of the approximately .54 acres gained from the boundary line adjustment.

G. It is the parties' intent that the City will retain fee ownership in perpetuity and will accommodate the Whitefish Trail corridor in perpetuity.

H. It is the parties' intent that the City will retain the entire .54 acres for recreation, public access, and open space.

I. It is the parties' intent that WLP pay all costs and fees associated with the boundary line adjustment.

NOW THEREFORE, WLP and City agree as follows:

1. The City will designate a portion of its Water Treatment Plant parcel to allow for the construction of a Whitefish Trail trailhead and connecting trail corridor.

2. The City Manager, on behalf of the City, shall execute the Buy-Sell Agreement (with the provision that the agreement is contingent upon the City Council's approval of the offer to purchase), and any additional documents necessary to effectuate the transfer of property.

3. Upon the City Council's approval, the City shall hold fee ownership of the approximately .54 acres gained from the boundary line adjustment in perpetuity to accommodate the Whitefish Trail and provide public access and recreation opportunities.

4. WLP shall pay on behalf of the City all costs and fees associated with the boundary line adjustment, including, but not limited to, the purchase price, the brokerage fee, the title company closing fee, title insurance, survey costs and recording fees.

5. WLP and its partners shall fundraise on behalf of the Whitefish Trail to pay for all design, construction, and annual operations and maintenance for the trail, trailheads, and related recreation amenities.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement on the date set forth above.

CITY OF WHITEFISH

By: _____
Charles C. Stearns, City Manager

WHITEFISH LEGACY PARTNERS, INC.

By: _____
Heidi Van Everen, Executive Director

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, approving a Real Estate Buy-Sale Agreement with respect to a 0.54 acre of land as an addition to the Water Treatment Plant site from a Boundary Line Adjustment with Howard A. Murr and Bonnie Murr.

WHEREAS, as part of the Haskill Basin Conservation Easement project with the Montana Fish, Wildlife, and Parks and the F.H. Stoltze Land and Lumber Company, there will be an extension of the Whitefish Trail constructed through the 3,020 acre Conservation Easement lands; and,

WHEREAS, there is a need for additional public trailheads for parking and access to this portion of the Whitefish Trail so that neighboring properties to the 3,020 acre Conservation Easement are not unfairly affected by Whitefish Trail users; and,

WHEREAS, Whitefish Legacy Partners, as the organization spearheading and helping manage the Whitefish Trail, has a proposed layout of the Whitefish Trail in Haskill Basin which includes a trail along the west side of the City's Water Treatment Plant property and a trailhead on the City's Water Treatment Plant property west of the Water Treatment Plant gate and fence; and,

WHEREAS, Whitefish Legacy Partners has obtained Letters of Intent from the Iron Horse Homeowners Association and Winter Sports Inc. for trails to connect the Whitefish Trail and to connect the Whitefish Trail to this trail along the west side of the City's Water Treatment Plant property; and,

WHEREAS, to improve the trail alignment and eliminate the need to relocate a portion of the fence on the City's Water Treatment Plant property, Whitefish Legacy Partners has negotiated and will provide funding of $14,000.00 plus other costs for the City's acquisition of a 0.54 acre parcel of land on the west edge of the City's Water Treatment Plant parcel via a Boundary Line Adjustment exemption subdivision process with Howard A. Murr and Bonnie Murr; and,

WHEREAS, the entire Real Estate Purchase and Sale Agreement for the $14,000.00 purchase of this 0.54 acre parcel of land is attached hereto as Exhibit "A" and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: The City Council hereby approves all of the terms of the $14,000.00 Buy-Sell Agreement with Howard A. Murr and Bonnie Murr attached as Exhibit "A", and approves the purchase of the property described therein according to such terms.

Section 3: The City Manager or his designated official is authorized and directed to negotiate and to complete the sale of the property identified herein according to the terms of the Buy-Sell Agreement attached as Exhibit "A", and in connection therewith is authorized to execute any additional documents necessary in order to close the sale.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

EXHIBIT A

BUY-SELL AGREEMENT (Land)

This Agreement stipulates the terms of sale of this property. Read carefully before signing. This is a legally binding contract. If not understood, seek competent advice.

Date: 12/17/2015

City Of Whitefish, as ☐ joint tenants with rights of survivorship, ☐ tenants in common, ☒ single in his/her own right, ☐ Other _____ (hereinafter called "Buyer") agrees to purchase, and the Seller agrees to sell the following described real property (hereinafter referred to as "Property"), commonly known as Nhn Resevoir Road 59937 in the City of Whitefish, County of Flathead, Montana, legally described as:

approximately 1/2 +-acre triangular shaped parcel on NE corner of Tr 1C & T7 In NE4 SE4 TR 4B & TR 7A IN SE4 NE4 Exact Legal to be provided by survey before closing date (see attached map)

TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto, uncut timber and non-harvested crops and all improvements thereon except: _____

PERSONAL PROPERTY: The following items of personal property, free of liens and without warranty of condition, are included and shall be transferred by the bill of sale: _____

PURCHASE PRICE AND TERMS:

Total purchase price is Fourteen Thousand U.S. Dollars ($ 14,000.00) payable as follows:

$ 1,000.00 earnest money to be applied at closing.

$ 13,000.00 as additional cash payment, payable on or before closing.

$ _____ balance of the purchase price will be financed as follows:

☐ Conventional ☐ Other Financing ☐ Seller Financing ☐ Assumption ☐ Home equity

CLOSING DATE: The date of closing shall be (date) JANUARY 28, 2016 (the "Closing Date"). The parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date specified. The Buyer and Seller will deposit with the closing agent all instruments and funds necessary to complete the purchase in accordance with this Agreement. If third party financing is required by the terms of this Agreement (including assumptions, contracts for deed, and lender financing), the Closing Date may be extended without amendment by not more than 5 days to accommodate delays attributable solely to such third party financing.

POSSESSION: Seller shall deliver to Buyer possession of the property and allow occupancy:

☐ when the closing agent is in receipt of all required, signed documents and all funds necessary for the purchase; OR

☒ on the date of recording the deed, notice of purchaser's interest, OR

☐ _____

Seller shall provide keys and/or means to operate locks, mailboxes, security systems, alarms, garage door opener(s), and Homeowner's Association facilities, if applicable.

PAYMENT/RECEIPT OF EARNEST MONEY: Buyer agrees to provide Earnest Money in the amount of _____ One Thousand _____ U.S. Dollars ($ _____ 1,000.00) as evidenced by ☐ Cash: OR ■ Check, the receipt of which is acknowledged by the undersigned Broker/Salesperson: ☐ OR. _____

_____ Gerald E Luderman _____ (406) 862-3541 _____

(Broker/Salesperson's Printed Name and Phone Number) (Signature of Broker/Salesperson) Gerald E Luderman

To be signed only of in actual receipt of cash or check

If Buyer fails to pay the Earnest Money as set forth above, Buyer will be in default of this Agreement and Seller shall be entitled to immediately terminate this Agreement and declare any Earnest Money already paid by Buyer to be forfeited.

DEPOSIT OF EARNEST MONEY: All parties to this transaction agree, unless otherwise provided herein, that the earnest monies will be deposited or delivered by the Broker/Salesperson listed above within (_____ 3 _____) business days of the date all parties have signed the Agreement or _____ and such funds will be held in a trust account by Title Co _____

Parties agree that interest accruing on earnest money, if any, while deposited shall be payable to: NA _____

If interest is payable to the Broker it is agreed that sums so paid are consideration for services rendered

The parties authorize the holder of the earnest money to forward to the closing agent, upon its request, all or any portion of the earnest money required to complete the closing of the transaction.

FINANCING CONDITIONS AND OBLIGATIONS:

BUYER'S REPRESENTATION OF FUNDS: Buyer represents that they have sufficient funds for the down payment and closing costs to close this sale in accordance with this Agreement and are not relying upon any contingent source of such funds unless otherwise expressly set forth herein.

LOAN APPLICATION: If Buyer fails to make written application for financing and pay to the lender any required fees, apply for assumption of an existing loan or contract, or initiate any action required for completion of a contract for deed by 5:00 P.M. (Mountain Time) (date) N/A _____ Buyer will be in breach of this Agreement and Seller can exercise Seller's remedies under this Agreement.

CONTINGENCIES: The contingencies set forth in this Agreement or on attached addenda shall be deemed to have been released, waived, or satisfied, and the transaction shall continue to closing, unless, by 5:00 p.m. (Mountain Time) on the date specified for each contingency, the party requesting that contingency has notified the other party or the other party's Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a party has notified the other party on or before the release date that a contingency is not released, waived, or satisfied, the transaction is terminated, and the earnest money will be returned to the Buyer, unless the parties negotiate other terms or provisions.

FINANCING CONTINGENCY:

☐ This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS". If financing cannot be obtained by the Closing Date this Agreement is terminated and the earnest money will be refunded to the Buyer: OR

☐ This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS." Release Date: _____ .

APPRAISAL CONTINGENCY:

☐ Property must appraise for at least ☐ the Purchase Price OR at least ☐ $ _____ . If the Property does not appraise for at least the specified amount, this Agreement is terminated and earnest money refunded to the Buyer unless the Buyer elects to proceed with closing this Agreement without regard to appraised value. Written notice of Buyer's election to proceed shall be given to Seller or Seller's Broker/Salesperson within _____ days of Buyer or Buyer's Broker/Salesperson receiving notice of appraised value: OR

☐ This agreement is contingent upon the Property appraising for at least ☐ the Purchase Price OR at least ☐ $ _____ . Release Date: _____

TITLE CONTINGENCY: This offer is contingent upon Buyer's receipt and approval (to Buyer's satisfaction) of the preliminary title commitment. Release Date: 5 days from Buyer's or Buyer's representative's receipt of preliminary title commitment.

PROPERTY INVESTIGATION: This offer is contingent upon Buyer's independent investigation of the following conditions relating to the property, including but not limited to; covenants, zoning, access, easements, well depths, septic and sanitation restrictions, surveys or other means of establishing the corners and boundaries, special improvement districts, restrictions affecting use, special building requirements, future assessments, utility hook up and installation costs, environmental hazards, airport affected area, road maintenance obligations or anything else Buyer deems appropriate. Buyer agrees that any investigations or inspections undertaken by Buyer or on his/her behalf shall not damage or destroy the property, without the prior written consent of Seller. Further, Buyer agrees to return the property to its original condition and to indemnify Seller from any damage or destruction to the property caused by the Buyer's investigations or inspections, if Buyer does not purchase the property. Release Date: _____

This offer is contingent upon

1. Whitefish City council's approval of this offer to purchase
2. All selling costs including but not limited to: 6% Brokerage fee, Title Co closing fee, Title Insurance, Survey costs & recording fees etc. to be paid by Purchasers.
3. Seller's only charge to be tax proration.

_____ Release Date: _____

This offer is contingent upon _____

_____ Release Date: _____

ADDITIONAL PROVISIONS: _____

CONVEYANCE: The Seller shall convey the real property by Warranty deed, free of all liens and encumbrances except those described in the title insurance commitment, as approved by Buyer. The Seller shall convey the personal property by Bill of Sale.

WATER: All water, including surface water or ground water, any legal entitlement to water, including statements of claim, certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins or any ditches, ditch rights, or ditch easements appurtenant to and/or used in connection with the Property are included with the Property, except _____

Filing or transfer fees will be paid by ☐ Seller, ☒ Buyer, ☐ split equally between Buyer and Seller.

Documents for transfer will be prepared by _____

WATER RIGHT OWNERSHIP UPDATE DISCLOSURE: By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording.

MINERAL RIGHTS: "Mineral rights" is a term used to describe the rights the owner of those rights has to use, mine, and/or produce any or all of the minerals and hydrocarbons including oil, gas, coal, sand, gravel, etc. lying below the surface of property. These mineral rights may be separate from the rights a property owner has for the surface of a property. In some cases, these mineral rights have been transferred to a party other than the property owner and as a result the subsurface mineral rights have been severed from the property owner's surface rights. If the mineral rights have been severed from the surface rights, the owner of the mineral rights has the right to enter the land and occupy it in order to mine the minerals even though they don't own the property. The undersigned Buyer acknowledges and agrees that neither the Seller nor the brokerage firms, brokers and salespersons involved in the transaction anticipated by this Agreement warrant or make any representations concerning the mineral rights, if any, for this Property and that neither the Seller nor the brokerage firms, brokers and salespersons involved in the Buyer's purchase of the Property have conducted an inspection or analysis of the mineral rights to and for the Property.

CLOSING AGENTS FEES: Closing agents fees will be paid by ☐ Seller ☒ Buyer ☐ Equally Shared.

Purchaser Purchaser Purchaser

TITLE INSURANCE: ~~Seller~~, at ~~Seller's~~ expense and from a title insurance company chosen by ~~Seller~~, shall furnish Buyer with an ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an amount equal to the purchase price. Buyer may purchase additional owner's title insurance coverage in the form of "Extended Coverage" or "Enhanced Coverage" for an additional cost to the buyer. It is recommended that buyer obtain details from a title company.

CONDITION OF TITLE: All mortgages, judgements and liens shall be paid or satisfied by the Seller at or prior to closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the property subsequent to the effective date of the preliminary title commitment approved by the Buyer.

SECTION 1031 LIKE-KIND EXCHANGE: If either Buyer or Seller intends for this transaction to be part of a Section 1031 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange provided the cooperating party does not incur any additional liability or cost in doing so. Any party who intends for this transaction to be part of a Section 1031 like-kind exchange may assign their rights under this Agreement to a qualified intermediary or any entity expressly created for the purposes of completing a Section 1031 like-kind exchange, notwithstanding the prohibition against the Buyer's assignment of this Agreement set forth in the "Binding Effect and Non-Assignability" section below.

SPECIAL IMPROVEMENT DISTRICTS: Special Improvement Districts (including rural SIDs), including those that have been noticed to Seller by City/County but not yet spread or currently assessed, if any, will be:

☐ paid off by Seller at closing;
☒ assumed by Buyer at closing; OR
☐ _____

All perpetual SIDs shall be assumed by Buyer.

ASSOCIATION SPECIAL ASSESSMENTS: Any special or non-recurring assessments of any non-governmental association, including those that have been approved but not yet billed or assessed, will be:

☐ paid off by Seller at closing;
☒ assumed by Buyer at closing; OR
☐ _____

PRORATION OF TAXES AND ASSESSMENTS: Seller and Buyer agree to prorate taxes, Special Improvement District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, heating fuel and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance fees, if any, as

of the date of closing unless otherwise agreed and: _____

_____

_____

_____

CONDITION OF PROPERTY: Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller will remove all personal property not included in this sale prior to closing.

NOXIOUS WEEDS DISCLOSURE: Buyers of property in the state of Montana should be aware that some properties contain noxious weeds. The laws of the State of Montana require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an owner of property, contact either your local County extension agent or Weed Control Board.

MEGAN'S LAW DISCLOSURE: Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Volent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information please contact the local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and the probation officers assigned to the area.

BUYER'S REMEDIES: (A) If the Seller fails to accept the offer contained in this Agreement within the time period provided in the BUYER'S COMMITMENT section, all earnest monies shall be returned to the Buyer. (B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Buyer may:

(1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the return of such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated; OR
(2) Demand that Seller specifically perform Seller's obligation under this Agreement; OR
(3) Demand moretary damages from Seller for Seller's failure to perform the terms of this Agreement.

SELLER'S REMEDIES: If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Seller may:

(1) Declare the earnest money paid by Buyer be forfeited; OR
(2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; OR
(3) Demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

BUYER'S AND SELLER'S CERTIFICATION: By entering into this Agreement, each person or persons executing this Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a corporation, partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such entity.

FOREIGN PERSON OR ENTITY: Sellers are not foreign persons, non-resident aliens, foreign corporations, foreign partnerships, foreign trusts, or foreign estates, as those terms are defined in the Internal Revenue Code and the Income Tax Regulations promulgated thereunder. Unless the purchase price of the Property does not exceed $300,000 and the Buyer is purchasing the Property for use by Buyer as a personal residence, Sellers shall deliver to Buyer a certificate of non-foreign status in the form required by the Income Tax Regulations and reasonably acceptable to Buyer and/or Buyer's attorney. In the event Sellers do not deliver the certificate to Buyer at or before closing, Sellers acknowledge and agree that Buyer may withhold ten percent (10%) of the Purchase Price and submit this amount to the Internal Revenue Service, pursuant to Section 1445 of the Internal Revenue Code.

CONSENT TO DISCLOSE INFORMATION: Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller, and Salespersons and their attorneys, agent, and other parties having interests essential to this Agreement, of any and all information reasonably necessary to consummate the transaction described in this Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar documents concerning this property or underlying obligations pertaining thereto.

HAM

CCS
Buyer's Initials

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Seller's Initials

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RISK OF LOSS: All loss or damage to any of the above-described real property or personal property to any cause is assumed by Seller through the time of closing unless otherwise specified.

TIME IS OF THE ESSENCE: Time is of the essence as to the terms and provisions of this agreement.

BINDING EFFECT AND NON-ASSIGNABILITY: This Agreement is binding upon the heirs, successors and assigns of each of the parties hereto; however, Buyer's rights under this Agreement are not assignable without the Seller's express written consent.

ATTORNEY FEES: In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine just.

COMMISSION: The Seller's and/or Buyer's commitment to pay a commission in connection with this transaction is an integral part of this Agreement.

FACSIMILE: The parties agree that a facsimile copy of this Agreement to Sell and Purchase which contains the parties' signatures may be used as the original.

ENTIRE AGREEMENT: This Agreement, together with any attached exhibits and any addenda or amendments signed by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.

COUNTERPARTS: A copy of this document may be executed by each individual/entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete contract between the parties.

EARNEST MONEY DISPUTES: Buyer and Seller agree that, in the event of any controversy regarding the earnest money and things of value held by the Broker, closing agent, or any person or entity holding such money or property, unless mutual written instructions are received by the holder of the earnest money and things of value, Broker or closing agent shall not be required to take any action, but may await any proceedings, or, at Broker's or closing agent's option and sole discretion, may interplead all parties and deposit any monies or things of value in a Court of competent jurisdiction and may utilize as much of the earnest money deposit as may be necessary to advance the cost and fees required for filing such action.

ADDENDA AND/OR DISCLOSURES ATTACHED: (Check all that apply.)

☐ Sale of Buyer's Property ☐ Back-up Offer
☐ Addendum for Additional Provisions
☐ Water Rights Acknowledgement
☐ _____

RELATIONSHIP CONFIRMATION: The parties to this agreement confirm that the real estate licensees identified hereafter have been involved in this transaction in the capacities indicated below and the parties have previously received the required statutory disclosures setting forth the licensees duties and the limits of their obligations to each party:

Gerald (Jerry) Luderman (name of licensee) of Village Square Realty (name of Brokerage company)
is acting as ☐ Seller's Broker/Salesperson; ■ Dual Broker/Salesperson; ☐ Statutory Broker.

Gerald E Luderman (name of licensee) of Village Square Realty (name of Brokerage company)
is acting as ☐ Buyer's Broker/Salesperson; ■ Dual Broker/Salesperson; ☐ Statutory Broker;
☐ Seller's Broker/Salesperson (includes Seller's Sub-Broker or Salesperson).

CCS
Buyer's Initials

Seller's Initials

BUYER'S ACKNOWLEDGMENT: Buyer acknowledges that he/she has examined the real and personal property, that Buyer enters into this Agreement in full reliance upon his/her independent investigation and judgement, that prior verbal representations by the Seller or Seller's agent or representatives do not modify or affect this Agreement, and that by signing this Agreement Buyer acknowledges having read and understood this entire Agreement.

BUYER'S COMMITMENT: I/We agree to purchase the above-described Property on the terms and conditions set forth in the above offer and grant to said Salesperson until (date) December 24, 2015 at 2:00 ☐ a.m. ☒ p.m. (Mountain Time) to secure Seller's written acceptance, whether nor not that deadline falls on a Saturday, Sunday or holiday. Buyer may withdraw this offer at any time prior to Buyer being notified of Seller's written acceptance. If Seller has not accepted by the time specified, this offer is automatically withdrawn.

The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic means in accordance with the Montana Uniform Electronic Transaction Act.

I/WE HEREBY ACKNOWLEDGE receipt of a copy of this Agreement bearing my/our signature(s).

Buyer's Address: P.O. Box 158 City Whitefish

State MT Zip Code 59937

Buyer's Name Printed: City Of Whitefish

Dated this 17th Day of December, 2015 at 3:40 ☐ am ☒ pm (Mountain Time).

Charles C Stearns
(Buyer's Signature) City Manager

(Buyer's Signature)

OFFER PRESENTATION: This offer was presented to the Seller(s) on

Date: Dec 18th 2015 Time 10:45 ☑ am ☐ pm By: JERRY LUDERMAN
(Signature of person presenting the offer)

SELLER'S COMMITMENT: I/We agree to sell and convey to Buyer the above-described Property on the terms and conditions herein above stated. I/We acknowledge a receipt of a copy of this Agreement bearing my/our signature(s) and that of the Buyer(s) named above.

Seller's Address: PO BOX 603 City Whitefish

State MT Zip Code 59937

Seller's Name Printed: Howard A. Murr & Bonnie Murr

Dated this 12-18-15 at 1100 ☑ am ☐ pm (Mountain Time).

Howard A Murr
(Seller's Signature) ~~Howard A.~~ Harold Murr & Bonnie Murr

Bonnie E. Murr
(Seller's Signature)

ACTION TAKEN, IF OTHER THAN ACCEPTANCE:

I/We acknowledge receipt of this Agreement bearing my/our initial(s) and the signature(s) of the Buyer(s) named above.

☐ Rejected by Seller ____ / ____ / ____ (Seller's Initials / Date) ☐ Modified per Attached Counter ____ / ____ / ____ (Seller's Initials / Date)

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

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RELATIONSHIPS/CONSENTS IN REAL ESTATE TRANSACTIONS (COMBINED EXPLANATION AND DISCLOSURE)

Definition of Terms and Description of Duties

A **"Seller Agent"** is obligated to the **Seller** to:

- act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;
- obey promptly and efficiently all lawful instructions of the seller;
- disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;
- safeguard the seller's confidences;
- exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;
- fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and
- comply with all applicable federal and state laws, rules, and regulations.

A **"Seller Agent"** is obligated to the **Buyer** to:

- disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;
- disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;
- act in good faith with a buyer and a buyer agent; and
- comply with all applicable federal and state laws, rules, and regulations.

A **"Buyer Agent"** is obligated to the **Buyer** to:

- act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;
- obey promptly and efficiently all lawful instructions of the buyer;
- disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior existing agency relationship on the part of the buyer agent with another buyer or seller;
- safeguard the buyer's confidences;
- exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the Buyer/Broker agreement;
- fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and
- comply with all applicable federal and state laws, rules and regulations.

A **"Buyer Agent"** is obligated to the **Seller** to:

- disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;
- disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the buyer;
- act in good faith with a seller and a seller agent; and
- comply with all applicable federal and state laws, rules and regulations.

DUAL AGENCY IF A SELLER AGENT IS ALSO REPRESENTING A BUYER, OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER.

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Agency Disclosure, January 2014

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A "Dual Agent" is obligated to a Seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent, except that a dual agent:

- has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent regardless of any confidentiality considerations; and
- may not disclose the following information without the written consent of the person whom the information is confidential:
  - (i) the fact that the buyer is willing to pay more than the offered purchase price;
  - (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;
  - (iii) factors motivating either party to buy or sell; and
  - (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

A **"Statutory Broker"** is not the agent of the Buyer or Seller but nevertheless is obligated to them to:

- disclose to:
  - (i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller; and
  - (ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;
- exercise reasonable care, skill, and diligence in putting together a real estate transaction, and
- comply with all applicable federal and state laws, rules and regulations.

An **"Adverse material fact"** means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; and

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

"Adverse material fact" does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

Disclosures/Consents

The undersigned Broker or Salesperson hereby discloses the relationship(s) as checked below, and the undersigned Seller or Buyer acknowledges receipt of such disclosure(s) and consents to the relationship(s) disclosed.

Check all the Applicable Relationship(s):

☐ Seller Agent
☐ **By checking this box, the undersigned consents to the Broker or Salesperson representing multiple sellers of property that may compete with the Seller's property**

☐ Statutory Broker

☐ Buyer Agent
☐ **By checking this box, the undersigned consents to the Broker or Salesperson representing multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or showing properties in which the buyer is interested to other prospective buyers, at the same time.**

☒ Dual Agent **(by checking this box, the undersigned consents to the Broker or Salesperson acting as a dual representative.)**

Broker and/or Salesperson

Harold R. Muir 12/18/15
Seller Date

Charles C. Stearns City Manager
☐ Seller ☒ Buyer

Bonnie E. Muir 12/17/15
Seller Date

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day

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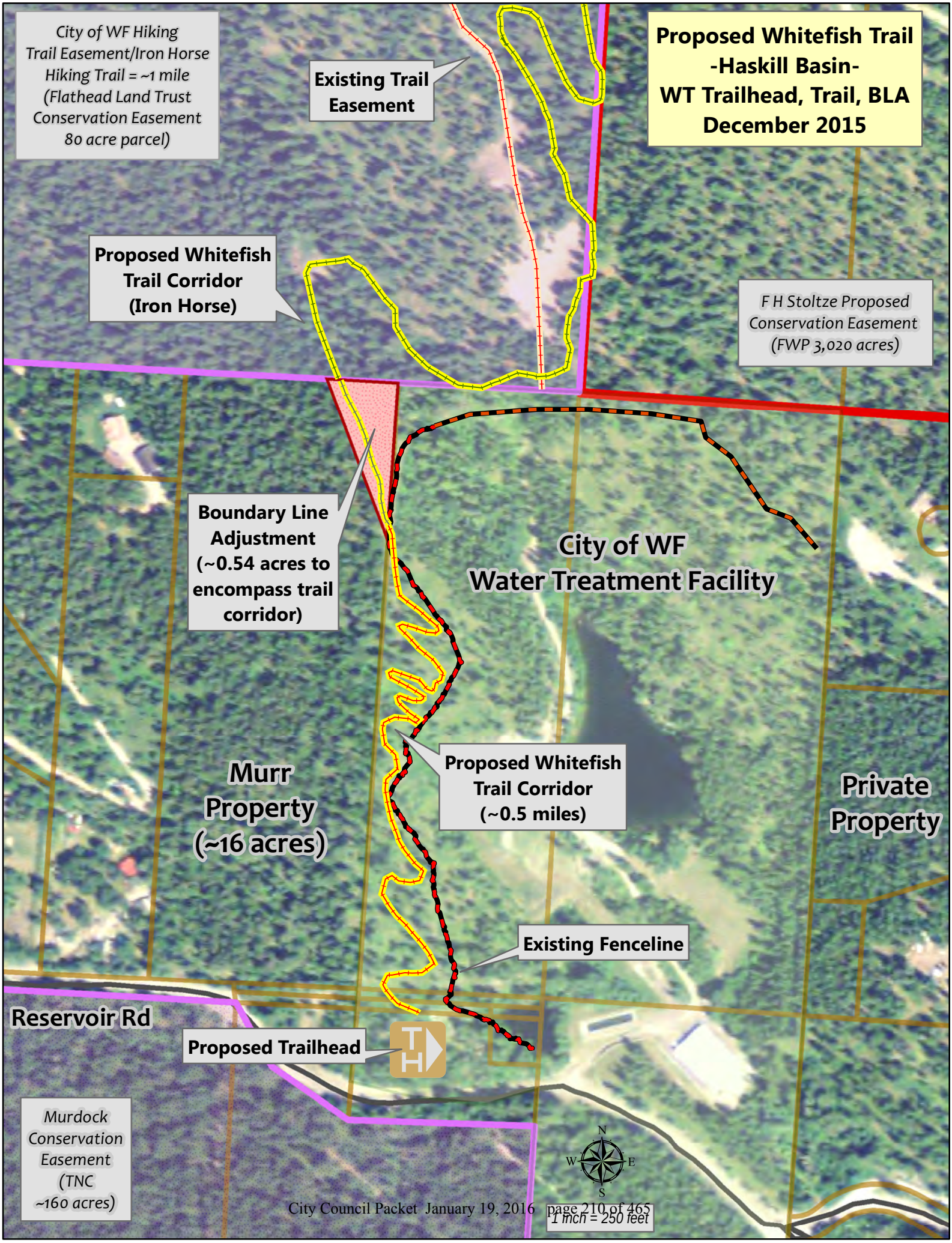
Proposed Whitefish Trail
-Haskill Basin-
WT Trailhead, Trail, BLA
December 2015
City of WF Hiking Trail Easement/Iron Horse Hiking Trail = ~1 mile (Flathead Land Trust Conservation Easement 80 acre parcel)
Existing Trail Easement
Proposed Whitefish Trail Corridor (Iron Horse)
F H Stoltze Proposed Conservation Easement (FWP 3,020 acres)
Boundary Line Adjustment (~0.54 acres to encompass trail corridor)
City of WF Water Treatment Facility
Murr Property (~16 acres)
Proposed Whitefish Trail Corridor (~0.5 miles)
Private Property
Existing Fenceline
Reservoir Rd
Proposed Trailhead
TH
Murdock Conservation Easement (TNC ~160 acres)
N
W
E
S
1 inch = 250 feet

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ORDINANCE NO. 16-___

An Ordinance of the City Council of the City of Whitefish, Montana, amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2.

WHEREAS, the Whitefish Planning & Building Department initiated an effort to amend the Zoning Regulations to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition of bar/lounge in §11-9-2; and

WHEREAS, in response to the proposal to amend Title 11, Chapters 2, 3, and 9 in the Whitefish City Code, the Planning and Building Department prepared Staff Report WZTA 15-04, dated December 10, 2015; and

WHEREAS, at a lawfully noticed public hearing on December 17, 2015, the Whitefish Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA 15-04, invited public comment, and thereafter voted to recommend approval of the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on January 19, 2016, the Whitefish City Council received an oral report and a written report from Planning staff, reviewed Staff Report WZTA 15-04, and letter of transmittal, invited public input, and approved the text amendments attached as Exhibit "A;" and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants to adopt the proposed text amendments.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Staff Report WZTA 15-04 dated December 10, 2015, together with the January 12, 2016 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: Amendments to Whitefish City Code Sections 11-2J-3, 11-2K-3, 11-2L-3, 11-2R-3, 11-3-2A, and 11-9-2, amending the language as provided in the attached Exhibit "A", with insertions shown in red and underlined, and deletions shown in red with strikethrough, are hereby adopted.

Section 4: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 5: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

EXHIBIT "A"

Whitefish City Code Title 11 – Zoning Regulations

Chapter 2 – Zoning Districts

Article J. WB-1 Limited Business District

11-2J-3: CONDITIONAL USES:

- Accessory apartments.
- Automobile and boat repair, limited.
- Automotive service stations.
- Bars/lounges.
- Boarding houses.
- Boat and recreational vehicle storage (see special provisions in section 11-3-22 of this title).
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories.
- Clubs.
- Daycare centers (more than 12 individuals).
- Funeral homes and mortuaries.
- Microbreweries and microdistilleries (located on a parcel with frontage along an arterial).
- Ministorage.
- Schools (K-12).

Article K. WB-2 Secondary Business District

11-2K-3: CONDITIONAL USES:

- Accessory apartments.
- Bars/lounges.
- Boat and recreational vehicle storage (see special provisions in section 11-3-32 of this title).
- Casinos within a casino overlay zone.
- Colleges, business and trade schools.
- Light assembly and light manufacturing.
- Manufactured home subdivisions.
- Microbreweries and microdistilleries.
- Ministorage.
- Personal care facilities when not in association with a hospital in a campus setting.
- Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size).
- Truck stops.
- Veterinary hospital.

Article L. WB-3 General Business District

11-2L-3: CONDITIONAL USES:

- Automotive service stations, with the exception of the Old Town central district and the Old Town railway district.
- Bars/lounges.
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Clubs.
- Daycare centers (more than 12 individuals), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Dwelling groups or clusters, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Microbreweries and microdistilleries.
- Multi-family dwellings in excess of four (4) dwelling units, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Schools (K-12), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Wholesale, light assembly and light manufacturing. Such uses must contain a retail component at ground level fronting a major street if located on Central Avenue between Third and Railway.

Article R. WI Industrial and Warehousing District

11-2R-3: CONDITIONAL USES:

- Automobile and boat sales.
- Automobile wrecking yards (requires state license).
- Heavy equipment sales and rental.
- Heavy industrial manufacturing, fabricating and processing.
- Junkyards (requires state license).
- Microbreweries and microdistilleries.
- Outdoor amusements.
- Petroleum products, wholesale.
- Sexually oriented businesses, as defined in section 11-9-2 of this title.
- Tire retreading and recapping.

Chapter 3 – Special Provisions

11-3-2: ACCESSORY BUILDINGS

A. Accessory buildings meeting the definition in section 11-9-2 of this title are allowed in all zoning districts. Accessory buildings less than ~~one hundred twenty (120)~~two hundred (200) square feet in floor area and not intended for human occupancy do not require building permits.

Chapter 9 – Definitions

11-9-2: DEFINITIONS:

BAR/LOUNGE: An establishment licensed by the state of Montana for on premises consumption of alcoholic beverages. This definition is specifically meant to exclude holders of ~~cabaret~~ Restaurant Bear Wine (RBW) licenses.

PLANNING & BUILDING DEPARTMENT
510 Railway Street, PO Box 158 Whitefish, MT 59937
(406) 863-2410 Fax (406) 863-2409

January 12, 2016

Mayor and City Council
City of Whitefish
PO Box 158
Whitefish, MT 59937

Re: Zoning Text Amendment: WZTA 15-04

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the city of Whitefish to amend the zoning regulations for housekeeping items related to: the definition of bar/lounge, the requirement for a building permit for an accessory building and the addition of micro-distillery to the list of Conditional Use in the WB-1, WB-2, WB-3 and WI districts.

Planning & Building Department Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: At the public hearing, one representative spoke in opposition to the addition of micro-distilleries, as she felt a more comprehensive approach to alcohol production uses was needed. The draft minutes of the Planning Board hearing are included.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on December 17, 2015. Following this hearing, the Planning Board recommended approval (6-1, Norton voting in opposition) of the amendments and adopted the supporting findings of fact in the staff report.

Proposed Motion:

> I move to approve WZTA15-04 along with the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board.

This item has been placed on the agenda for your regularly scheduled meeting on January 19, 2015. Should Council have questions or need further information on this matter, please contact the Whitefish Planning Board or the Planning & Building Department.

Respectfully,

Wendy Compton-Ring, AICP
Senior Planner

Att: Exhibit A, Planning Board recommendation, 12-17-15
Draft minutes of the 12-17-15 Planning Board meeting

Exhibits from 12-17-15 Staff Packet to Planning Board

1. Staff Report, WZTA 15-04, 12-10-15
2. Advisory Agency Notice, 11-25-15

Received After the Planning Board Packets Were Mailed

3. Email and Attachments, Mayre Flowers, 12-17-15

c: w/att Necile Lorang, City Clerk

EXHIBIT 'A'
Whitefish Planning Board Recommendation
WZTA 15-04
DECEMBER 17, 2015

1. **§11-9-2: Definitions – Bar/Lounge:**
   An establishment licensed by the state of Montana for on premises consumption of alcoholic beverages. This definition is specifically meant to exclude holders of ~~cabaret~~ Restaurant Beer Wine (RBW) licenses.

2. **§11-3-2A, Accessory Buildings:**
   Accessory buildings meeting the definition in section 11-9-2 of this title are allowed in all zoning districts. Accessory buildings less than ~~one hundred twenty (120)~~ two hundred (200) square feet in floor area and not intended for human occupancy do not require building permits.

3. **§11-2R-3, Conditional Uses, Industrial District:**
   - Automobile and boat sales.
   - Automobile wrecking yards (requires state license).
   - Heavy equipment sales and rental.
   - Heavy industrial manufacturing, fabricating and processing.
   - Junkyards (requires state license).
   - Microbreweries and microdistilleries.
   - Outdoor amusements.
   - Petroleum products, wholesale.
   - Sexually oriented businesses, as defined in section 11-9-2 of this title.
   - Tire retreading and recapping.

   §11-2L-3, Conditional Uses, General Business District:
   - Automotive service stations, with the exception of the Old Town central district and the Old Town railway district.
   - Bars/lounges.
   - Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
   - Clubs.
   - Daycare centers (more than 12 individuals), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
   - Dwelling groups or clusters, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
   - Microbreweries and microdistilleries.
   - Multi-family dwellings in excess of four (4) dwelling units, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.

- Schools (K - 12), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Wholesale, light assembly and light manufacturing. Such uses must contain a retail component at ground level fronting a major street if located on Central Avenue between Third and Railway.

§11-2K-3, Conditional Uses, Secondary Business District:

- Accessory apartments.
- Bars/lounges.
- Boat and recreational vehicle storage (see special provisions in section 11-3-32 of this title).
- Casinos within a casino overlay zone.
- Colleges, business and trade schools.
- Light assembly and light manufacturing.
- Manufactured home subdivisions.
- Microbreweries <u>and microdistilleries.</u>
- Ministorage.
- Personal care facilities when not in association with a hospital in a campus setting.
  Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size).
- Truck stops.
- Veterinary hospital.

§11-2J-3, Conditional Uses, Limited Business District:

- Accessory apartments.
- Automobile and boat repair, limited.
- Automotive service stations.
- Bars/lounges.
- Boarding houses.
- Boat and recreational vehicle storage (see special provisions in section 11-3-22 of this title).
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories.
- Clubs.
- Daycare centers (more than 12 individuals).
- Funeral homes and mortuaries.
- Microbreweries <u>and microdistilleries</u> (located on a parcel with frontage along an arterial).
- Ministorage.
- Schools (K-12).

MOTION / BOARD DISCUSSION	Frank moved and Ken seconded to continue this matter to the January 21, 2016 Planning Board Meeting.
VOTE	The motion passed unanimously.
PUBLIC HEARING 2: CITY OF WHITEFISH REZONE REQUEST 6:03 pm	A request by the City of Whitefish on behalf of Philip and Belinda Mitchell for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 1750 and 1770 Highway 93 West, and can be legally described as Tract 1DABA, 1D and 1DHB in S35, T31N, R22W.
STAFF REPORT WZC 15-05 (Minnich)	Planner Minnich reviewed her staff report and findings. Staff recommended adoption of the findings of fact within staff report WZC 15-05 and for **approval** to the Whitefish City Council.
BOARD QUESTIONS OF STAFF	Frank said he is comfortable with this as a general proposition, but asked whether the existing structures and use of the property are consistent with the proposed zoning, so that there will not be any nonconforming uses on the property at that point. Planner Minnich replied that other than setbacks, which she has not looked at, the uses are consistent.
APPLICANT / AGENCIES	None.
PUBLIC COMMENT	None.
MOTION / BOARD DISCUSSION	Ken moved and Rebecca seconded to adopt the findings of fact within staff report WZC 15-05. Jim recused himself since he was appointed by the County Commissioners to serve on this Committee and this is a County Commissioner's project.
VOTE	The motion passed unanimously with Jim recusing himself. The matter is scheduled to go before the Council on January 4, 2016.
PUBLIC HEARING 3: AMENDMENT OF WHITEFISH CITY CODE TITLE 11, ZONING REGULATIONS 6:10 pm	A request by the City of Whitefish for a variety of housekeeping amendments in §11-9-2, definitions, bar/lounge; §11-3-2A, Accessory Buildings; add micro-distillery to the Conditional Uses in §11-2R-3, Industrial District, §11-2L-3, General Business District, §11-2K-3, Secondary Business District, and §11-2J-3, Limited Business District, of the Zoning Code.
STAFF REPORT	Senior Planner Compton-Ring reviewed her staff report and

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WZTA 15-04 (Compton-Ring)

findings. She also printed and distributed to the Board Members some information regarding planning for alcoholic production that Mayre Flowers emailed her today at 4:05 pm. Microbreweries and microdistilleries are processed through a Conditional Use Permit and they have the criteria in the Zoning for Conditional Use Permits. Director Taylor will be bringing back some special provision standards in January. They are not proposing to add them to any new districts; they are keeping them in the same districts they have been allowed in through Conditional Use Permits.

Staff recommended adoption of the findings of fact within staff report WZTA 15-04 and for **approval** to the Whitefish City Council.

BOARD QUESTIONS OF STAFF

Regarding No. 2, Accessory Buildings, John asked Compton-Ring whether accessory buildings have to meet the setback requirements no matter what size they are and Compton-Ring replied yes. John also asked if there is anything that requires the City of Whitefish to adopt the International Building Code and Compton-Ring replied the City already has. The State of Montana adopts it and then the cities adopt it, so this is an inconsistency between the zoning and our Building Code. John asked whether there is anything that says our Zoning Code has to be consistent with the International Building Code; perhaps the City could decide that we have small lots and 200 feet is a big building in the City of Whitefish, whereas it might not be in a big building in some other international place. Director Taylor replied we have already adopted the Building Code that exempts accessory buildings up to 200 square feet and we need to make it consistent. John said so the point at which we should have decided that we did not want to go to 200 would have been when we did or did not adopt the Building Code rather than now, and Director Taylor confirmed and reiterated that it always has to meet the setback requirements.

Frank said there is a benefit to folks getting a Building Permit even if a small building is involved, just to be sure they do not encroach on their neighbors' property. He asked if we have a definition for a microdistillery and Director Taylor replied not currently but it is part of the Highway 93 West implementation. Frank wanted to make sure Highway 93 West is currently not set up for having microbreweries and Director Taylor said that is correct, but it is being added into the new transitional zone.

Melissa pointed out a typo on Page 2, Section 3, of WZTA 15-04,

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"We have considered it similar enough …" instead of "We have consider it similar enough …".

Rebecca said she did not know we actually have sexually-oriented businesses in town and Compton-Ring replied we do not but by law, we have to provide some place for them in at least one district.

APPLICANT / AGENCIES

None.

PUBLIC COMMENT

Mayre Flowers, 35 4th Street West, Kalispell, speaking on behalf of Citizens for a Better Flathead, appreciated the fact that there are some housekeeping aspects to what is being proposed, but requested removal of the provision for microdistilleries. She feels it is premature to move ahead with that until there are standards which is one of the reasons she asked that the Board be given a comprehensive overview of what the American Planning Association has put together to look at the issues. Across the Country it is not only Montana that is seeing a boom in microdistilleries and breweries, it is everywhere, and has become an issue. There has not been a set of template of standards that communities have looked at to really make sure that these businesses, which are very important to our economy, are located in areas that are appropriate, that have adequate services and that do not impact neighborhoods, in particular. She thinks it's high time that rather than simply make an amendment that would allow this to continue on, we step back and look at both microbreweries and microdistilleries and really look at overall standards and where these are most appropriate. She recognizes that they are put in as conditional uses, but when you do not have standards, you do not have the ability to look at the appropriateness of these uses. She thinks the comprehensive document she provided deserves some workshop session to try to look at making some more comprehensive recommendations that will address the proliferation of these. When you start to get a lot of these coming into a concentrated area, she does not think we have standards to address that. Some areas are appropriate, such as the downtown, but when you start to spread out into the fringes, we may need better standards to address it. Her request is that that portion be broken out of the consideration and to take more time to look at that.

MOTION / BOARD DISCUSSION

Frank said his background and training would dictate that you would not insert a term of art into a provision of anything unless that term had a definition to it or a set of standards that was

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associated with it so you knew what you were talking about. Are we in that position now? Director Taylor replied none of these could get approved without state approval. Microbrewery/ microdistillery are already defined under state law. That is why we did not add a definition when we added microbrewery. It does not hurt to have our own definition, but if the state's definition changes, we will need to change our Code. Frank thinks one of the things that will make it palatable for the City of Whitefish and its residents and neighborhoods where these might go in is to have some certainty as to what a microdistillery or microbrewery is because they have a specific definition. If state enlarges that, or makes them larger, or allows more production, because they can do that, that might have changed our minds as to whether or not we wanted microdistilleries of that size and nature in these neighborhoods. Whereas, if we set a standard, whether we adopt the state standard or whatever, and the state changes their standard, we can no longer rely on our standard or definition of what a microbrewery is that would go into a particular area? Director Taylor said he thought we could. That is one of the things talked about in the work sessions when they discussed nanobreweries versus microbreweries. A nanobrewery that might produce 200 barrels a year might be much more appropriate than a microbrewery, or more of an industrial production like the Great Northern Brewery. We can have our own standards on what type is appropriate in what location. In the past, microbreweries were lumped in with light manufacturing uses. Of our three commercial zones, the only one that maybe has a question about putting a major production brewery would be the WB-1 zone out on Wisconsin. There are enough protections in there that look at it broadly enough that nothing will slip through the cracks; it all has to go through the public process. They are going to create some standards and bring them to the Planning Board in January.

Rebecca wants to review the information provided by Ms. Flowers before proceeding on the issue as there is a lot of information and other issues that might come up. She asked if it would hurt anything if the Planning Board voted to delay approving No. 3 until next month so Board members could review the information given by the public. Director Taylor replied no, that if someone comes in with an application for a microdistillery, it would still be brought through under microbrewery since that is the way it has been handled.

Melissa asked what Ms. Flowers wanted the Planning Board to do with the documents - whether it has to do with the term "microdistillery" and whether the Planning Board should allow

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them at all, or it is from the standpoint of what areas they should be put in. She does not feel WZTA 15-04 and what has been submitted really correlate.

Ms. Flowers replied she does not feel we should not allow microdistilleries, but she wants a definition and standards in place. Since those are being brought to the Planning Board apparently in January for some further discussion, it seems premature to go ahead and insert microdistilleries at this time. She wants them to look at what other communities have for standards for noise, odor, outdoor screening size, storage, and appropriate locations. Maybe it should be added within the standards that they be a certain distance from a residential neighborhood.

Melissa said when Spotted Bear came through, the Planning Board really looked at the state ordinance and definitions and what the state is proposing for microdistilleries. She feels this is out of the Planning Board's scope to have that big of a definition as the state already defines that. Her understanding is that if someone is given a microdistillery permit by the state, there is a very specific definition of what that is and she feels the state has already done this. Part of the Planning Board's role would be to decide what part of town and proximity to things like schools would be appropriate. Ms. Flowers said the issue that Frank and Director Taylor had in their discussion is the Planning Board has the option of setting and enforcing standards that are different from what the state has. She thinks that the Planning Board should look at options that other communities have adopted, since some of them have done that, rather than just go with the blanket definition the state has.

Melissa said if that is the case, maybe we should find something to review that is more appropriate, since the smallest community addressed in the handout is 55,000 people. Chances are what is in the handout would be less than applicable to the City of Whitefish.

Ken said when an applicant comes in for a Conditional Use Permit, the Planning Board has the opportunity to decide whether the proposed location is appropriate for the use so he thinks all this is mute.

Rebecca said part of the Planning Board's job is integrating public comment in its decision-making so that they know they are doing the will of the people, and asked what is wrong with taking time with this and looking at what was presented before moving

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forward.

Melissa agreed the Planning Board really should look at all of the information, but that the conversation has been put off and the Board needs to move forward with it.

Chairman Meckel said what is being proposed here is a small, limited housekeeping issue, simply adding microdistilleries along with microbreweries, in the appropriate zone. Director Taylor said they look at microbreweries and microdistilleries the same, all they are trying to do is qualify that in the Code so it is clear for someone who wants to propose a microdistillery that there is a place for them within our Code.

Chairman Meckel said we are also going to revisit this under the Highway 93 W project in January, so the Planning Board will get that opportunity to tackle it at that time with this information. Compton-Ring also pointed out that in the Limited Business District, WB-1, out on Wisconsin Avenue, they did add another standard when they addressed microbreweries that it is only for parcels with frontage on arterials. Some of the WB-1 zones are deep and go back into those neighborhoods, but they are only permitted on the arterials, which is Wisconsin.

Rebecca moved and Frank seconded for purposes of discussion to adopt the findings of fact within staff report WZTA 15-04, with the exclusion of No. 3 to be continued to the next Planning Board Meeting. Rebecca does not feel comfortable passing things forward when the Planning Board has information from the public that none of them have read.

Frank said he hears what Rebecca is saying and feels it is a fair way to look at some of these things. Sometimes, however, it is appropriate to deal with the information that has been given to you in other settings. What has been placed before us here is about creating standards for microdistilleries or microbreweries. It is not at this point about whether or not they belong in some of these zones where they are already existing and where we already allow them as a conditional use. All we are doing is inserting, or correcting, what our practice has been on an ongoing basis. He would not be prepared to make a decision this evening regarding standards without having fully gone through the information provided by Ms. Flowers. Nor would he warrant that by placing this in there that he is not going to place additional standards and conditions on when these can go in there. He thinks that is the Planning Board's next project.

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There being no further discussion, Frank called for the question.

VOTE

The motion failed with a six to one vote, with Rebecca voting in favor.

Frank moved with a second by John to adopt the findings of fact within staff report WZTA 15-04 and the text amendments to the Code. The motion passed with a six to one vote; Rebecca was opposed. The matter is scheduled to go before the Council on January 19, 2016.

NEW BUSINESS
6:40 pm

None.

GOOD AND WELFARE
6:40 pm

1. Matters from Board. Rebecca asked if the December 16, 2015 memorandum to the Planning Board distributed from City Attorney Angela Jacobs was just for the Board members to read through and Compton-Ring replied yes.

2. Matters from Staff. None.

3. Poll of Board members available for the next meeting on January 21, 2016. All indicated they thought they would be available.

ADJOURNMENT

John made a motion and Frank seconded to adjourn the meeting at approximately 6:45 p.m. The motion passed unanimously. The next regular meeting of the Whitefish Planning Board will be held on January 21, 2016, at 6:00 pm, at 1005 Baker Avenue.

_____ _____

Ken Meckel, Chair of the Board Keni Hopkins, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: _____

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PROPOSED CODE AMENDMENTS
TITLE 11 – various sections
STAFF REPORT WZTA 15-04
December 10, 2015

This is a staff report to the Whitefish Planning Board and Whitefish City Council amending Title 11 of the Whitefish City Code with a variety of housekeeping amendments including: the definition for a bar/lounge; standards for accessory buildings; add micro-distillery to the list of Conditional Uses in §11-2R-3, Industrial District, §11-2L-3, General Business District, §11-2L-3, Secondary Business District, and §11-2J-3, Limited Business District. The Planning Board public hearing is scheduled for **December 17, 2015** and a subsequent hearing is scheduled before the City Council on **January 19, 2016**.

BACKGROUND

Staff maintains a list of housekeeping zoning text amendments to get to when we have time. These housekeeping items are related to the City's definition of bar/lounge, accessory building standards and microdistilleries.

PROPOSAL

1. This amendment is intended to keep pace with the changing language of the state of Montana Department of Licensing for the various liquor licenses available. The city does not require a Conditional Use Permit for a business owner that has a Restaurant Beer Wine license, formerly known as a cabaret license. This term has been updated by the state of Montana and this amendment reflects the state's term.

Amend §11-9-2: Definitions – Bar/Lounge:
An establishment licensed by the state of Montana for on premises consumption of alcoholic beverages. This definition is specifically meant to exclude holders of ~~cabaret~~ Restaurant Beer Wine (RBW) licenses.

2. The 2012 International Building Code, adopted by the state of Montana and the city of Whitefish do not require a building permit for an accessory building with less than 200 square feet. The standard used to be 120 square feet. This amendment is intended to keep pace with other changing standards.

Amend §11-3-2A, Accessory Buildings:
Accessory buildings meeting the definition in section 11-9-2 of this title are allowed in all zoning districts. Accessory buildings less than ~~one hundred twenty (120)~~ two hundred (200) square feet in floor area and not intended for human occupancy do not require building permits.

3. The city has recently seen a couple of requests for microdistilleries, but didn't have an exact allowance for a microdistillery in the zoning code. We have considered it similar enough to a microbrewery and; therefore, have processed them under a Conditional Use Permit. This amendment is to add microdistillery as a conditional use to the Industrial, WB-1, WB-2 and WB-3 Districts.

Amend §11-2R-3, Conditional Uses, Industrial District:

- Automobile and boat sales.
- Automobile wrecking yards (requires state license).
- Heavy equipment sales and rental.
- Heavy industrial manufacturing, fabricating and processing.
- Junkyards (requires state license).
- Microbreweries and microdistilleries.
- Outdoor amusements.
- Petroleum products, wholesale.
- Sexually oriented businesses, as defined in section 11-9-2 of this title.
- Tire retreading and recapping.

Amend §11-2L-3, Conditional Uses, General Business District:

- Automotive service stations, with the exception of the Old Town central district and the Old Town railway district.
- Bars/lounges.
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Clubs.
- Daycare centers (more than 12 individuals), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Dwelling groups or clusters, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Microbreweries and microdistilleries.
- Multi-family dwellings in excess of four (4) dwelling units, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Schools (K - 12), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Wholesale, light assembly and light manufacturing. Such uses must contain a retail component at ground level fronting a major street if located on Central Avenue between Third and Railway.

Amend §11-2K-3, Conditional Uses, Secondary Business District:

- Accessory apartments.

- Bars/lounges.
- Boat and recreational vehicle storage (see special provisions in section 11-3-32 of this title).
- Casinos within a casino overlay zone.
- Colleges, business and trade schools.
- Light assembly and light manufacturing.
- Manufactured home subdivisions.
- Microbreweries <u>and microdistilleries.</u>
- Ministorage.
- Personal care facilities when not in association with a hospital in a campus setting.
  Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size).
- Truck stops.
- Veterinary hospital.

Amend §11-2J-3, Conditional Uses, Limited Business District:

- Accessory apartments.
- Automobile and boat repair, limited.
- Automotive service stations.
- Bars/lounges.
- Boarding houses.
- Boat and recreational vehicle storage (see special provisions in section 11-3-22 of this title).
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories.
- Clubs.
- Daycare centers (more than 12 individuals).
- Funeral homes and mortuaries.
- Microbreweries <u>and microdistilleries</u> (located on a parcel with frontage along an arterial).
- Ministorage.
- Schools (K-12).

REVIEW AND FINDINGS OF FACT

The proposed changes shall be evaluated based on the criteria for consideration for amendments to the provisions of the Zoning Regulations per Section 11-7-12E.

1. Zoning Regulations Must Be:

a. Made in Accordance with a Growth Policy

Finding 1: The proposed text amendments are made in accordance with the Growth Policy because the housekeeping items are keeping the zoning regulations current and pertinent.

b. Designed to:

i. Secure safety from fire and other dangers

Finding 2: The proposed code amendment is unrelated to securing safety from fire and other dangers because it is a housekeeping matter.

ii. Promote public health, public safety and general welfare

Finding 3: The proposed amendments promote public health, public safety and general welfare because the housekeeping amendments are keeping the zoning regulations current and pertinent.

iii. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements

Finding 4: The proposed code amendment has no impact on the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because these are housekeeping amendments.

2. In the adoption of zoning regulations, the city shall consider:

a. Reasonable provision of adequate light and air

Finding 5: The proposed code amendment is unrelated to reasonable provisions of adequate light and air because these are housekeeping amendments.

b. The effect on motorized and nonmotorized transportation systems

Finding 6: The proposed code amendment has no impact on motorized and nonmotorized transportation systems because these are housekeeping amendments.

c. Promotion of compatible urban growth

Finding 7: The proposed code amendment has no impact on compatible urban growth because these are housekeeping amendments.

d. The character of the district and its particular suitability of the property for the particular uses

Finding 8: This criterion is not applicable to this code amendment as it pertains more to site development than community wide zoning regulations.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

Finding 9: The proposed code amendments do not affect the value of buildings.

f. That historical uses and established uses patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other.

Finding 10: This criterion is not applicable to this code amendment as it pertains more to site development than community wide zoning regulations.

ADDITIONAL FINDINGS

Finding 11: Staff finds the considerations in Section 11-7-12(E) are either met or are not applicable;

Finding 12: Whereas, legal public notice according to the Whitefish City Code was published in the *Whitefish Pilot* on December 2, 2015;

Finding 13: Whereas, staff sent a notice November 25, 2015 to twenty-three (23) reviewing agencies, departments and other service providers regarding the zoning regulation update.

We find it is in the best interest of the City of Whitefish to amend Title 11.

OVERALL RECOMMENDATION

Staff recommends the Planning Board **approve** the recommendations set forth in the staff report to amend Title 11 of the Zoning Regulations and adopt the findings of fact and transmit same to the Whitefish City Council for further action.

PLANNING & BUILDING DEPARTMENT
PO Box 158
510 Railway Street
Whitefish, MT 59937
(406) 863-2410 Fax (406) 863-2409

Date: November 25, 2015

To: Advisory Agencies & Interested Parties

From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held on Thursday, December 17, 2015 at 6:00 pm in the Whitefish City Council Chambers at **1005 Baker Avenue**. During the meeting, the Board will hold a public hearing on the items listed below. Upon receipt of the recommendation by the Planning Board, the Whitefish City Council will also hold subsequent public hearing on Monday January 4, 2016 for item #1 and Tuesday, January 19, 2016 for items #2 and #3. City Council meetings start at 7:10 pm at **1005 Baker Avenue** in the Whitefish City Council Chambers.

1. A request by the City of Whitefish on behalf of Philip and Belinda Mitchell for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 1750 and 1770 Highway 93 W., and can be legally described as Tract 1DABA, 1D and 1DHB in Section 35, Township 31N, Range 22W. WZC 15-05 (Minnich)

2. A request by the City of Whitefish for a variety of housekeeping amendments in §11-9-2, definitions, bar/lounge; §11-3-2A, Accessory Buildings; add micro-distillery to the Conditional Uses in §11-2R-3, Industrial District, §11-2L-3, General Business District, §11-2L-3, Secondary Business District, and §11-2J-3, Limited Business District, of the Zoning Code. WZTA 15-04 (Compton-Ring)

3. A request by the City of Whitefish for an amendment to Section 11-2S, WPUD, Planned Unit Development District, to clarify the blending of uses and density where a PUD overlays multiple underlying zones. WZTA 15-01 (Taylor)

Documents pertaining to these agenda items are available for review at the Whitefish Planning & Building Department, 510 Railway Street during regular business hours. Inquiries are welcomed. Interested parties are invited to attend the hearing and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address prior to the hearing or via email: *dtaylor@cityofwhitefish.org*. For questions or further information regarding these proposals, phone 406-863-2410.

Wendy Compton-Ring

From: Mayre Flowers <Mayre@flatheadcitizens.org>
Sent: Thursday, December 17, 2015 3:58 PM
To: Wendy Compton-Ring; Dave Taylor
Cc: Citizens for a Better Flathead
Subject: Whitefish Planning Board meeting Dec. 17
Attachments: APA zoning for breweries EIP34.pdf; Untitled attachment 00099.txt; EIP34part2.pdf; Untitled attachment 00102.txt

Dave and Wendy—

I was going to bring copies of the attached documents for the following agenda item tonight,

2. A request by the City of Whitefish for a variety of housekeeping amendments in §11-9-2, definitions, bar/lounge; §11-3-2A, Accessory Buildings; add micro-distillery to the Conditional Uses in §11-2R-3, Industrial District, §11-2L-3, General Business District, §11-2L-3, Secondary Business District, and §11-2J-3, Limited Business District, of the Zoning Code. WZTA 15-04 (Compton-Ring)

but recently realized that it was 123 pages long. Please provide a copy to the planning board, which I assume you can do electronically. I will asking the board to step back from the request before you to simply add micro-distilleries and to take a more comprehensive look at where such uses for micro alcohol production are most appropriate as the number of requests for such uses is continuing to grow within the city. This document provides background information for such a discussion.

PAS Essential

INFO PACKET

PAS EIP-34 April 2014

Zoning for Micro-Alcohol Production

The Planning Advisory Service (PAS) researchers are pleased to provide you with information from our world-class planning library. This packet represents a typical collection of documents PAS provides in response to research inquiries from our subscribers. For more information about PAS visit www.planning.org/pas.

APA

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www.planning.org/pas

ISBN: 978-1-61190-154-2

Foreword

Traditionally, relatively few communities have defined and regulated low-volume alcohol production facilities as distinct uses in their zoning codes. However, in recent years renewed interest in craft brewing and distilling, as well as small-batch wine production, has prompted a number of communities to update their codes to sanction small-scale producers in a wider range of zoning districts. Now, there are a number of communities across the country that have added definitions, use permissions, and, in some cases, use-specific standards for brewpubs, microbreweries, microdistilleries, or microwineries to their zoning codes. Generally speaking, the intent is to create space for smaller producers to operate outside of industrial districts.

While there is general agreement on the idea that these micro-production facilities produce smaller volumes of alcoholic beverages than conventional breweries, distilleries, and wineries, there is considerable variation from place to place in terms of the specific thresholds or characteristics that distinguish these "micro" producers from their high-volume cousins.

In regard to use permissions, there are a number of communities that permit brewpubs, microbreweries, microdistilleries, or microwineries in one or more mixed-use or commercial districts by right or with a ministerial review. In fact, this seems to be more common than requiring all micro-producers to obtain a discretionary use permit (i.e., a special exception, conditional use, or special use) before locating in a nonindustrial district. The table immediately following this foreword summarizes the use permissions for all examples included in this packet.

So far, use-specific standard for micro-production facilities are relatively rare. Among communities that have added additional standards to their codes, the most common provisions relate to space allocation, outdoor storage, locational criteria or location-based production limits, environmental performance, and compliance with state and local laws related to alcoholic beverage sales. While not represented explicitly in this packet, it is important to note that many other communities permit micro-production facilities either by right or subject to discretionary review without requiring compliance with use-specific standards.

The first section of this packet includes a short article from APA's *Zoning Practice* discussing overall trends related to zoning for brewpubs, microbreweries, microdistilleries, and microwineries. The following section provides examples of staff reports prepared in response to proposed zoning amendments to sanction one or more varieties of micro-production facilities in nonindustrial districts. The packet concludes with 14 examples of local zoning definitions and use-specific standards for micro-production facilities.

					Permitted in CBD or Subdistricts		Permitted in One or More Other Mixed Use or Commercial Districts	
Community	**State**	**2010 Population**	**Density (pop./square mile)**	**Defined Uses**	**By Right or Ministerial Approval**	**With Discretion-ary Approval**	**By Right or Ministerial Approval**	**With Discretion-ary Approval**
Asheville	NC	83,393	1,856	microbrewery		X	X	X
Bismarck	ND	61,272	1,986	microbrewery		X		X
Bloomington	IN	80,405	3,472	brewpub	X		X	
Clarksville	TN	132,929	1,362	alcohol distillery, small	X		X	
				brewery, micro	X		X	
Columbia	SC	129,272	978	microbrewery			X	
Covington	KY	40,640	3,079	brewpub	X		X	
				microbrewery		X		X
				micro-distillery		X		X
Dallas	TX	1,197,816	3,518	microbrewery/ micro-distillery/ winery		X		X
Goodyear	AZ	65,275	341	brewpub			X	
				microbrewery			X	
Henderson	NV			brew pub/ microbrewery/ craft distillery	X			X
Memphis-Shelby	TN	646,889	2,053	brew pub	X		X	
				microbrewery	X		X	
				microdistillery	X		X	
Novi	MI	55,224	1,825	brewpub		X	X	X
				microbrewery		X	X	X
Rapid City	SD	67,956	1,227	farm winery				X
				microbrewery				X
St. Petersburg	FL	244,769	3,964	brewpub			X	X
				microbrewery			X	X
Tacoma	WA	198,397	3,990	brewpub			X	
				craft production			X	
				microbrewery/ winery			X	

Background

Morley, David. 2014. "Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries." *Zoning Practice*, March.

- Provides an overview of issues to consider when drafting zoning standards for brewpubs and micro-production facilities.

Staff Reports Discussing Proposed Zoning Amendments

Anaheim (California), City of. 2014. "Zoning Code Amendment No. 2013-00113 Amending Title 18 of the Anaheim Municipal Code Allowing Alcoholic Beverage Manufacturing, Including Tasting Rooms, within Commercial and Industrial Zones." Council Agenda Report, February 25.

- Discusses a zoning amendment that would add a new definition and use permissions for alcoholic beverage manufacturing in response to a mayoral initiative to attract more craft brewers to the city.

Knoxville (Tennessee), City of. 2013. "An Ordinance to Amend the Knoxville City Code, Appendix B, 'Zoning Regulations,' Articles II, IV and V, Regarding Definitions and Development Standards for Small Breweries, Wineries and Distilleries in Certain Commercial and Industrial Zone Districts." Agenda Information Sheet, October 15.

- Discusses zoning amendment that would add new a new definition, use permissions, and use standards for craft breweries, wineries, and distilleries in response to increased demand and changes in state law.

Minnetonka (Minnesota), City of. 2014. "Ordinance Regarding Microbreweries." Staff report to Planning Commission, February 27.

- Discusses zoning amendment that would add definitions and use permissions for microbreweries in response to increased demand.

Definitions and Standards for Brewpubs and Micro-Production Facilities

Asheville (North Carolina), City of. 2013. *Code of Ordinances*. Chapter 7, Development; Article II, Official Map, Rules of Construction, and Definitions; Section 7-2-5, Definitions. Also, Article XVI, Uses by Right, Subject to Special Requirements and Conditional Uses; Section 7-16-1, Uses by Right, Subject to Special Requirements; part c(43), Microbrewery.

- Defines *microbrewery* and provides standards addressing noise, size, and site design.

Bismarck (North Dakota), City of. 2014. *Code of Ordinances*. Title 14, Zoning; Chapter 14-03, Districts: Uses; Section 14-03-08, Special Uses; part u, Microbrewery. Also, Chapter 14-04, District Regulations; Section 14-04-21.3, Use Categories; part c, Microbrewery. Also, Section 14-04-21.4, Use Standards; part 6, Microbrewery.

- Defines *microbrewery* and provides standards addressing location, neighborhood impacts, storage, and alcoholic beverage sales licenses.

Bloomington (Indiana), City of. 2013. *Unified Development Ordinance*. Chapter 20.05, Development Standards; Section 20.05.089, SC-03 [Special Conditions; Brewpub]. Also, Chapter 20.11, Definitions; Section 20.11.020, Defined Words.

- Defines *brewpub* and provides standards addressing space allocation, production limits, and shipping.

Clarksville (Tennessee), City of. 2013. *Code of Ordinances*. Title 11, Planning and Zoning; Chapter 2, Rules of Interpretation and Definitions; Section 2.2, Definitions. Also, Chapter 3, Zone Districts, Use Tables; Table 3.4.7, Industrial Uses. Also, Chapter 5, Land Use Development Standards and Procedures; Section 5.1.3, Industrial Uses Permitted with Conditions; Alcohol Distillery, Small; Brewery, Micro.

- Defines *small alcohol distillery* and *micro-brewery* and provides standards addressing operations and site design.

Columbia (South Carolina), City of. 2013. *Code of Ordinances*. Chapter 17, Planning, Land Development, and Zoning; Article III, Zoning; Division 1, Generally; Section 17-55, Definitions. Also, Division 8, District Descriptions; Use and Dimensional Regulations; Section 17-290, Microbrewery.

- Defines *microbrewery* and provides standards addressing outdoor storage and production limits.

Covington (Kentucky), City of. 2013. *Code of Ordinances*. Title XV, Land Usage; Appendix A, Zoning Ordinance; Article 6, Use Regulations; Section 6.28, Taverns and Restaurants. Also, Article 16, Definitions; Section 16.02, Use Groups and Categories; Section 16.02.06, Commercial Use Group.

- Defines *brewpub*, *microbrewery*, and *micro-distillery* and provides standards addressing space allocation, production limits, and outdoor storage.

Dallas (Texas), City of. 2013. *City Code*. Chapter 51A, Development Code; Article IV, Zoning Regulations; Section 51A-4.210, Retail and Personal Service Uses; part b(4), Specific Uses – Alcoholic Beverage Establishments.

- Defines *microbrewery, microdistillery, or winery* and provides standards addressing loading, outdoor storage, and site design.

Goodyear (Arizona), City of. 2013. *Zoning Ordinance*. Article II, Definitions; Section 2-2, Definitions. Also, Article 3, Zoning Districts; Chapter 3-3, Commercial Districts; Section 3-3-3, C-2 General Commercial District; part A, Principal Permitted Uses. Also, Article 4, Special Uses, Uses Requiring Additional Evaluation, Nonconforming Uses and Buildings; Chapter 4-2, Uses Requiring Additional Evaluation; Section 4-2-15, Brewpub. Section 4-2-16, Microbrewery.

- Defines *bar/microbrewery*, *brewpub*, and *microbrewery* and provides standards addressing production limits, allocation of sales, location, live entertainment, and hours of operation.

Henderson (Nevada), City of. 2013. *Development Code*. Chapter 19.5, Use Regulations; Section 19.5.5, Commercial Uses; Part H, Brew Pub/Microbrewery/Craft Distillery.

- Defines *brew pub/microbrewery/craft distillery* and provides standards addressing location, outdoor seating, environmental performance, and live entertainment.

Memphis-Shelby (Tennessee), City and County of. 2013. *Unified Development Code*. Article 2, Districts and Uses; Section 2.5, Permitted Use Table. Also, Section 2.6.3, Commercial Use Standards; Part G, Restaurant with Sale of Alcoholic Beverages, Brew Pub. Also, Section 2.6.4, Industrial Use Standards; part F, Microbreweries and Microdistilleries. Also, Article 12, Definitions; Section 12.3.1, General Definitions.

- Defines *brewpub*, *microbrewery*, and *microdistillery* and provides standards addressing location, space allocation, and alcoholic beverage sales licenses.

Novi (Michigan), City of. 2013. *Code of Ordinances*. Appendix A, Zoning Ordinance. Article 2, Construction of Language and Definitions; Zoning Districts and Map; Section 201, Definitions. Also, Article 15, B-3 General Business Districts; Section 1501, Principal Uses Permitted; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 16, TC and TC-1 Town

Center Districts; Section 1602: Principal Uses Subject to Special Conditions; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 17, RC Regional Center District; Section 1702, Principal Uses Permitted Subject to Special Conditions; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 25, General Provisions; Section 2505, Off-Street Parking Requirements; part 14, Schedule.

- Defines *brewpub* and *microbrewery* and provides standards addressing storage, production limits, space allocation, environmental performance, outdoor seating, and parking.

Rapid City (South Dakota), City of. 2014. *Code of Ordinances*. Title 17, Zoning; Chapter 17.18, General Commercial District; Section 17.18.030, Conditional Uses; part 31, Microbreweries. Part 32, Farm Wineries. Also, Chapter 17.22, Light Industrial District; Section 17.22.030, Conditional Uses; part N, Microbreweries. Part O, Farm Wineries.

- Defines *farm winery* and *microbrewery* and provides standards addressing production limits, alcoholic beverage sales licenses, and on-site sales.

St. Petersburg (Florida), City of. 2013. *Code of Ordinances*. Chapter 16, Land Development Regulations; Section 16.10.010, Establishment of Zoning Districts, Matrices and Maps; Microbrewery. Restaurant and Bar, Brewpub. Also, Section 16.50.045, Brewery, Microbrewery, and Brewpub.

- Defines *brewpub* and *microbrewery* and provides standards addressing allocation of sales, space allocation, site design, loading, outdoor storage, and sales for off-site consumption.

Tacoma (Washington), City of. 2014. *Municipal Code*. Title 13, Land Use Regulatory Code; Chapter 13.06, Zoning; Section 13.06.200, Commercial Districts; part C.4, Land Use Requirements – District Use Table. Also, Section 13.06.300, Mixed Use Center Districts; part C.4, Land Use Requirements – District Use Table. Also, Section 13.06.700, Definitions and Illustrations.

- Defines *brewpub*, *craft production* (which includes microdistilleries), and *microbrewery/winery* and provides standards addressing production limits, space allocation, and outdoor storage.

Background

- Morley, David. 2014. "Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries." *Zoning Practice*, March.

ZONING PRACTICE MARCH 2014

AMERICAN PLANNING ASSOCIATION

ISSUE NUMBER 3

PRACTICE MICROBREWERIES

3

Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries

By David M. Morley, AICP

In communities across the country, beer titans like St. Louis-based Anheuser-Busch and Chicago-based MillerCoors are facing stiff competition from a host of locally owned and operated craft breweries.

The number of brewers is higher today than at any point during the 20th century.

Brewers Association, Boulder, Colorado

Meanwhile, there is parallel growth in craft distilleries and small-volume wineries. While renewed interest in small-scale alcohol production is just one facet of the buy-local movement, it has special relevance for planning and zoning practitioners.

Historically, few communities have used zoning to draw distinctions between alcohol production facilities of different types and sizes. More recently, though, numerous localities have added provisions to their zoning codes that acknowledge the variety of alcohol producers. The primary motivation for these regulatory changes is a desire to make space for smaller producers to operate outside of industrial districts.

The two most common small-scale alcohol production uses to receive special zoning attention are brewpubs (restaurants combined with breweries) and microbreweries (small-volume brewers with or without on-site sales). But references to microdistilleries (small-volume distilleries with or without on-site sales) and microwineries (small-volume wineries without on-site vineyards) are also on the rise.

The purposes of this article are to highlight why the growth in small-scale alcohol production may merit zoning changes and to summarize how communities have amended their codes to add definitions, use permissions, and, in some cases, additional standards to sanction brewpubs and microproducers.

THE BOOM IN SMALL-SCALE ALCOHOL PRODUCTION

According to the Brewers Association, the trade group for small brewers, as of June 2013 there were 1,165 brewpubs and 1,221 microbreweries in the United States. By way of comparison, in the late 1970s there were only 89 commercial brewers of any type (Brewers Association 2013). This boom in small-scale production has spread to spirits and wine too. In April 2012 *Time* reported a 400 percent surge in microdistilleries in the U.S. between 2005 and 2012 (Steinmetz 2012). And according to statistics maintained by trade publisher *Wines & Vines*, the number of wineries producing between 1,000 and 5,000 cases per year grew 16.5 percent between August 2011 and January 2014 alone.

These trends have significant economic development implications for localities across the country. In addition to satisfying demand for locally produced beer, wine, and spirits, microproducers often distribute their product regionally or nationally, bringing new money into their host communities. Furthermore, successful brewpubs and microproducers can help enliven commercial and mixed use districts that would otherwise clear out after conventional retail and office hours. It's no surprise, then, that some communities are actively trying to lure high-profile microbreweries from other states (McConnell 2012).

THE TROUBLE WITH REGULATORY SILENCE

Despite the explosive growth in brewpubs and microproducers, surprisingly few communities explicitly sanction small-scale alcohol pro-

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About the Author

David Morley, AICP, is a senior research associate with the American Planning Association, as well as APA's Planning Advisory Service (PAS) coordinator and coeditor of *Zoning Practice*. Since 2007 he has contributed to APA research projects on topics including brownfields redevelopment, complete streets, urban agriculture, shrinking cities, solar energy, and disaster recovery. Apart from his contributions to research projects and APA publications, Morley provides customized research on a daily basis for PAS subscribers.

duction facilities through their zoning codes. Without clear definitions and use permissions, planning staff or public officials are forced to make ad hoc use interpretations that can delay or even prevent otherwise desirable development. This regulatory silence creates uncertainty for business owners looking to make location decisions and secure financing, and it may have the effect of scaring away potential applicants. Finally, explicit definitions, use permissions, and use-specific standards allow communities to proactively address the potential negative effects of brewpubs and microproducers on surrounding areas, thereby minimizing future conflicts with neighbors.

DEFINING USES

Clear zoning standards for small-scale alcohol production facilities begin with clear use definitions. Generally speaking, there are two basic schools of thought about defining uses in zoning codes. Some communities try to define every conceivable potential use, while others rely on use groups (or categories) with similar operational requirements and attendant community effects.

The first method can bring clarity and avoid some legal disputes over specific uses, but it may create unnecessarily complex regulations. The second method is part of larger trend away from proscriptive use regulations, as many communities focus more on a prescriptive approach to the form of development. In practice, most conventional new zoning codes use a hybrid of these approaches, with broad use categories, such as household living or general retail, and specific use definitions for a small subset of higher-impact or more contentious uses under each category.

Steve Morgan/Creative Commons 3.0

Since 2008 the federally landmarked G.G. Gerber building in Portland, Oregon's Pearl District has housed a brewpub.

Mirroring this broader conversation about the best approach to classifying and defining uses, communities that have added specific definitions for small-scale alcohol production facilities to their zoning codes generally take one of two approaches. Either they define brewpubs, microbreweries, microdistilleries, and microwineries as distinct uses, or they define an umbrella term that encompasses multiple types of production facilities.

Communities that define microbreweries, microdistilleries, or microwineries as distinct uses often rely on a production volume threshold to distinguish between the "micro" and "conventional" version of a particular use. For microbreweries, 15,000 barrels per year is a common threshold, which corresponds to the American Brewers Association's defined limit for a microbrewery. Given that there are no corresponding industry definitions for microdistillery and microwinery, it is perhaps unsurprising that thresholds for these uses seem to vary more from place to place.

When communities define brewpubs as a distinct use, the intent is usually to distinguish between accessory- and primary-use brewing facilities. Most communities stipulate that beer production in a brewpub must be accessory to a bar or restaurant, and many cap the volume of beer produced annually (usually less than 15,000 barrels). Furthermore, some jurisdictions quantify this subordinate relationship by limiting the percentage of floor area or sales attributable to the brewery component of the business.

Definitions for brewpubs, microbreweries, microdistilleries, and microwineries often include an acknowledgment that the alcohol produced will be consumed both on- and off-site. For "micro" facilities, the presumption is typically that on-site consumption will be

Examples of Use Definitions

Brewpub:

- A retail establishment that manufactures not more than 9,000 barrels of malt liquor on its licensed premises each calendar year. (Aurora, Colorado)
- A restaurant-brewery that sells 25 percent or more of its beer on-site. The beer is brewed primarily for sale in the restaurant and bar. The beer is often dispensed directly from the brewery's storage tanks. Where allowed by law, brewpubs often sell beer "to go" or distribute to off-site accounts. (Brewers Association)

A restaurant with facilities for the brewing of beer for on-site consumption and retail sale at the restaurant. A brewpub must derive at least 40 percent of its gross revenue from the sale of food. (Goodyear, Arizona)

- A restaurant featuring beer that is brewed on-site. (Memphis-Shelby County, Tennessee)
- A restaurant that brews beer as an accessory use, either for consumption on-site or in hand-capped, sealed containers in quantities up to one-half barrel sold directly to the consumer. Production capacity is limited to 5,000 barrels of beverage (all beverages combined) per year. The area used for brewing, bottling, and kegging shall not exceed 30 percent of the total floor area of the commercial space. A barrel is equivalent to 31 gallons. (Plainfield, Illinois)

Microbrewery:

- A small facility for the brewing of beer that produces less than 15,000 barrels per year. It may often include a tasting room and retail space to sell the beer to patrons on the site. (Asheville, North Carolina)
- Any establishment where malt liquors are manufactured and packaged on- or off-premises, manufacturing more than 9,000 but less than 60,000 barrels of malt liquor on its licensed premises each calendar year. (Aurora, Colorado)
- A brewery that produces less than 15,000 barrels of beer per year with 75 percent or more of its beer sold off-site. Microbreweries sell to the public by one or more of the following methods: the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and, directly to the consumer through carryouts or on-site taproom or restaurant sales. (Brewers Association)
- A brewery (for malt beverages) that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels. (Missoula, Montana)
- The production of beer, regardless of the percentage of alcohol by volume, in quantities not to exceed 5,000 barrels per month, with a barrel containing 31 U.S. liquid gallons. (Nashville-Davidson, Tennessee)

Nanobrewery:

- The production of beer, regardless of the percentage of alcohol by volume, in quantities not to exceed 1,250 barrels per month. (Nashville-Davidson, Tennessee)

Microdistillery:

- A combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves alcoholic spirits or food on the premises. (Port Townsend, Washington)
- A facility that produces no more than 15,000 gallons per year of spirituous beverages on-site and shall include a tasting room in which guests/customers may sample the product. (Fort Collins, Colorado)
- A facility that produces alcoholic beverages in quantities not to exceed 35,000 gallons per year and includes an accessory tasting room. A tasting room allows customers to taste samples of products manufactured on-site and purchase related sales items. Sales of alcohols manufactured outside the facility are prohibited. (Evanston, Illinois)

(continued on page 5)

subordinate to off-site consumption. For brewpubs, the opposite is true.

Communities that define an umbrella term for multiple "micro" facilities tend to stress spatial or operational features over production volume limits. In some instances this means a square footage limit on facility size or the proportion of a facility that can be used for alcohol production. In other instances, there are no defined size limits, and the use definition simply describes a set of operational characteristics (e.g., alcohol production and sales for on- and off-site consumption).

USE PERMISSIONS

Defining and regulating small-scale alcohol production facilities allows communities to permit small breweries, distilleries, and wineries in locations that would be inappropriate for conventional, large-scale facilities. Typically, this translates to permitting brewpubs, microbreweries, microdistilleries, and microwineries in one or more commercial or mixed use districts, either by right, with ministerial approval, or subject to a discretionary use permit.

Permitting a use by right sends a clear signal to potential developers and business owners that the use is desirable in a certain zoning district. This approach presents applicants with the fewest hoops to jump through before obtaining zoning approval, but it is important to note that most small-scale production facilities will still be subject to state or local licensing or permitting laws that govern the production or sale of alcoholic beverages.

Requiring a ministerial approval for a use communicates that the community is generally supportive of the use in a certain zoning district, but this support is conditional upon compliance with objective standards intended to minimize negative impacts on proximate uses. This approach gives planning staff an opportunity to review an application before the planning director or zoning administrator issues an "over-the-counter" permit. Often, communities use ministerial approval processes to confirm that a particular application conforms to use-specific standards (see additional standards discussion below).

Permitting a use subject to a discretionary use permit (often referred to as a conditional, special, or special exception use permit) indicates that the community is potentially supportive of the use in a certain zoning district, provided the specific spatial and operational characteristics of the use do not pose compatibility problems. Discretion-

ary approval processes involve one or more public hearings before the local legislative body, planning commission, or zoning board renders a final decision on an application. Because the longer approval time frame and a greater degree of uncertainty can discourage some applicants, it is important for communities to reserve discretionary use permissions for locations or circumstances where objective standards are likely to be insufficient to ensure compatibility.

Since a brewpub typically has more in common with a restaurant than a factory, many communities permit brewpubs either by right or with ministerial approval in a wide range of commercial and mixed use districts. Meanwhile, use permissions for microbreweries, microdistilleries, and microwineries vary considerably from place to place. With that said, though, many cities do permit microproduction facilities either by right or with ministerial approval in at least one commercial or mixed use district. Furthermore, it is relatively common to permit microbreweries, microdistilleries, or microwineries by right in more intense commercial or mixed use districts and subject to a discretionary use permit in less intense districts. (See the table on page 6.)

ADDITIONAL STANDARDS

Many contemporary zoning codes limit use permissions with use-specific development or operational standards. By codifying additional standards for specific uses, the community can permit a wider range of uses without relying on discretionary use permits to ensure compatibility. In some cases, use-specific standards apply only in certain zoning districts, while in other cases the standards apply community-wide.

So far, relatively few communities have adopted additional development or operational standards for small-scale alcohol production facilities. Among those that have, the most common provisions relate to outdoor storage, the size of the facility or volume of production, loading and unloading, and proximity either to sensitive uses or to other similar producers.

Outdoor Storage

Perhaps the most prevalent type of additional standards for brewpubs and microproducers are screening requirements or limitations on the amount of space business owners can use to store equipment, production waste, or product. In some cases these standards take the form of an outright prohibition on outdoor storage.

To illustrate, Covington, Kentucky, flatly prohibits all outdoor equipment and storage for brewpubs and microbreweries (§§6.28.02–03). Meanwhile, Dallas permits microbreweries and microdistilleries to store spent grain outside in silos or containers, provided the storage is screened from view (C51A-4.210(b)(4)(E)(ii)(cc)). And Novi, Michigan, prohibits all outdoor storage for brewpubs and microbreweries, with the exception of storage in tractor trailers for a period less than 24 hours (§§1501.11.b and 1501.12.b).

The two basic rationales for storage restrictions are aesthetics and public health. Outdoor storage can be an uninviting eyesore, especially in pedestrian-oriented areas. And left unattended, production waste may produce foul odors and attract vermin.

Use Definitions *(continued from page 4)*

- Any place or premises wherein any wines or liquors are manufactured for sale, not to exceed 5,000 gallons per year, generally referred to as a craft, boutique, or artisan distillery. Microdistilleries may or may not include an on-site tasting room, and may or may not operate in conjunction with an on-site restaurant or bar. For operation of an on-site tasting room or in conjunction with an on-site restaurant or bar additional permitting may be required. All relevant federal, state, and local regulations apply, including but not limited to TCA Title 57 and Memphis Code of Ordinances Title 7. For on-site sales by manufacturer compliance with TCA 57-3-204 applies. (Memphis-Shelby County, Tennessee)

Microwinery:

- A combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves wine and food on the premises. (Port Townsend, Washington)
- A facility that produces no more than 100,000 gallons per year of vinous beverages on-site and shall include a tasting room in which guests/customers may sample the product. (Fort Collins, Colorado)
- A small wine producer that does not have its own vineyard, and instead sources its grape production from outside suppliers. Microwineries produce wine for sale on- or off-site. For the purposes of this chapter, a microwinery is limited to a production of no more than 2,000 barrels per year. On-site consumption is not allowed, other than sample tasting by customers shopping on-site. (Glenville, New York)

Microbrewery/microdistillery/microwinery:

- A facility with no more than 3,000 square feet of floor area, for the production and packaging of alcoholic beverages for distribution, retail, or wholesale, on- or off-premises and which meets all alcohol beverage control laws and regulations. (Newport News, Virginia)
- An establishment for the manufacture, blending, fermentation, processing, and packaging of alcoholic beverages with a floor area of 10,000 square feet or less that takes place wholly inside a building. A facility that only provides tasting or retail sale of alcoholic beverages is not a microbrewery, microdistillery, or winery use. (Dallas)
- A facility in which beer, wine, or other alcoholic beverages are brewed, fermented, or distilled for distribution and consumption, and which possesses the appropriate license from the State of Maryland. Tasting rooms for the consumption of on-site produced beer, wine, or distilled products are permitted on the premises. (Denton, Maryland)
- An establishment with a primary use as a table service restaurant where beer, liquor, wine, or other alcoholic beverage is manufactured on the premises in a limited quantity subordinate to the primary table service restaurant use. The gross floor area utilized in a microbrewery, microdistillery, or microwinery for the production of beer, liquor, wine, or other alcoholic beverage shall be no greater than the gross floor area utilized for the associated table service restaurant. A microbrewery, microdistillery, or microwinery may include some off-site distribution of its alcoholic beverages consistent with state law. A tasting room or taproom may exist in a microbrewery, microdistillery, or microwinery where patrons may sample the manufacturer's products. (Wooster, Ohio)

EXAMPLES OF DEFINED USES AND PERMISSIONS

Community	State	2010 Population	Density (pop./square mile)	Defined Uses	Permitted in One or More Mixed Use or Commercial Districts: By Right or Ministerial Approval	Subject to Discretionary Use Permit	Subject to Additional Standards
Asheville	NC	83,393	1,856	microbrewery	X	X	§7-16-1(c)(43)
Bismarck	ND	61,272	1,986	brewpub	X		§14-03-08.4.u
				microbrewery		X	
Bloomington	IN	80,405	3,472	brewpub	X		§20.05.089
Burlington	VT	42,417	4,116	microbrewery	X	X	
Columbia	SC	129,272	978	microbrewery	X		§17-290
Covington	KY	40,640	3,079	brewpub	X		§6.28
				microbrewery		X	§6.28
				microdistillery		X	§6.28
Dallas	TX	1,197,816	3,518	microbrewery/ microdistillery/ winery		X	§51A-4.210(b)(4)
Denton	MD	4,418	837	microbrewery/ microwinery/ microdistillery		X	
Fort Collins	CO	143,986	2,653	microbrewery	X	X	
				microdistillery	X	X	
				microwinery	X	X	
Glenville	NY	29,480	580	microbrewery	X		
				microwinery	X		
Goodyear	AZ	65,275	341	brewpub	X		§4-2-15
				microbrewery	X		§4-2-16
Memphis-Shelby	TN	646,889	2,053	brew pub	X	X	§2.6.3.G
				microbrewery	X	X	§2.6.4.F
				microdistillery	X	X	§2.6.4.F
Missoula	MT	66,788	2,428	microbrewery		X	
Modesto	CA	201,165	5,457	microbrewery	X	X	§10-3.203
Newport News	VA	180,719	2,630	microbrewery/ microdistillery/ microwinery	X		
Novi	MI	55,224	1,825	brewpub	X	X	§1501.11
				microbrewery	X	X	§1501.12
Port Townsend	WA	9,113	1,306	microbrewery	X	X	
				microdistillery	X		
				microwinery	X		
St. Petersburg	FL	244,769	3,964	brewpub	X	X	§16.50.045
				microbrewery	X	X	§16.50.045
Wooster	OH	26,119	1,601	microbrewery/ microdistillery/ microwinery	X		

Facility Size or Volume of Production

Some communities use additional standards to restrict the size of the facility, scale of production, or the relationship between the alcohol production facility and collocated food or beverage service. This is most common in codes where the use definition does not stipulate a specific production limit or the nature of the relationship between primary and accessory uses. However, communities can also use this type of operational standard to modify defined limits or relationships in lower-intensity zoning districts.

For example, Asheville, North Carolina, limits microbreweries to 4,000 square feet of floor area in two specific office districts (§17-16-1(c)(43)a.3). Columbia, South Carolina, limits microbrewery production to 1,000 barrels per year in three lower-intensity commercial and mixed use districts (§17-290(2)). And Novi, Michigan, stipulates that no more than 50 percent of the gross floor space in a brewpub shall be used for brewing (§1501.11.e).

Loading and Unloading

A few communities have adopted additional standards stipulating the provision or location of loading spaces or prohibiting deliveries during certain hours. Both of these types of delivery restrictions can help brewpubs and microproducers be better neighbors by minimizing traffic congestion or limiting noise during certain times of the day. Still, it's important to note that in some pedestrian-oriented districts it may be infeasible or undesirable to require dedicated loading spaces due to premiums on space or urban design goals.

As one example, Asheville, North Carolina, stipulates that all microbreweries must have an off-street or alley-accessible loading dock (§17-16-1(c)(43)a.4). Meanwhile, St. Petersburg, Florida, discourages microbrewery access and loading from streets and requires any street-facing loading bays to keep their doors closed at all times, except when actively in use. The city also restricts service truck loading and unloading to the hours between 8 a.m. and 8 p.m., Monday through Saturday, and between 11 a.m. and 7 p.m. on Sundays and national holidays (§§16.50.045.4–6).

Distancing Requirements

A small number of communities have adopted distancing requirements that either limit the proximity of small-scale alcohol production facilities to sensitive uses, such as schools or churches, or require a minimum separation between similar uses. For the first type of distancing requirement, the rationale is to limit potential spillover effects on properties where children congregate. The rationale for the second type of requirement is to prevent an overconcentration of brewpubs or microproducers in a specific district.

To illustrate, Novi, Michigan, requires microbreweries to be separated from one another by at least 2,500 feet (§1501.12.h). And Bismarck, North Dakota, requires property owner consent as a condition of approval for microbreweries located within 300 feet of a lot line for any school, church, library, or hospital (§14-03-08.4.u.1).

CONCLUSIONS

When localities choose to define and regulate small-scale alcohol production facilities as one or more distinct uses, it allows them to permit these uses in locations that would be inappropriate for major industrial operations. By doing so, communities can set the stage to capitalize on the economic and placemaking benefits of brewpubs and microproducers.

With that said, the preceding discussion only hints at the variety of approaches localities have taken to regulate brewpubs, microbreweries, microdistilleries, and microwineries. Furthermore, a number of communities with thriving craft brewing and distilling scenes, such as Chicago and Portland, Oregon, have yet to single out small-scale alcohol production facilities for special zoning treatment. Others have made a conscious decision to minimize use-based restrictions in favor of prescriptive standards for the form of development. However, communities that don't thoughtfully consider regulatory alternatives for brewpubs and microproducers run the risk of being caught "flat-footed" by an application for a new facility that may be beneficial to the community but is inconsistent with current zoning.

Finally, as with any significant potential zoning change, it can be helpful to talk to other communities that have taken a similar approach to see what's working and what might need further attention. And, of course it's always important to review both new provisions and the intent behind those provisions with residents, business owners, and other community stakeholders before recommending or taking action.

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Cover image by filipfoto/iStock/Thinkstock; design concept by Lisa Barton

VOL. 31, NO. 3

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for $95 (U.S.) and $120 (foreign).
W. Paul Farmer, FAICP, Chief Executive Officer; David Rouse, AICP, Managing Director of Research and Advisory Services.

Zoning Practice (ISSN 1548–0135) is produced at APA. Jim Schwab, AICP, and David Morley, AICP, Editors; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

Missing and damaged print issues: Contact Customer Service, American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601 (312-431-9100 or customerservice@planning.org) within 90 days of the publication date. Include the name of the publication, year, volume and issue number or month, and your name, mailing address, and membership number if applicable.

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ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

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HOW DOES YOUR ZONING TREAT BREWPUBS, MICROBREWERIES, MICRODISTILLERIES, AND MICROWINERIES?

3

Staff Reports Discussing Proposed Zoning Amendments

- Anaheim (California), City of. 2014. "Zoning Code Amendment No. 2013-00113 Amending Title 18 of the Anaheim Municipal Code Allowing Alcoholic Beverage Manufacturing, Including Tasting Rooms, within Commercial and Industrial Zones." Council Agenda Report, February 25.

- Knoxville (Tennessee), City of. 2013. "An Ordinance to Amend the Knoxville City Code, Appendix B, 'Zoning Regulations,' Articles II, IV and V, Regarding Definitions and Development Standards for Small Breweries, Wineries and Distilleries in Certain Commercial and Industrial Zone Districts." Agenda Information Sheet, October 15.

- Minnetonka (Minnesota), City of. 2014. "Ordinance Regarding Microbreweries." Staff report to Planning Commission, February 27.

COUNCIL AGENDA REPORT

City of Anaheim
PLANNING DEPARTMENT

DATE: **FEBRUARY 25, 2014**

FROM: **PLANNING DEPARTMENT**

SUBJECT: **ZONING CODE AMENDMENT NO. 2013-00113 AMENDING TITLE 18 OF THE ANAHEIM MUNICIPAL CODE ALLOWING ALCOHOLIC BEVERAGE MANUFACTURING, INCLUDING TASTING ROOMS, WITHIN COMMERCIAL AND INDUSTRIAL ZONES**

ATTACHMENT (Y/N): **YES** **ITEM # 16**

RECOMMENDATION:

That the City Council, by Motion, introduce an Ordinance amending various chapters of Title 18 (Zoning) of the Anaheim Municipal Code, to permit breweries and manufacturing of other alcoholic beverages in commercial and industrial zones, including the addition of standards for the operation of these uses.

DISCUSSION:

The Mayor has announced the Brew City initiative, which is intended to attract additional "craft" brewers to Anaheim. This initiative is an extension of the Regulatory Relief Task Force's larger efforts to brand Anaheim as a place where new and existing businesses can open more quickly and with less red tape than any other city in the region. This proposed Zoning Code amendment is designed to implement this initiative by making it easier to establish breweries and other alcoholic beverage manufacturing businesses. The Planning Commission considered this proposed Code amendment at its February 10, 2014 meeting and unanimously recommended City Council approval.

Within the last decade, the craft beer and microbrewery industry has seen increased growth nationwide. Locally, Anaheim has permitted more craft and micro-breweries than any other city in Orange County. In the summer of 2013, the Mayor created a working group to evaluate how the City can make it easier for craft beer producers to open businesses in Anaheim. This working group included City staff, Anaheim residents, local brewers, and members of the media. This group sought to identify ways to reduce Anaheim's regulations as well as those imposed by the Orange County Environmental Health Agency. The proposed Code changes were derived largely from input from the working group and staff's experience reviewing the four breweries approved in Anaheim during the last four years. Through its research, staff also recognized the popularity of other types of alcoholic beverage manufacturing emerging from the craft beer movement, specifically distilled liquor. In anticipation of this trend, staff recommends that wineries and distilleries be included with this amendment and that the proposed Code language accommodates such uses.

The following is a brief overview of the major changes. An Executive Summary outlining the proposed modifications is provided in Attachment 1 to this staff report.

200 S. Anaheim Blvd.
Suite #162
Anaheim, CA 92805
Tel: (714) 765-5139
Fax: (714) 765-5280
www.anaheim.net

Land Use Definition: A new land use category and definition is proposed called "Alcoholic Beverage Manufacturing." This land use category would include manufacturing facilities for the production of beer, wine, and distilled spirits, in accordance with a valid alcohol production license issued by the State of California. This use would also allow a "tasting room" which is defined as an accessory use in a brewery, winery, or distillery that only serves beverages produced at that location.

Tasting room visitors would be allowed to consume alcoholic beverages on the premises and purchase containers of alcohol for off-site consumption.

Permitted Land Uses: Specific land uses within the Zoning Code are categorized as permitted, conditionally permitted, and prohibited. Historically, alcoholic beverage producing facilities were conditionally permitted and typically approved with a set of standard conditions of approval. The proposed Code Amendment would allow Alcoholic Beverage Manufacturing, including tasting rooms, by right, in almost all commercial and industrial zones. The permitted locations include 89 percent of all the City's commercial and industrially zoned properties.

Although the proposed Code amendment would eliminate the need for a conditional use permit (CUP), conditions of approval that are typically added through the CUP process would be incorporated as Code requirements. This approach is consistent with prior amendments to the Zoning Code, where conditionally permitted uses were allowed by right, and the commonly applied conditions of approval were included in the Code. Staff believes that allowing these uses by right, while incorporating the operational standards into the Code, would ensure that these uses operate in a manner compatible with surrounding land uses. Some of the Code-required operational standards would include, but are not limited to, the following:

- Alcoholic beverage manufacturing uses in commercial zones may not exceed 6,000 square feet, unless otherwise permitted by conditional use permit. Businesses located in the Industrial zone would not be subject to a size limit. The 6,000 square foot commercial standard is 1,000 square feet larger than the City's largest permitted brewery. Breweries larger than 6,000 square feet often exhibit industrial characteristics including frequent freight shipping and deliveries and such activity may not be suitable in all commercial areas, particularly those located adjacent to residential properties.

- Tasting rooms would be limited to 750 square feet. This limit is based on fire and building codes which require substantial additional improvements and design features for larger assembly areas. All tasting rooms approved in Anaheim to date fall within this limit. Larger tasting rooms may be permitted through a conditional use permit. Outdoor patios would be limited to 1,000 square feet to minimize potential conflicts with adjoining land uses.

- Only beverages produced on the property may be served in the tasting room.

- A security plan will be required to be approved by the Police Department prior to operation.

Staff received positive feedback regarding these size standards from members of the Mayor's working group and believes the proposed sizes are adequate to meet the needs of most craft breweries.

Eliminating the need for a CUP will create an incentive for microbreweries to locate in Anaheim. Eliminating the public hearing process associated with a conditional use permit application will save significant amounts of time and processing costs for prospective microbrewers. More importantly, the proposed approach creates certainty for the businesses.

The proposed ordinance will allow any of the operating standards that are incorporated into the Code to be modified through a conditional use permit (CUP). The purpose of requiring a CUP is to ensure compatibility with the surrounding land uses.

Determination of Public Convenience or Necessity: The State Department of Alcoholic Beverage Control (ABC) requires that a Determination of Public Convenience or Necessity (PCN) be made for businesses that sell alcohol for off-premises consumption when those uses are in areas that have a crime rate that is higher than the City average or where there is an overconcentration of off-sale licenses in the census tract where the business is proposed. Currently, the Planning Commission is the sole authority for making this determination. This proposal would allow the Planning Director to make this determination for Alcoholic Beverage Manufacturing uses that would be permitted by right. The granting of such authority to the Planning Director is allowed under state law. Should an applicant have a business proposal that requires a conditional use permit or a variance, then approval of the PCN determination would revert back to the Planning Commission and would be considered concurrently with the CUP or variance at a public hearing.

Parking: Alcoholic beverage manufacturing would be subject to the same parking standards required for an industrial or manufacturing use. These standards take into consideration the low number of employees per square foot for the manufacturing use and include provisions for accessory office uses. Parking for the tasting room or outdoor patio area would be based on the standard for bars and nightclubs. All of the breweries approved in the City to date could be located in a commercial space while easily meeting this parking standard. Breweries proposed within industrial areas would have the option of meeting this requirement on site or through a shared parking arrangement with an adjacent property owner.

The proposed Ordinance implements recommendations from the Mayor's working group and makes opening a brewery or similar businesses simpler by eliminating the need for a CUP. This Ordinance also includes Code requirements for the safe and orderly operation of alcoholic beverage manufacturers. Therefore, staff recommends that the City Council concur with the Planning Commission's recommendations and introduce the attached Ordinance.

IMPACT ON BUDGET:

The costs to process this code amendment were included in the Planning Department's FY 2013/14 budget, and implementation of these proposed changes will not have any budgetary impact.

Respectfully submitted,

Sheri Vander Dussen
Planning Director

Attachments:

1. Ordinance
2. Red-line Ordinance
3. Executive Summary
4. Planning Commission Staff Report (February 10, 2014)

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ANAHEIM ADDING SECTION 18.38.025 TO CHAPTER 18.38 OF TITLE 18 OF THE ANAHEIM MUNICIPAL CODE RELATING TO ALCOHOLIC BEVERAGE MANUFACTURING IN THE CITY OF ANAHEIM AND MAKING CORRESPONDING AMENDMENTS TO VARIOUS SECTIONS OF THE ANAHEIM MUNICIPAL CODE.

WHEREAS, pursuant to the City's police power, as granted broadly under Article XI, Section 7 of the California Constitution, the City Council of the City of Anaheim ("City Council") has the authority to enact and enforce ordinances and regulations for the public peace, morals and welfare of the City of Anaheim (the "City") and its residents; and

WHEREAS, the City Council recognizes that the burgeoning of micro- and craft-beer breweries has created new business and employment opportunities within the City and is a growing industry within the City, as well as on a state and national level; and

WHEREAS, the City Council also recognizes the growth opportunity of small manufacturers of wine and distilled spirits as a source of additional business and employment opportunities within the City; and

WHEREAS, the City Council desires to enable "alcoholic beverage manufacturers" meeting certain criteria under the Anaheim Municipal Code to obtain permits in a more efficient and cost-effective way to manufacture or produce and sell or distribute beer, wine, brandy or distilled spirits both within and without the jurisdiction of the City; and

WHEREAS, the City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act of 1970, as amended (Public Resources Code Section 21000 *et seq.;* herein referred to as "CEQA"), pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State of California Guidelines for Implementation of the California Environmental Quality Act (California Code of Regulations, Title 14, Chapter 3; herein referred to as the "CEQA Guidelines"), because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a project as defined in Section 15378 of the CEQA Guidelines; and

WHEREAS, the City Council determines that this ordinance is in accord with the public purposes and provisions of applicable State and local laws and requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANAHEIM DOES ORDAIN AS FOLLOWS:

SECTION 1.

That Section 18.92.040 **(**"A" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

> "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, brandy, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
>
> "Alcoholic beverage manufacturing" means the manufacture or production within the City of Anaheim of beer, wine, brandy or distilled spirits by any person licensed by the Department of Alcoholic Beverage Control of the State of California and includes the sale or distribution of said products both within and without the jurisdiction of the City.
>
> "Alcoholic beverage manufacturer" means a beer manufacturer, a winegrower, a distilled spirits manufacturer, or a brandy manufacturer, licensed by the Department of Alcoholic Beverage Control of the State of California, or any officer, director, employee or agent of any such person.

SECTION 2.

That Section 18.92.050 **(**"B" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

> "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, but does not include sake, known as Japanese rice wine. Beer aged in an empty wooden barrel previously used to contain wine or distilled spirits shall be defined exclusively as "beer" and shall not be considered a dilution or mixture of any other alcoholic beverage.
>
> "Beer manufacturer" means any person licensed by the Department of Alcoholic Beverage Control of the State of California that has facilities and equipment for the purposes of, and is engaged in, the commercial manufacture of beer.
>
> "Brandy manufacturer" means any person licensed by the Department of Alcoholic Beverage Control of the State of California that is engaged in the

manufacture of brandy only and not in the manufacture of any other distilled spirits.

SECTION 3.

That Section 18.92.070 **(**"D" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

> "Distilled spirits" means an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.
>
> "Distilled spirits manufacturer" means any person licensed by the Department of Alcoholic Beverage Control of the State of California who produces distilled spirits from naturally fermented materials or in any other manner.

SECTION 4.

That Section 18.92.230 **(**"T" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definition:

> "Tasting Room" means a separate area on the alcoholic beverage manufacturer's licensed premises maintained and operated by and for an alcoholic beverage manufacturer, wherein alcoholic beverages may be sold and served by an employee or designated representative of the alcoholic beverage manufacturer to consumers of legal drinking age for consumption on the alcoholic beverage manufacturer's licensed premises. The alcoholic beverages served shall be limited to the products that are authorized to be sold by the alcoholic beverage manufacturer under its license issued by the California Department of Alcoholic Beverage Control. Alcoholic beverages manufactured elsewhere may not be sold in the tasting room or on the alcoholic beverage manufacturer's licensed premises. A tasting room is, and at all times shall remain, an ancillary use to the alcoholic beverage manufacturing use.

SECTION 5.

That Section 18.92.260 **(**"W" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

> "Wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural

product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine.

"Winegrower" means any person licensed by the Department who has facilities and equipment for the conversion of grapes, berries, or other fruit into wine and is engaged in the production of wine within the City.

SECTION 6.

That Table 8-A (Primary Uses: Commercial Zones) of Section 18.08.030 (Uses) of Chapter 18.08 (Commercial Zones) be, and the same is hereby, amended to read in full as follows:

Table 8-A PRIMARY USES: COMMERCIAL ZONES						**P=Permitted by Right** **C=Conditional Use Permit Required** **N=Prohibited** **T=Telecommunications Antenna Review Permit Required**
	C- NC	**C-R**	**C-G**	**O-L**	**O-H**	**Special Provisions**
Non-Residential Classes of Uses						
Alcoholic Beverage Manufacturing	N	P/C	P/C	N	N	Subject to Section 18.38.025. Buildings larger than 6,000 square feet are subject to a Conditional Use Permit.
Alcoholic Beverage Sales–Off-Sale	P/C	P/C	P/C	P/C	P/C	Conditional use permit not required if use is in conjunction with Markets–Large. In O-L and O-H Zones, must be clearly accessory to and integrated with an office building
Alcoholic Beverage Sales–On-Sale	C	C	C	C	C	

SECTION 7.

That Table 10-A (Primary Uses: Industrial Zone) of Section 18.10.030 (Uses) of Chapter 18.10 (Industrial Zone) be, and the same is hereby, amended to read in full as follows:

Table 10-A PRIMARY USES: INDUSTRIAL ZONE		**P=Permitted by Right** **C=Conditional Use Permit Required** **N=Prohibited** **T=Telecommunications Antenna Review Permit Required**
	I	**Special Provisions**
Non-Residential Classes of Uses		
Alcoholic Beverage Manufacturing	P/C	Subject to Section 18.38.025
Alcoholic Beverage Sales–Off-Sale	C	
Alcoholic Beverage Sales–On-Sale	C	

SECTION 8.

That subsection .010 ("A" Use Classes) of Section 18.36.040 **(**Non-Residential Primary Use Classes**)** of Chapter 18.36 (Types of Uses) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definition:

> Alcoholic Beverage Manufacturing. This use class consists of establishments that produce or manufacture alcoholic beverages of all types. Businesses under this use class may sell alcohol produced or manufactured on the alcoholic beverage manufacturer's licensed premises for On-Sale or Off-Sale consumption. Typical uses include breweries, distilleries and wineries. Tasting rooms may be included in conjunction with the manufacturing.

SECTION 9.

That the following use classes set forth in subsection .010 ("A" Use Classes) of Section 18.36.040 **(**Non-Residential Primary Use Classes**)** of Chapter 18.36 of Title 18 of the Anaheim Municipal Code be, and the same are hereby, amended to read in full as follows:

Alcoholic Beverage Sales-Off-Sale. This use class consists of establishments that sell alcoholic beverages of all types for consumption outside the building in which they are sold. Typical uses include liquor or grocery stores, and convenience markets, selling alcoholic beverages for off-site consumption.

Alcoholic Beverage Sales-On-Sale. This use class consists of establishments that sell alcoholic beverages of all types for consumption within the building in which they are sold or in an accessory outdoor dining area. Typical uses include bars, wine bars, brew pubs, and restaurants that serve alcoholic beverages.

SECTION 10.

That new Section 18.38.025 (Alcoholic Beverage Manufacturing) be added to Chapter 18.38 (Supplemental Use Regulations) of Title 18 of the Anaheim Municipal Code to read in full as follows:

18.38.025 ALCOHOLIC BEVERAGE MANUFACTURING.

An alcoholic beverage manufacturer shall comply with the provisions of this section.

.010 Alcoholic beverage manufacturing shall be permitted by right in the "C-R" Regional Commercial Zone, the "C-G" General Commercial Zone, and the "I" Industrial Zone provided that the alcoholic beverage manufacturer satisfies the following requirements:

.0101 A sewer study, including an identification of appropriate measures to mitigate sewer deficiencies, shall be prepared by a registered professional civil engineer in the State of California and submitted for consideration by the City Engineer.

.0102 The sewer study is subject to approval by the City Engineer. The alcoholic beverage manufacturer will be required to implement all mitigation measures recommended in the sewer study, including the construction of new sewer facilities.

.0103 Prior and as a condition to the opening for business of an alcoholic beverage manufacturing use, the alcoholic beverage manufacturer shall implement all such mitigation measures to the satisfaction of the City Engineer.

.020 Alcoholic beverage manufacturing uses in any of the commercial zones identified in this section may not exceed 6,000 square feet, unless otherwise permitted by conditional use permit. On the other hand, alcoholic beverage manufacturing uses located in the "I" Industrial Zone shall not be limited by square footage.

.030 A tasting room may not exceed a total of 750 square feet, unless otherwise permitted by conditional use permit. The area permitted for a tasting room shall not include any outdoor patio area. A tasting room consists of the floor area where alcoholic beverages are consumed, including any bar and seating areas but shall not consist of area within the alcoholic beverages manufacturing licensed premises devoted to restrooms serving the tasting room. An outdoor patio area may be permitted provided it is not located in any required parking space or access way. An outdoor patio area may not exceed 1,000 square feet.

.040 A grain silo may be permitted to be located outside of the building serving as the alcoholic beverage manufacturing use. The grain silo may not be located in any required parking space or access way. One (1) sign may be permitted on the grain silo with a maximum size of nine (9) square feet. The silo sign is permitted in addition to any permitted wall signs or monument signs.

.050 Outdoor utility equipment must be screened in accordance with the requirements in Section 18.38.160 (Mechanical and utility equipment – ground mounted). Outdoor ground-mounted utility equipment is not permitted in Commercial zones.

.060 Outdoor storage is prohibited in any commercial zone described in this section.

.070 No video, electronic or other amusement devices or games shall be permitted.

.080 The real property upon which an alcoholic beverage manufacturing use is operated shall be permanently maintained in an orderly fashion by the provision of regular landscape maintenance, removal of trash and debris, and removal of graffiti within forty eight (48) hours from the time of occurrence.

.090 Any proposed roof-mounted equipment shall be completely screened from view. This screening information shall be specifically shown on the plans submitted for a building permit.

.100 A security plan in a form satisfactory to the Anaheim Police Department shall be submitted to and approved by the Anaheim Police Department prior and as a condition to the issuance of a permit, which plan shall be formulated to deter unlawful conduct of employees and patrons, to promote the safe and orderly assembly and movement of persons and vehicles, and to prevent

disturbances to surrounding uses and the neighborhood by excessive noise created by patrons entering or leaving the alcoholic beverage manufacturer's licensed premises.

.110 Parking lots, driveways, circulation areas, aisles, passageways, recesses and grounds contiguous to buildings making up an alcoholic beverage manufacturing use shall be provided with enough lighting to illuminate and make clearly visible the presence of any person on or about the alcoholic beverage manufacturer's licensed premises during the hours of darkness and shall provide a safe and secure environment for all persons, property, and vehicles onsite.

.120 There shall be no admission fee, cover charge, nor minimum purchase required.

.130 Signs shall be posted inside the business near the exit door stating: "No alcohol allowed past this point."

.140 The number of persons shall not exceed the maximum occupancy load as determined by the Anaheim Fire Department. Signs indicating the occupant load shall be posted in a conspicuous place on an approved sign near the main exit from the room. (Section 25.114(a) Uniform Fire Code)

.150 There shall be no live entertainment, amplified music or dancing permitted on the alcoholic beverage manufacturer's licensed premises at any time without issuance of proper permits as required by the Anaheim Municipal Code.

.160 The display of alcoholic beverages shall not be located outside of a building or within five (5) feet of any public entrance to the building.

.170 Up to four (4) Special Event Permits are allowed for an alcoholic beverages manufacturing use subject to Section 18.38.240, except that Special Event Permits may be permitted for alcoholic beverage manufacturing uses in the "I" Industrial Zone and in the Industrial Area (Development Area 1), Industrial Area – Recycling Overly Area (Development Area 1A), Expanded Industrial Area (Development Area 2) and the La Palma Core Area (Development Area 3) of the Northeast Area Specific Plan No. SP94-1.

.180 Food preparation is not allowed on the alcoholic beverage manufacturer's licensed premises.

.190 An alcoholic beverage manufacturer shall not serve brands of alcoholic beverages distributed by a competing alcoholic beverage manufacturer. The alcoholic beverages served shall be limited to the products that are authorized to be sold by the alcoholic beverage manufacturer under its license issued by the California Department of Alcoholic Beverage Control.

.200 A licensed alcoholic beverage manufacturer may, at the alcoholic beverage manufacturer's licensed premises of production, sell to consumers for consumption off the alcoholic beverage manufacturer's licensed premises alcoholic beverages that are produced and bottled by, or produced and packaged for, that manufacturer. A licensed alcoholic beverage manufacturer may also sell such alcoholic beverages to consumers for consumption in the alcoholic beverage manufacturer's tasting room.

SECTION 11.

That Table 42-A (Non-residential parking requirements) of Section 18.42.040 (Non-residential parking requirements) of Chapter 18.42 (Parking and Loading) be, and the same is hereby, amended to include the following use class:

Table 42-A
NON-RESIDENTIAL PARKING REQUIREMENTS

Use Class	Required Spaces
Alcoholic Beverage Manufacturing	1.55 spaces per 1,000 square feet of GFA, which may include a maximum of 10% office space, plus, if the percentage of office space exceeds 10% of the GFA, 4 spaces per 1,000 square feet of GFA for the floor area in excess of 10%. *Tasting Room and outside patios*: 17 spaces per 1,000 square feet of GFA.

SECTION 12.

That Section 18.60.220 **(**Determination of Public Convenience or Necessity) of Chapter 18.60 (Procedures) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

18.60.220 DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY.

The Planning Commission shall have the authority to make determinations of public convenience or necessity on behalf of the City pursuant to Section 23958.4 of the California Business and Professions Code relating to the sale of alcoholic beverages, including beer and wine, or the section that may be subsequently adopted to replace Section 23958.4. The Planning Director shall have the authority to make determinations of public convenience or necessity on behalf of the City for uses classified as “Alcoholic Beverage Manufacturing”, unless such an application is made in conjunction with an application for a conditional use permit and/or variance under Section 18.38.025, which will require Planning Commission action. In such event, the application for a conditional use permit and/or variance (as the case may be) and a determination of public convenience or necessity shall be made to the Planning Commission to be processed in accordance with Chapter 18.60 (Procedures).

The process for making and appealing a determination of public convenience or necessity shall be as set forth for conditional use permits in Chapter 18.66 (Conditional Use Permits), except that no findings shall be required. Said process may be modified or supplemented by Section 23958 of the Business and Professions Code, or the section that may be subsequently adopted to replace Section 23958.

SECTION 13. SEVERABILITY.

The City Council of the City of Anaheim hereby declares that should any section, paragraph, sentence, phrase, term or word of this ordinance be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid. If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION 14. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be printed once within fifteen (15) days after its adoption in the *Anaheim Bulletin*, a newspaper of general circulation, published and circulated in the City of Anaheim.

SECTION 15. EFFECTIVE DATE

This ordinance shall take effect and be in full force thirty (30) days from and after its final passage.

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THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the ____ day of _____, 2014, and thereafter passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2014, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ANAHEIM

By: _____
MAYOR OF THE CITY OF ANAHEIM

ATTEST:

_____
CITY CLERK OF THE CITY OF ANAHEIM

100293-v2/TReynolds

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ANAHEIM ADDING SECTION 18.38.025 TO CHAPTER 18.38 OF TITLE 18 OF THE ANAHEIM MUNICIPAL CODE RELATING TO ALCOHOLIC BEVERAGE MANUFACTURING IN THE CITY OF ANAHEIM AND MAKING CORRESPONDING AMENDMENTS TO VARIOUS SECTIONS OF THE ANAHEIM MUNICIPAL CODE.

WHEREAS, pursuant to the City's police power, as granted broadly under Article XI, Section 7 of the California Constitution, the City Council of the City of Anaheim ("City Council") has the authority to enact and enforce ordinances and regulations for the public peace, morals and welfare of the City of Anaheim (the "City") and its residents; and

WHEREAS, the City Council recognizes that the burgeoning of micro- and craft-beer breweries has created new business and employment opportunities within the City and is a growing industry within the City, as well as on a state and national level; and

WHEREAS, the City Council also recognizes the growth opportunity of small manufacturers of wine and distilled spirits as a source of additional business and employment opportunities within the City; and

WHEREAS, the City Council desires to enable "alcoholic beverage manufacturers" meeting certain criteria under the Anaheim Municipal Code to obtain permits in a more efficient and cost-effective way to manufacture or produce and sell or distribute beer, wine, brandy or distilled spirits both within and without the jurisdiction of the City; and

WHEREAS, the City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act of 1970, as amended (Public Resources Code Section 21000 *et seq.;* herein referred to as "CEQA"), pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State of California Guidelines for Implementation of the California Environmental Quality Act (California Code of Regulations, Title 14, Chapter 3; herein referred to as the "CEQA Guidelines"), because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a project as defined in Section 15378 of the CEQA Guidelines; and

WHEREAS, the City Council determines that this ordinance is in accord with the public purposes and provisions of applicable State and local laws and requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANAHEIM DOES ORDAIN AS FOLLOWS:

SECTION 1.

That Section 18.92.040 **(**"A" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

"Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, brandy, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

"Alcoholic beverage manufacturing" means the manufacture or production within the City of Anaheim of beer, wine, brandy or distilled spirits by any person licensed by the Department of Alcoholic Beverage Control of the State of California and includes the sale or distribution of said products both within and without the jurisdiction of the City.

"Alcoholic beverage manufacturer" means a beer manufacturer, a winegrower, a distilled spirits manufacturer, or a brandy manufacturer, licensed by the Department of Alcoholic Beverage Control of the State of California, or any officer, director, employee or agent of any such person.

SECTION 2.

That Section 18.92.050 **(**"B" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

"Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, but does not include sake, known as Japanese rice wine. Beer aged in an empty wooden barrel previously used to contain wine or distilled spirits shall be defined exclusively as "beer" and shall not be considered a dilution or mixture of any other alcoholic beverage.

"Beer manufacturer" means any person licensed by the Department of Alcoholic Beverage Control of the State of California that has facilities and equipment for the purposes of, and is engaged in, the commercial manufacture of beer.

"Brandy manufacturer" means any person licensed by the Department of Alcoholic Beverage Control of the State of California that is engaged in the manufacture of brandy only and not in the manufacture of any other distilled spirits.

SECTION 3.

That Section 18.92.070 **(**"D" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

"Distilled spirits" means an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

"Distilled spirits manufacturer" means any person licensed by the Department of Alcoholic Beverage Control of the State of California who produces distilled spirits from naturally fermented materials or in any other manner.

SECTION 4.

That Section 18.92.230 **(**"T" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definition:

"Tasting Room" means a separate area on the alcoholic beverage manufacturer's licensed premises maintained and operated by and for an alcoholic beverage manufacturer, wherein alcoholic beverages may be sold and served by an employee or designated representative of the alcoholic beverage manufacturer to consumers of legal drinking age for consumption on the alcoholic beverage manufacturer's licensed premises. The alcoholic beverages served shall be limited to the products that are authorized to be sold by the alcoholic beverage manufacturer under its license issued by the California Department of Alcoholic Beverage Control. Alcoholic beverages manufactured elsewhere may not be sold in the tasting room or on the alcoholic beverage manufacturer's licensed premises. A tasting room is, and at all times shall remain, an ancillary use to the alcoholic beverage manufacturing use.

SECTION 5.

That Section 18.92.260 **(**"W" Words, Terms and Phrases**)** of Chapter 18.92 (Definitions) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

"Wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine.

"Winegrower" means any person licensed by the Department who has facilities and equipment for the conversion of grapes, berries, or other fruit into wine and is engaged in the production of wine within the City.

SECTION 6.

That Table 8-A (Primary Uses: Commercial Zones) of Section 18.08.030 (Uses) of Chapter 18.08 (Commercial Zones) be, and the same is hereby, amended to read in full as follows:

Table 8-A PRIMARY USES: COMMERCIAL ZONES						**P=Permitted by Right** **C=Conditional Use Permit Required** **N=Prohibited** **T=Telecommunications Antenna Review Permit Required**
	C- NC	**C-R**	**C-G**	**O-L**	**O-H**	**Special Provisions**
Non-Residential Classes of Uses						
Alcoholic Beverage Manufacturing	**N**	**P/C**	**P/C**	**N**	**N**	**Subject to Section 18.38.025. Buildings larger than 6,000 square feet are subject to a Conditional Use Permit.**
Alcoholic Beverage Sales–Off-Sale	P/C	P/C	P/C	P/C	P/C	Conditional use permit not required if use is in conjunction with Markets–Large. In O-L and O-H Zones, must be clearly accessory to and integrated with an office building
Alcoholic Beverage Sales–On-Sale	C	C	C	C	C	

SECTION 7.

That Table 10-A (Primary Uses: Industrial Zone) of Section 18.10.030 (Uses) of Chapter 18.10 (Industrial Zone) be, and the same is hereby, amended to read in full as follows:

Table 10-A PRIMARY USES: INDUSTRIAL ZONE		**P=Permitted by Right** **C=Conditional Use Permit Required** **N=Prohibited** **T=Telecommunications Antenna Review Permit Required**
	I	**Special Provisions**
Non-Residential Classes of Uses		
Alcoholic Beverage Manufacturing	P/C	**Subject to Section 18.38.025**
Alcoholic Beverage Sales–Off-Sale	C	
Alcoholic Beverage Sales–On-Sale	C	

SECTION 8.

That subsection .010 ("A" Use Classes) of Section 18.36.040 **(**Non-Residential Primary Use Classes**)** of Chapter 18.36 (Types of Uses) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definition:

Alcoholic Beverage Manufacturing. This use class consists of establishments that produce or manufacture alcoholic beverages of all types. Businesses under this use class may sell alcohol produced or manufactured on the alcoholic beverage manufacturer's licensed premises for On-Sale or Off-Sale consumption. Typical uses include breweries, distilleries and wineries. Tasting rooms may be included in conjunction with the manufacturing.

SECTION 9.

That the following use classes set forth in subsection .010 ("A" Use Classes) of Section 18.36.040 **(**Non-Residential Primary Use Classes**)** of Chapter 18.36 of Title 18 of the Anaheim Municipal Code be, and the same are hereby, amended to read in full as follows:

Alcoholic Beverage Sales-Off-Sale. This use class consists of establishments that sell alcoholic beverages of all types for consumption outside the building in which they are sold. ~~This and Alcoholic Beverage Sales-On-Sale are the only use~~

~~classes that allow the sale of alcoholic beverages.~~ Typical uses include liquor or grocery stores, and convenience markets, selling alcoholic beverages for off-site consumption.

Alcoholic Beverage Sales-On-Sale. This use class consists of establishments that sell alcoholic beverages of all types for consumption within the building in which they are sold or in an accessory outdoor dining area. ~~This and Alcoholic Beverage Sales-Off-Sale are the only use classes that allow the sale of alcoholic beverages.~~ Typical uses include bars, wine bars, brew pubs, and restaurants that serve alcoholic beverages.

SECTION 10.

That new Section 18.38.025 (Alcoholic Beverage Manufacturing) be added to Chapter 18.38 (Supplemental Use Regulations) of Title 18 of the Anaheim Municipal Code to read in full as follows:

18.38.025 ALCOHOLIC BEVERAGE MANUFACTURING.

An alcoholic beverage manufacturer shall comply with the provisions of this section.

.010 Alcoholic beverage manufacturing shall be permitted by right in the "C-R" Regional Commercial Zone, the "C-G" General Commercial Zone, and the "I" Industrial Zone provided that the alcoholic beverage manufacturer satisfies the following requirements:

.0101 A sewer study, including an identification of appropriate measures to mitigate sewer deficiencies, shall be prepared by a registered professional civil engineer in the State of California and submitted for consideration by the City Engineer.

.0102 The sewer study is subject to approval by the City Engineer. The alcoholic beverage manufacturer will be required to implement all mitigation measures recommended in the sewer study, including the construction of new sewer facilities.

.0103 Prior and as a condition to the opening for business of an alcoholic beverage manufacturing use, the alcoholic beverage manufacturer shall implement all such mitigation measures to the satisfaction of the City Engineer.

.020 Alcoholic beverage manufacturing uses in any of the commercial zones identified in this section may not exceed 6,000 square feet, unless otherwise permitted by conditional use permit. On the other hand, alcoholic beverage manufacturing uses located in the "I" Industrial Zone shall not be limited by square footage.

.030 A tasting room may not exceed a total of 750 square feet, unless otherwise permitted by conditional use permit. The area permitted for a tasting room shall not include any outdoor patio area. A tasting room consists of the floor area where alcoholic beverages are consumed, including any bar and seating areas but shall not consist of area within the alcoholic beverages manufacturing licensed premises devoted to restrooms serving the tasting room. An outdoor patio area may be permitted provided it is not located in any required parking space or access way. An outdoor patio area may not exceed 1,000 square feet.

.040 A grain silo may be permitted to be located outside of the building serving as the alcoholic beverage manufacturing use. The grain silo may not be located in any required parking space or access way. One (1) sign may be permitted on the grain silo with a maximum size of nine (9) square feet. The silo sign is permitted in addition to any permitted wall signs or monument signs.

.050 Outdoor utility equipment must be screened in accordance with the requirements in Section 18.38.160 (Mechanical and utility equipment – ground mounted). Outdoor ground-mounted utility equipment is not permitted in Commercial zones.

.060 Outdoor storage is prohibited in any commercial zone described in this section.

.070 No video, electronic or other amusement devices or games shall be permitted.

.080 The real property upon which an alcoholic beverage manufacturing use is operated shall be permanently maintained in an orderly fashion by the provision of regular landscape maintenance, removal of trash and debris, and removal of graffiti within forty eight (48) hours from the time of occurrence.

.090 Any proposed roof-mounted equipment shall be completely screened from view. This screening information shall be specifically shown on the plans submitted for a building permit.

.100 A security plan in a form satisfactory to the Anaheim Police Department shall be submitted to and approved by the Anaheim Police Department prior and as a condition to the issuance of a permit, which plan shall be formulated to deter unlawful conduct of employees and patrons, to promote the safe and orderly assembly and movement of persons and vehicles, and to prevent disturbances to surrounding uses and the neighborhood by excessive noise created by patrons entering or leaving the alcoholic beverage manufacturer's licensed premises.

.110 Parking lots, driveways, circulation areas, aisles, passageways, recesses and grounds contiguous to buildings making up an alcoholic beverage

manufacturing use shall be provided with enough lighting to illuminate and make clearly visible the presence of any person on or about the alcoholic beverage manufacturer's licensed premises during the hours of darkness and shall provide a safe and secure environment for all persons, property, and vehicles onsite.

.120 There shall be no admission fee, cover charge, nor minimum purchase required.

.130 Signs shall be posted inside the business near the exit door stating: "No alcohol allowed past this point."

.140 The number of persons shall not exceed the maximum occupancy load as determined by the Anaheim Fire Department. Signs indicating the occupant load shall be posted in a conspicuous place on an approved sign near the main exit from the room. (Section 25.114(a) Uniform Fire Code)

.150 There shall be no live entertainment, amplified music or dancing permitted on the alcoholic beverage manufacturer's licensed premises at any time without issuance of proper permits as required by the Anaheim Municipal Code.

.160 The display of alcoholic beverages shall not be located outside of a building or within five (5) feet of any public entrance to the building.

.170 Up to four (4) Special Event Permits are allowed for an alcoholic beverages manufacturing use subject to Section 18.38.240, except that Special Event Permits may be permitted for alcoholic beverage manufacturing uses in the "I" Industrial Zone and in the Industrial Area (Development Area 1), Industrial Area – Recycling Overly Area (Development Area 1A), Expanded Industrial Area (Development Area 2) and the La Palma Core Area (Development Area 3) of the Northeast Area Specific Plan No. SP94-1.

.180 Food preparation is not allowed on the alcoholic beverage manufacturer's licensed premises.

.190 An alcoholic beverage manufacturer shall not serve brands of alcoholic beverages distributed by a competing alcoholic beverage manufacturer. The alcoholic beverages served shall be limited to the products that are authorized to be sold by the alcoholic beverage manufacturer under its license issued by the California Department of Alcoholic Beverage Control.

.200 A licensed alcoholic beverage manufacturer may, at the alcoholic beverage manufacturer's licensed premises of production, sell to consumers for consumption off the alcoholic beverage manufacturer's licensed premises alcoholic beverages that are produced and bottled by, or produced and packaged for, that manufacturer. A licensed alcoholic beverage manufacturer may also sell such alcoholic beverages to consumers for consumption in the alcoholic beverage manufacturer's tasting room.

SECTION 11.

That Table 42-A (Non-residential parking requirements) of Section 18.42.040 (Non-residential parking requirements) of Chapter 18.42 (Parking and Loading) be, and the same is hereby, amended to include the following use class:

Table 42-A NON-RESIDENTIAL PARKING REQUIREMENTS	
Use Class	**Required Spaces**
Alcoholic Beverage Manufacturing	1.55 spaces per 1,000 square feet of GFA, which may include a maximum of 10% office space, plus, if the percentage of office space exceeds 10% of the GFA, 4 spaces per 1,000 square feet of GFA for the floor area in excess of 10%. *Tasting Room and outside patios*: 17 spaces per 1,000 square feet of GFA.

SECTION 12.

That Section 18.60.220 **(**Determination of Public Convenience or Necessity) of Chapter 18.60 (Procedures) of Title 18 of the Anaheim Municipal Code be, and the same is hereby, amended to include the following new definitions:

18.60.220 DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY.

The Planning Commission shall have the authority to make determinations of public convenience or necessity on behalf of the City pursuant to Section 23958.4 of the California Business and Professions Code relating to the sale of alcoholic beverages, including beer and wine, or the section that may be subsequently adopted to replace Section 23958.4. The Planning Director shall have the authority to make determinations of public convenience or necessity on behalf of the City for uses classified as "Alcoholic Beverage Manufacturing", unless such an application is made in conjunction with an application for a conditional use permit and/or variance under Section 18.38.025, which will require Planning Commission action. In such event, the application for a conditional use permit and/or variance (as the case may be) and a determination of public convenience or necessity shall be made to the Planning Commission to be processed in accordance with Chapter 18.60 (Procedures).

The process for making and appealing a determination of public convenience or necessity shall be as set forth for conditional use permits in Chapter 18.66 (Conditional Use Permits), except that no findings shall be required. Said process may be modified or supplemented by Section 23958 of the Business and

Professions Code, or the section that may be subsequently adopted to replace Section 23958.

SECTION 13. SEVERABILITY.

The City Council of the City of Anaheim hereby declares that should any section, paragraph, sentence, phrase, term or word of this ordinance be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid. If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION 14. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be printed once within fifteen (15) days after its adoption in the *Anaheim Bulletin*, a newspaper of general circulation, published and circulated in the City of Anaheim.

SECTION 15. EFFECTIVE DATE

This ordinance shall take effect and be in full force thirty (30) days from and after its final passage.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the ____ day of _____, 2014, and thereafter passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2014, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ANAHEIM

By: _____
MAYOR OF THE CITY OF ANAHEIM

ATTEST:

_____

CITY CLERK OF THE CITY OF ANAHEIM

99986-v4/TReynolds

"BREW CITY"
ZONING CODE AMENDMENT NO. 2013-00113

EXECUTIVE SUMMARY

New provisions and updates are proposed throughout the Zoning Code to permit breweries and other alcoholic beverage manufacturing, by right, in certain commercial zones and the industrial zone. The following is a summary of the major changes proposed in the ordinance.

1. A new land use and definition has been added ("Alcoholic Beverage Manufacturing"). This land use will include manufacturing facilities for the production of beer, wine, brandy and distilled spirits or other similar alcoholic beverage, in accordance with a valid license issued by the State of California. It also includes a "Tasting Room."

2. "Tasting Room" is defined as an area located within an Alcoholic Beverage Manufacturing establishment which is accessory to the manufacturing use. Only beverages manufactured on the premises may be consumed or sold in the tasting room. Alcoholic beverages may be sold for consumption on or off the premises. A tasting room is, and at all times shall remain, an ancillary use to the alcoholic beverage manufacturing use.

3. Proposed changes to the Commercial and Industrial Uses sections to allow Alcoholic Beverage Manufacturing by right. This use will be permitted in the General Commercial and Regional Commercial zones, but not allowed in the Neighborhood Commercial, Office Low or Office High zones. The Neighborhood Commercial Zone is intended to serve surrounding neighborhoods and to provide uses such as small markets, barber shops, banks and specialty shops. Staff does not believe that this zone is compatible with the alcoholic beverage manufacturing use. Similarly, the O-L and O-H zones are intended for office uses and not alcohol manufacturing. A maximum size of 6,000 square feet will be allowed for these uses in the commercial zones. This is to ensure that large scale manufacturing facilities are not located in commercial zones. This size may be increased through approval of a conditional use permit. There is no size limit for this use in the industrial zone.

4. A Supplemental Use Regulation section has been added to establish operational requirements for these uses. This will limit the size of the tasting room to 750 square feet with a maximum outdoor patio size of 1,000 square feet. It will also require the preparation of a sewer study to evaluate sewer capacities and possible mitigation for any identified deficiencies caused by the use. It also permits a grain silo with an attached sign to be located outdoors and requires ground-mounted equipment to be located indoors in commercial zones.

5. Alcoholic Beverage Manufacturing uses will be parked at industrial requirements and the tasting room will be parked at bar/night club requirements. For comparison purposes, a 6,000 square foot brewery, including a 750 square foot tasting room, will require 21 parking spaces which is less than that required for an equivalently sized retail use.

6. Code change provides Planning Director authority to approve Public Convenience or Necessity (PCN) applications for Alcoholic Beverage Manufacturing uses. For PCN applications that include an entitlement request which requires Planning Commission approval, the PCN will accompany the request to Planning Commission which would have authority over the PCN determination.

ITEM NO. 9

PLANNING COMMISSION REPORT

City of Anaheim
PLANNING DEPARTMENT

DATE: **FEBRUARY 10, 2014**

SUBJECT: **ZONING CODE AMENDMENT NO. 2013-00113 – ALLOWING ALCOHOLIC BEVERAGE MANUFACTURING, INCLUDING TASTING ROOMS, WITHIN COMMERICAL AND INDUSTRIAL ZONES**

LOCATION: Citywide

APPLICANT: City of Anaheim

REQUEST: This is a City-initiated amendment to Title 18 (Zoning) of the Anaheim Municipal Code to permit breweries and other alcoholic beverage manufacturing in commercial and industrial zones. The proposed Code changes also include the addition of standards and regulations for the operation of these uses.

RECOMMENDATION: Staff recommends that the Planning Commission, by motion, determine that this action is exempt from the California Environmental Quality Act under Section 15061(b)(3) of Title 14 of the California Code of Regulations on the basis that there is no possibility that the Zoning Code amendment may have a significant effect on the environment, and recommend to the City Council approval of Zoning Code Amendment No. 2013-00113.

BACKGROUND: Within the last decade, the craft beer and microbrewery industry has seen increased growth nationwide. Locally, Anaheim has permitted more craft and micro-breweries than any other city in Orange County. The Mayor recently announced a "BrewCity" initiative aimed at strengthening Anaheim's share of the microbrew industry by making it easier to establish such uses in the City. In the summer of 2013, the Mayor created a working group to evaluate how the City can make it easier for craft beer producers and other alcoholic beverage manufacturers to open businesses in Anaheim. This working group included City staff, Anaheim residents, local brewers, and members of the media. This group sought to identify ways to reduce Anaheim's regulations as well as those imposed by the Orange County Environmental Health Agency.

The City has approved four breweries with tasting rooms. Two of these businesses are open and have been in operation for over two years. These breweries attract small groups of craft beer connoisseurs seeking an artisan-style beer and community gathering place. These two breweries are located in different areas of the City; one in an isolated industrial area and the other in the Downtown area adjacent to residences and commercial businesses. Both of these breweries have operated in a manner compatible with surrounding uses and were used as models while developing the proposed regulations.

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PROPOSAL: Following is a brief overview of the proposed Code changes. These changes were derived largely from staff's experience reviewing the four breweries approved in Anaheim during the last four years and based on input received from the working group. An executive summary outlining the proposed modifications in greater detail is provided in Attachment 1 to the staff report.

Land Use Definition: A new land use category and definition, "Alcoholic Beverage Manufacturing," is proposed to be added to the Zoning Code. This land use category would include manufacturing facilities for the production of beer, wine, and distilled spirits, in accordance with a valid alcohol production license issued by the State of California. By definition, this use would also allow a "tasting room." A tasting room would be defined as an accessory use in a brewery, winery or distillery that only serves beverages produced at that location. Tasting room visitors would be allowed to consume alcoholic beverages on the premises and also purchase containers of alcohol for off-site consumption. As further described below, the size and hours of operation for tasting rooms would be limited.

Permitted Land Uses: Specific land uses within the Zoning Code are categorized as permitted, conditionally permitted and prohibited. Historically, alcoholic beverage producing facilities were conditionally permitted and typically approved with a set of standard conditions of approval. The proposed Code Amendment would allow Alcoholic Beverage Manufacturing, including tasting rooms, by right, in the General Commercial (C-G), Regional Commercial (C-R) and Industrial (I) zones. Together, these available zones represent 89 percent of all the City's commercial and industrially zoned properties. This use would not be permitted in the Neighborhood Commercial (C-NC), Low Density Office (O-L) and High Density Office (O-H) zones. The Neighborhood Commercial zone is intended to support small, neighborhood-serving businesses such as small markets, barber shops, banks and specialty shops. The Office zones are intended to allow financial, real estate, medical and professional office uses. Staff does not believe that alcoholic beverage manufacturing is compatible with uses in these three zones.

Although the proposed Code amendment would eliminate the need for a conditional use permit (CUP), typical conditions of approval added through the CUP process would be incorporated as Code requirements. This approach is consistent with prior amendments to the Zoning Code, where conditionally permitted uses were designated as permitted, and commonly applied conditions of approval were included in the Code. Staff believes that allowing these uses by right, while incorporating several operational standards into the Code, would serve the same purpose of requiring a conditional use permit by ensuring that such uses operate in a manner compatible with surrounding land uses. Code-required operational standards would include, but are not limited to, the following:

- Alcoholic beverage manufacturing uses in any of the commercial zones may not exceed 6,000 square feet, unless otherwise permitted by conditional use permit. Businesses located in the Industrial zone would not be subject to a size limit.

- Tasting rooms would be limited to 750 square feet. This limit is based on Fire and Building codes. Outdoor patios may be permitted and are limited to 1,000 square feet. Larger tasting rooms may be permitted through a conditional use permit, but would require significant building improvements at a substantial cost. Staff believes these sizes are adequate to meet the needs of most craft breweries as these figures are greater than the size of existing tasting rooms in Anaheim.

- Only beverages produced on the property may be served in the tasting room.
- A security plan will be required to be approved by the Police Department prior to operation.

Eliminating the need for a CUP, while incorporating typical conditions of approval into the Code, would create an incentive for additional microbreweries to locate in Anaheim. Eliminating the public hearing process associated with a conditional use permit application would save significant amounts of time and processing costs for prospective microbrewers. More importantly, the proposed approach creates certainty for the businesses.

Per the provisions of the proposed ordinance, any of the operating standards that are incorporated into the Code could be modified through a conditional use permit (CUP) as long as they complied with infrastructure and life/safety requirements such as required exits from buildings, fire sprinklering of buildings and the use of certain building materials for construction.

Determination of Public Convenience or Necessity: The State Department of Alcoholic Beverage Control (ABC) requires that a Determination of Public Convenience or Necessity (PCN) be made for businesses that sell alcohol for off-premises consumption when those uses are in areas that have a crime rate that is higher than the City average or where there is an overconcentration of off-sale licenses in the census tract where the business is proposed. Currently, the Planning Commission is the sole authority for making this determination. The proposed Code changes would provide the Planning Director with the authority to make this determination for Alcoholic Beverage Manufacturing uses that would be permitted by right. The granting of such authority to the Planning Director is allowed under state law. In the event that any aspect of the use proposed requires consideration of a conditional use permit or a variance, then approval of the PCN determination would revert back to the Planning Commission and would be considered concurrently with that request at a public hearing.

Parking: Alcoholic beverage manufacturing would be subject to the same parking standards required for an industrial or manufacturing use. These standards require 1.55 parking spaces per 1,000 square feet of building area and take into consideration the low number of employees per square foot for the manufacturing use. The standard also includes provisions for accessory office uses. Parking for any associated tasting room or outdoor patio area would be based on the standard for bars and nightclubs, which is 17 spaces per 1,000 square feet.

CONCLUSION: The proposed Code amendment would support the BrewCity initiative by permitting alcoholic beverage manufacturing land uses by right, thereby creating a streamlined way to allow these businesses. The operational standards that would be included as Code requirements are based on careful review of the operational characteristics of existing breweries and are designed to ensure compatibility with surrounding land uses. Staff recommends approval of this Zoning Code Amendment.

Prepared by,

Scott Koehm
Associate Planner

Submitted by,

Jonathan E. Borrego
Planning Services Manager

Attachments:
1. Executive Summary
2. Draft Ordinance

CITY OF KNOXVILLE, TENNESSEE

City Council

AGENDA INFORMATION SHEET

AGENDA DATE: **October 15, 2013**

DEPARTMENT: **M.P.C.**

DIRECTOR: **Mark Donaldson**

AGENDA SUMMARY An Ordinance to amend the Knoxville City Code, Appendix B, "Zoning Regulations," Articles II, IV and V, regarding definitions and development standards for small breweries, wineries and distilleries in certain commercial and industrial zone districts. (MPC Approved 10-0-1) (File No. 9-A-13-OA)

COUNCIL DISTRICT AFFECTED
All districts

BACKGROUND
MPC has been requested by the City of Knoxville administration to consider and make a recommendation on amendments to the City of Knoxville zoning ordinance regarding definitions and development standards for small breweries, wineries and distilleries in certain commercial and industrial zone districts.

The city's zoning ordinance often acts as an impediment to new economic development trends. The craft brewing, winery and distillery industry is a rapidly expanding trend throughout the United States. As the market for craft beer, wines and distillates has grown and the land use has become more popular, a large number of communities have addressed this activity in their zoning ordinances. Generally, the smaller scale of these operations have been seen as appropriate for commercial and mixed use activity districts, particularly in association with other retail, eating and drinking establishments. It is the desire of the city administration to remove barriers to economic development and simplify and clarify the zoning ordinance.

EXISTING REGULATIONS
The city's zoning ordinance is dated and does not specifically address brewpubs or breweries, wineries and distilleries with any size distinction. It currently prohibits brewing or distillation of malt beverages and liquors in the I-3 (General Industrial) district and permits alcohol manufacture in the I-4 (Heavy Industrial) district.

Brewpubs are not specified in the zoning ordinance but have been permitted as accessory to eating and drinking establishments by virtue of a subordinate and secondary nature of the brewing activity to the eating and drinking activity.

ANALYSIS
Brewpubs and small breweries, distilleries and wineries are a significant and rapidly growing industry throughout the U.S. and many cities have amended their zoning ordinances within the past several years. There is a good body of zoning approaches from which to draw. The west coast, northeast and mountain states have many examples.

Brewpubs are most often defined as having production facilities that are accessory to principal eating and drinking establishments with some sort of control on production and are most often allowed anywhere an eating or drinking establishment is allowed.

Small manufacturing facilities are most often regulated to control the size of operation, either through the area allowed for production or through a cap on the volume of daily or annual production. Many places allow these facilities in all or most commercial and industrial districts, either by right or through a conditional use process similar to our use permitted on review. These types of facilities are called by a number of different names, including: nano-facilities, micro-facilities, artisan-facilities, niche facilities and craft facilities.

Other than parking at brewpubs because of the popularity of these types of facilities, there have been little documented negative impacts. The issues of odor, truck traffic, and fire hazards have been analyzed and no specific problems have been addressed through zoning regulations.

STRATEGY

The proposed amendments reflect a strategy to include the following:

- define brewpubs as accessory to an eating or drinking establishment which will keep the production facility smaller than the eating and drinking portion of the establishment, cap the amount of area devoted to the on-site production of beverages and allow them in the same districts that eating and drinking establishments are allowed;
- define craft facilities, allow them in combination with other uses such as eating and drinking establishments and retail as a part of the operation, cap the amount of area devoted to production of beverages, allow them in most commercial and industrial zones and establish development standards;
- define breweries, distilleries and wineries to replace the current language in the zoning ordinance, allow them in all industrial zones and establish development standards.

The following table summarizes the proposed zone districts were these facilities could be allowed:

Type of Facility	C-1	C-2, C-3, C-4, C-5, C-6, C-7, SC-1, SC-2, SC-3, PC-1, TC-1			I-1, I-2, I-3			I-4
Brewpub	UR	P	P	P				
Craft Brewery, Winery or Distillery		UR	UR	UR	P	P	P	P
Brewery, Winery or Distillery					UR	UR	UR	P

P - Permitted Use UR - Use Permitted on Review

PROPOSED AMENDMENTS

The proposed amendments are found in the attached exhibits:

- Exhibit B presents proposed definitions to be added to the zoning ordinance;
- Exhibit C presents proposed text amendments adding brewpubs and craft breweries, distilleries and wineries to the list of uses permitted in various commercial districts;
- Exhibit D presents proposed text amendments adding craft and other breweries, distilleries and wineries to the I-1, I-2, and I-3 districts;
- Exhibit E presents proposed text amendments adding craft and other breweries, distilleries and wineries to the I-4 district

- Exhibit F presents use on review standards for craft facilities; and
- Exhibit G presents development standards for craft and other facilities in the industrial districts.

OPTIONS
1. Approve First Reading 2. Approve on Emergency 3. Deny 4. Postpone for future consideration

RECOMMENDATION
The Metropolitan Planning Commission recommended approve the amendments as shown in exhibits B, C, D, E, F and G by a vote of 10-0-1 (Consent).

ESTIMATED PROJECT SCHEDULE
Not applicable.

PRIOR ACTION/REVIEW

MPC Meeting	9/12/2013	Published ad on 8/9/2013
Knoxville City Council	10/15/2013	Published ad on 9/20/2013

FISCAL INFORMATION
Not applicable.

ATTACHMENTS:

- Ordinance (DOCX)
- 9-A-13-OA Pkg (PDF)

Current Use of related terms

Article IV, Section 2.3.2 I-3, General Industrial District

D. Prohibited uses and structures. ...; *brewing or distillation of malt beverages or liquors*; .....

Article IV, Section 2.3.3 I-4, Heavy Industrial District

B. Uses permitted. Property and buildings in the I-4 heavy industrial district shall be used only for the following purposes:

2. Any of the following uses:

c. *Alcohol manufacture*

Proposed Additional Definitions

Additions to Article II – Definitions

Brewpub - A type of eating or drinking establishment that includes as an accessory use the production of malt liquors, regardless of alcohol content by volume, for consumption on the premises; except that sales for off-premises consumption, if not prohibited by other local ordinance or state or federal law, shall be allowed in specialty containers holding no more than one U.S. gallon (128 U.S. fluid ounces), commonly referred to as growlers. The area of the establishment devoted to the production of malts liquors shall not exceed five thousand (5,000) square feet.

Brewery - A facility where malt liquors, regardless of alcohol content by volume, are produced in accordance with any manufacturing or wholesaling license required by Tennessee Code Annotated.

Winery - A facility where vinous liquors are produced in accordance with any manufacturing or wholesaling license required by Tennessee Code Annotated.

Distillery - A facility where distilled liquors or spirits are produced in accordance with any manufacturing or wholesaling license required by Tennessee Code Annotated.

Craft brewery, winery and distillery - A type of brewery, winery or distillery wherein the area of the establishment devoted to the production of malts and liquors shall not exceed ten thousand (10,000) square feet in commercial zone districts or twenty thousand (20,000) square feet in industrial zone districts. The establishment shall include a tasting room and may also include office, retail, eating and drinking establishment or event facility components in addition to the area devoted to production of malts and liquors.

Tasting room - A facility, or portion of a facility, accessory to a brewery, winery or distillery at which guests may sample the manufacturer's products and consume other nonalcoholic beverages.

EXHIBIT C
September 2013

Proposed Text Amendments to Allow Brewpubs and Craft Breweries, Distilleries and Wineries as Permitted Uses and Uses Permitted on Review in Commercial Zone Districts

Article IV, Section 2.2.4 C-1, Neighborhood Commercial District

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C. Uses permitted on review.

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4. ~~Restaurants~~ **Eating and drinking establishments, brewpubs**

◇ ◇ ◇ ◇ ◇

Article IV, Section 2.2.5 C-2, Central Business District

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B. Uses permitted.

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5. Eating and drinking establishments**, brewpubs**.

C. Uses permitted on review.

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5. Craft breweries, distilleries and wineries

◇ ◇ ◇ ◇ ◇

Article IV, Section 2.2.6 C-3, General Commercial District

.

B. Uses permitted.

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2. Delicatessens and bakeries, eating and drinking establishments**, brewpubs**.

C. Uses permitted on review.

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7. Craft breweries, distilleries and wineries

◇ ◇ ◇ ◇ ◇

Article IV, Section 2.2.7 C-4, Highway and Arterial Commercial District

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B. Uses permitted. [NOTE: Includes uses permitted in the C-3 zone district]

C. Uses permitted on review.

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7. Craft breweries, distilleries and wineries

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Article IV, Section 2.2.8 C-5, Tourist Commercial District

.

B. Uses permitted.

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2. ~~Restaurants~~ **eating and drinking establishments** (not including hamburger, ice cream, soft drink, or other drive-in eating stand)**, brewpubs**.

C. Uses permitted on review.

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3. Craft breweries, distilleries and wineries

◇ ◇ ◇ ◇ ◇

Article IV, Section 2.2.9 C-6, General Commercial Park District

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B. Uses permitted. [NOTE: Includes uses permitted in the C-3 zone district]
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C. Uses permitted on review.
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.
6. Craft breweries, distilleries and wineries

◇ ◇ ◇ ◇ ◇

Article IV, Section 2.2.10 C-7, Pedestrian Commercial Park District

.
B. Uses permitted.
.
.
5. Eating and drinking establishments**, brewpubs**.

C. Uses permitted on review.
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.
7. Craft breweries, distilleries and wineries

◇ ◇ ◇ ◇ ◇

Article IV, Section 3.2 SC-1, Neighborhood Shopping Center District

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B. Uses permitted.
1.
.
. Eating and drinking establishment**s, brewpubs**.

◇ ◇ ◇ ◇ ◇

Article IV, Section 3.3 SC-2 and SC-3, Community and Regional Shopping Center District

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B. Use Descriptions.
1. *Community shopping center.* In addition to the uses permitted in the SC-1 district, department stores and theaters, but not open air or drive-in theaters, as well as craft breweries**, distilleries and wineries,** shall be permitted in the SC-2 community shopping center district.

◇ ◇ ◇ ◇ ◇

Article IV, Section 3.4 PC-1, Planned Commercial District

.
B. Uses permitted.
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.
12. Eating and drinking establishments**, brewpubs**.

Ba. Uses permitted on review.
.
2. Craft breweries, distilleries and wineries

◇ ◇ ◇ ◇ ◇

Article IV, Section 3.5 PC-2, Retail and Distribution Park District

.
B. Uses permitted. [NOTE: Includes uses permitted in the PC-1 zone district]
.

Ba. Uses permitted on review.
.
2. Craft breweries, distilleries and wineries

◇ ◇ ◇ ◇ ◇

Article IV, Section 3.12 TC-1, Town Center District

.
C. Uses permitted.
.
.
5. Eating and drinking establishments**, brewpubs**.

D. Uses permitted on review.
.
4. Craft breweries, distilleries and wineries

Proposed Text Amendments to Allow in the I-1, I-2 and I-3 Zone Districts:

- Brewpubs as Permitted Uses in I-3 only
- Craft Breweries, Distilleries and Wineries as Permitted Uses; and
- Breweries, Distilleries and Wineries as Uses Permitted on Review

Article IV, Section 3.9 I-1, Planned Industrial District

B. Uses Permitted.

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8. Craft Breweries, Distilleries and Wineries

Ba. Uses Permitted on Review

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3. Breweries, Distilleries and Wineries

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Article IV, Section 2.3.1 I-2, Restricted Manufacturing and Warehousing District

B. Uses Permitted.

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3.

u. Craft Breweries, Distilleries and Wineries

C. Uses Permitted on Review

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3. Breweries, Distilleries and Wineries

◇ ◇ ◇ ◇ ◇

Article IV, Section 2.3.2 I-3, General Industrial District

B. Uses Permitted. [NOTE: Includes uses permitted in the I-2 zone district]

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2.b. Retail, service, ~~and~~ eating and drinking establishments**, and brewpubs.**

C. Uses Permitted on Review.

.

.

3. Breweries, Distilleries and Wineries

D. Prohibited Uses and Structures. ……; ~~brewing or distillation of malt beverages or liquors;~~ ….

EXHIBIT E
September 2013

Proposed Text Amendment to Allow in the I-4 Zone District Breweries, Distilleries and Wineries as a Permitted Use

Article IV, Section 2.3.3 I-4, Heavy Industrial District

.

B. Uses Permitted.

.

2. Any of the following

.

.

c. ~~Alcohol Manufacture~~ **Breweries, distilleries and wineries**

EXHIBIT F
September 2013

Proposed Use on Review Standards for Craft Breweries, Distilleries and Wineries

Article V, Section 3 Development Standards for Uses Permitted On Review

F. Other Uses Permitted on Review.

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13. Craft breweries, distilleries and wineries.

a. **No outdoor storage shall be permitted;**
b. **All malt, vinous or distilled liquor production shall be within completely enclosed structures;**
c. **Loading areas shall not be oriented toward a public street, nor shall loading docks be located on the side of any building facing an adjacent zone district primarily for residential or office uses. Where these districts or streets abut all sides of the property, the loading areas shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to any required landscape buffer.**
d. **Service doors facing a public street or an adjacent zone district primarily for residential uses shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to any required landscape buffer.**
e. **By-products or waste from the production of the malt, vinous or distilled liquor shall be properly disposed of off the property.**

EXHIBIT G
September 2013

Proposed Standards for Breweries, Distilleries and Wineries

Article V Supplemental Regulations Applying to a Specific, To Several or To All Districts

Section 23 Development Standards for Breweries, Distilleries and Wineries

A. For craft breweries, distilleries and wineries allowed as permitted uses in the I-1, I-2 and I-3 zone districts the following development standards shall apply:

1. **No outdoor storage shall be permitted;**
2. **All malt, vinous or distilled liquor production shall be within completely enclosed structures;**
3. **Loading areas shall not be oriented toward a public street, nor shall loading docks be located on the side of any building facing an adjacent lot that is in a zone district primarily for residential or office uses. Where these districts or streets abut all sides of the property, the loading areas shall be screened by a solid wall or opaque fence with a minimum height of eight (8) feet, in addition to any required landscape buffer;**
4. **Service doors facing a public street or an adjacent lot that is in a zone district primarily for residential uses shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to any required landscape buffer; and**
5. **By-products or waste from the production of the malt, vinous or distilled liquor shall be properly disposed of off the property.**

B. For breweries, distilleries and wineries allowed as permitted uses in the I-4 (Heavy Industrial) zone district the following development standards shall apply:

1. **No facilities within 400 feet of a residential use or zone district primarily for residential uses;**
2. **All malt, vinous or distilled liquor production shall be within completely enclosed structures;**
3. **Loading areas shall not be oriented toward a public street, nor shall loading docks be located on the side of any building facing an adjacent lot that is in a zone district primarily for residential or office uses. Where these districts or streets abut all sides of the property, the loading areas shall be screened by a solid wall or opaque fence with a minimum height of eight (8) feet, in addition to any required landscape buffer;**
4. **Service doors facing a public street or an adjacent lot that is in a zone district primarily for residential uses shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to any required landscape buffer; and**
5. **By-products or waste from the production of the malt, vinous or distilled liquor shall be properly disposed of off the property.**

KNOXVILLE·KNOX COUNTY
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METROPOLITAN PLANNING COMMISSION
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400 Main Street
Knoxville, Tennessee 37902
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FAX•215•2068
www•knoxmpc•org

Minutes (Unapproved)

SEPTEMBER 12, 2013

1:30 P.M. Φ Main Assembly Room Φ City County Building

The Metropolitan Planning Commission met in regular session on September 12, 2013 at 1:30 p.m. in the Main Assembly Room, City/County Building, and Knoxville, Tennessee. Members:

	Ms. Rebecca Longmire, Chair		Mr. Nate Kelly
	Mr. Herb Anders	A	Mr. Charles F. Lomax, Jr
A	Mr. Bart Carey, Vice Chair		Mr. Brian Pierce
	Ms. Laura Cole		Mr. Jeff Roth
	Mr. Art Clancy		Mr. Jack Sharp
	Mr. Len Johnson	A	Mr. Wes Stowers
	Mr. Michael Kane		Ms. Janice Tocher

* Arrived late to the meeting.
** Left early in the meeting. A – Absent from the meeting

* **5.** **METROPOLITAN PLANNING COMMISSION** **9-A-13-OA**

Amendment to the City of Knoxville zoning ordinance regarding definitions and development standards for small breweries, wineries and distilleries and permitting these uses in certain commercial and industrial zone districts.

Staff Recommendation: Staff recommends that the planning commission recommend approval of the proposed amendments shown in exhibits B, C, D, E, F and G to the City of Knoxville Zoning Ordinance.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

MOTION (CLANCY) AND SECOND (JOHNSON) WERE MADE TO APPROVE CONSENT ITEMS AS READ EXCLUDING 11, 26 & 37. MOTION CARRIED 10-0-1. APPROVED.

MINNETONKA PLANNING COMMISSION
February 27, 2014

Brief Description	Ordinance regarding microbreweries and taprooms as a conditional use
Recommendation	Recommend the city council adopt the ordinance

Introduction

In 2011, the city council approved a conditional use permit (CUP) to allow the operations of a microbrewery and distribution center in the Culligan Industrial Park. The microbrewery was approved for operations in the I-1 District under the CUP provision, "other uses similar to those permitted in this section, as determined by the city." This provision was used as microbreweries are not a specifically listed use in the zoning code. The brewery, Lucid Brewing LLC, continues to operate under that CUP.

Lucid is interested in a new component to their business, a taproom. The taproom would provide the opportunity for customers to consume beer, produced at the brewery, on-site. The current CUP ordinance does not address this type of use.

Staff has drafted an ordinance to address microbreweries and taprooms which are not currently regulated. The proposed ordinance includes the following:

- Creates a definition for "microbrewery" - a facility that manufactures and distributes malt liquor or wine in total quantity not to exceed 250,000 barrels per year, which may include space dedicated as a taproom to distribute on-sale and off-sale alcohol.

- Establishes microbreweries as a conditionally permitted use in the B-2, B-3, PID and I-1 Districts. (See page A6). Like restaurants, microbreweries and associated taprooms would be allowed in the large majority of commercial areas in the city. Inclusion of the I-1 District reflects the current Lucid Brewing location and recognizes industrial zoned lands are generally appropriate for this type of use.

- Addresses performance standards such as parking and traffic:

    - Parking requirements for microbreweries would adopt the same ratios required for other manufacturing and industrial uses which typically have a low ratio of persons per square foot of building area. If the microbrewery included a tap room, a higher parking space ratio would be required. The ordinance proposed a parking space requirement the same as restaurants with liquor service, one parking space for each 50 square feet of floor area

- Traffic and circulation considerations would be included in the review of a conditional use permit. Site plan would be subject to commercial performance standards. Traffic generation would be reviewed in accordance with the Institute of Traffic Engineers (ITE) manual. Approval could be subject to significant changes to level of service (LOS) on adjacent roadways.

Comments

Microbreweries are not a new use in the city. The most similar operation was Sherlock's Home which was a "brewpub," or microbrewery with a restaurant. It operated on Red Circle Drive from approximately 1989 to 2002.

In recent years, there has been a steady statewide increase in the number of microbreweries. In 2011, Governor Dayton signed legislation that allowed microbreweries to sell product directly to the consumer for on or off-site consumption. The "Surly Bill" as it was known, helped popularize the upswing in microbreweries by allowing taprooms on-site.

City Council Introduction

The proposed ordinance was introduced at the January 27, 2014 city council meeting. The council asked questions related to Lucid Brewery's specific request to add a taproom. There were no specific questions about the proposed microbrewery ordinance. (See pages A4-A5).

Staff Recommendation

Recommend the city council adopt the ordinance on pages A1–A3.

Originated by:
Loren Gordon, ACIP, City Planner

ORDINANCE NO. 2014-___

AN ORDINANCE AMENDING SECTIONS 300.02, 300.18, 300.19, 300.20, 300.21, AND 300.31 OF THE CITY CODE; REQUIRING CONDITIONAL USE PERMITS FOR MICROBREWERIES IN THE B-2, B-3, PID, AND I-1 ZONING DISTRICTS

The City of Minnetonka Ordains:

Section 1. Section 300.02, relating to definitions for the zoning ordinance, is amended by adding the following subdivision and renumbering subsequent subdivisions accordingly:

93. "Microbrewery" – a facility that manufactures and distributes malt liquor or wine in total quantity not to exceed 250,000 barrels per year, which may include space dedicated as a taproom to distribute on-sale and off-sale alcohol.

Section 2. Section 300.18, subdivision 4 of the City Code, relating to conditional uses in the B-2 Limited Business District, is amended by adding the following paragraph and renumbering subsequent paragraphs accordingly:

r) microbreweries;

Section 3. Section 300.19, subdivision 4 of the City Code, relating to conditional uses in the B-3 General Business District, is amended by adding the following paragraph and renumbering subsequent paragraphs accordingly:

r) microbreweries;

Section 4. Section 300.20, subdivision 4, relating to conditional uses in the I-1 Industrial District, is amended by adding the following paragraph and renumbering subsequent paragraphs accordingly:

j) microbreweries;

Section 5. Section 300.31, subdivision 4, relating to conditional uses in the PID, Planned I-394 District, is amended by adding the following paragraph:

s) Microbreweries:

The ~~stricken~~ language is deleted; the <u>underlined</u> language is inserted.

Section 6. Section 300.21, subdivision 4, relating to conditional use permit standards in the B-2, Limited Business District, is amended by adding the following paragraph:

s) Microbreweries:

1) Parking Requirements:
microbrewery: one parking space for each 1000 square feet of floor area
Tap room: one parking space for each 50 square feet of floor area

2) shall have parking and vehicular circulation in compliance with the requirements of section 300.28 of this code and which items must be adequate to accommodate the restaurant; and

3) shall only be permitted when it can be demonstrated that operation will not significantly lower the existing level of service as defined by the Institute of traffic engineers on the roadway system.

Section 7. Section 300.21, subdivision 5, relating to conditional use permit standards in the B-3, General Business District, is amended by adding the following paragraph:

s) Microbreweries: the same standards as specified in subdivision 4(s)(1) through (3), inclusive, of this section shall apply.

Section 8. Section 300.21, subdivision 6, relating to conditional use permit standards in the B-3, General Business District, is amended by adding the following paragraph:

k) Microbreweries: the same standards as specified in subdivision 4(s)(1) through (3), inclusive, of this section shall apply.

Section 9. Section 300.31, subdivision 4, relating to conditional use permit standards in the PID, Planned I-394 District, is amended by adding the following paragraph:

s) Microbreweries: the same standards as specified in subdivision 4(s)(1) through (3), inclusive, of this section shall apply.

Section 10. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 11. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on _____.

_____
Terry Schneider, Mayor

ATTEST:

_____
David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: *
Date of adoption: **
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on _____.

_____
David E. Maeda, City Clerk

The ~~stricken~~ language is deleted; the <u>underlined</u> language is inserted.

Light Rail, TwinWest would take an open mind into the legislative session. They wanted to be part of the discussion and not be an outlier. The light rail was important to all the communities involved.

Wagner noted he was the council liaison to the Economic Development Advisory Commission. The commission continually discusses how the city can support the business community. He said it was important to keep a close relationship between TwinWest and the city's economic development efforts.

9. **Bids and Purchases:** None

10. **Consent Agenda - Items Requiring a Majority Vote:**

A. **Resolution approving a conditional use permit and variance for a restaurant with an outdoor dining patio at 11400 State Highway 7**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2014-005 approving the request. All voted "yes." Motion carried.

B. **Extension of a previously approved floodplain alteration permit, conditional use permit, and variances to construct a new home at 2529 Bantas Point Road**

Allendorf moved, Wiersum seconded a motion to approve the twelve-month time extension. All voted "yes." Motion carried.

11. **Consent Agenda - Items requiring Five Votes:** None

12. **Introduction of Ordinances:**

A. **Ordinance amending liquor code to allow licenses for offsale brewpubs, off-sale small brewers, and on-sale taprooms and ordinance amending the zoning code regarding microbreweries and taprooms as a conditional use**

Community Development Director Julie Wischnack gave the staff report.

Jon Messier from Lucid Brewing said the business had seen significant growth since it began operating two years ago. The company started with him and his partner delivering out of the back of his car into having eight full time employees and six part time employees. The beer is distributed as far as Bismarck and Sioux Falls. The brewery was setup before the state considered allowing breweries to sell beer onsite. He said the

business focus is on production and distribution around the state but over the past two years he has seen a real shift in brewery focus to deal directly with the immediate consumer. There are a group of people who visit the brewery every week to purchase off premise sales in the form of a growler. There have been multiple requests to buy a pint before leaving with a purchase. He said there are around 100 people coming in from other cities to visit the brewery and he thinks that number can be grown significantly over the next year if the change was approved. There is no intent to change the way the business is operated and the focus will continue to be on the production. What is being asked for is to allow a cordoned off side area that would allow people to watch the production. He said what he was looking to move forward with was a low key, low scale operation.

Wiersum asked what the visiting hours were and if currently people are allowed to sample the beer. Messier said the visiting hours were 5 p.m. to 8 p.m. on Thursdays and Fridays and 12 p.m. to 5 p.m. on Saturday. There is a portable bar setup to allow people to sample the beer. Wiersum said he was familiar with a competitor in Excelsior that was successful with its tap room. He asked if Lucid Brewery anticipated expanding the hours beyond the current hours. Messier said he would like to extend the hours to 10 p.m. He has seen some pros and cons with what is happening in Excelsior. That company focuses its business around the success of the tap room. He said the extra business would be a bonus for Lucid Brewery and it was not looking to be open seven days a week.

Wagner said he appreciated that Lucid Brewery had been able to distribute its beer in local restaurants and he enjoyed the product.

Schneider said he thought it was the wave of the future to have more local breweries. It tied in with creating vibrancy and interest in the community. He said he looked forward to Lucid Brewery's success and the city would do what it could to make sure things worked out.

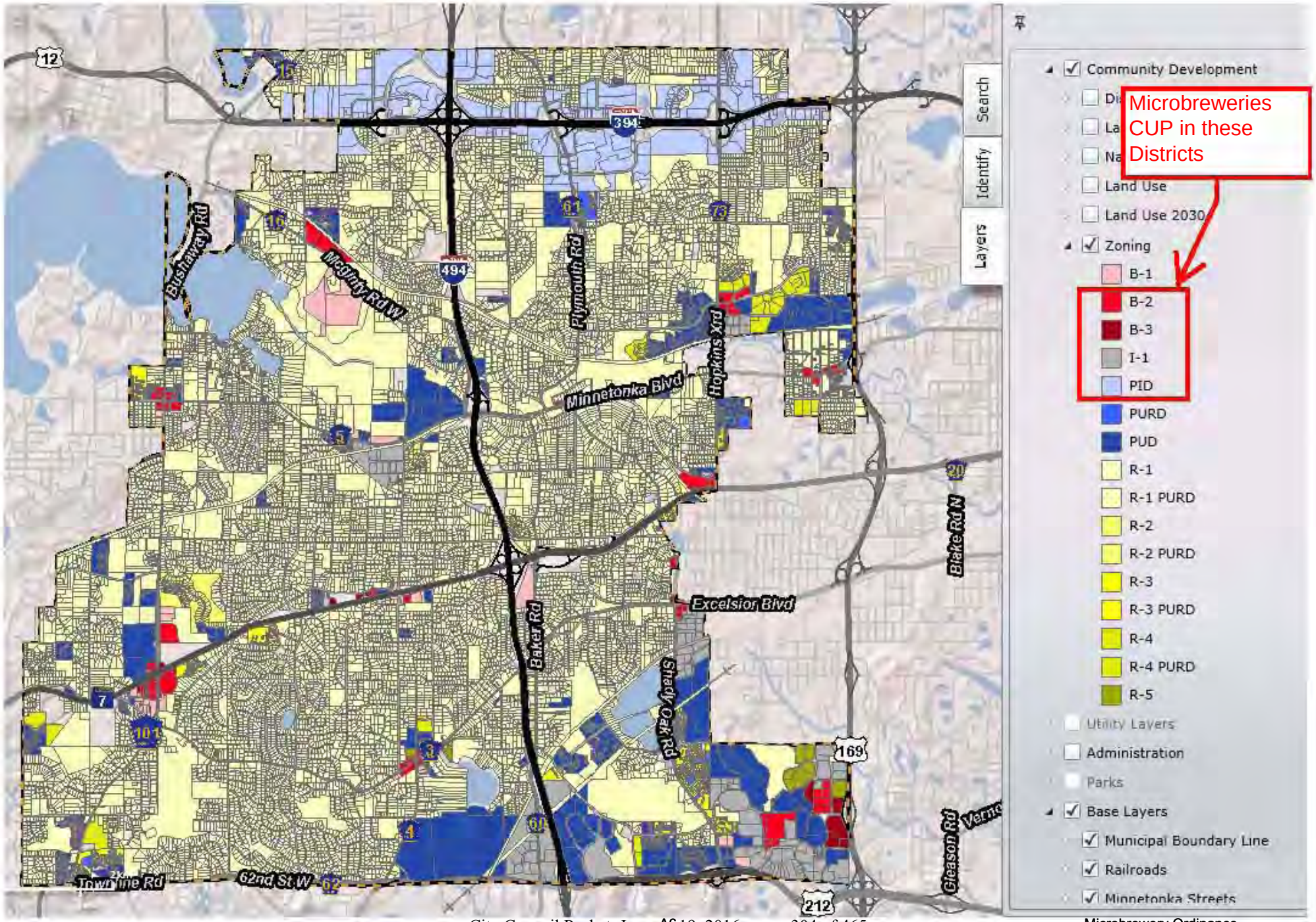
Wagner moved, Wiersum seconded a motion to introduce the ordinances; refer the zoning ordinance regarding microbreweries and taprooms to the planning commission. All voted "yes." Motion carried.

B. Ordinance amending city code regarding council salaries

Assistant City Manager Perry Vetter gave the staff report.

Schneider said it was always challenging for the council to raise its own salaries when the inclination is to cut costs wherever possible. He noted one of the reasons there was a provision the salary increase would not

Zoning Map


Search
Identify
Layers
Community Development
Microbreweries CUP in these Districts
Land Use
Land Use 2030
Zoning
B-1
B-2
B-3
I-1
PID
PURD
PUD
R-1
R-1 PURD
R-2
R-2 PURD
R-3
R-3 PURD
R-4
R-4 PURD
R-5
Utility Layers
Administration
Parks
Base Layers
Municipal Boundary Line
Railroads
Minnetonka Streets
Bushaway Rd
McGinty Rd W
Flymouth Rd
Hopkins Xrd
Minnetonka Blvd
Excelsior Blvd
Baker Rd
Shady Oak Rd
Blake Rd N
Gleason Rd
Town Line Rd
62nd St W
394
494
169
212

Staff Reports Discussing Proposed Zoning Amendments

- Asheville (North Carolina), City of. 2013. *Code of Ordinances*. Chapter 7, Development; Article II, Official Map, Rules of Construction, and Definitions; Section 7-2-5, Definitions. Also, Article XVI, Uses by Right, Subject to Special Requirements and Conditional Uses; Section 7-16-1, Uses by Right, Subject to Special Requirements; part c(43), Microbrewery.

- Bismarck (North Dakota), City of. 2014. *Code of Ordinances*. Title 14, Zoning; Chapter 14-03, Districts: Uses; Section 14-03-08, Special Uses; part u, Microbrewery. Also, Chapter 14-04, District Regulations; Section 14-04-21.3, Use Categories; part c, Microbrewery. Also, Section 14-04-21.4, Use Standards; part 6, Microbrewery.

- Bloomington (Indiana), City of. 2013. *Unified Development Ordinance*. Chapter 20.05, Development Standards; Section 20.05.089, SC-03 [Special Conditions; Brewpub]. Also, Chapter 20.11, Definitions; Section 20.11.020, Defined Words.

- Clarksville (Tennessee), City of. 2013. *Code of Ordinances*. Title 11, Planning and Zoning; Chapter 2, Rules of Interpretation and Definitions; Section 2.2, Definitions. Also, Chapter 3, Zone Districts, Use Tables; Table 3.4.7, Industrial Uses. Also, Chapter 5, Land Use Development Standards and Procedures; Section 5.1.3, Industrial Uses Permitted with Conditions; Alcohol Distillery, Small; Brewery, Micro.

- Columbia (South Carolina), City of. 2013. *Code of Ordinances*. Chapter 17, Planning, Land Development, and Zoning; Article III, Zoning; Division 1, Generally; Section 17-55, Definitions. Also, Division 8, District Descriptions; Use and Dimensional Regulations; Section 17-290, Microbrewery.

- Covington (Kentucky), City of. 2013. *Code of Ordinances*. Title XV, Land Usage; Appendix A, Zoning Ordinance; Article 6, Use Regulations; Section 6.28, Taverns and Restaurants. Also, Article 16, Definitions; Section 16.02, Use Groups and Categories; Section 16.02.06, Commercial Use Group.

- Dallas (Texas), City of. 2013. *City Code*. Chapter 51A, Development Code; Article IV, Zoning Regulations; Section 51A-4.210, Retail and Personal Service Uses; part b(4), Specific Uses – Alcoholic Beverage Establishments.

- Goodyear (Arizona), City of. 2013. *Zoning Ordinance*. Article II, Definitions; Section 2-2, Definitions. Also, Article 3, Zoning Districts; Chapter 3-3, Commercial Districts; Section 3-3-3, C-2 General Commercial District; part A, Principal Permitted Uses. Also, Article 4, Special Uses, Uses Requiring Additional Evaluation, Nonconforming Uses and Buildings; Chapter 4-2, Uses Requiring Additional Evaluation; Section 4-2-15, Brewpub. Section 4-2-16, Microbrewery.

- Henderson (Nevada), City of. 2013. *Development Code*. Chapter 19.5, Use Regulations; Section 19.5.5, Commercial Uses; Part H, Brew Pub/Microbrewery/Craft Distillery.

- Memphis-Shelby (Tennessee), City and County of. 2013. *Unified Development Code*. Article 2, Districts and Uses; Section 2.5, Permitted Use Table. Also, Section 2.6.3, Commercial Use Standards; Part G, Restaurant with Sale of Alcoholic Beverages, Brew Pub. Also, Section 2.6.4, Industrial Use Standards; part F, Microbreweries and Microdistilleries. Also, Article 12, Definitions; Section 12.3.1, General Definitions.

- Novi (Michigan), City of. 2013. *Code of Ordinances*. Appendix A, Zoning Ordinance. Article 2, Construction of Language and Definitions; Zoning Districts and Map; Section 201, Definitions. Also, Article 15, B-3 General Business Districts; Section 1501, Principal Uses Permitted; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 16, TC and TC-1 Town Center Districts; Section 1602: Principal Uses Subject to Special Conditions; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 17, RC Regional Center District; Section 1702, Principal Uses Permitted Subject to Special Conditions; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 25, General Provisions; Section 2505, Off-Street Parking Requirements; part 14, Schedule.

- Rapid City (South Dakota), City of. 2014. *Code of Ordinances*. Title 17, Zoning; Chapter 17.18, General Commercial District; Section 17.18.030, Conditional Uses; part 31, Microbreweries. Part 32, Farm Wineries. Also, Chapter 17.22, Light Industrial District; Section 17.22.030, Conditional Uses; part N, Microbreweries. Part O, Farm Wineries.

- St. Petersburg (Florida), City of. 2013. *Code of Ordinances*. Chapter 16, Land Development Regulations; Section 16.10.010, Establishment of Zoning Districts, Matrices and Maps; Microbrewery. Restaurant and Bar, Brewpub. Also, Section 16.50.045, Brewery, Microbrewery, and Brewpub.

- Tacoma (Washington), City of. 2014. *Municipal Code*. Title 13, Land Use Regulatory Code; Chapter 13.06, Zoning; Section 13.06.200, Commercial Districts; part C.4, Land Use Requirements − District Use Table. Also, Section 13.06.300, Mixed Use Center Districts; part C.4, Land Use Requirements − District Use Table. Also, Section 13.06.700, Definitions and Illustrations.

City of Asheville, North Carolina
***Code of Ordinances* (2013)**

Chapter 7: Development.

Article II: Official Map, Rules of Construction, and Definitions.

Section 7-2-5: Definitions.

Microbrewery means a small facility for the brewing of beer that produces less than 15,000 barrels per year. It may often include a tasting room and retail space to sell the beer to patrons on the site.

Article XVI: Uses by Right, Subject to Special Requirements and Conditional Uses.

Section 7-16-1: Uses by Right, Subject to Special Requirements.

7-16-1(c)(43) Microbrewery.

a. Use districts: Office, Office II, Office/Business, Central Business, Institutional, Resort.
    1. No drive through facilities permitted.
    2. No outdoor speaker systems (except for the Central Business District) shall be permitted.
    3. Maximum of 4,000 square feet in Office and Office II.
    4. Must have an off-street or alley loading dock.

City of Bismarck, North Dakota
***Code of Ordinances* (2014)**

Title 14: Zoning.
Chapter 14-03: Districts: Uses.
Section 14-03-08: Special Uses.

u. Microbrewery. A microbrewery may be permitted in any CG or DC district as a special use provided:
   1. The site may not be located within three hundred (300) feet of the nearest lot line of any church, public or parochial school, public library, hospital, or college or university building used for academic purposes, unless the entity(s) affected by the above limitation consent to the granting of the special use permit.
   2. A facility at the proposed site will not have an adverse impact on the character of the neighborhood. The following criteria may be used to evaluate proposed sites: the effect on traffic movements in the area; the general nature, character, age and condition of the adjacent development; the proximity to residential areas, regardless of zoning; or any other criteria the City may deem pertinent.
   3. All brewing and storage activities are located within a completely enclosed building.
   4. The facility complies with all applicable building code, health and sanitation, and zoning regulations.
   5. The facility complies with all applicable licensing and operational requirements of the State.
   6. Beverages brewed onsite cannot be sold or otherwise provided for consumption on the premises unless the owner of the microbrewery holds the appropriate liquor license from the City.
   7. Beverages brewed onsite cannot be sold or otherwise provided to non-wholesale customers for consumption off the premises unless the owner of the microbrewery holds appropriate liquor license from the City. Title 14 & 14.1 85
   8. Adequate parking is provided onsite in accordance with the provisions of Section 14-03-10.

Chapter 14-04: District Regulations.
Section 14-04-21.3: Use Categories.

c. *Microbrewery*. Microbreweries are small-scale breweries that manufacture up to 10,000 barrels of fermented malt beverages per year for wholesale or sale directly to the consumer.

Section 14-04-21.4: Use Standards.

6. Microbrewery.
   a. The site may not be located within three hundred (300) feet of the nearest lot line of any church, public or parochial school, public library, hospital, or college or university building used for academic purposes, unless the entity(s) affected by the above limitation consent to the granting of the special use permit.
   b. A facility at the proposed site will not have an adverse impact on the character of the neighborhood. The following criteria may be used to evaluate proposed sites: the effect on traffic movements in the area; the general nature, character, age and condition of the adjacent development; the proximity to residential areas, regardless of zoning; or any other criteria the City may deem pertinent.

c. All brewing and storage activities are located within a completely enclosed building.
d. The facility complies with all applicable building code, health and sanitation, and zoning regulations.
e. The facility complies with all applicable licensing and operational requirements of the State.
f. Beverages brewed onsite cannot be sold or otherwise provided for consumption on the premises unless the owner of the microbrewery holds the appropriate liquor license from the City.
g. Beverages brewed onsite cannot be sold or otherwise provided to non-wholesale customers for consumption off the premises unless the owner of the microbrewery holds appropriate liquor license from the City. Title 14 & 14.1 85
h. Adequate parking is provided onsite in accordance with the provisions of Section 14-03-10.

City of Bloomington, Indiana
***Unified Development Ordinance* (2013)**

Chapter 20.05: Development Standards.

Section 20.05.089: SC-03 [Special Conditions; Brewpub].

This Special Conditions Standards section applies to the following zoning districts: CG, CA, CL, and CD

(a) Brewpub:
  (1) *Production Limits*:
    (A) In the CG, CA, and CD zoning districts, brewpubs shall not manufacture more than 20,000 barrels of beverage (all beverages combined) annually.
    (B) In the CL zoning district, brewpubs shall not manufacture more than 5,000 barrels of beverage (all beverages combined) annually.
  (2) *Tavern/Restaurant Space*:
    (A) In the CL, CG, and CA zoning districts, brewpubs shall maintain at least fifteen percent (15%) of the gross floor area of the facility or five hundred (500) square feet of floor space, whichever is greater, for public use as a tavern and/or restaurant.
    (B) In the CD zoning district, brewpubs shall maintain at least fifty percent (50%) of the gross floor area of the facility for public use as a tavern and/or restaurant.
  (3) *Record Keeping*: Brewpubs shall maintain copies of all reports filed with the Bureau of Alcohol, Tobacco and Firearms (ATF) and shall be able to demonstrate, upon request of the City, that they have not exceeded the annual beverage production limit in any twelve (12) month period.
  (4) *Shipping*: Brewpubs may ship beverages for consumption at other sites, but only if it is demonstrated that the location and flow of shipping traffic has adequate access to streets classified as Collectors or Arterials by the Master Thoroughfare Plan.

Chapter 20.11: Definitions.
Section 20.11.020: Defined Words.

Brewpub: A commercial use which brews ales, beers, meads, and/or similar beverages on site and serves those beverages on site. Off-site sales are also permitted.

1

5. *Acid Manufacture:* An industrial facility or business that produces acid and/or acid based products by a designed process or as a byproduct of another industrial or manufacturing process.
6. *Addition:* (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.
7. *Adhesive and Sealants Manufacture:* An industrial facility or business that produces natural and/or synthetic adhesives and/or sealants.
8. *Adult-oriented business establishment:* An establishment defined in Section 5-1200 of the City Code and the provisions of Section 5-1200,as adopted on September 7, 2000, and as may be amended from time to time thereafter, are adopted and incorporated by reference herein.
9. *Agricultural Arenas:* Structures intended primarily or exclusively for support of an agricultural function
10. *Agricultural Retail:* A use primarily engaged in the sale or rental of farm tools and implements, feed, grain, tack, animal care products, and farm supplies. This definition excludes the sale of large implements, such as tractors and combines, but includes food sales and farm machinery repair services that are accessory to the principle use. This also includes the sale of products grown on site.
11. *Agricultural Uses (Customary):* This includes the growing of crops in the open, dairying, grazing, the raising and maintenance of poultry and other livestock, horticulture, viticulture, floriculture, forests, and timber. Commercial and Industrial feed lots, the raising of fur-bearing animals, riding academy, livery or boarding stables, or dog kennels are not considered to be customary agricultural uses.
12. *Agriculture use, accessory:* Those structures or equipment which are normally required in the operation of agricultural uses.
13. *Aircraft Parts Manufacture:* An industrial facility or business that produces aircraft component parts, excluding manufacturing of liquid lubricants, fuels, etc.
14. *Airplane Manufacture:* An industrial facility or business that assembles components to produce airplanes.
15. *Airports:* Any area of land or water designed and set aside for the landing and takeoff of aircraft, including all necessary facilities for the housing and maintenance of aircraft.
16. *Airports, private:* Any airport licensed by the State of Tennessee as a private airport, used primarily by the airport licensee, but available for use by others upon specific invitation of the licensee.
17. *Airport elevation:* Five hundred fifty (550) feet above mean sea level.
18. *Airport hazard:* Any structure, tree or use of land which obstructs the airspace required for or is otherwise hazardous to the flight of aircraft in landing or taking off at the airport.
19. *Alcohol Distillery:*
    - *Small:* Small scale distillery limited to producing alcoholic beverages in quantities not to exceed 1,000 barrels per month, with one barrel holding 55 gallons.
    - *Large:* Large scale production of alcoholic beverages in quantities exceeding 1,000 barrels per month, with one barrel holding 55 gallons.

12

68. *Boardinghouse:* A residence or portion thereof which is used to accommodate, for compensation, boarders or roomers. Rest homes or homes for the aged shall be included in this definition.
69. *Bond:* Money or a form of monetary security issued to the City of Clarksville by an owner to insure that the required site work will be performed completely and correctly within a certain time frame. This bond shall be in the form of a cashier's check, letter of credit from a banking institution, certificate of deposit, or performance bond from an insurance company.
70. *Bowling Alley:* An establishment that devotes more than 50 (fifty) percent of its gross floor area to bowling lanes, equipment, and playing area.
71. *Breakaway wall:* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.
72. *Brewery:*
    - *Brewery, Micro:* Small scale production of beer in quantities not to exceed 5,000 barrels per month, with one barrel holding 31 gallons.
    - *Brewery:* Large scale production of beer in quantities exceeding 5,000 barrels per month, with one barrel holding 31 gallons.
73. *Building:* for purposes of this section, means any structure built for support, shelter, or enclosure for any occupancy or storage. (See "structure")
74. *Building Area:* That portion of a lot occupied by the main building, including porches, carports, and other structures attached to the main building.
75. *Building Contractor Supply:* A facility that provides retail and/or wholesale sales of building materials, construction supplies, plumbing/electrical materials, and other similar items.
76. *Building Height:* The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line for mansard roofs, and to the mean height between eaves and ridge for gable, hip, and gambrel roofs.
77. *Building, main or principal:* A building in which is conducted or intended to be conducted the main or principal use of the lot on which the building is located.
78. *Building Official:* The person within the Building and Codes Department, which is determined by the City of Clarksville to have authority for enforcement of this Ordinance.
79. *Building Permit:* means the permit required under this Ordinance.
80. *Building Setback Line:* A line on private property, established by this zoning ordinance, to prohibit the location of buildings or structures between that line and street right-of-way line and/or property line.
81. *Bus or Truck Service:* Any building, structure, improvements, or land used for the repair and maintenance of buses, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler, or upholstery work, oil change and lubrication, painting, tire service and sales.
82. *Bus Station:* Any premises for the storage or parking of motor driven buses and the loading and unloading of passengers.

3.4.7 INDUSTRIAL USES

Uses	Agricultural		Residential														Inst.-Civic	Office		Commercial						Industrial	
	AG	AGC	E1	R1	R1A	R2	R2A	R2D	R3	R4	R5	RM1	R6	PUD	MLUD	MHP	IC	O1	OP	CBD	C1	C2	C3	C4	C5	M1	M2
Acid Manufacture																											PR
Adhesives and Sealants Manufacture																											P
Aircraft Parts Manufacture																										PC	P
Airplane Manufacture																											P
Alcohol Distillery, Large																										P	P
Alcohol Distillery, Small		PC													P					P		P	P	P	P	P	P
Animal Slaughtering and Processing																											PR
Asphalt Paving /Mixing Manufacture																											P
Automobile Assembly																											P
Automobile Parts Manufacture																										PC	P
Awning Manufacture, Cloth, Metal and Wood																										PC	P
Barge Port																											P
Brewery																										P	P
Brewery, Micro		PC													P					P		P	P	P	P	P	P
Cabinet and Countertop Manufacturing																										PC	P
Cement Manufacture																											PR

Table 3.8

P = Permitted

PC = Permitted with Conditions

PR = Permitted on Review

A = Accessory

Aircraft Parts Manufacture:

1. The manufacturing, fabricating, processing, or assembling processes shall not create any danger to health or safety in surrounding areas, and shall not create any objectionable noise, vibration, smoke, dust, odor, heat, and/or glare.
2. All storage and work shall be conducted within an enclosed building.
3. Unless specifically authorized no items shall be displayed outside for sale, lease, gift and/or promotional purposes.

Alcohol Distillery, Small:

1. Consumption of alcoholic beverage not produced on site shall be prohibited.
2. The following activities are permitted with this use:
    A. Growing, harvesting and other products suitable for processing and bottling products produced on the premises are allowed.
    B. Processing and bottling of products produced off premise is prohibited.
    C. Sale of alcohol produced on the premises for off premise consumption.
    D. Sale of merchandise related to alcohol or the distillery.
    E. Tastings involving serving to the public for the purpose of sampling the alcohol produced on the premises.
    F. Special events such as weddings, dances, and other social occasions associated with the distillery.
3. Structures related to manufacturing/storage of components and/or finished product shall be setback a minimum of two-hundred (200) feet from any side and/or rear property line.

Automobile Parts Manufacture:

1. The manufacturing, fabricating, processing, or assembling processes shall not create any danger to health or safety in surrounding areas, and shall not create any objectionable noise, vibration, smoke, dust, odor, heat, and/or glare.
2. All storage and work shall be conducted within an enclosed building.
3. Unless specifically authorized no items shall be displayed outside for sale, lease, gift and/or promotional purposes.

Awning Manufacture, Cloth, Metal and Wood:

1. The manufacturing, fabricating, processing, or assembling processes shall not create any danger to health or safety in surrounding areas, and shall not create any objectionable noise, vibration, smoke, dust, odor, heat, and/or glare.
2. All storage and work shall be conducted within an enclosed building.
3. Unless specifically authorized no items shall be displayed outside for sale, lease, gift and/or promotional purposes.

Brewery, Micro:

1. Consumption of alcoholic beverage not produced on site shall be prohibited.

2. The following activities are permitted with this use:
    A. Growing, harvesting and other products suitable for processing and bottling products produced on the premises are allowed.
    B. Processing and bottling of products produced off premise is prohibited.
    C. Sale of alcohol produced on the premises for off premise consumption.
    D. Sale of merchandise related to alcohol or the distillery.
    E. Tastings involving serving to the public for the purpose of sampling the alcohol produced on the premises.
    F. Special events such as weddings, dances, and other social occasions associated with the distillery.
3. Structures related to manufacturing/storage of components and/or finished product shall be setback a minimum of two-hundred (200) feet from any side and/or rear property line.

Cabinet and Countertop Manufacturing:

1. The manufacturing, fabricating, processing, or assembling processes shall not create any danger to health or safety in surrounding areas, and shall not create any objectionable noise, vibration, smoke, dust, odor, heat, and/or glare.
2. All storage and work shall be conducted within an enclosed building.
3. Unless specifically authorized no items shall be displayed outside for sale, lease, gift and/or promotional purposes.

Clothing Manufacture:

1. The manufacturing, fabricating, processing, or assembling processes shall not create any danger to health or safety in surrounding areas, and shall not create any objectionable noise, vibration, smoke, dust, odor, heat, and/or glare.
2. All storage and work shall be conducted within an enclosed building.
3. Unless specifically authorized no items shall be displayed outside for sale, lease, gift and/or promotional purposes.

Construction Contractor with Storage Yard:

1. Screening. All outdoor storage in construction storage yards shall be conducted entirely within an area which is screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled roads or way of the system, or they shall otherwise be removed from sight.
2. Storage outside such screening is expressly prohibited.
3. Such screening shall be properly maintained in good condition.

Custom Manufacturing:

1. The manufacturing, fabricating, processing, or assembling processes shall not create any danger to health or safety in surrounding areas, and shall not create any objectionable noise, vibration, smoke, dust, odor, heat, and/or glare.
2. All storage and work shall be conducted within an enclosed building.

City of Columbia, South Carolina
***Code of Ordinances* (2013)**

Chapter 17: Planning, Land Development, and Zoning.
Article III: Zoning.
Division 1: Generally.

Section 17-55: Definitions.

Microbrewery means the production of beer, regardless of the percentage of alcoholic volume (ABV), in quantities not to exceed 15,000 barrels or 475,000 gallons per year.

Division 8: District Descriptions; Use and Dimensional Regulations.

Section 17-290: Microbrewery.

Microbreweries are permitted in C-3 MX-1, and MX-2 districts, subject to the following conditions:

(1) No merchandise, barrels, or equipment shall be displayed or stored outside the store; and
(2) Production of beer not to exceed one thousand (1,000) barrels or thirty-one thousand (31,000) gallons per year.

City of Covington, Kentucky
***Code of Ordinances* (2013)**
Title XV: Land Usage.
Appendix A: Zoning Ordinance.

Article 6 Use Regulations.
Section 6.28 Taverns and Restaurants.

6.28.01 *General Regulations.* Restaurants or taverns serving beer, wine, or alcohol after 1:00 a.m. cannot abut a residential use in a residential zone and must have sufficient customer parking available in the zone where it is located without impacting adjacent zones.

6.28.02 *Brewpubs.* The area used for brewing and kegging, shall not exceed 30% of the total floor area of the commercial space. The brewery shall not produce more than 4,000 barrels or 124,000 gallons of beer or ale per year. No brewing equipment or storage is permitted on the exterior of the building.

6.28.03 *Microbreweries.* The brewing operation does not include the production of any other alcoholic beverage. The brewery shall not produce more than 15,000 barrels or 460,000 gallons of beer or ale per year. No brewing equipment or storage is permitted on the exterior of the building.

Article 16 Definitions.
Section 16.02 Use Groups and Categories.

16.02.06 Commercial Use Group.

(I) *Eating/Drinking Establishment.* Sale of prepared food and beverages for on- and off-premises consumption. Typical uses include microbreweries, restaurants and taverns.

(1) *Microbrewery*. Establishments engaged in on-site brewing of beer and sales of beer by the glass for on-premise consumption. These establishments are primarily used for the production of beer and ale and may include retail and food service as an accessory use. The brewing operation processes the ingredients to make beer and ale by mashing, cooking, and fermenting. The brewing operation dose not include the production of any other alcoholic beverage.
(4) *Brewpub*. Establishments primarily engaged in the retail sale of prepared food for consumption, which includes the brewing of beer as an accessory use. The brewing operation processes the ingredients to make beer and ale by mashing, cooking, and fermenting. The brewing operation does not include the production of any other alcoholic beverage.
(5) *Micro-distillery*. Establishments primarily engaged in on-site distillation of spirits and may include retail and food service as an accessory use. The distillery operation processes the ingredients to make spirits by mashing, cooking, and fermenting. The micro-distillery operation does not include the production of any other alcoholic beverage.

City of Dallas, Texas
***Code of Ordinances* (2013)**

Chapter 51A: Development Code.
Article IV: Zoning Regulations.

Section 51A-4.210: Retail and Personal Service Uses.

(b) Specific uses.

(4) Alcoholic beverage establishments.

(A) Definitions:

(ii) MICROBREWERY, MICRODISTILLERY, OR WINERY means an establishment for the manufacture, blending, fermentation, processing, and packaging of alcoholic beverages with a floor area of 10,000 square feet or less that takes place wholly inside a building. A facility that only provides tasting or retail sale of alcoholic beverages is not a microbrewery, microdistillery, or winery use.

(B) Districts permitted:

(ii) Microbrewery, micro-distillery, or winery. By right in industrial districts with RAR required. By SUP only in CR, RR, CS, central area, mixed-use, urban corridor, and walkable urban mixed use districts.

(D) Required off-street loading:

SQUARE FEET OF FLOOR AREA IN STRUCTURE	TOTAL REQUIRED SPACES OR BERTHS
0 to 5,000	NONE
5,000 to 25,000	1
25,000 to 50,000	2
Each additional 50,000 or fraction thereof	1 additional

(E) Additional provisions:

(ii) Microbrewery, micro-distillery, or winery.
- (aa) Retail sales of alcoholic beverages and related items and tastings or sampling are allowed in accordance with Texas Alcoholic Beverage Commission regulations.
- (bb) Except for loading, all activities must occur within a building.
- (cc) Silos and containers of spent grain are allowed as outdoor storage. Containers of spent grain must be screened. All other outdoor storage or repair is prohibited.
- (dd) If an SUP is required, silos and outdoor storage areas for spent grain must be shown on the site plan.
- (ee) Drive-through facilities are prohibited.

City of Goodyear, Arizona
***Zoning Ordinance* (2013)**

Article II: Definitions.

Section 2-2: Definitions.

Bar/Microbrewery. Facility with provision for the brewing of beer for on-premises consumption only. Maximum of 25% of the floor area shall be devoted to the brewery.

Brewpub. A restaurant with facilities for the brewing of beer for onsite consumption and retail sale at the restaurant. A brewpub must derive at least 40% of its gross revenue from the sale of food.

Microbrewery. A facility for the brewing of beer for onsite consumption as well as wholesale and retail sale. Food and/or other alcoholic beverages may also be served.

Article 3: Zoning Districts.
Chapter 3-3: Commercial Districts.

Section 3-3-3: C-2 General Commercial District.

A. PRINCIPAL PERMITTED USES. Only listed use of structures or land shall be permitted.

42. Brewpub, subject to the provisions of Article 4-2-15.
43. Microbrewery, producing 15,000 barrels of beer or less per year.

Article 4: Special Uses, Uses Requiring Additional Evaluation, Nonconforming Uses and Buildings.
Chapter 4-2, Uses Requiring Additional Evaluation.

Section 4-2-15 Brewpub

A **brewpub** as defined in Section 2-2 of this Ordinance is subject to the following regulation:

A. GENERAL REQUIREMENT
   1) At least 40% of the brewpub's gross revenue shall be derived from the sale of food. If requested by the Development Services Director, the owner of the brewpub shall provide to the Department documentation on the facility's gross revenue and the percentage of gross revenue derived from the sale of food for the calendar year. Documentation will be required to be submitted to the Department by January 31st of the following year.
   2) Live music or entertainment shall only be allowed as an accessory use if the facility is located a minimum of three hundred feet (300') from the property line of any residentially zoned or designated property. The area within the facility designated for music or entertainment activities, including patron dancing, shall not exceed 5,000 square feet. All noise generated by live music or entertainment activities shall be fully contained within the indoor space occupied by the brewpub.

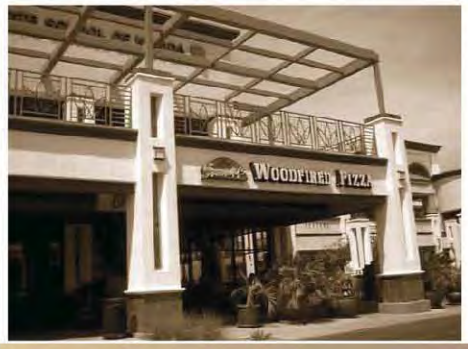
3) The area devoted to patron dancing shall not exceed twenty-five percent (25%) of the total floor area.
4) The brewpub shall not be open after hours as defined by State law (generally, closing time of the dance floor is later than that of the bar).

Section 4-2-16 Microbrewery

A **microbrewery** as defined in Section 2-2 of this Ordinance is subject to the following regulations:

A. GENERAL REQUIREMENTS
1) The building containing the microbrewery must be at least 300 feet from the property line of any property zoned for single family residential use and at least 300 feet from any building containing a school, nursery school or place of worship.
2) The microbrewery shall not produce odors, gas, dust or any other atmospheric pollutant detrimental to the health, safety or general welfare of persons living or working in the surrounding area. Development Services May 24, 1999 Revised: December 18, 2013 City of Goodyear 4-34 Zoning Ordinance
3) The owner of the microbrewery shall provide documentation to the Development Services Director on the quantity of beer produced onsite and the amount of beer sold and delivered to other retailers for the calendar year. Documentation will be required to be submitted to the Department by January 31st of the following year.
4) Live music or entertainment shall only be allowed as an accessory use if the facility is located a minimum of three hundred feet (300′) from the property line of any residentially zoned or designated property. The area within the facility designated for music or entertainment activities, including patron dancing, shall not exceed 5,000 square feet. All noise generated by live music or entertainment activities shall be fully contained within the indoor space occupied by the microbrewery.
5) The area devoted to patron dancing shall not exceed twenty-five percent (25%) of the total floor area.
6) The microbrewery shall not be open after hours as defined by State law (generally, closing time of the dance floor is later than that of the bar).

HENDERSON, NEVADA
Development Code



Adopted

January 19, 2010

Revised 10/18/2011

(2) All live entertainment activities shall occur within the banquet facility building or tenant space.

(3) Banquet facilities hours of operation shall be from 8 AM to 2AM.

(4) Any of these standards may be waived or modified through the conditions use permit process to ensure compatibility with surrounding uses and zoning districts.

(5) Banquet facilities shall comply with 19.5.5.A.1.

(6) Additional restrictions may be added through the conditional use permit process to ensure compatibility with surrounding uses and zoning districts.

(b) DCC district: Banquet facilities are allowed as an accessory use to an eating and drinking establishment.

3. Off-Street Parking Requirement

Schedule "C" (Section 19.7.4.C.3)

4. Off-Street Loading Group

Group Two (Section 19.7.4.D)

H. BREW PUB/MICROBREWERY/CRAFT DISTILLERY

RESIDENTIAL										DOWNTOWN RESIDENTIAL				
RS-1	RS-2	RS-4	RS-6	RS-8	RM-10	RM-16	RH-24	RH-36	RMH	DH	DRL	DRM	DRH	DP
COMMERCIAL						INDUSTRIAL			MIXED-USE			DWNTWN		
CN	CO	CC	CH	CT	CA	IL	IG	IP	MC	MN	MR	DCC	DHC	PS
		C	C	C				S	C	C	C	S	S	

1. Definition

An establishment that manufacturers malt beverages and sells those malt beverages at retail; or manufactures distilled spirits (per NRS Chapter 597). Sample products made on site may be offered at no cost to visitors.

2. Standards

(a) All Districts

(1) Brew pubs/microbreweries/craft distilleries are subject to the minimum separation requirements for taverns. See Section 19.5.5.O.3, Eating And Drinking Establishment: Tavern.

(2) Any proposed alcohol or liquor use shall comply with Section 19.5.5.A.1, Distance Limitations for Alcohol and Liquor Uses (same requirements as for a Tavern), and all Title 4 requirements for the subject use.

(3) Brew pubs/microbreweries/craft distilleries located in and owned or operated by a nonrestricted or limited gaming licensee shall be covered under the licensee's nonrestricted/limited gaming establishment's liquor license.

(4) A freestanding brew pub/microbrewery/craft distillery or independently owned brew pub/microbrewery/craft distillery located within a nonrestricted or limited gaming location shall be licensed as required per Title 4.

(5) A brew pub/microbrewery/craft distillery establishment may provide accessory outdoor food service and seating areas, including tables and chairs, for the use of their customers, provided they comply with the standards for such accessory uses in Section 19.5.7.D.8.

(6) Any use that includes live entertainment shall comply with the standards for live entertainment uses in Section 19.5.5.A, General Standards for Alcohol and Liquor Uses and Live Entertainment.

(7) Distance separations and exemptions for taverns shall also apply to brew pubs/microbreweries/craft distilleries. See Section 19.5.5.O.3(b)(2).

(8) Any use that includes Restricted Gaming shall comply with the standards in Section 19.5.5.S.2, Restricted Gaming and Title 4.32. An applicant shall demonstrate compliance with these standards through the Conditional Use Permit for a Brew Pub/Microbrewery/Craft Distillery.

(b) CT District

Brew pubs/microbreweries/craft distilleries are allowed only as part of a mixed-use project.

(c) IP District

(1) Brew pubs/microbreweries shall be allowed under 15,000 gallons.

(2) Brew pubs/microbreweries/craft distilleries must be located in a stand alone building or end unit of a multi-tenant building.

(3) Brew pubs/microbreweries/craft distilleries must provide sound-proofing and odor abatement.

3. Off-Street Parking Requirement

(a) Downtown districts, except the DCC district: 1 space per every 200 square feet of indoor and outdoor customer service area.

(b) DCC district: 1space per 500 (minimum), 1 space per 200 (maximum) square feet of indoor and outdoor customer service area.

(c) Nonresidential districts: 1 space per every 100 square feet of indoor and outdoor customer service area.

4. Off-Street Loading Group

Group One (Section 19.7.4.D)

I. BREWERY

RESIDENTIAL										DOWNTOWN RESIDENTIAL				
RS-1	RS-2	RS-4	RS-6	RS-8	RM-10	RM-16	RH-24	RH-36	RMH	DH	DRL	DRM	DRH	DP
COMMERCIAL						INDUSTRIAL			MIXED-USE			DWNTWN		
CN	CO	CC	CH	CT	CA	IL	IG	IP	MC	MN	MR	DCC	DHC	PS
						C	P	S						

1. Definition

An establishment that manufactures malt beverages, but does not sell those beverages at retail.

2. Standards

(a) IL District

A brewery may be permitted with a conditional use permit. Unless otherwise specified in the IL (limited industry) use classifications, no other general industry uses are allowed. All warehousing and manufacturing processes must be conducted within a totally enclosed building, and all outside storage of materials and equipment must be behind a minimum eight-foot-high cinder block or comparable masonry fence approved by the City. All storage must be completely screened from view from all neighboring properties and the public rights-of-way.

(b) IP District

General warehousing and the manufacture of products from raw materials are permitted. Unless otherwise specified in the industrial park classifications, no other general industry uses are allowed. All warehousing and manufacturing processes must be conducted within a totally enclosed building, and all storage of materials and equipment, except vehicles used for transporting the warehoused or manufactured products, must be within a totally enclosed building. Vehicles used for transporting and warehoused or manufactured products must be screened from view from all neighboring properties and internal and external streets with masonry fencing and landscaping, berms and landscaping, or other comparable screening method approved by the City.

3. Off-Street Parking Requirement

Schedule "B" (Section 19.7.4.C.2)

4. Off-Street Loading Group

Group Three (Section 19.7.4.D)

THE
MEMPHIS AND SHELBY COUNTY
UNIFIED DEVELOPMENT CODE

The Zoning Code and Subdivision Regulations
for the City of Memphis and Unincorporated Shelby County

Approved by the Shelby County Board of Commissioners: August 9, 2010
Approved by the Memphis City Council: August 10, 2010
and Incorporating the Following Amendments:

ZTA 12-001: approved by the Shelby Co. Board of Commissioners on August 27, 2012, and the Memphis City Council on July 17, 2012
ZTA 12-002: approved by the Shelby Co. Board of Commissioners on January 28, 2013, and the Memphis City Council on January 22, 2013
ZTA 13-001: approved by the Shelby Co. Board of Commissioners on April 15, 2013, and the Memphis City Council on April 16, 2013
ZTA 13-002: approved by the Shelby Co. Board of Commissioners on July 8, 2013, and the Memphis City Council on July 5, 2013
ZTA 13-003: approved by the Shelby Co. Board of Commissioners on Sept. 23, 2013, and the Memphis City Council on Sept. 3, 2013
ZTA 13-004: approved by the Shelby Co. Board of Commissioners on February 24, 2014, and the Memphis City Council on February 18, 2014

Key: Blank Cell = Not Permitted ■ = Permitted □ = Special Use Approval C = Conditional Use Permit + = Conditional Use Permit – Significant Neighborhood Structure

USE CATEGORY	PRINCIPAL USE	P	OS	FW	CA	CIV	R-MP	R-E	R-15	R-10	R-8	R-6	R-3	RU-1	RU-2	RU-3	RU-4	RU-5	R-W	OG	CMU-1	CMU-2	CMU-3	CBD	CMP-1	CMP-2	EMP	WD	IH	Use Standard
Indoor Recreation *(see 2.9.4A)*	Athletic, tennis, swim or health club																			■	■	■	■	■	■	■	■	■	■	
	Bar, Tavern, Cocktail Lounge, Nightclub																			□	□	■	■	■			■		■	2.6.3B
	Convention Center					■																	□	■	□	□	■		■	
	Lodge, Membership Club				□	■		□	□	□	□	□	□	□	□	□	□	□	□	□	■	■	■	■			■		■	
	Indoor Shooting Range																					□	□	□			■		■	
Office *(see 2.9.4B)*	All offices, except as listed below:								+	+	+	+	+	+	+	□	□	□	■	■	■	■	■	■	■	■	■	■	■	
	Radio, TV, or Recording Studio					■			+	+	+	+	+	+	+	+	+	+	■	■	■	■	■	■	■	■	■	■	■	2.6.3C
Overnight Lodging *(see 2.9.4C)*	Bed and Breakfast								+	+	+	+	+	□	□	□	□	□	□	□	□	□	□	□	□	□				
	Hotel or Motel																			□		□	□	□	□	□	□	□	□	2.6.3D
	Youth Hostel																					□	□	□	□	□				
Outdoor Recreation *(see 2.9.4D)*	All outdoor recreation, except as listed below:			□																		□	■				■		■	2.6.3E
	Golf Course, Country Club, Clubhouse	■		□	□			□	□	□	□	□	□	□	□	□	□	□					■				■		■	2.6.3E
	Horse Stables, Riding Academy, Equestrian Center	□			■																		■				■		■	2.6.3E
	Outdoor Shooting Range	□			□																		■				■		■	2.6.3E
	Stadium or Arena, Commercial Amphitheater																						■	■			■		■	2.6.3E
Outdoor Advertising Sign *(see 2.9.4E)*	Permanent Off-Premise Advertising Sign (*Signs in CBD are only permitted outside of the CBID.)																						■	■*			■		■	
Parking, Commercial *(see 2.9.4F)*	All commercial parking																			□		□	■	□	□	□	■	■	■	
Restaurant *(see 2.9.4G)*	All restaurants, except as listed below:								+	+	+	+	+	+	+	+	+	□		■	■	■	■	■	□	□	■		■	2.6.3F
	Restaurant with sale of alcoholic beverages, Brew Pub								+	+	+	+	+	+	+	+	+	+		■	■	■	■	■	□	□	■		■	2.6.3G
	Restaurant, Drive-in																				□	■	■	■	□	□	■		■	
Retail Sales & Service *(see 2.9.4H)*	All retail sales and service, except as listed below:								+	+	+	+	+	+	+	+	+	+			■	■	■	■			■		■	
	Animal Hospital, Veterinary Clinic, Pet Clinic				□				+	+	+	+	+	+	+	+	+	+			■	■	■	■			■		■	2.6.3H
	Animal Boarding, Animal Shelter, Kennel, Doggy Day Care				□				+	+	+	+	+	+	+	+	+	+			■	■	■	■			■	■	■	2.6.3H
	Art or photo studio, gallery								+	+	+	+	+	□	□	□	□	□	■	■	■	■	■	■	■	■	■		■	2.6.3I
	Bakery, retail								+	+	+	+	+	+	+	+	+	+			■	■	■	■	□	□	■		■	
	Hair, nail, tanning, message therapy and personal care service, barber shop or beauty salon								+	+	+	+	+	+	+	+	+	+	■	■	■	■	■	■	■	■	■		■	
	Convenience store with gas pumps, Gas station, Commercial electric vehicle charge station																				■	■	■	■	□	□	■		■	2.6.3J
	Convenience store without gas pumps													□	□	□	□	□	□		■	■	■	■	□	□	■		■	2.6.3K
	Catering establishment, small-scale								+	+	+	+	+	+	+	+	+	+			■	■	■	■			■		■	
	Cleaning establishment , pickup station								+	+	+	+	+	□	□	□	□	□	□		■	■	■	■			■		■	2.6.3L
	Farmers Market				□	□								□	□	□	□	□	□		■	■	■	■	□	□	■		■	2.6.3Q
	Greenhouse or Nursery, Commercial			□	□				+	+	+	+	+	+	+	+	+	+				■	■	■			■		■	
	Payday loans and title loan establishments																			□	□		□				■		■	2.6.3M

Key: Blank Cell = Not Permitted ■ = Permitted □ = Special Use Approval C = Conditional Use Permit + = Conditional Use Permit – Significant Neighborhood Structure

USE CATEGORY	PRINCIPAL USE	P	OS	FW	CA	CIV	R-MP	R-E	R-15	R-10	R-8	R-6	R-3	RU-1	RU-2	RU-3	RU-4	RU-5	R-W	OG	CMU-1	CMU-2	CMU-3	CBD	CMP-1	CMP-2	EMP	WD	IH	Use Standard
Retail Sales & Service *(see 2.9.4H)*	Post Office					■			+	+	+	+	+	+	+	+	+	+		■	■	■	■	■	□	□	■		■	
	Pawnshop																					□	□	□		□	□		■	
	Retail Sales Outdoor (vendor), Flea markets			□																	□	□	□	□		□			□	2.6.3N
	Tattoo, Palmist, Psychic or Medium																				C	■	■	■			■		■	
	Tractor-Trailer (fueling of)																										■		■	
	Vehicle parts and accessories																				■	■	■	■			■		■	
Self-Service Storage *(see 2.9.4I)*	Mini-storage																					□	■				■	■	■	2.6.3O
	Indoor multi-story																				■	■	■	■			■	■	■	2.6.3O
Vehicle Sales Service, & Repair *(see 2.9.4J)*	All Vehicle Service																				■	■	■	■	□	□	■	■	■	2.6.3P
	All Vehicle Repair																				□	□	■	■	□	□	■	■	■	2.6.3P
	All Vehicle Sales, Rental, Leasing, except as listed below:																				□	□	□	□			■	■	■	2.6.3P
	Tractor-Trailers and Heavy Trucks																										■		■	2.6.3P
	Manufactured housing																						■				■		■	2.6.3P
Water-Oriented (see 2.9.4K)	All water-oriented																						■	■			■	■	■	
INDUSTRIAL																														
Wholesale Trade *(see 2.9.5A)*	All wholesale trade																						■	■			■	■	■	
Light Industrial *(see 2.9.5B)*	All light industrial, except as listed below:																										■		■	
	Bulk mailing service																										■	■	■	
	Clothing, textile or apparel manufacturing																						□	■			■		■	
	Contractors storage																						□	□			■		■	2.6.4A
	Detention center, jail, prison																												■	
	Lawn, tree or garden service																						□	□			■		■	2.6.4A
	Light manufacturing or assembly of equipment, instruments, or goods																				□	□	■	■	■	■	■		■	
	Lumberyard and wood products																										■		■	
	Microbrewery and microdistillery								+	+	+	+	+	+	+	+	+	+		■	■	■	■	■	■	■	■	■	■	2.6.4F
	Movie production facility																										■		■	
	Photo finishing laboratory																					□	■	■	■	■	■		■	
	Repair of scientific or professional instruments, electric motors																					□	■	■	■	■	■		■	
	Research, Testing, and development Laboratory																					□	■	■	■	■	■		■	
	Sheet metal shop																										■		■	
	Soft drink bottling																										■	■	■	
	Welding, machine, tool repair shop																					□	■	■	■	■	■		■	
	Woodworking, including cabinet makers and furniture manufacturing																					□	■	■	■	■	■		■	
Warehouse & Distribution *(see 2.9.5C)*	All warehouse and distribution																					□	□	□	□	□	■	■	■	
Heavy Industrial *(see 2.9.5D)*	All heavy industrial, except as listed below:																												■	
	Asbestos products																												□	

D. Hotel and Motel

All hotels and motels are required to meet the following standards:

1. Any change in the controlling interest of a hotel or motel, or the real property associated with such use shall require the approval of a new special use permit (see Chapter 9.6).
2. The owner or manager of any hotel or motel shall notify the Planning Director in writing of any change in name of the hotel or motel, not resulting in a change of ownership and shall apply for a new certificate of occupancy permit that reflects this change.
3. No fencing or screening is permitted which visually blocks the front building entrance from view from the public right-of-way.
4. The governing bodies find that hourly rate motels/hotels have a deleterious effect on both the commercial and residential segments of a neighborhood, are repeatedly associated with prostitution, causing blight and the downgrading of property values. Hourly rate hotels and motels are not permitted in any zoning district. No hotel or motel may provide rooms for rent or lease more than twice in any ten hour period. Three or more violations of this provision in a 24 month period shall be grounds for revocation of the certificate of occupancy permit.

E. Outdoor Recreation

Outdoor recreational uses equipped with outdoor lighting shall be subject to the following standards:

1. Class III buffer (see Section 4.6.5) shall be established along any side of the property within 400 feet of a residential use as measured from property line of the recreation field to the nearest boundary line of a residential use.
2. Field lighting must the requirements of Chapter 4.7, Outdoor Site Lighting.

F. Restaurant

Restaurants located in the OG District are subject to the following additional standards:

1. Must be within or attached to a building containing another non-restaurant.
2. The floor area of the restaurant cannot exceed 6,000 square feet.
3. Drive-thru pick-up windows are not permitted.
4. The design and materials of the building and signage must be compatible with the associated office building.
5. Must be 150 feet from a single-family residential district measured from the property line of the restaurant to the nearest boundary line of the single-family residential district.

G. Restaurants with Sale of Alcoholic Beverages, Brew Pub

1. In the OG district, all the requirements of Sub-Section F apply.
2. If located within the city limits of the City of Memphis then any restaurant with sale of alcoholic beverages or brew pub shall meet all requirements of Title 7, Alcoholic Beverages, of the City of Memphis Code of Ordinances.
3. If located within unincorporated Shelby County then any restaurant with sale of alcoholic beverages or brew pub shall be regulated in accordance with the requirements of Title 57 of the Tennessee Code Annotated.

H. Animal Hospital, Veterinary Clinic, Pet Clinic, Animal Boarding, Animal Shelter, Kennel

1. In the CA, CMU, EMP, WD, IH districts, outdoor runs are permitted.
2. In all other districts, outdoor runs are not permitted. All overnight care of animals must occur indoors. All pens, kennels and runs must be located within an enclosed building.

I. Art or Photo Studio or Gallery

The following standards apply to art or photo studios or galleries permitted by special use permit in a RU-district.

1. Part of the contiguous use shall be within 100 feet of the right-of-way of a street intersection.
2. The use shall be located on the first floor of a two story or greater building.
3. Preference shall be given to existing buildings.
4. Maximum floor area of each individual user may not exceed 4,000 square feet.
5. Parking on the lot shall be located at the side or rear of a building and not between the building and the street.

J. Convenience Store with Gas Pumps, Gas Station, Commercial Electric Vehicle Charge Station

1. General Standards

n. The landfill site shall not obstruct the development of any street proposed in the MPO Long Range Transportation Plan.

o. The landfill site shall have direct access to a major or connector street. Access to the site shall be located so as to require a minimum of travel on a public way.

p. All materials delivered to the site shall be deposited and thoroughly compacted in accordance with the rules and regulations of the Tennessee Department of Health and Environment, Division of Solid Waste Disposal. Materials not permitted in landfills by state regulations shall not be permitted as fill material. Each day's deposit, after compaction, shall be covered with a layer of earth at least six inches in thickness after compaction. The face of the fill as well as the horizontal surface shall be covered with a layer of earth to prevent any movement of fill by wind or water erosion.

q. Separation of materials or storage for the salvage thereof on the site shall be conducted within an enclosed building. All unacceptable fill material shall be removed from the premises immediately after delivery.

r. Water lines shall be installed, connected to a public water supply, or to some other source which by use of pumps will provide water in sufficient quantity to combat fires or settle dust.

s. The days and hours of landfill operations are subject to the approval of the legislative body.

t. Any other conditions or standards as the legislative bodies may deem reasonable and appropriate to prevent or minimize any adverse effect of such landfill operation.

3. Prior to the commencement of landfill operations, the applicant for the special use permit shall submit to the building official a primary reclamation performance bond in the amount of $3,500 per acre for each acre to be excavated, less the amount of bond held by the state, increasing $100 per acre per year from the date of adoption of this Article, for landfill operations to insure that the land shall be restored, regraded and resloped as provided in this section when such operations cease. Said bond shall not be released until the work it secures is completed or a substitute serial bond is received by the appropriate government official which shall secure all remaining work under the original bond and all bonds submitted pursuant to this section and shall so state. Such primary reclamation performance bond may be on a serialized basis in five year increments. Such primary reclamation performance bond shall be released after primary reclamation activities are complete and the condition, grade and drainage of the land are approved in writing by the Building Official and City or County Engineer provided, however, that a proportionate release of not to exceed 60% of said primary reclamation bond may be authorized by the Building Official and City or County Engineer for phased or partial reclamation.

4. A final reclamation performance bond in an amount not less than 40% of the primary reclamation performance bond on deposit at the time of closure shall be submitted to the Building Official and retained for a period of five years after release of the primary reclamation bond to ensure restoration of reclaimed areas affected by settling and subsidence of filled land. Such final reclamation performance bond shall be released at the end of said five year period and after final reclamation activities are completed and the condition, grade, and drainage of the land are approved in writing by the Building Official and the City or County Engineer.

E. Scrap Metal Processors and Wrecking, Junk or Salvage Yard

The following standards shall apply to Scrap Metal Processors and Wrecking, Junk, or Salvage Yards permitted by Special Use Permit in the IH District.

1. The site shall be located at least 1,500 feet from any residential district.
2. All Scrap Metal Processors and Wrecking, Junk, or Salvage Yards must comply with Memphis City Ordinance 5217 regulating junk and scrap metal dealers.

F. Microbreweries & Microdistilleries

1. If located within the city limits of the City of Memphis then any microbrewery or microdistillery shall meet all requirements of Title 7, Alcoholic Beverages, of the City of Memphis Code of Ordinances.
2. If located within unincorporated Shelby County then any microbrewery or microdistillery shall be located at least 500 feet from any single family residential district as measured from property line of the microbrewery or microdistillery to the nearest boundary line of the single family residential district.
3. Tasting rooms may occupy no more than 2000 square feet, or 10% of the total microbrewery or microdistillery footprint, whichever is greater.

8.4.7 Uses Permitted in the Midtown District Overlay

Blank Cell= Not Permitted, ■ = Use permitted by right, □ = Use requiring approval of a special use permit, + = Use requiring approval of a Conditional Use Permit for a Significant Neighborhood Structure

PRINCIPAL USE	R6	RU-1	RU-2	RU-3	RU-4	RU-5	RW	OG	CMU-1	CMU-2	CMU-3	EMP
RESIDENTIAL												
Household Living												
Single Family Detached												
Conventional	■	■	■	■	■		■	■	■	■	■	
Side Yard House	■	■	■	■	■		■	■	■	■	■	
Cottage		■	■	■	■		■	■	■	■	■	
Single Family Attached												
Semi-attached		■	■	■	■		■	■	■	■	■	
Two-Family		■	■	■	■		■	■	■	■	■	
Townhouse		■	■	■	■	■	■	■	■	■	■	
Multifamily												
Large Home			■	■	■	■	■	□	□	□	□	
Stacked Townhouse			■	■	■	■	■	□	□	□	□	
Apartment				■	■	■		□	□	□	□	
Upper-Story Residential						■	■	■	■	■	■	
Live-Work		□	□	■	■	■	■	■	■	■	■	
Manufactured, Modular Home	■	■	■	■	■							
Mobile Home												
Manufactured, Modular Home Park												
Group Living												
Boarding House, Rooming House, Single Room Occupancy				□	□	□			□	■	■	
Fraternity, Sorority, Dormitory				□	□	□			□	■	■	
Monastery, Convent				□	□	□			□	■	■	
Nursing Home, Full- time Convalescent Hospice				■	■	■	■	■	□	■	■	
Personal Care Home for the Elderly	■	■	■	■	■			■				
Residential Home for the Elderly, Assisted Living Facility, Independent Living Facility				■	■	■	■	■	□	■	■	
Supportive Living Facility	■	■	■	■	■			□				
CIVIC USES												
Community Service												
Museum, Library	□	□	□	□	□	□	□	□	■	■	■	

PRINCIPAL USE	R6	RU-1	RU-2	RU-3	RU-4	RU-5	RW	OG	CMU-1	CMU-2	CMU-3	EMP
Hotel, Motel, Inn, Extended Stay Facility								□	□	□	□	
Youth Hostel									□	□	□	
Outdoor Recreation												
All outdoor Recreation except as listed below:										□	■	
Golf Course, Country Club, Clubhouse	□	□	□	□	□	□					■	
Horse Stables, Riding Academy, Equestrian Center											■	
Outdoor Shooting Range											■	
Stadium or Arena, Commercial Amphitheater											■	
Outdoor Advertising Sign												
Permanent Off-Premise Advertising Sign												
Parking, Commercial												
All Commercial Parking								□		□	□	□
All Restaurants, except as listed below	+	+	+	+	+	□		■	■	■	■	■
Restaurants with sale of alcoholic beverages, Brew Pub	+	+	+	+	+			■	■	■	■	■
Restaurant, Drive-in									□	■	■	■
All Retail Sales and Service except as listed below	+	+	+	+	+	+			■	■	■	■
Animal Hospital, Veterinary Clinic, Pet Clinic	+	+	+	+	+	+			■	■	■	■
Animal Boarding, Animal Shelter, Kennel, Doggy Day Care	+	+	+	+	+	+			■	■	■	■
Art or Photo Studio or Gallery	+	□	□	□	□	□	■	■	■	■	■	■
Bakery, Retail	+	+	+	+	+	+			■	■	■	■
Barber or Beauty Shop	+	+	+	+	+	+	■	■	■	■	■	■
Convenience Store with Gas Pumps, Gas Station									□	■	■	■
Convenience Store without Gas Pumps		□	□	□	□	□	□		□	■	■	■
Catering Establishment, small scale	+	+	+	+	+	+			■	■	■	■

PRINCIPAL USE	R6	RU-1	RU-2	RU-3	RU-4	RU-5	RW	OG	CMU-1	CMU-2	CMU-3	EMP
Industrial												
All Wholesale Trade											■	■
Light Industrial												
All light industrial except as listed below:												■
Bulk Mailing service												■
Clothing, textile or apparel manufacturing											□	■
Contractors storage											□	■
Detention center, jail, prison												
Lawn, Tree or Garden Service											□	■
Light Manufacturing or Assembly of Equipment, Instruments or Goods									□	□	■	■
Lumberyard and wood products												■
Microbrewery and microdistillery	+	+	+	+	+	+	+	■	■	■	■	■
Movie production facility												■
Photo Finishing Laboratory										□	■	■
Repair of Scientific or Professional Instruments, Electric Motors										□	■	■
Research, Testing and Development Laboratory										□	■	■
Sheet Metal Shop												■
Soft drink bottling												■
Welding, Machine, Tool Repair Shop										□	■	■
Woodworking, including Cabinet Makers and Furniture Manufacturing										□	■	■
Warehouse										□	□	■
Waste Related Services												
Recycling Drop-off Facility									□	□	□	□
Agriculture												
Winery												■
Resource Extraction												
Dredging, earth extraction, clearing or grading (silviculture)												
Planned Development	□	□	□	□	□	□	□	□	□	□	□	□

* Outdoor display/storage of vehicles must be screened from view from the public right of way

BEVERAGE CONTAINER COLLECTION CENTER: A building or portion of a building used for the incidental storage of beverage containers.

BEVERAGE CONTAINER RECYCLING CENTER: A building or portion of a building used for the crushing of beverage containers commonly used by the general public and the incidental storage of such containers.

BIKE LANE: A portion of a street reserved for use by bikes, usually separated from general purpose lanes by a stripe of paint and signage

BLANK WALL AREA: A portion of the exterior façade of the building which does not include a substantial material change (paint color is not considered a substantial change); windows or doors; or columns, pilasters or other articulation greater than 12 inches in depth (see Section 3.2.3).

BLOCK: An area of land bounded by streets, or by a combination of streets and railroad rights-of-way, shorelines or boundary lines of municipalities.

BLOCK FACE: See Section 5.2.5.

BLOCK PERIMETER: See Section 5.2.5.

BOARDING HOUSE, ROOMING HOUSE: A building where lodging is provided for compensation for five or more persons, who are not transients, by prearrangement for definite periods, provided that no convalescent or chronic care is provided.

BOAT LIVERY: A commercial enterprise that rents or leases rental boats or watercraft.

BODY PIERCING: A business that engages in the piercing of the human body.

BORROW PIT: Any place or premises where dirt, soil, sand, gravel or other material is removed below the grade of surrounding land, for any purpose other than that necessary and incidental to site grading or building construction.

BREW PUB: A restaurant featuring beer that is brewed on site.

BREWERY: A plant where beer is produced.

BUILDING: Any structure, place or any other construction built for the shelter or enclosure of person, animals or personal property or any part of such structure when subdivided by division walls or party walls extending to or above the roof and without openings in such separate walls. The term “building” shall be construed as is followed by the words “or any part thereof.”

BUILDING CODE: The Building Codes of the City of Memphis and Shelby County as amended.

BUILDING ELEVATION: Shall mean an architectural diagram showing the exterior surface of a building (including the roof, wall and all architectural appendages) as if projected onto a vertical plane.

BUILDING ENVELOPE STANDARDS: The basic parameters governing location of building construction. This includes the area for building placement and certain required/permitted building elements (see also Article 3).

BUILDING EXPANSION: Any exterior expansion of an existing building that increases the habitable floor area, or increases the amount of commercial or industrial floor area.

BUILDING FRONTAGE, REQUIRED: The minimum percentage of the front building façade that must be located within the setback area. (See Sub-Section 3.2.9C.)

BUILDING HEIGHT: The vertical distance measured from grade to the highest point of the roof for flat roofs, to the deck line for mansard roofs or to the mean height between eaves and ridge of any pitched roof (see also Sub-Section A).

BUILDING LINE: The line established by this Code beyond which a building shall not extend.

BUILDING MOUNTED SOLAR ENERGY SYSTEM: Any array of solar panels and related equipment attached to or incorporated as a part of any roof, wall or other portion of a structure to supplement the energy needs of the principal use.

BUILDING MOUNTED WIND ENERGY SYSTEMS: A wind energy system structurally attached to a roof, the side of a building, a cell tower, or similar structure as an appurtenance not exceeding 15 feet in height nor exceeding a generating capacity of 10 kW and generally used as a means to supplement energy reduction.

BUILDING OFFICIAL: The Administrator of the Memphis and Shelby County Office of Construction Code Enforcement, or his or her designee.

MANUFACTURED HOME PARK OR SUBDIVISION, EXPANSION TO AN EXISTING: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

MANUFACTURED HOME PARK OR SUBDIVISION, NEW: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after November 23, 1982.

MANUFACTURING: The processing and converting of raw, unfinished or finished materials or products, or any of these, into an article or substance of different character, or for use for a different character, or for use for a different purpose.

MAP, ZONING: The City of Memphis and Shelby County Zoning District Map (see Chapter 2.4).

MEDICAL LAB: A laboratory where tests are done on clinical specimens in order to get information about the health of a patient as pertaining to the diagnosis, treatment and prevention of disease.

METEOROLOGICAL TOWERS (MET TOWERS): Include the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

MICROBREWERY: A brewery that produces no more than 15,000 barrels of beer in a year. Microbreweries may or may not include an on-site tasting room, and may or may not operate in conjunction with a bar. If operated in conjunction with a restaurant, the operation shall be considered a brewpub.

MICRODISTILLERY: Any place or premises wherein any wines or liquors are manufactured for sale, not to exceed 5,000 gallons per year, generally referred to as a craft, boutique, or artisan distillery. Microdistilleries may or may not include an on-site tasting room, and may or may not operate in conjunction with an on-site restaurant or bar. For operation of an on-site tasting room or in conjunction with an on-site restaurant or bar additional permitting may be required. All relevant federal, state, and local regulations apply, including but not limited to TCA Title 57 and Memphis Code of Ordinances Title 7. For on-site sales by manufacturer compliance with TCA 57-3-204 applies.

MIXED USE DEVELOPMENT**:** shall mean a single building containing more than one principal permitted land use or a single development of more than one building containing more than one principal permitted land use. In a mixed-use development, the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of vehicular and pedestrian access and parking areas.

MIXED USE DISTRICTS: See Section 2.3.4.

MOBILE HOME: A structure manufactured before June 15, 1976, that is not constructed in accordance with the National Manufactured Home Construction and Safety Standards Act of 1974, (42 U.S.C. § 5401 et seq.). It is a structure that is transportable in one or more sections that in the traveling mode is eight body feet or more in width and 40 body-feet or more in length, or, when erected on site, is 320 or more square feet and that is built on a chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes any plumbing, heating, air conditioning and electrical systems contained in the structure.

MODULAR HOME: Shall mean a factory built home, other than a mobile home, which meets all of the following requirements: is designed only for erection or installation on a site-built permanent foundation; is not designed to be moved once so erected or installed; is designed and manufactured to comply with a nationally recognized model building code or an equivalent local code, or with a state or local modular building code recognized as generally equivalent to building codes for site-built housing. Such units shall provide all of the accommodations necessary to be a dwelling unit and shall be connected to all utilities in conformance with applicable regulations. The term modular home does not include a recreational vehicle.

MONOPOLE, CMCS TOWER: A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

MORTUARY: See Funeral Establishment.

MOTEL: A building in which lodging or boarding and lodging are provided and offered to the public for compensation and in which at least a portion of the rooms are directly accessible from a public or private right-of-way, from a parking lot or

City of Novi, Michigan
***Code of Ordinances* (2013)**
Appendix A: Zoning Ordinance.

ARTICLE 2: CONSTRUCTION OF LANGUAGE AND DEFINITIONS; ZONING DISTRICTS AND MAP
Section 201: Definitions.

Brewpub: An eating or drinking place which includes the brewing of beer as an accessory use for sale at the same premises of not more than two thousand (2,000) barrels per year. (A barrel is equivalent to thirty-one (31) U.S. gallons.) Notwithstanding more restrictive provisions of this Ordinance, such accessory uses may occupy up to fifty (50) percent of the gross floor area of the brewpub. The sale of alcoholic liquor by a brewpub other than produced by the brewpub is permitted, provided the appropriate license is obtained pursuant to the Michigan Liquor Control Act, as amended, MCL 435.1, et seq.; MSA 18.971, et seq.

Microbrewery or Microbrewer: A brewery/brewer that produces less than twenty thousand (20,000) barrels of ale/beer per year, and less than ten thousand (10,000) barrels of alcoholic liquors, other than ale/beer, per year, for on-site consumption and retail and wholesale distribution as allowed by state law. (A barrel is equivalent to thirty-one (31) U.S. gallons). The sale of alcoholic liquors by a microbrewery is restricted to those alcoholic liquors produced by the microbrewery. For purposes of this Zoning Ordinance a microbrewery or microbrewer is restricted to the above production limits, irrespective of less restrictive limits imposed by state law. (Ord. No. 2000-18.159, Pt. I, 1-24-00)

ARTICLE 15. B-3 GENERAL BUSINESS DISTRICTS
Sec. 1501: Principal Uses Permitted.

10. Microbreweries, subject to the following conditions:
    a. Brewery production shall not exceed twenty thousand (20,000) barrels per year.
    b. No storage in any detached, separate container (e.g. a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.
    c. There shall be compliance with the standards at Section 2519, Performance Standards. Steam condensation units shall be required on all venting.
    d. There shall be included a restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.
    e. No more than sixty-five (65) percent of total gross floor space of the establishment shall be used for the microbrewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.
    f. Owing to unique features and operational requirements of a microbrewery, off-street loading/unloading facilities shall be designed to accommodate at least two (2) tractor trailers at one time in addition to compliance with the standards at Section 2507.2.
    g. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use

pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.

h. No microbrewery shall be located closer than two thousand five hundred (2,500) feet of another microbrewery.

11. Brewpubs, subject to the following conditions:
    a. Brewery production shall not exceed two thousand (2,000) barrels per year.
    b. No storage in any detached, separate container (e.g., a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.
    c. There shall be compliance with standards at Section 2519, Performance Standards.
    d. There shall be included a taproom/restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.
    e. No more than fifty (50) percent of total gross floor space of the establishment shall be used for the brewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.
    f. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.

ARTICLE 16. TC AND TC-1 TOWN CENTER DISTRICTS.
Section 1602: Principal Uses Subject to Special Conditions.

5. Microbreweries, subject to the following conditions:
    a. Brewery production shall not exceed twenty thousand (20,000) barrels per year.
    b. No storage in any detached, separate container (e.g. a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.
    c. There shall be compliance with the standards at section 2519, performance standards. Steam condensation units shall be required on all venting.
    d. There shall be included a restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of restaurant (sit down)). Taprooms serving less than twenty (20) patrons and accessory to a larger retail use shall not be required to provide meal service.
    e. No more than sixty-five (65) percent of total gross floor space of the establishment shall be used for the microbrewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.
    f. Owing to unique features and operational requirements of a microbrewery, off-street loading/unloading facilities shall be designed to accommodate at least two (2) tractor

trailers at one (1) time in addition to compliance with the standards at section 2507.2.

g. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of section 2524, outdoor restaurants.

h. No microbrewery shall be located closer than two thousand five hundred (2,500) feet of another microbrewery.

6. Brewpubs, subject to the following conditions:

a. Brewery production shall not exceed two thousand (2,000) barrels per year.

b. No storage in any detached, separate container (e.g., a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.

c. There shall be compliance with standards at section 2519, performance standards.

d. There shall be included a taproom/restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of restaurant (sit down)). Taprooms serving less than twenty (20) patrons and accessory to a larger retail use shall not be required to provide meal service.

e. No more than fifty (50) percent of the total gross floor space of the establishment shall be used for the brewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.

f. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to section 3004 of this Ordinance Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of section 2524, outdoor restaurants.

ARTICLE 17. RC REGIONAL CENTER DISTRICT
Sec. 1702: Principal Uses Permitted Subject to Special Conditions.

5. Microbreweries, subject to the following conditions:

a. Brewery production shall not exceed twenty thousand (20,000) barrels per year.

b. No storage in any detached, separate container (e.g. a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.

c. There shall be compliance with the standards at Section 2519, Performance Standards. Steam condensation units shall be required on all venting.

d. There shall be included a restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service.

e. No more than sixty-five (65) percent of total gross floor space of the establishment shall be used for the microbrewery function such as the brewhouse, fermentation

tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.

f. Owing to unique features and operational requirements of a microbrewery, off-street loading/unloading facilities shall be designed to accommodate at least two (2) tractor trailers at one time in addition to compliance with the standards at Section 2507.2.
g. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.
h. No microbrewery shall be located closer than two thousand five hundred (2,500) feet of another microbrewery.
i. No microbrewery shall be located closer than one thousand (1,000) feet from any freestanding restaurant.

6. Brewpubs, subject to the following conditions:
   a. Brewery production shall not exceed two thousand (2,000) barrels per year.
   b. No storage in any detached, separate container (e.g., a silo) for hops, barley, wheat or other grain used in the brewing process shall be permitted. No open storage of bottles, pallets or other containers shall be permitted. No storage in tractor trailers shall be permitted longer than twenty-four (24) hours and only if such is conducted when attached to a motorized cab. All such storage shall be totally within walls of establishment.
   c. There shall be compliance with standards at Section 2519, Performance Standards.
   d. There shall be included a taproom/restaurant which shall provide full meal service for consumption by patrons while seated on the premises. (See also definition of Restaurant (sit down)). Taprooms serving less than twenty patrons and accessory to a larger retail use shall not be required to provide meal service. e. No more than fifty (50) percent of total gross floor space of the establishment shall be used for the brewery function such as the brewhouse, fermentation tanks, conditioning tanks, bright beer tanks/filter, bottling and kegging lines, malt milling/storage, serving tanks and boiler/water treatment areas.
   e. No outside beer tent shall be permitted on any off-street parking lot or off-street loading/unloading area except as may be permitted as a temporary tent sale use pursuant to Section 3004 of this Ordinance. Outside table serving may be permitted on a plaza providing proper handicapped sidewalk and ramp access is provided and subject to the requirements of Section 2524, Outdoor Restaurants.
   f. No brewpub shall be located closer than one thousand (1,000) feet from any freestanding restaurant.

ARTICLE 25. GENERAL PROVISIONS
Sec. 2505: Off-Street Parking Requirements.

c.24 Microbreweries; brewpubs	One (1) for each seventy (70) square feet of gross floor area (14.3 spaces per one thousand (1,000) square feet), or one (1) for each two (2) customers allowed under maximum capacity (including waiting areas) in the taproom/restaurant, whichever is greater, plus one (1) for each one and one-half (1½) employees in largest working shift in the taproom/restaurant and in the microbrewery or brewpub. Above requirements apply for either a freestanding facility or for a facility attached to other retail uses in a planned commercial center.

City of Rapid City, South Dakota
***Code of Ordinances* (2014)**
Title 17: Zoning.

CHAPTER 17.18. GENERAL COMMERCIAL DISTRICT
Section 17.18.030: Conditional Uses.

31. Microbreweries subject to the following considerations:
    a. A microbrewery is defined as an establishment which manufactures less than 5,000 barrels of malt beverages a year;
    b. In addition to the malt beverage manufacturer's license required by SDCL 35-4-2-(14), the operator of a microbrewery must obtain the appropriate city issued retail liquor license if it intends to sell its product directly to the public;
    c. Accessory uses to a microbrewery specifically include, but are not necessarily limited to, the selling of food operation of a restaurant, and/or selling of products associated with the microbrewery or manufacture of beer.

32. Farm wineries subject to the following regulations:
    a. A farm winery is defined as any winery owned or operated by the owner of a South Dakota farm and producing table, sparkling, or sacramental wines from grapes, grape juice, other fruit bases, or honey with a majority of the ingredients grown or produced in South Dakota;
    b. Table, sparkling, and sacramental wines are defined as any beverage made without rectification or fortification and containing not more than 18% alcohol by volume and made by the fermentation of grapes, grape juice, other fruits, or honey;
    c. The amount of wine the farm winery is allowed to sell in 1 year is limited to 50,000 gallons;
    d. If the operator of a farm winery intends to sell or serve alcoholic beverages other than the wines produced, the operator must obtain the appropriate city issued retail liquor license;
    e. Accessory uses to a farm winery specifically include, but are not necessarily limited to, the serving of food and/or operation of a restaurant, the selling of glassware, wine literature and accessories, and/or food products.

CHAPTER 17.22, LI LIGHT INDUSTRIAL DISTRICT
17.22.030: Conditional uses.

N. Microbreweries subject to the following regulations:
    1. A microbrewery is defined as an establishment which manufactures less than 5,000 barrels of malt beverages a year;
    2. In addition to the malt beverage manufacturer's license required by SDCL 35-4-2-(11), the operator of a microbrewery must obtain the appropriate city issued retail liquor license if it intends to sell its product directly to the public;
    3. Accessory uses to a microbrewery specifically include, but are not necessarily limited to, the selling of products associated with the microbrewery or manufacture of beer and/or the selling of food or food products but specifically exclude the operation of a restaurant.

O. Farm wineries subject to the following regulations:
    1. A farm winery is defined as any winery owned or operated by the owner of a South Dakota farm and producing table, sparkling, or sacramental wines from grapes,

grape juice, other fruit bases, or honey with a majority of the ingredients grown or produced in South Dakota;

2. Table, sparkling, and sacramental wines are defined as any beverage made without rectification or fortification and containing not more than 18% alcohol by volume and made by the fermentation of grapes, grape juice, other fruits, or honey;
3. The amount of wine the farm winery is allowed to sell in 1 year is limited to 50,000 gallons;
4. If the operator of a farm winery intends to sell or serve alcoholic beverages other than the wines produced, the operator must obtain the appropriate city issued retail liquor license;
5. Accessory uses to a farm winery specifically include, but are not necessarily limited to, the selling of food products, glassware, wine literature and accessories, and/or the serving of food, but specifically excludes the operation of a restaurant.

City of St. Petersburg, Florida
***Code of Ordinances* (2013)**
Chapter 16: Land Development Regulations.

SECTION 16.10.010. ESTABLISHMENT OF ZONING DISTRICTS; MATRICES AND MAPS
16.10.020.1. Matrix: Use permissions and parking requirements matrix and zoning matrix.

Microbrewery.

- Permitted Use:
  - CCS-1 – CCS-3, Corridor Commercial Suburban
  - RC-1 and RC-2, Retail Center
  - IC/I, Institutional Center
  - IT, Industrial Traditional
  - IS, Industrial Suburban
- Special Exception Use:
  - CCT-1 and CCT-2, Corridor Commercial Traditional
  - DC-C, Downtown Core
  - DC-1 and DC-2, Downtown Center
- Accessory Use:
  - EC, Employment Center
  - I/CRD, Institutional Center
- Minimum Parking Spaces:
  - Traditional Tier: 1 per 1,000 sf gfa; Additional parking based on type of accessory use
  - Suburban Tier: 1 per 500 sf gfa; Additional parking based on type of accessory use
  - Downtown: 1 per 1,000 sf gfa; Additional parking based on type of accessory use
- Definition: Establishments that are primarily a brewery, which produce no more than 15,000 barrels (465,000 US gallons/17,602.16 hectoliters) of beer per year. Microbreweries sell to the general public by one or more of the following methods: the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and, directly to the consumer for consumption on the premises or for retail carryout sale. (See Use Specific Development Standards)

Restaurant and Bar, Brewpub

- Permitted Use:
  - CCT-1 and CCT-2, Corridor Commercial, Traditional
  - CCS-1 – CCS-3, Corridor Commercial, Suburban
  - DC-C, Downtown Core
  - DC-1, Downtown Center
  - RC-1 and RC-2, Retail Center
  - I/I, Institutional Center
- Special Exception Use:
  - CRT-2, Corridor Residential, Suburban
- Accessory Use:
  - DC-2, Downtown Center
  - EC, Employment Center
  - IC/CRD, Institutional Center
  - IT, Industrial Traditional

  - IS, Industrial Suburban
- Parking:
  - Traditional Tier: 1 per 150 sf gfa
  - Suburban Tier: 1 per 150 sf gfa
  - Downtown Tier: 1 per 500 sf gfa
- Definition: Establishments that are primarily a restaurant and bar, but which include the brewing of beer as an accessory use. A brew pub produces only enough beer for consumption on the premises or for retail carryout sale in containers commonly referred to as growlers. (See Use Specific Development Standards)

SECTION 16.50.045. BREWERY, MICROBREWERY AND BREWPUB

16.50.045.1. Purpose.

Due to economies of scale in production, distribution, marketing and advertising, national and super-regional breweries have dominated the beer industry for decades. These large-scale production facilities are traditionally assigned to industrial zoning classifications. Starting in the 1980's, local, independent breweries emerged as a competitive market segment within the beer industry and by the turn of the twenty-first century, the increased demand for small production facilities and mixed-use concepts began to reshape certain expectations about the potential impacts of this land-use type when developed on a smaller scale. The purpose of this section is to recognize the emergence of this specialized market segment and establish appropriate standards allowing for the typical range of activities, while mitigating any associated, undesirable impacts.

16.50.045.2. Applicability.

A. This section shall apply to brewery, microbrewery and brewpub uses. Breweries are generally divided into four distinct market segments: brewpub, microbrewery, regional (small) brewery and large brewery.
B. This section does not apply to temporary or special events authorized by other sections of this chapter.

16.50.045.3. Establishment.

Brewery, including regional (small) and large, microbrewery and brew pub uses shall be allowed as provided in the Matrix: Use Permissions and Parking Requirements Matrix and Parking Matrix and shall comply with the development standards of the applicable zoning district, general development standards and this section.

16.50.045.4. Use-specific development standards.

16.50.045.4.1. Restaurant and bar, brewpub.

A. In addition to the development standards of the zoning district, applicable general development standards and where applicable, Use Specific Development Standards for a "restaurant and bar, indoor," "restaurant and bar, indoor and outdoor" or "restaurant and bar, accessory outdoor area," an establishment that meets the definition of a brewpub shall comply with the following:
   1. Revenue from food sales shall constitute more than 50 percent of the total business revenues;
   2. No more than 50 percent of the total gross floor area of the establishment shall be used for the brewery function including, but not limited to, the brewhouse, boiling and water treatment areas, bottling and kegging lines, malt milling and storage, fermentation tanks, conditioning tanks and serving tanks;
   3. Where permitted by local ordinance, state and federal law, retail carryout sale of beer produced on the premises shall be allowed in specialty containers holding no

more than a U.S. gallon (3,785 ml/128 US fluid ounces). These containers are commonly referred to as growlers;

4. Brewpubs may sell beer in keg containers larger than a U.S. gallon (3,785 ml/128 US fluid ounces) for the following purposes and in the following amounts:
   a. An unlimited number of kegs for special events, the primary purpose of which is the exposition of beers brewed by brewpubs and microbreweries, which include the participation of at least three such brewers;
   b. An unlimited number of kegs for City co-sponsored events where the purpose of the event is not for commercial profit and where the beer is not wholesaled to the event co-sponsors but is instead, dispensed by employees of the brewpub.
5. All mechanical equipment visible from the street (excluding alleys), an adjacent residential use or residential zoning district shall be screened using architectural features consistent with the principal structure;
6. Access and loading bays shall not face toward any street, excluding alleys;
7. Access and loading bays facing an adjacent residential use or residential zoning district, shall have the doors closed at all times, except during the movement of raw materials, other supplies and finished products into and out of the building;
8. Service trucks for the purpose of loading and unloading materials and equipment shall be restricted to between the hours of 8:00 a.m. and 8:00 p.m. Monday through Saturday and between 11:00 a.m. and 7:00 p.m. on Sundays and national holidays;
9. No outdoor storage shall be allowed. This prohibition includes the use of portable storage units, cargo containers and tractor trailers.

16.50.045.4.2. Microbrewery.

A. In addition to the development standards of the zoning district, applicable general development standards, and where applicable, use specific development standards for restaurant or retail uses, an establishment that meets the definition of a microbrewery shall comply with the following:
   1. The microbrewery shall produce no more than 15,000 barrels (465,000 US gallons/17,602.16 hectoliters) of beer per year;
   2. This use shall be permitted only in conjunction with a "restaurant and bar, indoor," "restaurant and bar, indoor and outdoor" or "restaurant and bar, accessory outdoor area," tasting room or retail sales and service:
      a. No more than 75 percent of the total gross floor space of the establishment shall be used for the brewery function including, but not limited to, the brewhouse, boiling and water treatment areas, bottling and kegging lines, malt milling and storage, fermentation tanks, conditioning tanks and serving tanks;
      b. The façade of any accessory use(s) shall be oriented toward the street, excluding alleys, and, if located in a shopping center, to the common space where the public can access the use;
      c. Pedestrian connections shall be provided between the public sidewalks and the primary entrance(s) to any accessory use(s).
   3. All mechanical equipment visible from the street (excluding alleys), an adjacent residential use or residential zoning district shall be screened using architectural features consistent with the principal structure;
   4. Access and loading bays are discouraged from facing toward any street, excluding alleys;
   5. Access and loading bays facing any street, adjacent residential use or residential zoning district, shall have the doors closed at all times, except during the movement of raw materials, other supplies and finished products into and out of the building;
   6. Service trucks for the purpose of loading and unloading materials and equipment shall be restricted to between the hours of 8:00 a.m. and 8:00 p.m. Monday through Saturday and between 11:00 a.m. and 7:00 p.m. on Sundays and national holidays;

7. No outdoor storage shall be allowed, including the use of portable storage units, cargo containers and tractor trailers, except as follows: spent or used grain, which is a natural byproduct of the brewing process, may be stored outdoors for a period of time not to exceed 24 hours. The temporary storage area of spent or used grain shall be:
   a. Designated on the approved site plan;
   b. Permitted within the interior side or rear yard or within the minimum building setbacks;
   c. Prohibited within any yard abutting a residential use or residential zoning district;
   d. Fully enclosed within a suitable container, secured and screened behind a solid, opaque fence or wall measuring a minimum five feet in height.

TITLE 13

Land Use Regulatory Code

3. Use table abbreviations.

P	=	Permitted use in this district.
CU	=	Conditional use in this district. Requires conditional use permit, consistent with the criteria and procedures of Section 13.06.640.
TU	=	Temporary Uses allowed in this district subject to specified provisions and consistent with the criteria and procedures of Section 13.06.635.
N	=	Prohibited use in this district.

4. District use table.

Uses	**T**	**C-1**	**C-2**[1]	**HM**	**PDB**	**Additional Regulations**[2, 3] **(also see footnotes at bottom of table)**
Adult family home	P	P	P	P	P	See definition for bed limit.
Adult retail and entertainment	N	N	N	N	N	Prohibited except as provided for in Section 13.06.525.
Agricultural uses	CU	CU	CU	CU	CU	Such uses shall not be located on a parcel of land containing less than 20,000 square feet of area. Livestock is not allowed.
Airport	CU	CU	CU	CU	CU	
Ambulance services	N	P	P	P	P	
Animal sales and service	N	P	P	N	N	Must be conducted entirely within an enclosed building. See Table 13.06.200.D for setback requirements specific to animal sales and service.
Assembly facility	CU	P	P	N	P	
Brewpub	N	N	P	N	N	2,400 barrel annual brewpub production maximum, equivalent volume wine limit.
Building materials and services	N	N	P	N	N	
Business support services	N	P	P	N	P	
Carnival	TU	TU	TU	TU	TU	Subject to Section 13.06.635.
Cemetery/internment services	N	N	N	N	N	New facilities are not permitted. Enlargement of facilities in existence prior to the effective date of this provision (May 27, 1975) may be approved in any zoning district subject to a conditional use permit. See Section 13.06.640.
Commercial parking facility	P	P	P	P	P	
Commercial recreation and entertainment	N	N	P	N	P	
Communication facility	N	N	P	N	P	
Confidential shelter	P	P	P	P	P	See Section 13.06.535. Limit: 15 residents in T District.
Continuing care retirement community	P	P	P	P	P	See Section 13.06.535.
Correctional facility	N	N	N	N	N	

Uses	T	C-1	C-2[1]	HM	PDB	Additional Regulations[2, 3] (also see footnotes at bottom of table)
Craft Production	CU	P	P	P	P	Must include a retail/eating/drinking/tasting component that occupies a minimum of 10 percent of usable space, fronts the street at sidewalk level or has a well-marked and visible entrance at sidewalk level, and is open to the public. Outside storage is allowed provided screening and/or buffer planting areas are provided in accordance with Section 13.06.502.C. All production, processing and distribution activities are to be conducted within an enclosed building.
Cultural institution	P	P	P	N	N	
Day care, family	P	P	P	P	P	
Day care center	P	P	P	P	P	Subject to regulations set forth in Section 13.06.155.
Detoxification center	N	N	N	CU	N	
Drive-through with any use	N	N	P	N	N	Prohibited in any commercial district combined with a VSD View-Sensitive Overlay District and adjacent to a Shoreline District (i.e., Old Town Area). Subject to the requirements of TMC 13.06.513.
Dwelling, single-family detached	P	P	P	P	P	
Dwelling, two-family	P	P	P	P	P	
Dwelling, three-family	P	P	P	P	P	
Dwelling, multiple-family	P	P	P	P	P	
Dwelling, townhouse	P	P	P	P	P	
Dwelling, accessory (ADU)	P	P	P	P	P	Subject to additional requirements contained in 13.06.150.
Eating and drinking	N	P/CU	P	P*	P*/ CU*	In the C-1 and PDB districts, restaurants are permitted outright while drinking establishments require a conditional use permit. See Section 13.06.700.E for the definitions of restaurants and drinking establishments. In the C-2 district, live entertainment is limited to that consistent with either a Class "B" or Class "C" Cabaret license as designated in Chapter 6B.70. In all other districts, live entertainment is limited to that consistent with a Class "C" cabaret license as designated in Section 6B.70. *Limited to 7,000 square feet of floor area, per business, in the HM and PDB Districts
Emergency and transitional housing	CU	CU	P	CU	CU	See Sections 13.06.535 and 13.06.640.
Extended care facility	P	P	P	P	P	See Section 13.06.535.
Foster home	P	P	P	P	P	
Fueling station	N	P	P	N	N	
Funeral home	P	P	P	P	N	
Golf course	P	P	P	P	P	
Group housing	P	P	P	P	P	
Heliport	N	N	N	CU	N	

Uses	T	C-1	C-2[1]	HM	PDB	Additional Regulations[2, 3] (also see footnotes at bottom of table)
Home occupation	P	P	P	P	P	Subject to additional requirements contained in Section 13.06.100.E
Hospital	N	CU	CU	P	N	
Hotel/motel	N	N	P	P	P	
Industry, heavy	N	N	N	N	N	
Industry, light	N	N	N	N	N	
Intermediate care facility	P	P	P	P	P	See Section 13.06.535.
Juvenile community facility	N	N	N	N	N	Prohibited except as provided for in Section 13.06.530.
Lodging house	P	P	P	P	P	
Marijuana processor	N	N	N	N	N	
Marijuana producer	N	N	N	N	N	
Marijuana retailer	N	P	P	P*	P*	*Limited to 7,000 square feet of floor area, per business, in the HM and PDB Districts. See additional requirements contained in Section 13.06.565
Master plans for any conditional use	CU	CU	CU	CU	CU	The purpose of this process is to allow an applicant to seek approval for a development program which occupies a large site with multiple-buildings, a complex program, and a detailed plan developed by the applicant which would be implemented in phases and which would extend beyond the normal expiration date, to be reviewed after a ten-year period for those portions of the plan which have not yet been developed.
Microbrewery/winery	N	N	N	N	N	
Mobile home/trailer court	N	N	CU	N	N	
Nursery	N	N	P	N	N	
Office	P	P	P	P	P	
Parks, recreation and open space	P	P	P	P	P	Subject to the requirements of Section 13.06.560,D.
Passenger terminal	N	N	P	N	N	
Personal services	N	P	P	P*	P*	*Limited to 7,000 square feet of floor area, per business, in the HM and PDB Districts.
Port, terminal, and industrial; water-dependent or water-related (as defined in Chapter 13.10)	N	N	N	N	N	
Public safety and public service facilities	P	P	P	P	P	
Religious assembly	P	P	P	P	P	
Repair services	N	P	P	N	N	Must be contained within a building with no outdoor storage. Engine repair, see Vehicle Repair.

3. District use table.

Uses	NCX	CCX	UCX	UCX-TD	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Adult family home	P	P	P	P	P	P	P	P	P	Subject to additional requirements contained in Section 13.06.535. See definition for bed limit. Prohibited at street level along designated pedestrian streets in NCX.[2] Not subject to minimum densities found in Section 13.06.300.E.
Adult retail and entertainment	N	N	N	N	N	N	N	N	N	Prohibited, except as provided for in Section 13.06.525.
Agricultural uses	N	N	N	N	N	N	N	N	N	
Airport	CU	CU	CU	CU	CU	CU	CU	CU	CU	
Ambulance services	N	CU	CU	CU	N	P	P	N	N	
Animal sales and service	P	P	P	P	N	P	N	N	N	Except in the CIX District, must be conducted entirely within an enclosed structure. Must be set back 20 feet from any adjacent residential district or use.
Assembly facility	P	P	P	P	CU	P	N	N	N	Prohibited at street level along designated pedestrian streets in NCX.[2]
Brewpub	P	P	P	P	P	P	N	N	N	Brewpubs located in NCX, CCX, UCX, and RCX shall be limited to producing, on-premises, a maximum of 2,400 barrels per year of beer, ale, or other malt beverages, as determined by the annual filings of barrelage tax reports to the Washington State Liquor Control Board. UCX-TD is limited to 5,000 barrels in the same manner. Equivalent volume winery limits apply.
Building materials and services	N	P	P	CU	N	P	N	N	N	Prohibited at street level along frontage of designated core pedestrian streets.[2]
Business support services	P	P	P	P	N	P	N	N	N	In NCX, all activities must occur within buildings; outdoor storage/repair is prohibited. Customer service offices must be located at building fronts on designated pedestrian streets in NCX.
Carnival	TU	TU	P	TU	N	TU	TU	TU	N	Subject to Section 13.06.635.
Cemetery/internment services	N	N	N	N	N	N	N	N	N	New facilities are not permitted. Enlargement of facilities in existence prior to the effective date of this provision (May 27, 1975) may be approved in any zoning district subject to a conditional use permit. See Section 13.06.640.
Commercial parking facility	P	P	P	P	N	P	P	N	N	In UCX-TD, only permitted if provided in a structure or below ground facility. Prohibited at street level along frontage of designated pedestrian streets in NCX and CCX Districts.[2]
Commercial recreation and entertainment	P	P	P	P	N	P	N	N	N	
Communication facility	CU	CU	P	P	N	P	N	N	N	Prohibited at street level along frontage of designated pedestrian streets in NCX and CCX Districts.[2]

Uses	NCX	CCX	UCX	UCX-TD	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Confidential shelter	P	P	P	P	P	P	P	P	P	See Section 13.06.535. Prohibited at street level along frontage of designated core pedestrian streets in NCX.[2] Not subject to minimum densities founding Section 13.06.300.E.
Continuing care retirement community	P	P	P	P	P	P	P	P	P	See Section 13.06.535. Prohibited at street level along frontage of designated core pedestrian streets in NCX.[2]
Correctional facility	N	N	N	N	N	N	N	N	N	
Craft Production	P	P	P	P	P	P	N	N	N	Must include a retail/eating/drinking/tasting component that occupies a minimum of 10 percent of usable space, fronts the street at sidewalk level or has a well-marked and visible entrance at sidewalk level, and is open to the public. Outside storage is allowed provided screening and/or buffer planting areas are provided in accordance with Section 13.06.502.D. All production, processing and distribution activities are to be conducted within an enclosed building.
Cultural institution	P	P	P	P	N	P	N	N	N	
Day care, family	P	P	P	P	P	N	P	P	P	
Day care center	P	P	P	P	P	P	P	P	CU	Not subject to RCX residential requirement.[1]
Detoxification center	N	N	N	N	N	CU	CU	N	N	
Drive-through with any use	P	P	P	P~	N	P	P*	N	N	~Within the "UCX – TD" District, drive-throughs are required to be located entirely within a building. * In the HMX District, drive-throughs are only allowed for hospitals and associated medical uses. All drive-throughs are subject to the requirements of TMC 13.06.513.
Dwelling, single-family detached	P	P	P	P	P	P	P	P	P	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.300.E for minimum densities.
Dwelling, two-family	P	P	P	P	P	P	P	P	CU	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.300.E for minimum densities.
Dwelling, three-family	P	P	P	P	P	P	P	P	CU	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.300.E for minimum densities.

Uses	NCX	CCX	UCX	UCX-TD	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Home occupation	P	P	P	P	P	P	P	P	P	Home occupations shall be allowed in all X-Districts pursuant to the standards found in Sections 13.06.100.E and 13.06A.050.
Hospital	N	CU	CU	CU	N	P	P	N	N	
Hotel/motel	P	P	P	P	N	P	P	N	N	
Industry, heavy	N	N	N	N	N	N	N	N	N	
Industry, light	N	N	N	P	N	P	N	N	N	In UCX-TD, only permitted if 50 percent of site contains an enclosed building.
Intermediate care facility	P	P	P	P	P	P	P	P	P	See Section 13.06.535. In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
Juvenile community facility	P	P	P	P	P/CU	P	N	P/CU	CU	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.530 for additional information about size limitations and permitting requirements.
Lodging house	P	P	P	P	P	P	P	P	CU	Prohibited at street level along frontage of designated core pedestrian streets in NCX and CCX Districts.[2]
Marijuana processor	N	N	N	N	N	N	N	N	N	
Marijuana producer	N	N	N	N	N	N	N	N	N	
Marijuana retailer	P	P	P	P	N	P	P*	N	N	*Limited to 7,000 square feet of floor area, per business, in the HMX District. See additional requirements contained in Section 13.06.565
Master plan for any conditional use	CU	CU	CU	CU	CU	CU	CU	CU	CU	The purpose of this process is to allow an applicant to seek approval for a development program which occupies a large site with multiple-buildings, a complex program, and a detailed plan developed by the applicant which would be implemented in phases and which would extend beyond the normal expiration date, to be reviewed after a ten-year period for those portions of the plan which have not yet been developed.
Microbrewery/ winery	N	N	N	P	N	P	N	N	N	Microbreweries shall be limited to 15,000 barrels per year of beer, ale, or other malt beverages, as determined by the filings of barrelage tax reports to the Washington State Liquor Control Board. Equivalent volume winery limits apply.
Mobile home/trailer court	N	N	N	N	N	N	N	N	N	
Nursery	P	P	P	N	N	P	N	N	N	
Office	P	P	P	P	P	P	P	N	N	Not subject to RCX residential requirement for properties fronting the west side of South Pine Street between South 40th Street and South 47th Street.[1]

Uses	M-1	M-2	PMI	Additional Regulations[1]
Ambulance services	P	P	P	
Animal sales and service	P	P	N	
Assembly facility	P	P	N	
Brewpub	P	P	P	
Building material and services	P	P	P	
Business support services	P	P	P	
Carnival	P/TU*	N	N	*Temporary use only within the South Tacoma M/IC Overlay District
Cemetery/internment services	N	N	N	New facilities are not permitted. Enlargement of facilities in existence prior to the effective date of this provision (May 27, 1975) may be approved in any zoning district subject to a conditional use permit. See Section 13.06.640.
Commercial parking facility	P	P	P	
Commercial recreation and entertainment	P/CU*	P/CU*	N	*Within the South Tacoma M/IC Overlay District, a conditional use permit is required for facilities over 10,000 square feet of floor area in the M-2 district and over 15,000 square feet in the M-1 district.
Communication facility	P	P	P	
Confidential shelter	P/N*	N	N	See Section 13.06.535. *Not permitted within the South Tacoma M/IC Overlay District.
Continuing care retirement community	P/N*	N	N	In M-1 districts, permitted only within residential or institutional buildings in existence on December 31, 2008, the effective date of adoption of this provision, or when located within a mixed-use building where a minimum of 1/3 of the building is devoted to industrial or commercial use. *Not permitted within the South Tacoma M/IC Overlay District. See Section 13.06.535.
Correctional facility	P	P	P	
Craft Production	P	P	P	
Cultural institution	P/CU*	P/CU*	N	*Conditional use within the South Tacoma M/IC Overlay District, unless an accessory use.
Day care, family	P/N*	N	N	*Not permitted within the South Tacoma M/IC Overlay District.
Day care center	P	P	N	Subject to development standards contained in Section 13.06.155.
Detoxification center	CU	CU	N	
Drive-through with any permitted use	P	P	P	Subject to the requirements of TMC 13.06.513.

Uses	M-1	M-2	PMI	Additional Regulations[1]
Hospital	P/CU*	P/N~	N	*Conditional use within the South Tacoma M/IC Overlay District. ~Not permitted within the South Tacoma M/IC Overlay District.
Hotel/motel	P/N*	N	N	*Not permitted within the South Tacoma M/IC Overlay District.
Industry, heavy	N	P	P	Animal slaughter, fat rendering, acid manufacture, smelters, and blast furnaces allowed in the PMI District only.
Industry, light	P	P	P	
Intermediate care facility	P/N*	N	N	In M-1 districts, permitted only within residential or institutional buildings in existence on December 31, 2008, the effective date of adoption of this provision, or when located within a mixed-use building where a minimum of 1/3 of the building is devoted to industrial or commercial use. *Not permitted within the South Tacoma M/IC Overlay District. See Section 13.06.535.
Juvenile community facility	P/N*	P/N*	P	See Section 13.06.530 for resident limits and additional regulations. *Not permitted within the South Tacoma M/IC Overlay District.
Lodging house	P/N*	N	N	In M-1 districts, permitted only within residential or institutional buildings in existence on December 31, 2008, the effective date of adoption of this provision, or when located within a mixed-use building where a minimum of 1/3 of the building is devoted to industrial or commercial use. *Not permitted within the South Tacoma M/IC Overlay District.
Marijuana processor	N	P	P	See additional requirements contained in Section 13.06.565
Marijuana producer	N	P	P	See additional requirements contained in Section 13.06.565
Marijuana retailer	P~	P~	N	~Within the South Tacoma M/IC Overlay District, limited to 10,000 square feet of floor area per development site in the M-2 district and 15,000 square feet in the M-1 district. See additional requirements contained in Section 13.06.565
Master plan for any conditional use	CU	CU	CU	The purpose of this process is to allow an applicant to seek approval for a development program which occupies a large site with multiple-buildings, a complex program, and a detailed plan developed by the applicant which would be implemented in phases and which would extend beyond the normal expiration date, to be reviewed after a ten-year period for those portions of the plan which have not yet been developed.
Microbrewery/winery	P	P	P	
Mobile home/trailer court	N	N	N	
Nursery	P	P	N	
Office	P*	P*	P	*Within the South Tacoma M/IC Overlay District, unless an accessory use, limited to 10,000 square feet of floor area per development site in the M-2 district and 15,000 square feet in the M-1 district.
Parks, recreation and open space	P	P	P	Subject to the requirements of Section 13.06.560.D.
Passenger terminal	P	P	P	
Personal services	P	P	P	

1. Directional antenna (also known as “panel” antenna). An antenna which transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.

2. Omni-directional antenna (also known as a “whip” antenna). An antenna that transmits and receives radio frequency signals in a 360 degree radial pattern.

3. Parabolic antenna (also known as a dish antenna). An antenna that is a bowl-shaped device for the reception and/or transmission of radio frequency communication signals in a specific directional pattern.

4. Concealed antenna. An antenna and associated equipment enclosure, installed inside a non-antenna structure or camouflaged to appear as a non-antenna structure.

Antenna height. The vertical distance measured from the base of the antenna support structure at a grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances, and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Antenna support structure. Any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

Arcade. A continuous unoccupied covered area, having direct access from abutting streets or open areas, unobstructed to a height of not less than 12 feet except for supporting beams and columns, and accessible to the general public at all times.

Art gallery. A space with public access from the sidewalk in the space and which is located within a building for the interior exhibition or display of artworks which may or may not be offered for sale to the public.

Assembly facilities. Privately operated facilities for the principle purpose of public meetings and social gatherings (including incidental recreation), including community halls, union halls, exhibition halls, social clubs, and youth centers. This use shall not include stadiums or public or quasi-public parks, recreation or open space uses.

Assisted living facility. See “intermediate care facility.”

Automobile house trailers. Any structure used for human habitation constructed on wheels and capable of being moved from place to place, either under its own power or under tow.

13.06.700.B

Basement. A story partly underground. A basement shall be counted as a story in building height measurement where more than one-half of its height is above the average level of the adjoining ground.

Bicycle parking. Stationary rack that accommodates a lock securing the frame and wheels, or a lockable enclosure with the quantity accommodated determined by manufacturer’s specifications.

Billboard, standard. An off-premises sign greater than 72 square feet in size. This type of sign is generally composed of materials (panels or modules) mounted on a building wall or freestanding structure, or painted directly on the wall or freestanding structure.

Billboard, digital. An off-premises sign greater than 72 square feet in size, utilizing digital message technology capable of changing the message or copy on the sign electronically. Digital billboards are not considered under the definitions of animated sign, changing message centers, electrical signs, illuminated signs, or flashing signs.

Brewpub. An eating and drinking establishment having a small brewery on the premises which produces beer, ale, or other malt beverage, or wine, and where the majority of the beer/wine produced is consumed on the premises. This classification allows a brewpub to sell beer/wine at retail and/or act as wholesaler for beer of its own production for off-site consumption, with appropriate state licenses.

Building. Any structure having a roof supported by columns or walls for the housing, shelter, or enclosure of persons, animals, or chattels; when separated by dividing walls without openings, each portion of such building so separated shall be deemed a separate building. For the purpose of this section, the term “building” shall not include “vehicle” as hereinafter defined.

Building, face or wall. All window and wall area of a building in one plane or elevation.

Building footprint. The outline of the total area that is surrounded by the exterior walls of a building or portion of a building, exclusive of courtyards. In the absence of surrounding exterior walls, the building footprint shall be the area under the horizontal projection of the roof, excluding any roof overhangs.

Coverage, lot or site. The percentage of a site covered by a roof, soffit, trellis, eave, or overhang extending more than 2.5 feet from a wall, and by a deck more than 30 inches in height.

COW: acronym for “cell on wheels.” A temporary wireless communication facility.

Craft Production. A commercial use that involves the production of arts, crafts, foods, beverages or other product with on-site production and assembly of goods primarily involving the use of hand tools and/or small-scale equipment. Due to the limited scale of the activities and small boutique nature of craft production establishments, they are compatible, and are often co-located with, retail sales and service uses. This use category includes but is not limited to ceramic art, glass art, candle-making, custom jewelry manufacture, bakeries, confectionaries, butchers, coffee roasting establishments, food production and beverage production.

Establishments engaged in the craft production of alcoholic beverages including craft wineries, craft breweries, and craft distilleries shall be limited to no more than 5,000 gallons of product per year. The following regulations also apply to the craft production of alcoholic beverage:

1. An occupancy that is below an “H” Hazard as defined by the current version of the adopted International Building Code (IBC) shall be maintained and not exceeded. Accessory “H” uses may be allowed provided the accessory use does not exceed 10 percent of the site’s floor area.

2. Retail sale and onsite tasting of beverages and/or the ability for producers to act as wholesaler of its own production for off-site consumption are subject to the appropriate state and local licenses.

3. Individual tenant spaces or units within a building may constitute the site.

Cultural institutions. Institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes museums.

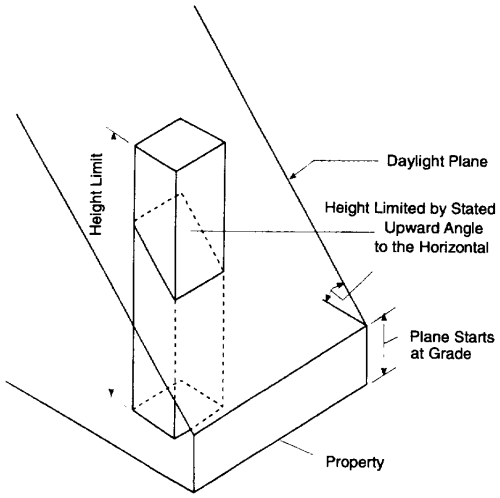
13.06.700.D

Day care center. Any facility which receives 13 or more children or adults for day care.

Day care, family. An occupied dwelling in which a person provides day care for children or adults other than his/her own family and those of close relatives. Such care in a family day care home is limited to 12 or fewer children or adults, including children or adults living in the dwelling and those of close relatives cared for in the dwelling.

Daylight plane. An inclined plane, beginning at a stated height above grade, generally at a property line or setback line or buffer, and extending into the site at a stated upward angle to the horizontal, which may limit the height or horizontal extent of structures at any specific point on the site where the daylight plane is more restrictive than the height limit or the minimum setbacks applicable at such point on the site (see diagram below).

Daylight Plane



Decorative grille. An open framework of metal, wood, or other material arranged in a pattern that effectively obscures the views of parked cars located in an off-street parking structure from the public right-of-way.

Design (wireless communication facility). The appearance of wireless communication facilities, including such features as materials, colors, and shapes.

Marijuana processor. As defined in RCW 69.50.101 and provided here for reference. A person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

Marijuana producer. As defined in RCW 69.50.101 and provided here for reference. A person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers

Marijuana-infused products. As defined in RCW 69.50.101 and provided here for reference. Products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.

Marijuana retailer. As defined in RCW 69.50.101 and provided here for reference. A person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

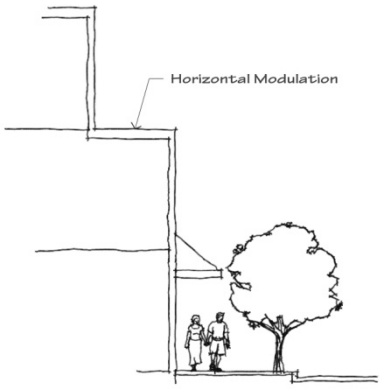
Microbrewery/winery. An establishment primarily engaged in the production and distribution of beer, ale, or other malt beverages, or wine, and which may include accessory uses such as tours of the microbrewery/winery, retail sales, and/or on-site consumption, e.g., “taproom.” This classification allows a microbrewery to sell beer/wine at retail and/or act as wholesaler for beer/wine of its own production for off-site consumption with appropriate state licenses.

Mixed-rate housing. Includes both affordable and market-rate housing units in the same housing or mixed-use development.

Mobile home/trailer court. A movable dwelling unit designed for year-round occupancy and including a flush toilet and bath or shower, except that an automobile house trailer located on the same lot with a building providing a private flush toilet and bath or shower shall constitute a mobile home for purposes of this chapter. This shall refer to and include all portable contrivances capable of being moved by their own power, towed, or transported by another vehicle.

Modification (wireless communication facility). The changing of any portion of a wireless communication facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design and the addition of an antenna to the site.

Modulation, horizontal. The horizontal stepping back of one or more upper levels of a building from the façade (see diagram below).



Horizontal Modulation

Modulation, vertical. A stepping back or projecting forward of vertical walls of the building face as a means of breaking up the apparent bulk of a structure's continuous exterior walls (see diagram below).

Background

- Morley, David. 2014. "Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries." *Zoning Practice*, March.

ZONING **PRACTICE** MARCH **2014**

AMERICAN PLANNING ASSOCIATION

ISSUE NUMBER 3

PRACTICE MICROBREWERIES

3

Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries

By David M. Morley, AICP

In communities across the country, beer titans like St. Louis-based Anheuser-Busch and Chicago-based MillerCoors are facing stiff competition from a host of locally owned and operated craft breweries.

The number of brewers is higher today than at any point during the 20th century.

Brewers Association, Boulder, Colorado

Meanwhile, there is parallel growth in craft distilleries and small-volume wineries. While renewed interest in small-scale alcohol production is just one facet of the buy-local movement, it has special relevance for planning and zoning practitioners.

Historically, few communities have used zoning to draw distinctions between alcohol production facilities of different types and sizes. More recently, though, numerous localities have added provisions to their zoning codes that acknowledge the variety of alcohol producers. The primary motivation for these regulatory changes is a desire to make space for smaller producers to operate outside of industrial districts.

The two most common small-scale alcohol production uses to receive special zoning attention are brewpubs (restaurants combined with breweries) and microbreweries (small-volume brewers with or without on-site sales). But references to microdistilleries (small-volume distilleries with or without on-site sales) and microwineries (small-volume wineries without on-site vineyards) are also on the rise.

The purposes of this article are to highlight why the growth in small-scale alcohol production may merit zoning changes and to summarize how communities have amended their codes to add definitions, use permissions, and, in some cases, additional standards to sanction brewpubs and microproducers.

THE BOOM IN SMALL-SCALE ALCOHOL PRODUCTION

According to the Brewers Association, the trade group for small brewers, as of June 2013 there were 1,165 brewpubs and 1,221 microbreweries in the United States. By way of comparison, in the late 1970s there were only 89 commercial brewers of any type (Brewers Association 2013). This boom in small-scale production has spread to spirits and wine too. In April 2012 *Time* reported a 400 percent surge in microdistilleries in the U.S. between 2005 and 2012 (Steinmetz 2012). And according to statistics maintained by trade publisher *Wines & Vines*, the number of wineries producing between 1,000 and 5,000 cases per year grew 16.5 percent between August 2011 and January 2014 alone.

These trends have significant economic development implications for localities across the country. In addition to satisfying demand for locally produced beer, wine, and spirits, microproducers often distribute their product regionally or nationally, bringing new money into their host communities. Furthermore, successful brewpubs and microproducers can help enliven commercial and mixed use districts that would otherwise clear out after conventional retail and office hours. It's no surprise, then, that some communities are actively trying to lure high-profile microbreweries from other states (McConnell 2012).

THE TROUBLE WITH REGULATORY SILENCE

Despite the explosive growth in brewpubs and microproducers, surprisingly few communities explicitly sanction small-scale alcohol pro-

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Go online during the month of March to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. *David Morley, AICP, will be available to answer questions about this article. Go to the* Zoning Practice *section of the APA website at www.planning.org/zoningpractice and follow the links to the Ask the Author discussion board. From there, just submit your questions about the article to the active forum. After each forum closes at the end of the month, the archived questions and answers will be available through the Ask the Author discussion board.*

About the Author

David Morley, AICP, is a senior research associate with the American Planning Association, as well as APA's Planning Advisory Service (PAS) coordinator and coeditor of *Zoning Practice*. Since 2007 he has contributed to APA research projects on topics including brownfields redevelopment, complete streets, urban agriculture, shrinking cities, solar energy, and disaster recovery. Apart from his contributions to research projects and APA publications, Morley provides customized research on a daily basis for PAS subscribers.

duction facilities through their zoning codes. Without clear definitions and use permissions, planning staff or public officials are forced to make ad hoc use interpretations that can delay or even prevent otherwise desirable development. This regulatory silence creates uncertainty for business owners looking to make location decisions and secure financing, and it may have the effect of scaring away potential applicants. Finally, explicit definitions, use permissions, and use-specific standards allow communities to proactively address the potential negative effects of brewpubs and microproducers on surrounding areas, thereby minimizing future conflicts with neighbors.

DEFINING USES

Clear zoning standards for small-scale alcohol production facilities begin with clear use definitions. Generally speaking, there are two basic schools of thought about defining uses in zoning codes. Some communities try to define every conceivable potential use, while others rely on use groups (or categories) with similar operational requirements and attendant community effects.

The first method can bring clarity and avoid some legal disputes over specific uses, but it may create unnecessarily complex regulations. The second method is part of larger trend away from proscriptive use regulations, as many communities focus more on a prescriptive approach to the form of development. In practice, most conventional new zoning codes use a hybrid of these approaches, with broad use categories, such as household living or general retail, and specific use definitions for a small subset of higher-impact or more contentious uses under each category.

Steve Morgan/Creative Commons 3.0

Since 2008 the federally landmarked G.G. Gerber building in Portland, Oregon's Pearl District has housed a brewpub.

Mirroring this broader conversation about the best approach to classifying and defining uses, communities that have added specific definitions for small-scale alcohol production facilities to their zoning codes generally take one of two approaches. Either they define brewpubs, microbreweries, microdistilleries, and microwineries as distinct uses, or they define an umbrella term that encompasses multiple types of production facilities.

Communities that define microbreweries, microdistilleries, or microwineries as distinct uses often rely on a production volume threshold to distinguish between the "micro" and "conventional" version of a particular use. For microbreweries, 15,000 barrels per year is a common threshold, which corresponds to the American Brewers Association's defined limit for a microbrewery. Given that there are no corresponding industry definitions for microdistillery and microwinery, it is perhaps unsurprising that thresholds for these uses seem to vary more from place to place.

When communities define brewpubs as a distinct use, the intent is usually to distinguish between accessory- and primary-use brewing facilities. Most communities stipulate that beer production in a brewpub must be accessory to a bar or restaurant, and many cap the volume of beer produced annually (usually less than 15,000 barrels). Furthermore, some jurisdictions quantify this subordinate relationship by limiting the percentage of floor area or sales attributable to the brewery component of the business.

Definitions for brewpubs, microbreweries, microdistilleries, and microwineries often include an acknowledgment that the alcohol produced will be consumed both on- and off-site. For "micro" facilities, the presumption is typically that on-site consumption will be

Examples of Use Definitions

Brewpub:

- A retail establishment that manufactures not more than 9,000 barrels of malt liquor on its licensed premises each calendar year. (Aurora, Colorado)
- A restaurant-brewery that sells 25 percent or more of its beer on-site. The beer is brewed primarily for sale in the restaurant and bar. The beer is often dispensed directly from the brewery's storage tanks. Where allowed by law, brewpubs often sell beer "to go" or distribute to off-site accounts. (Brewers Association)

A restaurant with facilities for the brewing of beer for on-site consumption and retail sale at the restaurant. A brewpub must derive at least 40 percent of its gross revenue from the sale of food. (Goodyear, Arizona)

- A restaurant featuring beer that is brewed on-site. (Memphis-Shelby County, Tennessee)
- A restaurant that brews beer as an accessory use, either for consumption on-site or in hand-capped, sealed containers in quantities up to one-half barrel sold directly to the consumer. Production capacity is limited to 5,000 barrels of beverage (all beverages combined) per year. The area used for brewing, bottling, and kegging shall not exceed 30 percent of the total floor area of the commercial space. A barrel is equivalent to 31 gallons. (Plainfield, Illinois)

Microbrewery:

- A small facility for the brewing of beer that produces less than 15,000 barrels per year. It may often include a tasting room and retail space to sell the beer to patrons on the site. (Asheville, North Carolina)
- Any establishment where malt liquors are manufactured and packaged on- or off-premises, manufacturing more than 9,000 but less than 60,000 barrels of malt liquor on its licensed premises each calendar year. (Aurora, Colorado)
- A brewery that produces less than 15,000 barrels of beer per year with 75 percent or more of its beer sold off-site. Microbreweries sell to the public by one or more of the following methods: the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and, directly to the consumer through carryouts or on-site taproom or restaurant sales. (Brewers Association)
- A brewery (for malt beverages) that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels. (Missoula, Montana)
- The production of beer, regardless of the percentage of alcohol by volume, in quantities not to exceed 5,000 barrels per month, with a barrel containing 31 U.S. liquid gallons. (Nashville-Davidson, Tennessee)

Nanobrewery:

- The production of beer, regardless of the percentage of alcohol by volume, in quantities not to exceed 1,250 barrels per month. (Nashville-Davidson, Tennessee)

Microdistillery:

- A combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves alcoholic spirits or food on the premises. (Port Townsend, Washington)
- A facility that produces no more than 15,000 gallons per year of spirituous beverages on-site and shall include a tasting room in which guests/customers may sample the product. (Fort Collins, Colorado)
- A facility that produces alcoholic beverages in quantities not to exceed 35,000 gallons per year and includes an accessory tasting room. A tasting room allows customers to taste samples of products manufactured on-site and purchase related sales items. Sales of alcohols manufactured outside the facility are prohibited. (Evanston, Illinois)

(continued on page 5)

subordinate to off-site consumption. For brewpubs, the opposite is true.

Communities that define an umbrella term for multiple "micro" facilities tend to stress spatial or operational features over production volume limits. In some instances this means a square footage limit on facility size or the proportion of a facility that can be used for alcohol production. In other instances, there are no defined size limits, and the use definition simply describes a set of operational characteristics (e.g., alcohol production and sales for on- and off-site consumption).

USE PERMISSIONS

Defining and regulating small-scale alcohol production facilities allows communities to permit small breweries, distilleries, and wineries in locations that would be inappropriate for conventional, large-scale facilities. Typically, this translates to permitting brewpubs, microbreweries, microdistilleries, and microwineries in one or more commercial or mixed use districts, either by right, with ministerial approval, or subject to a discretionary use permit.

Permitting a use by right sends a clear signal to potential developers and business owners that the use is desirable in a certain zoning district. This approach presents applicants with the fewest hoops to jump through before obtaining zoning approval, but it is important to note that most small-scale production facilities will still be subject to state or local licensing or permitting laws that govern the production or sale of alcoholic beverages.

Requiring a ministerial approval for a use communicates that the community is generally supportive of the use in a certain zoning district, but this support is conditional upon compliance with objective standards intended to minimize negative impacts on proximate uses. This approach gives planning staff an opportunity to review an application before the planning director or zoning administrator issues an "over-the-counter" permit. Often, communities use ministerial approval processes to confirm that a particular application conforms to use-specific standards (see additional standards discussion below).

Permitting a use subject to a discretionary use permit (often referred to as a conditional, special, or special exception use permit) indicates that the community is potentially supportive of the use in a certain zoning district, provided the specific spatial and operational characteristics of the use do not pose compatibility problems. Discretion-

ary approval processes involve one or more public hearings before the local legislative body, planning commission, or zoning board renders a final decision on an application. Because the longer approval time frame and a greater degree of uncertainty can discourage some applicants, it is important for communities to reserve discretionary use permissions for locations or circumstances where objective standards are likely to be insufficient to ensure compatibility.

Since a brewpub typically has more in common with a restaurant than a factory, many communities permit brewpubs either by right or with ministerial approval in a wide range of commercial and mixed use districts. Meanwhile, use permissions for microbreweries, microdistilleries, and microwineries vary considerably from place to place. With that said, though, many cities do permit microproduction facilities either by right or with ministerial approval in at least one commercial or mixed use district. Furthermore, it is relatively common to permit microbreweries, microdistilleries, or microwineries by right in more intense commercial or mixed use districts and subject to a discretionary use permit in less intense districts. (See the table on page 6.)

Use Definitions *(continued from page 4)*

- Any place or premises wherein any wines or liquors are manufactured for sale, not to exceed 5,000 gallons per year, generally referred to as a craft, boutique, or artisan distillery. Microdistilleries may or may not include an on-site tasting room, and may or may not operate in conjunction with an on-site restaurant or bar. For operation of an on-site tasting room or in conjunction with an on-site restaurant or bar additional permitting may be required. All relevant federal, state, and local regulations apply, including but not limited to TCA Title 57 and Memphis Code of Ordinances Title 7. For on-site sales by manufacturer compliance with TCA 57-3-204 applies. (Memphis-Shelby County, Tennessee)

Microwinery:

- A combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves wine and food on the premises. (Port Townsend, Washington)
- A facility that produces no more than 100,000 gallons per year of vinous beverages on-site and shall include a tasting room in which guests/customers may sample the product. (Fort Collins, Colorado)
- A small wine producer that does not have its own vineyard, and instead sources its grape production from outside suppliers. Microwineries produce wine for sale on- or off-site. For the purposes of this chapter, a microwinery is limited to a production of no more than 2,000 barrels per year. On-site consumption is not allowed, other than sample tasting by customers shopping on-site. (Glenville, New York)

Microbrewery/microdistillery/microwinery:

- A facility with no more than 3,000 square feet of floor area, for the production and packaging of alcoholic beverages for distribution, retail, or wholesale, on- or off-premises and which meets all alcohol beverage control laws and regulations. (Newport News, Virginia)
- An establishment for the manufacture, blending, fermentation, processing, and packaging of alcoholic beverages with a floor area of 10,000 square feet or less that takes place wholly inside a building. A facility that only provides tasting or retail sale of alcoholic beverages is not a microbrewery, microdistillery, or winery use. (Dallas)
- A facility in which beer, wine, or other alcoholic beverages are brewed, fermented, or distilled for distribution and consumption, and which possesses the appropriate license from the State of Maryland. Tasting rooms for the consumption of on-site produced beer, wine, or distilled products are permitted on the premises. (Denton, Maryland)
- An establishment with a primary use as a table service restaurant where beer, liquor, wine, or other alcoholic beverage is manufactured on the premises in a limited quantity subordinate to the primary table service restaurant use. The gross floor area utilized in a microbrewery, microdistillery, or microwinery for the production of beer, liquor, wine, or other alcoholic beverage shall be no greater than the gross floor area utilized for the associated table service restaurant. A microbrewery, microdistillery, or microwinery may include some off-site distribution of its alcoholic beverages consistent with state law. A tasting room or taproom may exist in a microbrewery, microdistillery, or microwinery where patrons may sample the manufacturer's products. (Wooster, Ohio)

ADDITIONAL STANDARDS

Many contemporary zoning codes limit use permissions with use-specific development or operational standards. By codifying additional standards for specific uses, the community can permit a wider range of uses without relying on discretionary use permits to ensure compatibility. In some cases, use-specific standards apply only in certain zoning districts, while in other cases the standards apply community-wide.

So far, relatively few communities have adopted additional development or operational standards for small-scale alcohol production facilities. Among those that have, the most common provisions relate to outdoor storage, the size of the facility or volume of production, loading and unloading, and proximity either to sensitive uses or to other similar producers.

Outdoor Storage

Perhaps the most prevalent type of additional standards for brewpubs and microproducers are screening requirements or limitations on the amount of space business owners can use to store equipment, production waste, or product. In some cases these standards take the form of an outright prohibition on outdoor storage.

To illustrate, Covington, Kentucky, flatly prohibits all outdoor equipment and storage for brewpubs and microbreweries (§§6.28.02–03). Meanwhile, Dallas permits microbreweries and microdistilleries to store spent grain outside in silos or containers, provided the storage is screened from view (C51A-4.210(b)(4)(E)(ii)(cc)). And Novi, Michigan, prohibits all outdoor storage for brewpubs and microbreweries, with the exception of storage in tractor trailers for a period less than 24 hours (§§1501.11.b and 1501.12.b).

The two basic rationales for storage restrictions are aesthetics and public health. Outdoor storage can be an uninviting eyesore, especially in pedestrian-oriented areas. And left unattended, production waste may produce foul odors and attract vermin.

EXAMPLES OF DEFINED USES AND PERMISSIONS

Community	State	2010 Population	Density (pop./square mile)	Defined Uses	Permitted in One or More Mixed Use or Commercial Districts: By Right or Ministerial Approval	Subject to Discretionary Use Permit	Subject to Additional Standards
Asheville	NC	83,393	1,856	microbrewery	X	X	§7-16-1(c)(43)
Bismarck	ND	61,272	1,986	brewpub	X		§14-03-08.4.u
				microbrewery		X	
Bloomington	IN	80,405	3,472	brewpub	X		§20.05.089
Burlington	VT	42,417	4,116	microbrewery	X	X	
Columbia	SC	129,272	978	microbrewery	X		§17-290
Covington	KY	40,640	3,079	brewpub	X		§6.28
				microbrewery		X	§6.28
				microdistillery		X	§6.28
Dallas	TX	1,197,816	3,518	microbrewery/ microdistillery/ winery		X	§51A-4.210(b)(4)
Denton	MD	4,418	837	microbrewery/ microwinery/ microdistillery		X	
Fort Collins	CO	143,986	2,653	microbrewery	X	X	
				microdistillery	X	X	
				microwinery	X	X	
Glenville	NY	29,480	580	microbrewery	X		
				microwinery	X		
Goodyear	AZ	65,275	341	brewpub	X		§4-2-15
				microbrewery	X		§4-2-16
Memphis-Shelby	TN	646,889	2,053	brew pub	X	X	§2.6.3.G
				microbrewery	X	X	§2.6.4.F
				microdistillery	X	X	§2.6.4.F
Missoula	MT	66,788	2,428	microbrewery		X	
Modesto	CA	201,165	5,457	microbrewery	X	X	§10-3.203
Newport News	VA	180,719	2,630	microbrewery/ microdistillery/ microwinery	X		
Novi	MI	55,224	1,825	brewpub	X	X	§1501.11
				microbrewery	X	X	§1501.12
Port Townsend	WA	9,113	1,306	microbrewery	X	X	
				microdistillery	X		
				microwinery	X		
St. Petersburg	FL	244,769	3,964	brewpub	X	X	§16.50.045
				microbrewery	X	X	§16.50.045
Wooster	OH	26,119	1,601	microbrewery/ microdistillery/ microwinery	X		

Facility Size or Volume of Production

Some communities use additional standards to restrict the size of the facility, scale of production, or the relationship between the alcohol production facility and collocated food or beverage service. This is most common in codes where the use definition does not stipulate a specific production limit or the nature of the relationship between primary and accessory uses. However, communities can also use this type of operational standard to modify defined limits or relationships in lower-intensity zoning districts.

For example, Asheville, North Carolina, limits microbreweries to 4,000 square feet of floor area in two specific office districts (§17-16-1(c)(43)a.3). Columbia, South Carolina, limits microbrewery production to 1,000 barrels per year in three lower-intensity commercial and mixed use districts (§17-290(2)). And Novi, Michigan, stipulates that no more than 50 percent of the gross floor space in a brewpub shall be used for brewing (§1501.11.e).

Loading and Unloading

A few communities have adopted additional standards stipulating the provision or location of loading spaces or prohibiting deliveries during certain hours. Both of these types of delivery restrictions can help brewpubs and microproducers be better neighbors by minimizing traffic congestion or limiting noise during certain times of the day. Still, it's important to note that in some pedestrian-oriented districts it may be infeasible or undesirable to require dedicated loading spaces due to premiums on space or urban design goals.

As one example, Asheville, North Carolina, stipulates that all microbreweries must have an off-street or alley-accessible loading dock (§17-16-1(c)(43)a.4). Meanwhile, St. Petersburg, Florida, discourages microbrewery access and loading from streets and requires any street-facing loading bays to keep their doors closed at all times, except when actively in use. The city also restricts service truck loading and unloading to the hours between 8 a.m. and 8 p.m., Monday through Saturday, and between 11 a.m. and 7 p.m. on Sundays and national holidays (§§16.50.045.4–6).

Distancing Requirements

A small number of communities have adopted distancing requirements that either limit the proximity of small-scale alcohol production facilities to sensitive uses, such as schools or churches, or require a minimum separation between similar uses. For the first type of distancing requirement, the rationale is to limit potential spillover effects on properties where children congregate. The rationale for the second type of requirement is to prevent an overconcentration of brewpubs or microproducers in a specific district.

To illustrate, Novi, Michigan, requires microbreweries to be separated from one another by at least 2,500 feet (§1501.12.h). And Bismarck, North Dakota, requires property owner consent as a condition of approval for microbreweries located within 300 feet of a lot line for any school, church, library, or hospital (§14-03-08.4.u.1).

CONCLUSIONS

When localities choose to define and regulate small-scale alcohol production facilities as one or more distinct uses, it allows them to permit these uses in locations that would be inappropriate for major industrial operations. By doing so, communities can set the stage to capitalize on the economic and placemaking benefits of brewpubs and microproducers.

With that said, the preceding discussion only hints at the variety of approaches localities have taken to regulate brewpubs, microbreweries, microdistilleries, and microwineries. Furthermore, a number of communities with thriving craft brewing and distilling scenes, such as Chicago and Portland, Oregon, have yet to single out small-scale alcohol production facilities for special zoning treatment. Others have made a conscious decision to minimize use-based restrictions in favor of prescriptive standards for the form of development. However, communities that don't thoughtfully consider regulatory alternatives for brewpubs and microproducers run the risk of being caught "flat-footed" by an application for a new facility that may be beneficial to the community but is inconsistent with current zoning.

Finally, as with any significant potential zoning change, it can be helpful to talk to other communities that have taken a similar approach to see what's working and what might need further attention. And, of course it's always important to review both new provisions and the intent behind those provisions with residents, business owners, and other community stakeholders before recommending or taking action.

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Cover image by filipfoto/iStock/Thinkstock; design concept by Lisa Barton

VOL. 31, NO. 3

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for $95 (U.S.) and $120 (foreign).
W. Paul Farmer, FAICP, Chief Executive Officer; David Rouse, AICP, Managing Director of Research and Advisory Services.

Zoning Practice (ISSN 1548–0135) is produced at APA. Jim Schwab, AICP, and David Morley, AICP, Editors; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

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Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

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HOW DOES YOUR ZONING TREAT BREWPUBS, MICROBREWERIES, MICRODISTILLERIES, AND MICROWINERIES?

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January 12, 2016

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Recommendation to Award a Consultant Contract for the Bicycle and Pedestrian Master Plan

Introduction/History

The City of Whitefish adopted the current Whitefish Bicycle and Pedestrian Master Plan in 1998. Since it's initial adoption, the City Council adopted amendments to the plan in 2003 and 2007. Although the current plan is aimed at making Whitefish an excellent place to walk and bicycle, numerous advancements in the realm of "multi-modal" transportation have prompted the City to budget for a revised Bicycle and Pedestrian Master Plan to be drafted this year.

Current Report

The City's existing Bike/Ped Master Plan laid a solid groundwork for the creation and maintenance of the current bicycle and pedestrian paths in town. However, over the past two decades there have been significant changes in the field of bicycle and pedestrian planning. These changes include a greater awareness of the different type of bicyclists, and an effort to design facilities that can be used by people of all ages and abilities. The 2016 Bicycle and Pedestrian Master Plan aims to provide the City of Whitefish with a series of actions which can be strategically implemented. These actions will add to the City's existing system of trails to create a complete walking and bicycling network throughout the City. One that appeals to a broad segment of residents and visitors alike.

In an effort to solicit proposals to draft the new plan, a Request for Proposals (RFP) was created by the Public Works Department and advertised in November, 2015. The RFP was geared towards the creation of a Bicycle and Pedestrian Master Plan that updates and expands the scope of the current plan. We were sure to specify that the consultant work closely with City Staff, the Bicycle & Pedestrian Committee, City Residents, and local agencies to create a clear vision for improving walking and bicycling conditions in the city.

Proposals were received from three consultants - WGM Group (WGM) out of Missoula, MT, Alta Planning & Design out of Bozeman, MT, and Vitruvian Planning out of Boise, ID. The proposals were reviewed by City staff and a five-member panel met on 12/17/2015 to interview the three firms.

Upon completion of the interviews, it was the unanimous recommendation of the interview committee that the City contract with WGM. The WGM team is led by planner and cycling enthusiast, BJ Grieve, who heads up their Kalispell office. BJ has been living in Flathead County for over a decade, and spent the last twelve years working for the Flathead County Planning and Zoning Department. Serving as the Flathead County Planning Director for the past five years, BJ understands the many moving pieces that must come together to develop a successful bicycle and pedestrian master plan, including the importance of public support. WGM is also responsible for the design of many successful projects in Whitefish, some of which involve components of the existing Whitefish Bicycle and Pedestrian Master Plan.

The recommendation of the interview panel was presented to the Bicycle & Pedestrian committee at their monthly meeting on 1/4/2016. The committee was highly supportive of working with WGM to draft the updated plan. They were also interested in having WGM work with them on the design of a much needed section of the City's trail system adjacent to the River Bend Condominiums. This section of trail will be an important element connecting the dead-end path on the north side of Veteran's Bridge with the Whitefish Bike and Pedestrian Trail that runs along the Whitefish River. After additional discussion, it was the unanimous recommendation of the Bicycle & Pedestrian Committee that City Council award a contract to WGM Group to complete the master plan, and consider a possible future amendment to the contract to complete design drawings for the much needed connector trail by River Bend Condominiums. The intent of the amendment would be to complete designs in time to present the concept to the River Bend Condominium Association at their annual meeting in early July.

Financial Requirement

Subsequent to the Bicycle & Pedestrian meeting on 1/4/2016, Public Works staff has worked with WGM to come up with the enclosed scope of services. The negotiated cost to perform these services is guaranteed not exceed the $40,000 which is included in the FY16 budget as a Resort Tax expense.

Recommendation

Based on the need to update the City's existing Bicycle and Pedestrian Master Plan, and the results of the RFP process that was conducted, I respectfully recommend that City Council authorize the City Manager to execute a consultant agreement with WGM to carry out the enclosed scope of services. In addition, at the recommendation of the Bicycle & Pedestrian committee, a future amendment to this contract will be presented for Council's consideration. The intent of the amendment will be to modify the delivery schedule for the plan for additional time to conduct public outreach, as well as to incorporate engineering design services for a section of trail adjacent to the River Bend Condominiums.

Sincerely,

Craig Workman, P.E.
Public Works Director

EXHIBIT A

Scope of Services
Whitefish Bicycle and Pedestrian Master Plan
January 12, 2016

WGM Group, Inc. will provide the following services to the City of Whitefish for the above-referenced project. This scope is intended to develop a Whitefish Bicycle and Pedestrian Master Plan. Goals and objectives articulated in the previous and related plans, input from City staff and committees, and public input will form the basis for strategies and recommendations. The Bicycle and Pedestrian Master Plan will provide the City of Whitefish with information, strategies, tools and specific recommended actions to promote and further implement a sustainable, multi-modal, local transportation system. City staff will provide assistance as outlined below, and Flathead City-County Health Department staff (funded by CDC) will provide assistance with public outreach and engagement as outlined below.

Task One: Initial Administration and Coordination $2,300

WGM Group's project manager will prepare the scope of services and work closely with City of Whitefish staff to move rapidly through initial administrative tasks.

- Prepare scope of services and sign Professional Services Agreement.
- Meetings with Whitefish Public Works staff to learn more about project objectives and existing information, and gather documents listed in RFP.
- Begin review of city planning documents, existing recommendations, priority project lists, and maps listed in RFP.

🕒 **Task One Deadline:** January 31, 2016
✓ **Task One Deliverable(s):** Scope of services; signed Professional Services Agreement

City Responsibilities: Prepare professional services agreement; provide existing planning documents, maps, and electronic GIS files
Flathead City-County Health Dept. Responsibilities: None in Task One

Task Two: Inventory Existing Characteristics & Expectations $3,600

In order to identify existing characteristics, WGM Group will meet with the Bicycle and Pedestrian Advisory Committee to supplement information from city staff to assemble a broad base of information. This will include information about priorities, existing paths, existing path

design standards, and existing funding sources. WGM Group will communicate with the Bicycle and Pedestrian Advisory Committee and city staff to clarify expectations.

- One public meeting with Bicycle and Pedestrian Advisory Committee on February 1, 2016 to discuss sources of information on existing characteristics, priorities, and project expectations.
- Review additional existing information referenced and provided at meetings.
- Oversee preparation of online survey, social media outreach and assembling of email addresses by Flathead City-County Health Department staff.
- Research existing facilities for connectivity, effectiveness, and capacity. Prioritize facilities connecting to schools, parks, and the downtown corridor.
- Prepare list of facilities and infrastructure to field-inspect when weather conditions allow.
- Site visit:
    - Conduct field inspections of existing bicycle and pedestrian facilities identified in Task Two.
    - Collect photo-inventory examples of: opportunities for connectivity, ineffective and effective facilities, facility maintenance deficiencies, different types of bicycle and pedestrian facilities (sidewalks, paths, bike lanes, crosswalks), over and under capacity facilities, effective and ineffective signage.

🕑 **Task Two Deadline:** April 29, 2016
✓ **Task Two Deliverable(s):** Meeting summary; list of existing facilities and infrastructure to field-inspect

🏳 **City Responsibilities:** Schedule and advertise February 1 public meeting with Bicycle and Pedestrian Advisory Committee; provide additional documents, maps, etc. referenced at meeting with Bicycle and Pedestrian Advisory Committee; provide information on non-motorized facilities in the city; accompany consultants on field inspections
Flathead City-County Health Dept. Responsibilities: Prepare online survey, email address list and social media outreach

Task Three: Community Outreach & Participation $3,800

WGM Group will work with city staff and Flathead City-County Health Department staff to use volunteers and cost-effective data collection platforms to educate and engage the public. We will work with city staff and Flathead City-County Health Department staff to energize public participation to raise awareness of the project, gather feedback on what is and is not working, and promote dialogue on bicycle and pedestrian facilities in Whitefish.

- Oversee Flathead City-County Health Department staff preparing a project informational handout containing project goal(s), timeline, link to survey, and sources of information.

- Oversee Flathead City-County Health Department staff conducting online survey and summarizing results.
- One meeting with Bicycle and Pedestrian Advisory Committee on April 4, 2016 to discuss outreach and participation and get guidance from committee.
- Oversee Flathead City-County Health Department staff coordinating an interactive "listening post" at first Farmer's Market.
- Work with Flathead City-County Health Department staff to conduct a town-hall-style meeting or outdoor "rally" at which the public can share vision, discuss problems, identify opportunities, etc.
- Oversee Flathead City-County Health Department staff collecting, reviewing, and summarizing public comments.

🕒 **Task Three Deadline:** May 31, 2016
✓ **Task Three Deliverable(s)**: Project handout; survey results; summary of public comments and public vision

🏳 **City Responsibilities**: Provide venue for public meetings
👌 **Flathead City-County Health Dept. Responsibilities:** Prepare informational handout and organize volunteers to distribute project handout and email updates as necessary; social media outreach; conduct online survey, tabulate results; coordinate "listening post" outreach at Farmer's Market; organize town-hall or rally-style public meeting; collect and summarize public comments

Task Four: Draft Recommendations and Funding Sources $8,600

WGM Group will analyze collected information to identify opportunities and challenges for existing and future bicycle and pedestrian facilities in and around Whitefish. We will then develop an outline of the Bicycle and Pedestrian Master Plan to include draft, concept-level recommendations. The outline will be presented to city staff, the Bicycle and Pedestrian Advisory Committee, and interested stakeholders to get feedback before a full plan is drafted.

- Prepare outline of Whitefish Bicycle and Pedestrian Master Plan, including summary of community vision and existing characteristics and concept-level maps and diagrams, recommendations, estimated costs, and funding sources for:
  - New bicycle and pedestrian facilities and improvements to existing bicycle and pedestrian facilities, with priority given to connectivity to schools, parks, and the downtown corridor.
  - Unified wayfinding signage system.
  - Maintenance and replacement intervals for bicycle and pedestrian facilities.
  - Planning policies and implementation methods for promoting non-motorized transportation.

- Public meeting with Bicycle and Pedestrian Advisory Committee and interested stakeholders on June 6, 2016 to present draft recommendations and seek feedback to inform preparation of Bicycle and Pedestrian Master Plan

🕑 **Task Four Deadline:** June 6, 2016
✓ **Task Four Deliverable(s):** Draft recommendations

City Responsibilities: Schedule and advertise public meeting with Bicycle and Pedestrian Advisory Committee and interested stakeholders
Flathead City-County Health Dept. Responsibilities: Email updates as necessary; social media updates

Task Five: Write Bicycle and Pedestrian Master Plan $18,400

WGM Group will draft a Whitefish Bicycle and Pedestrian Master Plan that integrates appropriately with existing city plans and complies with Montana laws regarding community planning. The plan will utilize a combination of text, maps, and diagrams to present information on the planning process, the public's vision, existing characteristics, recommendations for bicycle and pedestrian facilities and planning goals, policies and implementation methods. An appendix will include recommended bike and pedestrian facility design guidelines.

- Prepare Whitefish Bicycle and Pedestrian Master Plan to include:
  - Introduction and description of planning process and community vision for future of bicycle and pedestrian facilities in Whitefish.
  - Text descriptions, maps and figures of existing characteristics, recommendations, estimated costs, and funding sources for:
    - New bicycle and pedestrian facilities and improvements to existing bicycle and pedestrian facilities, with priority given to connectivity to schools, parks, and the downtown corridor.
    - Unified wayfinding signage system.
    - Maintenance and replacement intervals for bicycle and pedestrian facilities.
  - Planning policies and implementation methods for promoting non-motorized transportation.
  - Double-sided visual Bicycle and Pedestrian Master Plan containing:
    - Side 1: Map of Whitefish showing existing and recommended bicycle and pedestrian facilities, priorities and existing and recommended connectivity. Map features keyed to policies, diagrams, examples and descriptions on Side 2.
    - Side 2: Visual presentation of planning goals, policies and implementation methods; standard bicycle and pedestrian facility diagrams; examples of standard wayfinding signage.

  - Appendix containing bicycle and pedestrian facility design guidelines.
- Provide deliverables to City staff.

🕒 **Task Five Deadline**: July 15, 2016
✓ **Task Four Deliverable(s):** Electronic drafts of text document, double-sided Master Plan map, and Appendix

🚩 **City Responsibilities**: Print master plan as necessary 👌 **Flathead City-County Health Dept. Responsibilities:** Email news updates as necessary; social media updates

Task Six: Present Final Plan and Bicycle & Pedestrian Map $3,300

WGM Group will roll out deliverables with a soft release to City staff, followed quickly by release to the general public. Public meetings will be held with the Bicycle and Pedestrian Advisory Committee, Parks Board, and Whitefish City Council at which WGM Group will present the final draft Whitefish Bicycle and Pedestrian Master Plan.

- Complete final plan revisions based on City staff review.
- Provide City with shapefiles from double-sided map so city can create a Bicycle and Pedestrian map for the public.
- Present Bicycle and Pedestrian Master Plan to Bicycle and Pedestrian Advisory Committee (August 1, 2016), Parks Board (August 9, 2016) and City Council (August 15, 2016)

🕒 **Task Six Deadline:** August 15, 2016
✓ **Task Six Deliverable(s):** Whitefish Bicycle and Pedestrian Master Plan

🚩 **City Responsibilities:** Schedule and advertise public meetings with Bicycle and Pedestrian Advisory Committee, Parks Board, and City Council; print documents/maps as necessary 👌 **Flathead City-County Health Dept. Responsibilities:** Email news updates as necessary; social media updates

Additional Services

Services not specifically described in the tasks above as being the responsibility of WGM Group are not included. Additional services may include:

- Additional public outreach and engagement
- Final preparation of a city trail map for public use (shapefiles of existing and recommended facilities from Master Plan Map will be provided)

- Creation of an app to include information collected and presented in Whitefish Bicycle and Pedestrian Master Plan
- Printing of documents and maps for distribution to city staff, boards/committees, and the general public

Fee Estimate

Our fees will be billed on a lump sum basis, with a total cost not to exceed $40,000 without a supplemental agreement. The scope of services is broken into tasks as shown above. A detailed cost estimate is attached.

Fees are valid through August 2016. Fees may need to be adjusted if the project extends beyond this date due to unforeseen circumstances.

Schedule

WGM Group anticipates the project will be complete by the end of August 2016. We are prepared to begin work on this project immediately following authorization.

Professional Services Estimate

Project Name: **Whitefish Bicycle & Pedestrian Master Plan**
Project #: **151115**
Client: **City of Whitefish**
Date: **January 12, 2016**

DIRECT LABOR	Phase 01 INITIAL ADMINISTRATION & COORDINATION		Phase 02 INVENTORY EXISTING CHARACTERISTICS & EXPECTATIONS		Phase 03 COMMUNITY OUTREACH & PARTICIPATION		Phase 04 DRAFT RECOMMENDATIONS & FUNDING SOURCES		Phase 05 WRITE BICYCLE & PEDESTRIAN MASTER PLAN		Phase 06 PRESENT FINAL PLAN AND BICYCLE & PEDESTRIAN MAP		TOTAL	
	Hours	Total $	Hours	Total $	Hours	Total $	Hours	Total $	Hours	Total $	Hours	Total $	Hours	Total $
Principal Engineer	2	$270	3	$405	8	$1,080	20	$2,700	24	$3,240	4	$540	61	$ 8,235
Principal Planner							1	$165	6	$990	1	$165	8	$ 1,320
Senior Planner	16	$1,840	28	$3,220	24	$2,760	34	$3,910	93	$10,695	20	$2,300	215	$ 24,725
Landscape Architect														
Landscape Designer							12	$1,020	32	$2,720	4	$340	48	$ 4,080
Water Right Technician/GIS							2	$180	2	$180			4	$ 360
Project Assistant 2	2	$160					6	$480	6	$480			14	$ 1,120
TOTAL LABOR	**20**	**$ 2,270**	**31**	**$ 3,625**	**32**	**$ 3,840**	**75**	**$ 8,455**	**163**	**$ 18,305**	**29**	**$ 3,345**	**350**	**$ 39,840**

DIRECT EXPENSES	Phase 01	Phase 02	Phase 03	Phase 04	Phase 05	Phase 06	TOTAL
Copies / Prints	25.00	25.00	-	-	150.00	-	$ 200.00
Mileage	17.25	34.50	-	132.25	-	51.75	$ 235.75
TOTAL DIRECT EXPENSES	$ 42.25	$ 59.50	$ -	$ 132.25	$ 150.00	$ 51.75	$ 435.75

SUMMARY	Phase 01	Phase 02	Phase 03	Phase 04	Phase 05	Phase 06	TOTAL
Hours	20.0	31.0	32.0	75.0	163.0	29.0	350.0
Labor	$ 2,270.00	$ 3,625.00	$ 3,840.00	$ 8,455.00	$ 18,305.00	$ 3,345.00	$ 39,840.00
Expenses	$ 42.25	$ 59.50	$ -	$ 132.25	$ 150.00	$ 51.75	$ 435.75
TOTAL	**$ 2,312.25**	**$ 3,684.50**	**$ 3,840.00**	**$ 8,587.25**	**$ 18,455.00**	**$ 3,396.75**	**$ 40,275.75**

Professional Services Hours

Project Name: **Whitefish Bicycle & Pedestrian Master Plan**
Project #: **151115**
Client: **City of Whitefish**
Date: **January 12, 2016**

			PRINCIPAL ENGINEER	PRINCIPAL PLANNER	SENIOR PLANNER	LANDSCAPE DESIGNER	WTR RIGHT TECH/GIS	PROJECT ASSISTANT 2	COPIES & PRINTS	MILEAGE	LABOR	EXPENSES	TOTAL
Task	**01**	**INITIAL ADMINISTRATION & COORDINATION**											
	1.01	Prepare scope of services/sign agreement	2.0		4.0			2.0			$ 890.00	$ -	$ 890.00
	1.02	Meetings with city staff			6.0					$ 17.25	$ 690.00	$ 17.25	$ 707.25
	1.03	Begin review of documents and maps			6.0				$ 25.00		$ 690.00	$ 25.00	$ 715.00
		SUBTOTAL	**2.0**		**16.0**			**2.0**	**$ 25.00**	**$ 17.25**	**$ 2,270.00**	**$ 42.25**	**$ 2,312.25**
Task	**02**	**INVENTORY EXISTING CHARACTERISTICS & EXPECTATIONS**											
	2.01	Public meeting with Bicycle & Ped Advisory Committee			4.0					$ 17.25	$ 460.00	$ 17.25	$ 477.25
	2.02	Review additional existing information referenced at meeting			8.0				$ 25.00		$ 920.00	$ 25.00	$ 945.00
	2.03	Oversee preparation of outreach by Flathead City-County Health Dept staff	1.0		2.0						$ 365.00	$ -	$ 365.00
	2.04	Research existing facilities, prepare list of field inspections	2.0		6.0						$ 960.00	$ -	$ 960.00
	2.05	Site visit to Whitefish to conduct field inspections			8.0					$ 17.25	$ 920.00	$ 17.25	$ 937.25
		SUBTOTAL	**3.0**		**28.0**				**$ 25.00**	**$ 34.50**	**$ 3,625.00**	**$ 59.50**	**$ 3,684.50**
Task	**03**	**COMMUNITY OUTREACH & PARTICIPATION**											
	3.01	Oversee preparation of informational handout by Flathead City-County Health Dept staff	2.0		4.0						$ 730.00	$ -	$ 730.00
	3.02	Oversee conducting of online survey, summarizing of results by Flathead City-County Health Dept staff	2.0		4.0						$ 730.00	$ -	$ 730.00
	3.03	Work with Flathead City-County Health Dept staff on public "town hall" or "rally" style vision meeting			4.0						$ 460.00	$ -	$ 460.00
	3.04	Public meeting with Bicycle & Ped Advisory Committee			4.0						$ 460.00	$ -	$ 460.00
	3.05	Work with Flathead City-County Health Dept staff to conduct "Listening Post" at Farmer's Market	2.0		4.0						$ 730.00	$ -	$ 730.00
	3.06	Oversee Flathead City-County Health Dept staff collecting, reviewing and summarizing public comments	2.0		4.0						$ 730.00	$ -	$ 730.00
		SUBTOTAL	**8.0**		**24.0**				**$ -**	**$ -**	**$ 3,840.00**	**$ -**	**$ 3,840.00**
Task	**04**	**DRAFT RECOMMENDATIONS & FUNDING SOURCES**											
	4.01	Prepare plan outline and draft recommendations	14.0	1.0	30.0	12.0	2.0	6.0			$ 7,185.00	$ -	$ 7,185.00
	4.02	Public meeting with Bicycle & Ped Advisory Committee	6.0		4.0					$ 132.25	$ 1,270.00	$ 132.25	$ 1,402.25
		SUBTOTAL	**20.0**	**1.0**	**34.0**	**12.0**	**2.0**	**6.0**	**$ -**	**$ 132.25**	**$ 8,455.00**	**$ 132.25**	**$ 8,587.25**
Task	**05**	**WRITE BICYCLE & PEDESTRIAN MASTER PLAN**											
	5.01	Prepare text document	8.0	3.0	40.0			2.0	$ 50.00		$ 6,335.00	$ 50.00	$ 6,385.00
	5.02	Prepare double-sided map	8.0	3.0	40.0	32.0	2.0		$ 50.00		$ 9,075.00	$ 50.00	$ 9,125.00
	5.03	Prepare facility design guidelines appendix	8.0		12.0			2.0	$ 50.00		$ 2,620.00	$ 50.00	$ 2,670.00
	5.04	Provide deliverables to city staff			1.0			2.0			$ 275.00	$ -	$ 275.00
		SUBTOTAL	**24.0**	**6.0**	**93.0**	**32.0**	**2.0**	**6.0**	**$ 150.00**	**$ -**	**$ 18,305.00**	**$ 150.00**	**$ 18,455.00**
Task	**06**	**PRESENT FINAL PLAN AND BICYCLE & PEDESTRIAN MAP**											
	6.01	Final plan revisions	4.0	1.0	8.0	4.0					$ 1,965.00	$ -	$ 1,965.00
	6.02	Three trips to Whitefish to present plan at public meetings			12.0					$ 51.75	$ 1,380.00	$ 51.75	$ 1,431.75
		SUBTOTAL	**4.0**	**1.0**	**20.0**	**4.0**			**$ -**	**$ 51.75**	**$ 3,345.00**	**$ 51.75**	**$ 3,396.75**
PROJECT TOTALS			**61.0**	**8.0**	**215.0**	**48.0**	**4.0**	**14.0**	**$ 200.00**	**$ 235.75**	**$ 39,840.00**	**$ 435.75**	**$ 40,275.75**

P.O. Box 158 • Whitefish, MT 59937 • (406) 863-2400 • Fax: (406) 863-2419

REQUEST FOR PROPOSALS

Bicycle and Pedestrian Master Plan

CITY OF WHITEFISH, MONTANA

Proposals Due: Friday 12/4/2015
Contact: Karin Hilding
Senior Project Engineer
Phone Number: 406-863-2450
Email Address: khilding@cityofwhitefish.org

REQUEST FOR PROPOSALS

Bicycle and Pedestrian Master Plan

The City of Whitefish, Montana adopted the current Whitefish Bicycle and Pedestrian Master Plan in 1998. Since then the city council has adopted amendments to the plan in 2003 and 2007. This request for proposals is for a Bicycle and Pedestrian Master Plan that updates and expands the scope of the current Master Plan.

Whitefish is located along Highway 93 approximately 60 miles south of the Canadian border and approximately 30 miles west of Glacier National Park. The city is a tourist destination and its downtown can be congested with traffic during the summer tourist season and winter holidays. The town is bisected by the Burlington Northern Santa Fe rail line and Highway 93 and is home to about 7,000 residents.

Whitefish is a community of people with very active lifestyles that are supportive of creating a safer environment for children to move about independently. A Bicycle and Pedestrian Path Committee helps guide the development of a trail network in the community. The City's 2007 Growth Policy vision statement reads as follows: "We will manage traffic and keep our community safe for pedestrians and cyclists." The Growth Policy also states that "nowhere is sustainability and community livability more apparent than in the local transportation system."

The Whitefish Downtown Business District Master Plan 2015 Update advocated the development of a pedestrian friendly environment to encourage visitors and residents to utilize downtown businesses. The Plan proposed the development of a "promenade", an off-street, multi-recreational trail around the downtown.

The City of Whitefish is seeking the assistance of a qualified consultant to help develop an updated Bicycle and Pedestrian Master Plan. The ideal consultant will have extensive experience developing such plans for small communities in a manner that engages the residents of the area in the planning process.

Anyone interested in providing professional consulting services for the preparation of a Bicycle and Pedestrian Master Plan is encouraged to submit a proposal to the City in accordance with the following Scope of Work and proposal requirements. All proposals must be received by the City by 5:00 p.m. December 4th.

Scope of Work

The proposal must define a proposed Scope of Work based on the following minimal requirements as well as any additional work activities proposed by the consultant deemed necessary to develop an effective Bicycle and Pedestrian Master Plan. The proposal must demonstrate an understanding of the overall objectives and describe how each task will be accomplished. The Consultant's responsibilities are expected to include:

1. Review of the Whitefish Bicycle and Pedestrian Master Plan (adopted in 1998 with updates), 2009 Whitefish Transportation Plan, 2015 Downtown Master Plan, 2011 Safe Routes to School Plan, 2014 Whitefish Healthy Community Design Summit Recommendations and the current City Bicycle and Pedestrian map.

2. Meet with the Bicycle and Pedestrian Advisory Committee to track progress and review deliverables. Review the priority project lists prepared in recent years by the Bicycle and Pedestrian Advisory Committee. Review conceptual design plans prepared for various proposed paths that have yet to be constructed.

3. Identify existing non-motorized transportation facilities and evaluate the connectivity, effectiveness, capacity and potential integration of such facilities into a comprehensive system.

4. Develop recommendations on a unified bike and pedestrian path signage system that ties into our existing wayfinding signs. Currently, few paths in the City have signage. Also, recommend priority crosswalk improvements and bike lane striping improvements. Include a plan for mileage markers on the city's main paths.

5. Recommend proposed new non-motorized transportation facilities, as well as, any deficiencies in the existing systems that might be corrected. Provide estimated costs of construction of capital facilities, maintenance of facilities, signage and striping. Prioritize connectivity to schools, parks and the downtown corridor.

6. Include recommendations on regional connectivity with other bike and pedestrian networks outside city limits, such as the Whitefish Trail System.

7. Facilitate a public involvement process that includes at least three (3) public meetings.

8. Provide a list of potential sources of financing for recommended improvements.

9. Provide appropriate bike and pedestrian facility design standards for inclusion in the City of Whitefish Engineering Standards. Develop standards or guidance for placement of stop signs and other safety signage to protect pedestrians and bicyclists.

10. Include a section of the plan that addresses maintenance needs and costs for the existing and proposed paths and walkways. Provide recommendations for establishing a better program for funding path maintenance.

11. Provide an easy to use bicycle and pedestrian map for the public. Identify access points for public transportation on this map. Through collaboration with the City's GIS/IT Technician create an app for the trail map.

12. Provide recommendations on planning policies that promote non-motorized transportation, such as a requirement for a multi-modal transportation analysis in place of a traffic impact study. Recommend policies related to new trends in motorized vehicles, such as motorized bicycles. Identify any new City ordinances that are advisable to promote safe usage of the pedestrian and bicycle paths.

13. In addition to the other public processes, the consultant shall present the findings and recommendations of the Bicycle and Pedestrian Master Plan to the Park Board of Commissioners and the City Council.

Proposal Submittal Requirements

Four (4) copies of the proposal must be submitted to the City Clerk of the City of Whitefish, P.O. Box 158, Whitefish, Montana 59937 not later than 5:00 p.m. on December 4th. Each proposal must include the following.

1. Name, physical and mailing addresses, e-mail contact information and telephone number(s) of the lead firm and any other firms on the consulting team.

2. The Scope of Work proposed by the consultant.

3. The experience and qualifications of the consultant (or consulting team) to undertake the Scope of Work.

4. The name and qualifications of the Project Manager who will direct the work effort and serve as the liaison with the City of Whitefish.

5. The names and qualifications of the principal team members who will perform the proposed work and their individual responsibilities for the Scope of Work.

6. References from at least two (2) jurisdictions where the consultant or consulting team have provided similar bicycle and pedestrian plan consulting services. The references must include complete contact information including telephone number and e-mail address as well as a brief description of the project completed.

7. A preliminary timeline for the completion of the project. It is anticipated that this project will be substantially complete by July of 2016.

Evaluation Criteria

All proposals will be evaluated on the following basis:

80 Points Work Program and Qualifications of Firm and Personnel

1. The approach and work program in the proposal.
2. The public involvement experience of the consultant.
3. Related experience on similar planning projects incorporating facilities planning and cost estimating and capital programming.
4. Qualifications, experience and training of the firm's Project Manager.
5. Qualifications, experience, and training of staff to be assigned to project.
6. Ability of firm to meet project time requirements.

20 Points Background Reference Checks

1. Record of past performance of firm or personnel on similar projects.

Following review and evaluation of all proposals, the City shall award the contract to the most qualified consultant based on the evaluation score and the proposal that is deemed to be the most responsive to this Request for Proposals. The City may, at its sole discretion interview any or all of the consultants before awarding the contract. Unsuccessful consultants will be notified as soon as possible.

Additional Information

The budget allocation for this project is Forty Thousand Dollars ($40,000). This is the maximum allocation including contingencies. The contact person for questions pertaining to this Request for Proposals is Karin Hilding, City of Whitefish Senior Project Engineer. She may be contacted at (406)863-2450 or khilding@cityofwhitefish.org.

Legal Advertisement to be published November 15th and 22th, 2015

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MANAGER REPORT

January 13, 2016

APPOINTMENT OF NEW ADMINISTRATIVE SERVICES DIRECTOR/CITY CLERK

After interviewing four internal candidates to replace Necile Lorang when she retires on March 11th, I offered the position of Administrative Services Director/City Clerk to Michelle Howke this week and she accepted the promotion. It was a very difficult decision as we had four excellent candidates, but I think that Michelle has the aptitude, skills, knowledge, ability, and initiative to manage and continue to improve the City Clerk's office. Michelle will begin work as Administrative Services Director/City Clerk on March 14th.

RESORT TAX COLLECTIONS

On an equivalent basis of the 2% Resort Tax this year compared to last year, Resort Tax collections in November were up by 7.04% or $9,140. For the year-to-date, the comparative 2% Resort Tax is up 1.28% or $13,977.

Overall, with the additional 1% Resort Tax that voters approved, the 3% Resort Tax was up by 60.55% or $78,669 for November compared to the 2% Resort Tax in November, 2014. There are comparative figures and charts attached to this report in the packet.

BANNERS OVER HIGHWAY 93 SOUTH

Although we did our annual lottery for time slots for the banners over Highway 93 South again this year, there are a couple of important changes occurring with the banner program:

1. The Montana Department of Transportation has told us that there can be no commercial business names listed on the banners that go over the highway, even as sponsors.

2. More importantly, it seems that the two companies who were putting most of the banners up no longer want to put the banners up. One vendor is concerned about the safety of the cables and mechanisms (originally put up by Flathead Electric Coop) and the other company no longer wants to do it. The banner program was set up initially so that it wouldn't involve City staff and that is not a function that we want to perform as it will take

away from repairing street lights (that we are typically behind on) and other duties. So, there may be fewer banners this year. Organizations that want to put banners up can always rent a lift machine from a rental company and put their own banners up.

CITY HALL/PARKING STRUCTURE CONSTRUCTION UPDATE

Mike Cronquist, our Owner's Representative for the City Hall/Parking Structure project, has a bi-weekly update report attached to this report in the packet.

MEETINGS

Workforce/Affordable Housing Committee meeting (1/5 and 1/12) – On January 5th, I met with the sub-committee working on the Request for Qualifications (RFQ)/Request for Proposals (RFP) for an updated Housing Needs Assessment. The sub-committee decided to recommend that we do a RFQ rather than a RFP as a RFQ is a little less prescriptive in what we are looking for and doing a RFQ will let us collaborate with a consultant on the scope of services a little more. We also revised the glossary of definitions that we are using on the Workforce/Affordable Housing project.

On January 12th, the full Task Force met and reviewed progress that all three sub-committees had made (RFP/Definitions, Best Practices, and Finance sub-committees). The committee approved a motion to have the Chamber of Commerce proceed with issuing a Request for Qualifications (RFQ) with an outline of desired information that will result from a new Housing Needs Assessment after review and approval from the City Council.

WAVE Board Meeting (1/6) – The WAVE Board met primarily for the purpose of approving the 2016 budget. The budget was approved at $2,410,589 for 2016. The approval of a temporary easement for an adjoining property was also ratified and there was discussion of funding for equipment purchases.

City Hall Steering Sub-committee (1/8) – The City Hall Steering Sub-committee met on Friday and reviewed and asked questions about the budget status of the project. They also reviewed color and material choices for carpet, counters, and paint in the new City Hall.

UPCOMING SPECIAL EVENTS

Winter Carnival Coronation Ceremony – Central Avenue – Saturday, January 16th – 7:00 to 8:30 p.m.
Whitefish Winter Carnival – Saturday, February 6th

REMINDERS

Please remember to turn in your Ethics Disclosures Forms to City Clerk Necile Lorang as soon as possible and before the end of January.

Monday, January 18, 2016 – City Hall closed for Martin Luther King, Jr. holiday

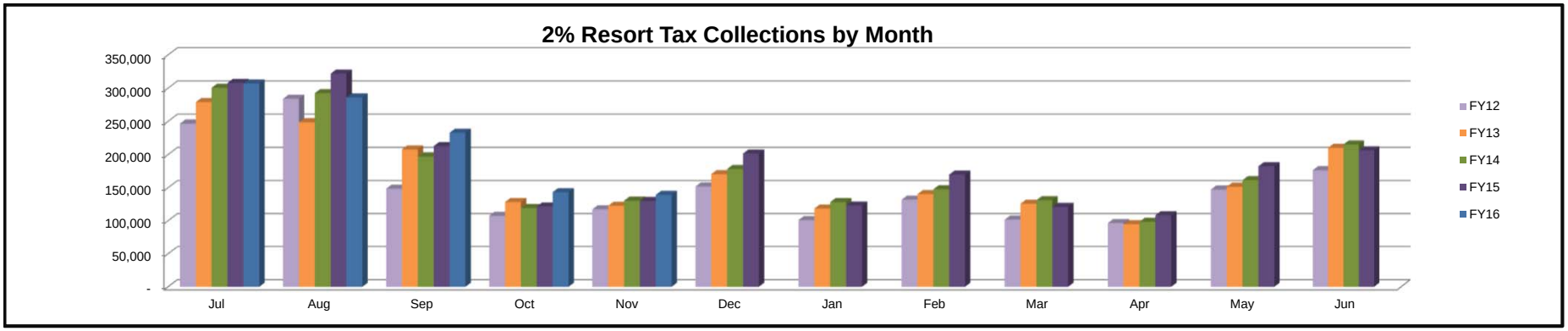
Chuck

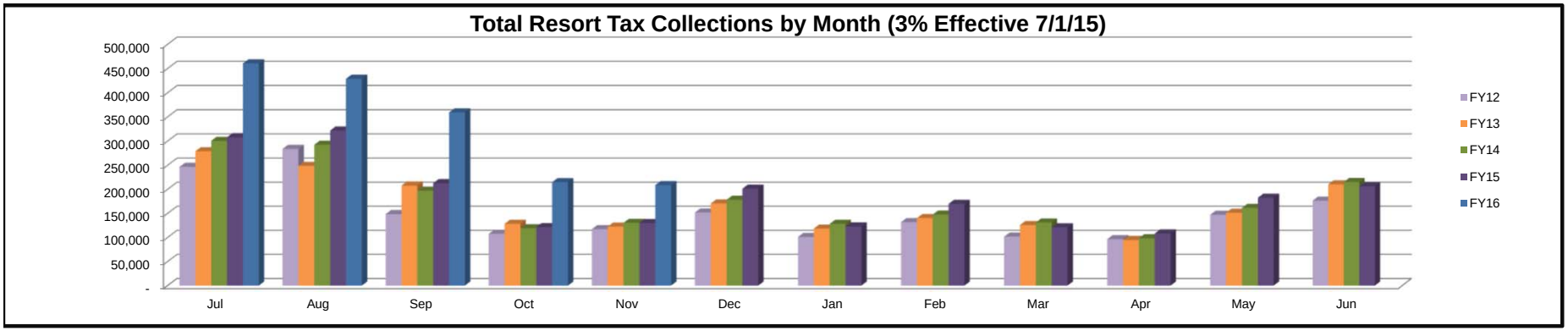
Respectfully submitted,
Chuck Stearns, City Manager

Resort Tax Report
Reported in the Month Businesses Paid Tax

Month/Year	Lodging	Bars & Restaurants	Retail	Collected	% Chng Mnth to Pr Yr Mnth	% Chng Quarter to Pr Yr Quarter	Additional 1% Resort Tax Effective July 1, 2015: Lodging	Bars & Restaurants	Retail	Collected	Total Collected (3% Resort Tax for FY16)	Interest	Total
Jul-13	81,828	98,642	120,028	300,497	7.7%		-	-	-	-	300,497	496	300,993
Aug-13	77,809	108,131	106,422	292,362	17.6%		-	-	-	-	292,362	434	292,796
Sep-13	50,377	77,416	69,328	197,120	-5.1%	7.4%	-	-	-	-	197,120	434	197,554
Oct-13	16,851	48,015	54,271	119,137	-7.1%		-	-	-	-	119,137	434	119,571
Nov-13	6,831	47,701	75,780	130,312	6.3%		-	-	-	-	130,312	2654	132,966
Dec-13	21,782	64,884	91,585	178,251	4.6%	1.5%	-	-	-	-	178,251	404	178,655
Jan-14	16,848	54,481	56,839	128,169	8.2%		-	-	-	-	128,169	404	128,573
Feb-14	22,323	58,758	66,487	147,568	5.3%		-	-	-	-	147,568	404	147,972
Mar-14	15,770	64,178	51,114	131,061	4.2%	5.8%	-	-	-	-	131,061	409	131,470
Apr-14	10,065	41,894	46,458	98,417	4.0%		-	-	-	-	98,417	455	98,872
May-14	18,993	58,791	83,683	161,467	6.6%		-	-	-	-	161,467	455	161,922
Jun-14	44,865	69,190	101,053	215,107	2.4%	4.1%	-	-	-	-	215,107	455	215,562
					YTD Compared to Last Year								
Total FY14	**$ 384,342**	**$ 792,081**	**$ 923,047**	**$ 2,099,470**	or	**5.12%**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 2,099,470**	**$ 7,438**	**$ 2,106,908**
FY13 vs FY14	11.2%	4.5%	3.3%	5.1%	$	102,265	n/a	n/a	n/a	n/a	5.1%	TaxableSalesFY14 $	110,498,402
Jul-14	84,053	104,935	118,876	307,864	2.5%		-	-	-	-	307,864	440	308,304
Aug-14	93,049	117,674	111,016	321,739	10.0%		-	-	-	-	321,739	498	322,236
Sep-14	49,804	84,149	78,813	212,767	7.9%	6.6%	-	-	-	-	212,767	246	213,013
Oct-14	18,589	50,665	52,266	121,519	2.0%		-	-	-	-	121,519	604	122,123
Nov-14	8,530	43,076	78,311	129,917	-0.3%		-	-	-	-	129,917	359	130,276
Dec-14	20,944	74,617	105,885	201,446	13.0%	5.9%	-	-	-	-	201,446	293	201,739
Jan-15	15,285	52,940	54,543	122,768	-4.2%		-	-	-	-	122,768	281	123,049
Feb-15	25,805	74,286	69,705	169,795	15.1%		-	-	-	-	169,795	166	169,961
Mar-15	16,336	51,183	53,368	120,887	-7.8%	1.6%	-	-	-	-	120,887	227	121,114
Apr-15	11,755	50,637	45,835	108,227	10.0%		-	-	-	-	108,227	263	108,490
May-15	23,911	61,756	96,773	182,441	13.0%		-	-	-	-	182,441	288	182,728
Jun-15	39,483	78,394	88,316	206,194	-4.1%	4.6%	-	-	-	-	206,194	301	206,495
					YTD Compared to Last Year								
Total FY15	**$ 407,543**	**$ 844,313**	**$ 953,707**	**$ 2,205,564**	or	**5.05%**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 2,205,564**	**$ 3,966**	**$ 2,209,529**
FY14 vs FY15	6.04%	6.59%	3.32%	5.05%	$	106,094	n/a	n/a	n/a	n/a	5.1%	Taxable Sales FY15 $	116,082,301
Jul-15	78,513	111,068	117,342	306,922	-0.3%		39,256	55,534	58,671	153,461	460,383	377	460,760
Aug-15	69,374	114,956	101,484	285,814	-11.2%		34,687	57,478	50,742	142,907	428,722	375	429,097
Sep-15	75,699	74,806	82,265	232,770	9.4%	-2.0%	37,850	47,403	41,133	126,386	359,156	410	359,566
Oct-15	19,169	63,939	60,111	143,219	17.9%		9,584	31,970	30,056	71,610	214,829	545	215,373
Nov-15	8,611	43,585	86,861	139,057	7.0%		4,306	21,793	43,430	69,529	208,586	527	209,113
Dec-15				-						-	-		-
Jan-16				-						-	-		-
Feb-16				-						-	-		-
Mar-16				-						-	-		-
Apr-16				-						-	-		-
May-16				-						-	-		-
Jun-16				-						-	-		-
					YTD Compared to Last Year								
Total FY16	**$ 251,366**	**$ 408,354**	**$ 448,063**	**$ 1,107,783**	or	**1.28%**	**$ 125,683**	**$ 214,177**	**$ 224,032**	**$ 563,892**	**$ 1,671,675**	**$ 2,233**	**$ 1,673,908**
FY15 vs FY16	-1.05%	1.96%	2.00%	1.28%	$	13,977	n/a	n/a	n/a	n/a	52.8%	Taxable Sales FY16 $	87,982,899
FY16 % of Collections	23%	37%	40%				22%	38%	40%				
Grand Total	**$ 5,013,830**	**$ 10,445,588**	**$ 12,547,878**	**$ 28,007,295**			**$ 125,683**	**$ 214,177**	**$ 224,032**	**$ 563,892**	**$ 28,571,187**	**$ 761,993**	**$ 29,333,730**
% of Total Collections	18%	37%	45%				22%	38%	40%			2.7%	Average since '96

Resort Tax Report
Reported in the Month Businesses Paid Tax





Total Taxable Sales Since 1996
$ 1,503,746,680

Total Collected
$ 30,074,934

5% Admin
$ 1,503,747

Public Portion
$ 28,571,187

MEMORANDUM
#2016-003

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Future City Hall and Parking Structure – Budget status, funding gap and Recommendation for Amendment #4 to contract with Martel Construction

Date: January 13, 2016

Introduction/History

On November 3, 2014, the City Council approved using the Construction Manager At Risk method of bidding for the construction of the future City Hall and Parking Structure.

On January 20, 2015, the City Council approved the selection of Martel Construction as the City's General Contractor/Construction Manager (GC/CM). The motion was:

> *Councilor Hildner made a motion, second by Councilor Sweeney, to select Martel Construction as the city's General Contractor/Construction Manager for the new City Hall & Parking Structure, and to authorize Manager Stearns to enter into negotiations with Martel Construction for a contract to be presented for future City Council Approval. The motion passed unanimously.*

On August 17, 2015 the City Council approved a GC/CM contract with Martel Construction. That contract anticipates a number of amendments along the way, including an amendment for a Guaranteed Maximum Price contract once the construction drawings are completed.

Also on August 17, 2015, the City Council approved Amendment #1 to the Martel GC/CM contract for asbestos abatement, demolition, and Martel's General Conditions of construction. Amendment #2 to the Martel GC/CM contract for excavation and shoring was approved on November 2, 2015.

On December 7, 2015, the City Council approved Amendment #3 to the Martel GC/CM contract in the amount of $10,294,553.76 for most of the construction costs for project.

Current Report

Attached to this report are the most current spreadsheets for the project. The budget summary shows the funding gap, if the City Council approves using the lease revenue to defray costs at $850,623 with the total project cost at $15,965,29, an increase of $1,012,622 from the $14,952,637 budget approved by the City Council on June 15, 2015. There is still $150,000.00 of contingency funds in this budget and Martel Construction is going to re-bid a portion of the concrete contract to see if costs can be lowered.

These costs are up somewhat from the spreadsheet which the City Council saw on January 4th, mostly because that spreadsheet had impact fees for the project at an estimate of $2,000.00, but the actual impact fees for the building permit totaled $83,744. Please note, this is money which the City pays, but it all comes back to the City and some of it is even for the City Hall impact fee. There is a breakdown of the impact fees attached in the packet with this report.

We would like the City Council to consider the various options in both of my memos in the packet (dated November 30th and December 29th) and accept those changes (other than keeping the SW elevator which the City Council did on December 7th) and give us direction on how to fund the budget gap. Once that is done, we can approve an Amendment #4 and a Guaranteed Maximum Price.

In addition to those costs, Martel Construction is entitled to indirect costs for insurance and the 1% Gross Receipts Tax in addition to their 4.5% construction fee which was part of their proposal submitted in response to our RFP, and contingency (which will not be spent or paid unless needed). Our architect Ben Tintinger and has reviewed this amendment and found that it is proper. With Martel's contractual add-on costs, that would bring Amendment #4 to a total of $1,034,823.24 and the total construction contract to date to $13,611,290.

Financial Requirement

The City Hall and Parking Structure Construction Fund will pay these costs. Most of that fund comes from Tax Increment Funds either set aside historically or from the upcoming TIF revenue bond which First Interstate Bank and Glacier Bank have agreed to underwrite. SID #167 for the Parking Structure will also provide $750,000 towards the cost of the Parking Structure. The sources and uses of the entire financing package are elsewhere in this packet with the Tax Increment project Ordinance. If the City Council funds the budget gap with annual Tax Increment revenues for this year and next year, we will need direction on whether to delay most of the Depot Park Master Plan Phase II project (probably can still do the gazebo) or what other costs to cut in the TIF budget.

Recommendation

Staff respectfully recommends the City Council set a new total construction budget for the City Hall/Parking Structure project, give us direction on how to fund the budget gap, and approve Amendment #4 for $1,034,823.24 to the construction contract with Martel Construction as the General Contractor/Construction Manager for the future City Hall/Parking Structure project with a Guaranteed Maximum Price of $13,611,290.00 and authorize the City Manager to sign the Amendment.

Chuck Stearns

From: Craig Workman <cworkman@cityofwhitefish.org>
Sent: Friday, January 08, 2016 5:12 PM
To: Chuck Stearns
Subject: City Hall & Parking Structure Impact Fees
Attachments: City Hall & Parking Structure Impact Fees.pdf

Chuck,

Here are the impact fee calculations for the Parking Structure & City Hall. Summary as follows:

	City Hall	Parking Structure
	Public Works	
Water	$6,083	$1,615
Sewer	$5,616	$1,654
Stormwater	$921	$2,329
Water Meter	$714	$325
Inspection	$20	$20
Credit (for existing)	-$12,555	-$3,138
SubTotal	**$798**	**$2,805**
	Buildings	
ESC	$7,800	$30,949
City Hall Fee	$7,389	$29,320
SubTotal	**$15,189**	**$60,269**
	Admin.	
5% Water Admin	$304	$81
5% Sewer Admin	$281	$83
5% Other Admin	$806	$3,130
SubTotal	**$1,390**	**$3,293**
Total	**$17,378**	**$66,367**

Grand Total = $83,744

Craig C. Workman, P.E.
Director of Public Works
City of Whitefish
P.O. Box 158
1005 Baker Avenue

Whitefish City Hall Building & Parking Garage

Whitefish, MT

Jan. 13, 2016

Project Budget Summary

Administrative/Owner Costs	**$**	**835,556**
Professional Fees	**$**	**1,518,413**
Construction Cost	**$**	**13,611,290**
TOTAL PROJECT COST	**$**	**15,965,259**
CURRENT FUNDS AVAILABLE	**$**	**14,952,636**
COST GAP	**$**	**(1,012,623)**
FURNITURE ALLOWANCE	**???**	
CAPITALIZATION OF LEASE SPACE	**$**	**162,000**
TOTAL GAP	**$**	**(850,623)**

CITY HALL AND PARKING STRUCTURE
ANCILLARY COSTS BUDGET AND EXPENDITURES

Prepared: Jan. 13, 2016

Item	Budget or Contract	Spent To Date - 12/15/15	Remaining Estimate Expenditures	Balance
Design Competition Stipends	$20,000.00	$20,000.00	$0.00	$0.00
Owner's Representative Contract	$332,130.00	$53,730.65	$162,388.00	$116,011.35
Seattle Trip Costs		$2,088.50	$0.00	$0.00
City Hall Lot Line Vacation, CUP, & ARC Costs		$6,475.60	$0.00	$0.00
Interim City Hall - Lease	$187,000.00	$51,000.00	$136,000.00	$0.00
Moving Costs		$5,576.58	$7,000.00	
Interim City Hall - Equipment and Misc costs	1	$76,545.71	?	?
Asbestos Investigations (not remediation)		$18,788.31	$0.00	$0.00
Newsletter		$7,022.50		$0.00
City Hall Audio Visual System	?		$80,000.00	
City Hall and Parking Structure Security System (cameras and door entries)	?		$80,000.00	
Parking Structure Parking Systems (lease spots and retail spot counter)	?		$40,000.00	
Parking Structure Bobcat snow plow and sweeper	$80,000?		$80,000.00	
Foundation Vibration Monitoring	?		$8,940.00	
Totals		$241,227.85	$594,328.00	$116,011.35

Spent to date plus remaining **$835,555.85**

1. Legal ads, display ads, telephones, audio-visual, moving in supplies, interim City Hall modifications, etc. Some of this equipment (Audio-visual and telephones) will go ov

BASIC SERVICES		AMOUNT
Phase 1 - Programming/Concept Design		**$65,700.00**
Phase 2 - Schematic Design (SD)		**$153,695.76**
Phase 2 - Design Development (DD)		**$164,674.01**
Phase 3 - Construction Documents (CD)		**$456,850.00**
Phase 4 - Bidding (BID)		**$54,825.00**
Phase 5 - Construction Administration (CA)		**$219,300.00**
Basic Services Total =		**$1,115,044.77**

ADDITIONAL SERVICES (Estimated amounts)		AMOUNT
Site Survey (estimated amount)	**Not to exceed**	**$7,500.00**
Geotech Investigation	**Not to exceed**	**$120,000.00**
Civil Engineering		**$42,000.00**
Revisions to the Design after Jan. 20 Council Mtg.	**Hourly**	**$14,907.50**
Fire Protection Design	Performance Spec included in Basic Services	
Traffic Plan for Construction Period		**$5,100.00**
Interior Furnishings Selection/Procurement		TBD
Record Drawings		TBD
Warranty Inspection		included in basic services
Hazardous Material Investigation		Completed by City of Whitefish
Building Commissioning		**$28,861.00**
Construction Testing	**Estimated**	**$85,000.00**
Additional Services Total =		**$303,368.50**

SUPPLEMENTAL SERVICES/REIMBURSABLES	Estimated	
Kimley Horn Travel Labor Cost per Trip	$5,000	**$40,000.00**
Direct Project Expenses (printing, travel cost, etc.)		**$60,000.00**
Owner Initiated Change Orders		6% of Actual Construction Cost
Supplemental Services/Reimbursables Total =		**$100,000.00**

TOTAL PROFESSIONAL COSTS	**$1,518,413.27**

Project: **Whitefish City Hall & Parking Garage**
Jan. 13, 2016 Overall Budget Update

MARTEL CONSTRUCTION

		over/under 8/6/15 est.	City Hall	Parking Garage	Base Bid	Alt #1 - Skylights (Deduct)	Alt #2 - Finish of Basement (Deduct)	Alternate #3 - Canopies (Deduct)	Alternate #4 - Cornice Detail (Deduct)	Alternate #5 - Oversized Brick Veneer (Deduct)	Alternate #7 - South West Elevator (Deduct)	Alternate #8 - Upper Floor Window Frames (Deduct)	Wood Board & Batten Paneling	Wood Species from Fir to Birch	Casework Storage Cubbies & Countertops	Wall Tile	Parking Garage - Painting of Ceiling	Parking Garage - Painting of East Wall, Columns, and Beams	Vendor
Division 1	***General Requirements***																		
	General Requirements - per RFP no bond		278,696	278,696	$ 557,391.00	inc	inc.	inc	inc.	inc	inc.	inc							Martel
	General Requirements - Project Specific	35,653	17,827	17,827	$ 35,653.00														Martel
	Final Cleaning		11,878		$ 11,878.00														
Division 2	***Site Work***	**205,959**																	
	Rammed Aggregate Piers		100,980	205,020	$ 306,000.00														GeoTech
	Pier Load Test		6,600	13,400	$ 20,000.00														
	Hazardous Abatement		23,064	46,826	$ 69,890.00														ACM
	Building Demolition		72,485	147,166	$ 219,650.00														Elder Demolition
	Excavation & Utilities		212,190	430,810	$ 643,000.00														Watson
	Shoring		40,095	81,405	$ 121,500.00														Tamietti
	Well Decommission		1,485	3,015	$ 4,500.00														
Division 31-33	***Earth & Sitework***																		
	Landscaping		*6,600*	13,400	$ 20,000.00														ALLOWANCE
	Bid Package 5.32A - Asphalt Paving		*3,548*	7,203	$ 10,750.00														ALLOWANCE
	Bid Package 5.32B - Site Concrete		*29,966*	60,841	$ 90,807.00	**Rebid**													Sandon
	Traffic Devices		-	-															ALLOWANCE
	Pavement striping and Symbols			9,365	$ 9,365.00														
Division 3	***Concrete***	930,973																	
	Bid Package 5.3A - Structural Concrete		490,900	3,729,500	$ 4,220,400.00	**Rebid Labor**		$ (13,950.00)											Martel
Division 4	***Masonry***																		
	Bid Package 5.4 - Masonry	149,200	383,037	583,931	$ 966,968.00					$ (6,709.00)									Stearns
Division 5	***Metals***																		
	Bid Package 5.5A - Structural Steel Supply	(95,346)	430,838	195,245	$ 626,082.84			$ (96,150.99)											American Welding & Stl
	Bid Package 5.5B - Structural Steel Erection/Install		235,000	225,000	$ 460,000.00			$ (33,000.00)	$ (18,000.00)	d									Dawson Enterprises
Division 6	***Woods, Plastics, and Composites***																		
	Bid Package 5.6A - Rough Carpentry	8,237	**45,115**	**17,521**	$ 62,636.00	$ (200.00)	$ (200.00)												Martel
	Bid Package 7.6A - Finish Carpentry		**262,075**		$ 262,075.00								$ (30,100.00)	$ (29,700.00)					ALLOWANCE
	Bid Package 7.6B - Architectural Wood Casework		**135,809**		$ 135,809.00		$ (1,330.00)								$ (29,259.00)				
	Bid Package 7.6B - *** Countertops		**15,000**		$ 15,000.00														
Division 7	***Thermal & Moisture Protection***																		
	Bid Package 5.7A - Thermal Insulation	(85,064)	**23,800**	4,200	$ 28,000.00														Lilienthal
	Bid Package 5.7B - Membrane Roofing		85,600	28,900	$ 114,500.00			$ (28,900.00)											Advanced
	Bid Package 5.7C - Metal Roofing, Wall Panels & Soffit		40,000	10,993	$ 50,992.88														ALLOWANCE
	Bid Package 5.7D - Joint Sealants				* Included in 3A														Martel
Division 8	***Openings***	(187,412)																	
	Bid Package 5.8A - Supply Doors, Frames, HW		71,884	23,832	$ 95,715.68														Arch Doors & HW
	Bid Package 5.8B - Install Doors, Frames, HW		25,300	14,230	$ 39,530.00		$ (1,010.00)												Martel
	Bid Package 5.8C - Access Panels		3,140		$ 3,140.00														Martel
	Bid Package 5.8D - Aluminum Storefront Windows & Doors		197,543	78,428	$ 275,971.00	$ (31,340.00)						$ (4,662.00)							Valley Glass
	coiling doors		10,000		$ 16,000.00														Allowance
Division 9	***Finishes***																		
	Bid Package 5.9A - Cold Formed Metal Framing	(730,959)	230,867	37,760	$ 268,627.00	$ (2,883.00)	$ (3,595.00)												RDJ Brothers
	Bid Package 5.9B - Gypsum Board Assemblies		126,784	8,461	$ 135,245.00	$ (1,024.00)	$ (4,037.00)												RDJ Brothers
	Bid Package 7.9A - Tiling		$ 39,736.00		$ 39,736.00											$ (11,366.00)			Martel/ NW Cabinetry
	Bid Package 7.9B - Flooring		$ 83,744.00		$ 83,744.00		$ (1,770.00)												
	Bid Package 7.9B *** - Wood Flooring		$ 10,500.00		$ 10,500.00														
	Bid Package 7.9C - Acoustical Ceilings		$ 54,376.00		$ 54,376.00														
	Bid Package 7.9D - FRP		$ 1,460.00		$ 1,460.00														
	Bid Package 7.9E - Painting & Coatings		186,515	98,285	$ 284,800.00		$ (2,650.00)	$ (12,815.00)	$ (4,680.00)				$ (6,845.00)				$ (32,480.00)	$ (3,940.00)	
Division 10	***Specialties***																		
	Bid Package 7.10A - Supply	(50,856)	20,000	6,566	$ 26,566.03														
	Bid Package 7.10B - Install		10,000	2,300	$ 12,300.00														
	Flagpole - S/I Allowance		2,000		$ 2,000.00														
	signage allowance		35,000	15,000	$ 50,000.00														
	Compact Legal Storage		35,000		$ 35,000.00														
Division 11	***Division 11***	(13,733)																	
	Bid Package 11A - Appliances		6,336		$ 6,336.00														
	Bid Package 11B - Projection Screens		6,573		$ 6,573.08														
Division 12	***Division 12***																		
	Bid Package 7.12A - Window Shades		9,013		$ 9,013.00														
	Bid Package 7.12B - Site Furnishings		12,000	$ 11,900.00	$ 23,900.00														
Division 14	***Conveying Systems***																		
	Bid Package 5.14 - Hydraulic Elevators	6,395	112,000	188,000	$ 300,000.00						$ (101,000.00)								Schindler
Division 21	***Fire Surpression***																		

Project: **Whitefish City Hall & Parking Garage**
Jan. 13, 2016 Overall Budget Update

	Bid Package 5.21 - Fire Sprinkler System		89,017	18,320	$ 107,337.00														IT&M
Division 22-23	***Mechanical***	(6,713)																	
	Bid Package 5.22 - Plumbing		192,282	118,809	$ 311,091.00		$ (10,935.00)				$ (500.00)								Diamond Plumbing
	Bid Package 5.23 - HVAC		915,350	28,726	$ 944,076.00		$ (3,441.00)				$ (6,513.00)								Diamond Plumbing
Division 26-28	***Electrical***	103,700																	
	Bid Package 5.26 - Electrical		558,650	290,050	$ 848,700.00		$ (3,310.00)	$ (29,340.00)											Monster Electric

VE Items	***VE Items***				
	Concrete Form Work		(137,015)	$ (137,015.00)	
	Storefront Color Change to Standard Color	(7,049)		$ (7,049.00)	
	Eliminate break metal that devides exterior windows into small units	(6,084)		$ (6,084.00)	
	Center Glazed Framing instead of Front Set	(6,677)		$ (6,677.00)	
	P-lam Panels in Lieu of Andematt Panels at Elevator	(24,000)		**$ (24,000.00)**	RFP #6/
	Provide SCO2 Luminous ceiling in lieu of SS	(850)	(1,700)	**$ (2,550.00)**	CMR #8
	Provide side opening for CH and PG in lieu of Center Opening	(1,000)	(2,000)	**$ (3,000.00)**	
	Change Cast-Iron Storm Above Grade to PVC @ Parking		(2,083)	$ (2,083.00)	
	Change Cast-Iron Sanitary Above Grade to PVC @ Parking		(1,950)	$ (1,950.00)	
	Change EWC-1 to Elkay LZSTL8	(4,040)		$ (4,040.00)	
	Change SH-1 to Aquatic Delta Package	(1,200)		$ (1,200.00)	
	Modify Sand-oil seperator from polypropylene to precast concrete		(2,000)	$ (2,000.00)	
	Use Electro Temperature Controls vs specified ATS Controls	(86,155)		**$ (86,155.00)**	
	Change Blue Duct to PVC Coated Spiral @ Underground	(3,529)		$ (3,529.00)	
	FC-1 - Remove Humidifier and reverse osmosis system	(1,500)		$ (1,500.00)	
	Aluminum Feeders instead of Copper (elevator & mech equip not included)	(5,000)		$ (5,000.00)	
	Upsize Panel MDPG and Eliminate Panel GH1 and feeders	(2,500)		$ (2,500.00)	
	Reuse existing sewer linesat alley and combine public restroom and retail sewer		(10,000)	$ (10,000.00)	
	Fire Sprinkler - Utilize 100% import of materials	(3,235)		$ (3,235.00)	
	Doors, Frames, & Hardware - Complete Bid including perf metal	(9,922)		$ (9,922.00)	
	Revised Steel Price - Complete Scope	6,166		$ 6,166.00	
City of Whitefish Building Fees					
	Building Permit Fee	38,956	45,326	$ 84,281.47	
	Impact Fees	17,551	67,031	$ 84,581.44	
		5,897,588	**7,006,537**		

**********DO NOT ADD ROWS BELOW THIS LINE **********

Bid Package Totals	$ 12,910,124.42	$ (35,447.00)	$ (32,278.00)	$ (214,155.99)	$ (22,680.00)	$ (6,709.00)	$ (108,013.00)	$ (4,662.00)	$ (36,945.00)	$ (29,700.00)	$ (29,259.00)	$ (11,366.00)	$ (32,480.00)	$ (3,940.00)			
General Liability Insurance	$ 109,736.06	$ (301.30)	$ (274.36)	$ (1,820.33)	$ (192.78)	$ (57.03)	$ (918.11)	$ (39.63)	$ (314.03)	$ (252.45)	$ (248.70)	$ (96.61)	$ (276.08)	$ (33.49)	0.0085		
Builder's Risk Insurance	$ 26,039.72	$ (71.50)	$ (65.10)	$ (431.95)	$ (45.75)	$ (13.53)	$ (217.86)	$ (9.40)	$ (74.52)	$ (59.90)	$ (59.02)	$ (22.93)	$ (65.51)	$ (7.95)	0.002		
Performance & Payment Bond	inc in GC	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP			
Fee	$ 587,065.51	$ (1,611.89)	$ (1,467.79)	$ (9,738.37)	$ (1,031.33)	$ (305.08)	$ (4,911.70)	$ (212.00)	$ (1,680.01)	$ (1,350.56)	$ (1,330.50)	$ (516.85)	$ (1,476.97)	$ (179.16)	Fee %	4.5%	
Gross Receipts Tax - For Indirects	$ 7,228.41	$ (19.85)	$ (18.07)	$ (119.91)	$ (12.70)	$ (3.76)	$ (60.48)	$ (2.61)	$ (20.69)	$ (16.63)	$ (16.38)	$ (6.36)	$ (18.19)	$ (2.21)	GRT %	1.0%	
Preconstruction Services	$ 18,000.00																
Contingency	$ 150,000.00	$ (1,871.58)	$ (1,704.26)	$ (11,307.33)	$ (1,197.49)	$ (354.23)	$ (5,703.03)	$ (246.15)	$ (1,950.68)	$ (1,568.15)	$ (1,544.86)	$ (600.12)	$ (1,714.93)	$ (208.03)	Contingency %	5.0%	
Subtotal of Indirect Costs	$ 898,069.70	$ (1,984.69)	$ (1,807.25)	$ (11,990.65)	$ (1,269.86)	$ (375.64)	$ (6,047.68)	$ (261.03)	$ (2,068.56)	$ (1,662.91)	$ (1,638.22)	$ (636.39)	$ (1,818.56)	$ (220.60)			
Grand Total	$ 13,808,194.12	$ (37,431.69)	$ (34,085.25)	$ (226,146.64)	$ (23,949.86)	$ (7,084.64)	$ (114,060.68)	$ (4,923.03)	$ (39,013.56)	$ (31,362.91)	$ (30,897.22)	$ (12,002.39)	$ (34,298.56)	$ (4,160.60)			
Total Accepted Alt.	(196,905)	(19,000)		(35,121)													
				53000 goal													
				RFP #2/													
Construction Amount	**13,611,290**			COR #7													

November 30th memo and update

MEMORANDUM

#2015-040

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Consideration of changes to the budget level for the City Hall/Parking Structure project

Date: November 30, 2015

Introduction/History

On June 15, 2015, the City Council unanimously approved the following motion establishing a budget of $14,952,637 for the new City Hall/Parking Structure project.

> **Councilor Feury made a motion, second by Councilor Fitzgerald, to agree with the Building Committee's recommendation for the new City Hall/Parking Structure project construction cost of $13,335,599 and contingency costs of $617,038; also including $1M for other costs including an interim city hall relocation, for a total of $14,952,637.**

A breakdown of the allocation of the costs of the $14,952,637 project between the City Hall and Parking Structure project is attached to this report.

Current Report

Despite efforts by the City Hall Steering Committee sub-committee to reduce construction costs with value engineering options and project cutbacks, the sub-committee wants to recommend the City Council consider increasing the $14,952,637 budget.

One method to consider is to capitalize three years of the projected lease revenue payments from the approximately 3,000 square foot retail space by borrowing $162,000 from the Tax Increment Fund (TIF) and repaying that amount over three years from the lease revenues to the Tax Increment Fund. Our Realtor Chap Godsey believes that we can rent the approximate 3,000 square foot retail space at the NW corner of the parking structure for $18.00 per square foot per year ($1.50 per square foot per month) which would result in $162,000 of revenue over three

years. The sub-committee would like to borrow that amount from the TIF and repay it over the three years leading up to the end of the TIF on June 30, 2020.

Also, the sub-committee has recommended some reductions to the City Hall/Project costs that are significant changes to the design which the City Council approved on June 15, 2015. As the final decision on design and budget rests with the City Council, it is important for the City Council to consider each of these proposed design changes and cost savings and either ratify/adopt those changes or agree to increase the budget to accommodate those design issues. Those changes are shown below along with the vote tally of the sub-committee at their last meeting on November 19, 2015.

1. Cut finishing the basement storage area and locker/bathrooms -	$ 28,013	(5-2 vote)
2. Cut skylight in City Council Chambers -	$ 19,000	(5-2)
3. Cut some canopies on Baker Avenue – from retail space to City Hall	$ 53,000	(5-2)
4. Cut detail design on roof cornice	$ 32,030	(7-0)
5. Cut oversize brick on east side of building (alley side) and replace with painted block	$ 7,085	(7-0)
6. Cut SW Elevator (leave shaft for future elevator)	$ 90,000	(5-2)
Sub-total	$229,128	

A copy of the draft minutes from the November 19, 2015 sub-committee meeting is attached to this report for more information on the changes recommended above.

Also attached is a value engineering spreadsheet from our architect Ben Tintinger of Mosaic Architecture and Martel Construction, Inc., our General Contractor/Construction Manager. That sheet shows value engineering savings from doing things differently without affecting greatly the quality of the project would result in another $181,194 of savings ($174,203 plus $6,991). In addition, there are still some other value engineering items in the list which Ben Tintinger and Mosaic Construction are researching and verifying.

Also, within the $1,000,000 of ancillary costs that we have budgeted for the City Hall/Parking Structure for the Owner's Representative, interim City Hall lease costs, moving costs, audio-visual system costs, building security costs, and parking system equipment costs, there is probably at least $200,000 that will not be used from that budget and can be allocated to the design costs.

Thus, to summarize the current situation, the City Council needs to consider the following items:

1. Adding $162,000 to the budget for City Hall/Parking Structure by capitalizing three years of lease payments from the retail space and borrowing that money from the TIF.
2. Cutting $229,128 as shown above from the project.
3. Approving the value engineering changes of $181,194
4. Allocate $200,000 left over from the ancillary costs budget to the building design

As these three figures equal $772,322, there is still $227,687 of costs either to reduce from the project or add to the cost of the project. This difference can come from additional value engineering savings, other design cost reductions, an increase of the budget and increase contribution from TIF, a use of the 5% contingency, or private fundraising. The City Council should give us further direction on these options.

I am attaching a copy of the current TIF pro-forma schedule of revenues and expenditures between now and the end of the TIF in 2020 to help the City Council consider the options. While there are additional funds available in the TIF, the Mayor and City Council members of the sub-committee have generally recommended that no more money come from TIF and that we either cut additional costs (or maybe do private fundraising).

It is fair to say that the cost increases in the City Hall/Parking Structure project over the past months are caused by the Parking Structure portion of the project and the City Hall portion of the project is still in line with historic cost projections. The exterior of the Parking Structure, a third elevator, and increasing construction costs for steel, concrete, and labor seem to be driving the cost increases.

Financial Requirements

Most of the financial issues are discussed above. If the City Council chooses to add money to the budget, those funds would most likely come from the Tax Increment Fund. There are some members of the community who feel that we should revise the Resort Tax list of priority projects and pay for the sidewalk and streetscape costs of the project from the Resort Tax, but that concept has not had support of the elected officials on the sub-committee nor City staff.

All costs of the City Hall/Parking Structure are paid from the accumulated savings of TIF, current year TIF appropriation, a future Tax Increment Bond, and $750,000 from the approved $880,000 Special Improvement District #167.

Recommendation

Staff respectfully recommends the City Council review the above information and decide on increases to the budget of the City Hall/Parking Structure project and/or cost reductions and set a revised budget for the project.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
1																						
2								Allocation of Costs - City Hall and Parking Structure														
3								Date:		10/26/2015												
4																						
5																						
6																						
7			Cost estimate on			Allocation		Allocation		Allocation		Allocation of		Revised		Allocation		June 15, 2015		Allocation		Allocation
8			6/15/15 from			of Site Prep		of Development		of Direct Cost		other Cost		Provisional		of		Allocated		of Interim/		of all
9			Mosaic and Martel	%		Costs		Costs/Fees		Reductions		Reductions		Cost Estimate		Contingency		Construction Cost		Ancillary Costs		costs
10	City Hall		$5,417,702	42.89%		$299,276		$620,346		-$190,000		-$218,783		$5,928,542		$264,659		$6,193,201		$428,919		$6,622,120
11	Parking Structure		$7,213,364	57.11%		$398,470		$825,956		-$739,436		-$291,297		$7,407,056		$352,379		$7,759,435		$571,081		$8,330,516
12																						
13	Total		$12,631,066	100.00%		$697,746		$1,446,302		-$929,436		-$510,080		$13,335,598		$617,038		$13,952,636		$1,000,000		$14,952,636
14										Not done		Done								This figure will likely		
15										proportionately		Proportionaely								decrease.		
16																						

WHITEFISH FUTURE CITY HALL STEERING
SUB-COMMITTEE
NOVEMBER 19, 2015

CALL TO ORDER
Sherri called the meeting to order. Members present were Ian Collins, Wendy Compton-Ring, Jen Frandsen, Richard Hildner, Rhonda Fitzgerald and City Manager Chuck Stearns. Steve Conway, Ryan Dunn and Larry Palmer from Martel Construction, Mike Cronquest , Owners Representative and Ben Tintinger from Mosaic Architecture. In the audience were John Repke and Heidi from the Pilot.

REVIEW OF MINUTES FROM NOVEMBER 2, 2015
Chuck made a motion, seconded by Ian, to approve the November 2, 2015 minutes as submitted. The motion passed unanimously.

PUBLIC COMMENT
John Repke said he has been coming to the meetings and is interested on how things progress.

DISCUSSION
Review Interiors-Mosaic Architecture: Ben said he would like to go over the alternates to make recommendations to the Council for the final decision. Ben gave an update on the project saying that the demo is done the shoring is underway and they will start drilling for the pilings on December 1, 2015. Ben said that the mechanical, plumbing and electrical under slab are on budget and will be going to the December 7th Council meeting along with concrete and structural steel.

Ben said that he understood that the committee would like to keep the skylights over the stairway but to eliminate the ones in the Council Chambers.

Rhonda made a motion, seconded by Ian, to recommend deleting the Council Chambers skylights with a savings of approximately $19,000 and to keep the staircase skylights. The motion passed with a 6 to 1 voting with Sherri voting in opposition.

Chuck said John Muhlfeld said he wanted to eliminate some of the canopies on Baker Avenue, remove the southwest elevator but leave the shaft.

Richard made a motion, seconded by Rhonda, to eliminate the basement finish. The motion passed with a 5 to 2 vote with Chuck and Sherri voting in opposition.

The committee talked about how much of the canopies they were willing to cut and what the cost saving would be. Jen said that John had said he wanted to keep the canopies at the entrances.

Richard made a motion, seconded by Jen, to eliminate the canopies along Baker Avenue between the southwest entrance to the retail space which is about 150 square feet, with the ability to install at a later date, which results in a saving of approximately $53,000.

Rhonda and Ian were concerned that it would make the parking garage ugly if the canopies were removed.
The motion passed with a vote of 5 to 2 with Rhonda and Ian voting in opposition.

DRAFT

Ian said that the cornice detail could be added at later date.

Rhonda made a motion, seconded by Ian, to delete the cornice detail with a saving of $32,030. The motion passed unanimously.

Richard made a motion, seconded by Jen, to change to blocks in lieu of brick veneer on the east wall on the alley side of City Hall with a savings of $7,085. Rhonda made an amendment to the motion to have the block painted to match/same color as the brick exterior. The motion passed unanimously.

Chuck made a motion, seconded by Ian, to keep the public restrooms. The motion passed unanimously.

The committee talked about removing the southwest elevator and keeping the northeast one as it would be closer to the downtown area. Ben said they would make the inside elevator bigger so a medical cot could fit into the elevator for emergencies. In making the inside elevator bigger they will have to take some office space.

Wendy made a motion, seconded by Sherri, to eliminate the southwest elevator but keep the shaft with a savings of $90,000. The motion passed with a 5 to 2 vote with Jen and Rhonda voting in opposition.

Chuck made a motion, seconded by Jen, not to cut the upper levels window frames in the parking garage. The motion passed unanimously.

Ben went over some deductions (savings) in VE items:

Concrete forming (mix, rebar changes):	$65,000 to $95,000
Elevator finishing	$24,868
Electrical items (wiring, panels, inverter, etc.)	$72,500
Kawneer window changes (color, profile)	$24,500
Masonry changes (coping, precast base, etc.)	$18,400
Controls subcontractor (Honeywell controls)	$80,000
Mechanical/plumbing changes (return air, drinking)	$114,700

The list also included utility line changes, drain line changes (PVC vs. Iron), interior door wood species and lighting approvals (for equals) which Ben did not have cost savings on as of this meeting.

Ian thought that having the window on the inside green like the outside would be too much so if they could make them bronze color instead, which might make it a little less cost. Ben said they have talked about having wood around the doors into the conference rooms and the entryway on the first floor which would be cheaper. They will keep the doors the same on the second floor aluminum.

Rhonda made a motion, seconded by Ian, to keep the masonry as is now. Keeping the coping, precast base, etc. without the savings of $18,400. The motion passed with a 5 to 2 vote with Richard and Jen voting in opposition.

NEXT MEETING
The next meeting was scheduled for December 11, 2015 at 9:30 a.m.

DRAFT

Rhonda made a motion, seconded by Wendy, to adjourn the meeting. The motion passed unanimously.
Meeting adjourned at 5:00 p.m.

DRAFT

City of Whitefish

Key
= More Discussion Required
= Modify Specification to Accept VE
=Keep as Originally Specified

MARTEL CONSTRUCTION INC.

POST BID ANALYSIS

Whitefish City Hall and Parking Structure

Item	Description		VE Potential	VE Actual	ASI # Issued	Remarks
Value Engineering						
	Concrete Mix Design	Concrete	$ 25,000			
	Concrete Form Work	Concrete	$ 50,000	$ 50,000		
	Concrete Rebar	Concrete	$ 20,000			
	P-lam Panels in Lieu of Andematt Panels at Elevator	Elevator	$ 24,000	$ 16,001		
	Baked Enamel Finish at Elevator doors vs. SS.	Elevator	$ 4,000			
	Provide SCO2 Luminous ceiling in lieu of SS	Elevator	$ 2,550	$ 1,700		
	Delete Battery Lowering System	Elevator	$ 3,750			
	Provide side opening for CH and PG in lieu of Center Opening	Elevator	$ 3,000	$ 2,000		
	Egress Lighting System - Removal of Inverters - use of Bug Eyes	Electrical	$ 40,000			
	Lighting Package	Electrical	$ 25,000			
	Aluminum Feeders instead of Copper (elevator & mech equip not included)	Electrical	$ 5,000	$ 5,000		
	Upsize Panel MDPG and Eliminate Panel GH1 and feeders	Electrical	$ 2,500	$ 2,500		
	Storefront Color Change to Standard Color	Storefront	$ 7,049	$ 8,000		
	Eliminate Pyrostop Fire Rated Glazing	Storefront	$ 5,116			
	Eliminate Firelite Rated Glazing	Storefront	$ 538			Allowance of $500 for new doors added
	Eliminate break metal that devides exterior windows into small units	Storefront	$ 6,084	$ 6,000		Assumes VE Color Change (VE #13)
	Center Glazed Framing instead of Front Set	Storefront	$ 6,677	$ 6,700		
	Reduced 1st Floor interior storefront	Storefront				PR #1
	Review species of interior doors	Doors/HW	No change			
	Elevator Shaft - Change of Glazing Material	Storefront				
	Change from Precast Concrete Masonry Back-up to Site Cast Panels	Masonry/Concrete	N/A			More Expensive as sitecast
	Change from Precast parapet coping to metal parapet cap	Masonry/Roofing	$ 5,400			(12,000) precast + 4,000 for cap +2600 for PT
	Change PreCast on Baker to Ground Faced CMU	Masonry	$ 13,000			Estimated
	Use Existing Sewer Line for Parking Structure Restroom - 2 locations	Civil	$ 12,000			Lines too old per city
	Use Exising 8" storm connection for City Hall Roof Drains	Civil	$ 3,000			Lines too old per city
	Delete Surface Drain Man Hole & Storm Drain Tie-in @ North End of Alley	Civil	$ 4,000			Review Grading with or without
	Change Cast-Iron Storm Above Grade to PVC @ City Hall	Plumbing	$ 7,404			
	Change Cast-Iron Storm Above Grade to PVC @ Parking	Plumbing	$ 2,083	$ 2,083		
	Change Cast-Iron Sanitary Above Grade to PVC @ Parking	Plumbing	$ 1,950	$ 1,950		
	Change EWC-1 to Elkay LZSTL8	Plumbing	$ 4,040	$ 4,040		
	Change SH-1 to Aquatic Delta Package	Plumbing	$ 1,200	$ 1,200		
	Change UR-1 to Sloan Royal Manual Flush Valve	Plumbing	$ 601			
	Change WC-1&2 to Sloan Manual Dual Flush Valve	Plumbing	$ 1,495			
	Use FICO Temperature Controls vs specified ATS Controls	HVAC	$ 80,000	$ 60,000		
	Eliminate PH-1 and add ductwork with sidewall louver	HVAC	$ 1,350			
	Change Blue Duct to PVC Coated Spiral @ Underground	HVAC	$ 3,529	$ 3,529		
	Reduce Return Ducting - Add z-pattern transfer ducts. Create Plenum space	Numerous				
	Condensing Unit CU-3 to as many stages as possible	HVAC				
	FC-1 - Remove Humidifier and reverse osmosis system	HVAC	$ 1,500	$ 1,500		
	Remove VAV-OC complete and add 2 electric King heaters	HVAC / Electric	$ 2,000			
	Remove all in-floor radiant heat	HVAC	$ 3,100			
	Remove the interior airflow measuring stations - retain exterior systems	HVAC	.			
	Modify all domestic piping to pex and aquatherm	Plumbing	$ 2,000			requires insulation change
	Modify toilets to "tank" style - including piping size reduction	Plumbing	$ 500			piping and labor
	Modify Sand-oil seperator from polypropylene to precast concrete	Plumbing	$ 2,000	$ 2,000		
	Combine Retail Space & Parking Structure Restroom Sewer	Plumbing				

City of Whitefish

Whitefish City Hall and Parking Structure

Item	Description		VE Potential	VE Actual	ASI # Issued	Remarks
Value Engineering						
	Membrane Roofing - Ideas	Roofing				
	Subtotal		***$ 382,416***	***$ 174,203***		
Bid Adjustments						
1.0	Fire Sprinkler - Utilize 100% import of materials	Fire Sprinkler	$ 3,235	$ 3,235		Voluntary Deduct
2.0	Doors, Frames, & Hardware - Complete Bid including perf metal	Doors, Frms, HW	$ 9,922	$ 9,922		Kalmont
3.0	Revised Steel Price - Complete Scope	Cornice Inc.	$ (6,166)	$ (6,166)		Advanced Welding
	Subtotal		***$ 6,991***	**$ 6,991**		
Project Alternates						
	City Hall					
1.0	Skylights (keep stair skylight, delete chambers skylight)		$ 37,432	$ 19,000		Delete Council, keep stair
3.0	Basement Finish		$ 28,013	$ 28,013		
4.0	Building Canopies		$ 212,614	$ 53,000		Reduce Baker Side
5.0	Cornice Detail		$ 32,030	$ 32,030		
6.0	Oversized Brick Veneer		$ 7,085	$ 7,085		
	Subtotal		***$ 317,174***			
	Parking Garage					
1.0	Delete Southwest Elevator (keep shaft for future elevator)		$ 114,061	$ 90,000		
	will require ramp at level 1.5 rather than stair, enlarge CH elevator for emergency response					
3.0	Delete Public Bathroom Finish (put cost in resort tax with street scape improve)		$ 6,154			
6.0	Painting of Garage Ceiling					
7.0	Painting of Garage East Wall, Columns, & Beams					
8.0	Upper Floor Window Frames		$ 4,923			
	Subtotal		***$ 125,138***	$ 229,128		
	Subtotal		**$ 831,719**	**$ 410,322**		
	VE Goal		**$ 1,000,000**			
	Variance to Goal		**$ 168,281**			

December 29 memo and update

MEMORANDUM

#2015-042

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: City Hall and Parking Structure – Current Spreadsheet and Budget Status

Date: December 29, 2015

CURRENT STATUS

As the Project Budget Summary spreadsheet from Ben Tintinger, which is attached to this memo, shows, the current funding gap is $882,699 (including an increased contingency to $150,000) although Ben and Martel Construction are continuing to chase down cost savings through value engineering (VE). Most of the cost savings for value engineering are already built into this spreadsheet and most of the acceptable design alternatives (savings) are also built in. The third elevator is put back in pursuant to the City Council vote on 12/7.

Of this $882,699 gap, $162,000 of that can come from capitalizing three years of lease revenue from the retail space, borrowing those funds from the TIF fund and repaying that amount back to TIF over three years. While this amount would reduce the gap to $720,699, it is still a project budget increase over the heretofore approved budget limit of $14,952,636, which was approved on June 15, 2015.

Much of the public and media has focused on the cost estimates being over budget by $1,000,000. While that was the case at one time, continued refinement of the costs, continued value engineering, and use of the lease revenue has now reduced the gap to $720,699. Please bear in mind that this figure can and will continue to change and could go up or down.

Also, please remember that this City Hall and Parking Structure is a large and complex project. I put the two percentage cost overruns into the first summary page of the attached spreadsheets. The total cost overrun from the budget is 5.90%, a figure which might not be as alarming or concerning to the media and public. If we use the lease money as new, non-Tax Increment funds, then the percentage of the gap is only 4.82%. A cost overrun of 5%-6%, while unfortunate, is not the crisis that some of the media or public have made it out to be. Also, remember that most of the cost increases are for the Parking Structure, which is an economic

development project of the highest priority and it is most appropriate to use additional Tax Increment Funds for such an economic development priority project.

OPTIONS TO GO FORWARD

Some of my ideas on how to go forward are listed below, again not in any priority order. There may be other ideas out there and as I said, Ben Tintinger and Martel Construction are still working on cost savings.

1. Furniture – as difficult as this item is to let go, I think we just need to say that we will buy furniture with any leftover money at the end of the project. If there aren't any leftover funds, then we can re-use the furniture we have stored here at the interim City Hall. Departments then could always budget in future years to buy new furniture as needed (bear in mind that this practice does shift funding of furniture from TIF to the general fund, other property tax supported funds, and Public Works (enterprise funds)).

   Dana also suggested that we could put the proceeds of the next surplus property auction when we move out of 1005 Baker Avenue towards the purchase of furniture. While that is possible, it would be ironic as most of the next surplus property auction was going to be furniture that we have at 1005 Baker Avenue, so we would be selling furniture to buy furniture – it is an option, but we are probably better off just retaining and re-using the existing furniture.

2. Furniture leasing – Ben Tintinger suggested we could lease-purchase furniture from a vendor for 0% interest and pay it off over time. That is an option, but again, it does shift costs from TIF to the General Fund, other property tax supported funds, and the Public Works enterprise funds. I am not generally in favor of this approach, but it is an option.

3. Commissioning – Commissioning is the process of having an independent engineer double check the HVAC (heating, ventilating, and air conditioning), mechanical systems, and electrical systems prior to occupancy to make sure they all work well and the HVAC system is balanced and working. The low quote for commissioning is $28,861 from CTA in Kalispell. We could cut the commissioning of the system (we cut it for the ESC) and save that money, but commissioning does ensure the systems work together after a bunch of different sub-contractors have all put their separate systems in. I would like to keep this amount in the budget, but it is an area we could cut.

4. Reduce Owner's Representative's Hours – Mike Cronquist already estimates that he won't spend $116,000 of his $332,130 contract as he is only beginning to work more than half days at the job site. Now is really when the main focus of an Owner's Representative comes in to play – when construction has started. The Mayor and City Council wanted him to start earlier than typical and we did that last spring. When I asked Mike if we could cut him back to 4 hours per day, he did not think that would be

enough time for him to oversee the project. But, with his estimated savings shown above, we are saving more than 1/3 of his contract.

5. Things already done – I had things like value engineering, using more of the $1,000,000 ancillary budget, and cutting some of the interior finishes in a prior list of mine, but all three of these things have been done, although there are still some value engineering items being researched and priced.

6. Rebid the concrete and rebar – Martel does not think rebidding the concrete and rebar division of work would be effective, but they are investigating whether there could be some savings in the amount of steel rebar going into the concrete. It is somewhat unfair to the bidder (Martel) to re-bid the item as other bidder know what dollar figure to shoot at and be lower.

7. Resort Tax – some members of the public (mostly Heart of Whitefish) have suggested that we redo the priorities of the Resort Tax Fund and allocate somewhere between $80,000 and $150,000 of Resort Tax money to the project for the sidewalks, street lights, and street furniture given that the Resort Tax fund paid those costs for the downtown Central Avenue projects. While this option may be somewhat attractive to some as it is new money from a different source, I generally don't favor this option. While it appears that you could still do West 7th Street project next summer, you would likely have to delay the next project, Somers Avenue somewhat. Also, I generally think that there is more money available in the TIF Fund than in the Resort Tax Fund – the controversy is not on the availability of funds, it is on increasing the budget. Also, to re-do the Resort Tax priorities, you would have to go through the Resort Tax Monitoring Committee, then to a public hearing, and then to a City Council vote. The City Council has the most control over the TIF Fund and we don't need to further complicate the process with adding a Resort Tax process to the mix. But, again, it is an option.

8. Impact Fees- Dana said that our current budgeting of City Hall Impact Fees for the project is only budgeting for the FY16 estimate of what we will receive for City Hall Impact Fees. Thus, we probably could also estimate and include another $60,000 of City Hall Impact Fees toward the project for FY17. Again, this item is still a budget increase, but it does reduce the impacts on the TIF Fund.

9. Delay Depot Park – We can fund the $720,699 shortfall with additional TIF funds, but it will probably delay most of the remaining work on Depot Park by 2-3 years at least. We could continue to do their gazebo next spring as they have a $10,000 grant from Rotary that is contingent on construction next spring. If we delayed other aspects of Depot Park Master Plan Phase II (street, sidewalk, and corner hardscaping work), we can fund the gap needed. In my mind, this is the primary and best alternative to consider once the value engineering and other cost savings are maximized.

10. Change the Depot Park Master Plan, keep the building in the park, and lease it out for more revenue – As you know, once the Planning and Building and Parks and Recreation Departments move into the new City Hall so that all Departments other than Public

Safety (Police, Fire, Court) are in one building, the Depot Park building is scheduled to be demolished so as to have a fully green space park in downtown. That was the vision of the Depot Park Master Plan committee and was approved by the City Council. There has been continuing interest in leasing the building from the City, mostly from the Chamber of Commerce and WCVB. Personally, I always felt that we should leave the building up and make it the public restrooms and maybe some other purpose as well, but I let the committee do their work. Again, this option would take some process as the Master Plan would have to be changed (going through the Depot Park Master Plan Committee and the Park Board and then to the City Council), but it could be done. At 2,386 square feet, you might get $35,000 to $40,000 per year from the lease.

11. Other options - ????

I hope this memo helps you understand the background of the issues and some of the options. If you have other options that you want to discuss or have other questions, please give me a call.

	A	B	H	I	J	K	L	M	N	O
37	TIF Financial Plan July 2015 through July 2020									
38			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021		Total
39	**Beginning Cash Balance**		$ 2,577,989	$ 317,856	$ 464,193	$ 1,213,966	$ 1,883,049	$ 4,702,782		
40	**Revenues**									
41	Property Taxes [1]		$ 5,129,571	$ 5,386,049	$ 5,655,352	$ 5,938,119	$ 6,235,025			28,344,116
42	State Entitlement Payment		248,865	248,865	248,865	248,865	248,865			1,244,325
43	Miscellaneous (Depot Park Grant)		10,000							10,000
44	Transfer from Impact Fees (ESC repayment) [4]		213,084	60,000	60,000	60,000	60,000			453,084
45	Transfer from Impact Fees (City Hall repayment) [7]		-	-	60,000	60,000	60,000			180,000
46	Total Revenues		$ 5,601,520	$ 5,694,914	$ 6,024,217	$ 6,306,984	$ 6,603,890	$ -		30,231,525
47	**Expenditures**									
48	Proposed Additional TIF Bond Debt Service - City Hall/Parking Structure [5]			$ 1,139,982	$ 2,075,939	$ 2,370,668	$ 2,679,993	$ 1,419,174		9,685,756
49	Current TIF Bond Debt Service - Refunding 2015A & 2015B [5]		112,394	2,206,667	1,550,590	1,548,993	1,547,492	54,695		7,020,830
50	Funding of Bond (Current Debt Service) Account [6]		3,129,120	322,344	340,889	361,360	(2,679,843)	(1,473,870)		0
51	Semi-annual School Payment [1]		680,000	714,000	749,700	787,185	826,544			3,757,429
52	Transfer to City Hall/Parking Structure Fund [2]		2,250,080							2,250,080
53	Salaries and O&M [3]		388,657	400,317	412,326	424,696	437,437			2,063,433
54	Business Rehab Loan		30,000	30,000	30,000	30,000	30,000			150,000
55	Land Purchase									-
56	Urban Renewal Projects:									-
57	Misc Urban Renewal Projects		100,000	15,000	15,000	15,000	15,000			160,000
58	Buy Local Campaign		50,000							50,000
59	High School TIF project									-
60	Depot Park ($2 million - phase 1-4)		480,802	620,267			827,534			1,928,603
61	Ice Den Roof Renovations and E-Ceiling		8,000							8,000
62	Ped-Bike bridge to Skye Park (Total ~$829k)		61,600							61,600
63	Develop additional downtown parking ($6.5M now in Debt Service)									-
64	Assist Private Developer - Boutique Hotel		150,000							150,000
65	Assist Private Developer - Idaho Timber									-
66	Assist Private Developer - N. Valley Hospital									-
67	Assist Private Developer - Other Redevelopment									-
68	Downtown/O'Shaugnessy Restrooms									-
69	Stairway at Stumptown Inn		21,000							21,000
70	Other Real Estate Committee Land Purchase		300,000							300,000
71	Housing Authority									-
72	Chamber ($96k)	$96,000								-
73	Depot Park Snow Lot (phase 5 of depot park)	$550,000								-
74	Install/refurbish water & sewer lines throughout district									-
75	Contingency		100,000	100,000	100,000	100,000	100,000			500,000
76	Total Approximate Non-Committed	$646,000								-
77	Total Expenditures		$ 7,861,653	$ 5,548,577	$ 5,274,444	$ 5,637,901	$ 3,784,157	$ (0)		28,106,731
78	Revenues less Expenditures		$ (2,260,133)	$ 146,337	$ 749,773	$ 669,083	$ 2,819,733	$ 0		$ 2,124,793
79	**Ending Cash Balance**		$ 317,856	$ 464,193	$ 1,213,966	$ 1,883,049	$ 4,702,782	$ 4,702,782		
80										

81 1 Assumes 5% growth per year. Since FY2000 the average growth has been 9.62%.
82 2 Final transfer from the TIF fund to the City Hall/Parking Structure Fund in FY16.
83 3 FY2017 through FY2020 assume a 3% growth per year based on the budgeted FY2016 figures.
84 4 Impact Fees transferred to TIF Fund to payoff TIF Bond issued for the ESC construction. FY17-FY20 based on a 7-year average.
85 5 For each bond the last year debt service payments use reserves on-hand of $980,000 (City Hall/Parking Structure Bonds @ 2.89% - debt service schedule prepared 9/30/2015) and $718,300 (Current Bonds at 2.62%)
86 6 To ensure the debt service account is fully funded (12 months principal/6months interest in next 12 months) a yearly transfer from TIF to the TIF Debt Service Fund has been added. The total amount per year needed
87 in the debt service account is as follows: FY16 $3,129,120; FY17 $3,451,464; FY18 $3,792,353; FY19 $4,153,713; FY20 $1,473,870 (use difference from PY to pay debt service during the year); FY21 $0 debt service
88 (difference is used to make final payment with the reserve funds as well).
89 7 After construction, City Hall impact fees will be transferred to TIF Fund to repay TIF Bond issued for the City Hall/Parking Structure Project - 7 year Average of collections used in estimating revenue. FY16 and
90 FY17 revenues will be transferred directly to the Construction Fund.

Prepared: 12/23/15

AMENDMENT NO. 4 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

Pursuant to Article 3.9 of the Agreement dated August 17, 2015, between the Owner and Construction Manager, and this Amendment this 13th day of January, 2016 between The City of Whitefish ("Owner") and Martel Construction, Inc. ("Construction Manager") for the New City Hall and Parking Structure, the Owner and Construction Manager hereby establish a Guaranteed Maximum Price and Contract Time for this portion of the Project as set forth below, and generally defined as:

Bid Package #7, Value Engineering & Final Adjustments

GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price (GMP) for the Work, including the Cost of the Work and Indirect Costs per attached cost summary and subcontractor & supplier quotations is:

$ ____1,034,823.24_____ TOTAL GUARANTEED MAXIMUM PRICE

CONTRACT TIME

The date of Substantial Completion for the Work underlying the contracts identified in Article 3.11 is found in contract **Appendix A.**

This Amendment No. 4 is entered into on this _____13th_____ day of _____January_____, 2016.

OWNER:
The City of Whitefish
2nd and Baker Ave
Whitefish, MT

CONSTRUCTION MANAGER:
Martel Construction, Inc.
1203 S. Church
Bozeman, MT 59715

OWNER

_____
(signature)

_____
(printed name and title)

_____
DATE

_____
ATTEST

CONSTRUCTION MANAGER

Ryan Dunn
(signature)

RYAN DUNN, Proj. Mgr.
(printed name and title)

1/13/2016
DATE

Karin L. Tillu
ATTEST

Whitefish City Hall & Parking Structure Amendment No. 4 Summary Martel Construction, Inc.		1.13.16
Proposal Packages	**Bid Package Proposal Price**	**SUBCONTRACTOR SUMMARY**
Remaining Scope of Work - Not included in Amendments 1, 2, & 3. * GMP includes "Allowances" and items to be "Rebid". * GMP includes deductions for assumed Value Engineered Items. * GMP reflects the overall construction cost document dated 1/13/16. * Value Engineering Items are "Allowances" until final numbers are verified via Request For Proposals.	$ 1,034,823.24	
Subtotal of Proposal Packages	$ 1,034,823.24	
SUMMARY		
Total Adjusted Direct Costs of Bid Packages	**$ 1,034,823.24**	
Construction Indirect Costs General Liability Insurance Builders Risk Insurance Building Permits Impact Fees Construction Fee per RFP Gross Receipts Tax (1% of the Indirect Totals for the Amendment) Contingency	*Included Above in Bid Package Proposal Price*	
Subtotal Indirect Costs	**$ -**	
Total of Costs - Amendment #4	**$ 1,034,823.24**	
AMENDMENT NO. 1 TOTAL	**$ 1,401,565.00**	
AMENDMENT NO. 2 TOTAL	**$ 880,348.00**	
AMENDMENT NO. 3 TOTAL	**$ 10,294,553.76**	
Guaranteed Maximum Price Amount	**$ 13,611,290.00**	

Project: Whitefish City Hall & Parking Garage
Jan. 13, 2016 Overall Budget Update

MARTEL CONSTRUCTION

		over/under 8/6/15 est	City Hall	Parking Garage	Base Bid	Alt #1 - Skylights (Deduct)	Alt #2 - Finish at Basement (Deduct)	Alternate #3 - Canopies (Deduct)	Alternate #4 - Cornice Detail (Deduct)	Alternate #5 - Decorative Brick Veneer (Deduct)	Alternate #7 - South West Elevator (Deduct)	Alternate #8 - Upper Floor Window Frames (Deduct)	Wood Board & Batten Paneling	Wood Species from Fir to Birch	Casework Storage Cabinets & Countertops	Wall Tile	Parking Garage - Painting of Ceiling	Parking Garage - Painting of East Wall, Columns, and Beams	Vendor
Division 1	General Requirements																		
	General Requirements - per RFP no bond		278,696	278,696	$ [illegible]	Inc	Inc	Inc	Inc	Inc	Inc	Inc							Martel
	General Requirements - Project Specific	39,633	37,623	37,623	$ [illegible]														Martel
	Final Cleaning		33,378		$ [illegible]														
Division 2	Site Work	205,953																	
	Removal Aggregate Piers		100,980	200,000	$ [illegible]														GeoTech
	Pier Load Test		6,600	13,400	$ [illegible]														
	Hazardous Abatement		23,084	44,835	$ [illegible]														ACM
	Building Demolition		72,185	141,956	$ [illegible]														Elder Demolition
	Excavation & Utilities		212,190	430,610	$ [illegible]														Watson
	Shoring		40,095	81,405	$ [illegible]														Tarbotti
	Well Decommission		1,485	3,015	$ 4,500.00														
Division 32-33	Earth & Elevator																		
	Landscaping		4,690	15,690	$ [illegible]														ALLOWANCE
	Bid Package 5 32A - Asphalt Paving		3,644	7,356	$ [illegible]														ALLOWANCE
	Bid Package 5 32B - Site Concrete		29,966	60,611	$ 90,577.00	Rebid													Sandon
	Traffic Devices																		ALLOWANCE
	Pavement striping and Symbols			9,345	$ [illegible]														
Division 3	Concrete	330,931																	
	Bid Package 5 3A - Structural Concrete		495,980	1,229,520	$ 4,220,400.00	Rebid Labor		$ (12,810.00)											Martel
Division 4	Masonry																		
	Bid Package 5 4 - Masonry	649,100	583,513	583,571	$ [illegible]					$ [illegible]									Simons
Division 5	Metals																		
	Bid Package 5 5A - Structural Steel Supply	(91,346)	430,848	190,245	$ [illegible]			$ (56,110.00)											American Welding & Sal
	Bid Package 5 5B - Structural Steel Erection/Install		225,000	125,000	$ [illegible]			$ (12,700.00)	$ (18,000.00)										Dawson Enterprises
Division 6	Woods, Plastics, and Composites																		
	Bid Package 5 6A - Rough Carpentry	8,137	45,115	17,521	$ [illegible]	$ (200.00)	$ (300.00)												Martel
	Bid Package 7 6A - Finish Carpentry		262,075		$ [illegible]								$ (30,330.00)	$ (19,200.00)					ALLOWANCE
	Bid Package 7 6B - Architectural Wood Casework		135,000		$ 135,000.00		$ (1,200.00)								$ (25,250.00)				
	Bid Package 7 6C - ??? Countertops		16,000		$ [illegible]														
Division 7	Thermal & Moisture Protection																		
	Bid Package 5 7A - Thermal Insulation	(90,064)	28,000	4,200	$ [illegible]														Glenntull
	Bid Package 5 7B - Membrane Roofing		83,600	28,900	$ [illegible]			$ (18,300.00)											Ridgehold
	Bid Package 5 7C - Metal Roofing, Wall Panels & Soffit		42,000	10,993	$ [illegible]														ALLOWANCE
	Bid Package 5 7D - Joint Sealants				* Included in 7A														Martel
Division 8	Openings	(187,412)																	
	Bid Package 5 8A - Supply Doors, Frames, HW		71,884	23,832	$ [illegible]														Jack Doors & HW
	Bid Package 5 8B - Install Doors, Frames, HW		26,300	14,730	$ [illegible]		$ (1,050.00)												Martel
	Bid Package 5 8C - Access Panels		3,140		$ [illegible]														Martel
	Bid Package 5 8D - Aluminum Storefront Windows & Doors		197,543	78,428	$ [illegible]	$ (31,349.00)						$ (4,662.00)							Valley Glass
	Ceiling Doors		27,765		$ [illegible]														Alexandria
Division 9	Finishes																		
	Bid Package 5 9A - Cold Formed Metal Framing	(730,950)	230,867	37,760	$ [illegible]	$ (2,263.00)	$ (1,510.00)												KCI Brothers
	Bid Package 5 9B - Gypsum Board Assemblies		126,784	8,461	$ [illegible]	$ (13,024.00)	$ (4,037.00)												KCI Brothers
	Bid Package 7 9A - Tiling	$	39,726.00		$ [illegible]											$ (31,766.00)			Martel/ Alin Cabinetry
	Bid Package 7 9B - Flooring	$	83,744.00		$ [illegible]		$ (1,770.00)												
	Bid Package 7 9B *** - Wood Flooring	$	10,500.00		$ [illegible]														
	Bid Package 7 9C - Acoustical Ceilings	$	54,376.00		$ [illegible]														
	Bid Package 7 9D - FRP	$	3,460.00		$ [illegible]														
	Bid Package 7 9E - Painting & Coatings		196,515	96,243	$ [illegible]		$ (7,000.00)	$ (12,415.00)	$ (4,040.00)				$ (6,845.00)				$ (33,490.00)	$ (3,940.00)	
Division 10	Specialties																		
	Bid Package 7 10A - Supply	(50,856)	70,000	6,545	$ [illegible]														
	Bid Package 7 10B - Install		10,000	2,500	$ [illegible]														
	Electric - S/I Allowance		2,000		$ [illegible]														
	Signage Allowance		25,000	25,000	$ [illegible]														
	Compact Shelf Storage		75,000		$ [illegible]														
Division 11	Division 11	(11,743)																	
	Bid Package 11A - Appliances		6,456		$ [illegible]														
	Bid Package 11B - Projection Screens		6,573		$ [illegible]														
Division 12	Division 12																		
	Bid Package 7 12A - Window Shades		9,023		$ [illegible]														
	Bid Package 7 12B - Site Furnishings		33,000	$ 13,900.00	$ [illegible]														
Division 14	Conveying Systems																		
	Bid Package 5 14 - Hydraulic Elevator	6,395	117,000	128,000	$ [illegible]						$ (101,000.00)								Schindler
Division 21	Fire Suppression																		

Project: Whitefish City Hall & Parking Garage
Jan. 13, 2016 Overall Budget Update

	Bid Package 5.21 - Fire Sprinkler System		88,017	18,920	$ [illegible]														ITEM
Division 22-23	Mechanical	(8,715)																	
	Bid Package 5.22 - Plumbing		105,263	118,000	$ 312,031.00		$ (26,969.00)				$ (500.00)								Diamond Plumbing
	Bid Pkg 5.23 - HVAC		845,930	39,726	$ 944,956.00		$ (3,441.00)				$ (6,517.00)								Diamond Plumbing
Division 26-28	Electrical	103,760																	
	Bid Package 5.24 - Electrical		558,430	289,000	$ [illegible]		$ (3,310.00)	$ (25,240.00)											Monster Electric
VE Items	VE Items																		
	Concrete Form Work			(117,265.56)	$ (117,265.56)														
	Storefront Color Change to Standard Color		(7,044)	-	$ (7,044.00)														
	Eliminate break metal that divides exterior windows into small units		(6,064)	-	$ (6,064.00)														
	Center Glazed Framing Instead of Floor Set		(6,677)	-	$ (6,677.00)														
	Floor Finish In Lieu of Anchorcast Panels at Elevator		(24,000)		$ (24,000.00)														
	Provide SCCT Luminous ceiling in lieu of SS		(850)	(8,750)	$ (2,550.00)	RFP #6/ CMR #8													
	Provide skirt opening for CH and PG in lieu of Center Opening		(1,000)	(1,000)	$ (1,000.00)														
	Change Cast Iron Waste Above Grade to PVC @ Parking			(2,083)	$ (2,083.00)														
	Change Cast Iron Sanitary Above Grade to PVC @ Parking			(3,350)	$ (3,350.00)														
	Change EWC 1 in Elkay LZSTL8		(4,047)	-	$ (4,047.00)														
	Change SS 1 to Aquarie Delta Package		(1,200)	-	$ (1,200.00)														
	Modify land of separator from polypropylene to precast concrete			(2,000)	$ (2,000.00)														
	Fire Pump Temperature Controls vs specified RTS Controls		(86,155)	-	$ (86,155.00)														
	Change Flue Duct to PVC Coated Spiral @ Underground		(3,529)	-	$ (3,529.00)														
	RO-1 - Remove Humidifier and reverse osmosis system		(1,500)	-	$ (1,500.00)														
	Aluminum Feeders instead of Copper (elevator & exch equip not included)		(5,200)	-	$ (5,200.00)														
	Upsize Panel MDPN and Electricals Panel GH1 and Feeders		(3,500)	-	$ (3,500.00)														
	Bond meeting never held (city and continue public comment and retail space)			(20,000)	$ (20,000.00)														
	Fire Sprinkler - Utilize 100% import of materials		(3,750)	-	$ (3,750.00)														
	Doors, Frames, & Hardware - Complete Bid including perf metal		(9,922)	-	$ (9,922.00)														
	Revised Steel Price - Complete Scope		4,166	-	$ 4,166.00														
City of Whitefish Building Fees																			
	Building Permit Fee		58,956	45,126	$ 94,081.67														
	Impact Fees		47,551	67,011	$ 84,987.04														
		5,897,588	7,006,537																

**********DO NOT ADD ROWS BELOW THIS LINE *********

Bid Package Totals	$ 12,610,126.42	$ (19,447.00)	$ (12,278.00)	$ (214,255.99)	$ (22,600.30)	$ (6,200.00)	$ (108,013.00)	$ (4,663.00)	$ (26,985.00)	$ (89,760.00)	$ (76,258.00)	$ (11,966.00)	$ (32,400.20)	$ (3,960.00)					
General Liability Insurance	$ 170,734.96	$ (194.39)	$ (124.36)	$ (1,609.31)	$ (232.75)	$ (57.03)	$ (911.18)	$ (33.67)	$ (214.70)	$ (252.45)	$ (248.78)	$ (96.62)	$ (236.08)	$ (33.47)	0.0085				
Builder's Risk Insurance	$ 36,037.72	$ (74.50)	$ (45.10)	$ (474.95)	$ (85.25)	$ (13.53)	$ (217.84)	$ (9.80)	$ (74.32)	$ (63.98)	$ (59.82)	$ (22.92)	$ (65.14)	$ (7.85)	0.002				
Performance & Payment Bond	incl in OC	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP	RFP					
Fee	$ 567,065.55	$ (1,618.80)	$ (1,467.20)	$ (9,736.37)	$ (1,611.53)	$ (265.05)	$ (4,911.79)	$ (212.00)	$ (1,070.05)	$ (1,950.54)	$ (1,196.50)	$ (116.35)	$ (1,426.97)	$ (179.16)	Fee %:	4.5%			
Gross Receipts Tax - Fee Referrals	$ 4,228.41	$ (19.94)	$ (17.07)	$ (110.32)	$ (12.49)	$ (1.46)	$ (66.98)	$ (2.61)	$ (20.69)	$ (19.63)	$ (16.38)	$ (4.36)	$ (15.18)	$ (2.21)	GRT %:	1.5%			
Preconstruction Services	$ (6,000.00)																		
Contingency	$ 194,600.00	$ (1,374.58)	$ (1,764.26)	$ (11,337.83)	$ (1,337.49)	$ (194.22)	$ (5,701.07)	$ (246.11)	$ (1,990.68)	$ (1,948.15)	$ (1,544.46)	$ (640.12)	$ (1,714.99)	$ (208.03)	Contingency %:	5.0%			
Subtotal of Indirect Costs	$ 898,067.63	$ (1,984.60)	$ (1,827.71)	$ (11,990.67)	$ (1,249.32)	$ (272.64)	$ (6,047.84)	$ (261.00)	$ (2,068.56)	$ (1,937.93)	$ (1,638.22)	$ (638.70)	$ (1,818.58)	$ (226.06)					
Grand Total	$ 13,808,194.12	$ (37,431.59)	$ (34,686.26)	$ (226,146.64)	$ (23,949.86)	$ (7,084.64)	$ (114,060.68)	$ (4,923.00)	$ (29,053.56)	$ (32,362.91)	$ (30,897.22)	$ (12,002.99)	$ (34,298.56)	$ (4,160.60)					
Total Accepted Alt.	(196,905)	(19,000)		(15,121)															
				$3,000 goal RFP #2/ COR #7															
Construction Amount	13,611,290																		

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: Amazing Cleaning

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** _____, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 11,760.00

Bid Package Description: Complete Interior Const Clean Plus Interior Exterior Glass and Frames

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12-3-15

By:

Amazing Cleaning
Contractor

Shannon Mamamamy
Signature

owner
Title

38 Dale Dr. Kal Mt.
Business Address

572253819
Montana Public Contractor's License No.

mamamamy@mtbasty.com
Email Address:

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ 11,760.00)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($_____)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($_____)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($_____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($_____)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($_____)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($_____)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($_____)

WALL TILE - Deduct to Base Bid:

($_____)

Cook Painting, Inc.
28 Morning Glory Lane
Kalispell, MT 59901
406-257-7404
fax 406-257-7450

Estimate

DATE	ESTIMATE NO.
9/20/2015	942

Name / Address
Whitefish City Hall / Parking Structure

PAYMENT TERMS

DESCRIPTION	TOTAL
Cook Painting Inc. proposes to supply all labor , material and equipment needed to complete laying out and painting of parking garage stalls and stencil work as per blue prints to clean surfaces.	9,365.00
TOTAL	$9,365.00

SIGNATURE _____

he cost of any required changes and/or additions to our insurance coverage (e.g. primary dditional insured, waiver of subrogation, etc...) will be added to the total amount invoiced.

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: MARTEL CONSTRUCTION

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 26A

Bid Package Description: Interior Finish Carpentry

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12/3/15

By: MARTEL CONSTRUCTION
Contractor

Signature

Project Mgr
Title

rdunn@martelconstruction.com
Email Address:

305 Highway 83, Bigfork MT 59911
Business Address

2124
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ 262,075)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 2,300)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($)

* **WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:**

($ 30,100)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($ 29,700)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($)

WALL TILE - Deduct to Base Bid:

($)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID:

($_____)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($_____)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($_____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($_____)

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: NORTHWEST CABINET WORKS

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 1 & 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 7.6B

Bid Package Description: CASEWORK

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of: ONE HUNDRED THIRTY FIVE THOUSAND EIGHT HUNDRED NINE

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12-3-15

By: NORTHWEST CABINET WORKS
Contractor

Signature

PRESIDENT
Title

JOHN@NWCABINETWORKS.COM
Email Address:

453 ASH RD - KALISPELL, MT
Business Address

54661
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ 135,809.00)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 4,075.00)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($ 1,330.00)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($ 29,259.00)

WALL TILE - Deduct to Base Bid:

($)

S&H
ALUMINUM PRODUCTS
INC.

November 20, 2015

This Proposal is especially for: Martel Construction
305 Hwy 83
Big Fork, MT 59911

Parking Structure

Furnish and install 22 ga steel Trapezoidal rib direct fasten wall panels with accessories on Back Side of 1 Parapet Overhang Structure, Back Side of Header above Main Auto Entrance, Both Sides of Tower Structure Walls and Above Door on Elevator Tower. Panels will be 36" x 1 1/2" with Kynar 500 finish. Siding will be attached with neoprene washered screws. Accessories include J channel, corners, finish trim, fasteners and sealant.

Furnish and install 22ga steel 12" x 1 1/2" flush seam soffit on 3 Parapet Overhang structures and 1 Tower Structure with accessories. Material will have Kynar 500 finish. Accessories include J channel, corners, finish trim, fasteners and sealant.

Furnish and install 22 ga steel Trapezoidal rib direct fasten steel roofing and accessories on 3 Parapet Overhang Structures and 1 Tower Structure. Roofing will be 1 ½" X 36" with Kynar 500 finish. Roof will be attached with neoprene washered screws and stitch screws. **Price does not include snow retention system unless noted.**

Furnish and install 22 ga steel Trapezoidal rib direct fasten steel roofing and accessories on Interior Ceiling of Retail Space. Ceiling will be 1 ½" X 36" with Kynar 500 finish. Ceiling will be attached with neoprene washered screws and stitch screws. **Price includes built in gutter. Price does not include framing or downspouts.**

Total material and labor - $50,488.00

City Hall

Furnish and install 22 ga steel 12" x 1 1/2" flush seam wall panels on Mechanical Penthouse, Vent Stack, and 1 Skylight with accessories. Material will have Kynar 500 finish. Accessories include J channel, corners, finish trim, fasteners and sealant.

Furnish and install 22 ga steel Trapezoidal rib direct fasten steel roofing and accessories on 1 Parapet Overhang Structures. Roofing will be 1 ½" X 36" with Kynar 500 finish. Roof will be attached with neoprene washered screws and stitch screws. **Price does not include snow retention system unless noted.**

S&H
ALUMINUM PRODUCTS
INC.

Furnish and install 22 ga steel 12" x 1 1/2" flush seam soffit on 1 Parapet Overhang structure with accessories. Material will have Kynar 500 finish. Furnish and install 6" V Groove Extruded Soffit on 2 Entrance Canopies. Material will have Alluminate Premium finish. Accessories include J channel, corners, finish trim, fasteners and sealant.

Total material and labor - $29,740.00

Bid Alt 1

Furnish and install 22 ga steel Trapezoidal rib direct fasten steel roofing and accessories on 2 Canopies. Roofing will be 1 ½" X 36" with Kynar 500 finish. Roof will be attached with neoprene washered screws and stitch screws. Price includes built in gutters system. **Price does not include snow retention system unless noted. Price also does not include downspouts or heat tape.**

Total material and labor - $13,120.00

Price does not include 1% gross receipts tax.

PRICE DOES NOT INCLUDE ANY FRAMING.
PRICE DOES NOT INCLUDE MASONRY, WINDOW OR EFIS FLASHINGS UNLESS NOTED.
PRICE DOES NOT INCLUDE SNOW RETENTION SYSTEM UNLESS NOTED.
PRICE DOES NOT INCLUDE ANY INTERIOR WORK UNLESS NOTED.

Insurance Information:
Montana Contractor's Registration: #3303B
Worker's Compensation Ins. #03-090759-6
Unemployment Insurance #117537

901 Sixth Street South, Great Falls, MT 59405 Phone (406) 452-2416 Fax (406) 452-2442

2541 HWY 2 E
KALISPELL, MT 59901
406-752-0924.FAX 406-752-0926.MOBILE 406-250-8506
EMAIL bobt@montanasky.us

MASTERPIECE CARPET ONE

Fax

To:	MARTEL CONSTRUCTION	**From:**	ROBERT R. THOMAS
Fax:		**Pages:**	6
Email:		**Date:**	12/2/2015
Re:	WHITEFISH CITY HALL & PARKING STRUCTURE – BID PACKAGE #7 BUILDING FINISHES		ADDENDUM NO. 01, 02 BID FORM ATTACHED

FLOOR FINISH – BASE BID

SECTIONS INCLUDED IN THIS PROPOSAL

09 6500 **RESILIENT FLOORING**

VCT-1 Armstrong, Natural Creations - Mystix, Aria Charcoal, 18 X 18

RESILIENT BASE

RB-1 Johnsonite, 4" Cove Base, Peppercorn, Job Formed Corners

09 6813 **TILE CARPETING**

CPT-1 Patcraft, Entry Point

CPT-2 Patcraft, Layered Expressions

CPT-3 Patcraft, Layered Expressions

THE ESTIMATED COST FOR - **FLOOR FINISH – BASE BID** - BASED ON THE AVAILABLE DOCUMENTATION IS:

$ 79,199.00

Robert R Thomas

PERFORMANCE AND LABOR & MATERIAL PAYMENT BONDS FOR 100% OF THE TOTAL BASE BID PRICE FOR THE LUMP SUM PRICE OF:

$ 6,175.00 **ADD TO BASE BID**

BID ALTERNATES

BASEMENT FINISH – Deduct to the Base Bid

$ 1,770.00

WALL TILE – Deduct to the Base Bid

$ 11,366.00

CLARIFICATIONS:

FLOOR FINISHES AS PER SHEETS A700, A701, A702, A800, A802, A803 DATED 11-11-2015.

THIS PROPOSAL DOES **NOT** INCLUDE SECTION 09 6429 WOOD STRIP AND PLANK FLOORING.

FLOOR GRINDING OR MAJOR LEVELING IS NOT INCLUDED IN THIS PROPOSAL.

CLEANING AND FINISHING IS ASSUMED TO BE THE RESPONSIBILITY OF OTHERS.

NO BUDGET FOR WATER VAPOR TESTING AND MITIGATION HAS BEEN INCLUDED.

EXTRA MATERIAL IS PROVIDED AS SPECIFIED.

THESE ESTIMATES ARE BASED ON CURRENT MANUFACTURERS PRICING AND FREIGHT COSTS.

PLEASE CALL IF YOU HAVE QUESTIONS.

CURSORY FLOOR PREP- 62 HOURS CURSORY FLOOR PREP IS **NOT** INCLUDED IN THIS PROPOSAL (IE, CRACK AND JOINT FILLING) WITH **61** BAGS OF ARDEX. EXTENSIVE FLOOR PREP IS **NOT** INCLUDED IN THIS PROPOSAL (IE, GRINDING AND LEVELING).

THE ESTIMATED COST FOR - **CURSORY FLOOR PREP – BASE BID** - BASED ON THE AVAILABLE DOCUMENTATION IS:

$ 4,545.00

SECTIONS INCLUDED IN THIS PROPOSAL

09 3000	**TILING**	
	T-1	Daltile, Concrete Connection, Boulevard Beige, 13 X 20
	TB-1	Daltile, Concrete Connection, Boulevard Beige, 6 x 13 Base
	WT-1	Daltile, Concrete Connection, Boulevard Beige, 13 X 20
		Daltile, Concrete Connection, Boulevard Beige, 3 X 13 BN
	WT-2	Daltile, Elevare, Carbon, 4 X 16
		Daltile, Elevare, Carbon, 4 X 16 BN
		Daltile, Costal Keystones, Caribbean Palm, 1 X 1 Mosaic
		Durock Cementitious Backer Board, (Wall Tile)
		Laticrete Permacolor Grout
		Schluter Transitions, Satin Anodized Aluminum

THE ESTIMATED COST FOR - **FLOOR FINISH – BASE BID – CERAMIC TILE** - BASED ON THE AVAILABLE DOCUMENTATION IS:

$ 39,736.00

THE ESTIMATED **TOTAL** COST FOR – **CITY HALL – BASE BID** - BASED ON THE AVAILABLE DOCUMENTATION IS:

$ 123,480.00

WYOMING WOOD FLOORS, LLC
240 B EXPRESSWAY
MISSOULA, MONTANA 59808
TEL: 855-549-1900
FAX: 406-549-1911

SUB-CONTRACTOR QUOTE

MARTEL CONSTRUCTION
1203 CHURCH AVE.
BOZEMAN, MONTANA 89715

ATTENTION: RYAN DUNN

FAX: 406-586-8585

TELEPHONE: 406-586-8646

Bid Date December 3, 2015

WYOMING WOOD FLOORS, LLC would like to offer a quote to you for the Wood Flooring System: labor and materials for the following:

ROOM NUMBERS: 201 and 227

BASE BID: $10,500.00

BID INCLUDES FURNISHING AND INSTALLING A COMPLETE HARDWOOD FLOOR SYSTEM .

Performance bond if required 2% N/A

PROJECT: WHITEFISH CITY HALL & PARKING STRUCTURE
WHITEFISH, MONTANA

OWNER: CITY OF WHITEFISH
WHITEFISH, MONTANA

ESTIMATOR: DODD LOWE
PHONE: 406-360-1005

Bromon Construction

2018 Main St. Unit 2
Billings, MT 59105
406.545.4582
Servicing Montana, Wyoming & Dakotas
Fax: 312.725.4119

December 3, 2015

Martel Construction
Ryan Dunn
305 Hwy 83 Bigfork 59911
rdunn@martelconstruction.com

RE: Whitefish City Hall and Parking Garage
Paint and ACT Drop Ceiling
Revision C

Exhibit "A"

A. Scope of Work (Labor and Material)

1. Paint Work as follows (099000): Labor & Material $319,342.00

- Interior paint on concrete surfaces as indicated on plans
- Interior pain on concrete floors as indicated on plans
- Interior paint on concrete masonry units, including split-face, scored, and smooth block as indicated on plans
- Interior pain on aluminum and galvanized steel surfaces as indicated on plans
- Interior pain on wood walls, ceillings, doors, and trim as indicated on plans
- Interior paint on wooden floors as indicated on plans
- Interior paint on drywall board and gypsum board as indicated on plans

2. ACT Work as follows (095100): Labor & Material $54,376.00

- 2'x2' Armstrong Cirrus ACT as specified, in locations indicted on plans for City Hall
- Hanging and installation of grid and tile board

B. EXCLUSIONS:

- Permit Fee
- Any cost increase due to conditions encountered that differ from those assumed above

C. QUALIFICATIONS:

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: MARTEL CONSTRUCTION

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 7.9D

Bid Package Description: FRP

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12/3/15

By: MARTEL CONSTRUCTION
Contractor

Signature

Project Mgr
Title

rdunn@martelconstruction.com
Email Address:

305 Highway 83, Bigfork MT 59911
Business Address

2124
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ 1460)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 100)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($)

WALL TILE - Deduct to Base Bid:

($)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID:

($_____)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($_____)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($_____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($_____)

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: **Hagestad Painting & Coatings Inc.**

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos. 1 & 2**, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 7.9E

Bid Package Description: Painting & Coating per Specifications Sections 99000 & 99113.

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: December 3rd, 2015

By: Hagestad Painting & Coatings Inc.

Contractor

Signature

Kelson Ramey - President
Title

kelson@hagestadpainting.com
Email Address:

PO Box 11262, Kalispell MT 59904
Business Address

158145
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ 98,285.00.)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 2,949.00.)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($ 2,650.00.)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($ 5,475.00.)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($ 1,490.00.)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($ 6,845.00.)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($ 0.00.)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($ 0.00.)

WALL TILE - Deduct to Base Bid:

($ 0.00.)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID:

($ 186,515.00.)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 5,595.00.)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($ 7,340.00.)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($ 3,190.00.)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($ 32,480.00.)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($ 3,940.00.)

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: Construction Supply, Inc. - Rachel Mischke
2410 5th ave N Fargo, ND 58102

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 1 & 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 7 10 A

Bid Package Description: Visual Display Boards, Toilet Compartments, Toilet Accessories, Lockers, Wall/Corner Guards + Fire protection

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12/3/15

By:

Construction Supply, Inc.
Contractor

Rachel Mischke
Signature

Estimator
Title

2410 5th ave N
Fargo ND 58102
Business Address

rachel@csi-fargo.com
Email Address:

N/A
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID: -no tax

($ 26,944.00)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 809.00)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($ - $939.00)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($ —)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($ —)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($ —)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($ —)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($ —)

WALL TILE - Deduct to Base Bid:

($ —)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID: -no tax

($ 3219.00)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 97.00)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($ —)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($ —)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($ —)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($ —)

Construction Supply Inc.

2410 5th Avenue North, Fargo, ND 58102

Phone: 701-235-6605
Fax: 701-235-9632
Web Site: www.csi-fargo.com

Estimate

Bid Date: 12/3/2015 **Estimate #:** 46551

Estimator: Rachel
E-mail: rachel@csi-fargo.com

To: All Contractors

Project Name: Whitefish City Hall & Parking
Whitefish, MT

Addendums: 1, 2

Phone: Fax:

PURCHASE ORDERS or MATERIAL CONTRACTS ONLY - NO SUBCONTRACTS - NO EXCEPTIONS

Acceptance of listed pricing is also acceptance of terms stated on this estimate.

Terms: NET 30 days, subject to credit approval. NO RETAINAGE ALLOWED. Past due amounts are subject to finance charges of 1-1/2% per month or 18% APR. We propose to furnish MATERIALS ONLY - One Shipment Only Per Section.

*Special Note: A Purchase Order for this project must be received **30 days** from the bid date.

Delivery must be made by **December 2016** ***or the price may be subject to review.***

Section:	Quantity/Description	Total
	CITY HALL Bid Package 7.10A	
101101-Visual Display Boards	(1) 4x6'W MB, (1) 4x4'W MB, (3) 4x8'W MBs, (2) 4x3'W MBs, (2) 4x3'W TBs and 26LF of Trim Maprail w/ 1" Cork Insert and End Stops Markerboards to include: aluminum maphooks, chalk tray, aluminum trim and maprail. Tackboards to include: aluminum trim	**2,913.00**
102113.16-Toilet Compartments	(8) 58"H Floor Mounted Overhead Braced Plastic Laminate Toilet Compartments w/ Steel Core Pilasters and (2) Wall Hung Urinal Screens	**4,519.00**
102800-Toilet Accessories	Base Bid- (75) Toilet Accessories: 10 Toilet Tissue Dispensers, 4 Paper Towel/Waste Receptacles Combo Units, 10 Soap Dispensers, 12-18x36"H Frameless Mirrors, 7 Napkin Disposals, 18 Grab Bars, 2 Shower Rods, 2 Shower Curtains w/ Hooks, 4 Baby Changing Stations, 4 Dyson dB 14 Hand Dryers and 2 Mop/Broom Holders	**12,254.00**
102800-Toilet Accessories	Deduct Basement- (19) Toilet Accessories: 2 Toilet Tissue Dispensers, 2 Soap Dispensers, 4-18x36"H Frameless Mirrors, 1 Napkin Disposal, 6 Grab Bars, 2 Shower Rods, 2 Shower Curtains w/ Hooks	**0.00**
	DEDUCT AMOUNT FROM BASE BID= $839	

SALES TAX NOT INCLUDED.

Proposal subject to revision after 30 days. All prices are FOB factory - freight allowed to jobsite. Unloading and sales tax are not included. All claims for damage inst carriers must be made by consignee. Replacement of lost material will be charged to purchaser. Concealed reinforcing and guaranteed field measurements the responsibility of the contractor. Materials bid are manufacturer's standard unless otherwise stated. Quantities are proposed, not guaranteed - General Contractor to verify quantities listed above. Not responsible for code compliance. These terms supersede any future Purchase Order.

NOTE: If delivery appointments are required there is a $40.00 delivery notification charge per shipment. This charge is not included in the prices above.

Construction Supply Inc.

2410 5th Avenue North, Fargo, ND 58102

Phone: 701-235-6605
Fax: 701-235-9632
Web Site: www.csi-fargo.com

Estimate

Bid Date: 12/3/2015 **Estimate #:** 46551

Estimator: Rachel
E-mail: rachel@csi-fargo.com

To: All Contractors

Project Name: Whitefish City Hall & Parking
Whitefish, MT

Addendums: 1, 2

Phone: Fax:

PURCHASE ORDERS or MATERIAL CONTRACTS ONLY - NO SUBCONTRACTS - NO EXCEPTIONS

Acceptance of listed pricing is also acceptance of terms stated on this estimate.

Terms: NET 30 days, subject to credit approval. NO RETAINAGE ALLOWED. Past due amounts are subject to finance charges of 1-1/2% per month or 18% APR. We propose to furnish MATERIALS ONLY - One Shipment Only Per Section.

*Special Note: A Purchase Order for this project must be received **30 days** from the bid date.

Delivery must be made by* December 2016 *or the price may be subject to review.

Section:	Quantity/Description	Total
105100-Lockers	(14) 12x18x72"H Single Tier All Welded Metal Lockers w/ Powder Coat Finish, Louvered Doors,, Fillers, Double Pan Doors, Number Plates, Shelf and Coat Hooks Locks and Base by Others	**5,698.00**
102601-Wall Protection	(35) 2"x2"x4'H Surface Mounted 90 Degree Vinyl Corner Guards w/ Retainers and End Caps	**679.00**
104400-Fire Protection	(11) 5lb Multi-Purpose Fire Extinguishers w/ Standard Mounting Brackets and (8) Fully Recessed Non-Rated Fire Extinguisher Cabinets w/ Handle, Full Glazed Door and Flat Trim	**881.00**
	PARKING GARAGE Bid Package 7.10A	
102800-Toilet Accessories	(21) Toilet Accessories: 3 Toilet Tissue Dispensers, 3 Paper Towel/Waste Receptacle Combo Units, 3 Soap Dispensers, 3-18x36"H Frameless Mirrors and 9 Grab Bars	**2,300.00**
104400-Fire Protection	(9) 5lb Multi-Purpose Fire Extinguishers w/ Standard Mounting Brackets and (9) Surface Mounted Non-Rated Fire Extinguisher Cabinets w/ Handle and Full Glazed Door	**919.00**
	Bid Package 7.11B	
115213-Projection Screens	(1) 108"H x 188" W Motorized Front Projection Screen w/ White Case for Recessing	**6,508.00**

SALES TAX NOT INCLUDED.

Proposal subject to revision after 30 days. All prices are FOB factory - freight allowed to jobsite. Unloading and sales tax are not included. All claims for damage inst carriers must be made by consignee. Replacement of lost material will be charged to purchaser. Concealed reinforcing and guaranteed field measurements - the responsibility of the contractor. Materials bid are manufacturer's standard unless otherwise stated. Quantities are proposed, not guaranteed - General Contractor to verify quantities listed above. Not responsible for code compliance. These terms supersede any future Purchase Order.

NOTE: If delivery appointments are required there is a $40.00 delivery notification charge per shipment. This charge is not included in the prices above.

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: MARTEL CONSTRUCTION

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 7.10 C

Bid Package Description: DIVISION 10 INSTALL

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12/3/15

By: MARTEL CONSTRUCTION
Contractor

Signature

Project Mgr
Title

rdunn@martelconstruction.com
Email Address:

305 Highway 83, Bigfork MT 59911
Business Address

2124
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ Twelve Thousand Three Hundred 12,300)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ Two Hundred Dollars)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($ 2,000)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($)

WALL TILE - Deduct to Base Bid:

($)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID:

($_____)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($_____)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($_____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($_____)

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: MARTEL CONSTRUCTION

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 7.11 A

Bid Package Description: Appliances

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12/3/15

By: MARTEL CONSTRUCTION
Contractor

Signature

Project Mgr
Title

rdunn@martelconstruction.com
Email Address:

305 Highway 83, Bigfork MT 59911
Business Address

2124
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ 6,336)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 100)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($)

WALL TILE - Deduct to Base Bid:

($)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID:

($_____)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($_____)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($_____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($_____)

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: Construction Supply, Inc. – Rachel Mischke
2410 5th ave N Fargo, ND 58102

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 1 + 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 7.11 B

Bid Package Description: Projection Screens

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12/3/15

By:

Construction Supply, Inc.
Contractor

Rachel Mischke
Signature

Estimator
Title

2410 5th ave N
Fargo ND 58102
Business Address

rachel@csi-fargo.com
Email Address:

n/A
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID: – no tax

($ 6,508.00)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ 196.00)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($ —)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($ —)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($ —)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($ —)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($ —)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($ —)

WALL TILE - Deduct to Base Bid:

($ —)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID:

($_____)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($_____)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($_____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($_____)

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: Diversions Contract Window Coverings / 1988 E. Gunther Avenue / Coeur d'Alene, Idaho 83815
208-765-8084 office / 866-765-8412 fax / 619-218-2787 mobile

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 1 and 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: BP 7.12A

Bid Package Description: Division 122400 Window Shades

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: December 2, 2015

By:

Larry Siglin, dba Diversions Contract Window Coverings
Contractor

Larry Siglin
Signature

Principal
Title

1988 East Gunther Avenue
Coeur d'alene, Idaho 83815-9435
Business Address

Email Address:

162527
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ $ 9,013.30 / Nine Thousand Thirteen Dollars and thirty cents)

(Hunter Douglas RB500 Roller Shades)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ N/A)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($ N/A)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($ N/A)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($ N/A)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($ N/A)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($ N/A)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($ N/A)

WALL TILE - Deduct to Base Bid:

($ N/A)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID:

($ N/A _____)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($ _____)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($ N/A _____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($ N/A _____)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($ N/A _____)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($ N/A _____)

BID FORM

PROJECT: Whitefish City Hall & Parking Garage

TO: Martel Construction, Inc.
305 Highway #83
Bigfork, MT 59911

BID FROM: MARTEL CONSTRUCTION

I have received and fully reviewed the Contract Documents for the Whitefish City Hall and Parking Garage. I have also received **Addenda Nos.** 2, and have included their provisions in my Bid. I have examined the documents and submit the following Bid for:

Bid Package #: 7.12B

Bid Package Description: Site Furnishings - Bike Racks, Garbage Cans, Trash Containers

In submitting this Bid, I agree:

1. To hold my bid open sixty (60) consecutive calendar days.
2. To enter into and execute a Contract, if awarded on the basis of this Bid and to furnish all bonds if required, and insurance required by the bidding documents.
3. To accomplish the work in accordance with the Contract Documents.

Bidder will perform Work as detailed in the Contract Documents and described in the Project Manual, for the lump sum price of:

This bid must be submitted to Martel Construction at 305 Highway #83, Bigfork, MT 59911 before the noted date and time in the invitation to bid. Please see the "Instruction to Bidders", "Invitation to bid" and "Bid Package Descriptions" in the specification manual for all the specific requirements of submitting this bid.

Respectfully Submitted:

Date: 12/3/15

By: MARTEL CONSTRUCTION
Contractor

Signature

Project Mgr
Title

cdunn@martelconstruction.com
Email Address:

305 Highway 83, Bigfork MT 59911
Business Address

2124
Montana Public Contractor's License No.

Whitefish City Hall Cost

CITY HALL - BASE BID:

($ Twenty Three Thousand, Nine Hundred) 23,900

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($_____)

BID ALTERNATES:

BASEMENT FINISH - Deduct to Base Bid:

($_____)

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($_____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($_____)

WOOD BOARD & BATTEN PANELING - Deduct to Base Bid:

($_____)

WOOD SPECIES FOR WOOD PANELING AND TRIM - Deduct to Base Bid:

($_____)

CASEWORK STORAGE CUBBIES AND COUNTER TOPS - Deduct to Base Bid:

($_____)

WALL TILE - Deduct to Base Bid:

($_____)

Whitefish City Parking Garage Cost

PARKING GARAGE BASE BID:

($_____)

Bidder will furnish Performance and Labor & Material Payment Bonds for 100% of the total Base Bid price for the lump sum price of:

Add to Base Bid:

($_____)

BID ALTERNATES:

PAINTING OF BUILDING CANOPIES - Deduct to Base Bid:

($_____)

PAINTING OF CORNICE DETAIL - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE CIELING - Deduct to Base Bid:

($_____)

PAINTING OF GARAGE EAST WALL, COLUMNS, & BEAMS - Deduct to Base Bid:

($_____)

(This page left blank intentionally to separate printed sections)

1035 First Ave West
Kalispell, MT 59901
406.751.8200
406.751.8210
planningweb@flathead.mt.gov
flathead.mt.gov/planning_zoning

December 8, 2015

James L. Laidlaw
1230 Lion Mountain Drive
Whitefish, MT 59937

Dear James:

I am happy to inform you that you were appointed to the Whitefish City Planning Board by the County Commissioners on December 8, 2015. Your term will begin January 1, 2016 and run to December 31, 2017.

Please sign and notarize the enclosed Notice of Appointment and return to:

Maria Albertson
800 South Main, Room 114
Kalispell, MT 59901-5420

I look forward to working with you on this board. If you have any questions, please give me a call.

Sincerely,

Mark Mussman
Director

ORDINANCE NO. 14-08

An Ordinance of the City Council of the City of Whitefish, Montana, providing that the Whitefish City Code be amended by adding Title 2, Chapter 15, providing for the creation of the Whitefish Planning Board, consistent with State law, and repealing Section 11-7-4.

WHEREAS, the City Council enacted Title 2, Chapter 1, to the Whitefish City Code, by Ordinance No. 01-06, establishing memberships and organization of City boards and committees; and

WHEREAS, by WCC Section 2-1-2, the provisions of Title 2, Chapter 1, to the Whitefish City Code did not apply to the City-County Planning Board as some of its members were appointed by agencies other than the City; and

WHEREAS, the Flathead County Board of County Commissioners has taken action to dissolve the Whitefish City-County Planning Board, assume jurisdiction of the exterritorial area around Whitefish, and exercise its election for the City to create a city planning board; and

WHEREAS, the City Council adopted Emergency Ordinance No. 14-07 on August 18, 2014, providing for the creation of an Interim Whitefish Planning Board; and

WHEREAS, the City Council desires to adopt an Ordinance providing for the creation of a city planning board as a standing committee of the City and establish the Whitefish Planning Board, its membership, powers, and duties, consistent with State law; and

WHEREAS, the City Council desires to repeal WCC Section 11-7-4 and all Resolutions, Ordinances and Sections of the Whitefish City Code in conflict with the application of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: STANDING COMMITTEE ESTABLISHED: Pursuant to and under the provisions of Title 76, Montana Code Annotated, the City Council of the City of Whitefish does create and establish a city planning board to be known as the "Whitefish Planning Board" consistent with State law by adding Title 2, Chapter 15, WCC, and repealing Section 11-7-4, WCC.

Section 2: PURPOSE, POWERS AND DUTIES: By this chapter, the City Council of the City of Whitefish adopts all of the sections of the laws of Montana aforementioned that specifically pertain to a city planning board, granting and delegating to the Whitefish Planning Board all of the rights, privileges, powers, duties, and responsibilities thereto appertaining. The Whitefish Planning Board shall have such jurisdiction as provided by State law.

Section 3: MEMBERSHIP: The Whitefish Planning Board shall consist of seven (7) members, residing within the corporate limits of the City of Whitefish, to be appointed as follows:

A. One member appointed by the City Council from its own membership;

B. One member appointed by the City Council who, at the Council's discretion, may be an employee of the City of Whitefish or hold public office in Whitefish or Flathead County;

C. One member appointed by the Mayor upon designation by the Flathead County Board of Commissioners, who may be a member of the Board of County Commissioners or an office holder or employee of the County; and

D. Four citizen members appointed by the Mayor, who shall be qualified by knowledge and experience in matters pertaining to the development of the City.

Board members shall receive no compensation.

Section 4: TERMS: POSITIONS: Board terms shall be two (2) years. There are hereby created positions numbered one (1) through seven (7) inclusive of the members of the Whitefish Planning Board. Members serving on the effective date of this Chapter shall be assigned to positions that correspond with the following expiration dates:

POSITION NUMBER	TERM EXPIRATION DATE
1	December 31, 2015
2	December 31, 2015
3	December 31, 2015
4	December 31, 2015
5	December 31, 2016
6	December 31, 2016
7	December 31, 2016

As each of the above listed expiration dates has past, a member appointed to the position shall serve for a two (2) year term. Terms shall begin on January 1 following the initial expiration of the preceding term. At the discretion of the City Council, members may be appointed for more than one term.

Section 5: REMOVAL OF MEMBER: A member of Whitefish Planning Board may be removed from the board by majority vote of the City Council for cause upon written charges and after a public hearing. Willful disregard of State statutes, City ordinances and the rules of procedure of the board, or absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year shall constitute cause for removal. Circumstances of the absences shall be considered by the City Council prior to removal.

Any person who knows in advance of his or her inability to attend a specific meeting shall notify the chair or secretary of Whitefish Planning Board at least twenty-four (24) hours prior to any scheduled meeting.

Section 6: VACANCY: Pursuant to Sections 3 and 4, any vacancy on Whitefish Planning Board shall be filled by the City Council acting in a regular or special session for the unexpired term of the Position wherein the vacancy exists. The City Council may appoint members of the City Council to temporarily fill vacant positions on Whitefish Planning Board.

Section 7: ORGANIZATION: Whitefish Planning Board, at its first meeting after January 1 of each year, shall elect a chair and vice-chair for the next twelve (12) month period. Upon the absence of the chair, the vice-chair shall serve as chair pro tem. If a vacancy occurs in the chair or vice-chair positions, the board shall elect a member to fill the vacancy at the next meeting.

Section 8: MEETINGS; RULES AND REGULATIONS: Four (4) members of Whitefish Planning Board shall constitute a quorum. Not less than a quorum of the board may transact any business or conduct any proceedings before the board. The concurring vote of four (4) members of the board shall be necessary to decide any question or matter before the board, except a motion for a continuance and motions to elect a chair and vice-chair may be decided by a simple majority vote of the board. The board shall adopt rules of procedure for the conduct of meetings consistent with statutes, the City Charter, ordinances and resolutions. Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. All meetings shall be open to the public.

Section 9: EXPENDITURE AUTHORIZED: Whitefish Planning Board shall not have authority to make any expenditures on behalf of the City or disburse any funds provided by the City or to obligate the City for any funds except as has been included in the City budget and after the City Council shall have authorized the expenditure by resolution, which resolution shall provide the administrative method by which funds shall be drawn and expended.

Section 10: WCC Section 11-7-4 is hereby repealed.

Section 11: All resolutions, ordinances and Sections of the Whitefish City Code and parts thereof in conflict with the application of this Ordinance are hereby repealed.

Section 12: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 13: This Ordinance does not affect the rights or duties that matured, penalties and assessments that were incurred or proceedings that began before the effective date of this Ordinance.

Section 14: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 15TH DAY OF SEPTEMBER, 2014.

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

WHITEFISH PLANNING BOARD

2-15-1: STANDING COMMITTEE ESTABLISHED:
Pursuant to and under the provisions of title 76, Montana Code Annotated, the city council of the city of Whitefish does create and establish a city planning board to be known as the "Whitefish planning board" consistent with the state law. (Ord 14-08, 9-15-2014)

2-15-2: PURPOSE, POWERS AND DUTIES:
By this chapter, the city council of the city of Whitefish adopts all of the sections of the laws of Montana aforementioned that specifically pertain to a city planning board, granting and delegating to the Whitefish planning board all of the rights, privileges, powers, duties, and responsibilities thereto appertaining. The Whitefish planning board shall have such jurisdiction as provided by state law. (Ord 14-08, 9-15-2014)

2-15-3: MEMBERSHIP:
The Whitefish planning board shall consist of seven (7) members, residing within the corporate limits of the city of Whitefish, to be appointed as follows:

A. One member appointed by the city council from its owns membership;
B. One member appointed by the city council who, at the council's discretion, may be an employee of the city of Whitefish or hold public office in Whitefish or Flathead County.
C. One member appointed by the mayor upon designation by the Flathead County board of commissioners, who may be a member of the board of county commissioners or an office holder or employee of the county; and
D. Four (4) citizen members appointed by the mayor, who shall be qualified by knowledge and experience in matters pertaining to the development of the city.

Board members shall receive no compensation. (Ord 14-08, 9-15-2014)

2-15-4: TERMS, POSITIONS
Board terms shall be two (2) years. There are hereby created positions numbered 1 through 7 inclusive of the members of the Whitefish planning board. Members serving on the effective date of this chapter shall be assigned to positions that correspond with the following expiration dates:

Position Number	Term Expiration Date
1	December 31, 2015
2	December 31, 2015
3	December 31, 2015
4	December 31, 2015
5	December 31, 2016
6	December 31, 2016
7	December 31, 2016

As each of the above listed expiration dates has past, a member appointed to the position shall serve for a two (2) year term. Terms shall begin on January 1 following the initial expiration of the preceding term. At the discretion of the city council, members may be appointed for more than one term. (Ord. 14-08, 9-15-2014)

2-15-5: REMOVAL OF MEMBER

A member of Whitefish planning board may be removed from the board by majority vote of the city council for cause upon written charges and after a public hearing. Wilful disregard of state statutes, city ordinances and the rules of procedure of the board, or absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year shall constitute cause for removal. Circumstances of the absences shall be considered by the city council prior to removal. Any person who knows in advance of his or her inability to attend a specific meeting shall notify the chair or secretary of Whitefish planning board at least twenty four (24) hours prior to any scheduled meeting. (Ord. 14-08, 9-15-2014)

2-15-6: VACANCY

Pursuant to sections 2-15-3 and 2-15-4 of this chapter, any vacancy on Whitefish planning board shall be filled by the city council acting in a regular or special session for the unexpired term of the position wherein the vacancy exists. The city council may appoint members of the city council to temporarily fill vacant positions on Whitefish planning board. (Ord. 14-08, 9-15-2014)

2-15-7: ORGANIZATION

Whitefish planning board, at its first meeting after January 1 of each year, shall elect a chair and vice chair for the next twelve (12) month period. Upon the absence of the chair, the vice chair shall serve as chair pro tem. If a vacancy occurs in the chair or vice chair position, the board shall elect a member to fill the vacancy at the next meeting. (Ord. 14-08, 9-15-2014)

2-15-8: MEETINGS; RULES AND REGULATIONS:

Four (4) members of Whitefish planning board shall constitute a quorum. Not less than a quorum of the board may transact any business or conduct any proceedings before the board. The concurring vote of four (4) members of the board shall be necessary to decide any question or matter before the board, except a motion for a continuance and motions to elect a chair and vice chair may be decided by a simple majority vote of the board. The board shall adopt rules of procedure for the conduct of meetings consistent with statutes, the city charter, ordinances and resolutions. Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. All meetings shall be open to the public. (Ord. 14-08, 9-15-2014)

2-15-9: EXPENDITURE AUTHORIZED

Whitefish planning board shall not have authority to make any expenditures on behalf of the city or disburse any funds provided by the city or to obligate the city for any funds except as has been included in the city budget and after the city council shall have authorized the expenditure by resolution, which resolution shall provide the administrative method by which funds shall be drawn and expended. (Ord. 14-08, 9-15-2014)