

RESOLUTION NO. 3978

A RESOLUTION APPROVING A WATER LINE EASEMENT/UTILITY RIGHT-OF-WAY AGREEMENT BETWEEN THE CITY OF MILES CITY AND MILES COMMUNITY COLLEGE.


WHEREAS, Miles Community College (“MCC”) is in the process of developing certain property, and desires to extend City water main lines over and across their property to provide domestic water and fire protection service, and to grant an easement to the City to allow the same;

AND WHEREAS, the City and MCC have certain responsibilities and obligations related thereto, which have been reduced to writing;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:


1. The “Water Line Easement/Utility Right-of-Way Agreement” attached hereto as Exhibit “A”, and made a part hereof, is hereby approved and adopted by the Council;
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and to bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 27TH DAY OF SEPTEMBER, 2016.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

166722 Fee: \$59.00

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

After Recording, Return to:
City of Miles City
Box 910
Miles City, MT 59301

Water Line Easement/Utility Right-of-Way Agreement

This Water Line Easement/Utility Right of Way Agreement ("Agreement") is made and entered into as of the date executed by both parties, by and between:

"MCC": Miles Community College 2715 Dickinson Street Miles City, Montana 59301	"City": City of Miles City 17 S. 8 th Street Miles City, MT 59301
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RECITALS

WHEREAS, the MCC owns the real property described below and is constructing improvements on and to the property which require the extension of a water main across MCC property while serving a local water line to supply domestic water and water for fire protection to MCC;

WHEREAS, MCC is willing to construct the main line across its property in order to provide the best possible delivery of municipal water that it can but does not want to maintain ownership of the water main infrastructure;

WHEREAS, MCC has the duties, rights and powers to grant licenses, easements, and rights-of-way for water main lines over this property;

WHEREAS, the City needs a water main line easement/utility right-of-way for the installation and maintenance of the water main across MCC property to serve the MCC real property and other property in Miles City;

WHEREAS, MCC wishes to grant a water main line easement/utility right-of-way across its property for these purposes;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and other valuable consideration, the parties agree as follows:

1. **Grant of Water Main Line Easement/Utility Right-of-Way.** MCC hereby grants and conveys unto the City and its successors, assigns, lessees, licensees, and agents, a public water main easement/utility right-of-way along, and across a portion of the MCC property, described below and as shown on the attached Exhibit A.
2. **Purpose of Water Main Extension Easement/Utility Right-of-Way.** This water main easement/utility right-of-way is for the purpose of allowing the construction of and installing, using, maintaining, or repairing an underground water main and other related and necessary equipment, to supply Miles City municipal water services to MCC property and to eventually extend municipal water to additional landowners.
3. **Description and Location of the Water Main Extension Easement/Utility Right-of-Way.** The Water Main Extension Easement/Utility Right-of-Way is located as shown on the attached Exhibit A and as described below:

A 20' wide public water main right-of-way across a portion of the Grantor's property, described as Tract X, as shown on Dependent Resurvey and Subdivision of Tract Y, approved August 12, 1987, lying in the NE1/4, Section 5, Township 7 North, Range 47 East, Principal Meridian Montana, Custer County, Montana, as described in the United States of America Patent Number 25-92-0078, filed as Document Number 123597, in the Custer County Clerk and Recorder's Office; with a centerline described as follows:

Beginning at a point which lies on the westerly line of said Tract X, which lies N24°52'46"E, a distance of 233.83 feet from the southwest corner of said Tract X and lies S24°52'46"W, a distance of 237.29 feet from the northwest corner of said Tract X; thence S65°00'25"E, a distance of 535.00 feet to the ENDING POINT, which lies S88°38'01"E, a distance of 583.44 feet from the southwest corner of said Tract X, and lies S41°06'24"E, a distance of 585.69 feet from the northwest corner of said Tract X.

Said right-of-way containing 10,700 square feet or 0.246 acres more or less. As shown on the attached Exhibit A.

4. **Scope and Use of the Water Main Easement/Utility Right-of-Way.** The water main easement/utility right-of-way may only be used for constructing, installing, using, maintaining, repairing, improving, and replacing the underground water main and any appurtenances of the main.
5. **Additional Rights.** In addition, the City has the additional and reasonable right of ingress and egress from the water main easement/utility right-of-way over land of the MCC using existing roads where practicable. In granting this water main easement/utility right-of-way, MCC agrees that all facilities, including all equipment initially installed on the Grantor's

property at the Grantor's expense and all equipment subsequently installed on the Grantor's property at Grantee's expense, shall be and remain the property of the Grantee.

6. **Use of the Water Main Easement/Utility Right-of-Way by MCC.** MCC reserves the right to occupy, use, and cultivate the area described on Exhibit A for all purposes not inconsistent with and not interfering with the rights granted by this water main easement/utility right-of-way. MCC shall not use the area within the water main easement/utility right-of-way in any manner that interferes with its use as a buried water main.

7. **Miles City Representations.** By accepting this water line easement/utility right-of-way, the Grantee agrees to the following:

- 7.1 After initial construction, prior to commencing any reconstruction, operation, repair, maintenance, or removal of any facility, the MCC shall be given a 30 day notice by the City, either orally or in writing when entry shall be made, except when emergency repair is required to maintain service of the water main line. The city shall notify the MCC after emergency work is completed. The notice shall be deemed given when received by the Grantor at its address stated above.
- 7.2 Subsequent to the City accepting ownership of water main line, the City will restore any damage caused to the MCC lawns resulting from the City's use of the easement, at the City's expense. MCC shall not place any trees, shrubs, fences, buildings, recreational facilities, or any other property, nor develop any flowing water or springs, in the easement area, and the City shall not be responsible for paying for damages to the same.
- 7.3 All facilities of the City will be placed in a location in the area described on Exhibit A, by MCC. MCC shall not disturb or remove any City facilities, and shall be responsible for any damages caused to the facilities by MCC or its agents.
- 7.4 Once the City assumes ownership, if disturbed, the City will restore the surface to its original contour as nearly as practical, including the moving or burying of all newly exposed rocks, reseeding with approved grasses and forbs, patching pavement or concrete parking or driving surfaces, all to the reasonable satisfaction of MCC or its representative. Furthermore, the City will repair any and all damaged trees, fences, buildings, roads, parking areas, recreational facilities and parts of all drainage or irrigation systems which damage may have resulted from the reconstruction, repair, maintenance, operation or removal of the City's facilities on MCC property, so long as the same have not been placed on the easement area, contrary to the provisions set forth in 7.2.
- 7.5 Only activities and developments directly related to and necessary for the operation of the water main line are approved.
- 7.6 This instrument and its covenants and agreements shall inure to the benefit of and be binding and obligatory upon the successors and assigns of both parties.
- 7.7 In the event of default by either party to any or the terms of this Agreement, the other party may give a written notice that specifies the default and a period of at least 30 days from the date of notice within which the default must be corrected. If the defaulting party does not correct the default within the specified time period, the other party may take whatever action is necessary to cure the default, and the costs associated with curing said default shall be immediately due and payable to the non-

defaulting party. Under no circumstances shall the City be required to remove buried utilities unless the same poses an immediate public health or safety threat as determined by the Department of Environmental Quality. If the Agreement is terminated, MCC will be authorized to remove the buried utilities if it is in its best interests to do so. Any failure of either party to take action under this paragraph shall not constitute a waiver of any of the provisions of this Agreement.

8. **Water Main Easement/Utility Right-of-Way to Run With the Land.** The benefits and burdens of this Agreement will run with the title to the land whether or not the water Main easement/utility right-of-way is referred to in conveyances of those properties.

9. **Time of Essence.** Time will be of the essence in complying with the terms and conditions of this Agreement.

10. **Attorneys' Fees.** If either party to this Agreement institutes legal proceedings to enforce the terms of this Agreement, the unsuccessful party to the proceedings will pay the reasonable attorney's fees, paralegal fees, expert witness fees, out of pocket expenses and legal costs of the prevailing party, as they may be approved by the court having jurisdiction over the proceedings.

11. **Entire Agreement.** This instrument constitutes the entire agreement between the parties. No party will be bound by any terms, conditions, understandings, warranties, statements or representations, oral or written, not contained in this agreement. Each party acknowledges that the execution of this Agreement was not induced or motivated by any promise or representation made by any other party, other than the promises and representations expressly set forth in this agreement.

12. **Interpretation to Support Validity.** If any provision of this Agreement can be interpreted in two ways, one of which would render the provision valid and the other of which would render the provision invalid, the provision will be interpreted in the manner that would render it valid.

13. **Severability of Invalid Provisions.** If any provision of this Agreement is declared or becomes invalid, unenforceable or contrary to law, the parties agree that the provision will be considered severed from the remaining provisions of this Agreement and will not affect the validity, legality, or enforceability of the other provisions of this Agreement, and the remainder will be interpreted as if it never contained the provision.

14. **Applicable Law.** This Agreement is governed by and will be construed in accordance with the laws of the State of Montana with venue in Custer County.

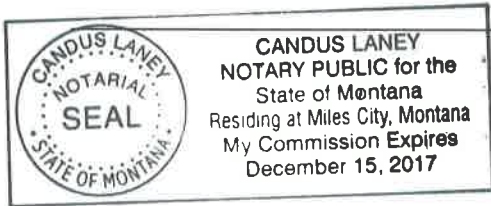
DATED as of the date set forth below each signature.

MCC:	City:
MILES COMMUNITY COLLEGE	The city of Miles City
By: <u>[Signature]</u>	By: <u>[Signature]</u>
Dr. Stacy Klippenstein, President	John Hollowell, Mayor
Dated: <u>9/27/16</u>	Dated: <u>7-27-16</u>

STATE OF MONTANA)
: ss.
County of Custer)

This instrument was acknowledged before me on 22 day of September, 2016, by **Dr. Stacy Klippenstein**, as President of Miles Community College.

[Signature]

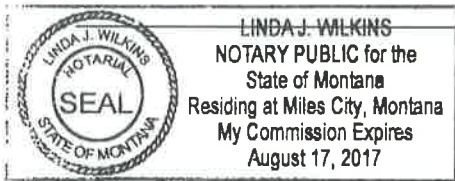


Printed or typed name:
Candus Laney
Notary Public for the State of Montana

STATE OF MONTANA)
: ss.
County of Custer)

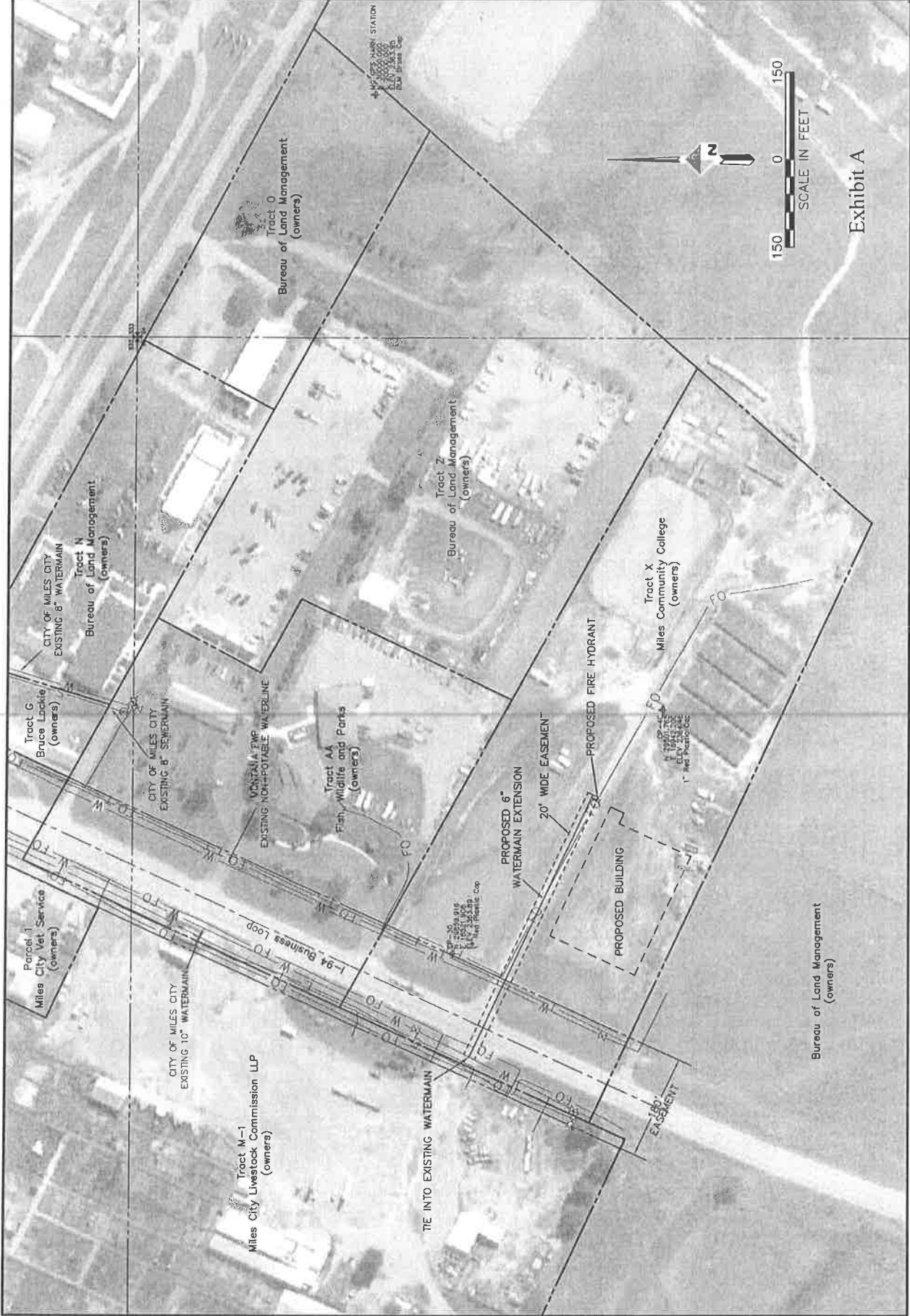
This instrument was acknowledged before me on 27 day of SEPTEMBER, 2016, by [Signature] as Mayor of Miles City.

[Signature]

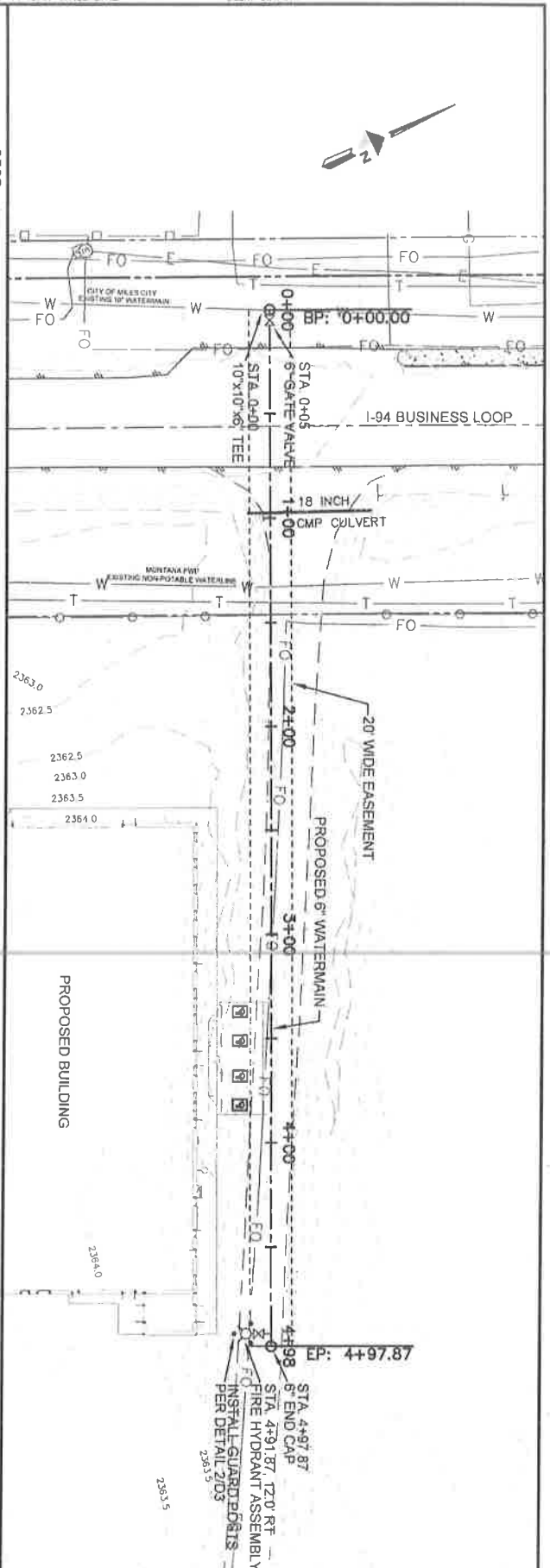
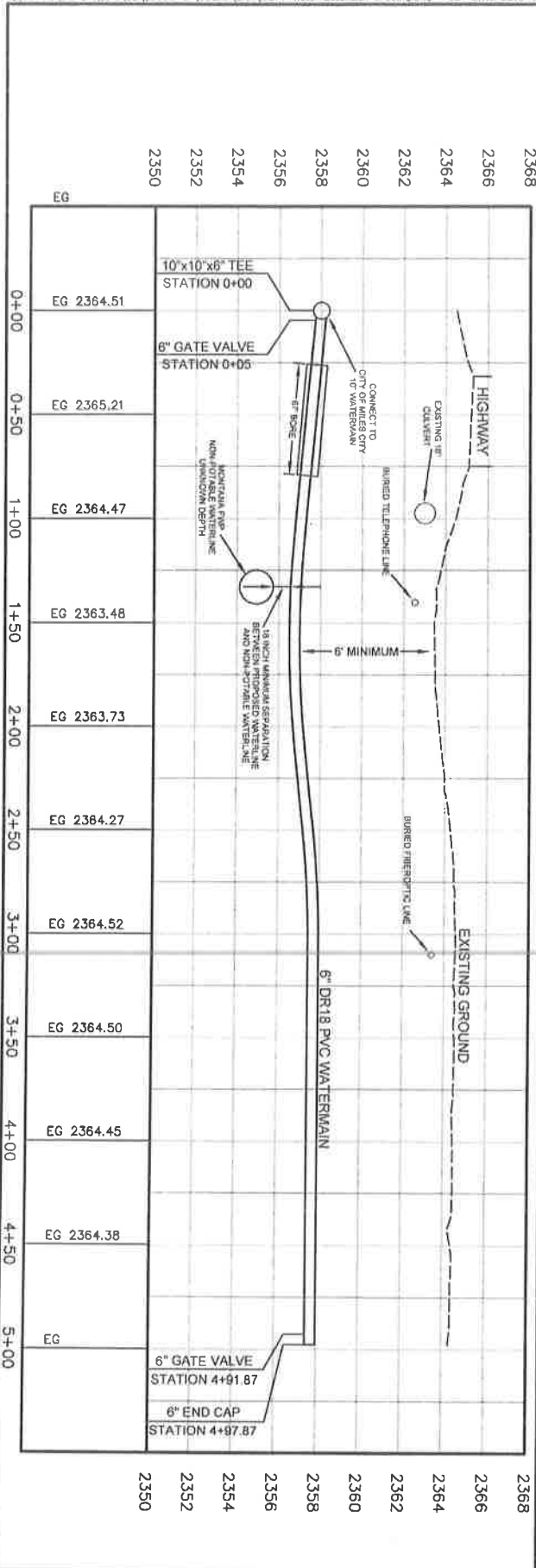


Printed or typed name:
Linda J. Wilkins
Notary Public for the State of Montana


AG ADVANCEMENT CENTER WATERLINE
 OVERALL WATERLINE WITH LANDOWNERS



166722 Fee: \$59.00
Custer County Recorded 10/7/2016 At 1:17 PM



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Custer County Recorded 10/7/2016 At 1:17 PM



 WWW.DOWL.COM
 713 Pheasant Street
 Miles City, Montana 59301
 406-234-6686

**AG ADVANCEMENT CENTER WATERLINE
 PLAN & PROFILE SHEETS**

PROJECT 4127.20988.01
 DATE 6/14/2016
SHEET PP-1