CITY COUNCIL MEETING AGENDA
TUESDAY, January 22, 2019, at 7:00 p.m.
City Hall Council Chambers, 201 First Avenue East

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. AGENDA APPROVAL

E. CONSENT AGENDA
   All items listed on the consent agenda will be accepted by one motion. If a council member desires to discuss an item separately, the item can be removed from the consent agenda by motion.

1. Council Minutes – January 7, 2019

2. Ordinance 1818 – Second Reading – Cottage Gardens Zoning
   A request from Bruce Wiederspiel to zone one acre of land as R-3 and to combine it with an existing parcel of land that is the expired Cottage Gardens property.

3. Ordinance 1819 – Second Reading – North Town Center Zoning Map Amendment
   A request from Stillwater Corporation to rezone 9.4 acres of land in the existing North Town Center PUD from R-3, Residential to B-2, General Business, in order to further buffer the Kalispell National Guard Armory to the west.

F. COMMITTEE REPORT – None.

G. PUBLIC COMMENT
   Persons wishing to address the council on any issue not on the agenda are asked to do so at this time. Those addressing the council are requested to give their name and address for the record. Please see the last page of the agenda for the proper manner of addressing the council. Please limit comments to three minutes.

H. REPORTS, RECOMMENDATIONS, AND SUBSEQUENT COUNCIL ACTION
   Persons wishing to address the council on individual agenda items will be asked to do so following staff reports. Please see the last page of the agenda for the proper manner of addressing the council. Please limit comments to three minutes.
1. **Ordinance 1820 – First Reading – Creating Downtown Urban Renewal Tax Increment Financing District**

This Ordinance creates a Downtown Urban Renewal Tax Increment Financing District as an overlay to the Downtown Urban Renewal District for the purposes of providing funding to rehabilitate and improve public infrastructure within the District.

2. **Village Plaza Amended Lot 1 Final Plat**

Jackola Engineering on behalf of Jerman Holdings, LLC is requesting final plat approval of a 2-lot commercial subdivision at 60 Village Loop Drive.

3. **Extension of Sludge Management Agreement with Glacier Gold Composting**

Approval would extend the agreement for Sludge Management with Glacier Gold Composting for an additional five years to expire March 31, 2024.

I. **CITY MANAGER, COUNCIL, AND MAYOR REPORTS (No Action)**

J. **ADJOURNMENT**

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**UPCOMING SCHEDULE / FOR YOUR INFORMATION**

City Offices Closed – January 21, 2019 – Martin Luther King Jr Day

Work Session – January 28, 2019, at 7:00 p.m. – Council Chambers

Next Regular Meeting – February 4, 2019, at 7:00 p.m. – Council Chambers

Next Work Session – February 11, 2019, at 7:00 p.m. – Council Chambers

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify the City Clerk at 758-7756.

Watch regular City Council sessions live on Charter Cable Channel 190 or online at the Meetings on Demand tab at www.kalispell.com.
ADMINISTRATIVE CODE
Adopted July 1, 1991

Section 2-20 Manner of Addressing Council

a. Each person not a Council member shall address the Council, at the time designated in the agenda or as directed by the Council, by stepping to the podium or microphone, giving that person's name and address in an audible tone of voice for the record, and unless further time is granted by the Council, shall limit the address to the Council to three minutes.

b. All remarks shall be addressed to the Council as a body and not to any member of the Council or Staff.

c. No person, other than the Council and the person having the floor, shall be permitted to enter into any discussion either directly or through a member of the Council, without the permission of the Presiding Officer.

d. No question shall be asked of individuals except through the Presiding Officer.

PRINCIPLES FOR CIVIL DIALOGUE
Adopted by Resolution 5180 on February 5, 2007

- 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 in 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 & guidelines established for each meeting.
CITY COUNCIL DRAFT MEETING MINUTES
Monday, January 7, 2019, at 7:00 p.m.
City Hall Council Chambers, 201 First Avenue East

A. CALL TO ORDER
Mayor Mark Johnson called the meeting to order at 7 p.m.

B. ROLL CALL

Mayor - Mark Johnson: Present
Council Member - Kari Gabriel: Present
Council Member - Sandy Carlson: Present
Council Member - Wayne Saverud: Present
Council President - Chad Graham: Present
Council Member - Rod Kuntz: Present
Council Member - Tim Kluesner: Present
Council Member - Phil Guiffrida: Present
Council Member - Kyle Waterman: Present

Staff members present included City Manager Doug Russell, City Attorney Charles Harball, City Clerk Aimee Brunckhorst, Planning Director Tom Jentz, Senior Planner Jarod Nygren, and Interim Police Chief Tim Falkner.

C. PLEDGE OF ALLEGIANCE

D. AGENDA APPROVAL

Motion and Vote to approve the agenda as submitted.
Council Member - Phil Guiffrida: Motion
Council Member - Kari Gabriel: 2nd
Mayor - Mark Johnson: Approve
Council Member - Kari Gabriel: Approve
Council Member - Sandy Carlson: Approve
Council Member - Wayne Saverud: Approve
Council President - Chad Graham: Approve
Council Member - Rod Kuntz: Approve
Council Member - Tim Kluesner: Approve
Council Member - Phil Guiffrida: Approve
Council Member - Kyle Waterman: Approve
The motion passed unanimously on voice vote.

E. CONSENT AGENDA
All items listed on the consent agenda will be accepted by one motion. If a council member desires to discuss an item separately, the item can be removed from the consent agenda by motion.

1. Council Minutes – December 17, 2018

Motion and Vote to approve the consent agenda.
Council Member - Phil Guiffrida: Motion
Council Member - Sandy Carlson: 2nd
Mayor - Mark Johnson: Approve
Council Member - Kari Gabriel: Approve
Council Member - Sandy Carlson: Approve
Council Member - Wayne Saverud: Approve
Council President - Chad Graham: Approve
Council Member - Rod Kuntz: Approve
Council Member - Tim Kluesner: Approve
Council Member - Phil Guiffrida: Approve
Council Member - Kyle Waterman: Approve

The motion passed unanimously on voice vote.

F. COMMITTEE REPORT – None.

G. PUBLIC COMMENT
Persons wishing to address the council on any issue not on the agenda are asked to do so at this time. Those addressing the council are requested to give their name and address for the record. Please see the last page of the agenda for the proper manner of addressing the council. Please limit comments to three minutes.

Mayor Johnson opened general public comment.

John Goyer, Public Comment
Mr. Goyer of 227 4th Street East spoke regarding traffic concerns on 4th Street East.

00:07:33 Pauline Shordal, Public Comment
Ms. Shordal spoke regarding the pruning completed on 3rd Avenue East congratulating the city on a job well done.

Seeing no further public comment, Mayor Johnson closed public comment.

H. PUBLIC HEARING – Downtown Urban Renewal Tax Increment Financing District
Council will accept comments regarding the Council’s intent to create a Downtown Urban Renewal Tax Increment Financing District.

Mayor Johnson opened the public hearing and called for public comment.
Marshall Noice, Public Comment
Mr. Noice with the Business Improvement District Board spoke in favor of the district.

John Goyer, Public Comment
Mr. Goyer of 227 4th Street East spoke regarding questions and concerns about the district.

Seeing no further public comment, Mayor Johnson closed the public hearing.

I. REPORTS, RECOMMENDATIONS, AND SUBSEQUENT COUNCIL ACTION
Persons wishing to address the council on individual agenda items will be asked to do so following staff reports. Please see the last page of the agenda for the proper manner of addressing the council. Please limit comments to three minutes.

1. Cottage Gardens – Annexation, Zoning, and Preliminary Plat
   This is a request from Bruce Wiederspiel to annex and zone one (1) acre of land as R-3 and to combine it with an existing parcel of land that is the expired Cottage Gardens property. This is also a request for a new Preliminary Plat for 37 single family residential lots for the entire property.

   Senior Planner Jarod Nygren provided the staff presentation.

Public Comment
Mayor Johnson opened public comment.

00:19:43 Doug Peppmeier, Public Comment
Mr. Peppmeier, with TDH Engineering offered his availability should questions arise for the applicant.

Seeing no further public comment, Mayor Johnson closed public comment.

   a. Resolution 5907 – Annexation

Motion and Vote to approve Resolution 5907, a resolution to provide for the alteration of the boundaries of the City of Kalispell by including therein as an Annexation certain real property, more particularly described as assessors Tract 1A, in the Southwest Quarter and Southeast Quarter of Section 2, Township 28 North, Range 22 West, P.M.M., Flathead County, Montana, to be known as the Cottage Gardens Addition No. 441; to zone said property in accordance with the Kalispell Zoning Ordinance, and to declare an effective date.

   Council Member - Phil Guiffrida: Motion
   Council Member - Kari Gabriel: 2nd
   Mayor - Mark Johnson: Approve
   Council Member - Kari Gabriel: Approve
   Council Member - Sandy Carlson: Approve
   Council Member - Wayne Saverud: Approve
   Council President - Chad Graham: Approve
   Council Member - Rod Kuntz: Approve
Council Member - Tim Kluesner: Approve
Council Member - Phil Guiffrida: Approve
Council Member - Kyle Waterman: Approve

The motion passed unanimously on roll call vote.

b. Ordinance 1818 – First Reading – Initial Zoning

Motion and Vote to approve the first reading of Ordinance 1818, an ordinance to amend Section 27.02.010, official zoning map, city of Kalispell zoning ordinance no. 1677, by zoning certain real property, more particularly described as assessors tract 1A in the Southwest Quarter and Southeast Quarter of Section 2, Township 28 North, Range 22 West, P.M.M., Flathead County, Montana (previously zoned County AG-80, Agricultural) to City R-3 (Urban Single Family Residential), in accordance with the Kalispell Growth Policy Plan-It 2035, and to provide an effective date.

Council Member - Wayne Saverud: Motion
Council Member - Kari Gabriel: 2nd
Mayor - Mark Johnson: Approve
Council Member - Kari Gabriel: Approve
Council Member - Sandy Carlson: Approve
Council Member - Wayne Saverud: Approve
Council President - Chad Graham: Approve
Council Member - Rod Kuntz: Approve
Council Member - Tim Kluesner: Approve
Council Member - Phil Guiffrida: Approve
Council Member - Kyle Waterman: Approve

The motion passed unanimously on roll call vote.

c. Resolution 5908 – Preliminary Plat

Motion and Vote to approve Resolution 5908, a resolution conditionally approving the Preliminary Plat of Cottage Gardens Subdivision, more particularly described as Tracts 1A and 1AC in the Southwest Quarter and Southeast Quarter of Section 2, Township 28 North, Range 22 West, P.M.M., Flathead County, Montana.

Discussion on the motion.

00:26:35 Public Comment
Mayor Johnson opened public comment. Seeing none, he closed public comment.

Vote on the motion.
Council Member - Kari Gabriel: Motion
Council President - Chad Graham: 2nd
Mayor - Mark Johnson: Approve
Council Member - Kari Gabriel: Approve
Council Member - Sandy Carlson: Approve
Council Member - Wayne Saverud: Approve
Council President - Chad Graham: Approve
Council Member - Rod Kuntz: Approve
Council Member - Tim Kluesner: Approve
Council Member - Phil Guiffrida: Approve
Council Member - Kyle Waterman: Approve
The motion passed unanimously on roll call vote.

2. Ordinance 1819 – First Reading – North Town Center Zoning Map Amendment

This is a request from Stillwater Corporation to rezone 9.4 acres of land in the existing North Town Center PUD from R-3, Residential to B-2, General Business, in order to further buffer the Kalispell National Guard Armory to the west.

Senior Planner Jarod Nygren provided the staff presentation.

Council questions for staff.

Public Comment
Mayor Johnson opened public comment.

Motion and Vote to approve the first reading of Ordinance 1819, an ordinance to amend Section 27.02.010, official zoning map, city of Kalispell zoning ordinance 1677, on 9.4 Acres of land described herein and located entirely within the Kalispell North Town Center (formerly known as Glacier Town Center) Planned Unit Development enacted by Ordinance 1630, in accordance with the Kalispell Growth Policy – Plan It 2035, and to provide an effective date.
Council President - Chad Graham: Motion
Council Member - Tim Kluesner: 2nd
Mayor - Mark Johnson: Approve
Council Member - Kari Gabriel: Approve
Council Member - Sandy Carlson: Approve
Council Member - Wayne Saverud: Approve
Council President - Chad Graham: Approve
Council Member - Rod Kuntz: Approve
Council Member - Tim Kluesner: Approve
Council Member - Phil Guiffrida: Approve
Council Member - Kyle Waterman: Approve
The motion passed unanimously on roll call vote.

3. Appointments to the Kalispell Business Improvement District (BID)

The Mayor will consider appointing two representatives to the Kalispell Business Improvement District.

Mayor Johnson appointed Curtis Bartel and Ryan Berweger.

Motion and Vote to confirm the Mayoral appointment of Curtis Bartel and Ryan Berweger to the Business Improvement District.
Council Member - Phil Guiffrida: Motion
Council Member - Tim Kluesner: 2nd
Mayor - Mark Johnson: Approve
The motion passed unanimously on voice vote.

4. **Appointment to the Kalispell Tourism Business Improvement District (TBID)**

   The Mayor will consider appointing one representative to the Kalispell Tourism Business Improvement District.

Mayor Johnson appointed Lucy Weeder to the board.

**Motion and Vote to confirm the Mayoral appointment of Lucy Weeder to the Tourism Business Improvement District.**

   Council Member - Wayne Saverud: Motion
   Council President - Chad Graham: 2nd
   Mayor - Mark Johnson: Approve
   Council Member - Kari Gabriel: Approve
   Council Member - Sandy Carlson: Approve
   Council Member - Wayne Saverud: Approve
   Council President - Chad Graham: Approve
   Council Member - Rod Kuntz: Approve
   Council Member - Tim Kluesner: Approve
   Council Member - Phil Guiffrida: Approve
   Council Member - Kyle Waterman: Approve

   The motion passed unanimously on voice vote.

J. **CITY MANAGER, COUNCIL, AND MAYOR REPORTS** (No Action)

City Manager Doug Russell provided the following report:

- Open House for Finalists for Chief of Police next Monday, January 14, at 7 p.m.
- Tuesday, the 22nd will be the next regular meeting.
- The meeting on January 28, will likely consist of an on-street parking work session.
- Mr. Russell spoke regarding the 911 facility and the possibility of changes that may emerge.

Councilor Guiffrida provided discussion regarding the 911 facility.

**Mayor Mark Johnson provided the following report:**
• The Mayor spoke to public comment received regarding traffic on 3rd and 4th Avenue.

• The Mayor spoke regarding the details of the tax increment financing district to answer questions brought forth from the public during public comment at the public hearing.

• The Montana Legislature is in session. The Mayor would encourage the public to stay informed and let their representatives know how they feel about issues.

K. **ADJOURNMENT**

Mayor Johnson adjourned the meeting at 7:45 p.m.

___________________________
Aimee Brunckhorst, CMC
City Clerk

Minutes approved on January 22, 2019

**UPCOMING SCHEDULE / FOR YOUR INFORMATION**

**Chief of Police Finalists Open House** – January 14, 2019, at 7:00 p.m. – Council Chambers

**City Offices Closed** – January 21, 2019 – Martin Luther King Jr Day

**Next Regular Meeting** – **TUESDAY**, January 22, 2019 at 7:00 p.m. – Council Chambers

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REPORT TO:  Doug Russell, City Manager

FROM:       Jarod Nygren, Senior Planner

SUBJECT:    Ordinance 1818 Second Reading – Cottage Gardens

MEETING DATE: January 22, 2019

BACKGROUND: This is the second reading of Ordinance 1818, an ordinance to amend the Kalispell Zoning Map, and establish a zoning classification of R-3. The subject property is located at 645 Three Mile Drive. The property can be legally described as Tract 1A in the SW4 and SE4 of Section 2, Township 28 North, Range 22 West, P.M.M., Flathead County, Montana.

The Kalispell City Council, at their meeting on January 7, 2019, approved the first reading of Ordinance 1818, unanimously upon roll call vote.

RECOMMENDATION: It is recommended that the Kalispell City Council approve the second reading of Ordinance 1818, an Ordinance to amend section 27.02.010, official zoning map, City of Kalispell zoning ordinance 1677, by zoning certain real property described as Tract 1A in the SW4 and SE4 of Section 2, Township 28 North, Range 22 West, P.M.M., Flathead County, Montana to City R-3 in accordance with the Kalispell Growth Policy Plan – It 2035, and to provide an effective date.

FISCAL EFFECTS: Approval of the request would have minimal fiscal impact to the City.

ALTERNATIVES: Deny the request.

ATTACHMENTS: Ordinance 1818

C: Aimee Brunckhorst, Kalispell City Clerk
ORDINANCE NO. 1818

AN ORDINANCE TO AMEND SECTION 27.02.010, OFFICIAL ZONING MAP, CITY OF KALISPELL ZONING ORDINANCE, (ORDINANCE NO. 1677), BY ZONING CERTAIN REAL PROPERTY, MORE PARTICULARLY DESCRIBED AS ASSESSORS TRACT 1A IN THE SOUTHWEST QUARTER AND SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 28 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA (PREVIOUSLY ZONED COUNTY AG-80, AGRICULTURAL) TO CITY R-3 (URBAN SINGLE FAMILY RESIDENTIAL), IN ACCORDANCE WITH THE KALISPELL GROWTH POLICY PLAN - IT 2035, AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, Bruce Wiederspiel, the owner of the property described above, petitioned the City of Kalispell that the zoning classification attached to the above described tract of land be zoned R-3, Urban Single Family Residential, on approximately 1.00 acre of land; and

WHEREAS, the property is located at 645 Three Mile Drive; and

WHEREAS, Bruce Wiederspiel’s petition was the subject of a report compiled by the Kalispell Planning Department, Staff Report #KA-18-07, dated November 30, 2018, in which the Kalispell Planning Department evaluated the petition and recommended that the property as described above be zoned R-3, Urban Single Family Residential, as requested by the petition; and

WHEREAS, after considering all the evidence submitted on the proposal to zone the property as described R-3, Urban Single Family Residential, the City Council finds such initial zoning to be consistent with the Kalispell Growth Policy Plan-It 2035 and adopts, based upon the criterion set forth in Section 76-3-608, M.C.A., and State, Etc. v. Board of County Commissioners, Etc. 590 P2d 602, the findings of fact of KPD as set forth in Staff Report No. KA-18-07.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KALISPELL AS FOLLOWS:

SECTION 1. Section 27.02.010, of the Official Zoning Map of the Kalispell Zoning Ordinance, (Ordinance No. 1677) is hereby amended by designating the property described above as R-3, Urban Single Family Residential, on approximately 1.00 acre of land.

SECTION 2. The balance of Section 27.02.010, Official Zoning Map, City of Kalispell Zoning Ordinance not amended hereby shall remain in full force and effect.

SECTION 3. This Ordinance shall be effective thirty (30) days from and after the date of its final passage and approval by the Mayor.


Mark Johnson
Mayor

ATTEST:

Aimee Brunckhorst, CMC
City Clerk
REPORT TO: Doug Russell, City Manager

FROM: Jarod Nygren, Senior Planner

SUBJECT: Ordinance 1819 Second Reading – Kalispell North Town Center

MEETING DATE: January 22, 2019

BACKGROUND: This is the second reading of Ordinance 1819, an ordinance to amend the Kalispell Zoning Map, and establish a zoning classification of B-2. The area to be rezoned can be described as 9.4-acres of land described as the westerly 592 feet of Tract 9 and westerly 592 feet of Tract 10 of COS 4491 in the S2 of Section 19, Township 29 North, Range 21 West, P.M.M, Flathead County, Montana.

The Kalispell City Council, at their meeting on January 7, 2019, approved the first reading of Ordinance 1819, unanimously upon roll call vote.

RECOMMENDATION: It is recommended that the Kalispell City Council approve the second reading of Ordinance 1819, an Ordinance to amend section 27.02.010, official zoning map, City of Kalispell zoning ordinance 1677, by zoning certain real property described as 9.4-acres of land described as the westerly 592 feet of Tract 9 and westerly 592 feet of Tract 10 of COS 4491 in the S2 of Section 19, Township 29 North, Range 21 West, P.M.M, Flathead County, Montana to City B-2 in accordance with the Kalispell Growth Policy Plan – It 2035, and to provide an effective date.

FISCAL EFFECTS: Approval of the request would have minimal fiscal impact to the City.

ALTERNATIVES: Deny the request.

ATTACHMENTS: Ordinance 1819

c: Aimee Brunckhorst, Kalispell City Clerk
ORDINANCE NO. 1819

AN ORDINANCE TO AMEND SECTION 27.02.010, OFFICIAL ZONING MAP, CITY OF KALISPELL ZONING ORDINANCE (ORDINANCE NO. 1677) ON 9.4 ACRES OF LAND DESCRIBED HEREIN AND LOCATED ENTIRELY WITHIN THE KALISPELL NORTH TOWN CENTER (FORMERLY KNOWN AS GLACIER TOWN CENTER) PLANNED UNIT DEVELOPMENT ENACTED BY ORDINANCE NO. 1630, IN ACCORDANCE WITH THE KALISPELL GROWTH POLICY - PLAN IT 2035, AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, on February 4, 2008, the Kalispell City Council passed Ordinance No. 1630 approving the Glacier Town Center Planned Unit Development and amending the City of Kalispell Zoning Ordinance with the establishment of the underlying zoning designations; and

WHEREAS, Stillwater Corporation, the new owner of Glacier Town Center (now renamed Kalispell North Town Center), has requested a Land Use Map amendment from R-3, Residential, to B-2, General Business, on approximately 9.4 acres of the 485 acre development; and

WHEREAS, the property to be rezoned can be described as 9.4 acres of land and can be further described as the westerly 592 feet of Tract 9 and westerly 592 feet of Tract 10 of COS 4491 in the South Half of Section 19, Township 29 North, Range 21 West, P.M.M, Flathead County, Montana; and

WHEREAS, the requested change in zoning is in accordance with the Kalispell Growth Policy – Plan It 2035; and

WHEREAS, based upon the application submitted and all evidence provided to the City Council in writing and orally at public hearing, it is in the best interests of the City of Kalispell that the requested Land Use Map amendment for the above described property from R-3, Residential, to B-2, General Business, be approved.
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KALISPELL, MONTANA AS FOLLOWS:

**SECTION 1.** The Kalispell Municipal Code, Section 27.02.010 (Ordinance No. 1677), known as the Official Zoning Map of the City of Kalispell Zoning Ordinance, is hereby amended to rezone approximately 9.4 acres of land described as the westerly 592 feet of Tract 9 and westerly 592 feet of Tract 10 of COS 4491 in the South Half of Section 19, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana from R-3, Residential, to R-2, General Business.

**SECTION 2.** This Ordinance shall take effect from and after 30 days of its passage by the City Council.


Mark Johnson
Mayor

ATTEST:

Aimee Brunckhorst, CMC
City Clerk
MEMORANDUM

TO: Doug Russell, City Manager

FROM: Charles Harball, City Attorney

SUBJECT: Ordinance No. 1820 – To Create a Downtown Urban Renewal Tax Increment Financing District as an Overlay to the Downtown Urban Renewal District

MEETING DATE: January 22, 2019 – Regular Council Meeting

BACKGROUND: On December 4, 2017, following many months of extensive interaction with the public, the Kalispell City Council adopted the Downtown Plan as an amendment to the City of Kalispell Growth Policy Plan-It 2035 by Resolution No. 5846. The adopted Downtown Plan identifies the City’s overall mission to meet its needs of promoting economic development, improving area employment opportunities, improving area housing opportunities and expanding the community’s tax base within the downtown area. It further identifies areas of blight within the downtown area that may be rehabilitated through replanning, removal of congestion, the provision of parks, playgrounds, and other public infrastructure improvements, and through encouraging voluntary rehabilitation. Finally, the Plan identifies the goal of creating a Downtown Urban Renewal District with a Tax Increment Finance District as an overlay for the purposes of constructing appropriate public infrastructure projects to invigorate the redevelopment of blighted conditions.

Sixteen years ago, the Kalispell Downtown Urban Renewal District and the Tax Increment Financing District overlay statutorily sunset after 22 years of service during which substantial rehabilitation to public infrastructure and private investment in the District occurred. Since that time, significant commercial investment has been made outside of Downtown Kalispell. Additionally, the Westside Urban Renewal and Tax Increment Financing Districts have been expanded to the Core area and are now ripe for investment by new development. Because of the attractive investment opportunities outside of the downtown area and the blight that continues to be there, a significant likelihood exists that a deprivation of investment will continue in the downtown area, increasing blighted properties, decreasing property values and the community’s tax base in that area.
Therefore, the Kalispell City Council passed Ordinance No. 1816 establishing the Downtown Urban Renewal District on second reading on December 17, 2018 and will become effective on January 16, 2019.

On December 17, 2018, the City Council passed a Resolution of Intent to give notice to the public of the Council’s intent to consider creating a Tax Increment Financing District overlay to the Downtown Urban Renewal District for the purposes of providing funding to rehabilitate and improve public infrastructure within the Urban Renewal District in order to attract private investment. On January 7, 2019 the City Council held the public hearing and took comment from the public and two comments were received.

RECOMMENDATION: It is recommended that the Council consider and pass Ordinance No. 1820 on first reading.

ALTERNATIVES: Council may seek to amend the Ordinance, reject the Ordinance or continue the matter for further consideration.
CERTIFICATE AS TO ORDINANCE AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Kalispell, Montana (the "City"), hereby certify that the attached ordinance is a true copy of an Ordinance entitled: AN ORDINANCE ESTABLISHING AN URBAN RENEWAL TAX INCREMENT FINANCING DISTRICT ENCOMPASSING A PORTION OF DOWNTOWN KALISPELL AS DELINIATED IN THE DOWNTOWN PLAN AMENDMENT TO THE CITY OF KALISPELL GROWTH POLICY PLAN-IT 2035 AS SET FORTH IN THE ATTACHED EXHIBIT "A" TO BE KNOWN AS THE DOWNTOWN KALISPELL URBAN RENEWAL TAX INCREMENT FINANCING DISTRICT (the "Ordinance"), on file in the original records of the City in my legal custody; that the Ordinance was duly adopted on first reading by the City Council of the City at a meeting on January 22, 2019, and the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Ordinance has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Ordinance at said meeting, the following City Council members voted in favor thereof:

voted against the same:

abstained from voting thereon:

or were absent:

WITNESS my hand officially this 22nd day of January, 2019.

Aimee Brunckhorst, CMC
City Clerk

I further certify that the Ordinance was duly adopted on second reading by the City Council of the City at a regular meeting on February 4, 2019, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Ordinance has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Ordinance at said meeting, the following City Council members voted in favor thereof:

voted against the same:

abstained from voting thereon:

or were absent:

WITNESS my hand officially this 4th day of February, 2019.

Aimee Brunckhorst, CMC
City Clerk
ORDINANCE NO. 1820

AN ORDINANCE ESTABLISHING AN URBAN RENEWAL TAX INCREMENT FINANCING DISTRICT ENCOMPASSING A PORTION OF DOWNTOWN KALISPELL AS DELINATED IN THE DOWNTOWN PLAN AMENDMENT TO THE CITY OF KALISPELL GROWTH POLICY PLAN-IT 2035 AS SET FORTH IN THE ATTACHED EXHIBIT “A” TO BE KNOWN AS THE DOWNTOWN KALISPELL URBAN RENEWAL TAX INCREMENT FINANCING DISTRICT.

WHEREAS, on December 4, 2017, following many months of extensive interaction with the public, the Kalispell City Council adopted the Downtown Plan as an amendment to the City of Kalispell Growth Policy Plan-It 2035 by Resolution No. 5846; and

WHEREAS, the adopted Downtown Plan identifies the City’s overall mission to meet its needs of promoting economic development, improving area employment opportunities, improving area housing opportunities and expanding the community’s tax base within the downtown area; and

WHEREAS, the Downtown Plan further identifies areas of blight within the downtown area that may be rehabilitated through replanning, removal of congestion, the provision of parks, playgrounds, and other public infrastructure improvements, and through encouraging voluntary rehabilitation; and

WHEREAS, the Downtown Plan identifies the goal of creating a Downtown Urban Renewal District with a Tax Increment Finance District as an overlay for the purposes of constructing appropriate public infrastructure projects to invigorate the redevelopment of blighted conditions; and

WHEREAS, sixteen years ago, the Kalispell Downtown Urban Renewal District and the Tax Increment Financing District overlay statutorily sun setted after 22 years of service during which substantial rehabilitation to public infrastructure and private investment in the District occurred; and

WHEREAS, since the time of the Kalispell Downtown Urban Renewal District and Tax Increment Financing District sun set ting in 2002, significant commercial investment has been made outside of Downtown Kalispell; additionally, the Westside Urban Renewal and Tax Increment Financing Districts have been expanded to the Core Area and are now ripe for investment by new development; and

WHEREAS, because of the attractive investment opportunities outside of the downtown area and the blight that continues to be there, a significant likelihood exists that a deprivation of investment will continue in the downtown area, increasing blighted properties and decreasing property values and the community’s tax base in that area; and

WHEREAS, the Kalispell Planning Board held a duly noticed public hearing September 11, 2018, to consider the DRAFT Downtown Kalispell Urban Renewal Plan in which staff report KRD-18-02 that provided details of the proposal and evaluation was accepted by the Planning Board as findings of fact and transmitted to the City Council; and

WHEREAS, on September 19, 2018 the Kalispell Urban Renewal Agency held a duly noticed public meeting to consider the DRAFT Downtown Kalispell Urban Renewal Plan in which it recommended approval on a vote of 4 to 1.
WHEREAS, pursuant to the terms of *MCA Title 7, Chapter 15, Part 42* the Kalispell City Council approved a resolution of intent and in conformance with Section 7-15-4215 of the Act held a duly noticed public hearing on November 19, 2018 considering all oral and written comment and testimony as well as all evidence reviewed by the Kalispell City Planning Board, including the Downtown Plan Amendment previously approved by Council; and

WHEREAS, on December 3, 2018, pursuant to *MCA 7-15-4210*, the Kalispell City Council passed Resolution No. 5905 a Resolution of Necessity finding that areas of blight exist within the boundaries of the Downtown Plan Amendment to the City of Kalispell Growth Policy Plan-It 2035 and that rehabilitation, redevelopment, or a combination thereof, within such area is necessary in the interest of the public health, safety, morals or welfare of the residents of the City of Kalispell; and

WHEREAS, on December 17, 2018 the Kalispell City Council passed Ordinance No. 1816 on second reading establishing the Downtown Kalispell Urban Renewal District and further passed Resolution No. 5906 stating its intent to create a Downtown Kalispell Urban Renewal Tax Increment Financing District and setting a duly noticed public hearing for such on January 7, 2019, all pursuant to the terms of *MCA Title 7, Chapter 15, Part 42*; and

WHEREAS, on January 7, 2019 the Kalispell City Council held a duly noticed public hearing to take oral and written comment from the public regarding the creation of a Downtown Kalispell Urban Renewal Tax Increment Financing District and received two public comments, one in favor of the creation of the district from the president of the Downtown Business Improvement District and one other comment that additional property taxes should not be imposed upon the properties within the district.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KALISPELL AS FOLLOWS:

**SECTION 1.** The Kalispell City Council hereby finds that it is in the best interests of the residents of the City of Kalispell that the City should exercise its powers pursuant to the terms of the Montana Urban Renewal Act, *MCA Title 7, Chapter 15, Part 42*, to create the Downtown Kalispell Urban Renewal Tax Increment Financing District, physically described in Exhibit “A”, attached hereto, for all legal purposes authorized under the Act.

**SECTION 2.** Effective Date. This Ordinance is to be posted as required by law and copies made available to the public upon request. This Ordinance shall take effect thirty (30) days after its final passage.

Mark Johnson
Mayor

ATTEST:

Aimee Brunckhorst, CMC
City Clerk
Exhibit “A”

Downtown Kalispell Urban Renewal Tax Increment Financing District Boundary

The Downtown Kalispell Urban Renewal Tax Increment Financing District Boundary embraces a 95-acre area. Starting at the intersection of 3rd Avenue West and 1st Street the plan is bound by heading easterly on 1st Street until 3rd Avenue East, thence southerly along 3rd Avenue East until the intersection with 4th Street, thence westerly along 4th Street until 2nd Avenue East, thence southerly along 2nd Avenue East until 5th Street, thence westerly along 5th Street until 1st Avenue East, thence southerly along 1st Avenue East until 9th Street, thence westerly along 9th Street until 1st Avenue West, thence northerly along 1st Avenue West until 5th Street, thence westerly along 5th Street until 2nd Avenue West, thence northerly along 2nd Avenue West until 4th Street, thence westerly along 4th Street to 3rd Avenue West, thence northerly along 3rd Avenue West until the point of beginning, shown in the map below:
REPORT TO:  Doug Russell, City Manager

FROM:  Jarod Nygren, Senior Planner

SUBJECT:  Final plat request for Village Plaza

MEETING DATE:  January 22, 2019

BACKGROUND:  Jackola Engineering submitted a request, on behalf of Jerman Holdings, LLC, for final plat approval of Village Plaza, a 2-lot commercial subdivision. The subject property is located at 60 Village Loop Drive and a portion of the property has recently been developed with one medical office building. The property can be legally described as Lot 1 of the Plat of Village Plaza, a subdivision in the SW4, SW4 in Section 32, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

The City Council approved the preliminary plat for Village Plaza with 10 conditions at their meeting on April 2, 2018, with Resolution No. 5862. All of the conditions have been met or adequately addressed.

RECOMMENDATION:  It is recommended that the City Council approve the final plat for Village Plaza.

FISCAL EFFECTS:  Positive impacts once developed.

ALTERNATIVES:  Deny the request.

ATTACHMENTS:  Final plat compliance letter and associated attachments.

Report compiled:  January 14, 2019

c:  Aimee Brunckhorst, Kalispell City Clerk
January 14, 2019

Doug Russell, City Manager
City of Kalispell
201 1st Ave E
Kalispell, MT 59901

Re: Final plat request for Village Plaza

Dear Doug:

Jackola Engineering submitted a request, on behalf of Jerman Holdings, LLC, for final plat approval of Village Plaza, a 2-lot commercial subdivision. The subject property is located at 60 Village Loop Drive and a portion of the property has recently been developed with one medical office building. The property can be legally described as Lot 1 of the Plat of Village Plaza, a subdivision in the SW4 SW4 in Section 32, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

The City Council approved the preliminary plat for Village Plaza with 10 conditions at their meeting on April 2, 2018, with Resolution No. 5862. All of the conditions have been met or adequately addressed. The following report summarizes the applicant’s compliance with the conditions of approval.

COMPLIANCE WITH CONDITIONS OF APPROVAL

1. That the development of the site shall be in substantial compliance with the application submitted, the site plan, materials and other specifications as well as any additional conditions associated with the preliminary plat as approved by the city council.

   Staff Response: This condition has been met. The final plat is in compliance with the approved preliminary plat.

2. The preliminary plat approval shall be valid for a period of three years from the date of approval.

   Staff Response: This condition has been met. The application for the final plat was submitted prior to the expiration of the preliminary plat approval, which was approved on April 2, 2018.

3. The developer shall submit to the Kalispell Public Works Department for review and approval a stormwater report and an engineered drainage plan that meets the requirements of the current city standards for design and construction.

   Staff Response: This condition has been met. The applicant submitted construction drawings and a Drainage Report to the City of Kalispell and received approval from Kalispell Public Work
Department. See attached letter from Tom Tabler, Kalispell Public Works, dated September 12, 2018.

4. The developer shall submit to the Kalispell Public Works Department, prior to construction, an erosion/sediment control plan for review and approval and a copy of all documents submitted to Montana Department of Environmental Quality for the General Permit for Stormwater Discharge Associated with Construction Activities.

Staff Response: This condition has been met. The applicant received a General Construction Stormwater Permit from the Montana Department of Environmental Quality. The applicant also received a Stormwater Management Permit from Kalispell Public Works. The Public Works letter, dated February 20, 2018 and Montana Department of Environmental Quality letter, dated October 1, 2018, are attached hereto for reference.

5. A letter from the Kalispell Public Works Department shall be submitted stating that all new infrastructure has been accepted by the City of Kalispell or a proper bond has been accepted for unfinished work.

Staff Response: This condition has been met. Public Works has accepted all applicable city infrastructure. See attached letter from Keith Haskins, Kalispell Public Works, dated December 4, 2018.

6. A letter shall be obtained from the Kalispell Parks and Recreation Director approving a landscape plan for the placement of trees and landscaping materials within Village Loop. The approved landscape plan shall be implemented or a cash in lieu payment for installation of the street trees and groundcover be provided to the Kalispell Parks and Recreation Department.

Staff Response: This condition has been met. Trees and landscaping were installed within the Village Loop right-of-way with the construction of the new medical office building. See attached letter from Chad Fincher, Kalispell Parks and Recreation, dated July 31, 2018.

7. All existing and proposed easements shall be indicated on the face of the final plat. A letter from the Kalispell Public Works Department shall be obtained stating that the required easements are being shown on the final plat.

Staff Response: This condition has been met. All easements are shown on the final plat. See attached letter from Keith Haskins, Kalispell Public Works, dated December 4, 2018.

8. The following statement shall appear on the final plat: "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."

Developer's Signature

Staff Response: This condition has been met. The above statement has been included on the final plat.
9. All utilities shall be installed underground.

Staff Response: This condition has been adequately addressed. Utilities have been constructed underground and further verified via filed inspection by Public Works.

10. All areas disturbed during development shall be re-vegetated with a weed-free mix immediately after development.

Staff Response: This condition has been adequately addressed. The site has been revegetated and further verified via field inspection by Public Works.

**COMPLIANCE WITH APPROVED PRELIMINARY PLAT**

The final plat is in substantial compliance with the preliminary plat approved by the Kalispell City Council on April 2, 2018.

**COMPLIANCE WITH THE SUBDIVISION REGULATIONS:**

This subdivision plat has been found to be in compliance with the State and City Subdivision Regulations.

**COMPLIANCE WITH THE ZONING REGULATIONS**

This subdivision can be found to be in compliance with the Kalispell Zoning Ordinance and the B-1 zoning designation for the property which governs the dimensional requirements of the lots within the subdivision as well as the uses.

**RECOMMENDATION:**

It can be found that the conditions of preliminary plat approval have been met or are otherwise adequately addressed. The staff recommends that the Kalispell City Council approve the final plat for Village Plaza.

Attachments:
- Two mylars of final plat
- 11” x 17” copy of plat
- Applicant responses and final plat application dated 12/12/2018
- First American Title Insurance Company guarantee 5010500-709892-FT, dated 12/17/2018
- Flathead County tax certification, dated 12/14/2018
- Letter from Kalispell Public Works (utility easements/utility acceptance), dated 12/4/2018
- Letter from Kalispell Public Works (stormwater engineering approval), dated 9/12/2018
- Letter from Kalispell Public Works (stormwater management permit), dated 2/20/2018
- Montana Department of Environmental Quality letter dated, 10/1/2018
- Letter from Kalispell Parks and Recreation, dated 7/31/2018
c w/ Att: Aimee Brunckhorst, Kalispell City Clerk

c w/o Att: Jackola Engineering
2250 HWY 93 South
Kalispell, MT 59901

Jerman Holdings, LLC
22 2nd Avenue West
Kalispell, MT 59901
FINAL PLAT APPLICATION

Project / Subdivision Name: Amended Lot 1 of Village Plaza

Contact Person:
Name: Jackola Engineering & Architecture, PC
Address: 2250 Hwy 93 South
Kalispell, MT 59901
Phone No.: 755.3208

Owner & Mailing Address:
Jerman Holdings LLC
22 2nd Ave. West, Ste 1000
Kalispell, MT 59901
752.4375

Date of Preliminary Plat Approval:

Type of Subdivision: Residential _ Industrial _ Commercial _ X PUD _ Other __

Total Number of Lots in Subdivision 2

Land in Project (acres) 0.432

Parkland (acres) _______ Cash-in-Lieu $ _______ Exempt _ X _

No. of Lots by Type:
Single Family _______ Townhouse _______ Mobile Home Park _______
Duplex _______ Apartment _______ Recreational Vehicle Park _______
Commercial _______ Industrial _______ Planned Unit Development _______
Condominium _______ Multi-Family _______ Other _______

Legal Description of the Property Lot 1 of Village Plaza Subdivision in SW 1/4, SW 1/4 Section 32, T 29 N, R 21 W, Flathead County, Montana

FILING FEE ATTACHED $ 1,050

Minor Subdivision with approved preliminary plat $400 + $125/lot
Major Subdivision with approved preliminary plat $800 + $125/lot
Subdivisions with Waiver of Preliminary Plat $800 + $125/lot
Subdivision Improvements Agreement $50
**MUST CHECK ONE**

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Health Department Certification (Original)
Title Report (Original, not more than 90 days old)
Tax Certification (Property taxes must be paid)
Consent(s) to Plat (Originals and notarized)
Subdivision Improvements Agreement (Attach collateral)
Parkland Cash-in-Lie (Check attached)
Maintenance Agreement

**Plats:**
- 2 mylars
- 1 full size copy
- 1 11X17 Copy
- 1 Electronic Copy

**The plat must be signed by all owners of record, the surveyor and the examining land surveyor.**

Attach a letter, which lists each condition of preliminary plat approval, and individually state how each condition has specifically been met. In cases where documentation is required, such as an engineer’s certification, State Department of Health certification, etc., original letters shall be submitted. Blanket statements stating, for example, “all improvements are in place” are not acceptable.

A complete final plat application must be submitted no less than **60 days** prior to expiration date of the preliminary plat.

When all application materials are submitted to the Kalispell Planning Department, and the staff finds the application is complete, the staff will submit a report to the governing body. The governing body must act within 30 days of receipt of the revised preliminary plat application and staff report. Incomplete submittals will not be accepted and will not be forwarded to the governing body for approval. Changes to the approved preliminary plat may necessitate reconsideration by the planning board.

I certify that all information submitted is true, accurate and complete. I understand that incomplete information will not be accepted and that false information will delay the application and may invalidate any approval. The signing of this application signifies approval for Kalispell Planning staff to be present on the property for routine monitoring and inspection during the approval and development process.

**NOTE:** Please be advised that the County Clerk & Recorder requests that all subdivision final plat applications be accompanied with a digital copy.

\[\frac{2/15}{\text{Date}}\]

Owner(s) Signature

**A digital copy of the final plat in a Drawing Interchange File (DXF) format or an AutoCAD file format, consisting of the following layers:**

1. Exterior boundary of subdivision
2. Lot or park boundaries
3. Easements
4. Roads or rights-of-way
5. A tie to either an existing subdivision corner or a corner of the public land survey system
RESOLUTION NO. 5862

A RESOLUTION CONDITIONALLY APPROVING THE PRELIMINARY PLAT OF VILLAGE PLAZA, DESCRIBED AS LOT 1 OF THE PLAT OF VILLAGE PLAZA, A SUBDIVISION IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER IN SECTION 32, TOWNSHIP 29 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

WHEREAS, Jerman Holdings, LLC, the owner of the certain real property described above, has petitioned for approval of the Subdivision Plat of said property; and

WHEREAS, the Kalispell City Planning Board and Zoning Commission held a public hearing on March 13, 2018 on the proposal and reviewed Subdivision Report #KPP-18-03 issued by the Kalispell Planning Department; and

WHEREAS, the Kalispell City Planning Board and Zoning Commission has recommended approval of the Preliminary Plat of Village Plaza subject to certain conditions and recommendations; and

WHEREAS, the city council of the City of Kalispell at its regular council meeting of April 2, 2018, reviewed the Kalispell Planning Department Report #KPP-18-03, reviewed the recommendations of the Kalispell City Planning Board and Zoning Commission, and found from the Preliminary Plat, and evidence, that the subdivision is in the public interest.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KALISPELL, MONTANA AS FOLLOWS:

SECTION 1. That the Findings of Fact contained in Kalispell Planning Department Report #KPP-18-03 are hereby adopted as the Findings of Fact of the city council.

SECTION 2. That the application of Jerman Holdings, LLC for approval of the Preliminary Plat of Village Plaza, Kalispell, Flathead County, Montana is hereby approved subject to the following conditions:

1. That the development of the site shall be in substantial compliance with the application submitted, the site plan, materials and other specifications as well as any additional conditions associated with the preliminary plat as approved by the city council.

2. The preliminary plat approval shall be valid for a period of three years from the date of approval.

3. The developer shall submit to the Kalispell Public Works Department for review and approval a stormwater report and an engineered drainage plan that meets the requirements of the current city standards for design and construction.

4. The developer shall submit to the Kalispell Public Works Department, prior to construction, an erosion/sediment control plan for review and approval and a copy of all documents
submitted to Montana Department of Environmental Quality for the General Permit for Stormwater Discharge Associated with Construction Activities.

5. A letter from the Kalispell Public Works Department shall be submitted stating that all new infrastructure has been accepted by the City of Kalispell or a proper bond has been accepted for unfinished work.

6. A letter shall be obtained from the Kalispell Parks and Recreation Director approving a landscape plan for the placement of trees and landscaping materials within Village Loop. The approved landscape plan shall be implemented or a cash in lieu payment for installation of the street trees and groundcover be provided to the Kalispell Parks and Recreation Department.

7. All existing and proposed easements shall be indicated on the face of the final plat. A letter from the Kalispell Public Works Department shall be obtained stating that the required easements are being shown on the final plat.

8. The following statement shall appear on the final plat: "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."

______________________________
Developer's Signature

9. All utilities shall be installed underground.

10. All areas disturbed during development shall be re-vegetated with a weed-free mix immediately after development.

SECTION 3. Upon proper review and filing of the Final Plat of said subdivision in the office of the Flathead County Clerk and Recorder, said premises shall be a subdivision of the City of Kalispell.


______________________________
Mark Johnson
Mayor

ATTEST:

______________________________
Aimee Brunckhorst, CMC
City Clerk
Amended Plat of Lot 1, Village Plaza
Preliminary Plat Conditions Compliance Review

1. The development of the site shall be in substantial compliance with the application submitted, the site plan, materials and other specifications as well as any additional conditions associated with the preliminary plat as approved by the city council.

The subdivision has been developed in compliance with the approved Preliminary Plat. A copy of the approved Preliminary Plat is included in (attachment B) for comparison with the Final Plat (attachment H) and showing compliance with this condition.

2. The preliminary plat approval shall be valid for a period of three years from the date of approval.

Per attachment A, The Preliminary Plat was approved by the City of Kalispell on the 2nd of April 2018. The Final Plat application is being made within the three year approval.

3. The developer shall submit to the Kalispell Public Works Department for review and approval a storm water report and an engineered drainage plan that meets the requirements of the current city standards for design and construction.

The plans for the resubdivision of Lot 1, Village Plaza have been approved by the City per attachment E & F, letters from the Kalispell Public Works Department.

4. The developer shall submit to the Kalispell Public Works Department prior to construction an erosion/ sediment control plan for review and approval and a copy of all documents submitted to Montana Department of Environmental Quality for the General Permit for Storm Water Discharge Associated with Construction Activities.

A letter from the Kalispell Public Works Department notifying the contractor of approval for Permit Number SW18-042 is included as attachment C.

5. A letter from the Kalispell Public Works Department shall be submitted stating that all new infrastructure has been accepted by the City of Kalispell or a proper bond has been accepted for unfinished work.

We have attached copies of the approvals received from the Montana Department of Environmental Quality (attachment D) and the Kalispell Public Works Department (attachment F) showing compliance with this condition.

6. A letter shall be obtained from the Kalispell Parks and Recreation Director approving a landscape plan for the placement of trees and landscaping materials within Village Loop. The approved landscape plan shall be implemented or a cash in lieu payment for installation of the street trees and groundcover be provided to the Kalispell Parks and Recreation Department.
The plans for the resubdivision of Lot 1, Village Plaza have been approved by the City per attachment G, a letter from the Kalispell Parks & Recreation Department.

7. All existing and proposed easements shall be indicated on the face of the final plat. A letter from the Kalispell Public Works Department shall be obtained stating that the required easements are being shown on the final plat.

All existing and proposed easements are indicated on the final plat (attachment h) per letter from the Public Works Department (attachment F).

8. The following statement shall appear on the final plat: "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."

The statement appears on the final plat (attachment G).

9. All utilities shall be installed underground.

All utilities required to serve the subdivision have been installed underground.

10. All areas disturbed during development shall be re-vegetated with a weed-free mix immediately after development.

All areas disturbed by construction have been revegetated.

Attachments:

A. Resolution 5862 approving the Preliminary Plat of Lot 1 Village Plaza.
B. Approved Preliminary Plat.
C. SWPPP approval from Martel Construction
D. Montana DEQ Approval
E. City of Kalispell Public Works – Storm Water Letter
F. City of Kalispell Public Works - Easements
G. City of Kalispell Parks Dept Approval
H. Final Plat
# LETTER OF TRANSMITTAL

**DATE:** 12/21/2018  
**JOB NO:** 171202

**ATTENTION:** Planner  
**RE:** Resubdivisions of Lot 1, Village Plaza  
**Jerman Holdings, LLC**

**TO:** City of Kalispell Planning Department  
201 1st Ave. E  
Kalispell, MT

WE ARE SENDING YOU:  
- [ ] attached  
- [ ] under separate cover via  
- [ ] the following items:
  - [ ] Shop drawings  
  - [ ] Prints  
  - [ ] Plans  
  - [ ] Samples  
  - [X] Specifications  
  - [X] Title Guarantee

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**COPIES**

**DESCRIPTION**

**FOR BIDS DUE**

**PRINTS RETURNED AFTER LOAN TO US**

**REMARKS**

**SIGNATURE:**

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If enclosures are not as noted: notify us at once.
GUARANTEE

Issued by

Insured Titles
44 4th Street West/P.O. Box 188, Kalispell, MT 59901
Title Officer: Lisa S. Jones
Phone: (406)755-5028
FAX: (406)755-3299
Guarantee Face Page

ISSUED BY
First American Title Insurance Company

GUARANTEE NUMBER
5010500-709892-FT
SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
   (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title, whether or not shown by the public records.
   (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
   (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.

2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
   (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
   (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
   (c) The identity of any party shown or referred to in Schedule A.
   (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.
   The following terms when used in the Guarantee mean:
   (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
   (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, lanes, ways or waterways.
   (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
   (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
   (e) "date": the effective date.

2. NOTICE OF CLAIM TO BE GIVEN BY ASSURED CLAIMANT.
   An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. NO DUTY TO DEFEND OR PROSECUTE.
   The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF ASSURED CLAIMANT TO COOPERATE.
   Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:
   (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
   (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
   (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of
GUARANTEE CONDITIONS AND STIPULATIONS (Continued)

this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase. Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay. Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. DETERMINATION AND EXTENT OF LIABILITY.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the
GUARANTEE CONDITIONS AND STIPULATIONS (Continued)

Exclusions From Coverage of This Guarantee.
The liability of the Company under this Guarantee to the Assured shall not exceed the least of:
(a) the amount of liability stated in Schedule A or in Part 2;
(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage occurred by this Guarantee occurs, together with interest thereon; or
(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance as against by this Guarantee.

8. LIMITATION OF LIABILITY.
(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY.
All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. PAYMENT OF LOSS.
(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. SUBROGATION UPON PAYMENT OR SETTLEMENT.
Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies. If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. ARBITRATION.
Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is $1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.
The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

13. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT.
(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. NOTICES, WHERE SENT.
All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Phone: 888-632-1642.
Subdivision Guarantee

ISSUED BY
First American Title Insurance Company

GUARANTEE NUMBER
5010500-709892-FT

Subdivision or Proposed Subdivision:

Order No.: 709892-FT

Reference No.: Fee: $150.00

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY, AND OTHER PROVISIONS
OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE,
FIRST AMERICAN TITLE INSURANCE COMPANY, A CORPORATION HEREIN CALLED THE COMPANY
GUARANTEES:

Bob Erickson, PLS, Jackola Engineering

FOR THE PURPOSES OF AIDING ITS COMPLIANCE WITH FLATHEAD COUNTY SUBDIVISION
REGULATIONS,

in a sum not exceeding $5,000.00.

THAT according to those public records which, under the recording laws of the State of Montana, impart
constructive notice of matters affecting the title to the lands described on the attached legal description:

LOT 1 OF VILLAGE PLAZA, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF
RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA

TO BE KNOWN AS

THE AMENDED PLAT OF LOT 1 OF VILLAGE PLAZA, ACCORDING TO THE MAP OR PLAT
THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF
FLATHEAD COUNTY, MONTANA

(A) Parties having record title interest in said lands whose signatures are necessary under the
requirements of Flathead County Subdivision Regulations on the certificates consenting to the recordation
of Plats and offering for dedication any streets, roads, avenues, and other easements offered for
dedication by said Plat are:

Jerman Holdings, LLC

(B) Parties holding liens or encumbrances on the title to said lands are:
1. 2018 taxes and special assessments are a lien; amounts are determined and payable. The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st of the following year.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

<table>
<thead>
<tr>
<th>Year</th>
<th>1st Half</th>
<th>2nd Half</th>
<th>Parcel Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$2076.03 paid</td>
<td>$2076.02 paid</td>
<td>0002837</td>
</tr>
</tbody>
</table>

2. Deed of Trust dated February 21, 2018, to secure an original indebtedness of $1,062,500.00, and any other amounts and/or obligations secured thereby
Recorded: March 15, 2018, as Instrument No. 2018-000-05051
Grantor: Jerman Holdings, LLC
Trustee: Insured Titles
Beneficiary: First Interstate Bank

Claimant: Probuild Company, LLC 445 (Kalispell)
Recorded May 29, 2018 as Doc. No. 2018-000-10464

(C) Easements, claims of easements and restriction agreements of record are:

4. County road rights-of-way not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, M.C.A., including, but not limited to any right of the Public and the County of Flathead to use and occupy those certain roads and trails as depicted on County Surveyor’s maps on file in the office of the County Surveyor of Flathead County.

5. Water System Agreement upon the terms, conditions and provisions contained therein:
Parties: Julius Bruyer, George W. Hyde, Walter L. McPheeters and James W. McPheeters
Recorded: July 14, 1906, in Book 54, Page 635 AND modified on March 6, 1915 in Book 112, Page 332


8. Easement for right of way granted to Flathead County and Flathead County Sewer & Water District #1-Evergreen, recorded October 29, 1999 as Instrument No. 1999-302-14360.

9. All matters, covenants, conditions, restrictions, easements and any rights, interest or claims which may exist by reason thereof, disclosed on the recorded plat of Village Plaza, recorded November 9, 2000, as Instrument No. 2000-314-09400, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

11. Easement and Parking Agreement upon the terms, conditions and provisions contained therein:
Parties: TRS, LLC, Thomas E. Sands and Reta D. Sands and Village Plaza Incorporated
Recorded: February 10, 2010, as Instrument No. 2010-000-03504

12. Easement and Parking Agreement upon the terms, conditions and provisions contained therein:
Parties: Thomas E. Sands and Reta D. Sands and Village Plaza Incorporated, and B & V WSI, LLC,
and Flathead Valley Bridge Center
Recorded: May 16, 2014, as Instrument No. 2014-000-08320

13. Easement and Parking Agreement upon the terms, conditions and provisions contained therein:
Parties: Village Plaza Incorporated and Flathead Hospital Development Company, LLC
Recorded: August 12, 2015, as Doc. No. 2015-000-18596

14. Easement & Parking Agreement upon the terms, conditions and provisions contained therein:
Parties: Village Plaza Incorporate and James A. Jerman DDS, PLLC
Recorded: February 1, 2017, as Doc. No. 2017-000-02392

15. Easement for electric transmission and distribution line granted to Flathead Electric Cooperative, Inc.,

Within Kalispell City Fire District.

Date of Guarantee: December 17, 2018 at 7:30 A.M.

Insured Titles

[Signature]

By:
Authorized Countersignature
Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information—particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications with us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We respect access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American’s Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation’s site and its affiliates’ sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American’s Web sites may make use of “cookie” technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive. FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy.

Security We will cause our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.
AND WHEN RECORDED MAIL TO:
Jerman Holdings, LLC
22 2nd Ave W Ste 1000
KALISPELL, MT 59901

Filed for Record at Request of: Insured Titles

Order No.: 618372-FT
Parcel No.: 0002837

*CORRECTIVE
QUITCLAIM DEED

*Correcting notary block in Quitclaim Deed recorded under Doc. No. 201700014712*

For Value Received

James A. Jerman, DDS, PLLC
do(es) hereby convey, release, remise and forever quit claim unto

Jerman Holdings, LLC

whose address is: 22 2nd Ave W, Ste 1000 Kalispell, MT 59901

the following described premises situated in Flathead County, Montana to-wit:

LOT 1 OF VILLAGE PLAZA, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF
RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA.

together with its appurtenances.

Dated August 11, 2017

James A. Jerman, Sole Member
STATE OF Montana

)  

SS.

COUNTY OF Flathead

)  

This instrument was acknowledged before me on August 14, 2017, by James A. Jerman, known to me to be the Sole Member of the James A. Jerman, DDS, PLLC.

[Signature]

TANYA JACKSON
NOTARY PUBLIC for the State of Montana
Residing at Kalispell, Montana
My Commission Expires December 15, 2018

Signature of Notarial Officer

Kalispell
Residing at:
Commission Expires:
12-15-18
BY: SANDS SURVEYING, INC.
1995 THIRD AVENUE EAST
KALISPELL, MT 59901
PH: (406) 755-6481

JOB NO: 27516 DWG: 10315

DECEMBER 17, 1999

FOR: GEORGE SCHULZE
OWNER: KAL-MONT DAIRY FARM

LEGEND

SECTION CORNER (AS NOTED)

1/4 CORNER (AS NOTED)

FOUND (AS NOTED)
December 4, 2018

Bob Erickson, PLS
Land Surveyor
Jackola Engineering
PO Box 1134
Kalispell, MT 59903

Re: Amended Lot 1 of Village Plaza

Dear Mr. Erickson:

The purpose of this letter is to indicate all public utilities (except water main) for Lot 1 of Village Plaza have been previously installed and accepted by the City. The water main serving this property is owned, operated, and maintained by Evergreen Water and Sewer, and is therefore outside of the purview of the City of Kalispell. Water and sewer services will be installed at time of building construction.

Additionally, this letter is intended to serve as review and acceptance of required easements for the lot, including a 10-foot road reserve, a 10-foot sewer easement, and an 8-foot stormwater easement.

Sincerely,

Keith Haskins, PE
City Engineer

cc: Jarod Nygren – Senior Planner
September 12, 2018

Emily Gillespie, PE
Montana DEQ – Kalispell Office
655 Timberwolf, Suite 3
Kalispell, MT 59901

RE: Lot 1 of Village Plaza – Storm Sewer Waiver
   EQ#18-2251

Dear Ms. Gillespie,

The purpose of this letter is to certify that the above referenced property has been reviewed and approved by the City of Kalispell to ensure adequate storm drainage. I further certify that I am authorized to sign this letter on behalf of the City of Kalispell.

Storm drainage was reviewed as required in the City of Kalispell Standards for Design and Construction, current at the time of submittal. All new development shall be completed as reviewed and approved in compliance with City Standards and approved drawings.

Sincerely,

[Signature]

Tom Tabler, PE
Civil Engineer
February 20, 2018

Jeremy Peterson
Martel Construction, Inc.
305 Hwy 83
Bigfork, MT 59911

Re: Approval letter for City Stormwater Management Permit Number SW18-042 for project site: 60 Village Loop (Lot 1)

Dear Permittee:

As of July 17th, 2017, all stormwater permits must be reviewed and approved before the commencement of any land disturbing activity.

This letter serves as an approval letter to begin land disturbance for the above referenced project site. You are required to: (1) implement the City Stormwater Management Plan prior to any land disturbance, (2) develop and maintain best management practices, and (3) terminate the permit once the site is properly stabilized.


Note: This permit is separate from any permit required by other governmental agencies and does not waive any obligation by you to obtain other permits or approvals that may be required. If you have any questions, please call 406-758-5705 or email cleywis@kalispell.com.

Sincerely,

Casey Lewis
Environmental Specialist
Public Works Department
City of Kalispell
July 31, 2018

KalisPELL
Parks and Recreation Dept
MONTANA

KalisPELL Planning Department
Attn: Jarod Nygren
P.O. Box 1997
KalisPELL, MT 59901
Phone: (406) 758-7942

Re: Lot 1 Village Commons

Dear Jarod:

This letter is to serve as approval on the proposed landscaping plans for Lot 1 Village Commons per the plans submitted.

It is agreed that if the project is extended, the developer will be responsible for submitting bonding for the remaining improvements as specified on the submitted plan for Lot 1 Village Commons. The bond may not be longer than a period of 12 months. Tree plantings are required to meet the Street Tree Ordinance standards of 2 ¾” caliper and have a 4 foot fibrous mulch around them in addition to meeting ISA planting standards. Any landscape revisions or substitutions need to be authorized prior to installation. They will need to coordinate with Public Works for any permits/approvals of working in the right of ways prior to working in the right of way.

Final approval will be given upon completion, inspection and approval of the landscaping, tree plantings and exercise equipment at which time any bonding that has been submitted will be released. It should be noted that the trees and landscaping are under a 2 year warranty period and should they die within this time frame, the developer will be responsible for replacement.

If you have any concerns or questions please give me a call.

Sincerely,

Chad Fincher, Parks and Recreation Director
KalisPELL Parks and Recreation

306 1st Avenue East, P.O. Box 1997, KalisPELL, MT 59901-Phone (406) 758-7718- Fax (406) 758-7719
www.kalispell.com
October 1, 2018

TOBY MCINTOSH, PE
JACKOLA ENGINEERING & ARCHITECTURE
P.O. BOX 1134
KALISPELL, MT 59903

RE: Lot 1 of Village Plaza Subdivision
Flathead County
E.Q. #18-2251

Dear Mr. McIntosh:

The plans and supplemental information relating to the water supply, sewage, solid waste disposal, and storm drainage (if any) for the above referenced division of land have been reviewed as required by ARM Title 17 Chapter 36(101-805) and have been found to be in compliance with those rules.

Two copies of the Certificate of Subdivision Plat Approval are enclosed. The original is to be filed at the office of the county clerk and recorder. The duplicate is for your personal records.

Development of the approved subdivision may require coverage under the Department's General Permit for Storm Water Discharges Associated with Construction Activity, if your development has construction-related disturbance of one or more acre. If so, please contact the Storm Water Program at (406) 444-3080 for more information or visit the Department's storm water construction website at http://deq.mt.gov/wqinfo/WaterDischarge/index.asp. Failure to obtain this permit (if required) prior to development can result in significant penalties.

Your copy is to inform you of the conditions of the approval. Please note that you have specific responsibilities according to the plat approval statement primarily with regard to informing any new owner as to any conditions that have been imposed.

If you wish to challenge the conditions of this Certificate of Subdivision Plat Approval, you may request a hearing before the Board of Environmental Review or the Department, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

If you have any questions, please contact this office.

Sincerely,

Rachel Clary, PE
Supervisor
Engineering Bureau
Water Quality Division

RC/EG

cc: File
County Sanitarian
County Planning Board
STATE OF MONTANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
CERTIFICATE OF SUBDIVISION PLAT APPROVAL  
(Section 76-4-101 et seq., MCA )

TO:    County Clerk and Recorder  
       Flathead County  
       Kalispell, Montana  

EQ # 18-2251  

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision  
known as Lot 1 of Village Plaza Subdivision  

A tract of land located in the southwest ¼ of Section 32, Township 29 North, Range  
21 West, PMM, Flathead County, Montana  

Located on two lots, Lot 1A and 1B, have been reviewed by personnel of the Water Quality Division,  
and,

THAT the documents and data required by ARM Title 17, Chapter 36 have been submitted and found to be in compliance therewith, and,

THAT the approval of the application is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the plat filed with the county clerk and recorder will not be further altered without approval, and,

THAT each lot shall be used for one commercial structure, and,

THAT water distribution will be provided by service connection to the Flathead County Water & Sewer District #1 (Evergreen) Public Water Supply #MT0001744 as shown on the lot layout, herein approved, and,

THAT wastewater collection will be provided by extension of and service connection to the City of Kalispell Sanitary Sewer collection & wastewater treatment as shown on the lot layout, herein approved, and,

THAT a waiver has been approved by the Department from the requirements of storm water review and approval under the condition that the City of Kalispell will review and approve the storm water facilities for the lots during the local approval process. City approval of the storm water components proposed for the site was received on September 17, 2018, and,

THAT water supply systems, sewage collection and treatment systems and storm drainage systems will be located as shown on the lot layout, and,

THAT all sanitary facilities must be located as shown on the approved lot layout, and,

THAT the developer and/or owner of record shall provide the purchaser of property with a copy of the plat approved location of water supply and sewage treatment system as shown on the attached lot layout, and a copy of this document, and,
THAT instruments of transfer for this property shall contain reference to these conditions, and,
THAT departure from any criteria set forth in the approved plans and specifications and ARM Title
17, Chapter 36, Subchapters 1, 3, and 6 when erecting a structure and appurtenant facilities in said
subdivision without Department approval, is grounds for injunction by the Department of
Environmental Quality.

THAT pursuant to Section 76-4-122 (2)(a), MCA, a person must obtain the approval of both the
reviewing authority under Title 76, Chapter 4, MCA, and local health officer having jurisdiction, before
filing a subdivision plat with the county clerk and recorder.

YOU ARE REQUESTED to record this certificate by attaching it to the plat filed in your office as
required by law.

DATED this 1st day of October, 2018.

George Mathieu
Acting Director

By: ____________________________
Rachel Clark, PE, Supervisor
Engineering Bureau
Water Quality Division
Department of Environmental Quality

Owner’s Name: James Jerman
2 TYP. SANITARY SERVICE TO EXIST. MAIN

3 METER PIT DETAIL

NOTES:
1. "NO SERVICE CONNECTIONS SHALL BE MADE AT MANHOLIS.
2. "METER PIT DETAIL"
Plat Room
Flathead County, Montana
800 S. Main St.
Kalispell, MT 59901
(406) 758-5510

This Form is for Subdivisions Only

BY: JACKOLA
FOR: JERMAN HOLDINGS LLC
DESCP: VILLAGE PLAZA AMD L1
(32-29-21)

YEARS ASSESSOR #
2014 THRU 2017 0002837
2018 Same

I hereby certify that there are no outstanding taxes on the property assigned the assessor numbers listed above, for the years indicated for each assessor number.

DEC 14, 2018

Deputy Treasurer
(seal)
To: Douglas Russell, City Manager
From: Susie Turner, P.E., Public Works Director
Re: Sludge Management Agreement-Glacier Gold LLC
Meeting Date: January 22, 2019

The City and Glacier Gold Compost have a Sludge Management Agreement that ensures the disposal of Kalispell’s bio-solids (sludge). The City uses Glacier Gold Composting as the primary method of sewage sludge disposal, and the secondary disposal location is at the Flathead Landfill.

Kalispell’s BNR plant has been disposing sewage sludge at Glacier Gold Compost since 1993, with the current sludge management agreement initiated in 2014. The term of the current agreement is set for a five-year period from April 1, 2014 to March 31, 2019, with the option for the Agreement to extend for an additional five years by mutual agreement in writing by both parties.

Glacier Gold Compost Owners and City Public Works Staff mutually agree it is in both parties best interest to extend the current agreement, as is, for an additional five years. Below is a summary highlighting sections of the current agreement. A copy of the current Agreement is enclosed for reference.

Charges/Adjustments: The City is currently paying $238 per dry ton of sludge delivered to and accepted by Glacier Gold. The City will continue to pay a fixed rate of $238 per dry ton of sludge for the next five years.

Truck Washdown Service: Glacier Gold provides a truck washdown service area at the composting site for use by the City, at no charge to the City. This allows the WWTP Operators to washdown the equipment at the composting facility reducing pungent odors and fugitive biosolids from blowing out of the back of an empty truck while traveling on the Highway.

Physical Characteristics: The sludge is required to be dewatered between 13% and 20% solids content. The typical sludge solids content for Kalispell is 13-15%. Kalispell Operators are continually refining the dewatering process to generate a drier cake, in an effort to improve handling of the sludge disposal at the Landfill.

Testing: The City will continue to perform the quarterly zinc sampling per the EPA requirements.

Term: The initial term of this Agreement is for a five (5) year period from April 1, 2014 to March 31, 2019. The Agreement may be extended for an additional five (5) years by mutual agreement in writing by both parties. If any of the terms of this Agreement are to be modified by these extensions, they will be subject to renegotiation by both parties upon written notice by either party, thirty (30) days prior to the expiration of the term.

Sludge Removal and Delivery: The annual delivery shall not exceed 600 dry ton per year unless revised by mutual consent in an amendment to the Agreement. The City may delivery up to 600 dry tons per year
to Glacier Gold Composting, but retains the right to dispose of biosolids as the City deems necessary to sustain disposal operations in the future.

Follow-up meetings and discussions with the Solid Waste Board of Directors, Flathead County Staff, Whitefish and Columbia Falls Public Works Staff, and Kalispell Staff have led to the development of procedural and scheduled deliveries of Biosolids by all entities to the County Landfill. For the time being, the Landfill established a minimum acceptance standard of 20 gallons of sludge for every ton of municipal solid waste received by the landfill. At this time, Whitefish does not deliver biosolids on a regular basis to the landfill, therefore routine load deliveries were scheduled between Kalispell and Columbia Falls.

Kalispell is delivering two loads a week to the Landfill, every Monday and Wednesday morning. In the spring of this year, the entities will meet again to review schedules, deliveries, and discuss the potential for the Landfill to receive extra loads from Kalispell in the summer. The Landfill’s acceptance of two loads per week reduces the number of loads Kalispell would bring to Glacier Gold Composting, extending the immediate need to fund alternate biosolid management practices. The table below provides a projection of the biosolids generation and load deliveries to Glacier Gold Composting and the Landfill.

<table>
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<tr>
<th>Year</th>
<th>Biosolids Loading (dry tons/yr)</th>
<th>Loads/Year</th>
<th>Loads/Week</th>
<th>Landfill Loads/Week</th>
<th>Landfill dry tons/year</th>
<th>Glacier Gold Loads/Week</th>
<th>Glacier Gold dry tons/year</th>
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1: Projected 2% growth rate, 2: 2.13 dry tons/load, 13 wet tons or 28,000 lbs/load

**RECOMMENDATION:** Approve the term extension for an additional five years to expire on March 31, 2024.

**ACTION REQUESTED:** Motion to approve the term extension for the Sludge Management Agreement with Glacier Gold Composting.

**FISCAL EFFECTS:** There are no additional fiscal effects associated with this agreement. Contract Service-Glacier Gold line item 354 is budgeted annually in the Wastewater Treatment Plant Fund.

**ALTERNATIVES:** As suggested by City Council.
SLUDGE MANAGEMENT AGREEMENT

THIS AGREEMENT, made this ___ day of ___ ____, 20___
by and between the City of Kalispell, a municipal corporation, hereinafter called “CITY”
and Glacier Gold L.L.C., hereinafter called “GLACIER GOLD”.

WHEREAS, the CITY operates a secondary sewage treatment plant for municipal
wastewater that produces an end product of dewatered sludge; and

WHEREAS, GLACIER GOLD has in its priced proposal alternative, dated
January 26, 2004, attached hereto and made a part of this Agreement, requested the
opportunity to obtain the sludge for its product line, and intends to use the sludge, along
with certain bulking agents, to produce a man-made humus which GLACIER GOLD
markets as an organic fertilizer and soil conditioner; and

WHEREAS, the parties are desirous of entering into an agreement whereby the
CITY provides to GLACIER GOLD the dewatered sludge.

WITNESSETH:

ARTICLE I
SERVICES AND CHARGES

1. SLUDGE REMOVAL AND DELIVERY.

   The CITY will provide to GLACIER GOLD and GLACIER GOLD will
   accept all the dewatered sludge produced at the CITY’S wastewater
   treatment plant.

   The annual delivery of sludge shall not exceed 600 dry tons per year
   unless revised by mutual consent in an amendment to this Agreement. The
   CITY shall supply all labor, equipment, materials, fuel, repairs, equipment
   operators, supervisory personnel required to deliver the sludge to
   GLACIER GOLD’S composting operation located in Olney, Montana and
   to deposit the sludge as directed by GLACIER GOLD personnel on site.

2. CHARGES/ADJUSTMENTS.

   The CITY shall pay to GLACIER GOLD, two hundred dollars thirty eight
dollars ($238) per dry ton of sludge delivered to and accepted by
GLACIER GOLD.
3. **TRUCK WASHDOWN SERVICE.**

GLACIER GOLD shall provide truck washdown service at its composting operation site for use by CITY equipment, at no cost to the CITY.

**ARTICLE II**

**SLUDGE CHARACTERISTICS**

1. **PHYSICAL CHARACTERISTICS.**

The sludge delivered to GLACIER GOLD by the CITY shall typically be dewatered between thirteen percent (13%) to twenty percent (20%) solids content. Seasonal variations in percent solids may occur but at no time shall sludge be delivered that is not suitable for use by GLACIER GOLD.

2. **CHEMICAL CHARACTERISTICS.**

The CITY shall not deliver to GLACIER GOLD any sludge where test results of the sludge exceed maximum contaminant limits established by the EPA or State Water Quality Bureau. If the sludge contains any physical, chemical or organic chemical characteristics that render it unsuitable for use by GLACIER GOLD, GLACIER GOLD has the right to refuse acceptance of the sludge. The CITY agrees to notify GLACIER GOLD within 24 hours of any test results which indicate the sludge is unsuitable for GLACIER GOLD’S use.

**ARTICLE III**

**MEASUREMENT AND PAYMENT**

1. **FORMULA FOR DETERMINING DRY TON.**

For purposes of this Agreement the computation of dry tons shall be determined as follows:

\[
\text{Dry ton} = \% \text{ of solids} \times \text{wet ton}
\]

2. **MAINTENANCE OF RECORDS.**

CITY will maintain accurate records of tonnages delivered to GLACIER GOLD in a form adopted by the CITY. CITY shall provide records on
tonnage delivered to GLACIER GOLD with each billing cycle. These records will form the basis of payment under Article I of this Agreement.

3. **LOADING MEASUREMENT.**

The CITY shall determine the tonnage of sludge to be hauled by all trucks. Tonnage delivered to GLACIER GOLD shall be determined by weighing trucks delivering sludge when full and then weighing truck when empty. All weighing shall be done on certified scales supplied by GLACIER GOLD. Duplicates of weight tickets shall be supplied to GLACIER GOLD.

4. **INVOICE SUBMISSION AND PAYMENT.**

CITY shall pay GLACIER GOLD within thirty (30) days of receipt of itemized invoices. The invoices shall identify the date, tonnage, and percent of solids for each load delivered to GLACIER GOLD by the CITY.

**ARTICLE IV**

**SCHEDULES AND TESTING**

1. **SCHEDULES.**

CITY and GLACIER GOLD shall develop and agree to a normal operating schedule which will allow the CITY to efficiently operate the wastewater treatment plant and allow GLACIER GOLD to accept the projected volume of the sludge. Unless otherwise agreed to in writing between the CITY and GLACIER GOLD sludge may be delivered to the GLACIER GOLD composting facility between 8:30 a.m. and 3:30 p.m., Monday through Friday.

2. **TESTING.**

CITY will provide to GLACIER GOLD results of tests conducted on the sludge with regard to percent total solids with each load delivered. In addition to the information as provided in Article II, Section 2, analyses for TKN, total Phosphorous, ammonia, nitrates and routine heavy metals will be provided to GLACIER GOLD —on a quarterly basis. Upon written request from GLACIER GOLD, CITY will provide GLACIER GOLD with the results of any additional sludge tests conducted by the CITY. If
GLACIER GOLD conducts any test on the sludge, GLACIER GOLD shall provide the results of such test to CITY.

ARTICLE V
PERMITS, CHANGES TO LAW

1. PERMITS.

GLACIER GOLD shall have the full responsibility and any and all liability for meeting the terms conditions of any permits which GLACIER GOLD must acquire relative to the program outlined in this Agreement. GLACIER GOLD agrees to hold CITY harmless and indemnify the CITY with regard to GLACIER GOLD’S lack of compliance or any other reason which results in an action of regulatory enforcement or litigation relative to GLACIER GOLD’S program and ultimate disposition of GLACIER GOLD’S end product. GLACIER GOLD shall acquire and maintain in continuous effect liability insurance in the amount specified in Article VI. GLACIER GOLD must be in continuous compliance with the provisions of any permit or law applicable to its business operations, or it will be in default with the provisions of this Agreement.

2. CHANGES TO LAW.

The price agreed to above is based on GLACIER GOLD’S anticipated compliance with current Federal, State, and Local laws and permitting requirements. In the event that there are changes in such laws, permitting requirements, regulations, or local interpretation of the laws or regulations which impose additional or lesser costs which are attributable to the characteristics of the sludge, either the CITY or GLACIER GOLD may request that the agreed to price may be renegotiated, stating in detail the reason or justifications for the request. Such request for additional or lesser sums must be in writing. In the event agreement of a revised amount cannot be reached within sixty (60) days of receipt of such request, either party may terminate this Agreement with ninety (90) days written notice.

ARTICLE VI
INSURANCE, INDEMNIFICATION, AND BONDING

1. INSURANCE REQUIREMENTS.
Without limiting GLACIER GOLD’S indemnification of the CITY, GLACIER GOLD shall provide and maintain at its own expense during the terms of this Agreement, the following policy or policies of insurance covering its operations hereunder, whether such operations be by GLACIER GOLD or by any subcontractor or by anyone for whose acts any of them may be liable. Such insurance shall be secured through a carrier satisfactory to the CITY. Evidence of such insurance satisfactory to the CITY shall be delivered to the CITY on or before the effective date of this Agreement, and shall contain the express condition that the CITY is to be given written notice at least thirty (30) days in advance of cancellation, modification, expiration, or termination of any policy of insurance. The CITY shall be named as an additional named insured on all policies except worker’s compensation.

2. GENERAL LIABILITY.

Such policy of insurance shall include, but not be limited to, comprehensive general liability with explosion, collapse, and underground hazards, contractual liability, products/completed operations and independent contractor’s endorsements, with a combined single limit not less than $750,000.00 per claim and $1,500,000.00 per occurrence. Such insurance shall be primary to and not contributing with any other insurance maintained by the CITY and shall name the CITY as additional insured.

3. WORKER’S COMPENSATION.

GLACIER GOLD’S employees shall be covered by Worker’s Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of Montana.

4. FAILURE TO PROCUREMENT INSURANCE.

In case of failure on the part of GLACIER GOLD to procure or maintain required insurance, GLACIER GOLD shall be deemed to be in default of this Agreement. CITY shall notify GLACIER GOLD of such default and GLACIER GOLD shall within 30 days of such notice of default, take corrective action to rectify such default by procuring and maintaining the required insurance.

5. INDEMNIFICATION.

GLACIER GOLD agrees to indemnify, defend and save the CITY, its agents, elected and appointed officials, and employees from suppliers’, or agents’ operations, or anyone directly or indirectly employed by any to
them, or their services, from and against any and all liability, expense, including defense costs and legal fees (including costs and attorney's fees on appeal), and claims for damages of any nature whatsoever, including, but not limited to bodily injury, death, personal injury, or property damage arising from or connected to GLACIER GOLD'S, its subcontractors', suppliers', or agents' operations, or their service hereunder, including any worker's compensation suits, liability, or expense arising from or connected with services by any person pursuant to this Agreement. The CITY shall specifically be indemnified and held harmless of any liability as a result of the sale or use of the sludge produced by the CITY in any form whatsoever, except when the liability is occasioned by the CITY'S negligence or failure to inform as required in Article II, Section 2, supra.

ARTICLE VII

TERM OF AGREEMENT

1. TERM.

The initial term of this Agreement is for a five (5) year period from April 1, 2014 to March 31, 2019. The Agreement may be extended for an additional five (5) years by mutual agreement in writing by both parties. If any of the terms of this Agreement are to be modified by these extensions, they will be subject to renegotiation by both parties upon written notice by either party, thirty (30) days prior to the expiration of the term.

2. TERMINATION.

a) All terms and conditions of this Agreement are considered material, and failure to perform any of the terms and conditions on the part of either party shall be considered a breach of this Agreement. In the event either party to this Agreement breaches the Agreement, the party not in breach of this Agreement shall notify the breaching party in writing of the nature of such breach. Within ten (10) days of said notice the breaching party shall correct the breach.

b) In the event the breaching party fails to correct the breach, as provided in (a) above, the party not in breach, without further notice, shall have the following rights and remedies, which may be exercised singly or in combination:
i) The right to declare this Agreement, together with all rights granted thereunder, terminated, effective immediately;

ii) The right to contract with others to perform the services otherwise to be performed by the breaching party, or to perform such services itself; and

iii) Any and all rights under federal laws and the laws of the State of Montana.

c) Notwithstanding paragraphs (a) and (b), supra, the CITY shall have the right to terminate this Agreement if GLACIER GOLD fails in any consecutive 30 day period to accept sludge under the terms of this Agreement.

d) Notwithstanding paragraphs (a), (b), and (c), supra, GLACIER GOLD, upon twelve (12) months written notice, shall have the right to terminate this Agreement for the business reason stated in the Proposal Alternative 1, attached hereto, and for no other reason except as specified in Article V, Paragraph 2.

ARTICLE VIII
MISCELLANEOUS

1. BINDING EFFECT.

This Agreement is binding upon the heirs, successors, administrators, executors, personal representatives and assigns of the parties hereto.

2. ENTIRE AGREEMENT.

This Agreement and Proposal Alternative 1, attached hereto, comprise the entire agreement between the parties. This Agreement completely replaces any and all prior agreements of any nature whatsoever. Any additional agreement hereafter made shall be effective to alter, change, modify or discharge this Agreement in whole or in part unless any additional agreement is in writing and signed by the parties hereto.

3. SEVERABILITY.

If any article, section, subsection, sentence, clause, phrase or word of this Agreement is ever for any reason held to be invalid by a court, the parties hereby agree that such decision shall not affect the validity of the
remainder of this Agreement, and the parties agree that the remaining provisions shall remain in full force and effect.

4. **AFFIRMATIVE ACTION POLICY.**

Contractors, subcontractors, subgrantees, and other firms doing business with the CITY or any agency connected with the CITY must be in compliance with the CITY’S Affirmative Action Plan and Title 49, MCA or forfeit the right to continue such business dealings.

5. **NON-DISCRIMINATION.**

In connection with the performance of work and services under this Agreement, the contractor agrees to comply with the provisions of the law and Constitution of the State of Montana. Contractor further agrees to comply with the Civil Rights Act of 1964 (78 Stat. 242), the regulations of the Department of Health, Education and Welfare issued pursuant to the Act, and the provisions of Executive Order 11246, Equal Opportunity, September 24, 1965. The contractor agrees that any and all hiring by them related to this Agreement shall be on the basis of merit and qualifications and there shall be no discrimination on the basis of race, color, religious creed, political ideas, gender, age, marital status, physical or mental handicap, national origin or ancestry, by persons performing this contract. Qualifications mean such abilities that are genuinely related to the competent performance of the particular occupational task.

6. **ATTORNEY’S FEES.**

In the event either party brings a legal action under this agreement, the prevailing party shall be entitled to its reasonable attorneys’ fees and costs in prosecuting or defending the action.