

AGENDA

*Regular Council Meeting
City Council Chambers*

*September 25, 2012
7:00 p.m.*

**CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL**

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES

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|----|---------------------------------|------------|
| a. | City Council Meeting | 09/11/2012 |
| b. | Human Resources Meeting | 09/07/2012 |
| c. | Public Safety Committee Meeting | 09/12/2012 |
| d. | Finance Committee Meeting | 09/19/2012 |

2. SCHEDULE MEETINGS

3. REQUEST OF CITIZENS& PUBLIC COMMENT

4. PROCLAMATIONS

5. STAFF REPORTS

Dawn Colton, Grant Administrator: Update on Riverside Restroom Project
Al Kelm, Public Utilities Director:
Update on Fire Door
Update on Strevell Street Project

6. CITY COUNCIL COMMENTS

7. MAYOR COMMENTS

8. PUBLIC HEARINGS

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- a. **Intent To Decrease** For Two Years, Then Incrementally Increase For 13 Years, Monthly Minimum Water Rates And Monthly Overage Water Rates
 - b. **Intent To Annex** Certain Contiguous Government Lands To The City Of Miles City, Montana, To-Wit: That Portion Of The Right Of Way Of Montana State Highway 59 South Commencing At The Intersection Of Such Highway With The Southerly City Limit Line Of The City Of Miles City On Highway 59 South, Thence Southerly, The Full Width Of Such Right Of Way, To That Point At Which The Southerly Boundary Line Of Tract 1 Of Certificate Of Survey 49207 In Section 2, Township 7 North, Range 47 East,

Custer County, Montana (Commonly Known As The Super 8 Motel Property) Intersects The Easterly Boundary Of Such Right Of Way

- c. **RESOLUTION NO. 3547:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2012-2013 To Appropriate Unappropriated Revenues To Library Grant Fund No.2880 For Grant Expenditures

9. **OLD BUSINESS**

- a. **RESOLUTION NO. 3547:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2012-2013 To Appropriate Unappropriated Revenues To Library Grant Fund No.2880 For Grant Expenditures
- b. **RESOLUTION NO. 3549:** A Resolution, Pursuant To Title 7, Chapter 2, Part 44 MCA, Annexing certain Contiguous Government Lands To The City Of Miles City, Montana, That Portion Of The Right Of Way Of Montana State Highway 59 South Commencing At The Intersection Of Such Highway With The Southerly City Limit Line Of The City Of Miles City On Highway 59 South, Thence Southerly, The Full Width Of Such Right Of Way, To That Point At Which The Southerly Boundary Line Of Tract 1 Of Certificate Of Survey 49207 In Section 2, Township 7 North, Range 47 East, Custer County, Montana (Commonly Known As The Super 8 Motel Property) Intersects The Easterly Boundary Of Such Right Of Way

10. **BID OPENING**

Riverside Park Restroom Project

BID AWARD

Levee Repair – Jarrett Construction

11. **NEW BUSINESS**

- a. **RESOLUTION NO. 3550:** A Resolution Establishing Wages And Salaries For City Employees For Fiscal Year 2012-2013
- b. **RESOLUTION NO. 3553:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2012-2013 To Appropriate Unappropriated Cash Balances From The Capital Improvement Fund No. 4000 For The Purchase Of A Prisoner Transport Van
- c. **RESOLUTION NO. 3554:** A Resolution Authorizing An Amendment To The Construction Agreement With Dick Anderson Construction, Inc., A Montana Corporation, For Construction Of The Schedule I Wastewater System Improvements (Haynes Avenue Lift Station).
- d. **Consideration of Waiver of Site Plan Fee for Grutkowski Animal Rescue Shelter at 818 N. Lake**
- e. **Consider Granting Permission to use “Old Cross Country” Dike Route: Mike Ryan, Custer County District High School Activities Director**
- f. **Consider a Counter-proposal for BNSF depot lease**

- g. **Appointment of Janette Jones as Special Counsel to the Human Resources Committee**
- h. **Wages & Adjustments regarding four non-union grievances**

12. **APPOINTMENTS**

13. **ADJOURNMENT**

Public comment on any public matter that is not on the agenda of this meeting can be presented under a Request of Citizens provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings.

CALL TO ORDER

The Regular Council meeting was held Tuesday, September 11, 2012, in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana. Mayor C. A. Grenz called the meeting to order. Council members present were Dwayne Andrews, Roxanna Brush, John Hollowell, Mark Ahner, Jerry Partridge, John Uden, Bill Melnik and Sue Galbraith.

Also present were Police Chief Doug Colombik, Legal Assistant Erica Griffith, Grant Administrator Dawn Colton, Public Utilities Director Al Kelm, Floodplain Administrator Dawn Colton, Building Inspector Dennis Hirsch and Council Recorder City Clerk Becky Stanton.

PLEDGE OF ALLEGIANCE

Mayor Grenz led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

Special Council Minutes – 8/27/2012

****** *Councilperson Ahner moved to approve the minutes of the Special Council Meeting of August 27, 2012, seconded by Councilperson Brush. The motion then passed unanimously, 8-0.*

Regular Council Minutes – 8/28/2012

****** *Councilperson Uden moved to approve the minutes of the Regular Council Meeting of August 28, 2012, with corrections, seconded by Councilperson Ahner. The motion then passed unanimously, 8-0.*

Flood Control Committee Meeting – 8/23/2012

****** *Councilperson Galbraith moved to approve the minutes of the Flood Control Committee Meeting of August 23, 2012, seconded by Councilperson Hollowell. The motion then passed unanimously, 8-0.*

Finance Committee Meeting – 8/30/2012

****** *Councilperson Ahner moved to approve the minutes of the Finance Committee Meeting of August 30, 2012, seconded by Councilperson Melnik. The motion then passed unanimously, 8-0.*

SCHEDULE MEETINGS

Planning Meeting: Wednesday, September 12, at 6:00p.m.
Public Safety: Wednesday, September 12, at Noon

REQUEST OF CITIZENS & PUBLIC COMMENT

-None

PROCLAMATIONS

-None

STAFF REPORTS

DAWN COLTON, Grant Administrator – Update on Riverside Restroom Project: Administrator Colton explained that there will be a pre-bid meeting at 9:00 a.m. Thursday, September 13th, and the bids will be opened at the Council meeting on September 25, 2012. The City received the rest of the grant for Spotted Eagle for a grand total of \$31,298. She has completed an AmeriCorps project concept form which is a request for assistance to City crews for repairing the fence by the underpass, removing the Russian Olive trees on the dike and assisting with spring clean-up.

AL KELM, Public Utilities Director

Update on Fire Door - nothing to report, but he has contacted three different vendors for fire alarms for City Hall.

Strevell Street Project – The plans have gone to DEQ for approval on the water lines for the four streets in the project.

1911 Riverside Park Water Tank Removal – completed

The City is requesting bids on the old vehicles and the old swimming pool docks.

Councilperson Uden – Wanted to know what the plans were for the area and remaining materials of the old water tower. Public Utilities Director Kelm said there are plans to construct a sitting wall connecting the different footings together, the center will be filled in with concrete, there will be electricity to the site and there will also be a drinking fountain. The City is going to memorialize the old tank by incorporating a part of an old leg and the plug from the bottom of the tank that has Chicago Mill and Ironworks, 1911, Chicago, IL stamped in it.

Mayor Grenz said he had received a letter of interest on the old Fish and Game Building. He asked Public Utilities Director Kelm how he felt about that. Director Kelm said they are using the building for heated storage for some of the equipment that has water in them. He thought if the City could lease that building and take the proceeds from the lease to build an addition onto the old shop to store the above equipment that would work.

CITY COUNCIL COMMENTS

Councilperson Galbraith – Miles City has received notice of a grant from Humanities Montana for 24 free programs. She just wanted to make everyone aware so they can watch for them. She also had someone contact her about someone burning plastic or oil products in their stove. She asked that individuals please be considerate of their neighbors.

Councilperson Uden – thanked and complimented the High Plains Classic Car Club for the exhibition they hosted in the park this weekend in conjunction with the 1962 Class reunion. There were over 200 vehicles on display with several states represented.

Councilperson Ahner – will be absent for more than ten days to include the next Council meeting, and requested permission from the Council to be excused.

*** Councilperson Uden moved to approve Councilperson Ahner's absence, seconded by Councilperson Brush and the motion passed unanimously, 7-0, with Councilperson Ahner abstaining from voting.*

MAYOR COMMENTS

Mayor Grenz said that Councilperson Ahner and he would be meeting with the County Commissioners to discuss the Interlocal Agreement.

The easement between Oftedal, Inc. and the Airport Commission will be drawn up by the Commission's attorney. They are also requesting compensation for the easement.

There have been four grievances filed by non-union employees in City Hall. Mayor Grenz visited with Attorney Larry Martin of Felt, Martin, Frazier, Weldon, P.C. and would like to put on the next Council agenda the issue of wages and adjustments for the grievances. He told the City Clerk that she would be getting her answer to her grievance on Thursday, which is the last day for him to respond.

APPOINTMENTS

-- Mark Browning to Historic Preservation Commission

*** Councilperson Hollowell moved to approve Mark Browning to the Historic Preservation Commission, seconded by Councilperson Melnik and the motion passed unanimously, 8-0.*

PUBLIC HEARINGS

-None

OLD BUSINESS

-None

BID AWARDS

Public Utilities Director Kelm opened the bid for the levee repair west of the Tongue River and Yellowstone River confluence. Jarrett Construction bid \$44,640 with a bid bond of 10%. There were no other bids.

*** Councilperson Ahner moved to refer the above bid to the Finance Committee, seconded by Councilperson Uden and the motion passed unanimously, 8-0.*

NEW BUSINESS

Approval of claims for August 2012

*** Councilperson Melnik moved to approve August claims, seconded by Councilperson Brush. On roll call vote, the motion passed unanimously, 8-0.*

RESOLUTION NO. 3544: Resolution Designating City Employees who are Authorized to Acquire Federal Surplus Properties from the State of Montana

*** Councilperson Brush moved to approve the Resolution, read by title only, seconded by Councilperson Melnik. On roll call vote, the motion passed unanimously, 8-0.*

RESOLUTION NO. 3545: A Resolution Conditionally Committing \$10,000.00 Toward An Assessment Of The Custer County, Montana, Jail Facility, Including The Possibility Of Replacement Of Such Facility

*** Councilperson Ahner moved to approve the Resolution, read by title only, seconded by Councilperson Uden. After discussion, and on roll call vote, the motion passed unanimously, 8-0.*

RESOLUTION NO. 3546: A Resolution Authorizing The Leasing To Duane Bundy And Jane Bundy, Of Miles City Montana, A Tract Of Land Owned By The City Of Miles City, Montana On The Perimeter Of The Sewage Treatment Plant In Section 22, Township 8 North, Range 47 East, M.P.M.

*** Councilperson Galbraith moved to approve the Resolution, read by title only, seconded by Councilperson Melnik. On roll call vote, the motion passed unanimously, 8-0.*

RESOLUTION NO. 3547: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For Fy 2012-2013 To Appropriate Unappropriated Revenues To Library Grant Fund No.2880 For Grant Expenditures

*** Councilperson Ahner moved to approve the Resolution, read by title only, seconded by Councilperson Galbraith. After discussion, and on roll call vote, the motion passed unanimously, 8-0.*

RESOLUTION NO. 3548: A Resolution Authorizing A Grant Agreement Amendment With The Montana Department Of Fish, Wildlife And Parks Under The Recreational Trails Program For Improvements At Spotted Eagle Recreation Area And Authorizing The Mayor To Execute Such Agreement Amendment

*** Councilperson Ahner moved to approve the Resolution, read by title only, seconded by Councilperson Andrews. After discussion, and on roll call vote, the motion passed unanimously, 8-0.*

Request for Qualifications for Feasibility Study for Flood Plain

Mayor Grenz asked Public Utilities Director Kelm to explain what the study entailed. He explained that it will help determine how the City wants to proceed with the dike and floodplain issues. To go forward with the Request for Qualifications, the City needs to determine the scope of the work, a list and scoring criteria. The City will send it out to numerous engineering firms and they will be able to do a package, which the City will score and rate. From there, the City will select an engineering firm. At this point, there is not any cost to the City.

*** Councilperson Hollowell moved to proceed with the Request for Qualifications, seconded by Councilperson Brush. On roll call vote, the motion passed unanimously, 8-0.*

ORDINANCE NO. 1247: An Ordinance Revising Section 22-183 Of The Code Of Ordinances Of The City Of Miles City Regarding The Parking Of Large Vehicles, Permitting Parking Of Large Vehicles On The First Half-Block Of Sudlow Street And Tompy Street Immediately West Of South Haynes Avenue, And Providing An Effective Date Thereof

*** The above Ordinance was pulled from the agenda by Mayor Grenz due to City Attorney Huss' opinion. The Mayor will take care of this item.*

M & L Enterprises: Request to Deviate from Subdivision Regulations for Seven Lots along Arrowhead Lane

Mr. Bruce Larson spoke on behalf of M & L Enterprises to explain the deviation from the Phase I plat. Councilperson Brush shared a memo that she received from City Planner Dianna Broadie before she left on vacation that stated DEQ has not approved the Phase I. Mr. Larson said that DEQ was not going to approve water and sewer that is already in place. M & L Enterprises want to deviate from the original Phase I by selling the seven lots along Arrowhead Lane. They are not changing the size of the lots. The water and sewer are already in place for the seven lots that they want to sell. They are selling them in order to generate cash flow so they can make improvements. They would stub into the existing main lines for water and sewer and after selling three or four lots, then make the improvements. City Sanitarian Mike Rinaldi and Public Utilities Director Kelm would have to get permission from the City Council to sign off on the water and sewer.

Mr. Larson referred to City Planner Broadie's memo, which said the road could be handled in three different ways. They could pave Arrowhead Lane prior to submitting the final plat for approval. Mr. Larson stated they probably would not do that unless they get approval for the final plat. They could get approval from Council for a Subdivision Improvement Agreement as a condition for approval for final plat. Or they could get approval for a Special Improvement District (SID) to pay for road improvements which would ensure the paving of the street is submitted for final plat approval. In order to set up SIDs, there is a protest hearing and property owners could protest the SIDs.

M & L Enterprises would like the City to agree to pay for paving the street and the developers would do the curb and gutters, the engineering, the grading and graveling.

According to the Subdivision Improvement Agreement, the Sub-divider is required to submit three bids for the unfinished work. Mr. Larson does not feel that applies since the Sub-divider has a Montana Contractor's license, they are bonded and would be doing their own work for which they are incurring the costs. He does not feel they would have to go to bid.

Councilperson Ahner is concerned about Southgate overall, including the egress/ingress issue and the storm water drainage issue. He is uncomfortable with an attempt to piece-meal this project. The storm water issue has not been addressed. He feels this development should be held to the same standards as the Miles Town development in putting in the lights, curb and gutters, streets and storm water drainage.

Mayor Grenz verified with Mr. Larson that the developers wanted the City to pay for the pavement. The Mayor was concerned over setting precedence in paying for paving of the streets.

Mr. Larson said the development of the seven lots would be in accordance with the preliminary plat plan that has been approved by the City Council.

Councilperson Brush, who chairs the Planning Board, said she was confused because she thought the plans had to be approved by DEQ. Therefore, the Planning Board was sure the storm drainage issues would be addressed by DEQ before lots were developed.

Councilperson Uden stated that he can't understand why the City should pay for the streets in this development, when all other developers previously paid for them. He is also concerned about seven more families putting stress on the ingress/egress issue at Southgate.

Councilperson Brush reminded Councilperson Uden that the secondary access was not part of the final plat approval.

Dave Jewel, 107 Ponderosa, has concerns about the drainage issues and feels that there should be a complete final engineering plan in place before anything is developed. He does not agree with the current engineering plan, as he noted in a letter he wrote earlier to the City, but DEQ needs to approve that plan before anyone proceeds. He does not feel that the burden of paving Arrowhead Lane should be placed on the residents of Southgate.

Mayor Grenz asked Assistant City Attorney Griffith her legal opinion. She would have to research the matter and get back to them.

*** Councilperson Uden moved to approve the M & L Enterprises request for deviation from Subdivision Regulations for seven lots along Arrowhead Lane, seconded by Councilperson Partridge.*

Councilperson Hollowell asked Public Utilities Director Kelm for his input. He stated that, according to City Sanitarian Rinaldi, the seven lots that are located along existing developed water and sewer lines would not have to be approved by DEQ. He was unsure if the storm water drainage still needed to be reviewed by DEQ.

Mayor Grenz asked Councilperson Uden to consider changing his motion to reflect that developers would have to put in their own pavement.

*** Councilperson Uden amended the original motion to approve the M & L Enterprises request for deviation from Subdivision Regulations for seven lots along Arrowhead Lane with the understanding that they would be responsible for curbs, gutters and paving on the portion of Arrowhead Lane that they intend to develop, seconded by Councilperson Partridge.*

Councilperson Ahner explained that he still could not support this amended motion because the City does not have final plat approval, does not have DEQ review of storm drainage, and is not sure if the developer should have to pave a street that should have been paved by someone else. He does not like the idea of piece-mealing the Phase I development.

Dave Jewel, 107 Ponderosa, said that three or four of the seven lots were supposed to flow into a retention pond. He asked if that pond would be developed along with the seven lots. Mr. Larson did not have the answer for him.

*** Councilperson Hollowell amended the amended motion that the development be conditional upon all drainage issues be taken care of for the seven lots, seconded by Councilperson Partridge. On roll call vote, the motion passed 7-1, with Councilperson Galbraith voting nay.*

*** Roll call vote was taken on the amended motion to require curbs, gutters and paving on Arrowhead Lane, and the motion passed 6-2 with Councilperson Hollowell and Ahner voting nay.*

*** Roll call vote was taken on the original motion allowing the developer to deviate from the Subdivision Regulations and the motion passed 6-2 with Councilperson Galbraith and Ahner voting nay.*

RESOLUTION NO. 3518: A Resolution Authorizing the City Of Miles City to Contract With Dennis Hirsch For Building Inspection Services For Fiscal Year 2012-2013

This portion of the meeting was closed.

ADJOURNMENT

*** Councilperson Brush moved to adjourn the meeting, seconded by Councilperson Andrews and passed unanimously, 8-0. The meeting was adjourned at 8:35 p.m.*

C.A. GRENZ, Mayor

Becky Stanton, City Clerk

Human Resources Committee Minutes **September 7, 2012**

The **Human Resources Committee** met Friday, September 7, 2012, at 12:00 p.m. in the Conference Room at City Hall. Chairperson John Uden called the meeting to order. Committee members present were Dwayne Andrews, Bill Melnik and John Hollowell.

Also present were Councilperson Sue Galbraith, City Clerk Becky Stanton, Human Resource/Payroll Officer Billie Burkhalter, Auto Cad Technician/Flood Plain Administrator/Asst. to Public Works & Public Utilities Administrator Samantha Malenovsky, Police Chief Doug Colombik, Grant Administrator Dawn Colton and Recorder Connie Watts.

Roll Call

Noted above

Review Compensation for City Clerk, HR/Payroll Officer, Grant Administrator and Floodplain Administrator/AutoCAD Tech/Asst to Public Works & Public Utilities Administrator

Chairman Uden asked City Clerk Stanton, HR/Payroll Officer Burkhalter, Grant Administrator Colton and ACT/FPA/APW&PUA Malenovsky to address the Committee with their concerns.

City Clerk Stanton mentioned the Wage Analysis Study in which, she felt, some positions were not properly addressed. HR/Payroll Officer Burkhalter sent a letter to Chief Colombik, who was representing the non-organized employees. Chief Colombik then sent a letter to Chairperson Uden, who forwarded a copy to the Mayor. An email was then sent to the Mayor requesting him to address those issues, which has not, as yet, been done. After the budget became final, it became apparent that the Mayor was not going to address the issues, so the grievances were then filed.

HR/Payroll Officer Burkhalter explained that one of the issues to be addressed is that Dawn Colton's position and Sam Malenovsky's position are not reflected in the survey passed by the Council. Her position, HR/Payroll Officer, is not reflected in the survey either, other than in the Miles City column. The City Clerk's position had many cities and towns missing from the study and so it is not an accurate representation in comparison to other surveyed positions. Ms. Burkhalter identified numerous other errors in the study:

1. When averaging the wages, Miles City wages were included and they should not have been.
2. The City of Whitefish was thrown out of some, but not all, position averages because the person doing the study felt those wages were too high.

3. A "clerk and recorder" (a county position) was used in the City Clerk's averages – the City Clerk is not a Clerk and Recorder.

She felt the person who did the original survey should be required to correct the errors. Job descriptions should be compared, not simply plugging in wages for job titles.

HR/Payroll Officer Burkhalter stated that what they are requesting is for the Human Resources Committee to follow the recommendations of the non-organized representative, Chief Colombik, implement the wages set forth in his letter, and be recognized in the Study.

Police Chief Colombik prefaced his comments by noting that he was chosen to represent the non-organized employees, but is an employee of the City, works with City employees and is, therefore, not an independent representative. He noted that this Committee will have to decide whether to accept his figures or have somebody completely independent of the City do a follow-up.

The Police, Fire, even the City Shop and Utilities positions were relatively easy, as the titles are fairly consistent throughout various cities. The positions being discussed here, however, vary widely in the duties for those titled positions. The person at MSU doing the survey sent out a form to the cities and many of the cities did not respond.

HR/Payroll Officer Burkhalter stated the individual at MSU indicated to her that a more in-depth study could have been done if there had been more money allocated for it. She also said that the group is basically asking for the 2% raise that is built into the study - these positions are currently frozen for six years.

Chairperson Uden stressed that this meeting has nothing to do with the grievances recently filed by Stanton, Burkhalter, Colton and Malenovsky. He did say that, in his opinion, if they were successful in the grievance, any pay raise could be effective as of July 1, 2012.

Committee Member Andrews thanked Chief Colombik for all his work on this wage project. He questioned why the 2% increase, which he understands to be a cost of living increase, is not implemented for all employees. He assumed it was because no one would get an increase, even a cost of living increase, until he or she would reach the average over the six year period.

He also says he trusts the conclusions of the Police Chief. He would prefer not to have to do the Study again, but if the majority of the Committee felt it was necessary, because of the *appearance* of impropriety, he would vote for that. He has looked at the Study, and feels that: 1. these positions were not analyzed correctly, 2. the study was somewhat flawed because of that and 3. it is our obligation to treat people fairly, and he does not believe these four individuals have been treated fairly because there were problems with the survey.

He feels the Committee needs to go along with Chief Colombik's recommendations or make a decision to have an outside person look at it.

Chairperson Uden asked if these four individuals have all turned in job descriptions.

City Clerk Stanton replied she was asked to complete an in-depth questionnaire for her department, which was also sent by the Mayor to other cities. The questionnaire included the positions of HR/Payroll, Ambulance/AP, City Clerk and Deputy City Clerk positions. She turned that in to the Mayor, along with job descriptions and payroll spreadsheets. No other departments were asked to provide this information with regard to determination of wages, and the mayor had not sent questionnaires to other cities regarding other departments.

Administrator Colton noted that the majority of cities do not have a Grant Administrator at all, so there was nothing with which to compare her position. City Clerk Stanton had called all nine cities requesting information on the Grant Writing and Flood Plain Administrator positions. None of the cities had anything corresponding to either the Grant Administrator or Flood Plain Administrator positions. That work was all contracted out. Administrator Colton also noted that her position was not addressed in Chief Colombik's letter of recommendation to the Mayor.

HR/Payroll Officer Burkhalter explained the procedure for a grievance. Mayor Grenz has 15 days from the filing of the grievance to respond. Then if the grievant disagrees with the Mayor's response, the grievant can request the grievance to proceed to the third step, which is requesting the Human Resources Committee to review the grievance. The Human Resource Committee, after a meeting is held, has 20 days to render its decision.

*** Chairperson Uden moved to recommend to the Council that the information relevant to pay and benefits for these four positions be sent to Larry R. Martin and also to the Montana State University wage study group, along with the information on the job descriptions, for further review and recommendations. The motion was seconded by Committee Member Andrews and, on roll call vote, passed unanimously, 4-0.*

Request of Citizens

None

Adjournment

*** Committee Member Melnik moved to adjourn the meeting. The motion was seconded by Committee Member Hollowell and passed. The meeting was adjourned at 12:55 p.m.*

Respectfully submitted,

Connie L. Watts, Recorder

Chairperson John Uden

Public Safety Committee Meeting

September 12, 2012

The **Public Safety Committee** met Wednesday, September 12, 2012, at 12:00 pm in the City Hall Conference Room. Present were Committee Chairperson John Uden and Committee Members Sue Galbraith, Duane Andrews and Mark Ahner. Also present were Mayor C.A. Grenz, Miles City Police Chief Doug Colombik, Police Captain Mark Reddick, Custer County Sheriff Tony Harbaugh, Undersheriff Pat Roos and Committee Recorder Connie Watts.

MEETING WITH CHIEF OF POLICE AND CUSTER COUNTY SHERIFF PER CRIMINAL INVESTIGATIONS, DETENTION OF OFFENDERS AND TRANSPORT OF OFFENDERS

Chairperson Uden began the discussion by referencing the ACLU's threat to sue the County because of its recent findings that the County jail is no longer suitable for housing offenders. Even though it is a county jail, it also serves the City of Miles City. The purpose of this meeting is to see if there is any way the City and County could work together to solve the problem of transporting prisoners.

The Sheriff has come up with a plan for transporting and will also transport City prisoners, when necessary, but will need some help from the City in doing so. Chief Colombik said he has no officers that he could use to transport prisoners, as he is currently short four: two who are deployed and two who will shortly be gone to the academy. However, the City could possibly help with costs.

Sheriff Harbaugh then thanked the Committee for inviting them. He felt it was a big step forward to be able to sit down and share concerns. The County has been given a deadline of October 1st to shut down the facility. There is a tentative plan with another county to rent a pod of 8 beds at a cost of \$50.00 per day, \$60 per day if more than 8 beds are required. The agreement just needs to be signed by the Commissioners of both counties.

He has proposed keeping the lower portion of the jail facility, which is about 40 years old, as a 72-hour holding facility. This would give people time to make bail, come before a judge, etc., before having to be transported. If there are three scheduled trips a week – Monday, Wednesday and Friday, this should be enough to handle the necessary transports on a normal basis.

This plan, he stressed, is simply an interim solution, as a new facility will have to be built. He had been approached in January and asked to attend a meeting of the Economic Development Commission, and expressed his concern about the condition of the jail facility.

Throughout the spring and early summer he continued to attend their meetings, and they actually prioritized this issue on their agenda. Last week the grants were signed for the Coal Board and the Eastern Montana Economic Development grant to put together a needs assessment and preliminary plan for a new facility.

The Sheriff's biggest need right now is a reliable vehicle to use for transport. He feels about \$15,000 would be needed to purchase a good, used vehicle for this purpose. After discussion, the Committee members felt the City would be agreeable to purchasing a vehicle. Sheriff Harbaugh and Chief Colombik will work together on this purchase.

*** Committee Member Andrews moved to recommend authorizing the Police Chief to work with the Sheriff on locating a vehicle suitable for transport and authorizing the expenditure of up to \$15,000. The motion was seconded by Committee Member Galbraith and, on roll call vote, passed unanimously, 4-0.*

Adjournment

*** Having no more business to come before the Committee, Committee Member Ahner moved to adjourn, seconded by Committee Member Galbraith and passed unanimously. The meeting was adjourned at 1:00 p.m.*

Respectfully Submitted:

Public Safety Committee Chairperson:

Connie L. Watts, Recorder

Chairperson John Uden

Finance Committee Meeting September 19, 2012

The **Finance Committee** met September 19, 2012, at 12:00 p.m. in the City Hall Council Chambers. Present were Chairperson Mark Ahner and Committee Members Bill Melnik and Roxanna Brush. Committee Member Jerry Partridge was excused. Also present were Council Member John Uden, Councilperson Dwayne Andrews, Mayor Chris Grenz, Public Utilities Director Al Kelm, Fire Chief Dale Berg, and Recorder City Clerk Becky Stanton. Also present was Shop Mechanic Foreman Scott Ask

Request to adjust Ambulance bill:

Chairperson Ahner requested that anyone that is not an integral part of the ambulance bill to please leave due to privacy issues. Public Utilities Director Kelm and Shop Mechanic Foreman Ask left the room. Chairperson Ahner stated that when the patient was discussed, it would be Patient Number 2731. Patient Number 2731 has submitted a letter requesting a reduction on her ambulance bill and the circumstances surrounding the request and the incident requiring an ambulance. Insurance has paid on the bill leaving a remaining balance. The ambulance department is always willing to take payments of almost any amount and the Finance Committee has never written off or reduced an ambulance bill.

- ** Committee Member Brush moved to have the Ambulance Billing Clerk work with Patient Number 2731 to find an acceptable payment amount so the individual can pay on the bill. The motion was seconded by Committee Member Melnik, and the motion carried unanimously, 3-0.*

Review of Levee Repair Bid by Jarrett Construction.

Chairperson Ahner explained that the bid of \$44,646 was in everyone's packet. Director Kelm stated that the money to pay for this project was from FEMA.

- ** Committee Member Melnik moved to recommend to the Council to approve the Levee Repair Bid. The motion was seconded by Committee Member Brush, and the motion carried unanimously, 3-0.*

Review of Resolution No. 3547 – Budget Amendment for Library for FY 2012-2013.

Chairperson Ahner explained that the Humanities Grant was received by the Library in FY 2011-2012. The Library had not used all the money in that year and needed a budget amendment to appropriate the money in the current Fiscal Year. The amount of the amendment is \$2,374.01 split amongst various expenditures accounts.

* * Chairperson Brush moved to recommend to the Council to approve the Resolution. The motion was seconded by Committee Member Melnik and the motion carried unanimously, 3-0.

Review of Change Orders 5 and 6 for CMG Construction for 20" Waterline Relocation

Chairperson Ahner explained that Change Order 5 had already been approved by Resolution 3489 dated May 8, 2012. Director Kelm said that the Change Order 6 in the packet is the wrong one. It is the one from Ahanu and not from CMG. The City has not received the Change Order 6 from CMG yet. Director Kelm asked that this item be pulled from the agenda. Chairperson Ahner agreed, pulled the item from the agenda and will refer it to another meeting.

Request to Purchase Hoist for the City Shop

Director Kelm explained that the current hoist is 25 years old. The new hoist is budgeted for in the Capital Improvements Fund for the Shop. The cost of the new hoist will be \$5,599. It is a 14,000 pound hoist, which is heavier and longer than the old hoist. It will accommodate more of the City's vehicles. This bid also includes 2 rotary 7,000 pound capacity rolling jacks for 4 post hoist at \$2,299 each. Shop Foreman Ask explained the necessity of the rolling jacks. The City Shop will be able to service more City vehicles with the purchase of the new hoist and jacks. The old hoist will be moved to the Parks Department Shop to be used for the mowers and lighter equipment

* * Chairperson Melnik moved to recommend to the Council to approve the purchase of a hoist and rolling jacks from Miles City Motor Supply for a total price of \$10,197. The motion was seconded by Committee Member Brush and the motion carried unanimously, 3-0.

Request of Citizens

-None

There being no further business, the meeting was adjourned at 12:20 p.m.

Respectfully Submitted:

Chairperson Mark Ahner

City Clerk Becky Stanton

WATER RATE DECREASE/INCREASE

PURSUANT TO §69-7-111 OF THE MONTANA CODE ANNOTATED, OF INTENT TO DECREASE FOR TWO YEARS, THEN INCREMENTALLY INCREASE FOR 13 YEARS, MONTHLY MINIMUM WATER RATES AND MONTHLY OVERAGE WATER RATES, AND PROVIDING FOR MUNICIPAL RATE HEARING THEREON.

WHEREAS, §7-13-4307 requires that the rates and charges for the City of Miles City water system be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expenses and maintenance, maintenance of sinking funds, accumulation of reserves, and expenditures for depreciation and replacement of such system, and to meet the covenants of outstanding bonds for the system;

AND WHEREAS, in order to meet the above obligations, the City Council of the City of Miles City considers it advisable to decrease the rates charged to residential and commercial consumers of water from the City of Miles City water system for monthly minimum rates and monthly overage rates by six percent (6%) below current rates from September 15, 2012 to July 1, 2013, then to further decrease such rates by an additional six percent (6%) from July 1, 2013 to June 30, 2014, and then to incrementally increase such rates by two percent (2%) per year for the next 13 years, as more fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

AND WHEREAS, the City Council further considers it advisable to phase in the increases in the monthly residential and commercial minimum rates and monthly overage rates over 13 fiscal years, with the initial rate increase being effective July 1, 2014, and the remaining 12 annual rate increases being effective on July 1st of each year thereafter.

AND WHEREAS, pursuant to §69-7-111, the City of Miles City must conduct a hearing upon such proposed rate changes;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana that the rates charged to residential and commercial consumers of water from the City of Miles City water system for monthly minimum rates and monthly overage rates be decreased by six percent (6%) below current rates from November 1, 2012 to July 1, 2013, then be further decreased by an additional six percent (6%) from July 1, 2013 to June 30, 2014, and then, commencing July 1, 2014, be incrementally increased by two percent (2%) per year for the next 13 years, as more fully set forth in Exhibit "A" attached hereto and incorporated herein by reference. Such minimum rates and overages rates shall supersede the water system minimum and overage rates set forth in Ordinance No. 1073 and pursuant to Resolution 3193.

RESOLUTION 3513 - EXHIBIT "A" (Rev. 8-8-12)

RESIDENTIAL MONTHLY MINIMUM RATES (BASE RATES)

Meter Size:	Monthly Minimum Quantity (gals.)	Current Minimum Rate	Proposed Rate Effective 11-1-12	Proposed Rate Effective 7-1-13	Proposed Rate Effective 7-1-14	Proposed Rate Effective 7-1-15	Proposed Rate Effective 7-1-16	Proposed Rate Effective 7-1-17	Proposed Rate Effective 7-1-18	Proposed Rate Effective 7-1-19	Proposed Rate Effective 7-1-20	Proposed Rate Effective 7-1-21	Proposed Rate Effective 7-1-22	Proposed Rate Effective 7-1-23	Proposed Rate Effective 7-1-24	Proposed Rate Effective 7-1-25	Proposed Rate Effective 7-1-26
5/8"	3,000	\$22.57	\$21.22	\$19.94	\$20.34	\$20.75	\$21.16	\$21.59	\$22.02	\$22.46	\$22.91	\$23.37	\$23.83	\$24.31	\$24.80	\$25.29	\$25.80
3/4"	4,000	\$28.08	\$26.40	\$24.81	\$25.31	\$25.81	\$26.33	\$26.86	\$27.39	\$27.94	\$28.50	\$29.07	\$29.65	\$30.25	\$30.85	\$31.47	\$32.10
1"	6,000	\$39.14	\$36.79	\$34.58	\$35.28	\$35.98	\$36.70	\$37.43	\$38.18	\$38.95	\$39.73	\$40.52	\$41.33	\$42.16	\$43.00	\$43.86	\$44.74
1 1/2"	10,000	\$57.17	\$53.74	\$50.52	\$51.53	\$52.56	\$53.61	\$54.68	\$55.77	\$56.89	\$58.03	\$59.19	\$60.37	\$61.58	\$62.81	\$64.07	\$65.35
2"	20,000	\$109.88	\$103.29	\$97.09	\$99.03	\$101.01	\$103.03	\$105.09	\$107.20	\$109.34	\$111.53	\$113.76	\$116.03	\$118.35	\$120.72	\$123.13	\$125.60
3"	60,000	\$277.98	\$261.30	\$245.62	\$250.54	\$255.55	\$260.66	\$265.87	\$271.19	\$276.61	\$282.14	\$287.79	\$293.54	\$299.41	\$305.40	\$311.51	\$317.74
4"	140,000	\$490.25	\$460.83	\$433.18	\$441.85	\$450.59	\$459.70	\$468.89	\$478.27	\$487.84	\$497.59	\$507.55	\$517.70	\$528.05	\$538.61	\$549.38	\$560.37
6"	200,000	\$649.48	\$610.51	\$573.88	\$585.36	\$597.07	\$609.01	\$621.19	\$633.61	\$646.28	\$659.21	\$672.39	\$685.84	\$699.56	\$713.55	\$727.82	\$742.38

COMMERCIAL MONTHLY MINIMUM RATES (BASE RATES)

Meter Size:	Monthly Minimum Quantity (gals.)	Current Minimum Rate	Proposed Rate Effective 11-1-12	Proposed Rate Effective 7-1-13	Proposed Rate Effective 7-1-14	Proposed Rate Effective 7-1-15	Proposed Rate Effective 7-1-16	Proposed Rate Effective 7-1-17	Proposed Rate Effective 7-1-18	Proposed Rate Effective 7-1-19	Proposed Rate Effective 7-1-20	Proposed Rate Effective 7-1-21	Proposed Rate Effective 7-1-22	Proposed Rate Effective 7-1-23	Proposed Rate Effective 7-1-24	Proposed Rate Effective 7-1-25	Proposed Rate Effective 7-1-26
5/8"	3,000	\$41.16	\$38.69	\$36.37	\$37.10	\$37.84	\$38.60	\$39.37	\$40.15	\$40.96	\$41.78	\$42.61	\$43.46	\$44.33	\$45.22	\$46.12	\$47.05
3/4"	4,000	\$46.67	\$43.87	\$41.24	\$42.06	\$42.90	\$43.76	\$44.64	\$45.53	\$46.44	\$47.37	\$48.32	\$49.28	\$50.27	\$51.27	\$52.30	\$53.35
1"	6,000	\$57.70	\$54.24	\$50.98	\$52.00	\$53.04	\$54.10	\$55.19	\$56.29	\$57.42	\$58.56	\$59.74	\$60.93	\$62.15	\$63.39	\$64.66	\$65.95
1 1/2"	10,000	\$79.87	\$75.08	\$70.57	\$71.98	\$73.42	\$74.89	\$76.39	\$77.92	\$79.48	\$81.07	\$82.69	\$84.34	\$86.03	\$87.75	\$89.50	\$91.29
2"	20,000	\$128.52	\$120.81	\$113.56	\$115.83	\$118.15	\$120.51	\$122.92	\$125.38	\$127.89	\$130.45	\$133.05	\$135.72	\$138.43	\$141.20	\$144.02	\$146.90
3"	60,000	\$296.59	\$278.79	\$262.07	\$267.31	\$272.55	\$278.11	\$283.67	\$289.34	\$295.13	\$301.03	\$307.05	\$313.19	\$319.46	\$325.85	\$332.36	\$339.01
4"	140,000	\$508.86	\$478.33	\$449.63	\$458.62	\$467.79	\$477.15	\$486.69	\$496.43	\$506.35	\$516.48	\$526.81	\$537.35	\$548.09	\$559.06	\$570.24	\$581.64
6"	200,000	\$673.88	\$633.45	\$595.44	\$607.35	\$619.50	\$631.89	\$644.52	\$657.41	\$670.56	\$683.97	\$697.65	\$711.61	\$725.84	\$740.36	\$755.16	\$770.27

MONTHLY CHARGES FOR GALLONAGE OVER MONTHLY MINIMUM GALLONAGE

Quantity	Current Rate Per 1000 Gallons	Proposed Rate Per 1000 Gallons Effective 1-1-12	Proposed Rate Per 1000 Gallons Effective 7-1-13	Proposed Rate Per 1000 Gallons Effective 7-1-14	Proposed Rate Per 1000 Gallons Effective 7-1-15	Proposed Rate Per 1000 Gallons Effective 7-1-16	Proposed Rate Per 1000 Gallons Effective 7-1-17	Proposed Rate Per 1000 Gallons Effective 7-1-18	Proposed Rate Per 1000 Gallons Effective 7-1-19	Proposed Rate Per 1000 Gallons Effective 7-1-20	Proposed Rate Per 1000 Gallons Effective 7-1-21	Proposed Rate Per 1000 Gallons Effective 7-1-22	Proposed Rate Per 1000 Gallons Effective 7-1-23	Proposed Rate Per 1000 Gallons Effective 7-1-24	Proposed Rate Per 1000 Gallons Effective 7-1-25	Proposed Rate Per 1000 Gallons Effective 7-1-26
0 - 3,000 (Base)	\$22.57	\$21.22	\$19.94	\$20.34	\$20.75	\$21.16	\$21.59	\$22.02	\$22.46	\$22.91	\$23.37	\$23.83	\$24.31	\$24.80	\$25.29	\$25.80
3,000 - 10,000	\$4.42	\$4.15	\$3.91	\$3.98	\$4.06	\$4.14	\$4.23	\$4.31	\$4.40	\$4.49	\$4.58	\$4.67	\$4.76	\$4.86	\$4.95	\$5.05
10,000 - 50,000	\$3.83	\$3.60	\$3.38	\$3.45	\$3.52	\$3.59	\$3.66	\$3.74	\$3.81	\$3.89	\$3.97	\$4.04	\$4.13	\$4.21	\$4.29	\$4.38
50,000 - 100,000	\$2.98	\$2.80	\$2.63	\$2.69	\$2.74	\$2.79	\$2.85	\$2.91	\$2.97	\$3.02	\$3.09	\$3.15	\$3.21	\$3.27	\$3.34	\$3.41
Over 100,000	\$2.12	\$1.99	\$1.87	\$1.91	\$1.95	\$1.99	\$2.03	\$2.07	\$2.11	\$2.15	\$2.19	\$2.24	\$2.28	\$2.33	\$2.38	\$2.42

INTENT TO ANNEX

INTENT TO ANNEX CERTAIN CONTIGUOUS GOVERNMENT LANDS TO THE CITY OF MILES CITY, MONTANA, TO-WIT: THAT PORTION OF THE RIGHT OF WAY OF MONTANA STATE HIGHWAY 59 SOUTH COMMENCING AT THE INTERSECTION OF SUCH HIGHWAY WITH THE SOUTHERLY CITY LIMIT LINE OF THE CITY OF MILES CITY ON HIGHWAY 59 SOUTH, THENCE SOUTHERLY, THE FULL WIDTH OF SUCH RIGHT OF WAY, TO THAT POINT AT WHICH THE SOUTHERLY BOUNDARY LINE OF TRACT 1 OF CERTIFICATE OF SURVEY 49207 IN SECTION 2, TOWNSHIP 7 NORTH, RANGE 47 EAST, CUSTER COUNTY, MONTANA (COMMONLY KNOWN AS THE SUPER 8 MOTEL PROPERTY) INTERSECTS THE EASTERLY BOUNDARY OF SUCH RIGHT OF WAY, PROVIDING FOR NOTICE THEREOF, AND PROVIDING FOR A PUBLIC HEARING THEREON

WHEREAS, pursuant to Title 7, Chapter 2, Part 44, Montana Code Annotated, the State of Montana, Department of Transportation, Highways & Engineering Division, through its administrative head, has filed with the City Clerk of the City of Miles City, its request, by written certification, that the City of Miles City annex into its city limits the below described parcels of land owned by the State of Montana, Department of Transportation, and contiguous to the City of Miles City, and that the boundaries of the City of Miles City be extended to include the below described platted tracts and parcels within the corporate limits of the City of Miles City:

That portion of the right of way of Montana State Highway 59 South situated in Sections 2 and 3, Township 7 North, Range 47 East, Custer County, Montana, commencing at the intersection of such Montana State Highway 59 South with the present southerly city limit line of the City of Miles City on Highway 59 South, thence Southerly, the full width of such right of way, to that point at which the southerly boundary line of Tract 1 of Certificate of Survey 49207 in Section 2, Township 7 North, Range 47 East, Custer County, Montana (commonly known as the Super 8 Motel property) intersects the easterly boundary of such Highway 59 South right of way, and including therein such portions of the right of way of Montana State Highway 59 South as are granted in those certain bargain and sale deeds recorded at Books M25 at page 11, M25 at page 1036, M26 at page 246, M24 at page 718, M25 at page 783, M24 at page 892, M25 at page 787, M25 at page 17, and M25 at page 20, microfilm records of Custer County, Montana.

AND WHEREAS, pursuant to §7-2-4409, the City of Miles City has provided the plan for provision of services to such proposed area of annexation as provided in Exhibit "A", attached hereto and made a part hereof;

RESOLUTION NO. 3547

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2012-2013 TO APPROPRIATE UNAPPROPRIATED REVENUES TO LIBRARY GRANT FUND NO. 2880 FOR GRANT EXPENDITURES.

WHEREAS, the City of Miles City has accruing revenues for Fiscal Year 2012-2013 which were not appropriated in the Final Budget for Fiscal Year 2012-2013 consisting of the following:

Humanities Montana Library Grant--\$2,374.01

AND WHEREAS, as permitted by §7-6-4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2012-2013 to appropriate and expend such revenues;

AND WHEREAS, such amendment of the final budget will result in an overall increase in appropriation authority,

AND WHEREAS the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

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

1. The Estimated Revenues for the Final Budget for Fiscal Year 2012-2013 shall be amended in the following funds as follows:

Fund No. 2880, the Library Grant Fund, shall be increased in the amount of \$2,374.01;

2. The appropriations for the Final Budget for Fiscal Year 2012-2013 shall be amended in the following funds as follows:

Fund No. 2880.044.460100.210 of the Library Grant Fund shall be increased in the amount of \$570.87;

Fund No. 2880.044.460100.311 of the Library Grant Fund shall be increased in the amount of \$87.00;

Fund No. 2880.044.460100.320 of the Library Grant Fund shall be increased in the amount of \$158.88;

Fund No. 2880.044.460100.330 of the Library Grant Fund shall be increased in the amount of \$250.00;

Fund No. 2880.044.460100.350 of the Library Grant Fund shall be increased in the amount of \$1,066.12;

Fund No. 2880.044.460100.370 of the Library Grant Fund shall be increased in the amount of \$88.14;

Fund No. 2880.044.460100.382 of the Library Grant Fund shall be increased in the amount of \$153.00;

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendments to the Final Budget for Fiscal Year 2012-2013 on the 25th day of September, 2012 at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 11TH DAY OF SEPTEMBER, 2012.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 25TH DAY OF SEPTEMBER, 2012.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

RESOLUTION NO. 3549

A RESOLUTION, PURSUANT TO TITLE 7, CHAPTER 2, PART 44 MCA, ANNEXING CERTAIN CONTIGUOUS GOVERNMENT LANDS TO THE CITY OF MILES CITY, MONTANA, THAT PORTION OF THE RIGHT OF WAY OF MONTANA STATE HIGHWAY 59 SOUTH COMMENCING AT THE INTERSECTION OF SUCH HIGHWAY WITH THE SOUTHERLY CITY LIMIT LINE OF THE CITY OF MILES CITY ON HIGHWAY 59 SOUTH, THENCE SOUTHERLY, THE FULL WIDTH OF SUCH RIGHT OF WAY, TO THAT POINT AT WHICH THE SOUTHERLY BOUNDARY LINE OF TRACT 1 OF CERTIFICATE OF SURVEY 49207 IN SECTION 2, TOWNSHIP 7 NORTH, RANGE 47 EAST, CUSTER COUNTY, MONTANA (COMMONLY KNOWN AS THE SUPER 8 MOTEL PROPERTY) INTERSECTS THE EASTERLY BOUNDARY OF SUCH RIGHT OF WAY

WHEREAS, pursuant to Title 7, Chapter 2, Part 44, Montana Code Annotated, the State of Montana, Department of Transportation, Highways & Engineering Division, through its administrative head, has filed with the City Clerk of the City of Miles City, its request, by written certification, that the City of Miles City annex into its city limits the below described parcels of land owned by the State of Montana, Department of Transportation, and contiguous to the City of Miles City, and that the boundaries of the City of Miles City be extended to include the below described platted tracts and parcels within the corporate limits of the City of Miles City:

That portion of the right of way of Montana State Highway 59 South situated in Sections 2 and 3, Township 7 North, Range 47 East, Custer County, Montana, commencing at the intersection of such Montana State Highway 59 South with the present southerly city limit line of the City of Miles City on Highway 59 South, thence Southerly, the full width of such right of way, to that point at which the southerly boundary line of Tract 1 of Certificate of Survey 49207 in Section 2, Township 7 North, Range 47 East, Custer County, Montana (commonly known as the Super 8 Motel property) intersects the easterly boundary of such Highway 59 South right of way, and including therein such portions of the right of way of Montana State Highway 59 South as are granted in those certain bargain and sale deeds recorded at Books M25 at page 11, M25 at page 1036, M26 at page 246, M24 at page 718, M25 at page 783, M24 at page 892, M25 at page 787, M25 at page 17, and M25 at page 20, microfilm records of Custer County, Montana.

AND WHEREAS, pursuant to §7-2-4409, the City of Miles City has provided the plan for provision of services to such proposed area of annexation as provided in Exhibit "A", attached hereto and made a part hereof;

AND WHEREAS on the 14th day of August, 2012, the City Council of the City of Miles City adopted Resolution 3516, a resolution of intent to annex the above-described contiguous government land;

AND WHEREAS, pursuant to such resolution of intent the City Clerk published in the Miles City Star, the newspaper nearest such land, once a week for 2 successive weeks, a notice that such resolution has been duly and regularly passed and that for a period of 20 days after the first publication of such notice, the Clerk would receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality and that a hearing would be held upon such proposed annexation at the regularly scheduled meeting of the City Council in the Council Chambers at City Hall, 17 S. 8th Street, Miles City, Montana on the 25th day of September, 2012 at 7:00 p.m.;

AND WHEREAS, no written expressions of approval or disapproval of such proposed alteration of the boundaries of the City of Miles City were received pursuant to such published notice;

AND WHEREAS, a public hearing was conducted as to the proposed annexation at the regularly scheduled meeting of the City Council in the Council Chambers at City Hall, 17 S. 8th Street, Miles City, Montana on the 25th day of September, 2012 at 7:00 p.m.;

AND WHEREAS, following such hearing, the City Council of the City of Miles City determined that it was in the best interests of the City of Miles City to annex the above-described contiguous government land to the City of Miles City;

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

1. It hereby extends the boundaries of the City of Miles City to include the following described contiguous government owned land, to-wit:

That portion of the right of way of Montana State Highway 59 South situated in Sections 2 and 3, Township 7 North, Range 47 East, Custer County, Montana, commencing at the intersection of such Montana State Highway 59 South with the present southerly city limit line of the City of Miles City on Highway 59 South, thence Southerly, the full width of such right of way, to that point at which the southerly boundary line of Tract 1 of Certificate of Survey 49207 in Section 2, Township 7 North, Range 47 East, Custer County, Montana (commonly known as the Super 8 Motel property) intersects the easterly boundary of such Highway 59 South right of way, and including therein such portions of the right of way of Montana State Highway 59 South as are granted in those certain bargain and sale deeds recorded at Books M25 at page 11, M25 at page 1036, M26 at page 246, M24 at page 718, M25 at page 783, M24 at page 892, M25 at page 787, M25 at page 17, and M25 at page 20, microfilm records of Custer County, Montana.

2. The plan of services attached to Resolution 3516 is hereby approved.

3. This resolution shall become effective 30 days after its passage and approval and thereafter the boundaries of the City of Miles City shall be expanded to include the above-described lands;

4. Within 30 days after the passage and approval of this resolution, a copy hereof, duly certified by the City Clerk, together with a map showing the corporate limits of the City of Miles City as altered and changed, shall be filed in the office of the Custer County Clerk and Recorder.

**SAID RESOLUTION PASSED AND ADOPTED BY A DULY CONSTITUTED
QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA,
THIS 25TH DAY OF SEPTEMBER, 2012.**

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

RESOLUTION NO. 3550

A RESOLUTION ESTABLISHING WAGES AND SALARIES FOR CITY EMPLOYEES FOR FISCAL YEAR 2012-2013

WHEREAS, §7-4-4201 MCA requires the City Council to determine by resolution or ordinance the compensation of city employees,

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

That the following wages and salaries be paid city employees for the fiscal year 2012-2013 shall be as follows:

POSITION	AMOUNT
Elected and Appointed	
City Council	\$250.00 per month
City Court Judge	\$1,299.48 per month
Mayor	\$1,666.67 per month
Treasurer	\$1,666.67 per month
City Attorney	\$150.00 per hour
Deputy City Attorney	\$2,250.00 per month
Legal Intern to City Attorney	\$75.00 per hour
Assistant City Attorney	\$100.00 per hour
Airport Manager	\$3,295.00 per month
Historical Preservation Officer	\$9.15 per hour
Administrative/Finance	
City Clerk	\$3,433.99 per month
Human Resources/Payroll Officer	\$3,391.28 per month
Finance AP Clerk/Ambulance Billing Clerk	\$15.97 per hour
Public Services	
Director of Public Utilities	\$4,940.00 per month
Director of Public Works	\$4,872.40 per month
Program Administrator	\$2,829.48 per month
Flood Administrator/Engineering Tech	\$2,857.08 per month
Water/Wastewater Plant Supervisor	\$3,612.27 per month
Community Service Planner	\$3,763.07 per month
Fire Department	
Chief	\$4091.51 per month
Probationary Part-paid fire fighters	*\$7.65 per hour

Part-paid fire fighters who have achieved the Basic Fire Fighter Certification will be paid a

base wage, *\$7.65 per hour, during their six-month probationary period. Upon the successful completion of their probationary period, the base rate is increased to \$8.00 per hour.

Shall comply with Montana State Minimum wage law and regulations)

Beginning with the initial hiring, part-paid fire fighters are entitled to the following increases to their base pay: \$1.00 per hour for E.M.T., \$.25 per hour for Fire fighter I certification (upon completion), \$.50 per hour for Fire fighter II certification (and after 2 years of service), \$.75 per hour for Fire fighter III certification (and upon 3 years of service.) The probationary designation means less than six months of service.

*Shall be adjusted to comply with Montana State minimum wage law and regulations

Police Department

Chief	\$4,851.60 per month
911 Coordinator/Lead Dispatcher	\$3,502.68 per month

Swimming Pool

Lifeguards after	*\$7.65 per hour
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Lifeguards receive an additional \$.20 per hour for WSI certification.

*Shall be adjusted to comply with Montana State minimum wage law and regulations

Library

Director	\$3,607.74 per month
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LONGEVITY/STIPENDS

Longevity pay is calculated at the rate of \$.05 per hour (or \$7.50 per month for salaried employees) for each year of service after the employee's applicable date for new longevity. Nonunion employees retain their present level received as longevity as of June 30, 1993. For each additional year of service after this date, salaried employees shall receive an additional amount of \$7.50 per month and hourly employees shall receive an additional \$.05 per hour. The fire chief and assistant fire chief, if they are certified fire fighters, shall receive as longevity 1% of their base pay per month for each year of service, in accordance with state law.

Elected officials, seasonal employees, reserve officers and part-paid fire fighters do not receive longevity pay.

Any employee who achieves an EMT certification shall be paid an additional \$50 per month.

EMPLOYEE HEALTH INSURANCE

A maximum of \$604.50 shall be paid by the employer for medical insurance. (See union contracts for specifics on health insurance for employees who are members of collective bargaining units.)

COLLECTIVE BARGAINING UNITS

AFSCME 283A: City Shop, Treatment Facilities, Library and Clerical. Wages and Benefits for members of this union shall be paid in accordance with their bargaining agreement dated July 1, 2010, through June 30, 2012, and specifically in accordance with Addendum A of that contract dated July 1, 2010, through June 30, 2012, as extended by Letter of Agreement, attached Exhibit A, approved by Resolution No. 3510.

AFSCME 283B: Police Officers, Dispatchers, Animal Control and Clerical. Wages and Benefits for members of this union shall be paid in accordance with their bargaining agreement dated July 1, 2010, through June 30, 2012, and specifically in accordance with Addendum A of that contract dated July 1, 2010, through June 30, 2012, as extended by Letter of Agreement, attached Exhibit A, approved by Resolution No. 3510.

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 600: Firefighters/Ambulance Personnel. Wages and Benefits for members of this union shall be paid in accordance with their bargaining agreement dated July 1, 2010, through June 30, 2012, as extended by Letter of Agreement, attached Exhibit A, approved by Resolution No. 3510.

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 25TH DAY OF SEPTEMBER, 2012.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

RESOLUTION NO. 3553

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2012-2013 TO APPROPRIATE UNAPPROPRIATED CASH BALANCES FROM THE CAPITAL IMPROVEMENT FUND NO. 4000 FOR THE PURCHASE OF A PRISONER TRANSPORT VAN.

WHEREAS, the City of Miles City has cash balances for Fiscal Year 2012-2013 in the Capital Improvement Fund No. 4000 which were not appropriated in the Final Budget for Fiscal Year 2012-2013.

AND WHEREAS, as permitted by §7-6-4006 MCA, the City of Miles City desires to amend its final budget for Fiscal Year 2012-2013 to appropriate and expend a portion of such unappropriated cash balance in Fund No. 4000 to purchase a prisoner transport van;

AND WHEREAS, such amendment of the final budget will result in an overall increase in appropriation authority within such fund,

AND WHEREAS the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

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

The appropriations for the Final Budget for Fiscal Year 2012-2013 for Capital Improvement Fund No. 4000 shall be increased in the following amount:

Fund No. 4000-0 501-410100-940 (Capital Improvement Fund No. 4000, Capital Machinery & Equipment), in the sum of \$15,000.00.

Such increased appropriation shall be made from the following Capital Improvement Fund No. 4000 account:

Account No. 4000-101000 - (Capital Improvement Fund No. 4000 - Cash) in the amount of \$15,000.00,

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendments to the Final Budget for Fiscal Year 2012-2013 on the 9th day of October, 2012 at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 25TH DAY OF SEPTEMBER, 2012.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED
QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA,
THIS 9TH DAY OF OCTOBER, 2012.**

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

RESOLUTION NO. 3554

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE CONSTRUCTION AGREEMENT WITH DICK ANDERSON CONSTRUCTION, INC., A MONTANA CORPORATION, FOR CONSTRUCTION OF THE SCHEDULE I WASTEWATER SYSTEM IMPROVEMENTS (HAYNES AVENUE LIFT STATION).

WHEREAS, on July 24, 2012, the City of Miles City approved the award of a contract to Dick Anderson Construction, Inc. for the construction of Schedule I Wastewater System Improvements (Haynes Avenue Lift Station, hereinafter the "*Contract*," which Contract was approved by Resolution No. 3521.

AND WHEREAS, there was an erroneous calculation by Dick Anderson Construction, Inc. of Item 7, electrical work, on Schedule 1, of \$91,00.00 due to transposition of Item 7, Lift Station Electrical, on their bid on Schedule 1 Lift Station, for Item 6, headworks electrical, for their bid on Schedule 2, the headworks building. They were not awarded the bid upon Schedule 2.

AND WHEREAS, Dick Anderson Construction asserts that they are entitled to withdraw from contract because it was offered to them more than 30 days beyond the award date, and additionally, that the contract price should be increased by \$56,000.00 for heat and cover issues due to such delay.

AND WHEREAS it would cause additional expense and delay to the City to either delay construction until the spring of 2013 to avoid the heat and cover issues, or to re-bid the contract should Dick Anderson Construction, Inc. decline to accept the contract.

AND WHEREAS, Dick Anderson Construction, Inc. is agreeable to accept the offered contract and forgoing any claims for heat and cover issues, if the City of Miles City agrees to modify the contract price for Item 7, Lift Station Electrical on Schedule 1, from \$91,000.00 to \$166,000.00 to partially relieve Dick Anderson Construction, Inc. from the result of its erroneous calculation;

AND WHEREAS, such change order will result in the alteration or modification of the specifications or plans of the Contract and will result in an increase in the contract price in the sum of \$75,000.00

AND WHEREAS, pursuant to §7-5-4308 MCA, the modification of the contract price may be authorized only upon resolution of the City Council;

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

1. It hereby authorizes an increase Item No. 7 Electrical Lift Station on Schedule 1 from \$91,000.00 to \$166,000.00, contingent upon Dick Anderson Construction, Inc., executing the contract, proceeding with construction, and providing to the City of Miles City its written waiver

of any claims for extra costs for heat and cover due to late commencement of work. Such increase and waiver shall be memorialized in writing as Change Order No. 1.

2. The Mayor of the City of Miles City is hereby empowered and authorized to execute Change Order No. 1 on behalf of the City of Miles City and 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, AT A REGULAR MEETING OF THE CITY COUNCIL CONDUCTED THIS 25TH DAY OF SEPTEMBER, 2012

C. A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

Allen Kelm

From: Tim Tholt <TimTdaconstruction.com@daconstruction.com>
Sent: Thursday, September 20, 2012 10:11 AM
To: brad@rpa-hln.com
Subject: Electrical Discrepancy-Haynes Lift Station
Attachments: Don' Electric Quote.pdf; Yellowstone Electric Quote.pdf; Bid Tabulation.pdf

Brad-

Attached are the electrical quote used from Don's Electric and the electrical quote intended to be used and switched around in the bid from Yellowstone Electric , also attached is the bid tabulation for quick reference.

We have \$91,000.00 in the bid for electrical work, this represents the \$86,500.00 from Yellowstone Electrics Quote for Schedule 2, if done appropriately this number would have been \$218,500.00. We changed contractors from Yellowstone Electric to Don's Electrical number \$166,000.00 once awarded the project to help mitigate the loss. So in the electrical number we are upside down: bid \$91,000.00 minus actual \$166,000.00=(\$75,000.00).

Just to help in your negotiations with the city this is \$75,000.00 of additional value that the city is receiving at this point for no cost. This is also the reason why we cannot possibly be looking at incurring another \$56,000.00 of loss due to heat and cover issues. As spoken on the phone please let us know how we can help to get this issue resolved and project moving forward.

Thanks

Tim Tholt
Dick Anderson Construction
(406) 579-4006

Allen Keim

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To: brad@rpa-hln.com
Subject: Electrical Discrepancy-Haynes Lift Station
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Thanks

Tim Tholt
Dick Anderson Construction
(406) 579-4006



PROPOSAL FOR ELECTRICAL WORK

TO: Prime Contractor's

Date: June 12, 2012

PROJECT: Miles City Waterworks

This proposal is for Division 16 (Electrical) work per plans and specifications.

THE FOLLOWING PRICE INCLUDES:

- 1. Electrical and controls as specified
2. Generator and ATS as specified
3. Grounding
4. Trenching and backfill as needed
5. Boring as required
6. 1% GRT
7. 1% Bond (Deduct if not required)
8. Permit

NOT INCLUDED:

- 1. Cutting and/or patching of existing asphalt or concrete
2. Painting
3. Utility company fees
4. Generator Pad

Table with 2 columns: Description and Price. Rows include TOTAL PRICE #7 SCHEDULE #1 (\$208,000.00), TOTAL PRICE #6 SCHEDULE #2 (\$ 86,500.00), and TOTAL SCHEDULE #1 AND SCHEDULE #2 (\$294,500.00).

- Recognize Addendum #1, #2, and #3

The price above assumes the following:

- Subcontract similar to ASC Form No. 52, 1994.
Payment per Montana Title 28 Chapter 2 Part 21.
Retainage held only relative to completion of ELECTRICAL subcontract work (i.e. fully released when electrical subcontract work is satisfactorily complete).
Insurance as we now carry, namely CGL under form GNC0010198, will be sufficient. Additional requirements may add cost.
No provision in a subcontract will be accepted which would obligate us to indemnify for the negligence, recklessness or intentional misconduct of parties not under our direct control.

PAYABLE ON THE FOLLOWING TERMS: NET 30 DAYS

WE ACCEPT VISA AND MASTERCARD

Thank you for considering YELLOWSTONE ELECTRIC CO. for your project. We look forward to your authorization to proceed on the above referenced project. This quote will be subject to review and subsequent revisions after 30 days. If you have any questions, or if we can be of further assistance, please contact me directly at (406) 252-3407.

Accepted by: _____
Customer

Yellowstone Electric Co.
Contractor

Handwritten signature of Tim C. Ross

Tim C. Ross, Estimator

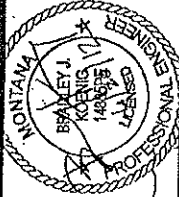
Date: _____

1919 Fourth Avenue North
P.O. Box 2018
Billings, Montana 59103

Phone (406) 252-3407
Fax (406) 252-8965
Cell Phone (406) 860-0407

BID TABULATIONS
MILES CITY WASTEWATER
SCHEDULE ONE: Haynes Avenue Lift Station
SCHEDULE TWO: New Headworks Building
Bid Date: June 12, 2012

RPAY
 ROBERT PECCIA & ASSOCIATES, INC.
 825 Custer Avenue • Helena • Montana • (406) 447-5000
 100 Cooperative Way, Suite 200 • Kalispell • Montana • (406) 752-5025



Item No.	Quantity	Unit	Description	Engineer's Estimate		Dick Anderson Constr. Bozeman, MT		COP Construction Billings, MT		Jackson Contractor Grp Missoula, MT	
				Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)
1	1	LS	Mobilization, Bonding and Submittals (5% max)	\$41,262.00	\$41,262.00	\$55,000.00	\$55,000.00	\$71,225.00	\$71,225.00	\$49,000.00	\$49,000.00
2	1	LS	Site Work and Buried Piping	\$115,235.00	\$115,235.00	\$117,000.00	\$117,000.00	\$306,300.00	\$306,300.00	\$72,100.00	\$72,100.00
3	1	LS	Shoring, Dewatering, and Structural Excavation	\$109,860.00	\$109,860.00	\$306,000.00	\$306,000.00	\$221,750.00	\$221,750.00	\$245,200.00	\$245,200.00
4	1	LS	Lift Station Structure	\$282,450.00	\$282,450.00	\$430,000.00	\$430,000.00	\$414,000.00	\$414,000.00	\$262,850.00	\$262,850.00
5	1	LS	Lift Station Mechanical	\$155,700.00	\$155,700.00	\$155,000.00	\$155,000.00	\$214,600.00	\$214,600.00	\$160,000.00	\$160,000.00
6	1	LS	Lift Station HVAC	\$19,400.00	\$19,400.00	\$27,000.00	\$27,000.00	\$26,350.00	\$26,350.00	\$26,000.00	\$26,000.00
7	1	LS	Lift Station Electrical	\$130,500.00	\$130,500.00	\$31,000.00	\$31,000.00	\$25,100.00	\$25,100.00	\$165,000.00	\$165,000.00
TOTAL - SCHEDULE ONE					\$834,572.00		\$1,191,000.00		\$1,479,325.00		\$982,150.00

Item No.	Quantity	Unit	Description	Engineer's Estimate		Williams Bros. Constr. Billings, MT		Dick Anderson Constr. Bozeman, MT		COP Construction Billings, MT		Jackson Contractor Grp Missoula, MT	
				Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)
1	1	LS	Mobilization, Bonding and Submittals (5% max)	\$39,768.00	\$39,768.00	\$81,000.00	\$81,000.00	\$30,000.00	\$30,000.00	\$81,500.00	\$81,500.00	\$60,000.00	\$60,000.00
2	1	LS	Site Work and Buried Piping	\$190,976.00	\$190,976.00	\$100,000.00	\$100,000.00	\$207,000.00	\$207,000.00	\$477,200.00	\$477,200.00	\$165,000.00	\$165,000.00
3	1	LS	Headworks Structure	\$472,600.00	\$472,600.00	\$650,000.00	\$650,000.00	\$340,000.00	\$340,000.00	\$679,000.00	\$679,000.00	\$596,750.00	\$596,750.00
4	1	LS	Headworks Mechanical	\$872,700.00	\$872,700.00	\$631,000.00	\$631,000.00	\$800,000.00	\$800,000.00	\$705,100.00	\$705,100.00	\$705,700.00	\$705,700.00
5	1	LS	Headworks HVAC	\$26,000.00	\$26,000.00	\$68,000.00	\$68,000.00	\$75,500.00	\$75,500.00	\$98,500.00	\$98,500.00	\$71,000.00	\$71,000.00
6	1	LS	Headworks Electrical	\$181,100.00	\$181,100.00	\$34,000.00	\$34,000.00	\$248,500.00	\$248,500.00	\$101,200.00	\$101,200.00	\$64,000.00	\$64,000.00
TOTAL - SCHEDULE TWO					\$1,833,149.00		\$1,624,000.00		\$1,937,000.00		\$2,143,800.00		\$1,612,450.00

Item No.	Quantity	Unit	Description	Engineer's Estimate		Dick Anderson Constr. Bozeman, MT		COP Construction Billings, MT		Jackson Contractor Grp Missoula, MT	
				Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)
1	1	LS	Deduction for Award of Both Schedules	\$0.00	\$0.00	\$213,000.00	\$213,000.00	\$31,400.00	\$31,400.00	\$61,000.00	\$61,000.00
TOTAL DEDUCTION					\$0.00		\$213,000.00		\$31,400.00		\$81,000.00

TOTAL (Schedule One + Schedule 2 - Deduction) \$2,667,662.00 NA \$2,899,000.00 \$3,581,425.00 \$2,633,400.00

DON'S ELECTRIC, INC.

P.O. Box 1891 • Colstrip, MT 59323

Office: (406) 748-3000

Fax: (406) 748-3735

Home: (406) 748-3381

FAX TRANSMISSION

DATE

6/11/12

TIME

We Aim to Please 

FAX#

586-0453

TO

Kirk Hogan

COMPANY

Rich Anderson

SUBJECT

Miles City Wastewater Improvements.

FROM

Don Hottel Call 749-6500

TOTAL NUMBER OF PAGES INCLUDING THIS PAGE

1

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT US.

REMARKS

Price per plans and specs for Hogans avenue lift station. Includes controls as listed. Includes 1% state contractor fee, state permit. Seen Addendums 1, 2, 3

Quote \$164,000.00

Price per plans and specs for Headquarters Building. Includes controls as listed. Includes 1% state contractor fee, state permit. Seen Addendums 1, 2, 3.

Quote \$149,000.00

BOSS Printing, Glendive, MT 59223-Don's Fax (6-98)

PLEASE CONFIRM RECEIPT OF THIS FAX BY

PHONE

FAX

NO HEATING CONTROLS =
NO TSTATS -

In Control - quote
Level

Sept. 01, 2012

Dear City Council Members & Mayor Grenz,

This letter is to request your consideration for a waiver of the site plan fee of \$110.00 for the animal shelter at my residence. Dianna Broadie stated at the City Council meeting on August 28, 2012 that a site plan is normally required in instances where there is construction and/or renovations on the site. There was neither construction nor renovation required for the animal shelter on my property. Dianna told me she merely took several pictures of my property.

I would ask the Council to please consider that \$110.00 could provide the following services:

- Provide vaccinations against rabies, distemper, heartworm, and parvovirus for several dogs or cats or
- Pay for one male dog to be neutered, wormed, plus provide vaccinations against rabies, distemper, heartworm, and parvovirus or
- Pay a good portion of the cost of one female dog to be spayed or
- Pay for neutering of two male cats including rabies vaccinations or
- Pay for spaying one female cat including rabies vaccination or
- Pay for pet food for one month or
- Used for a sundry of veterinary services or needed medications.

Since I cover all the above costs out of my own pocket and never have and never will charge an adoption fee or take compensation for medical expenses or spaying or neutering costs for any animals I rescue, I would ask the Council to look upon that as 'paying it forward'.

Thank you for your consideration.

Sincerely,



Diane Grutkowski

818 N Lake Ave

Miles City, MT 59301



CUSTER COUNTY DISTRICT HIGH SCHOOL

20 South Center, Miles City, MT 59301
Business Office: (406) 234-4920
Fax Number: (406) 234-4923
Attendance Office: (406) 234-4930

Keith Campbell, Superintendent
Jamie A. Ogolin, Principal
Terry Annalora, Assistant Principal
Mike Ryan, Activities Director

September 14, 2012

To: Mayor Grenz

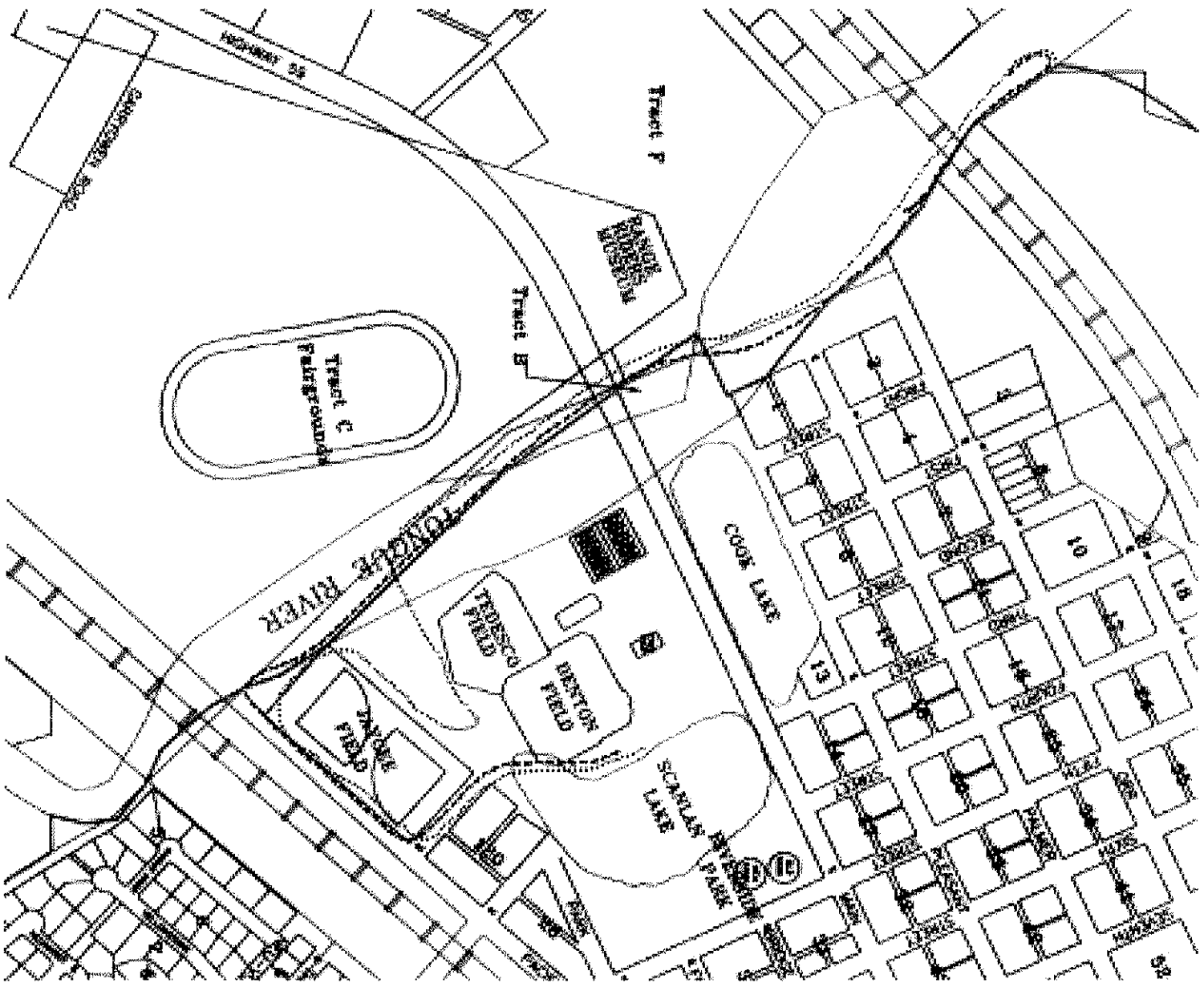
From: Mike Ryan
Mike Ryan, Activities Director

Re: Permission to use the previous cross country route along the dike

I am writing to request permission to use the old cross country route (see the enclosed map) along the dike for the upcoming Cross Country Invitational on October 6, 2012. Due to the increasing popularity of cross country there is a lack of parking at the Town and Country Club.

I will be able to have workers posted, barricades out and patrol intersections to insure the safety of the runners. Please contact me at the high school 234-4920 ext. 229 or at 853-1399 if you have further questions.

A response at your earliest convenience would be greatly appreciated. Thank you in advance for your time.



Black Line = Start

Red Line = Return Route

Connie Watts

From: George Huss
Sent: Wednesday, September 19, 2012 3:31 PM
To: 'Butch Grenz'
Cc: 'CONSTANCE MUGGLI Owner'; 'Connie Watts'; Jana Mueller
Subject: Agenda addition

Mayor --

Bryant Martin at the Lucas firm is assisting the Custer County Historical Society in the depot restoration project. He has drafted a counter-proposal to BNSF for a ground lease under the building. I am in the process of revising it to cover some particular interests of the City. I will have my revision ready before Council deadline this Friday noon. Would you please add an agenda item for the Council to consider and act upon a counter-proposal for a lease with BNSF on the land on which the depot building is situated.

George W. Huss
Brown and Huss, P.C.
507 Pleasant Street
P.O. Box 128
Miles City, Montana 59301
(406) 234-3054
(406) 234-5864 (FAX)
bhpc@midrivers.com

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**TERM LEASE
LAND**

THIS INDEFINITE-TERM LEASE FOR LAND ("Lease") is made and entered into this ____ day of _____, 2012, ("Effective Date"), by and between BNSF RAILWAY COMPANY, A Delaware corporation, ("Lessor") and the CITY OF MILES CITY ("Lessee").

RECITALS

A. Lessor is in the railroad transportation business and owns or controls a system of rail tracks ("Lessor's Tracks") and various real properties associated therewith, including certain Premises as described below which Lessee desires to lease from Lessor.

B. Lessor desires to enter an agreement that will enable the community of Miles City to preserve local cultural heritage and railroad history, and also contribute to the local economy.

C. Lessee is a municipality located in Custer County, Montana, and desires to enter into an agreement to provide access to the historic Northern Pacific Depot Building ("Depot"), which is listed on the National Register of Historic Places, for the purpose of preservation and restoration of the Depot. Lessor has previously or contemporaneously with the execution of this Lease, conveyed ownership of the Depot to Lessee.

D. It is the intention of Lessee to sub-lease the below described lands to a qualified entity for purposes which include, but are not limited to, management of the preservation and restoration of the Depot and subsequently for the purpose of conducting a for-profit business, non-profit business, or other activities, such as providing a community center or museum to benefit local residents.

E. Lessor supports Lessee's intentions and has agreed to lease the below described lands to Lessee, subject to the terms, conditions and limitations provided herein.

AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

Section 1. Premises and Term.

A. Lessor is the owner of and hereby leases to Lessee that certain parcel of real property, situated in the City of Miles City, County of Custer, State of Montana, depicted in Exhibit A attached hereto and by this reference made a part hereof ("Premises"). The Depot is located upon the Premises, however, said building is owned by City of Miles City and is not subject to the terms of this Lease unless explicitly stated otherwise hereunder. Thus, any reference to the "Premises" is a reference only to the real property depicted in Exhibit A and not the Depot building.

B. The primary term of this lease shall be for a period of forty (40) years, commencing on _____, 2012. At the expiration of the primary term, Lessee shall have the right and option to extend this lease for two (2) additional terms of five (5) years each. With respect to each of such extended periods, Lessee shall be deemed to have exercised its option to extend this Lease for such extended periods, unless Lessee shall have notified Lessor in writing, at least sixty (60) days prior to the

expiration of the primary term or the extended period then in effect, as the case may be, of Lessee's election not to exercise such option. Each of such extended periods shall be upon the same covenants, terms and conditions contained herein, except as hereinafter provided.

CC. Either party may terminate this Lease by sending written notice to the other party sixty (60) days prior to the expiration of the primary term or any additional term. In the event that the City of Miles City has not procured an assignee of this lease acceptable to Lessor, pursuant to Section 14 of this Lease, and assignment has not been approved by the Lessor and this lease has not been assigned in writing to such approved assignee within thirty-six (36) months of the Commencement Date of this lease, the City of Miles City, at its option, may terminate this lease and surrender the Premises to Lessor, subject to the provisions of Subsection D and E, below

DGD. In the event that Lessor terminates this Lease for any reason, Lessor shall reimburse Lessee or its assigns for any improvements to the Premises and may purchase the Depot and any improvements to the Premises from Lessee or its assigns at fair market value. Lessor must exercise, in writing, give notice to Lessee of its intent to exercise its option to purchase prior to the expiration of the sixty (60) day notice period described above or if Lessor terminates this Lease for any other reason it must exercise its option to purchase within ninety (90) days from the termination date or expiration date. If Lessor timely gives such notice of intent, then the value of the improvements to the Premises and the purchase price for the Depot shall be determined by an independent appraiser approved by Lessor and Lessee or its assigns. If the parties are unable to agree upon an independent appraiser, then either party may petition the 16th Judicial District Court of the State of Montana, in and for Custer County, for the appointment of an appraiser. The cost of such appraisal shall be equally paid by Lessor and Lessee. Lessor shall then have sixty (60) days following the receipt of such appraisal to exercise its option to purchase by tendering to Lessee the appraised value of the Depot and the improvements. Upon receipt of payment for said improvements (and the purchase price if Lessor chooses to exercise its option to purchase), Lessee or its assigns shall execute a Bill of Sale to Lessor for the Depot and the improvements

Formatted: Superscript

EDE. In the event that Lessor terminates this Lease for any reason and chooses not to exercise its option to purchase the Depot or fails to do so in the time required, Lessee may sell, trade, or relocate the Depot and improvements.

Section 2. Use and Compliance.

A. Lessee, or its assigns, may use the Premises for the sole and exclusive purpose of access to, operations of, and parking for the Depot, which will be conducting a restaurant, café, night club, retail store, museum, art gallery, or similar business for profit business, not for profit business, or governmental operation. Lessee, or its assigns, may also landscape the Premises with grass, trees, bushes, and the like. In the event that Lessee desires to use the Premises for a purpose not included herein, Lessee, or its assigns, shall obtain Lessor's prior written consent. Lessee shall promptly respond to Lessor's reasonable written inquiries regarding the use or condition of the Premises.

B. Lessee, or its assigns, shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's, or its assigns', activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Laws" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or an order,

decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Premises, this Lease, and/or Lessee's, or its assigns, obligations under this Lease, and shall include all Environmental Laws (as defined in Section 4(A)).

C. If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's, or its assigns', business or other activity in or on the Premises, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, or its assigns, at Lessee's or its assigns, expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, or its assigns, at Lessee's, or its assigns', expense, shall at all times comply with the requirements of each such license or permit.

Section 3. Rent.

A. For the first five (5) years of the lease, Lessee, or its assigns, shall pay Lessor a monthly rent of \$_____.

B. The monthly rents shall be recomputed as follows, at the commencement of the sixth (6th), eleventh (11th), sixteenth (16th), twenty-first (21st), twenty-sixth (26th), thirty-first (31st), and thirty-sixth (36th) years of this lease and extension thereof.

1. During the second five (5) years of the Lease, Lessee, or its assigns, shall pay as rent for each calendar month, a sum equal to the monthly rent during the first five (5) years of the Lease, plus such percentage increase as is reflected by the percentage increase in the cost of living index computation described as follows:

A Consumer Price Index for the nation as a whole is published by the Bureau of Labor Statistics, United States Department of Labor. The October 1, 2017 edition of the above publication shall be used to determine the cost of living increase which shall govern the rental payment for the second five (5) year period of this Lease.

For example, assume the following:

- a. That the monthly rental for the first five year period of the lease was \$_____ per month.
- b. That the Consumer Price Index increases 15% from October 1, 2012 to October 1, 2017.

Using the foregoing assumptions, the rental for the second five (5) year period would be as follows:

Previous monthly rental	\$_____
15% increase	_____ <u>xxx.xx</u>
Total Monthly Rent	\$_____

The parties further agree that in any event, the monthly rental during the second (5) years of this Lease, shall be increased at least ten percent (10%) but not more than

twenty-five percent (25%) over the monthly rent for the first five (5) years of the Lease.

2. During the third, fourth, fifth, sixth, and seventh five (5) years of the Lease, and any subsequent extension, Lessee, or its assigns, shall pay as rent for each calendar month, a sum equal to the monthly rent during the immediately preceding five (5) year period of the Lease, plus such percentage increase as is reflected by the percentage increase in the cost of living index computation as is described above. In the third, fourth, fifth, sixth, seventh and subsequent extension years, the computation will be computed using the October 1st edition of the above publication for the current year.

The parties further agree that in any event, the monthly rental during the third, fourth, fifth, sixth, and seventh five (5) years of the Lease, and any subsequent extension shall be increased at least ten percent (10%) but not more than twenty-five percent (25%) over the monthly rent for the immediately preceding five (5) year period of the Lease

C. All monthly lease rentals and other monetary payments shall be paid to Lessor in advance on or before the 1st day of each calendar month. All rent under this Lease from Lessee, or its assigns, to Lessor shall be delivered solely to the following address:

Jones Lang LaSalle -- Representative for BNSF Railway Company
P.O. Box 676160
Dallas, Texas 75267-6160

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee, or its assigns, pursuant to the notice provisions of Section 36 below.

D. If any rent or any payment under Section 9 or any other payment due by Lessee, or its assigns, hereunder is not paid within five (5) days after the date the same is due, Lessor may assess Lessee, or its assigns, a late fee in an amount equal to 5% of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment.

Section 4. Environmental:

A, Lessee, and its assigns, shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Lessee, and its assigns, shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Lessee, and its assigns, shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.

B. Lessee, or its assigns, shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises and to Lessor's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. If the above contact information changes, Lessor shall provide current phone numbers to Lessee, at its assigns. Lessee, or its assigns, shall use its best efforts to promptly respond to any release on or from the Premises. Lessee, or its assigns, also shall give Lessor's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee, or its assigns, to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises.

C. In the event that Lessor has notice from Lessee, or its assigns, or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, or its assigns, at Lessee's, or its assigns', sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way, unless such release or violation was the result of the act, or failure to act, of the Lessor, its agents, employees, contractors, or from the operations of the railroad system adjacent to the Premises.

D. Lessee, or its assigns, shall promptly report to Lessor in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's, or its assigns', reporting to Lessor shall not relieve Lessee, or its assigns, of any obligation whatsoever imposed on them by this Lease. Lessee, or its assigns, shall promptly respond to Lessor's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee, or its assigns, expects to use on the Premises the following Hazardous Materials: (See Schedule HM1, attached hereto and made a part hereof) and to store on the Premises the following Hazardous Materials (as defined in Section 4(F) below): See Schedule HM2, attached hereto and made a part hereof; provided, however, that Lessee, or its assigns, may only use and store the listed Hazardous Materials in such amounts as are necessary and customary in Lessee's, or its assigns', industry for the permitted uses hereunder ("Permitted Substances"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials not disclosed in this Section 4(E) is a breach of this Lease. Should Lessee or its assigns desire to modify Schedule HM1 or HM2 during the term of this lease, then they shall give written notice of such desired modification to Lessor, describing the Hazardous Material that will be used on the premise or stored on the Premises and the quantities to be upon the Premises. Upon approval of such modification, in writing, by Lessor, Schedule HM1 and/or Schedule HM2 shall be so modified.

F. For purposes of this Section 4, "Hazardous Materials" means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

G. Lessor may, at its option prior to termination of this Lease, require Lessee, or its assigns, to conduct an environmental audit of the Premises through an environmental consulting engineer acceptable to Lessor, at Lessee's, or its assigns, sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during lessee's occupancy thereof. The audit shall be conducted to Lessor's reasonable satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessor shall compare said audit to an audit of equal or greater quality and depth conducted by Lessor in the year prior to the commencement date of this Lease. Lessor shall provide the audit it conducted to Lessee, or its assigns, so that Lessee, or its assigns, may also compare the two audits. In the event that the audits reveal that Lessee caused additional environmental damage to the Premises during tenancy, Lessee, or its assigns, agrees to pay all expenses for any remedial action that may be required to correct such additional environmental damage and therefore return the Premises to the condition it was immediately prior to the Commencement Date. Lessor agrees that it shall not require Lessee, or its assigns, to take remedial action for damage that was caused by Lessor or occurred prior to the commencement date of this Lease.

Section 5. Access to Adjacent Property by Lessee.

If access to and from the Premises can be accomplished only through use of Lessor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such reasonable restrictions and conditions as Lessor may impose by notice to Lessee, or its assigns. Lessor shall have the right to designate the location or route to be used. Lessee and its assigns understands and agrees that all of the terms and obligations under this Lease applicable to Lessee, and its assigns, shall also be applicable to Lessee, and its assigns, with respect to Lessee's or its assigns use of any property adjacent to the Premises which Lessee, or its assigns, may use just as though the property has been specifically described as part of the Premises, including, without limitation, the indemnity provisions of Section 13. Notwithstanding anything to the contrary herein, this Section 5 shall not grant Lessee, or its assigns, any right to access, use, or cross any of Lessor's Tracks. Any such access, use, or crossing rights may only be granted by a separate written agreement between Lessor and Lessee, or its assigns.

Section 6. Access to Premises by Lessor.

A. Lessor and its contractors, agents and other designated third parties may at all reasonable times, and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's, or its assigns, use of the Premises as allowed hereunder, (i) enter the Premises for inspection of the premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, and operate trackage, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Premises, (iii) take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee, or its assigns, defaults in its/their obligation to do so, (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the Premises, or to prospective purchasers or mortgagees of the Premises provided; however, that Lessor shall compensate

Lessee, or its assigns, in full for any damage caused to the Depot during such entry or access and Lessor shall not completely cut-off or deny Lessee, its assigns, or its guests, invitees, or customers' access to the Depot. In the event that Lessor must completely deny access to the Depot for a period of time greater than one business day, Lessor agrees to rebate rent for the period of time Lessee, or its assigns, is denied access. In the event that Lessor completely denies access to the Miles City Depot Building for a period greater than one month, Lessee, or its assigns, may treat such action as termination of the Lease and Lessor must purchase the Depot and improvements to the premises proceed pursuant to Section 1, paragraph D.

B. For purposes stated in this Section 6, with the exception of the Depot, Lessor will at all times have keys with which to unlock all of the doors and gates on the Premises, and Lessee, and its assigns, will not change or alter any lock thereon without Lessor's permission.

C. In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises.

~~Section 7. Warranties.~~

~~Delete Section.~~

~~Section 87. Premises Condition; Lessee Improvements.~~

A. Lessee represents that the Premises, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the nature, condition or usability thereof, or the uses to which the Premises may be put. Lessor only represents and warrants Title to the Premises and access to and from the Premises from a public road or private easement. By taking possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Commencement Date on an "AS IS" basis.

B. If improvements are necessary for Lessee's use of the Premises, Lessee, or its assigns, at Lessee's, or its assigns, sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the Premises which are necessary for Lessee's, or its assigns, use of the Premises and are acceptable to Lessor in Lessor's sole reasonable discretion ("Lessee Improvements"). The construction and installation of any Lessee, or its assigns, improvements shall be subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee, or its assigns, and submitted to Lessor for approval as set forth below, such approval to be in Lessor's sole and absolute reasonable discretion. Within forty-five (45) days after the Commencement Date, Lessee, or its assigns, shall submit detailed plans and specifications, and the identity of Lessee's, or its assigns, proposed general contractor for the Lessee Improvements for Lessor's review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its sole and absolute reasonable discretion) by written notice delivered to Lessee, or its assigns, within sixty (60)

Comment [cm1]: Applies only to the land as the building will be owned. Landscaping – surfacing drive – what about the tree?

days after receipt of the same from Lessee, or its assigns. In the event of any disapproval, Lessor shall specify the reasons for such non-approval. If Lessor fails to deliver notice to Lessee, or its assigns, of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's, or its assigns' plans, specifications and proposed contractor shall be deemed disapproved. If Lessor specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee, or its assigns, are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, ~~to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this Lease by written notice to Lessor~~ may seek judicial review of the reasonableness of such disapproval. Upon approval of the plans and specifications by Lessor, Lessor and Lessee, or its assigns, shall sign the same, and they shall be deemed a part hereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of Exhibit "B" ~~attached to the Lease~~ the plans and specifications approved by Lessor, and all applicable terms and conditions of the Lease regarding alterations and improvements. Lessee, or its assigns, shall not construct any other alteration or improvement to the Premises without Lessor's prior written consent. The Lessee Improvements constructed pursuant to the above provisions shall be owned by Lessee, or its assigns, during the term of the Lease and removed from the Premises or surrendered to the Lessor pursuant to Section ~~2019~~ below upon termination of this Lease.

Section 98. Taxes and Utilities.

Lessee, or its assigns, shall pay all taxes, ~~assessments~~ and utilities which are attributable to the term of this Lease and may become due or levied against the Premises, against Lessee, or its assigns, against the business conducted on the Premises or against the Lessee, or its assigns', Improvements placed thereon during the term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease provided; however, that Lessee, and its assigns, shall only be responsible for the payment of property taxes and assessments levied against the Premises to the extent such taxes are separately assessed by the applicable taxing authority as a result of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee, or its assigns, any utility or other services provided.

Section 109. Track Clearance.

A. Lessee, or its assigns, shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Premises (nine and one-half (9-1/2) feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Premises ("Minimal Clearances"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 10, then Lessee, or its assigns, shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 10, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on

the Premises clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

B. Lessor's operation over any Lessor's Track on or about the Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 10 or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom.

C. Lessee, or its assigns, shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on Lessor's Tracks.

Section 1110. Repairs; Maintenance.

A. Lessee, or its assigns, shall, at ~~its~~ their sole expense, take good care of the Premises (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee, or its assigns, shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee, or its assigns, shall keep and maintain any paved areas, sidewalks, curbs, landscaping, and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

B. Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee, and its assigns, acknowledges that Lessor shall have no responsibility for management of the Premises.

Section 1211. Safety; Dangerous and Hazardous Conditions.

It is understood by Lessee that the Premises may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Lessee, and its assigns, accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

Section 1312. Indemnity.

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE, OR ITS ASSIGNS, SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND

COSTS OF INVESTIGATION) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS LEASE;
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;
- (iii) LESSEE'S, OR ITS ASSIGNS, OCCUPATION AND USE OF THE PREMISES;
- (iv) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S, OR ITS ASSIGNS', OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER;

UNLESS SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITTEE LESSOR OR ITS SUCCESSORS OR ASSIGNS

B. LESSEE, OR ITS ASSIGNS, SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST AN CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SETTLEMENTS, DAMAGES (INCLUDING, BUT NOT LIMITED TO ALL DAMAGES FOR INJURY TO PERSON AND/OR PROPERTY) CLEANUP EXPENSE, AND ALL OTHER COSTS OR EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANT FEES, COURT COSTS, AND LITIGATION EXPENSES) OF WHATEVER KIND OR NATURE, KNOW OR UNKNOWN, CONTINGENT OR OTHERWISE ARISING OUT OF OR IN ANY WAY RELATED TO THE PRESENCE, DISPOSAL, CONTAMINATION, RELEASE OF ANY SUCH HAZARDOUS MATERIAL BY LESSEE, ITS ASSIGNS, ITS AGENTS, EMPLOYEES, CONTRACTORS, OR INVITEES, WHICH IS ON, FROM, OR AFFECTS SOIL, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, PERSONS, ANIMALS, OR OTHERWISE.

C. LESSOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSEE AND LESSEE'S SUCCESSORS, ASSIGNS, AND SUBLESSEES FOR, FROM AND AGAINST AN CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SETTLEMENTS, DAMAGES (INCLUDING, BUT NOT LIMITED TO ALL DAMAGES FOR INJURY TO PERSON AND/OR PROPERTY) CLEANUP EXPENSE, AND ALL OTHER COSTS OR EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANT FEES, COURT COSTS, AND LITIGATION EXPENSES) OF WHATEVER KIND OR NATURE, KNOW OR UNKNOWN, CONTINGENT OR OTHERWISE ARISING OUT OF OR IN ANY WAY RELATED TO THE PRESENCE, DISPOSAL, CONTAMINATION, RELEASE OF ANY SUCH HAZARDOUS MATERIAL BY LESSOR, ITS AGENTS, EMPLOYEES, CONTRACTORS, OR INVITEES, AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, OR SHAREHOLDERS, WHICH IS ON, FROM, OR AFFECTS SOIL, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, PERSONS, ANIMALS, OR OTHERWISE.

Section 1413. Equal Protection.

It is agreed that the provisions of Sections 109, 1211, and 1312 are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under Sections 109, 1211, and 1312.

Section 1514. Assignment and Sublease.

Lessee shall not (i) assign or otherwise transfer this Lease or any interest herein, or (ii) sublet the Premises or any part thereof, without, in each instance, obtaining the prior written consent of Lessor provided; however, that such consent is not unreasonably withheld. Lessor understands that it is the intent of the Lessee to obtain an assignee satisfactory to the Lessee to operate within the Depot on the Premises, rather than for Lessee to conduct operations upon the Premises, or sublet the Premises and the Depot. In the event that Lessee desires to sublease or sublet, it shall submit a written request to Lessor. Lessor will then have thirty days to request additional information. Once Lessee provides the additional information, Lessor will have an additional thirty (30) days to reply to Lessor with a decision. Should Lessee assign this Lease to an assignee approved in writing by Lessor, then all obligations of Lessee hereunder, shall become the obligation of such assignee, and Lessee shall have no further obligations or liabilities of any kind or nature under this Lease, including obligations which survive this lease. In the event of such approved assignment, the approved assignee shall be deemed the "Lessee" for purpose of this lease.

Section 1615. Liens.

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section 16 or any other Section of this Lease.

Section 1716. Insurance.

Lessee or its assigns shall, at their sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

~~A. All risks property insurance covering all of Lessee's property including property in the care of custody or control of Lessee. Coverage shall include the following:~~

- ~~◆ Issued on a replacement cost basis;~~
- ~~◆ Include a standard loss payable endorsement naming Lessor as the loss payee as its interests may appear.~~

~~BA. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000/750,000.00 per claim and \$1,500,000.00 each occurrence and an aggregate limit of at least \$2,000,000. Coverage must be purchased on an post-1998 ISO occurrence form basis or equivalent and include coverage for, but not limited to, the following:~~

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

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BC. Business Automobile Insurance. This insurance shall contain a combined single limit of ~~\$750,000.00 per claim and at least \$1,000,000~~ 1,500,000.00 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

CD. Workers Compensation and Employers Liability insurance including coverage for, but not limited to Lessee's, or its assigns, statutory liability under the worker's compensation laws of Montana.

DE. Other Requirements:

Lessee is ~~not allowed to self-insure- provide insurance coverage pursuant to §2-9-211 MCA~~ without the prior written consent of ~~Railroad~~ Lessor. ~~Lessee's assigns are not allowed to self insure without the prior written consent of Lessor.~~ If granted by Lessor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all Lessor liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's, or its assigns, insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Premises, Lessee, or its assigns, shall furnish to Lessor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Lessor in writing at least ~~30~~ 30 days prior to cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon reasonable request from Lessor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy provided by Lessee's assigns shall be written by a reputable insurance company acceptable to Lessor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.

Lessee, and its assigns, represents that this Lease has been reviewed by Lessee's, and its assigns, insurance agent/advisor, who has been instructed by Lessee, or its assigns, to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for the coverage referenced above.

If any portion of the operation is to be contracted by Lessee, or its assigns, Lessee, or its assigns, shall require that the contractor shall provide and maintain insurance coverage as set forth herein, naming Lessor as an additional insured and shall require that the contractor shall release, defend and indemnify Lessor to the same extent and under the same terms and conditions as Lessee, or its assigns, are required to release, defend and indemnify Lessor herein.

Section 18. Water Rights and Use of Wells.

~~Same. Unless they don't have water rights then take it out.~~

Section 1987. Default.

A. An "Event of Default" by Lessee, or its assigns, shall have occurred hereunder if any of the following shall occur:

- (i) if Lessee, or its assigns, violates any safety provision contained in this Lease;
- (ii) if Lessee, or its assigns, fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee, or its assigns, of Lessee's, or the assign's, failure to make such payment or perform such obligations;
- (iii) if a decree or order of a court having jurisdiction over the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee, or its assigns, or over all or a substantial part of the property of Lessee, or its assigns, shall be entered; or if Lessee, or its assigns, becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee, or its assigns, or of all or a substantial part of the property of Lessee, or its assigns, shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee, or its assigns, shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;
- (iv) if the Premises is abandoned or vacated by Lessee, or its assigns.

B. In the event Lessee, or its assigns, defaults in any other terms hereunder, Lessor shall notify Lessee in writing of such default and the nature thereof and unless the same is corrected within thirty (30) days thereafter, then this Lease shall at the option of Lessor become ended and terminated; provided, however, that if Lessee commences subsequent defaults of the same nature within six (6) months, that then this Lease may be terminated upon five (5) days' notice. In such event Lessor shall have the right without further notice and without legal process, to re-enter and take full possession of all of the rented premises. Section 1, paragraphs D and E, shall apply to such a default by Lessee

Section 2018. Termination

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, and if Lessor does not exercise its option to purchase under Section 1(C), and if Lessee, or its assign do not remove the Depot and improvements as provided under Section 1(D), Lessee shall relinquish possession of the Premises and shall remove any Lessee Improvements, and restore the Premises to substantially the state and environmental condition in which it was prior to Lessee's use ("Restoration Obligations"). If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Premises, and in such event Lessee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, or (ii) retain the Depot and all improvements without any compensation to Lessee or its assigns, specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Further, in the event Lessor agrees to purchase Lessee Improvements or Lessee agrees to gift Lessee Improvements following

termination, and Lessee, or its assigns, shall provide a Bill of Sale to Lessor conveying such Lessee the Depot and Improvements to Lessor.

Section 2119. Survival of Obligations.

Notwithstanding any expiration or other termination of this Lease, all of Lessee's, or its assigns, and Lessor's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

Section 2220. Holding Over.

If Lessee, or its assigns, fails to surrender the Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's, or assigns', holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's, or its assigns', holdover will be subject to all provisions of this Lease.

Section 2321. Multiple Party Lessee.

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

Section 2422. Damage or Destruction.

If at any time during the term of this Lease, the Premises are damaged or destroyed by fire or other casualty, then Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee, or its assigns, Improvements, personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Lessee, or its assigns, under the provisions of this Lease.

Section 2523. Eminent Domain.

If any part of the Premises is taken by eminent domain, Lessor may either terminate this Lease or continue the Lease in effect. If Lessor elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Lessor shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, or its assigns, whether as damages or as compensation, will be the property of Lessor; without prejudice, however, to claims of Lessee, or its assigns, against the condemning authority for moving costs and the unamortized cost of leasehold improvements paid for by Lessee, or its assigns, taken by the condemning authority. If this Lease is terminated under this Section 2523, rent will be payable up to the date that possession is taken by the condemning authority, and Lessor shall refund to Lessee, or its assigns, any prepaid unaccrued rent less any sum then owing by Lessee, or its assigns, to Lessor.

Section 2624. Representations.

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Premises except as herein expressly set forth.

Section 2725. Signs.

No signs are to be placed on the Premises without the prior written approval of Lessor of the size, design, and content thereof. Lessor shall not unreasonably withhold its approval of proposed signs upon the Depot building or the Premises.

Section 2826. Consents and Approvals.

Whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion, unless otherwise provided for herein. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee, or its assigns, in no event will be entitled to make, nor will Lessee, or its assigns, make, any claim, and Lessee, and its assigns, hereby waives any claim, for money damages (nor will Lessee, or its assigns, claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee, or its assigns, that Lessor unreasonably withheld or unreasonably delayed its consent or approval, unless such approval is subject to a "reasonable" standard under the express provisions of this lease.

Section 2927. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

Section 3028. Public Record.

It is understood and agreed that this Lease shall not be placed of public record.

Section 3129. Governing Law.

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the State in which the Premises are located of Montana.

Section 3230. No Waiver.

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee, or its assigns, requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 3331. Binding Effect.

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

Section 3432. Force Majeure.

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

Section 3533. Entire Agreement/Modification.

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreement held by Lessee, or its assigns, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee, or its assigns.

Section 3634. Notices.

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 3(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

Name

Address

Address

If to Lessor:

BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828

Attn: Senior Manager – Land Revenue Management

With a copy to:

Jones Lang LaSalle - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, Texas 76131-2800
Attn: Director – Leases and Permits

Section 3735. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

Section 3836. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the term of this Lease, shall remain that of Lessor and Lessee, or its assigns.

Section 3937. Severability.

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 4038. Transferability; Release of Lessor.

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Lessor shall be released from

any further obligations hereunder, and Lessee, and its assigns, agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

Section 4139. Tax Waiver.

Lessee, and its assigns, waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

Section 4240. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

Executed by the parties to be effective as of the Effective Date above.

DRAFT

