



CONTRACT AGREEMENT

PROJECT: Seal Coat Fort Missoula Regional Park Phase 2

This Contract Agreement is made and entered into this _____ day of April, 2021, between the City of Missoula and Pro Sweep, 1850 Idaho St., Missoula, MT 59801, hereinafter referred to as "Contractor," for the scope of work listed below.

A. SCOPE OF WORK (Exhibit 2)

Contractor shall furnish all labor, equipment and materials necessary to complete the following items:

1. Mobilization, asphalt preparation and seal coat application of approximately 250,000 square feet and re striping/painting for existing parking lots and driveways. Project shall be advanced in phases to minimize impacts on park uses and services.
2. Supply and maintain traffic barricades to close off areas for seal coating and re striping until the seal is fully set and paint is cured.

B. TIME OF COMPLETION

Work shall be started no earlier than August 1, 2021 and be completed no later than August 31, 2021.

C. PAYMENT

Upon completion and acceptance by the City of the work performed under this agreement, the City shall pay Contractor in accordance with the not-to-exceed price of **THIRTY-FIVE THOUSAND, THREE HUNDRED FOUR DOLLARS AND ZERO CENTS (\$35,304.00)** for Seal Coating and Striping/Painting of Fort Missoula Regional Park Phase 2 per quotation proposal dated March 30, 2021 (Exhibit 3). The payment shall be full compensation for the work described on the attached Quotation Proposal.

D. DOCUMENTS AND DRAWINGS

The following documents shall be made a part of this agreement:

Exhibit #	Description
1.	City of Missoula General Conditions (Short Form)
2.	City of Missoula Special Conditions
3.	<u>Pro Sweep's signed Bid Form – Fort Missoula Regional Park Phase 2 Seal Coat</u>
4.	<u>Map of areas to be Seal Coated</u>

ACKNOWLEDGMENT AND APPROVAL OF AGREEMENT:

City of Missoula

Contractor

By: _____
JOHN ENGEN
MAYOR

By: _____
Joe Baumgardner
Pro Sweep

Attest:

By _____
MARTHA L. REHBEIN, CMC
Legislative Services Director/City Clerk

(Seal)

Jim Nugent
ATTORNEY FOR THE CITY OF MISSOULA

CITY OF MISSOULA
Fort Missoula Regional Park Phase 2 Seal Coat
EXHIBIT 1
GENERAL CONDITIONS (SHORT FORM)

1. Examination of Site.

The Contractor shall make arrangements to inspect the work area to satisfy him/herself as to the character, quality and quantity of the work to be performed, as well as the conditions that will be encountered at the site or will otherwise affect the cost or difficulty of performing the work.

2. Materials and Workmanship.

Whenever any material is specified by name and/or number thereof, such specifications shall be deemed to be used for the purpose of facilitating a description of the materials and establishing quality, and shall be deemed and construed to be followed by the words "or approved equal." No substitutions will be permitted which have not been submitted for prior approval by the Engineer. All materials shall be new and without flaws or defects and shall be the best of their class and kind. Sufficient descriptive literature and/or samples must be furnished for any materials submitted as "equal" substitutes.

All materials and equipment shall be installed in a neat and workmanlike manner. The Owner's Authorized Representative reserves the right to direct the removal and replacement of any items, which in their opinion shall not present an orderly and reasonably neat or workmanlike appearance, provided such time can be properly installed in such orderly way by the usual methods in such work. Such removal and replacement shall be done, when directed in writing, at the Contractor's expense without additional cost to the Owner.

3. Montana State License and Registration Requirements.

Uniform Professional Licensing and Regulation procedures are contained in Title 37, M.C.A. Bidders are responsible for ensuring that they and their subcontractors are licensed and qualified to conduct business in Montana. Any Construction Contractor bidding on public work in the State of Montana is required to have a current Montana State Construction Contractor Registration except as listed in M.C.A. 39-9-211. No bids will be considered that do not carry the current contractor registration number on the Bid Proposal immediately following the signature and address of the bidder. Information pertaining to registration requirements may be obtained from the Montana Department of Labor and Industry, Helena, Montana. It is the duty of said Department to determine whether an applicant has met all requirements for registration as a construction contractor per Title 39, Chapter 9, Sections 39-9-101 through 39-9-401, M.C.A.

4. Taxation – Gross Receipts Tax.

As defined under Title 15, Chapter 50, embracing Sections 15-50-101 through 15-50-207, M.C.A., a governmental agency entering into a construction contract shall withhold one percent (1%) of gross sum due the Contractor under the performance of the contract provided that the contract amount exceeds five thousand dollars (\$5,000). The Contractor shall also withhold one percent (1%) of gross sum due the subcontractors. The withholdings shall be made payable to Miscellaneous Tax Division, Department of Revenue, Mitchell Building, Helena, Montana.

5. City of Missoula License and Bond Requirements.

Any Contractors engaged in public work in the City of Missoula are required to have a license from the City of Missoula based upon the nature of the work. A bond is also required for each type of work in the City of Missoula. Licenses are obtainable at the Office of the City Treasurer, City Hall, Missoula, Montana.

6. Industrial Accident Insurance.

The Contractor's attention is directed to the Industrial Accident Insurance laws in force in Montana and to the responsibility of the Owner for the collection of premiums thereunder. Contractor's compliance with said laws is required, and he shall relieve the Owner of any responsibility for the payment of premiums thereunder, and shall furnish the Owner with satisfactory evidence showing that all premiums arising from this contract have been paid before payment is made on the final estimate.

7. **Ordinances and Regulations.**

The Contractor shall give all notices and comply with all Federal, State and local laws, ordinances and regulations in any manner affecting the conduct of the work, and all such orders and decrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the Owner and the Engineer against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order or decrees, whether by himself or his employees.

8. **Guarantee.**

The Contractor shall guarantee all materials and workmanship furnished and performed for a period of one year from the date of written acceptance of the work unless specified otherwise.

9. **Insurance.**

The Contractor shall not commence any work until he obtains, at his own expense, all required insurance. Such insurance must have the approval of the Owner as to limit, form and amount. The Contractor will not permit any Subcontractor to commence work on this project until the same insurance requirements have been complied with by such Subcontractor.

- A. **Types:** The types of insurance the Contractor is required to obtain and maintain for the full period of the Contract will be: Workmen's Compensation Insurance, Comprehensive General Liability Insurance, and Builders' Risk "All-Risk" Insurance as detailed in the following portions of these specifications.
- B. **Evidence:** As evidence of specified insurance coverage, the Owner may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without Forty-five days notice in writing to be delivered by registered mail to the Owner. Should any policy be canceled before final payment by the Owner to the Contractor and the Contractor fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under this Contract.
- C. **Adequacy of Performance:** Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should such insurance be canceled before the end of the guaranty period and the Contractor fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to charge the cost thereof to the Contractor.
- D. **Payment of Damages:** Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under this contract.

10. **WORKMEN'S COMPENSATION INSURANCE.** Before the Agreement between the Owner and the Contractor is entered into, the Contractor shall submit written evidence that he and all subcontractors have obtained, for the period of the Contract, full Workmen's Compensation Insurance coverage for all persons whom they employ or may employ in carrying out the work under this Contract. This insurance shall be in strict accordance with the requirements of the most current and applicable State Workmen's Compensation Insurance Laws.

11. **COMPREHENSIVE GENERAL LIABILITY INSURANCE.** Before commencement of the work, the Contractor shall submit written evidence that he and all his Subcontractors have obtained for the period of the Contract, full Comprehensive General Liability Insurance coverage. This coverage shall provide for both bodily injury and property damage. (The Comprehensive General Liability Insurance will include as Additional Named Insured: The Owner, the Engineer and his consultants; and each of their officers agents and employees).

- A. **Bodily Injury** portion shall include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with the performance of work under this Contract, and shall provide for a limit of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, sickness or disease to or death of one person, and a total limit of three million dollars (\$3,000,000) for damages arising out of bodily injury, sickness or disease and death of two or more persons in any one occurrence.
 - B. **Property Damage** portion will provide for a limit of not less than that listed below for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of work under this Contract and in any one occurrence including explosion, collapse and underground exposure.
 - 1. Automobile \$1,000,000 per accident
 - C. **Indemnity.** The Contractor shall hold harmless, indemnify and defend the Owner, the Engineer and his consultants, and each of their officers and employees and agents, from any and all liability claims, losses or damage arising or alleged to arise from the performance of the work described herein, but not including the sole negligence of the Owner or the Engineer.
12. **INDEMNITY.** The Contractor shall hold harmless, indemnify and defend the Owner, the Engineer and his consultants, and each of their officers and employees and agents, from any and all liability claims, losses or damage arising or alleged to arise from the performance of the work described herein, but not including the sole negligence of the Owner or the Engineer.
13. **NOTICE TO PROCEED.** Following the execution for the Contract by the Owner and the Contractor, written Notice to Proceed with the work shall be given by the Owner to the Contractor. The Contractor shall begin and prosecute the work regularly and uninterruptedly thereafter with such force as to secure the completion of the work within the Contract time.
14. **MINIMUM WAGE RATES.** In accordance with Montana Law (Section 18-2-403, M.C.A.) on contracts for State, County, municipal school construction, heavy highway or municipal construction, repair or maintenance work under any of the laws of the State, the Contractor and Employers shall give preference to the employment of bona fide Montana residents in the performance of said contract, and shall further pay the standard prevailing rate of wages including fringe benefits and travel allowances in effect as paid in the County or locality in which the work is being performed. The provisions of Section 18-2-409, MCA, requires 50 percent of the workers on the project to be Montana residents.

The minimum wages if included as a part of the contract documents, are not controlling except as to the minimum for the purpose of the Davis-Bacon Act; therefore, it is incumbent upon each employer to pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the County or locality in which the work is being performed. The prevailing wage rate schedule in effect at the time this project is first advertised shall be used throughout the duration of the contract as prescribed in Administrative Rules of Montana (ARM) 24.17.127(1)(c).

"Standard Prevailing Rate of Wages" is defined by Section 18-2-402, M.C.A., as including wages, fringe benefits for health and welfare and pension contributions and travel allowance which are paid in the City or locality by other contractors for work of a similar character performed in the County or locality by each craft, classification or type of worker needed to complete a contract.

In accordance with Montana Law (Section 18-2-422, M.C.A.), each contractor and employer shall maintain payroll records in a manner readily capable of being certified for submission under M.C.A. 18-2-423, for not less than three years after the contractor's or employer's completion of work on this project.

Travel allowance, if applicable, may or may not be all inclusive of "travel" and/or subsistence and travel time due employees. It is incumbent on the employer to determine the amounts due for each craft employed according to the method of computation outlined for each craft where applicable.

To comply with Section 18-2-406, M.C.A., the Contractor performing work or providing construction services, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.

Per Montana Law, (Section 18-2-407, M.C.A.), any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected under this section must be deposited in the Montana general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

Copies of the current prevailing rate of wages may be obtained from the Montana State Department of Labor and Industry, Labor Standards Division, Helena, Montana. The Montana prevailing wage rate schedule for this project is

Any infractions of the Laws of the State of Montana covering labor will be forwarded to the State of Montana, Department of Labor and Industry, Labor Standards Division.

15. **CONTRACT TIME.** The Contractor shall complete, in an acceptable manner, all of the work contracted for in the time stated herein. The work shall be commenced on or after August 1, 2021 and shall be completed by August 31, 2021.
16. **REQUESTS FOR PAYMENT.** The Contractor may submit to the Owner periodically, but not more than once each month a Request for Payment for work done and materials delivered to and stored on the site. The Contractor shall furnish the Owner all reasonable information required for obtaining the necessary data relative to the progress and execution of the work. Payment for materials stored on the site will be conditioned upon evidence submitted to establish the Owner's title to such materials. Each Request for Payment shall be computed on the basis of work completed on all items listed in the Detailed Breakdown of Contract, unit prices, less five percent to be retained until final completion and acceptance of the work and less previous payments.
17. **OWNER'S ACTION ON REQUEST FOR PAYMENT.** Within thirty days after receipt of a Request for Payment from the Contractor, the Owner shall:
 - A. **Pay the Request** for Payment as submitted by the Contractor.
 - B. **Pay such other amount**, in accordance with Paragraph 18 as he shall decide is due the Contractor, informing the Contractor in writing of his reasons for payment the amended amount.
 - C. **Withhold payment** in accordance with Paragraph 18, informing the Contractor of his reasons for withholding payment.
18. **OWNER'S RIGHT TO WITHHOLD PAYMENT OF A REQUEST FOR PAYMENT.** The Owner may withhold payment, in whole or in part, of a Request for Payment to the extent necessary to protect itself from loss on account of any of the following:
 - A. **Defective work.**
 - B. **Evidence indicating** the probable filing of claims by other parties against the Contractor that may adversely affect the Owner.
 - C. **Failure of the Contractor** to make payments due to Subcontractors, material suppliers or employees.
19. **INTEREST ON UNPAID REQUESTS FOR PAYMENT.** No interest will be paid on unpaid requests for payment.

20. **NON-DISCRIMINATION**. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political ideas, public assistance status, sexual orientation or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

21. **AFFIRMATIVE ACTION POLICY**. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

END OF GENERAL CONDITIONS

CITY OF MISSOULA
Fort Missoula Regional Park Phase 2 Seal Coat
EXHIBIT 2
PROJECT SPECIAL CONDITIONS

Scope of Work: Patching and Crack Sealing, Seal Coating, Lot Striping/Painting

The scope of this project shall be for material, labor and necessary equipment to perform preventative maintenance, inspection, diagnostics, minor repair, or replacement, emergency and professional services at Fort Missoula Regional Park as identified and referenced in these documents.

Expectations:

Surface preparation for patching is required and will be planned according to MDOT specifications. This will include sweeping, cleaning and proper removal and disposal of waste materials. The use of tack coat for quality and consistent bond for patching. Tack coat shall be CSS-1, CSS-1h, STE-1 emulsified asphalt or equivalent materials and substitute materials need to be submitted for prior approval. Patching will be a minimum of 2" of ½" HMA consistent with existing pavement. Seams and joints will be properly sealed at transition edges. The final patched surface shall be of a uniform texture conforming to the existing and original grade.

If you have any questions about this work contact Lincoln Lake (406-552-6237), 100 Hickory St, Missoula Mt, 59801.

Submittals for products used are required including MSDS and Product Data Sheets. The contractor shall, at its own expense, obtain and keep in force any necessary licenses, permits, and tax certificates. All projects will be completed within fourteen days, weather dependent, of notification to proceed from Project Manager

The undersigned Bidder declares that they have read and fully understand the Notice Inviting Bids, General Conditions for City of Missoula projects, and the Contract Document referred to therein and agrees to all of the terms, conditions and provisions contained therein; that they have examined the site of the work and have made the investigations and formed the estimates as to all conditions and contingencies referred to in and required by the Contract Documents, and they propose and agree that if their bid as submitted in the Proposal be accepted, they will contract in the form provided to perform all of the work and in the manner required by the Contract Documents and to complete the same within the time stipulated; that they will accept in full payment therefore the prices named herein. Said prices are to include the necessary preparation of site, cover the furnishing of all materials, the disposal of waste materials, the performing of all labor requisite or proper, supervision, overhead, profit, taxes and the providing of all necessary machinery, tools, appurtenances, equipment and other means required to fully complete this contract, except as otherwise specifically provided in the Specifications.

1. Scope of Work:

A. Preparation prior to seal coating the entire area will be swept and cleaned of all debris with commercial blowers. Oil spots will be cleaned and primed as necessary.

B. Crack filling as needed—machine clean cracks, removing all weeds and debris and seal with MDOT approved, hot, applied crack sealant.

C. Asphalt patchwork as needed:

1. Saw cut patches.
2. Remove asphalt and compact gravel base.
3. Grind and/or cut to form butt joints as required to ensure even transition of new pavement to existing surfaces.
4. Clean and prime areas with approved liquid asphalt primer.
5. Install 2" of compacted binder asphalt.
6. Install 2" of compacted surface asphalt mix, matching existing surfaces.
7. Adjust any drainage basins prior to asphalt installation.

D. Seal coat – Seal coat is to be completed within the below parameters.

1. Weather Limitations – Perform seal coat operations only during daylight hours and not during foggy weather. Begin seal coat operations when pavement and air temperatures are 60° F (15.5° C) and rising.

2. Surface Preparation – Contractor will use a motorized broom to sweep pavement before seal coating to remove loose rock chips. Cover metal surfaces to prevent adherence of the bituminous material. Remove the protective coverings before opening the road or parking lot to traffic.

3. Contractor must demonstrate a uniform application of asphalt emulsion producing 100 percent coverage of the surface after curing. Stop operations if the application demonstration does not meet the coverage requirements. Minimize the amount of overspray during the seal coat operation. Using a distance of 1,000 feet (300 meters) perform a yield check at the beginning of each project to verify the application rate is correct.

E. Striping – layout and stripe all original stalls and pavement markings using thermal paint material.

F. Clean-up – All remaining stock piles, material waste and construction debris is to be properly disposed of by Contractor promptly upon completion of the work. All personal or incidental rubbish is to be removed from sites and properly disposed of immediately after creating.

Special provisions:

Seal coat Restrictions – Seal Coat work shall not be done before August 1, 2021 or after August 30, 2021. No seal coat work is to be done on weekends. Pavement and air temperature shall be 60 degrees Fahrenheit or higher. Relative humidity shall be less than 75%. Seal coat shall not be placed during rain or fog or if rain is expected before set time.

Traffic control and lot closures shall be monitored and maintained until seal coat sets. Once seal coat is set, lot striping shall take place. Additional lot sweeping should not be necessary given the new seal coat, but advise and include if necessary. All parking lot striping is to be done with Pro-Park Pavement Marking Paint waterborne acrylic alkyd striping paint. Manufactured by Sherwin Williams, Cleveland, OH www.sherwin-williams.com, or approved equal. Application of reflective beads not needed. “Teen Area” to be painted with original specifications and color. Once striping and paint is set and dry, the treated lot is to be re-opened for public use and all signage removed. Traffic control for individual lot (phase) closures shall be set the day/evening before work is to commence.

Any parked vehicles left/remaining in a lot that was closed the night before, shall be subject to being towed by the City’s choice of licensed, insured towing companies to another legal parking location in the park. City Parks & Recreation will be responsible to pay cost to tow vehicles as required to complete the work.

END OF SPECIAL CONDITIONS

EXHIBIT 3

Pro Sweep Quote for Fort Missoula Regional Park Phase 2 Seal Coat

City of Missoula, Parks & Recreation –Limited Solicitation

FORT MISSOULA REGIONAL PARK PHASE 2 SEAL COATING

Complete this form, sign and e-mail/mail to Lakel@ci.missoula.mt.us

DUE DATE: On or before 4:00 PM, Wednesday, March 31, 2021

Description of services requested: Supply all materials, equipment, and personnel required for site preparation and seal coat application of approximately 248,130 square feet and lot striping/painting for existing parking lots and driveways. Project shall be advanced in phases to minimize impacts on park uses and services. Contractor shall be responsible to supply and maintain traffic barricades to close off areas for seal coating until the seal is fully set. Selected contractor must provide proof of having \$3.0M general liability insurance in the aggregate, \$1.5M per occurrence, City of Missoula Business license, and a workers compensation insurance policy valid in the State of Montana, and State contractor license. No bid bond or surety is required. A standard City Contract will be awarded to the low responsive bidder subject to positive feedback from references.

Date of Service required: M-F between hours of 6:00 AM and 5:00 PM during August, 2021. Extended early morning hours (12 midnight to 6:00 AM) is possible by written approval of the assigned City Project Manager.

Item	Quantity	Units	Unit Cost	Total
1. Mobilization	1	LS	\$ 500	\$ 500
2. Asphalt preparation	1	LS	\$ 1100	\$ 1100.
3. Sealcoat	250,000	SF	\$ 0.125	\$ 31,250.
4. Striping		LF	\$ 2,250	\$ 2,250
5. Traffic Control	1	LS	\$ 500	\$ 500
1% Montana Gross Receipts Sales Tax (to be withheld by City)	1	1% total of above lines	NA	\$ - 356.-
Grand Total			\$	35,244.-

Written Total Quote Amount: thirty-five thousand two hundred forty-four Dollars and 00 Cents

Additional Services if required

Item	Quantity	Units	Unit Cost
1. Crack Seal	60	LF	\$ 1.00
2. Patching		SF	\$

NOTE 1. The cost of the work is anticipated to exceed \$25,000.00. All quotes shall include appropriate labor classifications and rates as reflected in the current Montana Prevailing Wage Act for Heavy Construction (link: <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>).

Authorized Signature:

Joe Buraggin
President

Date: 3/30/2021

Title:

MT Contractor #: _____

Provide 2 references for most recent similar work performed

Client Name	City & State	Contact Name	Phone Number	Date services provided
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Bretz RV	Missoula	Dave Bretz	406-880-0102	
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Treasure State Concrete	Ronan MT	Dan Eastman	406-253-7150	
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EXHIBIT 4

Map of Fort Missoula Regional Park Phase 2 Seal Coat Areas

North Lot on South Ave: ~166,842 sq. ft.



South Lot on Fort Missoula Rd.: ~81,288 sq. ft.

