

**RESOLUTION NO. 3975**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY, MONTANA TO ENTER INTO AN AGREEMENT WITH JOHN MUGGLI CONTRACTING LLC FOR REPLACEMENT OF WATER MAIN LINE UNDER THE TONGUE RIVER.**

*WHEREAS*, the City of Miles City has advertised and received bids for the replacement of approximately 400 feet of 20 inch main water line under the Tongue River;

*AND WHEREAS*, the City awarded said bid to the lowest responsible bidder, John Muggli Contracting, LLC;

*AND WHEREAS*, the obligations of the parties related thereto have been reduced to writing;

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

1. It does hereby approve the Agreement between the City of Miles City, Montana and John Muggli Contracting, LLC, attached hereto as Exhibit "A," and hereby authorizes the Mayor of the City of Miles City to execute said Agreement, and bind the City of Miles City thereto.
2. The Mayor is hereby authorized and empowered to execute such additional documents as may be necessary to carry out the terms of said Agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 13<sup>th</sup> DAY OF SEPTEMBER, 2016.**

ATTEST:

  
Lottie Pearce, City Clerk

  
John Hollowell, Mayor

**SECTION 00500  
AGREEMENT**

This Agreement is dated as of the 25 day of August in the year 2016, by and between the City of Miles City, hereinafter called "Owner" and John Muggli Contracting LLC, hereinafter called "Contractor". Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The replacement and reconnection, at both ends, of approximately 400 feet of 20-inch water main under the Tongue River by horizontal directional drilling, approximately 300 feet of trenched 20-inch water main, and the associated facility and site containment systems.

**ARTICLE 2 - THE PROJECT**

2.01 The project for which the work under these Contract Documents may be the whole or only a part is generally described as follows:

**20" Tongue River Water Main Crossing for Miles City, Montana**

**ARTICLE 3 - ENGINEER**

3.01 The Project has been designed by Kadrmas, Lee and Jackson, Inc. (KLJ), which is to act as Owner's Representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 - CONTRACT TIME**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially complete within 35 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions. No winter shut down shall be permitted.

B. All punch list items, if any, shall be completed within 14 calendar days from the issuance of the Substantial Completion Certificate. Final completion will not be achieved until all punch list items have been completed.

C. Final completion is defined to include all components of the project not completed by substantial completion.

#### 4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner one thousand dollars (\$1,000) for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$1,000 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and one thousand dollars (\$1,000) for each day that expires after the time specified in Paragraph 4.02 for Final Completion. The liquidated damages specified herein includes unscheduled employment.

#### ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the lump sum amount (subject to adjustment as provided in the Contract Documents) of: three hundred forty eight thousand, seven hundred ninety and no cents Dollars (\$348,790.00).

#### ARTICLE 6 - PAYMENT PROCEDURES

##### 6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

##### 6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the once each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. Ninety (90%) percent of Work completed (with the balance being retainage).

### 6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

### ARTICLE 7 - INTEREST

7.01 All monies not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

### ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents (including all Addenda) listed in Paragraph 9 and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and furnishing of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Special Provisions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the site which has been identified in the Special Provisions as provided in Paragraph 4.06 of the General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

- E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by the Contractor, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 - CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (Pages 1 to 7, inclusive).
  2. Performance bond.
  3. Payment bond.
  4. General Conditions.
  5. Supplementary Conditions.
  6. Special Provisions
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings consisting of a cover sheet and sheets numbered 1 through 7 with each sheet bearing the following general title: 20" Tongue River Water Main Crossing.
  9. Addenda (Numbers 1, inclusive).
  10. Exhibits to this Agreement (enumerated as follows):

- a. Notice to Proceed (Pages 1 to 1, inclusive).
- b. Contractor's Bid (Pages 1 to 6, inclusive).
- c. Notice of Award

11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Written Amendments;
- b. Work Change Directives;
- c. Change Orders.
- d. Any Notice of Partial Utilization
- e. Notice of Substantial Completion
- f. Lien Waivers
- g. Notice of Final Completion and Acceptance

12. Supplementary Specifications

13. Certificates of Insurance

14. Standard General Conditions

15. Wage Rates

16. Montana Public Works Standard Specifications, Sixth Edition, dated April 2010

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 - MISCELLANEOUS

### 10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
  - 5.

IN WITNESS WHEREOF, Owner and Contractor have signed Three (3) copies of the Agreement. One (1) counterparts have been delivered to Owner, one (1) to Contractor and one (1) to Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on 9-21-16 (which is the Effective Date of the Agreement).

OWNER: City of Miles City, Montana

Signature: [Signature]

By: Mr. John Hallowell  
Title: MAYOR

Attest: [Signature]  
Signature

By: Horrie Pearce  
Title: City Clerk  
Address for giving notices:  
PO Box 910  
Miles City, mt 59301

CONTRACTOR: Jottin Mussli Contracting  
Signature: [Signature]

By: Michelle A. Mussli  
Title: Book keeper

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: [Signature]  
Signature

By: Jennifer Maidings  
Title: Office manager  
Address for giving notices:  
PO Box 67  
Miles City MT 59301  
License No.: Contractors  
10361

END OF SECTION



**166723 Fee: \$38.00**

Custer County Recorded 10/7/2016 At 1:17 PM  
Linda Corbett, Clk & Rcdr By [Signature]  
Return to: City of Miles City P.O. Box 910  
MILES CITY MT 59301

Right of Way Application No. 17430  
Affecting a 20-foot strip through  
SW4NW4 , Sec. 33, Twp. 8N, Rge. 47E  
Custer County, Montana

EASEMENT NO. D-15570

## RIGHT OF WAY DEED

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Know ye that the State of Montana (hereinafter referred to as "Grantor"), in consideration of the sum of Two Hundred and No/100 Dollars (\$200.00), now paid, grants to City of Miles City (hereinafter referred to as "Grantee") a right of way upon and across State lands for a 20" water main pipeline under the Tongue River, as follows:

A 20-foot strip through SW4NW4 , Section 33, Township 8N, Range 47E, Principal Meridian Montana, Custer County, Montana, as shown and depicted on the Exhibit attached hereto and made a part hereof and containing 0.06 acres, more or less.

**The grant of this easement is subject to the following conditions:**

The Grantee shall comply with the Montana Antiquities Act, Title 22, Chapter 3, MCA. In particular, Sections 22-3, Parts 4 and 8 MCA.

It is also agreed that the Grantee shall comply with such rules or regulations as may be hereafter imposed by the State Board of Land Commissioners to insure that the environment will be adequately protected and the public health and safety not be endangered.

The Grantee shall be responsible for controlling any noxious weeds introduced by Grantee's activity on state-owned land. The Grantee's methods of control must be reviewed by the Grantor's Area Field Office that has jurisdiction for that locale.

The Grantee shall comply with the Montana County Noxious Weed Management Act, Section 7-22-2101 MCA et. seq., as follows:

The Grantee shall notify the local weed board that is responsible for that geographical area that the project is located in. If the Grantee disturbs vegetation for any reason, Grantee shall be required to revegetate the disturbed area. The Grantee shall submit to the local weed board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding; fertilization, recommended plant species, use of weed-free seed, and the weed management procedures to be used. This plan is subject to approval by the local weed board, and therefore must be signed by the chairman of the board. Upon termination of this easement, Grantee shall reclaim the entire area in accordance with this paragraph.

Provided, further, that the right of way deed granted herein shall be assignable by Grantee only with the written approval of the Director, Department of Natural Resources and Conservation.

Provided, further, that this right of way deed is granted under the express condition that the Grantee's exercise of the rights herein granted shall not interfere with the Grantor's use of the adjacent land.

Provided, further, that permission must be obtained in writing, from the Director, Department of Natural Resources and Conservation, prior to the construction of any improvements on the right of way herein granted.

The Grantee shall have secured all permits and approvals as may be required by law before beginning any activity within, above or below the riverbed. These permits include, but are not limited to, any permit issued by the Army Corps of Engineers, the State of Montana Department of Environmental Quality, the County Flood Plain Manager, the local County Soil Conservation District and/or the Montana Department of Fish, Wildlife and Parks.

All terms, conditions, project specifications and time-frames contained in all of the required permits, authorizations and construction specification plans become a part of the terms and conditions of this easement.

Provided, further, Grantee shall comply with §80-7-1012, MCA in regards to treatment of aquatic invasive species.

Provided, that Grantor may terminate this right of way for a material breach of any of the conditions or provisions of this deed. Before termination, the Board shall give Grantee written notice of intent to terminate and a reasonable period to cure the breach.

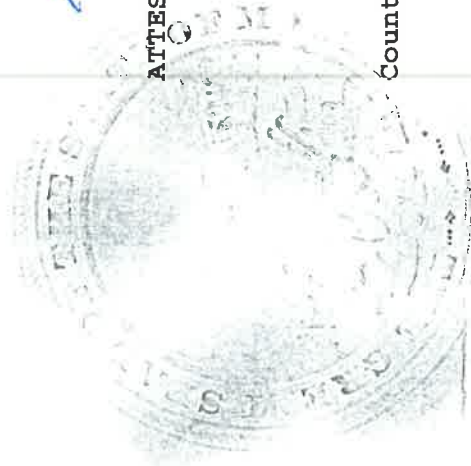
It is further provided that whenever said lands herein granted as a right of way shall cease to be used for such purpose, the right of way shall terminate upon notice to that effect being given to the said grantee named herein.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Director, Department of Natural Resources and Conservation, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this 14 day of September, A.D. 2016.



.....  
Governor of the State of Montana

ATTEST:

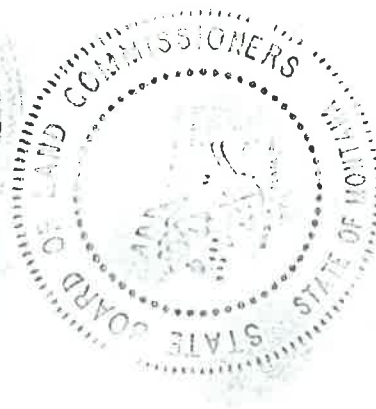


.....  
Secretary of State

Countersigned by:



.....  
Director, Department of Natural Resources and Conservation



10/7/2016

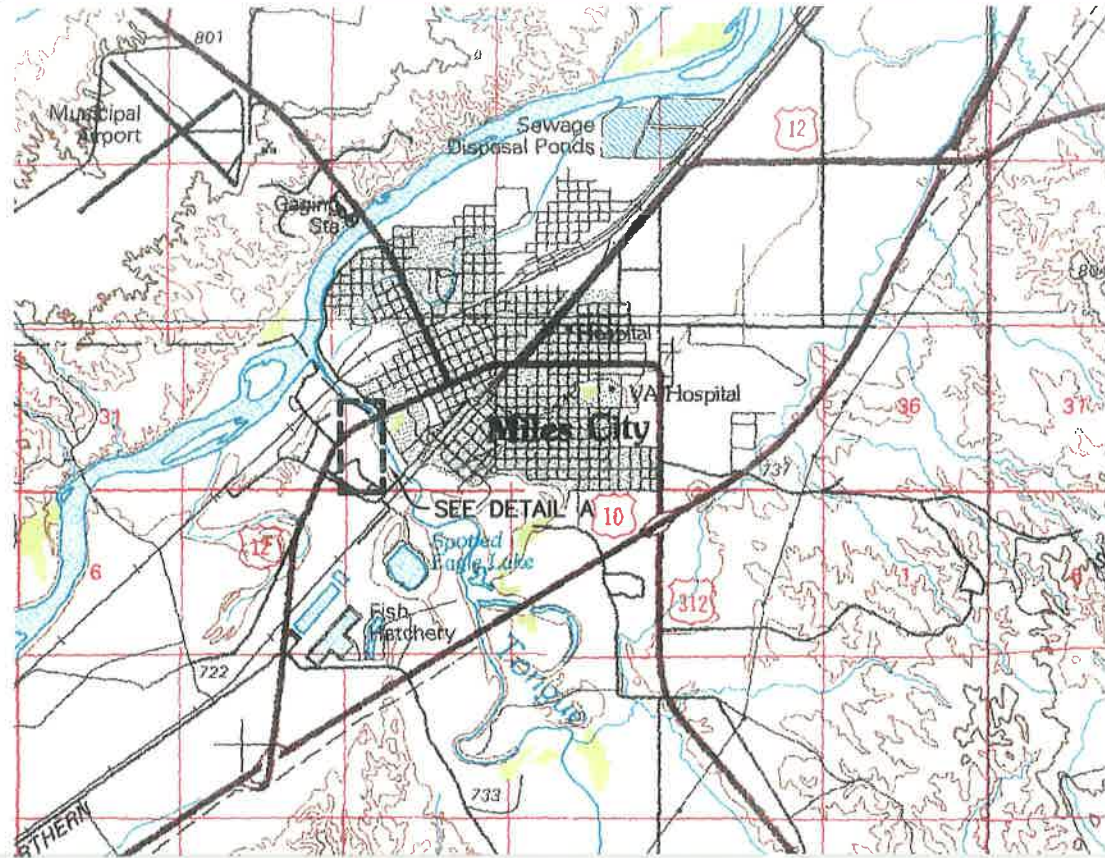
Accepted and Approved:

*Suzanne M. Galbraith*  
Applicant

Suzanne M. Galbraith...  
Printed Name

166723 Fee: \$38.00  
Custer County Recorded 10/7/2016 At 1:17 PM

166723 Fee: \$38.00  
Custer County Recorded 10/7/2016 At 1:17 PM



NOTE: USGS MAP REFERENCE CODE - 46105-A1

CENTERLINE DESCRIPTION

A pipe line crossing State of Montana land (Tongue River) in Section 33, T.8N., R.47E., P.M.M., Custer County, Montana, within a 20-foot-easement being 10 feet on each side of the following described Centerline:

Beginning at a point on the Westerly water mark of the Tongue River which bears N15°01'26"E, a distance of 2,698.39 feet from the Section corner common to Sections 32 & 33, T.8N., R.47E., P.M.M. & Sections 4 & 5, T.7N., R.47E., P.M.M.; thence N65°07'40"E, a distance of 125.02 feet to a point on the Easterly water mark of the Tongue River which bears N88°42'48"E, a distance of 816.50 feet from the 1/4 corner common to said Sections 32 & 33.

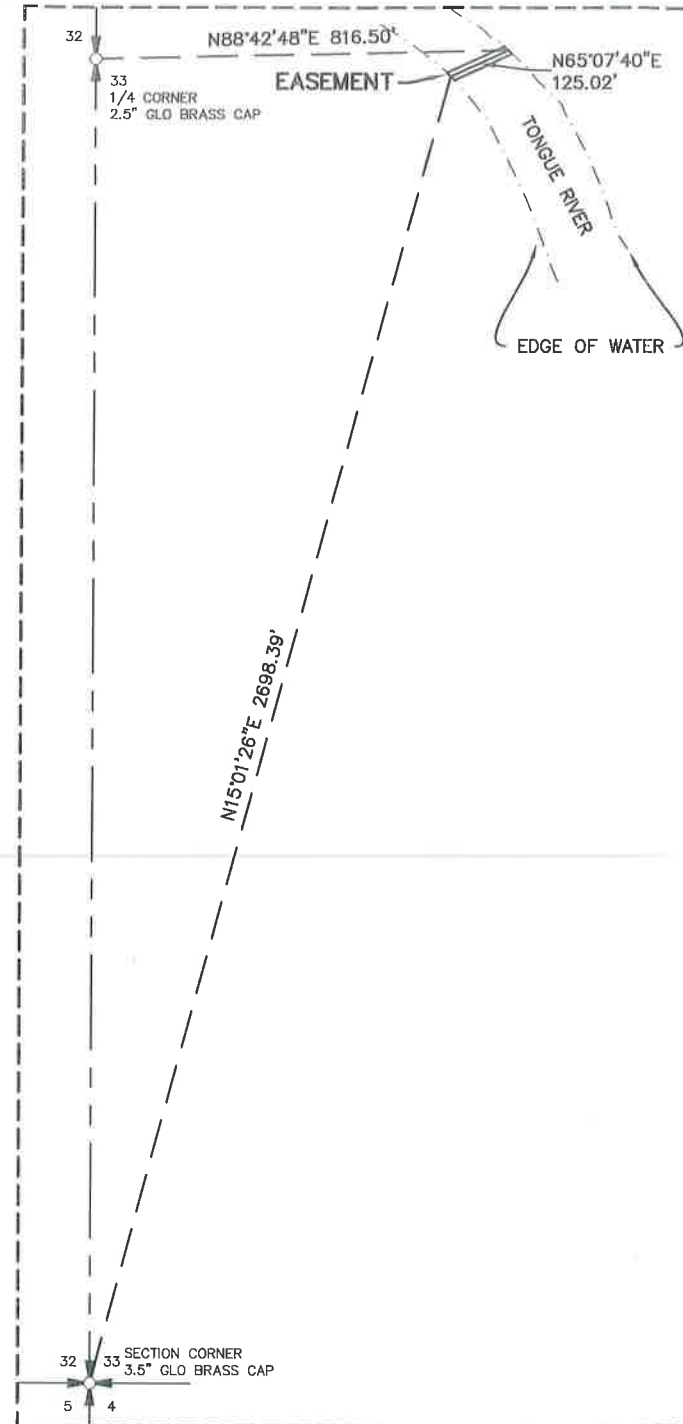
Total length of pipe line crossing state of Montana Land in Section 33 is 125.02 feet and contains 0.057 acres.

I, Darryl E. Magnuson, Professional Land Surveyor do hereby certify that the survey plat shown hereon was made by me, or under my direction, from notes made in the field, and the same is true and correct to the best of my knowledge and belief.

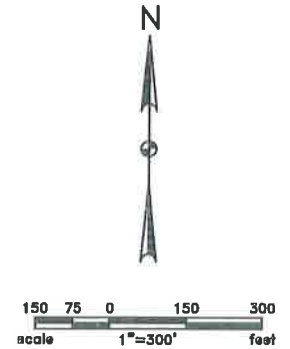
KLJ, INC.

By: *Darryl E. Magnuson*

Montana Registration No. 17791 PLS



DETAIL A  
SCALE: 1"=300'



20" TONGUE RIVER WATER MAIN CROSSING  
CITY OF MILES CITY  
MILES CITY, MT  
PROPOSED EASEMENTS

NO.	DATE	REVISION

DRAWN BY  
JAC  
REVIEWED BY  
DEM  
PROJECT NUMBER  
2414109  
ISSUE DATE  
MAR 2016

SHEET