

# AGENDA

*Regular Council Meeting  
City Council Chambers*

*February 25, 2014  
7:00 p.m.*

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

**1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**

- |    |  |           |
|----|--|-----------|
| a. | City Council Meeting ( <i>Need Motion to Amend</i> ) | 1/14/2014 |
| b. | Special City Council Meeting                         | 2/13/2014 |
| c. | Finance Committee Meeting                            | 2/4/2014  |
| d. | Human Resources Committee Meeting                    | 2/6/2014  |
| e. | Flood Control Meeting                                | 2/13/14   |

**2. SCHEDULE MEETINGS**

**3. REQUEST OF CITIZENS & PUBLIC COMMENT**

**4. APPOINTMENTS**

**Shawn Quinlan:** Assistant City Attorney

**5. PROCLAMATIONS**

**6. STAFF REPORTS**

**7. CITY COUNCIL COMMENTS**

**8. MAYOR COMMENTS**

**9. COMMITTEE RECOMMENDATIONS**

*Finance Committee: 2/4/2014*

Recommendation to stay with CPI as the water/sewer collection company

*Human Resources Committee: 2/6/14*

- Recommendation to Eliminate the Employee Handbook in the Personnel Policy Manual
- Recommendation to Approve Updated Employment Application

**10. PUBLIC HEARINGS**

**11. BID OPENING**

Printing Contract

Curb & Gutter at Triangle Park & Along Montana Avenue

## **BID AWARDS**

### **12. UNFINISHED BUSINESS**

### **13. NEW BUSINESS**

14. A. **RESOLUTION NO. 3664:** A Resolution Revising City Of Miles City Personnel Policy Manual Regarding Family And Medical Leave Guidelines.
- B. **RESOLUTION NO. 3665:** A Resolution Authorizing The City Of Miles City To An Agreement Entitled "City Agreement Cold Milled Bituminous Material" With The State Of Montana Department Of Transportation
- C. **RESOLUTION NO. 3666:** A Resolution Approving and Adopting the Montana Municipal Interlocal Authority Revised and Restated Workers' Compensation Program Agreement
- D. **RESOLUTION NO. 3667:** A Resolution Authorizing the City of Miles City to an Agreement Entitled "State of Montana Agreement" with the State of Montana Department of Transportation for Partial Funding of the Historic Preservation Officer Position
- E. **RESOLUTION NO. 3668:** A Resolution Authorizing The City Of Miles City To Enter Into An Agreement Entitled "Interlocal Agreement For Montana Firefighters Testing Consortium" With Certain Cities And Fire Districts In The State Of Montana.
- F. **RESOLUTION NO. 3669:** A Resolution Authorizing The City Of Miles City To Enter Into An Agreement With Lucas & Tonn, P.C., A Montana Corporation, For Providing Legal Services Of Assistant City Attorney.
- G. Approval of Reimbursement to City Court for \$100 Cash Loss
- H. Kron Boundary Line Adjustment
- I. Final Plat Approval of Horizon Park Subdivision

### **15. ADJOURNMENT**

Public comment on any public matter that is not on the agenda of this meeting can be presented under 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.

Council Minutes of 1-14-14

Ken Gardner, Sheena Martin, Mark Ahner and Roxanna Brush

\*\* Councilperson Ahner moved to approve the Mayor's nominations for the Human Resources Committee, seconded by Councilperson Brush and passed unanimously.

Mayor Grenz nominated the following councilpersons for the Flood Control Committee:

Ken Gardner, Sheena Martin, John Hollowell and Dwayne Andrews

\*\* Councilperson Brush moved to approve the Mayor's nominations for the Flood Control Committee, seconded by Councilperson Ahner and passed unanimously.

Councilperson Brush noted Carol Hardesty and Dawn Leidholt also need to be reappointed to the Planning Board, as their terms are expiring. This will be placed on the next agenda.

minutes need to be amended as follows:

\* She also informed the Council that it needs to appoint a representative from its number to the Planning Board. Councilperson Hollowell has been serving in this capacity, and she moved that he continue in this position. The City Attorney then suggested this appointment should be placed on the next agenda. Councilperson Brush then withdrew her motion.

After further discussion with the City Attorney, it was determined that the Council member could be appointed, but the public appointments would need to be set on the next agenda.

\*\* Councilperson Brush then moved to have John Hollowell sit on the Planning Board to fulfill the Council's commitment to the Board. The motion was seconded by Councilperson Ahner and passed unanimously.

ELECTION OF COUNCIL PRESIDENT

\*\* Councilperson Ahner nominated Councilperson Hollowell as Council President, seconded by Councilperson Andrews.

Mayor Grenz asked for other nominations. Hearing none, the nominations were closed.

**SPECIAL COUNCIL MEETING MINUTES    February 13, 2014  
8:00 p.m.**

**CALL TO ORDER**

The Special Council meeting was held Thursday, February 13, 2014, in the Conference Room at City Hall, 17 S. 8<sup>th</sup> Street, at 8:00 p.m. Mayor C. A. Grenz called the meeting to order and led the Council in the Pledge of Allegiance.

Council Members present were Mark Ahner, Jerry Partridge, John Hollowell, Roxanna Brush, Dwayne Andrews, Susanne Galbraith, Kenneth Gardner, and Sheena Martin.

Also present were City Attorney Dan Rice, City Clerk Lorrie Pearce, Fire Chief Dale Berg, Police Chief Doug Colombik, Public Works Director Scott Gray, Public Utilities Director Al Kelm, and Human Resource/Payroll Officer /Minute Recorder Billie Burkhalter.

**APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**

**City Council Meeting 1/28/2014**

*\*\* Councilperson Galbraith moved to accept the City Council minutes of January 28<sup>th</sup>, 2014, as presented, seconded by Councilperson Gardner and, on roll call vote, passed unanimously, 8-0.*

**SCHEDULED MEETINGS**

- Planning Board Meeting on 2/18/2014 @ 6:00 p.m.
- Flood Control Meeting on 2/21/2014 @ 6:00 p.m.
- Public Information Meeting on 3/6/2014 @ 6:00 p.m. at the Miles Community College Room 106 & 107
  - this meeting is for the Community and it concerns information gathering for Floodplain

**APPOINTMENTS**

- **Housing Authority Board: Brent Leischner**

Mayor Grenz stated he would like to appoint Brent Leischner to the Housing Authority Board with consent of the Council. He asked the Council Members who were in favor to say aye. All Members said aye. No one was opposed.

**PUBLIC HEARINGS**

**Resolution No. 3662:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing

Amendment Of Final Budget For FY 2013-2014 For  
Allocation Of Personnel And Associated Costs  
Between The Fire Department And Ambulance Funds  
And Providing For Hearing Thereon

Mayor Grenz requested any discussion from the City Council before going to the Public. There was none.

Mayor Grenz called three times for comments from opponents, then three times for comments from proponents.

Mayor Grenz questioned Fire Chief Berg why the overtime was not in the Ambulance instead in the Fire Department. Fire Chief Berg responded that it is in the Ambulance.

Hearing no comments either for or against, the hearing was closed.

**Ordinance No. 1258:** An Ordinance Enacting A New Section 24-96 Of The Code Of Ordinances Of The City Of Miles City, Montana To Provide For A Process For Site Plan Review

Mayor Grenz requested any discussion from the City Council before going to the Public. There was none.

Mayor Grenz called three times for comments from opponents, then three times for comments from proponents. Hearing no comments either for or against, the hearing was closed.

**OLD BUSINESS**

**Resolution No. 3662:** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 For Allocation Of Personnel And Associated Costs Between The Fire Department And Ambulance Funds And Providing For Hearing Thereon

*\*\* Councilperson Ahner moved to defer consideration of Resolution No 3662 until next Fiscal Year after the Finance Committee has conducted its budget review for the current Fiscal Year and for the Fiscal Year forthcoming. Motion died for lack of a second.*

*\*\* Councilperson Galbraith moved to approve Resolution No. 3662: A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2013-2014 For Allocation Of Personnel And Associated Costs Between The Fire Department And Ambulance Funds, 2014 as presented, seconded by Councilperson Martin.*

Councilperson Ahner requested clarification, as it appears as though under the third “whereas” on the first page of the resolution it states 2.5 FTE personnel. However, the computed FTE sheets from the Fire Chief indicate it should be 2.3 FTE’s. He questioned if the resolution is retroactive to the beginning of the Fiscal Year, July 2013. City Clerk Pearce indicated that it was. Councilperson Ahner stated he wonders why there is a necessity to pass this resolution when the City is nearly three quarters of the way through the fiscal year. This apparently has been an ongoing problem for some time and it would be more appropriate to consider the cause of the problem of being overrun on an annual basis in a more intensive review. Councilperson Ahner estimated that 90% of the dispatch calls are ambulance calls and with the passage of this resolution only 28% of costs will be regulated to the Ambulance Fund. This may look good from the standpoint of improving the appearance of the Ambulance Fund, but all that is being done is that the General Fund will have to come up with \$118,400 to support the fund.

Chief Berg clarified that the number of ambulance calls are about 78%. When he did his research on the Ambulance Fund, it was originally set up to have 4 FTE’s. Then it went to a percentage in 2006-2007, which was 70-30, or 9.5 FTE’s in the General Fund and 4.5 FTE’s in the Ambulance Fund. The Council has continued to increase the FTE percentage. During that time the previous Fire Chief stated it would not withstand that many people. They also have not had a rate increase since 2005.

Councilperson Ahner stated that in working with the former Fire Chief, the goal had always been to have 7 FTE’s in the Ambulance Fund. This number had come from a private ambulance service that stated for a City of this size and number of calls it would take that many to run a full time ambulance service. Councilperson Partridge agreed with this.

Councilperson Hollowell stated the Finance Committee’s feeling on this was that it is a slow process in congruence with other plans the Fire Department is working on to try and make the Ambulance Fund more efficient. Seven is probably what the work load requires but is unsustainable.

Mayor Grenz stated, looking forward on the budget, that no matter what is put into the General Fund they are going to need to find that money. It might come down to a decision of keeping essential personnel and nonessential personnel. Typically that would be in the Parks Department. Councilperson Andrews asked if the reserves were not sufficient enough to cover this shortfall. Mayor Grenz responded that the Auditors stated there needs to be 25% of the General Fund in reserve. Councilperson Andrews stated

it is there for emergencies, and Councilperson Partridge agreed. Mayor Grenz did not.

*\*\* On roll call vote, motion passed 6-2, with Councilperson Ahner and Brush opposed.*

**Ordinance No. 1258:** An Ordinance Enacting A New Section 24-96 Of The Code Of Ordinances Of The City Of Miles City, Montana To Provide For A Process For Site Plan Review

*\*\* Councilperson Brush moved to approve Ordinance No. 1258: An Ordinance Enacting A New Section 24-96 Of The Code Of Ordinances Of The City Of Miles City, Montana To Provide For A Process For Site Plan Review, seconded by Councilperson Hollowell. On roll call vote, motion passed unanimously 8-0.*

### NEW BUSINESS

**Resolution No. 3663:** A Resolution Of The City Council Of The City Of Miles City, Montana, Amending Resolution 3658 And Calling For An Election On The Question Of Conducting A Local Government Review And Establishing A Study Commission To Do So.

*\*\* Councilperson Galbraith moved to adopt Resolution No. 3663: A Resolution Of The City Council Of The City Of Miles City, Montana, Amending Resolution 3658 And Calling For An Election On The Question Of Conducting A Local Government Review And Establishing a Study Commission to Do So, seconded by Councilperson Andrews.*

Councilperson Galbraith stated under Section 3, where it states vote for one, instead of a dollar amount, the Finance Committee wanted it to state "2 Mills" so the public understands this is a mill levy. Mayor Grenz stated it would be helpful to provide how much it will cost per household. Councilperson Andrews questioned if both could be done. City Attorney Rice explained that from guidance from the City Clerk's office, it can only state mill or dollars, but not both.

*\*\* Councilperson Galbraith moved to amend Resolution No. 3663: under Section 3 to strike the amount of \$14,142 and replace it with 2 Mills, one for each fiscal year, under both for and against, seconded by Councilperson Martin.*

Councilperson Hollowell questioned if they could define what a mill is on the ballot. City Clerk Pearce stated that the County is also doing this, so maybe both entities could put something in the paper. She explained this is exactly what the MCA states. Mayor

Grenz stated it is only fair to let the public know what this will cost them.

\*\* *On roll call vote, the amended motion passed unanimously, 8-0.*

\*\* *On the original motion, on roll call vote, motion passed unanimously 8-0.*

### **Approval of January Claims**

\*\* *Councilperson Andrews moved to approve the January Claims as presented, seconded by Councilperson Gardner.*

Councilperson Ahner questioned if the Kruzfeldt and Jones payment was for the pending grievances. City Clerk Pearce stated it was.

Councilperson Ahner asked what the Montana Department of Transportation payment was for. Director Gray explained that was for the City's portion of the Tatro project.

Councilperson Ahner questioned what the Christina Lucinda Heller website payment was for. City Clerk Pearce stated it was for RSVP.

Councilperson Ahner explained the payment to the Custer County Clerk and Recorder in the amount of \$4382.00 for General Elections. The Council had set aside \$9000, based on the fact that the Elections office had informed them they would have to pay for the primary as well as general election. Instead of the \$9000 it only ended up being \$4382.00.

Councilperson Ahner questioned dog tag payments. City Clerk Pearce responded it was for licensing dogs.

*On roll call vote, the motion passed unanimously, 8-0.*

### **ADJOURNMENT**

\*\* *Councilperson Galbraith moved to adjourn the meeting, seconded by Councilperson Brush and passed unanimously, 8-0.*

---

**C.A. Grenz, Mayor**

**ATTEST:**

---

**Lorrie Pearce, City Clerk**



## **Finance Committee Meeting February 4, 2014**

The **Finance Committee** met Tuesday, February 4, 2014, at 6:00 p.m. in the City Hall Conference Room. Present were Committee members Sue Galbraith, Dwayne Andrews, John Hollowell and Sheena Martin. Also present were Councilperson Ken Gardner, Mayor C.A. Grenz, Utility Billing Clerk Patti Bishop, Fire Chief Dale Berg, Public Utilities Director Al Kelm, Public Works Director Scott Gray and Recorder/City Clerk Lorrie Pearce.

### **Bid Review and Recommendation for Collection Company**

Clerk Pearce explained the difference of the collection bids between CPI (Collection Professionals, Inc.), DCI (DCI Credit Services, Inc.) and Main Street Business Services. The following was proposed for services on disputed accounts and legal collection: CPI would be 30/40%, DCI would be 33 1/3/50%, and Main Street Business Services would be 30/50%. After a short discussion, it was decided to stay with CPI.

*\*\* Committee Member Andrews moved to remain with CPI. The motion was seconded by Committee Member Martin; the motion carried unanimously, 4-0.*

### **Discussion on Collection Policy for Sewer and Water Department**

Billing Clerk Bishop explained the proposed changes on the new Collection policy.

- 1.0 **General:** Will stay the same, except that the City would be adopting the MCA code to make property owners responsible for old past due bills.
- 2.0 **Agreements:** The City would still have the Customer Information form to fill out. Proposed is the Landlord Rental Agreement form, which would be required by all landlords if they wish the City to bill the tenant.
- 3.0 **Service Lines:** Changed the wording from the property owner to the City being responsible for the curb stop if broken.
- 4.0 **Landlord/Tenant:** "The curb stop for the property must be in a proper working condition for the tenant to be billed", will be deleted. Proposed is that the final bill for all tenants will be sent in care of the landlord. The landlord will then have the thirty days to pay the

final bill, and all past due charges left by tenant. If charges are not paid, the process in section 5.0 will then be followed. The property the charges were accrued on would then be noticed for termination of service. This would make someone responsible for the charges.

- 5.0 **Delinquencies:** Payment for water and sewer charges are due when billed and would become delinquent after 30 days from the date of the bill. It previously stated 60 days. Customer would now have forty eight hours to respond to the past due notice (door hanger). This would be changed from one week. Also added would be a \$ 20.00 charge for a late payment penalty fee, and the reconnect fee changed from \$18.00 to \$35.00. This cost was determined by calculating roll up cost of City employees that are involved in the process. Director Kelm thought that there should be a clarification added to the policy explaining that the \$ 20.00 fee would be waived to the Landlord if it wasn't paid by the tenant. Mayor Grenz suggested that something be added to specify what would happen to the charges if the landlord passes away. It was decided to ask the City Attorney if language should be added, or if MCA 7-13-4309 would cover this situation. Also, a clarification of no charges for turn on/turn off would be added. Billing Clerk Bishop explained that it wasn't in the old policy, but that is how the City is currently handling the situation.
- 6.0 **Discontinuation of Service:** MCA 7-3-4309 would be added to the first paragraph, and the re-connect fee was changed from \$18.00 to \$35.00.
- 7.0 **Deposits:** No change
- 8.0 **Turn-on/Turn-off** The reconnect fee would be changed from \$18.00 to \$35.00.
- 9.0 **Unlawful Acts:** No change
- 10.0 **Appeals:** Utility Billing Clerk would be added to the appeal process.

On the Agreement for Payment of Past Due Accounts form, the wording would be changed to determine that the landlord would be responsible for the entire amount due. The reconnect fee of \$35.00 would be added.

On the Landlord Rental Agreement Form, in the section that states; "If water service is disconnected due to non-payment, service will not be resumed until all delinquent charges, including prior renter charges, together with any administrative fees

are paid in full" was added. MCA -13-4309 would be adapted to the third bullet, and MCA 70-24-303g would be adapted to the sixth bullet.

On the Past Due Notice Letter a \$20.00 late payment penalty fee, a \$35.00 re-connect fee and a \$50.00 deposit would be added.

On the Final Disconnect Notice, the \$35.00 re-connect fee was changed from \$18.00 to \$ 35.00, and the \$20.00 penalty fee and credit cards accepted would be added.

Committee Member Hollowell suggested that under the deposit section the wording would be changed from "may be charged" to "shall be charged".

Director Kelm suggested placing notifications in the Miles City Star explaining the changes in the policy. He also suggested posting a notice in the water/sewer department.

*\*\* Chairperson Galbraith moved to make appropriate corrections and send to City Attorney Rice for approval. The motion was seconded by Committee Member Andrews; the motion carried unanimously, 4-0.*

### **Bid Review and Recommendation for Fire Alarms**

Director Gray explained he received two quotes to install the fire alarm system in City Hall. He explained that the installation is behind in the process, and felt it should have been completed two years ago. The two quotes were from Kenco for an amount of \$13,993 and the Fire Company for an amount of \$9950. He felt that the quotes were very similar. The difference is the Fire Company has a 2-year warranty and provides a monitoring system for \$ 25.00 a month. Kenco states a 90-day warranty and provides a monitoring system for \$ 65.00 a month. He also stated Kenco's service is within their 30 mile radius. If it's outside the radius, there would be an additional charge. He recommended the City accept the Fire Company quote.

Chairperson Galbraith mentioned that the quotes were through the month of December. Gray explained that he didn't think the quote would change more than \$ 25.00 to \$ 30.00.

*\*\* Committee Member Hollowell moved to recommend to Council approval of accepting the Fire Company bid. The motion was seconded by Committee Member Martin; the motion carried unanimously, 4-0.*

### **Review Cash Report**

Clerk Pearce explained all accounts that were in the negative. Most were taken care of or they will be taken care of after grants are received. The funds that will need to be looked at closer at budget time are:

1. Library- Mayor and City Attorney are meeting with the Library Foundation.
2. Emergency Disaster- Still waiting for reimbursement from the State. Clerk Pearce calls every two months to see if the monies are received. Tim Thennis from DESD reports that FEMA is so back logged, that it could be quite a while before the City receives the reimbursement. She also mentioned that FEMA will reimburse approximately \$60,000, which means the fund will be a negative \$20,000 when finalized.

**Discussion on Resolution 3662. A Resolution Pursuant To 7-6-4006 Of The Montana Code Annotated, authorizing Amendment of Final Budget For FY 2013-2014 For Allocation Of Personnel And Associated Costs Between The Fire Department and Ambulance Funds and Providing For Hearing Thereon**

Chairperson Andrews asked why the Ambulance fund was not brought up as an issue during budget time. Mayor Grenz explained that it's an enterprise fund and it should stand on its own. He was more concerned about the General Fund. Chief Berg explained the fund is made to work with no more than 4 employees. It has had as low as two employees and as high as 7.5 employees. He said there have been too many employees for too long, and it needs to be changed. Councilperson Hollowell asked Chief Berg to explain the deficit. Chief Berg replied that it's very complicated and John Ungaretti from Solestone could explain much better. Councilperson Hollowell asked if the fund's cash is an accounting shortage. Councilperson Andrews commented that the fund is \$377,000 in the hole and that is the reality.

Mayor Grenz suggested asking the public whether or not they want to fund the ambulance.

Chief Berg suggested educating the public to not use the program for every cut and scrape.

Clerk Pearce said she would run some reports to help the Committee understand how the ambulance fund got to where it is.

Galbraith said the auditors reported to her that if the City shows we are trying to solve the problem, they will work with the City.

\* \* *Committee Member Hollowell moved to recommend that the City Council approve Resolution 3662 The motion was seconded by Committee Member Martin; the motion carried unanimously, 4-0.*

**Request of Citizens**

-None

**Adjournment**

There being no further business, *Committee Member Martin moved to adjourn the meeting, seconded by Committee Member Andrews.* The meeting was adjourned at 7:35 p.m.

Respectfully Submitted:

---

Chairperson Susan Galbraith

---

City Clerk Lorrie Pearce

## **Human Resources Committee**

### **February 6, 2014**

The **Human Resources Committee** met Thursday, February 6, 2014, at 6:00 p.m. in the Conference Room at City Hall. Present were Committee Members Sheena Martin, Ken Gardner, Roxanna Brush and Mark Ahner. Also present was Mayor C.A. Grenz, Public Utilities Director Al Kelm and Committee Recorder HR/Payroll Officer Billie Burkhalter.

#### **1. Election of Chairperson**

*\*\* Committee Member Ahner moved to elect Roxanna Brush as Chairperson of the Human Resources Committee. Motion seconded by Committee Member Gardner and, on roll call vote, motion passed unanimously with Committee Member Brush abstaining.*

#### **2. Revised Customer Service job description**

Director Kelm presented the Committee with an updated Customer Service job description marked Customer Service/HEO (Heavy Equipment Operator). He explained that the current Customer Service Foreman is retiring and he would like to do is make this position a Customer Service/HEO position, so that whoever applies for the position will also work with the Utility crew at the City shop during their down time. Committee Member Ahner questioned how much down time there is for this position. Director Kelm stated it all depended on the time of year, such as during spring and fall this position will be busy all day with lawn accounts. It will also be busy doing turn on's and off's for the Water department. The winter can be more of a down time for the position. Committee Member Ahner stated he liked that this position would be versatile, but questioned that, with this new description, if it goes in house the individual would request a pay raise due to extra duties. Director Kelm explained that creating this position will actually save the City money, as this will no longer be a Foreman position but would be at a lower HEO pay rate. Committee Member Ahner requested that the job title "Heavy Equipment Operator not be abbreviated but be spelled out on the job description.

*\*\* Committee Member Ahner moved to approve the job description as presented for the Customer Service/Heavy Equipment Operator. Motion seconded by Committee Member Martin and, on roll call vote, motion passed unanimously.*

#### **3. Recommendation by HR/Payroll Officer to eliminate the Employee Handbook in the Personnel Policy Manual**

HR Officer Burkhalter explained that in the current Personnel Policy Manual there is a section called "Employee Handbook", and it is basically a condensed version of the manual. While currently trying to update the Personnel Policy Manual, she questioned why it was needed. The whole policy manual will be going out to employees and the Handbook is repetitive. It would be better to have a single document, as it is easier to

maintain and there is less opportunity to interpret something different between the two documents. Committee Member Ahner questioned that, when the City gets a new employee, do he/she get the entire Personnel Manual? HR Officer Burkhalter stated she plans to email the manual if an email address is provided. Otherwise, she will give the employee a physical copy. Chairperson Brush stated it's been her experience that most employers only give out the Employee Handbook and not the whole Personnel Manual. HR Officer Burkhalter stated she has spoken with John Cummings, who is the HR and Risk Management Programs Manager with MMIA, the City's insurer, and it is his recommendation that the entire manual be provided. Committee Member Gardner stated if this helps clean the system up, he is for it as long as the same information is being provided.

*\*\* Committee Member Ahner moved to recommend eliminating the Employee Handbook, as it is a duplicate in the Personnel Policy Manual. Motion seconded by Committee Member Martin and, on roll call vote, motion passed unanimously.*

#### **4. Review and Recommendation of updated Family Medical Leave Act Policy**

HR Officer Burkhalter stated that, after reviewing the City's current Family Medical Leave Act (FMLA) policy, she noted the policy was not helping anyone, whether Directors or employees, and is outdated with the Federal guidelines. The new proposed policy consists of a "Director FMLA Kit", an "Employee FMLA Kit" and a "FMLA Decision Tree", which makes it easier for Directors and employees to follow the policy, as it gives step-by-step instructions. HR Officer Burkhalter stated she had City Attorney Rice review this policy, and it meets with his approval.

*\*\* Committee Member Ahner moved to recommend to City Council to approve the new Family Medical Leave Act policy as submitted by the Human Resource Officer. Motion seconded by Committee Member Martin and, on roll call vote, motion passed unanimously.*

#### **5. Review and Recommendation of updated Employment Application**

HR Officer Burkhalter stated that she had updated the City's Employment Application with format changes and added "Political Belief" to the Equal Opportunity Employer section, as per the recommendation of John Cummings, of MMIA. She also eliminated the phrase "GED" as it is not a term used anymore, and replaced it with "Equivalent". HR Officer Burkhalter explained that she does have plans to fully update the City's Employment Application, but in the meantime requested the Committee approve the minor changes, as this form can now be uploaded to the City's website and Job Service's website.

*\*\* Chairperson Brush moved to approve the new Employment Application as presented. Motion seconded by Committee Member Martin.*

Committee Member Ahner questioned the language at the bottom of the application concerning falsification or misrepresentation of credentials, as the City has

had this issue in the past. HR Officer Burkhalter stated the Committee had previously passed a very good Background Check Policy that would uncover any inconsistencies in the job application. Committee Member Ahner further questioned the need for the language of "Political Belief" and if it's in State Statute. HR Officer Burkhalter stated that it is in the Personnel Policy manual and is a recommendation of John Cummings, but is unsure about State Statute. She will find out more information concerning this for the Committee when she presents the in-depth employment application.

*\*\* On roll call vote, motion passed unanimously.*

## **6. Request of Citizens**

Chairperson Brush stated she will contact Labor Attorney Martin in regard to the current Grievances and let him know she is now the chair.

## **5. Adjournment**

*\*\* Committee Member Ahner moved to adjourn the meeting. The motion was seconded by Committee Member Martin and passed.*

The meeting was adjourned at 6:45 p.m.

Respectfully submitted,

---

Billie D. Burkhalter, Recorder

---

Chairperson Roxanna Brush



**CITY OF MILES CITY**  
**POSITION DESCRIPTION**

**FEBRUARY, 2014**

**POSITION:** Customer Serviceman / Heavy Equipment Operator

**DEPARTMENT:** Public Utilities Department

**ACCOUNTABLE TO:** Public Utilities Director

**SUMMARY OF WORK:** This positions main responsibility is water meter readings, customer service connection, disconnection, and repair and maintenance duties. This position will also be working with the Utilities collection and distribution department, assisting with daily tasks and doing utility locates.

**JOB CHARACTERISTICS:**

**Nature of Work:** This position performs technical, skilled labor in operation & maintenance of heavy equipment and physical duties which includes utility locations, water meter readings, updating route books, customer service connections, disconnections, repair and maintenance duties in the customer service department and Public Utilities distribution and collection department. The position requires confidentiality of sensitive information, strenuous physical labor, lifting weights up to 70 lbs, duties typically performed out of doors occasionally during inclement weather, and proper use of safety equipment and clothes for inclement weather conditions in order to prevent injury and illness. This position is a full time position, subject to call outs 24 hours per day.

**Personal Contacts:** Daily contact with the public, co-workers and management.

**Supervision Received:** Daily instructions from the Public Utilities Director.

**Essential Functions:** This position requires ability to communicate orally and in writing, read written material, ability to lift and carry heavy objects; lift and maneuver tools and equipment; update route books, exercise good judgment; make sound decisions; have physical strength and agility to perform labor duties; have good depth perception; and ability to operate and maintain heavy equipment.. This position requires the ability to communicate with the public.

**AREAS OF JOB ACCOUNTABILITY AND PERFORMANCE:**

Read and accurately record water meters; knowledge of the radio read system. At the direction of the Public Utilities Director, read water meters in the middle of the month as to have as close to 30 calendar days on each reading as possible. Deliver notices and correspondence as directed by the Public Utilities Director. Visually inspect all water meters when applicable for any irregularities and report any to the Public Utilities Director. Record readings and update books. Accurately record all meter readings for transfer to the billing department. Update route books and keep information current. Maintain inventories and customer counts.

Customer service connections and disconnections. Provides water service connections and installation for new services. Provides disconnect service for customer water shut offs. Delivers notices and correspondence to customers. Investigates complaints of low water pressure or supply and attempts to remedy the problem if possible. Assists customers in locating leaks. Installs and maintains water meters.

Perform repair and maintenance duties as directed by the Public Utilities Director. Repairs and tests water meters. Assist with the repair of curb stops. Performs maintenance and cleaning duties in the meter shop area. Operates and maintains meter testing equipment. Perform other related duties as required.

Operates and maintains heavy equipment as necessary to accomplish assigned tasks such as demonstrating upon request the safe and proper operation of back hoes, front-end loaders, hydro-flusher and other heavy equipment as necessary to perform assigned tasks; the ability to repair and maintain water lines, valves, fire hydrants, water storage tanks, repair and maintain sewer lines and manholes maintain equipment in such a manner as to prevent un-necessary repairs such as daily lubrication, checking oil, etc.; reports possible malfunctions or necessary repairs to the Shop Foreman.

### **JOB REQUIREMENTS:**

**Knowledge:** This position requires a knowledge of the operation and maintenance of departmental water meters, customer service connections and disconnections procedures, customer service repair and maintenance; safety procedures in the use of equipment and in the physical lifting of materials and knowledge of water and sewer lines for proper locates. General knowledge of operation and capabilities of a variety of hand and power tools; public utilities construction and maintenance.

**Skills:** This position requires skills in operating computer readout equipment, various small equipment, heavy equipment, utility vehicles, handling heavy materials, operating hand and power tools, maintenance, and cleaning.

**Abilities:** This position requires the ability to: accurately read and record numbers; work during inclement weather conditions; walk for extended periods of time; climb ladders and other obstacles; lift weights up to 70 pounds; communicate effectively orally and in writing; follow verbal and written instructions; adhere to and follow safety procedures; establish effective working relationships with fellow employees, supervisors, and the public.

## **EDUCATION AND EXPERIENCE:**

The above knowledge, skills, and abilities are typically acquired through a combination of education and experience equivalent to:

--High School Diploma or equivalent with basic mathematic skills and/or training.

### **Special requirements:**

--Must have a valid Montana Driver's License.

--Must have a valid Montana CDL License.

--Must be eligible for coverage by the City's insurance carriers.

--Must be able to pass background check.

## **JOB PERFORMANCE STANDARDS:**

Evaluation of this position will be based primarily upon performance of the preceding requirements and duties. Examples of job performance criteria include, but are not limited to, the following:

--Performs assigned duties.

--Maintains accurate and timely readings.

--Prepares and submits accurate and timely reports.

--Deals tactfully and courteously with the public.

--Observes work hours.

--Demonstrates punctuality.

--Establishes and maintains effective working relationships with fellow employees, supervisors and the public.

--Provides helpful and cooperative assistance to users.

--Performs routine maintenance and repairs.

-- Adheres to practices of safety in use of tools, vehicles, and equipment.

--Effectively operates tools, vehicles, and equipment to perform tasks.

- Adheres to standard's of confidentiality.
- Repairs and tests water meters.
- Provides water service connections and disconnections.
- Assists in repairing curb stops.
- Performs maintenance and cleaning duties in shop area.
- Operates and maintains meter testing equipment.
- Delivers notices and correspondence to customers.
- Investigates customer complaints.
- Ability to work in extreme temperatures and adverse weather conditions.
- Performs locates and knowledge of utilities system.

## **Flood Control Committee**

### **February 13, 2014**

The **Flood Control Committee** met Thursday, February 13, 2014, at 6:00 p.m. in the City Hall Conference Room. Present were Committee Members John Hollowell, Dwayne Andrews, Ken Gardner and Sheena Martin. Also present were Councilperson Jerry Partridge, Councilperson Susanne Galbraith, Floodplain Administrator Sam Malenovsky, Public Works Director Scott Gray, Engineer Project Manager Carl Jackson with KLJ and Recorder HR/Payroll Officer Billie Burkhalter.

#### **1. Election of Chairperson**

**\*\*** *Committee Member Andrews moved to nominate Committee Member John Hollowell as Chairperson of the Flood Control Committee, seconded by Committee Member Gardner; motion passed unanimously, 4-0.*

#### **2. Requests of Citizens/Public Comment**

-None.

#### **4. Update on Public Information Meeting**

Chairperson Hollowell moved this agenda item up for full discussion.

Carl Jackson, Project Manager, explained that the Public Informational Meeting is set for March 6, 2014, at Miles Community College. His firm will present Administrator Malenovsky with drafts of public notice advertisements consisting of media releases, mass mailings to the community and posters for her approval. They have also designed a web page specifically for this project that will be linked to the City of Miles City's website. This website will contain maps and public information as it becomes available. When it goes live, it will have the ability for the public to make comments or ask questions through the web page.

Carl Jackson, Project Manager, emphasized that this meeting is a Public Information meeting and they are intentionally not calling this a "Public Input" meeting, as they want to distinguish between the two. Carl Jackson explained this is a high level study and, at this point, they are not going to get into the fine details. He wants to make sure to let the public know that they are in the initial stages of this project. Ultimately, the first step is to analyze all the alternatives available to the City with a recommendation on how to move forward with flood control and insurance issues.

Carl Jackson explained that the general format of the meeting will have an introduction to his firm with a formal presentation of the project overview. Then he plans to break out the audience into their prospective wards, each with a facilitator to outline how their area is affected. He feels that this will be advantageous due to each

ward having different issues and concerns. Once this is completed, they will all come back together as a whole group, and they will be provided an overview or summary of the questions and feedback they received. Administrator Malenovsky explained that each Ward is affected differently. By conducting the meeting as described, it will facilitate communication and make people more comfortable about asking questions on how their individual ward is affected.

Administrator Malenovsky explained that the final meeting will be scheduled sometime after the Flood Awareness Day in April, depending upon comments from DNRC (Department of Natural Resources and Conservation), USACE (United States of Army Corp of Engineers) and FEMA (Federal Emergency Management Agency).

Carl Jackson advised the Committee that he wanted this meeting to be as successful as possible and, if they had any ideas that would enable this, please contact Administrator Malenovsky.

Committee Member Gardner explained that his Ward, which is Ward I, is very concerned about the flood issue and will be very vocal at this Public Informational Meeting. He stated that he foresees three major questions being asked; first, does this affect my home; second, how much it is going to cost; third, how long is it going to take. Carl Jackson replied that one of their most important recommendations is to get aggressive with a strategy. This might be a combination of planning internally with the Community to see what funding mechanisms needed to be considered. There also needs to be a political strategy at a State and Federal level.

Councilperson Galbraith requested a cheat sheet be provided for the meeting for definitions on floodway, flood fringe, LOMA etc. Administrator Malenovsky advised the Committee that they are in the process of completing one and it will be available in time for the meeting.

### **3. Approval of Flood Plain Ordinance**

Administrator Malenovsky explained to the Committee that the proposed Flood Plain Ordinance is from State and Federal regulations, and she has marked the amendments in the document that she feels are important for the City of Miles City. Chairperson Hollowell stated this is a new revised Flood Plain Ordinance that would repeal the old ordinance if adopted.

Due to time constraints, Committee Member Andrews stated it would be acceptable to have Administrator Malenovsky present the Committee with her changes and recommendations for the final Flood Plain Ordinance. Committee Member Gardner was in agreement. Chairperson Hollowell requested Administrator Malenovsky keep the proposed Ordinance intact and note any amendments off to the side of the document that she feels are necessary. Committee Member Martin agreed.

Administrator Malenovsky wanted to point out that a big issue between NFIP

(National Flood Insurance Program) and FEMA is how they do not communicate very well together. She referenced the City's Ordinance currently reads if a homeowner completes a crawlspace, the crawlspace floor has to be at or above base flood elevation(BFE) with the lowest floor of the structure having to be at BFE plus two. The problem with that, insurance wise, is the lowest floor will be considered at BFE for insurance purposes. The proposed ordinance states the same as the current ordinance, with the one change being that the crawlspace enclosure must also meet wet flood proofing requirements. This means that now they have to put vents in that crawl space. With this addition of the wet proofing requirement, the next lowest floor, which is at BFE plus 2, will be used for insurance rating purposes.

*\*\* Committee Member Martin moved to table approval of the Flood Plain Ordinance until the next scheduled meeting, seconded by Committee Member Andrews and, on roll call vote, motion passed unanimously, 4-0.*

## **5. Adjournment**

*\*\* Committee Member Martin moved to adjourn the meeting, seconded by Committee Member Gardner and passed unanimously, 4-0.*

There being no further business, the Committee adjourned at 7:20 p.m.

Respectfully Submitted,

Flood Control Committee Chairperson

---

Billie D. Burkhalter, Recorder

---

John Hollowell, Chairperson

## INVITATION FOR BIDS

Sealed bids for a printing contract for the City of Miles City will be received by:

City of Miles City  
17 South 8<sup>th</sup> Street  
Miles City, Montana 59301

Bids will be received by the City Clerk at the office of the City Clerk in Miles City, Montana until 5:00 PM local time on Tuesday, February 25, 2014, and then publicly opened and read aloud at that evening's City Council meeting. Late bids shall not be accepted. All interested parties are invited to attend.

For details and types of documents to be printed, please contact Lorrie Pearce, City Clerk of the City of Miles City, at 406-874-8602.

No bid may be withdrawn after the scheduled time for the public opening of bids, which is at the City council meeting on Tuesday, February 25, 2014.

The right is reserved to reject any or all proposals received, to waive informalities, to postpone the award of the contract for a period of not to exceed sixty (60) days, and to accept the lowest responsive and responsible bid which is in the best interest of the City. The City intends to award to the one contractor submitting the lowest responsive and responsible bid.

The City of Miles City is an Equal Opportunity Employer, and the Contractor is required to be an Equal Opportunity Employer.

Published in the Miles City Star at Miles City, Montana, this:

14th day of February, 2014, and 21st day of February, 2014.



# NOTICE

## INVITATION TO BID

The City of Miles City will receive sealed bids until 5:00 p.m. on Tuesday, February 25<sup>th</sup>, 2014 for the purpose of replacement of existing curb and gutter and the doing of all other work necessary and incidental to the performance of said work. The project can commence in the spring of 2014.

Bid tender forms, bid instructions and technical specifications may be obtained from the City Engineers office, City Hall, 17 South 8<sup>th</sup> Street, PO Box 910, Miles City, MT, 59301 (phone 406-234-3493).

Sealed envelopes containing bids must be plainly marked in the lower left corner and marked **“BID FOR CURB & GUTTER REPLACEMENT DISTRICT #204.”** Bids should be addressed to: City of Miles City, ATTN: Public Works Director, 17 South 8<sup>th</sup> Street, PO Box 910, Miles City, MT 59301.

The City reserves the right to waive informalities which are not inconsistent with law and to reject any or all bids. Bids must be on the forms and according to the bid instructions provided by the City. Bids cannot be withdrawn for 45 days after the actual date of the opening.

The City also reserves the right to negotiate with the lowest responsible bidder in the event all bids exceed the project budget and to award a negotiated contract to the lowest responsive bidder without further competitive bidding.

All bidders shall abide by State and Federal laws pertaining to wage rates and insurance requirements.

### **BID SECURITY**

Bid security in the amount of ten percent (10%) of the bid must accompany each bid in accordance with the Instructions to Bidders. The Contractor shall comply with all fair labor practices and the state statutes. No bidder may withdraw his bid for at least 45 days after the scheduled time for receipt of bids.

Bid security shall be made payable to the CITY OF MILES CITY in an amount of not less than ten percent of the Bidders Maximum bid price for each Bid schedule and in the form of one of the Following: (1) lawful monies of the United States, (2) a cashiers check, certified check, bank money order, or bank draft drawn and issued by a national banking association located in the State of Montana, or by any banking corporation incorporated under the laws of the State of Montana, or (3) a bid bond or bonds executed by the surety corporation authorized to do business in the State of Montana.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement, whereupon the Successful Bidder will be required to furnish Owner a contract. If the Successful Bidder fails to execute and deliver the Agreement within 15 days of the Notice of Award,

OWNER may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. Award may then be made to the next lowest responsible and qualified bidder or may be re-advertised, as the OWNER may decide. The Bid Security of any Bidder whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the Seventh day after the "effective date of the Agreement" or the forty-first day after the Bid opening whichever occurs first. Bid Security of other Bidders will be returned within fourteen days of the Bid opening. After contract is awarded, the successful bidder will be required to furnish a performance bond in the amount of one hundred percent (100%) of the contract.

Scott Gray  
Engineering & Operations

Publish Dates: February 7<sup>th</sup>, 2014  
February 19<sup>th</sup>, 2014

*Send Affidavit of publication and invoice to City Hall-Engineering Department*

**RESOLUTION NO. 3664**

**A RESOLUTION REVISING CITY OF MILES CITY PERSONNEL POLICY MANUAL REGARDING FAMILY AND MEDICAL LEAVE GUIDELINES.**

*WHEREAS*, the City of Miles City has established certain personnel policies for officers and employees of the City of Miles City, which are set forth in the City of Miles City Personnel Manual;

*AND WHEREAS*, such policies include a Family and Medical Leave policy located in Section 4.4 of the Personnel Manual, and a packet titled "Family and Medical Leave Guidelines for City Government Employees" related to Section 4.4 is located in the back of the policy manual and contains form documents related to said section;

*AND WHEREAS*, the City Council finds that certain revisions to such packet and forms is advisable based on the recommendation of the Human Resources Committee, and that the adoption of such revised guidelines is in the best interest of the City;

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

1. That the packet titled "Family and Medical Leave Guidelines for City Government Employees" which is attached hereto as Exhibit "A" shall replace the existing packet with the same title.
2. Such changes to the guidelines shall become effective immediately upon the passage of this resolution.

**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 FEBRUARY, 2014.**

\_\_\_\_\_  
C.A. Grenz, Mayor

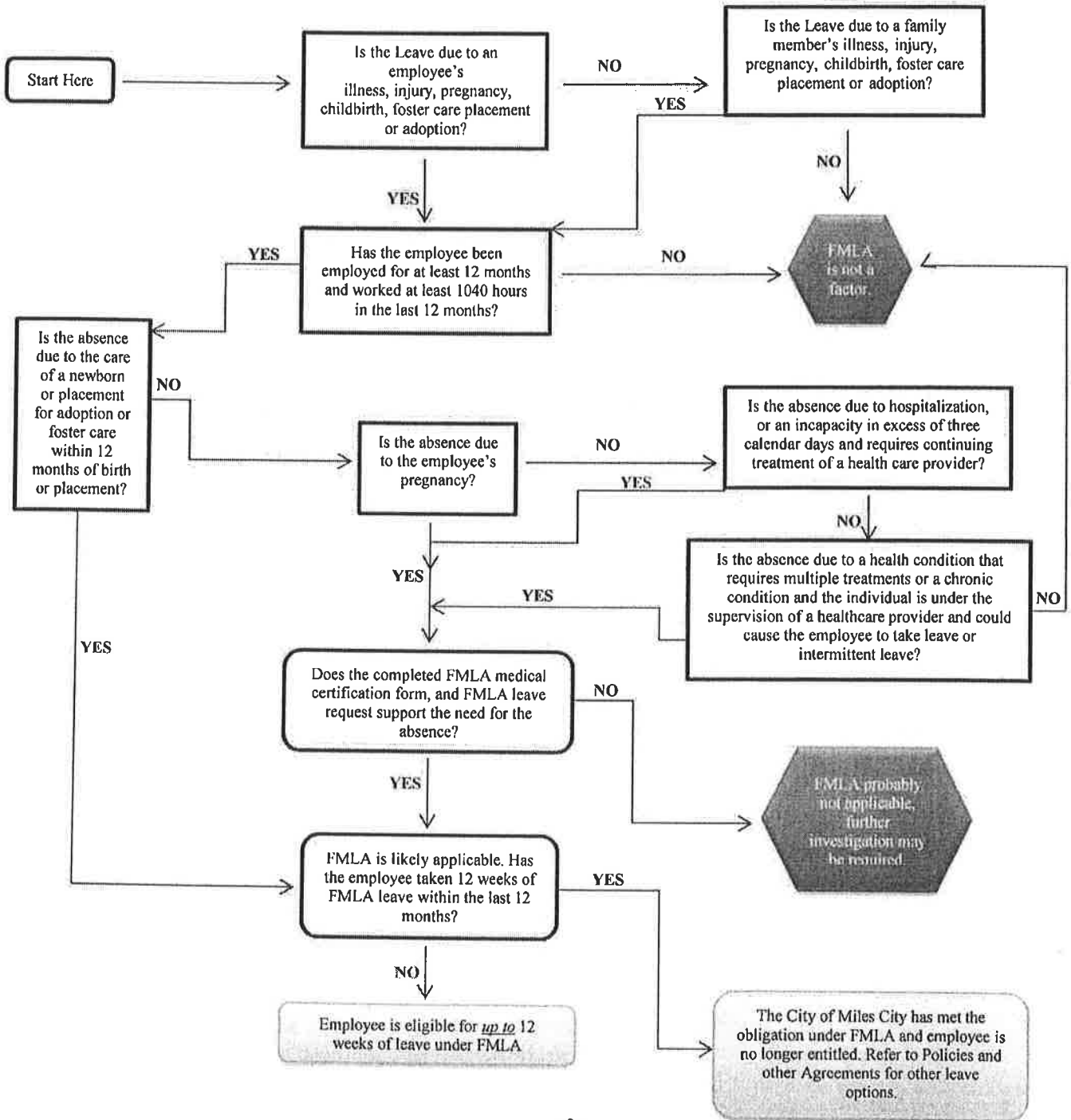
ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

**Family Medical Leave  
Guidelines for City  
Government Employees**

**City of Miles City**

## FMLA Decision Tree



# **FAMILY MEDICAL LEAVE GUIDELINES FOR CITY GOVERNMENT EMPLOYEES**

## **POLICY STATEMENT:**

- A. The City of Miles City shall comply with the Family Medical Leave Act (FMLA) of 1993 by providing eligible employees with up to 12 work weeks of unpaid leave and other corresponding benefits for FMLA-qualifying conditions.
- B. This policy outlines the basic procedures governing Family Medical Leaves. Family and Medical leaves are unpaid, job protected leaves of absence by employees for child care, personal medical care, family medical care and certain other circumstances.
- C. The City of Miles City adopts 1,040 hours as the minimum hours an employee must work in the prior 12-month period to be eligible for FMLA. (Federal guidelines require 1,250 hours worked.) This is adopted for ease of administration because it is consistent with the minimum hours worked for purposes of qualifying for other city-provided benefits.
- D. The City of Miles City **WILL NOT ENFORCE** the following FMLA regulations:
  - (1) Denial of FMLA benefits to “key employees” as that term is defined in federal regulations.
  - (2) Denial of FMLA benefits because an employee is not employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that work-site
  - (3) Limit to a combined total of 12 weeks FMLA leave for a husband and wife who both are employed by the City of Miles City. Each employee is entitled to 12 weeks of FMLA leave.

## **POSTING REQUIREMENTS:**

- A. Employers covered by the FMLA are required to post, and keep posted in a conspicuous place on the premises, a notice explaining the act’s provisions and providing information concerning the procedures for filing complaints for violations of the act. The poster and text must large enough to be easily read.

**The following guidelines will assist City Departments with implementing the City’s Family and Medical Leave practices.**

## DIRECTOR – Understanding FMLA KIT

# City of Miles City-Family Medical Leave KIT

Dear *City of Miles City* Directors,

Human Resources is supplying this kit to assist departments in handling the administrative aspects of the Family & Medical Leave under the federal *Family & Medical Leave Act*.

The kit contains all the forms needed to start the leave of absence, understand FMLA and the steps, roles and responsibilities of all the parties involved.

Please contact 874-8601, your FMLA Coordinator, if you need further information.

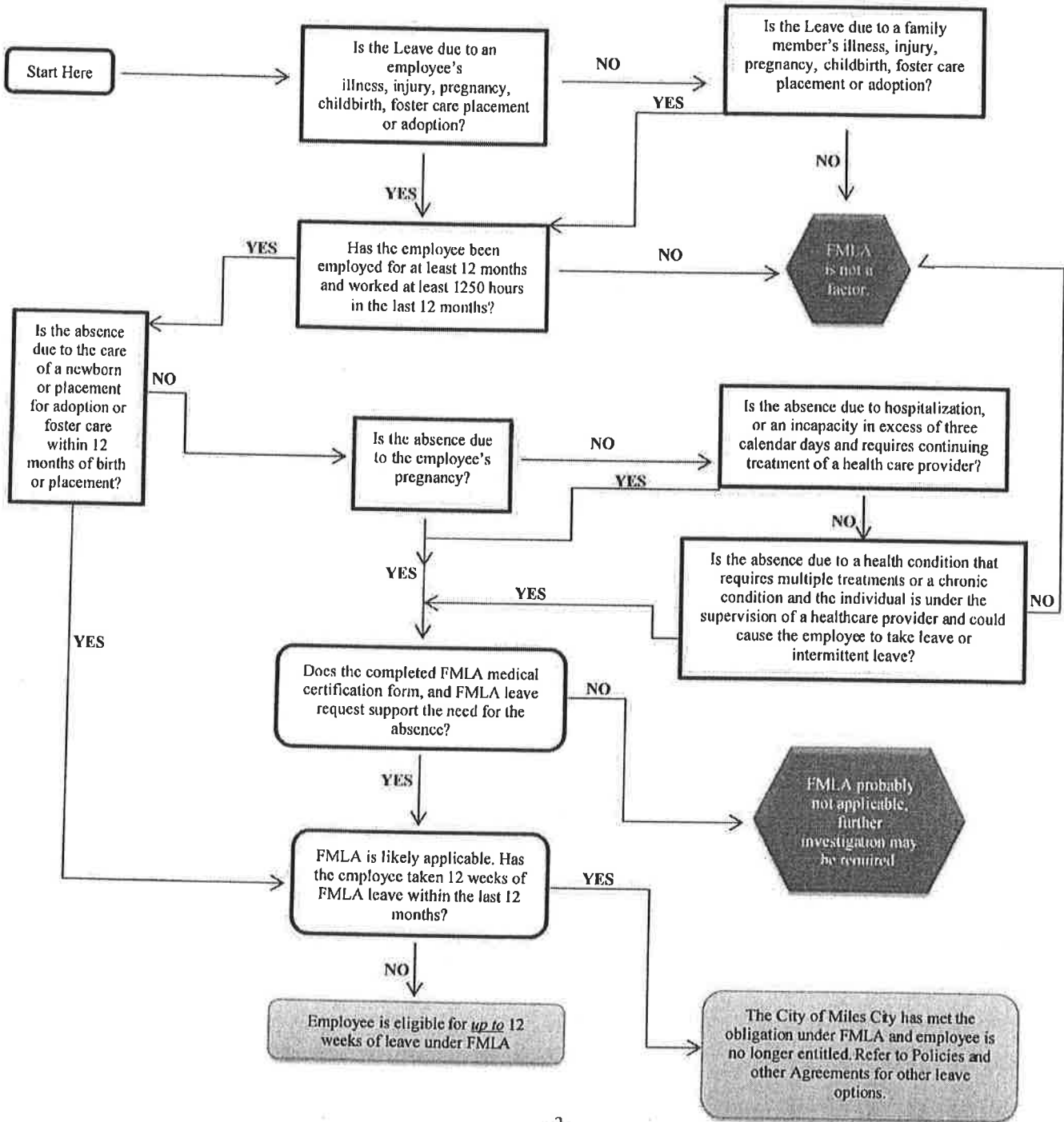
Respectfully,

*City of Miles City*, HR/Payroll Officer

### Contents

- FMLA Decision Tree: Step by Step guide to determine if FMLA applies to the employee..... Page 2
- FMLA Checklist: Step by step guide for departments and Human Resources to follow for FMLA..... Page 3-4
- Request to fill out FMLA paperwork letter: This is a sample letter that can be created specific to departments to send to employees with the FMLA paperwork..... Page 5
- FMLA Notice to Employee: The department uses this document to give the employee notice of his or her rights under the FMLA and covers several areas of topics related to FMLA..... Page 6-10
- FMLA Leave Request: A combined form for the employee to request leave and the Director and Human Resources Officer to acknowledge the request. Includes instructions for filling out the form..... Page 11
- FMLA Medical Certification: A health care provider can use this form to document the need for leave..... Page 12-14
- Return to Work Certification: A health care provider can use this form to document that the employee is able to return to work. Human Resources will issue this form to the employee with the approval or denial letter of the FMLA ..... Page 15

## FMLA Decision Tree





## CITY OF MILES CITY – FMLA Leave Checklist

- The employee requests leave:
  - ✓ *Thirty (30) days' notice is required when the need for leave is foreseeable*
  - ✓ *When advance notice is not possible, the employee must provide notice as soon as practical, typically within 2 business days.*
- The employee has called in sick 3+ days and/or requires time off work due to serious health condition for self or immediate family member.
  - ✓ *Being out sick 3+ days does not mean FMLA is automatically approved...this is just a trigger for Directors that this may be a serious health condition that would qualify under FMLA.*
- The Director will issue to the employee the **FMLA Notice to Employees, FMLA Request, and FMLA Medical Certification forms.**
- The employee can keep the **FMLA Notice to Employees** for his or her records.
- The employee fills out Section I of the **FMLA Request form** and then presents it to their Director. The Director, Human Resource Officer and the employee should discuss at that time the use of their accruals and timekeeping. FMLA-Sick is to be used first, prior to FMLA-Vacation, provided that the leave is for the employee's own serious health condition or to take care of a family member with a serious health condition.
- The Director fills out Section II of the **FMLA Request form.**
- The employee fills out Section I of the **FMLA Medical Certification form.**
- The employee then has his or her treating physician complete Section II of the **FMLA Medical Certification form** and submit it to HR within 15 days.
- If the Director receives the **FMLA Medical Certification form**, please forward it to HR immediately. Do not keep copies due to HIPAA privacy laws.
- Once Human Resources receives the completed **FMLA Request and FMLA Medical Certification forms**, the Human Resource Officer will make their recommendation to the Mayor for his/her final decision and then the employee and Director will be notified if the request is approved, provisionally approved, or denied in writing, the employee's letter will be sent to their home address.
- Human Resources will also forward the employee the **Return to Work Certificate** and Job Description if they are on approved leave for their own serious health condition.
- In Workers Compensation situations (which run concurrently with FMLA), timekeeping coding will be different. Please contact HR/Payroll with questions.
- Conversion to Leave without Pay: If the employee exhausts his or her paid leave, the department will need to code the timecard as FMLA – Leave without pay.
- The HR department will send a per pay period billing statement to the employee's home for their charges on insurance premiums & some elected voluntary benefits if they are in an unpaid FMLA status. Payments will need to be submitted to the *City of Miles City*.
- Depending on the length of FMLA Leave, periodic recertification may be required by the employee. Use the **FMLA Medical Certification form** for all recertification.

- The employee returns to work. **Return to Work Certification** reflecting fitness for duty will be required when an employee returns to work from FMLA used to treat the employee's own serious health condition. The employee must present the **Return to Work Certification**, immediately upon his or her return to work.
- If the employee is *Certified* to Return to Work with Limited or Light Duty accommodations, please contact your Director and HR to confirm if this is available prior to the employee's return.
- **FLMA Requests, FMLA Medical Certifications, Return to Work Certifications** and other FMLA supporting documentation will be maintained as confidential medical records in a file separate from the employee's personnel file. HR will maintain FMLA Records for three years.

**SAMPLE LETTER – Change specific to department and reason for leave**

---

City of Miles City  
17 S. 8<sup>th</sup>, P.O. Box 910  
Miles City, Mt 59301  
(406) 234-3462

---

July 7, 2012

John Doe  
1234 Ave D  
Miles City, Mt 59301

Re: Request to fill out FMLA Paperwork

John,

Human Resources was recently informed that you have been off work for treatment of a personal medical condition. Family Medical Leave Act can be applied if an individual has been off work 3+ days and has been treated by a physician 2 or more times for the condition.

The care of an employee's own serious health condition that makes that employee unable to perform his or her job may qualify the employee for leave from work pursuant to the Family and Medical Leave Act (FMLA). However, the condition that makes the employee eligible for FMLA status has to be medically certified by a physician.

Enclosed is FMLA paperwork for your timely completion. The Notice of Employee Rights is for you to keep for your records. Please fill out Section I of the Request for FMLA and give it to your Director who will fill out Section II and return it directly to Human Resources.

Please also fill Section 1 of the FMLA Medical Certification (2 pages) and ask your physician to fill out Section II and return the completed forms (Sections I & II) to Human Resources as soon as possible. It is satisfactory for our purposes if the doctor's office simply faxes the FMLA Medical Certification form to us at (406) 234-2903. Please have them call #874-8601 prior to faxing.

Once Human Resources receives the completed FMLA Request and FMLA Medical Certification forms, the employee and Director will be notified whether the request is approved, provisionally approved, or denied. If approved, please make sure that timecards for the time you are required to be away due to your health condition are being coded as FMLA leave. In the meantime, take care!

Sincerely,

Leta Lintern

Cc: Director  
HR/Payroll Officer  
Medical File

Enclosure- FMLA Paperwork

# CITY OF MILES CITY- FMLA Notice to Employee

## FAMILY & MEDICAL LEAVE: YOUR RIGHTS AND OBLIGATIONS

The *City of Miles City* provides family and medical leave (FMLA) to eligible employees in accordance with the federal Family Medical Leave Act. This notice summarizes your rights and obligations under this law.

The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 workweeks of unpaid job protection leave in a specified 12-month period, and requires group health insurance benefits to be maintained during the leave as if employees continued to work instead of taking leave.

Employees taking FMLA leave for their own serious health condition, or leave to care for a family member with a serious health condition, will be *required* to use their accrued, paid sick leave prior to being granted FMLA leave without pay. If the leave is for a reason that qualifies as FMLA leave and the employee's sick accruals are exhausted the employee has the option to use his or her accrued, paid vacation, but is not required to. The total of the paid and unpaid FMLA leave will count against the 12-workweek FMLA leave entitlement.

### Purpose

FMLA allows employees to balance their work and family life by taking leave for certain family and medical reasons. The FMLA seeks to accomplish this purpose in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.

### Eligibility

In order to be eligible for FMLA an employee must have been employed by the City of Miles City a cumulative total of at least 12 months prior to leave *and* have worked 1,040 hours (exclusive of vacation, sick leave, holidays) in the 12 months preceding leave time. The 12 months of employment need not be consecutive months. The 1,040 hours include only those hours actually worked. Paid leave and unpaid leave, including FMLA leave, are not included.

### Entitlements

→ Leave of up to a total of 12 workweeks in a 12-month period for one or more of the following reasons:

- For the birth of a son or daughter, and to care for the newborn;
- For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- To care for an immediate family member (spouse, child, or parent – but not a parent “in-law” with a serious health condition; and
- When the employee cannot perform the essential functions of his or her job because of a serious health condition.
- \*Active Military duty for an employee with a spouse, son, daughter or parent who:
  - Is on active duty in the Armed Forces in support of a contingency operation
  - Has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation
    - A “Contingency Operation” is an action or operation against an opposing military forces

→ Leave of up to a total of 26 workweeks in a 12-month period for the following reason:

- For a caregiver (which is defined as a spouse, son, daughter, parent or nearest

blood relative) of a recovering service member, to care for the individual. The recovering service member must be a member of the Armed Forces (including the National Guard and Reserves) who is undergoing medical treatment, recuperation or therapy, is in an outpatient status, or is on the temporary disability retired list, for a serious injury or illness. A serious injury or illness is one incurred while in active duty that may render the person unable to perform the duties of the member's office, grade, rank or rating. Employees are entitled to only one 26-week leave period to care for a wounded service member during the employee's employment.

#### **Advance Notice**

Thirty (30) days advance notice is required if your need for leave is foreseeable. When leave is not foreseeable notice "as soon as practicable" needs to be provided. "As soon as practicable" generally means verbal notice to the City typically within two (2) business days of learning of the need to take FMLA leave.

Employees are required to give sufficient information to their Director so that the Director understands that the employee needs leave for an FMLA-qualifying reason (the employee need not mention FMLA when requesting leave to meet this requirement, but must explain why the leave is needed).

If employees do not make their Directors aware that they were absent for FMLA reasons and the employee wants the leave counted as FMLA leave, he or she must provide timely notice, generally within two (2) business days of returning to work, that leave was taken for an FMLA-qualifying reason.

#### **Calculation of FMLA by the City of Miles City**

FMLA leave is calculated on a "Rolling" 12-month period beginning with the FMLA leave request date. At the time, an employee requests FMLA leave, records for the previous twelve months will be reviewed to determine if FMLA leave has previously been used and the amount of leave an employee is eligible to receive forward.

#### **Serious health condition**

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- A period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider;  
or
- Any period of incapacity due to pregnancy, or for prenatal care; or
- Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.);  
or
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- Leave for multiple treatments by a health care provider for a condition that likely would result in an incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

#### **Immediate family members**

An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law". The terms son or

daughter does not include Individuals age 18 or over unless they are “incapable of self-care” because of mental or physical disability that substantially limits one or more of the “major life activities” as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (ADA). The only exception to the above definition of immediate family member is for Military Personnel regarding Active Duty and Caregiver leave however with one additional member of the nearest blood relative.

### **Intermittent Leave**

FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

- Intermittent/reduced schedule leave may be taken when medically necessary to care for a serious ill family member, or because of the employee’s own serious health condition
- Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the City’s approval.

Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. However, due to the intermittent schedule, the 12-week entitlement will be calculated using 480 hours for full-time employees who work forty hours a week. The amount of FMLA leave for part-time employees will be pro-rated.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with the City to schedule the leave so as not to unduly disrupt the City’s operation, subject to the approval of the employee’s health care provider. In such cases, the City may transfer the employee temporarily to an alternative job with equivalent pay and benefits that better accommodates recurring periods of leave better than the employee’s regular job (if available).

### **FMLA Approval**

Once Human Resources receives the completed FMLA forms, the employee and Director (who signed the FMLA Request form) will be notified, in writing, if the request is approved, provisionally approved, or denied. The letter will be mailed to the employee’s home address.

*The final decision on the amount of approved leave time will be based on the medical certification stating the time needed.*

### **Medical Certification**

The City requires that the need for leave for a serious health condition of the employee or the employee’s immediate family member be supported by a medical certification issued by a health care provider.

Exceptions to this are:

- Request for Military Active Duty:
  - You will need to provide a copy of the individual’s military orders as proof of certification.
- Requests for adoption:
  - You will need to provide a copy of the adoption paperwork as proof of certification.
- Request for birth:
  - No medical certification is required in the event of birth.

The employee has 15 calendar days to obtain the required certification and return it to the Human Resources office.

The City may require the employee to obtain a second or third opinion if it doubts the validity of the medical certification. The City also may require recertification once every 30 days, at the employee's expense, during the FMLA leave. However, there are some exceptions to this time frame that would allow recertification prior to the end of this 30 day period. Examples of this would be:

- the employee requests an extension of the leave
- the City doubts the validity of the certification
- the original certification has changed
- the employee is unable to return from leave

A "health care provider" is defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, or nurse-midwife who is authorized to practice by the State and performing within the scope of their practice as defined by State law.

#### **Timekeeping while on leave**

It is the responsibility of the employee to make arrangements with their Director. The employee must use FMLA-Sick accruals until exhausted and then may use the following in any order:

FMLA –Vacation and/or Compensatory Time (if applicable)  
and/or  
FMLA –w/out pay

According to 29 C.F.R. Section 825.207 (i), Compensatory time cannot be charged against the employees FMLA leave entitlement. However, the City does require that all sick leave accruals be exhausted prior to going to an unpaid status.

#### **Pay**

The total of the paid and unpaid FMLA leave will count against the 12-workweek FMLA leave entitlement.

#### **Holiday Pay**

Yes, the holiday hours will count towards the FMLA entitlement, however in order to be paid; the employee has to be in a paid status either the day before or the day after the holiday. (MCA 2-18-603). If the employee is on an unpaid FMLA leave, they may not be eligible for the holiday pay.

#### **While on Leave**

The City may not restrict your activities. However, we do have an Outside Employment Policy that has to be adhered to – refer to Personnel Policy manual. The protections of FMLA will not, however, cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

#### **Health Benefits**

The City is required to maintain group health insurance coverage for an employee on FMLA leave on the same terms as if the employee continued to work. However, during an unpaid FMLA leave or after the first 32 hours if you are on Workers Compensation (which runs concurrently with FMLA), the employee is responsible to pay their insurance premiums (health, dental, vision, flex) and the City will continue paying the City's portion. Additional voluntary deductions, such as Additional Life Insurance, Long Term Disability & Prepaid Legal, etc., also must be paid by the employee during any such unpaid leave in order to continue coverage. If the employee fails to make a required payment, benefits may be discontinued. If the employee fails to return to work after taking FMLA leave, the employee may be liable for repayment of health insurance premiums paid by the City during FMLA leave.

**Workers' Compensation & FMLA**

FMLA and Workers Compensation leave run concurrently, provided the reason for the absence qualifies as a serious health condition under the FMLA.

**Communication while on FMLA**

Your department Director and/or Human Resources can and may check in with you periodically thorough out your FMLA leave to ask you questions to confirm whether the leave needed or being taken qualifies for FMLA purposes, and may require periodic reports on your status and intent to return to work.

**Returning to Work Certification**

Under the law, you must be reinstated to the same position you had prior to taking the leave, or to an equivalent position if you return to work immediately after FMLA.

*Return to Work Certification* reflecting, light/limited duty accommodations, will be required when an employee returns to work from FMLA used to treat the employee's own serious health condition. The employee must present the *Return to Work Certification* immediately upon his/her return to work.

**Current Position**

Employees who are unable to return to work and have exhausted their 12-weeks of FMLA leave in the designated "12 month period" no longer have FMLA protections of leave or job restoration.

**City of Miles City- FMLA Coordinator contact numbers"**

- Phone number: 406-874-8601
- Fax Number: 406-234-2903



## FAMILY AND MEDICAL LEAVE (FMLA) – REQUEST FORM

Eligible employees are entitled under the Family & Medical Act (FMLA) up to 12 weeks of unpaid, job protection leave for certain family & medical reasons. **Submit this request form to Director.** Thirty (30) days' notice is required when the need for leave is foreseeable. When advance notice is not possible, the employee must provide notice as soon as practical, typically within 2 business days. Requesting FMLA leave or being out sick 3+ days does not mean FMLA is automatically approved.

### SECTION I: TO BE COMPLETED BY THE EMPLOYEE

Employee Name: \_\_\_\_\_ Department: \_\_\_\_\_

Job Title: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

**TYPE OF LEAVE:**  Continuous  Workers Comp  Intermittent (comment below on proposed schedule): \_\_\_\_\_

**REASON FOR LEAVE – Mark all that apply:**

- Birth of a child and to care for the newborn child
- Placement of a child with an employee for adoption or foster care
- Care of child with a serious health condition
- Care of a parent with a serious health condition
- Care of a spouse with a serious health condition
- Serious health condition that makes employee unable to work
- In patient hospitalization
- Active Duty/Caregiver Military Leave
- Continuous treatment by a health care provider

**EXPLANATION of LEAVE:** \_\_\_\_\_

Estimated LEAVE BEGIN DATE: \_\_\_\_\_ Estimated RETURN DATE: \_\_\_\_\_

### ACKNOWLEDGEMENT by Employee:

-**FMLA Medical Certification** from a health care provider is *required within 15 days* to support all requests for FMLA leave due to the employee's own serious health condition or that of a family member. Exceptions: Military Active Duty leave requires a copy of the "military orders". Adoption leave requires a copy of the adoption paperwork. Birth does not require medical certification.

-**FMLA Return to Work Certification** will be *required* when an employee returns to work from FMLA leave for the employee's own serious health condition.

-**An Employee on approved FMLA leave** must use FMLA-Sick until exhausted, then may use: FMLA-Vacation and/or Compensatory Time and/or FMLA w/out pay

*I acknowledge the above FMLA request; FMLA paperwork and authorizing paid sick leave, instead of unpaid leave. I also acknowledge that the FMLA request is not valid until it has been certified and approved by the Mayor. Finally, I acknowledge, I will communicate on an ongoing basis with my Director and HR on any changes in my FMLA leave (if approved) and return date.*

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date of request

### SECTION II: TO BE COMPLETED BY EMPLOYEE'S DIRECTOR

I acknowledge, pending medical certification (if required), the above employee's FMLA request:

\_\_\_\_\_  
Director's Printed Name

\_\_\_\_\_  
Director's Signature

\_\_\_\_\_  
Date

Please return completed form to Human Resources. HR will respond to the request and notify the employee if any additional documentation and/or requirements. Please call #874-8601 if you have any questions.

## CITY OF MILES CITY – FMLA MEDICAL CERTIFICATION

**SECTION I: EMPLOYEE: PLEASE FILL OUT THIS SECTION, AND TAKE THIS FORM TO YOUR HEALTH CARE PROVIDER.**

Printed Employee Name:

Reason for leave:

Patient Name (if other than employee):

| Relation to employee:

*\*If request is for someone other than the employee, all shaded sections are required on the certification.*

Treating Physicians Name:

**SECTION II: HEALTH CARE PROVIDER: PLEASE FILL OUT THIS SECTION AND RETURN AS STATED BELOW**

Does the patient have a "serious health condition"  Yes  No (see definitions on pg. 3 (-14-) of Medical Certification )

If yes, please check reason:

- 1. Hospital Stay
- 2. Incapacity plus Treatment – condition that causes more than three (3) days of incapacity and
  - two or more treatments by a health care provider; or
  - one treatment plus a continuing regimen under supervision of a health care provider*Please request employee's job description if needed to determine "incapacity."*
- 3. Pregnancy – any period of incapacity due to pregnancy or prenatal care.
- 4. Chronic Serious Health Condition
- 5. Permanent or Long-Term Conditions – requiring medical supervision
- 6. Multiple Treatments for Non-Chronic Condition

A. If the leave is to care for an *immediate family member*, is the employee's presence necessary and/or beneficial to the patient's care?  Yes  No

B. How long will the employee's presence be necessary to assist the family member? Please be specific on timeframe:

1. Describe the medical facts that support your certification for which the patient is being treated:

2. State the approximate date the condition commenced & the probable duration of the condition:

3. Prescribed treatment (i.e., number of visits, nature & duration of treatment, etc.):

4. If any of these treatments will be provided by another provider of health services, please state the nature of the treatments:

5. Is intermittent leave or a reduced work schedule medically necessary?  Yes  No  
If yes, describe:

**FMLA MEDICAL CERTIFICATION → CONTINUED**

**SECTION II Continued:**

6. Is the employee able to perform the essential functions of their position, at this time?  Yes  No  
(We may provide and request your review of the employee's job description. Otherwise such information may be obtained from discussion with the employee)

7. Will the employee's work activities need to be modified upon return to work?  Yes  No

If so, tentative date employee may return to modified work?

Recommended modifications and duration?

8. Will any activities be limited permanently?  Yes  No

9. When is the anticipated return to work date with No limitations?

Comments:

Physician's Signature:

Contact person:

Health Care Provider's Address:

Phone #:

Date:

Fax #:

**PLEASE RETURN THIS FORM TO CITY OF MILES CITY – HUMAN RESOURCES/PAYROLL OFFICE**

**FAX (preferred): 406-234-2903 \*Please call #874-8601 prior to faxing**

**Address: P.O. Box 910, ATTN: Human Resources/Payroll Office Miles City, Mt 59301**

## FMLA MEDICAL CERTIFICATION → CONTINUED

A "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY IMPAIRMENT, OR PHYSICAL OR MENTAL CONDITION THAT INVOLVES ONE OF THE FOLLOWING:

### 1. Hospital Care

**Inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

### 2. Absence Plus Treatment

- a) A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
- (1) **Treatment two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
  - (2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment** under the supervision of the health care provider.

### 3. Pregnancy

Any period of incapacity due to **pregnancy**, or for prenatal care.

### 4. Chronic Conditions Requiring

A **chronic condition** which:

- (1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
- (3) May cause **episodic** rather than a continuing period of incapacity e.g., asthma, diabetes, epilepsy, etc.).

### 5. Permanent/Long-term Conditions Requiring Supervision

A period of **Incapacity** which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

### 6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, or for a condition that **would likely result in a prior Incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

#### Definitions:

"Incapacity;" for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

Treatment Includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

## FMLA - RETURN TO WORK CERTIFICATION

**SECTION I: EMPLOYEE:** PLEASE FILL OUT THE TOP PORTION, AND TAKE THIS FORM TO YOUR HEALTH CARE PROVIDER

THIS CERTIFICATION MUST BE PROVIDED TO YOUR DIRECTOR PRIOR TO YOUR RETURN TO WORK.

Employee :

Employee's Department:

Employee's Job Title:

Department Supervisor:

Department FAX number:

**SECTION II: HEALTH CARE PROVIDER:** PLEASE COMPLETE THE FOLLOWING:

Please review the attached job description: Is the employee able to perform all the functions of his or her job?

Yes       No       Yes, with restrictions.

Please list any restrictions or functional limitations which the department should consider:

Are the restrictions:                       Permanent                       Temporary, until (date):

Comments:

Employee is released to return to work effective (date):

Printed Name of Health Care Provider & Physician:

Specialty:

Address of Health Care Provider:

Signature of Health Care Provider:

| Date:

Attn: Directors: PLEASE SEND COMPLETED FORM TO HR FOR employees FMLA File

## EMPLOYEE – FMLA KIT

### CITY OF MILES CITY- FMLA Notice to Employee

#### FAMILY & MEDICAL LEAVE: YOUR RIGHTS AND OBLIGATIONS

The *City of Miles City* provides family and medical leave (FMLA) to eligible employees in accordance with the federal Family Medical Leave Act. This notice summarizes your rights and obligations under this law.

The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 workweeks of unpaid job protection leave in a specified 12-month period, and requires group health insurance benefits to be maintained during the leave as if employees continued to work instead of taking leave.

Employees taking FMLA leave for their own serious health condition, or leave to care for a family member with a serious health condition, will be *required* to use their accrued, paid sick leave prior to being granted FMLA leave without pay. If the leave is for a reason that qualifies as FMLA leave and the employee's sick accruals are exhausted the employee is *NOT required* to use his or her accrued, paid vacation, subject to MCA 2-18-615. The total of the paid and unpaid FMLA leave will count against the 12-workweek FMLA leave entitlement.

#### Purpose

FMLA allows employees to balance their work and family life by taking leave for certain family and medical reasons. The FMLA seeks to accomplish this purpose in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.

#### Eligibility

In order to be eligible for FMLA an employee must have been employed by the City of Miles City a cumulative total of at least 12 months prior to leave *and* have worked 1,040 hours (exclusive of vacation, sick leave, holidays) in the 12 months preceding leave time. The 12 months of employment need not be consecutive months. The 1,040 hours include only those hours actually worked. Paid leave and unpaid leave, including FMLA leave, are not included.

#### Entitlements

→ Leave of up to a total of 12 workweeks in a 12-month period for one or more of the following reasons:

- For the birth of a son or daughter, and to care for the newborn;
- For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- To care for an immediate family member (spouse, child, or parent – but not a parent “in-law” with a serious health condition; and
- When the employee cannot perform the essential functions of his or her job because of a serious health condition.
- \*Active Military duty for an employee with a spouse, son, daughter or parent who:
  - Is on active duty in the Armed Forces in support of a contingency operation
  - Has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation
    - A “Contingency Operation” is an action or operation against an opposing military forces

→ Leave of up to a total of 26 workweeks in a 12-month period for the following reason:

- For a caregiver (which is defined as a spouse, son, daughter, parent or nearest blood relative) of a recovering service member, to care for the individual. The recovering service member must be a member of the Armed Forces (including the National Guard and Reserves) who is undergoing medical treatment, recuperation or therapy, is in an outpatient status, or is on the temporary disability retired list, for a serious injury or illness. A serious injury or illness is one incurred while in active duty that may render the person unable to perform the duties of the member's office, grade, rank or rating. Employees are entitled to only one 26-week leave period to care for a wounded service member during the employee's employment.

#### **Advance Notice**

Thirty (30) days advance notice is required if your need for leave is foreseeable. When leave is not foreseeable notice "as soon as practicable" needs to be provided. "As soon as practicable" generally means verbal notice to the City typically within two (2) business days of learning of the need to take FMLA leave.

Employees are required to give sufficient information to their Director so that the Director understands that the employee needs leave for an FMLA-qualifying reason (the employee need not mention FMLA when requesting leave to meet this requirement, but must explain why the leave is needed).

If employees do not make their Directors aware that they were absent for FMLA reasons and the employee wants the leave counted as FMLA leave, he or she must provide timely notice, generally within two (2) business days of returning to work, that leave was taken for an FMLA-qualifying reason.

#### **Calculation of FMLA by the City of Miles City**

FMLA leave is calculated on a "Rolling" 12-month period beginning with the FMLA leave request date. At the time, an employee requests FMLA leave, records for the previous twelve months will be reviewed to determine if FMLA leave has previously been used and the amount of leave an employee is eligible to receive forward.

#### **Serious health condition**

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- A period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider;  
or
- Any period of incapacity due to pregnancy, or for prenatal care; or
- Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.);  
or
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- Leave for multiple treatments by a health care provider for a condition that likely would result in an incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

### **Immediate family members**

An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law". The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of mental or physical disability that substantially limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act (ADA). The only exception to the above definition of immediate family member is for Military Personnel regarding Active Duty and Caregiver leave however with one additional member of the nearest blood relative.

### **Intermittent Leave**

FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

- Intermittent/reduced schedule leave may be taken when medically necessary to care for a serious ill family member, or because of the employee's own serious health condition
- Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the City's approval.

Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. However, due to the intermittent schedule, the 12-week entitlement will be calculated using 480 hours for full-time employees who work forty hours a week. The amount of FMLA leave for part-time employees will be pro-rated.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with the City to schedule the leave so as not to unduly disrupt the City's operation, subject to the approval of the employee's health care provider. In such cases, the City may transfer the employee temporarily to an alternative job with equivalent pay and benefits that better accommodates recurring periods of leave better than the employee's regular job (if available).

### **FMLA Approval**

Once Human Resources receives the completed FMLA forms, the employee and Director (who signed the FMLA Request form) will be notified, in writing, if the request is approved, provisionally approved, or denied. The letter will be mailed to the employee's home address.

*The final decision on the amount of approved leave time will be based on the medical certification stating the time needed.*

### **Medical Certification**

The City requires that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a medical certification issued by a health care provider.

Exceptions to this are:

- Request for Military Active Duty:
  - You will need to provide a copy of the individual's military orders as proof of certification.
- Requests for adoption:
  - You will need to provide a copy of the adoption paperwork as proof of certification.
- Request for birth:
  - No medical certification is required in the event of birth.



The employee has 15 calendar days to obtain the required certification and return it to the Human Resources office.

The City may require the employee to obtain a second or third opinion if it doubts the validity of the medical certification. The City also may require recertification once every 30 days, at the employee's expense, during the FMLA leave. However, there are some exceptions to this time frame that would allow recertification prior to the end of this 30 day period. Examples of this would be:

- the employee requests an extension of the leave
- the City doubts the validity of the certification
- the original certification has changed
- the employee is unable to return from leave

A "health care provider" is defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, or nurse-midwife who is authorized to practice by the State and performing within the scope of their practice as defined by State law.

#### **Timekeeping while on leave**

It is the responsibility of the employee to make arrangements with their Director. The employee must use FMLA-Sick accruals until exhausted and then may use the following in any order:

FMLA –Vacation and/or Compensatory Time (if applicable)  
and/or  
FMLA –w/out pay

According to 29 C.F.R. Section 825.207 (i), Compensatory time cannot be charged against the employees FMLA leave entitlement. The City requires all sick leave accruals be exhausted prior to going to an unpaid status.

#### **Pay**

The total of the paid and unpaid FMLA leave will count against the 12-workweek FMLA leave entitlement.

#### **Holiday Pay**

Yes, the holiday hours will count towards the FMLA entitlement, however in order to be paid; the employee has to be in a paid status either the day before or the day after the holiday. (MCA 2-18-603). If the employee is on an unpaid FMLA leave, they may not be eligible for the holiday pay.

#### **While on Leave**

The City may not restrict your activities. However, we do have an Outside Employment Policy that has to be adhered to – refer to Personnel Policy manual. The protections of FMLA will not, however, cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

#### **Health Benefits**

The City is required to maintain group health insurance coverage for an employee on FMLA leave on the same terms as if the employee continued to work. However, during an unpaid FMLA leave or after the first 32 hours if you are on Workers Compensation (which runs concurrently with FMLA), the employee is responsible to pay their insurance premiums (health, dental, flex) and the City will continue paying the City's portion. Additional voluntary deductions, such as Additional Life Insurance, Long Term Disability & Prepaid Legal, etc., also must be paid by the employee during any such unpaid leave in order to continue coverage. If

the employee fails to make a required payment, benefits may be discontinued. If the employee fails to return to work after taking FMLA leave, the employee may be liable for repayment of health insurance premiums paid by the City during FMLA leave.

**Workers' Compensation & FMLA**

FMLA and Workers Compensation leave run concurrently, provided the reason for the absence qualifies as a serious health condition under the FMLA.

**Communication while on FMLA**

Your department Director and/or Human Resources can and may check in with you periodically thorough out your FMLA leave to ask you questions to confirm whether the leave needed or being taken qualifies for FMLA purposes, and may require periodic reports on your status and intent to return to work.

**Returning to Work Certification**

Under the law, you must be reinstated to the same position you had prior to taking the leave, or to an equivalent position if you return to work immediately after FMLA.

***Return to Work Certification*** reflecting, light/limited duty accommodations, will be required when an employee returns to work from FMLA used to treat the employee's own serious health condition. The employee must present the ***Return to Work Certification*** immediately upon his/her return to work.

**Current Position**

Employees who are unable to return to work and have exhausted their 12-weeks of FMLA leave in the designated "12 month period" no longer have FMLA protections of leave or job restoration.

**City of Miles City- FMLA Coordinator contact numbers"**

- Phone number: 406-874-8601
- Fax Number: 406-234-2903

**FAMILY AND MEDICAL LEAVE (FMLA) – REQUEST FORM**

Eligible employees are entitled under the Family & Medical Act (FMLA) up to 12 weeks of unpaid, job protection leave for certain family & medical reasons. **Submit this request form to Director.** Thirty (30) days' notice is required when the need for leave is foreseeable. When advance notice is not possible, the employee must provide notice as soon as practical, typically within 2 business days. Requesting FMLA leave or being out sick 3+ days does not mean FMLA is automatically approved

**SECTION I: TO BE COMPLETED BY THE EMPLOYEE**

Employee Name: \_\_\_\_\_ Department: \_\_\_\_\_

Job Title: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

**TYPE OF LEAVE:**  Continuous  Workers Comp  Intermittent (comment below on proposed schedule): \_\_\_\_\_

**REASON FOR LEAVE – Mark all that apply:**

- Birth of a child and to care for the newborn child
- Placement of a child with an employee for adoption or foster care
- Care of child with a serious health condition
- Care of a parent with a serious health condition
- Care of a spouse with a serious health condition
- Serious health condition that makes employee unable to work
- In patient hospitalization
- Active Duty/Caregiver Military Leave
- Continuous treatment by a health care provider

**EXPLANATION of LEAVE:** \_\_\_\_\_

**Estimated LEAVE BEGIN DATE:** \_\_\_\_\_ **Estimated RETURN DATE:** \_\_\_\_\_

**ACKNOWLEDGEMENT by Employee:**

-**FMLA Medical Certification** from a health care provider is *required within 15 days* to support all requests for FMLA leave due to the employee's own serious health condition or that of a family member. Exceptions: Military Active Duty leave requires a copy of the "military orders". Adoption leave requires a copy of the adoption paperwork. Birth does not require medical certification.

-**FMLA Return to Work Certification** will be *required* when an employee returns to work from FMLA leave for the employee's own serious health condition.

-**An Employee on approved FMLA leave** must use FMLA-Sick until exhausted, then may use: FMLA-Vacation and/or Compensatory Time and/or FMLA w/out pay

*I acknowledge the above FMLA request; FMLA paperwork and authorizing paid sick leave, instead of unpaid leave. I also acknowledge that the FMLA request is not valid until it has been certified and approved by Human Resources. Finally, I acknowledge, I will communicate on an ongoing basis with my Director and HR on any changes in my FMLA leave (if approved) and return date.*

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date of request

**SECTION II: TO BE COMPLETED BY EMPLOYEE'S DIRECTOR**

I acknowledge, pending medical certification (if required), the above employee's FMLA request:

\_\_\_\_\_  
Director's Printed Name

\_\_\_\_\_  
Director's Signature

\_\_\_\_\_  
Date

Please return completed form to Human Resources. HR will respond to the request and notify the employee if any additional documentation and/or requirements. Please call #874-8601 if you have any questions.

## CITY OF MILES CITY – FMLA MEDICAL CERTIFICATION

**SECTION I: EMPLOYEE: PLEASE FILL OUT THIS SECTION, AND TAKE THIS FORM TO YOUR HEALTH CARE PROVIDER.**

Printed Employee Name:

Reason for leave:

Patient Name (if other than employee):

| Relation to employee:

*\*If request is for someone other than the employee, all shaded sections are required on the certification.*

Treating Physicians Name:

**SECTION II: HEALTH CARE PROVIDER: PLEASE FILL OUT THIS SECTION AND RETURN AS STATED BELOW**

Does the patient have a "serious health condition"  Yes  No (see definitions on pg. 3 (-14-) of Medical Certification)

If yes, please check reason:

- 1. Hospital Stay
- 2. Incapacity plus Treatment – condition that causes more than three (3) days of incapacity and
  - two or more treatments by a health care provider; or
  - one treatment plus a continuing regimen under supervision of a health care provider*Please request employee's job description if needed to determine "incapacity."*
- 3. Pregnancy – any period of incapacity due to pregnancy or prenatal care.
- 4. Chronic Serious Health Condition
- 5. Permanent or Long-Term Conditions – requiring medical supervision
- 6. Multiple Treatments for Non-Chronic Condition

**A. If the leave is to care for an *immediate family member*, is the employee's presence necessary And/or beneficial to the patient's care?  Yes  No**

**B. How long will the employee's presence be necessary to assist the family member? Please be specific on timeframe:**

**1. Describe the medical facts that support your certification for which the patient is being treated:**

**2. State the approximate date the condition commenced & the probable duration of the condition:**

**3. Prescribed treatment (i.e., number of visits, nature & duration of treatment, etc.):**

**4. If any of these treatments will be provided by another provider of health services, please state the nature of the treatments:**

**5. Is intermittent leave or a reduced work schedule medically necessary?  Yes  No**

If yes, describe:

## FMLA MEDICAL CERTIFICATION → CONTINUED

### SECTION II Continued:

6. Is the employee able to perform the essential functions of their position, at this time?  Yes  No  
(We may provide and request your review of the employee's job description. Otherwise such information may be obtained from discussion with the employee)

7. Will the employee's work activities need to be modified upon return to work?  Yes  No

If so, tentative date employee may return to modified work?

Recommended modifications and duration?

8. Will any activities be limited permanently?  Yes  No

9. When is the anticipated return to work date with No limitations?

Comments:

Physician's Signature:

Contact person:

Health Care Provider's Address:

Phone #:

Date:

Fax #:

PLEASE RETURN THIS FORM TO CITY OF MILES CITY – HUMAN RESOURCES/PAYROLL OFFICE

**FAX (preferred): 406-234-2903 \*Please call #874-8601 prior to faxing**

**Address: P.O. Box 910, ATTN: Human Resources/Payroll Office Miles City, Mt 59301**

## FMLA MEDICAL CERTIFICATION → CONTINUED

A "SERIOUS HEALTH CONDITION" MEANS AND ILLNESS, INJURY IMPAIRMENT, OR PHYSICAL OR MENTAL CONDITION THAT INVOLVES ONE OF THE FOLLOWING:

1. Hospital Care

**Inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

a) A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- (1) **Treatment two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment** under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to **pregnancy**, or for prenatal care.

4. Chronic Conditions Requiring

A **chronic condition** which:

- (1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
- (3) May cause **episodic** rather than a continuing period of incapacity e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of **incapacity** which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, or for a condition that **would likely result in a prior of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

Definitions:

"Incapacity;" for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

## FMLA – RETURN TO WORK CERTIFICATION

**SECTION I: EMPLOYEE:** PLEASE FILL OUT THE TOP PORTION, AND TAKE THIS FORM TO YOUR HEALTH CARE PROVIDER

THIS CERTIFICATION MUST BE PROVIDED TO YOUR **DIRECTOR PRIOR** TO YOUR RETURN TO WORK.

Employee :

Employee's Department:

Employee's Job Title:

Department Supervisor:

Department FAX number:

**SECTION II: HEALTH CARE PROVIDER:** PLEASE COMPLETE THE FOLLOWING AND RETURN DIRECTLY TO THE DEPARTMENT LISTED ABOVE PRIOR TO THE RETURN TO WORK DATE.

Please review the attached job description: Is the employee able to perform all the functions of his or her job?

Yes       No       Yes, with restrictions.

Please list any restrictions or functional limitations which the department should consider:

Are the restrictions:                       Permanent                       Temporary, until (date):

Comments:

Employee is released to return to work effective (date):

Printed Name of Health Care Provider & Physician:

Specialty:

Address of Health Care Provider:

Signature of Health Care Provider:

| Date:

**Attn: Directors: PLEASE SEND COMPLETED FORM TO HR FOR employees FMLA File**

**RESOLUTION NO. 3665**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT ENTITLED "CITY AGREEMENT COLD MILLED BITUMINOUS MATERIAL" WITH THE STATE OF MONTANA DEPARTMENT OF TRANSPORTATION.**

*WHEREAS*, the City of Miles City desires to receive and make use of cold millings salvaged from Federal Aid highway projects by the State of Montana, and for such cold millings to be stockpiled for public use as surfacing material;

*AND WHEREAS* the State of Montana Department of Transportation has prepared an Agreement as to the stockpiling and use of said cold millings, and the City of Miles City desires to enter into such Agreement;

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

1. The City Agreement Cold Milled Bituminous Material, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement 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, THIS 25TH DAY OF FEBRUARY, 2014.**

---

C.A. Grenz, Mayor

ATTEST:

---

Lorrie Pearce, City Clerk





Glendive District Office  
503 N River Avenue  
PO Box 890  
Glendive, MT 59330-0890

February 10, 2014

Mayor Chris Grenz  
City of Miles City  
P.O. Box 910  
Miles City, MT 59301

Subject: Cold Millings Agreement  
8<sup>th</sup> / Stower – Miles City

We have prepared a cold millings usage agreement that provides for MDT to have its contractor stockpile the cold millings at the City's stockpile site on the west end of Orr Street as requested by Public Works Director, Scott Gray. Please review, sign both copies, and return them to me at your earliest convenience.

We will have our contractor contact the Miles City Public Works Department two weeks before hauling begins. The project is tentatively scheduled for letting on April 24, 2014. The letting date is subject to change based on the availability of funding and the completion of project development activities.

If you have any questions on this agreement, please contact me at (406) 345-8247.

Sincerely,

Steve Heidner  
District Projects Engineer

copies: District File

## CITY AGREEMENT

### COLD MILLED BITUMINOUS MATERIAL

This agreement for beneficial use of cold-milled bituminous material from MDT project 8<sup>th</sup>/Stower – Miles City, UPP 8009(6) is entered into this 12<sup>th</sup> day of February, 2014, between the State of Montana, Department of Transportation, hereinafter called the State, and the City of Miles City, hereinafter called the City.

Cold-milled bituminous materials salvaged from Federal Aid highway projects and provided to local Governments are intended for beneficial public use. The City agrees that such materials provided to them from the 8<sup>th</sup>/Stower – Miles City project is to be used as a surfacing material for public transportation facilities. Acceptable uses include: use in asphalt paving, use as a base course or surfacing material, use as embankment for guardrail widening, surfacing approaches on public right-of-way, or other uses on public transportation facilities. It is not acceptable to use the materials on private roadways, private driveways, private parking lots, or any other facilities not owned and maintained by local Governments or other public agencies.

The City has provided locations owned or controlled by the City and not on State right-of-way for stockpiling excess cold-milled material from the 8<sup>th</sup>/Stower – Miles City project. Excess cold-milled material will be that material milled from the project and not required for use on the project. Once the material designated for City use is removed from the project and either stockpiled or transported to other locations designated by the City, the City agrees to assume all responsibility for the removed material, including any environmental issues, its beneficial use and ultimate disposal.

The State agrees to have its contractor for the 8<sup>th</sup>/Stower – Miles City project transport and stockpile approximately 135 tons of material not required for use on the project to the City of Miles City stockpile site located approximately 1.0 miles northwest of the beginning of the project on the west end of Orr Street, directly southwest of the MDT Maintenance yards.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Shane Mintz, District Administrator

By: \_\_\_\_\_  
Chris Grenz, Miles City Mayor

**RESOLUTION APPROVING AND ADOPTING THE  
MONTANA MUNICIPAL INTERLOCAL AUTHORITY  
REVISED AND RESTATED WORKERS' COMPENSATION  
PROGRAM AGREEMENT  
Dated July 1, 2014**

WHEREAS, the City/Town of Miles City (Member Entity) is duly organized under the laws of the State of Montana; and

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may a) cooperate in the exercise of any function, power, or responsibility with, b) share the services of any officer or facilities with, and c) transfer or delegate any function, power responsibility, or duty of any officer to one or more other local government units, the state or the United States; and

WHEREAS, Mont. Code Ann. Title 7, Chapter 11, Part 1, (the Interlocal Cooperation Act) authorizes political subdivisions to create interlocal agreements to jointly perform any undertaking that each such political subdivision unit is authorized by law to perform; and

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the State to procure insurance separately or jointly with other subdivisions, and to use a deductible or self-insurance plan, wholly or in part; and

WHEREAS, Mont. Code Ann. § 39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage;

WHEREAS, the Montana Municipal Interlocal Authority (Authority) is an Interlocal entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement;

WHEREAS, by executing this REVISED AND RESTATED WORKERS' COMPENSATION PROGRAM AGREEMENT, the Member Entity signatory hereto has heretofore determined and does hereby confirm that the Assessments and other charges required by the Workers' Compensation Program have been and are just and reasonable and advantageous to the public benefit of the citizens of such Member Entity; and,

NOW THEREFORE, BE IT RESOLVED THAT the City/Town of \_\_\_\_\_ hereby approves and adopts this REVISED AND RESTATED WORKERS' COMPENSATION PROGRAM AGREEMENT with a delayed effective date of July 1, 2014.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk





To: MMIA Workers' Compensation Program Members

From: Alan Hulse, CEO

Date: January 30, 2014

Re: MMIA Workers' Compensation Program Agreement Changes

Attached is a proposed Revised Workers' Compensation Program Agreement between the Members and the MMIA. This document describes, among other things, the obligations of the MMIA and each Member, how the Program works, how assessments are calculated and adjusted, and how parties may withdraw from the Program. As explained below, the proposed revisions were authorized by the Board at its January 17, 2014 meeting. They are intended to provide additional financial tools for the Board and staff to manage more efficiently the capital adequacy of the Program. This, in turn, will allow the MMIA to more effectively provide you with stable and predictable rates over time.

The Board has established a number of ratios that will be used each year to measure the adequacy of the level of capital in the Work Comp Program. These ratios will be used by the actuary and the Board to create a target range of unencumbered surplus within which the Program would be adequately capitalized. If capital levels fall below this target range, the Board can collect additional revenues through rate increases or add a retroactive assessment to your invoice. If capital levels exceed the target range, the MMIA Board will have ability to lower capital either through rate reductions or retroactive disbursements. In either event, the goal would be to get back into the target range over a period of time rather than through a large one-time assessment which the Program Agreement currently allows.

Again, the goal of this change is to allow the MMIA to better manage program capital and to provide a more predictable and stable rate environment for our members over time. If these changes are adopted, the Work Comp Program would function like the Liability Program which has had these provisions in its Program Agreement since its inception. (Because of the capital position of the MMIA Liability Program, the Board elected to provide for a \$1.5 million dollar disbursement to our membership last year.) The Work Comp Program is currently adequately capitalized within the target range established by the MMIA Board of Directors.

In order to implement these financial tools, the Members of the Work Comp Program must approve the enclosed July 1, 2014 Revised and Restated Program Agreement which is attached. The changes to the Program Agreement can be found in Section 4.5 Risk Assessment Adjustment which is a new section beginning on page 10.

Please execute two (2) original signature pages (Page 22) and return them to the MMIA by **April 15, 2014**. I have also included a draft Resolution in the event your entity would need a resolution passed in order to execute the agreement. The body of the Agreement should be retained with your records. The MMIA will return one signed signature page to you upon completion of the application process.

If you have any questions, please give me a call.

**REVISED AND RESTATED**

**WORKERS' COMPENSATION**

**PROGRAM AGREEMENT**

**between the**

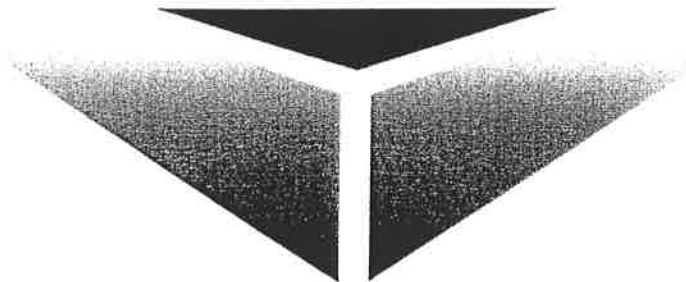
**MONTANA MUNICIPAL INTERLOCAL AUTHORITY  
as Authority**

**and**

**The City/Town of \_\_\_\_\_**

**Effective: July 1, 2014**

**MMIA**  
**MONTANA MUNICIPAL INTERLOCAL AUTHORITY**



# Table of Contents

<b>SECTION 1: DEFINITIONS .....</b>	<b>3</b>
<b>SECTION 2: REPRESENTATIONS, COVENANTS AND WARRANTIES.....</b>	<b>5</b>
<b>SECTION 3: ESTABLISHMENT OF ACCOUNTS; COVERAGE; PAYMENT OF CLAIMS AND OTHER PROGRAM COSTS; PURCHASE OR ACQUISITION OF OTHER INSURANCE, EXCESS INSURANCE OR REINSURANCE .....</b>	<b>7</b>
<b>SECTION 4: TERM OF AGREEMENT; ASSESSMENT; COMMINGLING OF FUNDS PROHIBITED .....</b>	<b>9</b>
<b>SECTION 5: INDIVIDUAL MEMBER ENTITY ACCOUNTS; ACCOUNT SETTLEMENT UPON WITHDRAWAL OR TERMINATION .....</b>	<b>12</b>
<b>SECTION 6: ADMISSION TO, WITHDRAWAL FROM AND EXPULSION FROM THE WORKERS' COMPENSATION RISK RETENTION PROGRAM.....</b>	<b>13</b>
<b>SECTION 7: JOINT AND SEVERAL LIABILITY .....</b>	<b>17</b>
<b>SECTION 8: INSPECTION OF FACILITIES AND EQUIPMENT; SAFETY CONSIDERATIONS AND NOTIFICATION OF ACCIDENT .....</b>	<b>18</b>
<b>SECTION 9: PROHIBITION OF UNAUTHORIZED PAYMENTS; PENALTY FOR EMPLOYMENT WITHOUT WORKERS' COMPENSATION COVERAGE.....</b>	<b>18</b>
<b>SECTION 10: AGREEMENT WITH SERVICE PROVIDERS.....</b>	<b>19</b>
<b>SECTION 11: INDEMNIFICATION AND RELEASE; DISCLAIMER .....</b>	<b>19</b>
<b>SECTION 12: ASSIGNMENT AND AMENDMENT .....</b>	<b>20</b>
<b>SECTION 13: MISCELLANEOUS .....</b>	<b>20</b>

**REVISED AND RESTATED**

**WORKERS' COMPENSATION PROGRAM AGREEMENT**

This REVISED AND RESTATED WORKERS' COMPENSATION PROGRAM AGREEMENT, by and between the MONTANA MUNICIPAL INTERLOCAL AUTHORITY, an interlocal agency duly organized and existing under the laws of the State of Montana, (the "Authority"), and the CITY (TOWN) OF \_\_\_\_\_, a political subdivision duly organized and existing under the Constitution and laws of the State of Montana, and such other political subdivisions that may hereafter become party hereto as provided herein, each a political subdivision duly organized and existing under the Constitution and laws of said State, (each a "Member Entity" and collectively the "Member Entities");

**WITNESSETH:**

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may (a) cooperate in the exercise of any function, power, or responsibility with, (b) share the services of any officer or facilities with, and (c) transfer or delegate any function, power responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States;

WHEREAS, Title 7, Chapter 11, Part 1, Montana Code Annotated (Mont. Code Ann.), (the Interlocal Cooperation Act) authorizes political subdivisions to create interlocal agreements to perform jointly any undertaking that each such political subdivision unit is authorized by law to perform;

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the state to procure insurance separately or jointly with other subdivisions, and to use a deductible or self-insurance plan, wholly or in part;

WHEREAS, Mont. Code Ann. § 39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage;

WHEREAS, the Authority has been created pursuant to the Interlocal Cooperation Act for the purpose of providing, among other things, workers' compensation coverage pursuant to such statutes to Montana political subdivisions becoming members of the Authority and executing the necessary program documents for such coverage;

WHEREAS, the Member Entity has determined it to be in its best interest to join with other Member Entities in forming and creating the Authority through the Interlocal Cooperation Act for the purposes of:

1. developing effective risk management programs to reduce the amount and frequency of their losses;
2. sharing some portion, or all, of their losses;
3. jointly purchasing or otherwise acquiring insurance, excess insurance or reinsurance through a group program;



4. jointly issuing bonds or notes to fund a self-insurance or deductible reserve;
5. jointly purchasing administrative and other services through a group program when related to any of the other purposes;
6. jointly make deposits which may take the form of assessments to an account or surplus account and pay premiums for the purposes of participating in a group or captive insurance, excess insurance, or reinsurance programs, in whole or in part; and

WHEREAS, the Authority is a joint exercise of powers entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement;

WHEREAS, the Authority and each Member Entity, in consultation with independent professional consultants, have formulated a Workers' Compensation Program, administered by the Authority to meet the workers' compensation needs of each Member Entity, and which provides for joint and several liability of each Member Entity along with all other Member Entities for the full amount of any and all known or unknown claims of each Member Entity arising during the Member Entity's participation in the Program, and which will provide the following advantages, among others, to each Member Entity:

- (a) spread and moderate the cost of claims loss to each Member Entity by paying annual Assessments on an experience-rated basis calculated actuarially;
- (b) relief from the burden of paying premiums to insurers at levels reflecting the insurers' high costs of underwriting, administration and brokerage fees since the Authority's Program costs are limited to reasonable administrative costs,
- (c) relief from commercial insurers' rights under excess liability policies to force claim settlements which are payable primarily in each case from the Member Entity's self-insurance funds,
- (d) access to group insurance, excess insurance, reinsurance or other insurance programs which may provide such insurance at reasonable rates and on advantageous terms and conditions,
- (e) actuarially determined Assessments calculated to provide amounts in each year necessary to maintain the Workers' Compensation Program at an actuarially sound level and therefore sufficient to reserve against the losses of the Member Entities;

WHEREAS, the Authority has established and offered to its members since January 1, 1986 the Program which has been approved annually as a duly authorized and existing workers' compensation program by the regulatory agency authorized by statute to review and approve such programs;

WHEREAS, by executing this Revised and Restated Workers' Compensation Program Agreement, the Member Entity signatory hereto has heretofore determined and does hereby

confirm that the Assessments and other charges required by the Workers Compensation Program have been and are just and reasonable and advantageous to the public benefit of the citizens of such Member Entity; and,

WHEREAS, it is the intent of the Member Entity that in executing this Revised and Restated Workers Compensation Program Agreement that the Workers' Compensation Program should remain in full force and effect and that continuity of the Workers' Compensation Program should be and is maintained with the execution of this Revised and Restated Workers' Compensation Program Agreement; and,

WHEREAS, the governing body of each Member Entity has authorized the execution of this Agreement for the purpose of providing Coverage for such Member Entity for the benefit of the Member Entity's employees, residents and taxpayers and for the health and safety of the public who interact with the Member Entity; and

WHEREAS, it is a matter for the governing board of the Member Entity to determine whether the amount of Assessments which the Member Entity pays for coverage is reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has heretofore determined and does hereby confirm that the Assessments to be required hereunder are reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has knowingly and willingly entered into this Agreement

NOW THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

## SECTION I: DEFINITIONS

1.1 Definitions and Rules of Construction. Unless the context shall require otherwise, the terms defined below shall, for all purposes of this Revised and Restated Workers' Compensation Program Agreement, have the meanings herein specified.

**Administrative Costs** means those ordinary and necessary costs incurred in providing administrative services to the Program, including but not limited to, the following:

- a. General administrative services
- b. Loss prevention and risk assessment
- c. Investment services
- d. Legal services
- e. Accounting services
- f. Actuarial services
- g. Risk management consulting
- h. Brokerage services.

**Agreement or Revised Agreement** means this Revised and Restated Workers' Compensation Program Agreement, effective September 1, 2010, by and among the Authority and the political subdivisions signatory hereto, as Member Entities.

**Annual Recomputed Amount** means the re-computation of an Individual Member Entity's Account as provided in Section 5.2 of this Revised Agreement.

**Assessment** means Risk Assessments and Special Assessments payable for any Coverage Year.

**Authority** means the Montana Municipal Interlocal Authority, an interlocal agency, duly organized and existing under the Constitution and laws of Montana, its successors and assigns.

**Board** means the Board of Directors or its successor or governing body of the Authority.

**Claim** means a demand, action or suit against one or more Member Entity(ies) or the Authority to recover for losses or damages within or alleged to be within the scope of Coverage.

**Consultant** means a consultant qualified in the area of political subdivision workers' compensation coverage or actuarial science, as the Authority deems appropriate.

**Coverage** means the coverage, excess insurance, reinsurance, and other services provided pursuant to and in accordance with and on the terms set forth in this Agreement and in the Memorandum provided to each Member Entity, including, but not limited to, rights to payment of Settlements and Judgments from funds on deposit in the Program Operations Fund under the terms of this Agreement

**Coverage Year** shall mean the period beginning each July 1 and the twelve (12) consecutive months thereafter during which this Agreement and the Memorandum shall be in effect for each Member Entity, unless the Board of Directors designates such other period of twelve (12) consecutive months as the period during which this Agreement and the Memorandum may be in effect. In the case of a Member Entity which joins the Program during a Coverage Year, the Coverage Year shall be the remaining portion of the Coverage Year from the effective date of Coverage until the end of such Coverage Year.

**Interlocal Agreement** means that Interlocal Cooperation Agreement establishing the Montana Municipal Interlocal Authority pursuant to Title 7, Chapter 11, Part 1, Mont. Code .Ann.

**Judgment** means a final judgment entered in a court of competent jurisdiction or by an administrative tribunal after all appeals have been exhausted with respect to a Claim for which Coverage is provided under this Program. The amount of any Judgment may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

**Loss Reserve** means amounts in the Program Operations Fund required to be designated as reserves for payment of Settlements and Judgments pursuant to Section 3.3 hereof in accordance with prudent practice as determined by the Qualified Claims Administrator, including additional reserves established because of changed circumstances subsequent to the year any such Claim is filed and including the amount determined by a Qualified Consultant for loss development of claims and unallocated loss adjustment expenses.

**Member Entity** means that political subdivision of the State of Montana duly organized and existing under the Constitution and laws of the State of Montana and which has complied with the terms and conditions of this Revised Program Agreement for participation in the Workers' Compensation Program.

**Memorandum of Coverage** means the Memorandum of Workers Compensation and Occupational Disease Coverage, as the same may from time-to-time be amended, setting forth the terms and conditions for which Coverage is provided under the Workers' Compensation Program.

**Program** means the Workers' Compensation Program established by the Authority and in effect as of the effective date of this Revised Program Agreement.

**Program Operations Fund** means the fund established to carry out the operations of the Program, including but not limited to payment of Claims, payment of Administrative Costs, other insurance, excess insurance or reinsurance, loss reserves and unencumbered reserves.

**Qualified Claims Administrator** means an individual or an organization experienced in the handling of public entity workers' compensation claims, appointed by the Authority, or the Authority itself provided the Authority employs individuals who have such experience in the handling of public entity workers' compensation claims.

**Settlement** means the Settlement by the Authority or Member Entity in accordance with the Memorandum of a Claim against such Member Entity. The amount of any Settlement may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

**Unencumbered Reserves** means the amount in the Program Operations Fund in excess of the total amount that has been designated by the Authority as Loss Reserve and amounts required for operations.

1.2 Other Terms. Such other terms as may appear in this Agreement which are not defined in this Section 1 shall have such definitions as may be contained in the remainder of this Agreement.

## SECTION 2: REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1 Representations, Covenants and Warranties of the Member Entity. The Member Entity represents, covenants and warrants to the Authority as follows:

- (a) Recitals Correct. The recitals to this Agreement are true and correct.
- (b) Due Organization and Existence. Such Member Entity is a political subdivision of the State, duly organized and existing under the Constitution and laws of the State.
- (c) Authorization; Enforceability. The Constitution and laws of the State authorize the Member Entity to enter into, execute, approve and issue, as the case may be, and to enter into the transactions contemplated by and to carry out its obligations under all of the Program Documents, and the Member Entity has duly authorized and executed all of the applicable Program Documents. The Program Documents constitute the legal, valid, binding and enforceable obligations of such Member Entity in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principals affecting the rights of creditors generally and except as to the limitations on remedies against public agencies generally.

(d) No Violations. Neither the execution and delivery of this Revised Agreement or the Interlocal Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which such Member Entity is now a party or by which the Member Entity is bound, or constitutes a default under any of the foregoing.

(e) Risk Management Guidelines. The Member Entity covenants to implement and follow risk management programs, guidelines and policies as adopted by the Authority for the Revised Program from time to time.

(f) Payment of Assessments and Acceptance of Coverage. The Member Entity agrees to pay when due Assessment for and accept the Coverage as described herein and the Memorandum of Coverage upon the terms and conditions set forth herein.

(g) Observance of Laws and Regulations by the Member Entity. The Member Entity agrees to keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State of Montana, or by an officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the Member Entity, including its right to exist and carry on business as a municipal corporation or other local government agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

2.2 Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to each Member Entity as follows:

(a) Recitals Correct. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence; Enforceability.

The Authority is a legal entity created pursuant to the Interlocal Cooperation Act, Title 7, Chapter 11, Part 1, Montana Code Annotated, duly organized, existing and in good standing under and by virtue of the laws of the State of Montana; has the power to enter into this Agreement and possesses by virtue of the Interlocal Agreement full power to provide coverage to parties signatory to the Interlocal Agreement and this Agreement. This Agreement and the other Program Documents constitute the legal, valid, binding and enforceable obligations of the Authority in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Encumbrances. The Authority will not pledge the Assessments or its rights under this Revised Agreement except as provided under the terms of this Revised Agreement.

(d) Equitable Exercise of Responsibilities. The Authority will exercise all rights and responsibilities hereunder reasonably and equitably for the benefit of all Member Entities without preference or discrimination among Member Entities.

(e) No Violations. Neither the execution and delivery of this Revised Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of the Bylaws of the Authority or any restriction on

any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing.

(f) **Covenant to Comply with Regulations.** The Authority covenants that it will comply with the regulations concerning self-insurance and group self-insurance for workers' compensation coverage duly and lawfully promulgated by the Employment Relations Division of the Montana Department of Labor and Industry, and its successors.

(g) **Agreement to Provide Coverage.** The Authority agrees to provide the Coverage to the Member Entity described herein and in the Memorandum of Coverage and upon the terms and conditions set forth in this Revised Agreement.

### **SECTION 3: ESTABLISHMENT OF ACCOUNTS; COVERAGE; PAYMENT OF CLAIMS AND OTHER PROGRAM COSTS; PURCHASE OR ACQUISITION OF OTHER INSURANCE, EXCESS INSURANCE OR REINSURANCE**

3.1 **Program Funds and Accounts.** The Authority hereby creates the following Funds and Accounts as set forth herein:

(a) **Program Operations Fund.** The Authority shall deposit in the Program Operations Fund all Assessments, investment income, and other funds or revenues allocated to the Program. This fund shall be used to pay all claims as well as the administrative costs of the Program. These funds may also be expended for investments, contribution or assessment for participation in a group or captive insurance program or pool as provided in Section 3.6.

(b) The Program Operations Fund shall have the following accounts:

- (i) one or more Program Checking Accounts into which assessments and other revenue items shall be deposited and from which shall be paid Program costs and expenses;
- (ii) Program Investment accounts. The Program shall maintain various investment accounts in compliance with MMIA's Investment Policy.

3.2 **Coverage.** The Authority through its Workers' Compensation Program hereby provides the Coverage to the Member Entity, and the Member Entity hereby agrees to accept the Coverage, upon the terms and conditions set forth in this Revised Agreement and the Memorandum of Coverage attached hereto as Exhibit A.

3.3 **Payment of Claims, Settlements, Judgments and Administrative Costs.**

(a) Settlements and Judgments which the Authority is obligated to pay under the terms of this Program Agreement and the Memorandum shall be paid on behalf of the Member Entities from the Program Operations Fund directly to the claimants or designees. An amount representing the Administrative Costs incurred by the Authority with respect to the Program shall be paid to the Authority.

(b) If the Program Operations Fund is insufficient to pay the award, the Authority shall individually assess each Member Entity to the extent necessary to pay the award, and the assessment charged each Member Entity shall be determined on a proportionate basis as may be

determined by the Board of Directors with the advice of its Consultant ("Special Assessment"). Any such Special Assessment shall be a contractual obligation of the Member Entity.

(c) Any lawful award entered against a Member Entity shall be a liability of the Program and a joint and several liability of each Member Entity as provided in this Revised Agreement.

3.4 Subrogation. Each Member Entity agrees that in the event of the payment of any loss by the Program under this Agreement, the Program shall be subrogated to the extent of such payment to all the rights of the Member Entity against any person or other entity legally responsible for damages for said loss, and in such event the Member Entity hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

3.5 Loss Reserves. The Authority shall employ or retain a Qualified Claims Administrator for the purpose of adjusting Claims and submitting a report to the Authority and each Member Entity setting forth (a) the amount of Loss Reserves necessary to be established with respect to each Claim arising during the preceding full Coverage Year(s), and (b) any adjustments (whether increases or decreases) necessary to be made in the amount of each Loss Reserve previously established pursuant to this Section and to make supplemental reports from time to time throughout each year as needed in accordance with prudent practice. In determining the amount of Loss Reserves necessary to be established or adjusted as described above, the Qualified Claims Administrator shall consider such facts and circumstances occurring during the period covered by such report as it, in its independent judgment, deems necessary in accordance with prudent practice. Notwithstanding the foregoing, the Qualified Claims Administrator shall take into account Settlements of Claims in accordance with the criteria set forth in this Section.

The Authority shall adjust Loss Reserves in the Program Operations Fund annually, and additionally from time to time throughout each year as needed in accordance with prudent practice. In the event that any such adjustment to Loss Reserves results in the Unencumbered Reserves being reduced to zero, the Authority shall provide prompt written notice of such fact to the Member Entities and the Authority shall have the discretion to impose, and the Member Entities shall be obligated to pay, any Special Assessment which the Board of Directors may determine is necessary in order to fund the Unencumbered Reserves at a prudent level with the advice of a qualified actuary or other person knowledgeable about public entity workers' compensation programs.

3.6 Other Insurance, Excess Insurance or Reinsurance. The Authority may provide Coverage, or a portion of Coverage, to the Member Entities by purchase of specific and/or aggregate workers' compensation insurance, excess insurance, or reinsurance with such self-insurance attachment points as at the time are in the best interests of the Program and the Member Entities as determined by the Board; by purchase of workers' compensation insurance, excess insurance or reinsurance from a group or captive insurance program or pool; or by participation in a group or captive insurance program or pool for the purposes of acquiring workers' compensation insurance, excess insurance or reinsurance. The Authority may use Unencumbered Reserves to purchase or make payments to acquire such insurance, excess insurance or reinsurance, or participate in such pool or program; provided, however, that the Authority may use Loss Reserves to purchase or otherwise acquire such insurance, excess insurance or reinsurance if the policy of commercial insurance, excess insurance or reinsurance to be purchased or otherwise acquired covers the claim for which such Loss Reserves were established. In the event of a dispute between the Authority and any Member Entity and any insurer, excess insurer or reinsurer as to payment of a Claim, the failure by either to pay such Claim shall not result in a default by the Authority under the terms of this Agreement.

In a Coverage Year for which the Authority has purchased or otherwise acquired insurance, excess insurance or reinsurance on behalf of a Member Entity, each such Member Entity shall be obligated to pay a proportion of the costs of such insurance, excess insurance or reinsurance, and Risk Assessment Adjustments.

#### **Section 4: TERM OF AGREEMENT; ASSESSMENT; COMMINGLING OF FUNDS PROHIBITED**

4.1 Term of Agreement; Termination of a Participant's Obligations to Pay Assessment. The Term of this Agreement shall commence on the date of its execution and shall continue until the Member Entity terminates the agreement as provided in Section 6 of this Agreement.

The obligation of any Member Entity to pay Assessments under this Agreement will terminate upon the terms and conditions set forth in Section 6 herein.

4.2 Budget and Appropriation of Assessment Payments. The Authority shall calculate the class code rates for Assessments to be paid by each Member Entity for the next succeeding Coverage Year as provided in Section 4.4 herein and provide preliminary class code rate information no later than April 15th of each year. During the term of the Agreement, Assessment invoices will be sent to Member Entities quarterly in arrears with payment being due by the 15th of the month following the end of the quarter being assessed. Each Member Entity covenants to take such action as may be necessary to include Assessment payments payable hereunder in its annual budget, to levy ad valorem taxes outside its permitted mill levy limitation, if necessary, on all property within its jurisdiction to fund such Assessment payments and to make the necessary annual appropriations for all such Assessment payments. The covenants on the part of the Member Entity herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Member Entity to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Member Entity to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by such Member Entity.

4.3 Obligation to Pay Assessments.

(a) No Withholding. Notwithstanding any dispute between the Authority and a Member Entity, including a dispute as to the scope or nature of Coverage provided by the Authority or the availability of amounts in the Program Operations Fund to pay Claims made against any Member Entity, or for any other reason (other than the termination of the obligation to pay Assessment pursuant to Section 4.1 hereof), the Member Entity shall appropriate funds sufficient to pay and shall make all Assessment payments when due and shall not withhold any Assessment payments pending the final resolution of such dispute.

(b) Rate on overdue Payments. In the event a Member Entity fails to make any of the payments required in this Section, the payment in default shall continue as an obligation of the Member Entity until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Member Entity agrees to pay the same with interest or penalty thereon, at a rate or rates to be established by the Authority, from the date such amount was originally payable.

(c) Abatement. There shall be no abatement of Assessment payments.



#### 4.4 Assessments

(a) Total Risk Assessments. With respect to each Coverage Year, the Authority shall retain a Consultant to determine and prepare a report by March 1 preceding the beginning of such Coverage Year setting forth the total amount of Risk Assessments payable in the aggregate by all Member Entities for such Coverage Year ("Total Risk Assessment"). The Total Risk Assessment shall be that amount which the Consultant estimates is required to be deposited into the Program Operations Fund at a confidence level of no less than fifty percent (50%), to maintain sufficient Loss Reserves to pay all Settlements and Judgments for all Member Entities, all Administrative Costs incurred during the Coverage Year, costs of other insurance, excess insurance, or reinsurance, and such other reasonable and necessary costs as may be incurred in the operation of the Program as may be determined by the Board of Directors of the Authority. The Total Risk Assessment may be increased by the Authority if, upon advice of the Consultant, the Board of Directors determines that a higher confidence level should be maintained. The Consultant shall utilize such methodology as adopted from time to time by the Authority upon notice to the Member Entities and shall certify that such methodology was used. The Authority shall collect from all Member Entities an amount equal to the Total Risk Assessment determined by the Consultant to maintain the designated confidence level in the Program. The amount collected from all Members may include funds obtained from Assessments, investment income and Unencumbered Reserves, as the Board of Directors may in the exercise of its discretion deem appropriate with respect to each Coverage Year.

(b) Calculation of Individual Member Entity Risk Assessment. The Risk Assessment rates established as provided in Section 4.4(a) shall then be applied to each Member Entity's estimated payroll by rating classification and further adjusted by an experience rating modification which shall be determined by the Board of Directors on the advice of an actuarial consultant utilizing commonly accepted actuarial principles. The amount so allocated to each Member Entity shall be the Risk Assessment due and owing by the Member Entity to the Program for such period.

(c) The aggregate Assessment and the Risk Assessment due and owing by each Member Entity shall be computed and adopted by the Board of Directors on a Coverage Year basis to be effective July 1, provided that the Board of Directors may make such mid-term adjustments to Risk Assessment rates as appropriate and in the best interests of the Program and the Member Entities to accomplish the goals of the Program in accordance with the Workers' Compensation and Occupational Disease Acts of Montana.

#### 4.5. Risk Assessment Adjustment;

(a) For purposes of the Risk Assessment Adjustment Computation, "Incurred Losses" for each Member Entity shall mean the amount by which Loss Reserves for all Claims of each Member Entity are to be established or increased during each Coverage Year covered by the annual report which is submitted by the Qualified Claims Administrator pursuant to Section 3.5 hereof, exclusive of the most recently completed preceding full Coverage Year, netting out any decrease in Loss Reserves for Claims of each such Member Entity during such period.

(b) Risk Assessment Adjustment Computation. On or before March 31 of each year, the Authority shall compute the Risk Assessment Adjustment for each Member Entity. The Risk Assessment Adjustment, which may be an additional Assessment or a refund of a previous Assessment, shall be the sum of Incurred Losses, loss expenses, and administrative costs less Risk Assessments, inclusive of prior Risk Assessment Adjustments. The methodology and

limitations of additional assessment or refund shall be determined by the Authority based on the recommendation of the Consultant.

Notwithstanding the foregoing, the Authority is authorized to compute the Risk Assessment Adjustment more frequently than annually and/or inclusive of the most recently completed preceding full Coverage Year when the Board of Directors with due regard for the financial condition of the Program deems it prudent and necessary to do so.

(c) **Overriding Clause.** In the event Section 4.5(a) conflicts with any other section, provision, or definition in the Workers' Compensation Coverage Program Agreement, this section shall govern and supersede the same.

(d) **Prompt Notice of Risk Assessment Adjustments.** The Authority shall give each Member Entity prompt notice of the determination of Risk Assessment Adjustments.

(e) **Obligation to Pay Risk Assessment Adjustments.** The obligation of Member Entities to pay Risk Assessment Adjustments with respect to Coverage Years in which they were Member Entities determined subsequent to the date of withdrawal shall in no event be discharged by expulsion or withdrawal from the Program.

**4.6 Assessments In The Event of Losses and Expenses In Excess of the Program Funds.** In the event the Program losses and expenses for the Coverage Year exceed Risk Assessments, Loss Reserves, and interest income for that Coverage Year, the difference shall be charged to the Unencumbered Reserves, if funds are available. If funds are not available, the Board of Directors, in the exercise of its discretion and upon the advice of a qualified actuary may impose a Special Assessment.

Should funds be obtained by the Program from borrowing or from any other appropriate source in lieu of a Special Assessment, then such funds shall be used to pay Claims. In the event of such borrowing of funds by the Program, the Authority shall advise the Employment Relations Division of the Montana Department of Labor and Industry, or its successor responsible for the regulation of the Program.

Any sums expended by the Member Entity in the interim to pay Claims covered by the Program shall be reimbursed, if they would otherwise be covered by the Program.

Provided that nothing in this Section 4.6 shall be construed to limit the joint and several liability of individual Member Entities.

**4.7 Commingling of Funds Prohibited.** Assessments, Special Assessments, Loss Reserves, Unencumbered Reserves, investment income, or other income paid to or derived from the Program shall not be commingled with the funds of any other program which is or may be sponsored, operated, or controlled by the Authority. Nothing in this Revised Agreement shall be construed to permit any Member Entity or any other person to attach, assign, transfer, or otherwise have any right or title to or interest in the assets of the Program for any purpose other than as set forth in this Revised Agreement. Nothing in this Revised Agreement shall be construed to permit any Member Entity or any other person to attach, assign, transfer, or otherwise have any right or title to or interest in the assets of any other risk retention or other program which is or may be sponsored, operated, or controlled by the Authority for purposes of satisfying any obligation, debt, or covenant arising from or related to this Revised Agreement.

This prohibition on commingling of funds does not apply to the Montana Municipal

Interlocal Authority Workers' Compensation Program's proportionate share of the total amounts of any Assessment Deposits or Assessments received by Government Entities Mutual (GEM) from all participants of GEM, or held in any account or surplus account by GEM.

4.8 **Assessment Audits.** The Authority may at its discretion audit each Member Entity to determine the accuracy of the basis used for the Assessment calculations. An audit will be limited to the two Coverage Years prior to the Coverage Year during which the audit takes place. Refunds for overpayment or billing for underpayment will be limited to the same period.

4.9 **Member Identified Errors.** If an individual Member Entity finds errors in the amount of Assessments paid for prior periods, and submits documentation deemed adequate by the Authority (e.g. an independent audit or authorized change to reports submitted to some other government entity), a refund may be requested or additional Assessments paid in accordance with the time limits identified above for Assessment audits.

## **SECTION 5: INDIVIDUAL MEMBER ENTITY ACCOUNTS; ACCOUNT SETTLEMENT UPON WITHDRAWAL OR TERMINATION**

5.1 **Individual Member Entity Accounts.** An Individual Member Entity Account in the name of each Member Entity will be established; and in the case of Member Entities who are Member Entities in the Program as of the effective date of this Agreement, the balance in their respective Individual Member Entity Accounts will be continued. Such Individual Member Entity Account will be used to identify the current financial condition of each Member Entity's participation in the Program. The Individual Member Entity Accounts will represent each Member Entity's share of Assessments less Claims, Judgments, Administrative Costs and other expenses which have been made against the Program.

The Individual Member Entity Accounts are for the purpose of determining each Member Entity's share of funds which:

- (a) may be credited against future Assessments or payable as dividends;
- (b) may be payable to each Member Entity who withdraws from the Program;
- (c) may be payable to each Member Entity on termination of the Program.

5.2 **Annual Computation.** Within 180 days of the end of each Coverage Year, the Individual Member Account of each Member Entity shall be computed by computing for the Program as a whole and by allocating to each Member Entity its proportionate share of the Assessments collected plus the investment income and other revenues of the Program at the end of the Coverage Year less the Claims (including claims paid, claims incurred, and claims incurred-but-not-reported), Judgments, loss development, Administrative Costs, and other operating costs for such Coverage Year.

Provided, however, that no Member Entity shall be entitled to receive any money or credit on account of having a positive balance in its Individual Member Entity Account unless the Unencumbered Reserves of the Program Operations Fund has an adequate fund balance, as determined by the Board in consultation with the programs actuary, and in such event the individual Member Entity shall be entitled to a proportionate share of the assets in the Unencumbered Reserves in satisfaction of its Individual Member Entity Account as provided in

this Agreement.

5.3 Settlement of Individual Member Entity Account upon Withdrawal. In the event a Member Entity withdraws from the Program in good standing as provided in Section 6.5, the withdrawing Member Entity's Individual Member Entity Account will be calculated as of that date and 10% of the amount due the withdrawing Member Entity based upon the status of its Individual Member Entity Account and subject to the provisions contained in Sections 5.1 and 5.2 will be paid to the Member Entity at that time. At the end of each of the next three years, the Individual Member Entity's Account will be recomputed based upon changes in incurred losses and investment income during the year and the amount then due and payable the withdrawing Member Entity shall be determined as provided in Section 5.2. At the end of the first year, twenty-five percent (25%) of the Annual Recomputed Amount due and payable based upon the Individual Member Entity's Account will be paid to the Member Entity plus interest on that amount for one year and computed at the then rate of one-year U.S. Treasury Notes. At the end of the second year, the Member Entity shall be paid fifty percent (50%) of the Annual Recomputed Amount due and payable based upon the Individual Member Entity's Account plus interest on that amount for two years and computed for each of those two years at the rate of one-year U.S. Treasury Notes at the end of each such year. At the end of the third year, the Member Entity shall be paid fifteen percent (15%) of the Annual Recomputed Amount due and payable based upon the Individual Member's Account plus interest on that balance for three years computed for each of those three years at the rate of one-year U.S. Treasury Notes at the end of such year. During the three-year period, the right of a withdrawing Member Entity to receive a settlement of its Individual Member Entity's Account is subject to the availability of funds in the Unencumbered Reserves as provided in Section 5.2, provided however, that this schedule for disbursements is subject to the limitation imposed by Section 6.5(c) of this Agreement.

5.4 Settlement of Individual Member Entity Account upon Termination. In connection with expulsion or suspension of a Member Entity pursuant to Section 6.5 herein, the Authority shall determine the Individual Member Entity Account of such Member Entity. The amount of the Individual Member Entity Account otherwise due to the Member Entity being expelled or suspended shall be applied to the obligations due from such Member Entity under the terms of this Agreement. Any remaining balance in the terminated Member's Individual Member Entity Account ("the Excess Individual Member Entity Account Balance") shall be held by the Authority and any interest thereon in a segregated account for the benefit of such Member Entity. The Authority will transfer to such Member Entity its Excess Individual Member Entity Account Balance, if any, on the earliest practicable date when the Member is no longer subject to any Assessments for any obligations under the terms of this Agreement, which will be the date when all Claims, including claims incurred during any Coverage Period prior to expulsion or suspension of such Member Entity, and Judgments have been finally determined and/or paid, and then pursuant to the schedule of payments set forth in Section 5.3 herein applicable to a Member Entity who withdraws in good standing, subject to the availability of funds in the Unencumbered Reserves as provided in Sections 5.2 and 5.3 and subject further to the limitation as provided in Section 6.5 (c).

## **SECTION 6: ADMISSION TO, WITHDRAWAL FROM AND EXPULSION FROM THE WORKERS' COMPENSATION RISK RETENTION PROGRAM**

6.1 Transition Period. This Revised Agreement shall be effective September 1, 2010. Members of the Workers' Compensation Program who execute this Revised Agreement prior to the effective date shall continue to be covered under the terms and conditions of the Program

Agreement then in existence until the effective date of this Agreement. The effective date for those Member Entities of the Workers' Compensation Program who execute this Revised Agreement after September 1, 2010, will be retroactive to September 1, 2010.

6.2 Conditions for Providing Coverage to a New Member Entity. Applications for memberships in the Revised Program shall be submitted on an approved form to the Chief Executive Officer. The Board of Directors will consider and act upon each application. Concurrence by a majority of the Board and the Authority's excess insurance carrier is required in order for an applicant to be admitted as a Member Entity. The Authority may provide Coverage to a new Member Entity of the Program that is not currently a Member Entity under this Agreement, subject to the following conditions:

- (a) such new Member shall be a political subdivision of the state;
- (b) at least 30 days prior to the commencement of coverage under the Revised Program, such new Member Entity shall be signatory to the Interlocal Agreement and a member of the Authority;
- (c) at least 30 days prior to the commencement of coverage under the Revised Program, such new Member Entity shall have submitted a completed application for admission to the Revised Program as may be required by the Board of Directors; and

The minimum time requirements for execution and submission of documents as provided in subparagraphs (b) and (c) hereinabove may be waived by the Board of Directors at their discretion.

Coverage of such new Member Entity shall be effective on the first day of the quarter next succeeding the approval of the new Member's application by the Authority, unless determined otherwise by the Board of Directors, and the execution of the documents as provided herein.

### 6.3 Requirements for Participation in the Program.

Each Member Entity who participates in the Program shall execute this Agreement. Each Member Entity hereby acknowledges and agrees that, commencing with the effective date of its participation in the Program, the Member shall be obligated to pay Assessments as computed pursuant to this Agreement

### 6.4 Capital Assessment of New Member Entity to Program Operations Fund.

(a) If the Program Operations Fund is not adequately funded, the new Member Entity may be assessed a non-refundable amount to be deposited into the Program Operations Fund as determined by the Authority ("Capital Assessment"). Such new Member Entity shall pay all components of the Risk Assessment in addition to this Capital Assessment.

(b) If the Program Operations Fund is adequately funded as determined by a Consultant, no initial capital assessment will be required of the Member Entity.

6.5 Conditions for Permitting Withdrawal of a Member Entity from Coverage. The Authority shall permit a Member Entity to withdraw from Coverage under this Agreement, provided that the following are satisfied:

- (a) such Member Entity shall not be in default as to payment of any Assessments then

or theretofore due;

(b) at least 60 days preceding the effective date of such withdrawal, such Member Entity shall have provided written notice to the Authority of its intent to withdraw;

(c) Provided, however, if the Authority shall have received a certificate from a Consultant that such withdrawal will materially reduce the actuarial soundness of the Program, the Authority may, in its sole discretion and upon the advice of the Consultant, in order to minimize the financial, actuarial and economic impacts on the Program, extend the terms of the repayment of amounts due the withdrawing Member of the Member's Individual Member Entity Account as otherwise provided in Sections 5.2 and 5.3 of this Agreement.

(d) In no event shall withdrawal from Coverage or termination of a Member Entity's participation in the Program release a Member Entity from its obligation to pay damages resulting from default under the terms of this Revised Agreement, nor shall such withdrawal or termination release a Member Entity from its obligation to pay Assessments as provided herein. The Authority shall continue to pay covered Claims relating to the withdrawn Member Entity which arose prior to withdrawal as provided herein, unless the Member Entity defaults in the payment of its continuing obligations described in the preceding sentence. Notice of withdrawal shall be revocable by the Member Entity only with the consent of the Authority.

#### 6.6 Conditions of Membership Review, Suspension and Termination Procedure.

(a) The Authority may suspend or expel a Member Entity from the Revised Program (i) if the Member Entity is in default under the terms of this Revised Agreement or (ii) when, in the determination of the Chief Executive Officer, a Member Entity has engaged in conduct, other than a default under this Revised Agreement, that warrants expulsion from membership in the Program. Suspension, termination or expulsion is subject to the conditions provided in Section 6.6 herein.

(b) The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall have the same meaning whenever they are used in this Agreement with respect to a Member Entity:

- (i) failure by such Member Entity to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to such Member Entity by the Authority, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Member Entity within the applicable period and diligently pursued until the default is corrected; or
- (ii) the filing by such Member Entity of a case in bankruptcy, or the subject of any right or interest of such Member Entity under this Agreement to any execution, garnishment or attachment, or, adjudication of such Member Entity as a bankrupt, or assignment by such Member Entity for the benefit of creditors, or the entry by such Member Entity into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Member Entity in any proceedings instituted under the provisions of the federal bankruptcy code, as amended,

or under any similar act which may hereafter be enacted.

(c) When a Member Entity has been determined by the Authority to be in default under the terms of the Revised Agreement, the Member Entity shall be given written notice of such default and shall be required to cure such default within ten (10) calendar days of receipt of such notice. If such default is not cured within the time prescribed herein, said Member Entity will be suspended from the Program and Coverage of Claims under the Program shall be terminated during the period of suspension, which shall be effective, without the need for a meeting of the Board of the Authority, at 12:01 a.m. on the 30th day after notice of termination has been received by the Member Entity. Such period of suspension shall continue until the conditions of termination or expulsion stated in Section 5.4 of this Program Agreement have been met, at which time the defaulting Member Entity's participation in the Program shall be immediately terminated without a meeting.

(d) In the event the Chief Executive Officer has determined that the Member Entity has engaged in conduct that warrants expulsion other than a default under this Revised Agreement, the Chief Executive Officer shall file a written report with the Board of Directors. Said report shall contain a summary of the facts and the recommendations regarding continued membership status. A copy of the report shall be served by mail to the Member Entity along with a Notice of Meeting of the Board of Directors. Said Notice of Meeting shall include the place, date and time of the meeting. At its discretion, the Board of Directors may submit written questions to the Member Entity, written answers to which must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the date of the meeting. A Member Entity objecting to the report and recommendations of the Chief Executive Officer shall submit a written statement to the Board of Directors setting out in detail the basis for the objection and any other information the Member Entity desires to submit. Said statement must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the meeting. The Board of Directors shall meet at the time and place designated in the Notice of Meeting. The Member Entity shall be entitled to be represented at the meeting and present an oral statement and other information. Following the meeting, the Board of Directors shall affirm, modify, or reject the recommendation of the Chief Executive Officer. The Board of Directors shall have the authority: (i) to place a Member Entity on probation, the terms and duration of which it shall determine; (ii) to suspend a Member Entity from Coverage of Claims; or (iii) to expel a Member Entity from the Program. A copy of the Board of Directors' decision shall be served by mail on the Member Entity. In the event that the Board of Directors votes to suspend or terminate membership, such suspension or termination shall not take place for at least thirty (30) days after the Member Entity has received notice of the suspension or termination. The duration of the notice period shall be determined by the Board.

6.7 In no event shall involuntary termination or expulsion from the Revised Program release a Member Entity from its obligation to pay Assessments or comply with the other terms or conditions of this Revised Agreement, nor shall involuntary termination or expulsion release a Member from its obligation to pay damages resulting from a default under the terms of this Revised Agreement.

6.8 **Obligation to Notify Employment Relations Division upon Withdrawal or Termination.** Upon withdrawal or termination of a Member Entity, the Authority and the Member Entity shall promptly notify the Employment Relations Division of the Montana Department of Labor and Industry or its successor.

6.9 **No Remedy Exclusive.** No remedy conferred herein upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or

in equity, including, but not limited to the right by mandamus or other suit or proceeding at law or in equity to enforce his rights against the Member Entity and to compel the Member Entity to perform and carry out its duties under this Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

6.10 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will on demand pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party awarded to the nondefaulting party by a court of competent jurisdiction.

6.11 No Additional Waiver Implied by One Waiver. In the event any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **SECTION 7: JOINT AND SEVERAL LIABILITY**

7.1 Guarantee to Pay Claims. The Member Entity agrees to assume and guarantee to pay, or otherwise discharge promptly, any and all the liabilities and obligations which the Program may incur for Claims for which Coverage has been provided pursuant to the terms of this Revised Agreement and the Workers' Compensation and Occupational Disease Acts of the State of Montana.

7.2 Joint and Several Liability. This Revised Agreement represents a direct financial guarantee to the employees of all Member Entities of the Program and dependents of the deceased employees of all Member Entities of the Program for the full amount of any and all liabilities or obligations for which Coverage has been provided pursuant to the terms of this Revised Agreement and any predecessor Agreement with respect to this Program in amounts not limited to this Member Entity's "pro rata" share. The Member Entity understands and agrees that it shall be jointly and severally liable with the other Member Entities for the full amount of any and all known and unknown Claims incurred and incurred-but-not-reported during the Member Entity's participation in the Original Program and for the full amount of any and all known and unknown claims incurred and incurred-but-not-reported during the membership of the Member Entity in the Program.

7.3 Other Insurance Excluded. This Revised Agreement shall not cover or extend to any workers' compensation or occupational disease liabilities which are expressly insured by a carrier duly authorized to write Montana workers' compensation and occupational disease insurance, provided that the liabilities assumed by an excess insurance or reinsurance provider shall also remain the primary liabilities of the Program and its Member Entities.

7.4 Enforcement of Guarantee. In the event the Program shall fail to pay compensation, as compensation is defined in the Montana Workers' Compensation and



Occupational Disease Acts, when due, the Member Entity will pay the same, and the payment may be enforced against the Member Entity to the same extent as if said payment was its sole liability. The Member Entity understands and agrees that it shall be jointly and severally liable with the other Member Entities for the full amounts of any and all known or unknown Claims of the Program arising during the membership of the Member Entity in the Program.

## **SECTION 8: INSPECTION OF FACILITIES AND EQUIPMENT; SAFETY CONSIDERATIONS AND NOTIFICATION OF ACCIDENT**

8.1 **Inspection of Facilities, Equipment and Records.** The Board of Directors and any of their agents, employees or attorneys shall be permitted at all reasonable times to inspect the work places, plants, works, machinery and appliances covered by this Revised Agreement and shall be permitted at all reasonable times to examine Member Entity's payroll, personnel, injury and accident records, and Member Entity's books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify the Assessments which are payable under the terms hereof. This right to inspect or examine shall continue after termination of membership with respect to all claims or matters arising during or relating to membership status.

8.2 **Safety Considerations.** Each Member Entity must follow the safety recommendations of the Board of Directors and the service company or any other agent of the Authority in order to provide safe and sanitary working conditions.

8.3 **Notification of Accident and Reimbursement to Authority for Penalty.** Each Member Entity must give immediate notification to the Qualified Claims Administrator on the prescribed forms of any accident and reported Claim for any benefits whatsoever payable under the Workers' Compensation and Occupational Disease Acts.

Any penalty levied for failure to pay compensation benefits, medical expenses or travel allowances resulting from a Member Entity's failure to give timely notice to the claims adjuster of an accident or claim for any benefits as heretofore described may, by a vote of a majority of the Board of Directors, be assessed against the Member Entity.

## **SECTION 9: PROHIBITION OF UNAUTHORIZED PAYMENTS; PENALTY FOR EMPLOYMENT WITHOUT WORKERS' COMPENSATION COVERAGE**

9.1 **Prohibition of Unauthorized Payments by Member Entities.** No Member Entity shall make voluntary payment of weekly benefits or medical expenses or enter into any agreement with any employee or his agent committing payment or admitting liability for any workers' compensation benefits as provided in the Workers' Compensation and Occupational Disease Acts without the prior approval of the Board of Directors or the Qualified Claims Administrator. Any Member Entity making such voluntary payments or entering into such an agreement may, by a vote of a majority of the Board of Directors, be held individually and separately liable for reimbursement to the Program for all benefits and medical expenses paid or committed.

9.2 **Penalty for Employment of Persons without Workers' Compensation Coverage.** No Member Entity shall contract with any person, including contractors, or subcontractors, who has not produced evidence of current workers' compensation insurance according to the

provisions of the Workers' Compensation and Occupational Disease Acts. Any Member Entity who contracts with any person who does not have current workers' compensation insurance will be charged an additional non-discounted Assessment based upon the full amount of the contract.

## **SECTION 10: AGREEMENT WITH SERVICE PROVIDERS**

10.1 Agreements with Service Providers. The Board of Directors may enter into agreements with various service companies or employ individuals to provide the following services:

- (a) Assist the Authority in securing specific and aggregate excess insurance or reinsurance.
- (b) Inspect the work places, operations, machinery and equipment owned or operated by the participating Member Entities of the Program.
- (c) Compile and file notices and reports required under the Workers' Compensation and Occupational Disease Acts upon receipt of initial report from either the Authority or any participating Member Entity; conduct any necessary investigation in order to determine the liability of the participating Member Entity under the Workers' Compensation and Occupational Disease Acts; and, process any and all lawful claims under rules established pursuant to applicable law and by such additional rules as may be promulgated.
- (d) Furnish the Authority and participating Member Entities in the Program with periodic reports of all accidents and occupational disease, and of all payments made and reserves set up for benefits and expenses on account of liability and/or reasonably anticipated liability for accidental injuries and occupational diseases sustained by employees.
- (e) Adjust the Assessments payable by participating Member Entities in the Revised Program by allowing for favorable or unfavorable experience so as to determine and assign Assessment modifications for each Member Entity in the Program annually in accordance with policies established by the Board of Directors.
- (f) Bill for and maintain records of all Assessment payments to the Program in accordance with such rules as the Board of Directors adopt.
- (g) Make payroll audits of participating Member Entities in the Program.
- (h) Prepare on behalf of the Authority and the participating Member Entities in the Program for all scheduled hearings and generally administer all other details pertaining to each participating Member Entity's obligations to its employees under the Workers' Compensation and Occupational Disease Acts.
- (i) Perform such other related services as may be reasonably necessary for the operation of the Program.

## **SECTION 11: INDEMNIFICATION AND RELEASE; DISCLAIMER**

11.1 Release and Indemnification Covenants. Each Member Entity shall and hereby agrees to indemnify and save the Authority and all other Member Entities harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) its breach or default in the performance of any of its obligations under this Agreement or (ii) its act or negligence or that of any of its agents, contractors, servants, employees or licensees with respect to the Coverage. No indemnification is made under this Section or elsewhere in this Agreement for claims, losses or damages, including legal fees and expenses arising out of the willful misconduct, negligence, or breach of duty under this Agreement by the Authority, its officers, agents, employees, successors or assigns.

11.2 Disclaimer. THE AUTHORITY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE COVERAGE FOR THE NEEDS OF THE MEMBER ENTITIES.

11.3 Savings Clause for Joint and Several Liability. Nothing herein in this Section 11 shall be construed to limit or eliminate the obligation of the Member Entities with respect to their joint and several liability for Claims as provided in Section 7 of this Agreement.

## **SECTION 12: ASSIGNMENT AND AMENDMENT**

12.1 No Assignment by the Member Entities. This Revised Agreement may not be assigned by any Member Entity.

12.2 Amendment. This Agreement may be amended by a written instrument duly authorized and executed by the Authority and a majority of the Member Entities. It is expressly agreed and understood that approval of any amendment by a majority of the Member Entities who are signatories to this Agreement at the time of such amendment shall operate to bind each Member Entity to such amendment. All costs and expenses incurred in connection with any amendment to this Agreement shall be borne pro rata by the Member Entities.

## **SECTION 13: MISCELLANEOUS**

13.1 Notices. All notices, bonds or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) business days after deposit in the United States mail, certified, postage prepaid, to the Member Entities, the Authority at the following addresses:

If to the Member Entity

To the City or Town Clerk  
At the address of the City or Town  
as maintained in the official records of the  
Authority

If to the Authority:

Montana Municipal Interlocal Authority  
Attn: Workers' Compensation Program  
PO Box 6669  
Helena, Montana 59604-6669

The Authority and Member Entity, by notice given hereunder, may designate different addresses to which subsequent notices, bonds or other communications will be sent.

13.2 Binding Effect. This Revised Agreement shall inure to the benefit of and shall be binding upon the Authority and the Member Entities and their respective successors and assigns.

13.3 Enforceability. This Revised Agreement is enforceable by the Authority, Member Entities of the Revised Program, the employees of such Member Entities, and/or the Employment Relations Division of the Montana Department of Labor and Industry or its successor. The parties to this Revised Agreement are held and firmly bound for the payment of all legal fees and costs incurred by the State of Montana in any actions taken to enforce this Revised Agreement.

13.4 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13.5 Further Assurances and Corrective Instruments. The Authority and the Member Entities agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Coverage hereby provided or intended so to be or for carrying out the expressed intention of this Revised Agreement.

13.6 Waiver of Notice as to Current Condition of Authority. The Member Entity waives any notices as to the current condition of said Authority, the Program, any changes therein, and the manner of conducting the Program. The Undersigned also waives, in the event of non-compliance by the Authority, any demand or notice in respect thereof and any requirement of legal or equitable proceedings or otherwise on the part of the Employment Relations Division of the Montana Department of Labor and Industry or its successor against the Authority as a condition precedent to enforcing the obligations of the Member Entities hereunder.

13.7 Execution in Counterparts. This Revised and Restated Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.8 Applicable Law. This Revised and Restated Agreement shall be governed by and interpreted in accordance with the laws of the State of Montana.

13.9 Effect of Revised Agreement. This Revised Agreement amends and supersedes each prior Workers Compensation Program Agreement, and this Revised Agreement shall effect a continuation of the Program for all purposes with respect to the continuity of Coverage, expenses, accounts, contracts, and other agreements related to the operation of the Program.

**MONTANA MUNICIPAL INTERLOCAL AUTHORITY  
REVISED AND RESTATED  
WORKERS' COMPENSATION  
PROGRAM AGREEMENT  
July 1, 2014  
Signature Page**

IN WITNESS WHEREOF, The Authority has caused this Revised and Restated Workers' Compensation Risk Retention Program Agreement to be executed in its name by its duly authorized officers;

MONTANA MUNICIPAL INTERLOCAL AUTHORITY,  
as Authority

By \_\_\_\_\_  
Chief Executive Officer

Date Signed \_\_\_\_\_

and the Member Entity has caused this Revised Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

City of \_\_\_\_\_  
As Member

Address \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Date Signed \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 3667**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT ENTITLED "STATE OF MONTANA AGREEMENT" WITH THE STATE OF MONTANA DEPARTMENT OF TRANSPORTATION FOR PARTIAL FUNDING OF THE HISTORIC PRESERVATION OFFICER POSITION.**

*WHEREAS*, the City of Miles City desires to enter into an agreement with the Montana State Historic Preservation Office to assist in the funding of the Miles City Historic Preservation Officer position;

*AND WHEREAS* the Montana State Historic Preservation Office has prepared an Agreement setting for the obligations of the City and the State, and the City of Miles City desires to enter into such Agreement;

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

1. The State of Montana Agreement, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement 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, THIS 25TH DAY OF FEBRUARY, 2014.**

---

C.A. Grenz, Mayor

ATTEST:

---

Lorrie Pearce, City Clerk

Agreement Number: MT-14-023

STATE OF MONTANA AGREEMENT

This agreement (Agreement) is hereby made between City of Miles City, P.O. Box 910, Miles City, MT, 59301 (The "Sub-Grantee") and the Montana State Historic Preservation Office, Montana Historical Society, 1410 8th Ave, PO Box 201202 Helena, Montana 59620-1202 (The "Grantee"). The two parties, in consideration of mutual covenants and stipulations described below, agree as follows:

SECTION I: SERVICES

The Sub-grantee shall:

1. Maintain an active Historic Preservation Commission (HPC) that will advocate for preservation, assist the HPO to accomplish preservation goals, and fill vacancies on the HPC promptly.
2. Participate in and carry out the responsibilities for Certified Local Government program status as outlined in "The Montana Certified Local Government Manual."
3. Insure historic preservation concerns are considered at all levels of local government planning and are incorporated as goals of other local, state, and federal projects.
4. Administer local preservation ordinances.
5. Have on staff a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the sub-grantee's historic preservation activities. On behalf of the Sub-grantee it is the role of HPO to conduct these activities and/or work with the HPC to:
  - a. Regularly report on HPC activities at local government Commission meetings and be available for comment to these groups and other local government offices;
  - b. Monitor Preservation Covenants and Agreements and provide historic preservation information and assistance to property owners;
  - c. Provide technical assistance, direction, literature on historic preservation tax credits, National Register, Federal regulations and Secretary of Interior Standards;
  - d. Inspect and evaluate historic properties for potential and feasible reuse and rehabilitation;
  - e. Coordinate, promote and participate in events such as National Historic Preservation Month and/or other preservation related activities;
  - f. Cooperate and communicate with the Grantee and fellow HPO/HPCs in Montana and elsewhere as appropriate; and
  - g. Submit semi-annual progress reports, meeting minutes and financial reports per deadlines outlined in this agreement. In the Final Progress Report, the HPO will identify benefits the local government has derived as a result of the employment of a HPO, the needs of the local government for future professional preservation efforts, and any additional functions of the HPO carried out which

further the understanding and implementation of historic preservation values and objectives in the local government.

6. Send at least one (1) person from the Certified Local Government to a State Historic Preservation Office (SHPO) - approved training. The attendee shall attend the entire training and report back to their Preservation Commission.

All work completed under this funding agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantee. Final products or services that do not fulfill the requirements of this Agreement, and do not comply with the appropriate Secretary of the Interior's Standards, will not be reimbursed, and any advance payments made in connection with such products or services must be repaid to the Grantee.

The funding for this agreement is provided by Federal dollars from the U.S. Department of the Interior, the National Park Service, CFDA number 15.904, Historic Preservation Fund Grants-In-Aid. The Federal Grant Number, as assigned by the National Park Service, is 30-14-121162.

## SECTION II: EFFECTIVE DATE, DURATION, AND REMUNERATION

The Agreement shall take effect as of April 1, 2014 and shall terminate March 31, 2015 unless a new termination date is set or the agreement is terminated pursuant to SECTION IV. Total payments by the "Grantee" for all purposes under this contract shall not exceed \$5,225. In the event that the SHPO does not receive full funding from the National Park Service, the total grant award may be reduced, as outlined in the CLG Manual. Payment shall be made on a reimbursement basis by request of Sub-grantee to the SHPO.

## SECTION III: CONSIDERATION AND PROCESS FOR PAYMENT

In consideration of Services rendered in this Agreement, the Grantee agrees to pay the Sub-grantee as follows:

1. The Sub-grantee agrees to submit semi-annual Progress Reports, meeting minutes, and Requests for Reimbursement. Reports will be accompanied by the following documentation:
  - a. The Sub-grantee's name, address and agreement number MT-14-023
  - b. Report discussing work completed during the reporting period. Include meeting agendas and minutes;
  - c. An itemized listing of cash or in-kind donations that comprise the nonfederal match;
  - d. An itemized listing of project expenses that are charged to the federal grant;
  - e. The net request for payment; and
  - f. Products produced during the reporting period.
2. All Requests for Reimbursement must be approved by the Grantee prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Sub-grantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of 3 years or until an acceptable audit (accessible by auditors) has been performed and



all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement if they are to qualify for payment.

3. All Requests for Reimbursement will be reviewed for eligibility and allow-ability under Chapters 12, 13 and 14 of the National Park Service's Historic Preservation Fund Manual and the State CLG Manual. The Sub-grantee may request a copy of the CLG Manual from the SHPO and the Historic Preservation Fund Manual is available for inspection at the SHPO.

4. The Sub-grantee shall, at minimum, provide documentation detailing forty percent (40%) matching non-federal funds for the overall grant award. The minimum dollar amount of match necessary for the full grant award of \$5,225.00 is \$3,484.00 (in-kind services or cash). In the event that the grant award is reduced, the match requirement would be reduced proportionally. Requests for Reimbursement require the same 40% documentation relative to the amount requested. The accepted Grant Application, reviewed and approved by the Grantee, provides an estimation of sources and amounts of matching funds from the Sub-grantee.

5. The Grantee may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

#### SECTION IV: TERMINATION

1. The Sub-grantee understands and agrees the Grantee, as a state agency, is dependent upon federal and state appropriations for its funding and actions by Congress or the Montana Legislature may preclude funding this Agreement completely through the termination date stated in Section II. Should such a contingency occur, the parties agree the Grantee may set a new termination date or terminate the contract immediately, depending upon the funding remaining available for the Agreement, and the Sub-grantee will be compensated for services rendered and expenses incurred to 5:00 p.m. of the revised termination date.

2. In the event of termination, all property (except real estate) and finished or unfinished documents, data, studies, and reports purchased or prepared by the Sub-grantee under this Agreement shall, at the option of the Montana Historical Society (MHS), become the property of the MHS, and the Sub-grantee shall be entitled to compensation for any un-reimbursed expenses necessarily incurred in satisfactory performance of this Agreement. Notwithstanding the above, the Sub-grantee will not be relieved of liability to the Grantee for damage sustained by the Grantee by virtue of any breach of the Agreement by the Sub-grantee, and the Grantee may withhold any reimbursement to the Sub-grantee for the purpose of off set until such time as the exact amount of damages due the Grantee from the Sub-grantee is agreed upon or otherwise determined.

3. Except for the provisions of SECTION IV, paragraph 1, and SECTION XII, either party may terminate this Agreement without cause thirty (30) days after delivery of written notice in hand to the other party.

4. The MHS may terminate this Agreement for failure of the Sub-grantee to perform any of the services, duties, or conditions in accordance with the time schedule contained in this Agreement. The Grantee will provide the Sub-grantee with written notification of the reasons for the Sub-grantee's performance failure and allow the Sub-grantee a period of not less than ten (10) days or more than thirty (30) days after receipt of said notification to rectify the identified failure to perform.

## SECTION V: GENERAL AND SPECIFIC CONDITIONS

The Sub-grantee agrees to follow the General and Specific Conditions according to this Agreement and Chapter 5 of the Historic Preservation Fund Grants Manual.

## SECTION VI: ASSIGNMENT AND PROCUREMENT PROCEDURES

1. The Sub grantee agrees that the procurement of services, supplies, equipment, and construction will be obtained efficiently and economically and in compliance with the applicable federal laws, and of OMB Circular A 102, (as further amended, 8/29/97) and Chapter 17 of the Historic Preservation Grants Manual.
2. The process for the selection of subcontractors to perform the services under this Agreement, regardless of whether by competitive bidding or negotiated procurement shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms or individuals in order for them to qualify to do business, (2) noncompetitive practices between firms, (3) organizational conflicts of interest, and (4) Unnecessary experience and bonding requirements.
3. Competitive bidding or negotiated procurement is required for all survey and planning subcontracts. Proposals shall be requested from an adequate number of sources (at least two or three sources) to permit reasonable competition. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable. The Request for Proposals shall identify the survey or planning area, population, number of properties to be inventoried, funds available and volunteer support (if applicable). The Sub grantee shall document in writing the evaluation criteria used and the results of the technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for subcontract award. Subcontractors shall be selected on the basis of qualification, subject to negotiation of fair and reasonable compensation. Unsuccessful offerors shall be notified promptly. A copy of documentation of the selection process will be submitted to the Grantee prior to the initiation of the project.
4. Noncompetitive negotiation may be used with prior written approval from the Grantee when, after the solicitation in accordance with Section VI, 3. Above, competition is determined inadequate.
5. The Sub-grantee will notify the SHPO upon the selection of a subcontractor. Sub-grantee will verify Subcontractor is not on the debarred list. A copy of this contract will be submitted to the SHPO for review and written approval prior to its execution.
6. Prior to the beginning of project work or any grant payment, the Sub-grantee must submit to the SHPO the below listed items to demonstrate that the federal procurement requirements have been met in full:
  - a. Copies of the letters to qualified sources and public advertisements requesting proposals and/or invitations to bid;
  - b. Copy of the Sub-grantee documentation of the selection criteria and process;
  - c. A copy of the successful proposal and a description of the Sub-grantee reasons for selection;

- d. Listing of the unsuccessful offerors; and
- e. Copy of the proposed contract between the Sub-grantee and the subcontractor.

Note: SHPO must review and approve all contracts between the Sub-grantee and subcontractors prior to their execution. The parties agree that there will be no assignment or transfer of this Agreement or any interest in the Agreement and that no service required under this Agreement may be performed under subcontract unless both parties agree in writing.

#### SECTION VII: EQUAL EMPLOYMENT OPPORTUNITY

1. Pursuant to Sections 49 2 303 and 49 3 207 of the Montana Code Annotated and the federal Civil Rights Act of 1964, (as amended) and Equal Employment Opportunity statute, in all hiring or employment made possible by or resulting from this Agreement, the Sub-grantee: 1) will not discriminate against any employee or applicant for employment because of race, color, social condition, religion, sex, age, national origin, marital status, creed, political affiliation, or physical or mental handicap; and 2) will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This requirement applies to, but is not limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Sub-grantee will comply with all applicable statutes and Executive Orders on equal employment opportunity, including enforcement provisions, as implemented by, but not limited to, Department of the Interior policies, published in 43 CFR 17.
2. The Sub-grantee will comply with Section 504 of the Rehabilitation Act of 1973 which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
3. The Sub-grantee will comply with The Age Discrimination Act of 1975 prohibiting discrimination on the basis of age in programs and activities receiving Federal Financial assistance.

#### SECTION VIII: FAIR LABOR STANDARDS

The Sub-grantee agrees to comply with all Federal and State wage and hour rules, statutes, and regulations, and warrants that all applicable Federal and State fair labor standards and provisions will be complied with both by the Sub-grantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the MHS, SHPO and the Sub-grantee.

#### SECTION IX: PROHIBITION AGAINST LOBBYING

The Sub-grantee must conform to provisions of 18 USC 1913:

"No part of the money appropriated by an enactment of Congress shall in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or any other device intended or designed to influence in any matter a Member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of

the U.S. or its Departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper channels, requests for legislation or appropriation that they deem necessary for the efficient conduct of the public business." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred-to as "lobbying" is unallowable under this Agreement.

#### SECTION X: INDEMNIFICATION

The Sub-grantee agrees that it will hold harmless and indemnify the MHS from any and all losses that may result to the Grantee because of negligence on the part of the Sub-grantee, its agents, representatives, or employees. The Sub-grantee shall hold harmless the MHS from any and all claims arising out of the execution of this Agreement for injury to third persons, including their agents, employees, or volunteers, recipients, and to the public at large, for injury to property of persons, which arise out of any Sub-grantee's actions.

#### SECTION XI: WORKERS' COMPENSATION

The Sub-grantee and all independent subcontractors earning compensation under this funding agreement must elect to be bound personally and individually by the provisions of compensation plans 1, 2 or 3, but he/she may apply to Montana Workers' Compensation division for an exemption from the Worker's Compensation Act. The application must be made in accordance with the rules adopted by the division.

The division may deny the application only if it determines that the applicant is not an independent contractor. When the division approves an application it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

#### SECTION XII: MODIFICATIONS AND PREVIOUS AGREEMENTS

1. This instrument contains the entire Agreement between the parties, and no previous statements, promises, or inducements made by either party or agent of either party which are not contained in this written agreement shall be valid or binding. This agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached to the original of this Agreement, except as provided under Section IV (1). No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.
2. Any changes that substantially alter the scope of work or the cost of the approved project must be submitted as a project amendment. These amendments must have prior written approval from NPS before the change is implemented. Change orders will be treated as amendments. SHPO will be consulted to review the change to determine if it substantially alters the scope of work or the cost of the approved project. If the change is determined to be substantial, the SHPO will process the amendment through NPS. Failure to notify the SHPO of any such changes may be construed as just cause for revocation and/or recovery of the grant funds.

#### SECTION XIII: CONFLICT OF INTEREST

No officer or employee of the MHS or member of the Society Board or State Historic Preservation Review Board and no member of the Sub-grantee's governing body at localities in which the project is situated or being carried out who exercises any functions or responsibilities, or who enjoys a position of influence in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects his or her personal or pecuniary interest. The Sub-grantee agrees that it presently has no interest and shall not acquire any

interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

#### SECTION XIV: COPYRIGHT PROHIBITION

1. Except as otherwise provided in the terms and conditions of the grant agreement, the Sub-grantee is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty-free, nonexclusive, and irrevocable license throughout the work to the Grantee and/or the US Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.
2. Any materials produced as a result of this Agreement which are to be publicly distributed, shall include the following statement:

The (activity) that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, U.S. Department of Interior, and administered by the SHPO of Montana. The contents and opinions do not necessarily reflect the views or policies of the U.S. Department of the Interior or the Montana Historic Preservation Office, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO.

3. Publications must include the nondiscrimination statement:

This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, age, or disability in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:

Office for Equal Opportunity  
National Park Service  
849 C Street, N.W.  
Washington, D.C. 20240

4. The Sub-grantee shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner that provided SHPO and the United States Government with written permission to use the material in the manner provided herein.

#### SECTION XV: AUDITING

The Sub-grantee agrees to allow access to the records of the activities covered by this Agreement as may be necessary for legislative post audit and analysis purposes in determining compliance with the terms of this Agreement.

The Sub-grantee shall maintain all administrative and fiscal records relating to this project for three years after the final grant reimbursement is made by the Grantee to the Sub-grantee. Notwithstanding the provisions of SECTION IV, this Agreement shall automatically terminate upon any refusal of the Sub-grantee to allow access to records necessary to carry out the legislative post audit and analysis functions set forth in Title 5 Chapter 12 and 13, MCA and the financial

and programmatic audit conducted by the Secretary of the Interior and the Comptroller General of the United States provided for in OMB Circular A 102, as amended.

Grantees that expend \$500,000 or more in Federal funds shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." For local governments and school districts, the Grantee will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau all other grantees such as Tribal Communities and Non-Profit Organizations will provide the report to the Montana Historical Society, State Historic Preservation Office.

**SECTION XVI: SEVERABILITY**

It is understood and agreed by the parties hereto that if any term or provision of this contract is by the courts held to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

**SECTION XVII: EXECUTION**

This Contract consists of this Agreement and pages of attachments; the original copy is to be retained by SHPO. A copy of the original and attachments, if any, has the same force and effect for all purposes as the original.

Each party has full power and authority to enter into and perform this Agreement, and the person signing the Agreement on the behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the date set out below:

City of Miles City,

\_\_\_\_\_  
Date

Sub-grantee DUNS Number

\_\_\_\_\_  
134230325

Administrator, Centralized Services Division  
Montana Historical Society

\_\_\_\_\_  
Date

FOR RESOLUTION 3668

From: **Brent Christopherson**

Date: Tue, Feb 18, 2014 at 9:48 AM

Subject: Signatures needed ASAP for 1999 Interlocal Agreement for Firefighters Testing Consortium

Good Morning Everyone:

Attached is the 1999 version of the Interlocal Agreement. No changes have been made to this except that "Cities" is changed to "Cities and Fire Districts" throughout and the addition of all of the member parties that currently exist in the Consortium. Hopefully, all of the original six parties will agree to sign the agreement, again, with the new parties being the only modification/amendments. Remember, we are having to go through this process fairly quickly as one of the parties attorney's is calling into question the validity of the 1999 Interlocal Agreement without the signatures of each of the **governing bodies every time** someone new joins the Consortium!

It is important that **each** of the ten governing bodies sign this agreement, given the objection before us. The three Fire District Board signatures are very important, so that then, at the very least, we will have an executed agreement, by all ten of the governing bodies of each of the current members. I would ask that each of you try to have this done before the March 12<sup>th</sup> meeting in Helena if at all possible. We will then move towards modifying the 1999 Interlocal Agreement and ByLaws very soon thereafter.

Thanks for your assistance and sorry for the inconvenience.

Brent

**Brent L. Christopherson, MPA, EFO**  
**Assistant Fire Chief**  
**Missoula Rural Fire District**  
**2521 South Ave West**  
**Missoula, MT 59804**  
**Email: [bchristopherson@mrfdfire.org](mailto:bchristopherson@mrfdfire.org)**  
**Headquarters Station #1 Phone: [406-549-6172](tel:406-549-6172)**

**RESOLUTION NO. 3668**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT ENTITLED "INTERLOCAL AGREEMENT FOR MONTANA FIREFIGHTERS TESTING CONSORTIUM" WITH CERTAIN CITIES AND FIRE DISTRICTS IN THE STATE OF MONTANA.**

*WHEREAS*, the City of Miles City desires to enter into an agreement with the Big Sky Fire Department, City of Billings, City of Bozeman, City-County of Butte-Silverbow, City of Great Falls, City of Helena, Lockwood Rural Fire District, City of Missoula and Missoula Rural Fire District for the joint testing of potential employment candidates;

*AND WHEREAS* the provisions of Title 7, Chapter 11, Part 1, MCA, permit public agencies to contract with other public agencies for the provision of services;

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

1. The Interlocal Agreement for Montana Firefighters Testing Consortium, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement 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, THIS 25TH DAY OF FEBRUARY, 2014.**

---

C.A. Grenz, Mayor

ATTEST:

---

Lorrie Pearce, City Clerk



EXHIBIT "A"

INTERLOCAL AGREEMENT FOR MONTANA  
FIREFIGHTERS TESTING CONSORTIUM

THIS INTERLOCAL AGREEMENT is made and entered this \_\_\_\_ day of \_\_\_\_\_  
by and between the **BIG SKY FIRE DEPARTMENT, CITY OF BILLINGS, CITY OF BOZEMAN, CITY-COUNTY OF BUTTE-SILVERBOW, CITY OF GREAT FALLS, CITY OF HELENA, LOCKWOOD RURAL FIRE DISTRICT, CITY OF MILES CITY, CITY OF MISSOULA, AND MISSOULA RURAL FIRE DISTRICT**, all municipal corporations or fire districts organized and existing under the laws of the State of Montana and hereinafter referred to as "*Cities and Fire Districts*".

WITNESSETH

**WHEREAS**, the Cities and Fire Districts each maintain a Fire Department that provides fire protection services and each City is responsible for hiring qualified firefighters.

**WHEREAS**, each City and Fire District has its own hiring processes and conducts testing at various times. The testing is expensive and time-consuming.

**WHEREAS**, the duties of firefighters, as determined by a task analysis throughout these Cities and Fire Districts are similar. The Cities and Fire Districts would all benefit in terms of efficiency and economy by consolidating their recruiting and testing efforts for firefighter candidates by establishing a pool of qualified firefighter candidates for hiring.

**NOW, THEREFORE**, in consideration of the mutual covenants and benefits to be derived, the Cities and Fire Districts agree as follows:

1. **PURPOSE:** The purpose of this Agreement is to set forth the operation and financing of a joint recruitment testing program that will identify qualified candidates for the participating Cities and Fire Districts. It will be referred to as the "*Montana Firefighters Testing Consortium*".
2. **GOALS:** The goals are to jointly coordinate the application process; share costs for administration and testing; provide for consistency in our selection process; evaluate and revise our process as necessary, to reflect the duties of fire fighter; evaluate candidates; and provide the most qualified candidates for the position of fire fighter for the Cities and Fire Districts.
3. **MONTANA FIREFIGHTERS TESTING CONSORTIUM BOARD:** The Montana Firefighters Consortium Board will administer this Interlocal Agreement. The Board shall consist of two (2) representatives from each of the participating Cities and Fire Districts.  
A Chairperson, Vice-Chairperson, Secretary and Treasurer will be selected from the membership of the Board at the first regular meeting. The Chairperson, or in his/her

absence the Vice-Chairperson, shall be the Chief Officer of the Board and will preside over all meetings and activities of the Board.

4. **ADMINISTRATION:** Actions of the Board shall be voted on by a quorum of the members. A quorum will exist when a majority of the members of the Board are present. Voting will be done in person, with no proxy votes allowed. The Secretary shall take Minutes of all meetings. The Treasurer shall provide all necessary administrative and accounting functions for the Board. Roberts Rules of Order shall be followed.
5. **VALIDATION:** Prior to each test, the Cities and Fire Districts will validate their job descriptions and requirements for the position of firefighter. **An independent consultant that is selected by the Board will conduct the validation procedures.** All Cities and Fire Districts shall use the same validation procedures. Validation for each Department participating in the Consortium is accomplished by comparing job descriptions, job analysis questionnaire results, and the physical ability test for compatibility of activities. **The testing instruments used shall promotes the identification of the most qualified candidates.**
6. **FINANCING:** The Cities and Fire Districts shall equally share the cost of administering and coordinating the recruitment test as determined by the Board.
  - a. The Cities and Fire Districts are responsible for providing personnel to help administer the test at their expense.
  - b. Each City and Fire District shall pay its own costs of validating the test for its department.
7. **STAFFING:** Each City and Fire District shall equally provide staffing during the testing process as determined by the Board.
8. **PROCEDURE:** The Board shall determine the recruitment testing procedure, including, but not limited to: the intervals at which the tests will be offered; the location of the test; the number of candidates who will take part in the testing procedure and the type of test used.
9. **LIABILITY:** All Consortium Cities and Fire Districts shall share equally in the costs rising out of any claims against the Consortium. All Consortium Cities are considered covered parties as defined in the M.M.I.A.'s Memorandum of Liability Coverage.
10. **AMENDMENTS AND MODIFICATIONS:** Amendments and modifications shall be in writing and shall not become effective until approved by all parties to the Agreement.
11. **DURATION:** This Agreement shall continue until modified or terminated by the Parties as set forth herein.
12. **TERMINATION:** Each party to this Agreement may terminate the same by giving the other Cities and Fire Districts at least thirty (30) days written notice of its intent to terminate the Agreement. The Agreement will remain in effect for the remaining Cities

and Fire Districts, if any. No participating City or Fire District shall be permitted to terminate its participation and commitment thirty (30) days prior to the scheduled testing.

13. **EFFECTIVE DATE:** This Agreement shall be effective on the date that it has been approved by all of the Cities' and Fire Districts' governing bodies.

**BIG SKY FIRE DISTRICT**

ATTEST: \_\_\_\_\_  
SECRETARY

BY: \_\_\_\_\_  
CHAIRPERSON

DATE: \_\_\_\_\_

**CITY OF BILLINGS**

ATTEST: \_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
MAYOR

DATE: \_\_\_\_\_

**CITY OF BOZEMAN**

ATTEST: \_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
CITY MANAGER

DATE: \_\_\_\_\_

**CITY-COUNTY OF BUTTE-SILVERBOW**

ATTEST: \_\_\_\_\_  
CLERK AND RECORDER

BY: \_\_\_\_\_  
CHIEF EXECUTIVE

DATE: \_\_\_\_\_

**CITY OF GREAT FALLS**

ATTEST: \_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
MAYOR

DATE: \_\_\_\_\_

**CITY OF HELENA**

ATTEST: \_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
CITY MANAGER

DATE: \_\_\_\_\_

**LOCKWOOD RURAL FIRE DISTRICT**

ATTEST: \_\_\_\_\_  
SECRETARY

BY: \_\_\_\_\_  
CHAIRPERSON

DATE: \_\_\_\_\_

**CITY OF MILES CITY**

ATTEST: \_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
MAYOR

DATE: \_\_\_\_\_

**CITY OF MISSOULA**

ATTEST: \_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
MAYOR

DATE: \_\_\_\_\_

**MISSOULA RURAL FIRE DISTRICT**

ATTEST: \_\_\_\_\_  
SECRETARY

BY: \_\_\_\_\_  
CHAIRPERSON

DATE: \_\_\_\_\_

## RESOLUTION NO. 3669

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT WITH LUCAS & TONN, P.C., A MONTANA CORPORATION, FOR PROVIDING LEGAL SERVICES OF ASSISTANT CITY ATTORNEY.**

*WHEREAS*, the Deputy City Attorney, who acts as the City Prosecutor, has given notice of his resignation effective December 15, 2014, and that his caseload is so substantial that he requires the aide of an assistant prosecutor;

*AND WHEREAS* the City of Miles City recognizes that it is necessary to provide such assistance to the City Prosecutor, and that the function of the City Court requires that prosecution services be provided;

*AND WHEREAS* the Mayor has appointed attorney Shawn Quinlan of the law firm Lucas & Tonn, P.C., to serve as the assistant prosecutor, and Shawn Quinlan has agreed to accept such duties on a contract basis through his employer;

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

1. The Contract For Legal Services, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A 2/3 VOTE OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 25TH DAY OF FEBRUARY, 2014.**

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

Exhibit "A"

**CONTRACT FOR LEGAL SERVICES**

THIS AGREEMENT is made and entered into by and between the City of Miles City, Montana, a Montana Municipal Corporation, of P. O. Box 910, Miles City, Montana 59301 hereinafter called "City," and Lucas & Tonn, P.C., a Montana Corporation, of P.O. Box 728, Miles City, Montana, 59301, hereinafter "Law Firm."

**RECITALS**

WHEREAS, the City wishes to engage Law Firm for the provision of legal services, namely the services of attorney Shawn Quinlan to act as the Assistant City Attorney and to provide supplemental prosecution services to the City until the end of FY 2013-2014;

AND WHEREAS, Shawn Quinlan is an attorney licensed to practice law in the State of Montana, and is an employee of Law Firm;

AND WHEREAS, the parties hereto wish to reduce their agreement to writing;

NOW, THEREFORE, the parties hereto agree as follows:

1. INCORPORATION OF RECITALS. The foregoing recitals are hereby incorporated as if fully set forth herein.
2. SERVICES PROVIDED. Shawn Quinlan, hereinafter "Attorney," will provide prosecution services to the City of Miles City and will be directly supervised by Deputy City Attorney Jeff Noble. Attorney agrees to prosecute approximately one-half of the cases which are before the City Court of the City of Miles City, as determined and assigned by the Deputy City Attorney.

3. SECRETARIAL SERVICES. The City agrees to increase the hours of the City's Legal Secretary from 15 hours per week to 20 hours per week, and the Legal Secretary will assist both the City Prosecutor and the Assistant City Attorney in the management of case files.

4. INDEPENDENT CONTRACTOR. Law Firm and Attorney shall have the status of an independent contractor and not that of an employee. The City will not be responsible for payment of workers compensation insurance, unemployment insurance, retirement, vacation, or any other benefit to Attorney or for reimbursement of the same to Law Firm.

5. ERRORS AND OMISSIONS INSURANCE. Law Firm shall carry errors and omissions insurance in an amount not less than \$1,000,000.00 per occurrence and in the aggregate covering the services of Attorney.

6. COMPENSATION. The City shall compensate Law Firm the amount of \$2,623 per month for services rendered under this Agreement. The foregoing amount is approximately equal to the salary and rollup costs currently paid to or on behalf of the City Prosecutor for the same services.

7. TERMINATION. This Agreement shall terminate at midnight on June 30, 2014.

DATED this \_\_\_\_\_ day of February, 2014.

**CITY OF MILES CITY**

By: \_\_\_\_\_  
Chris A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

**LUCAS & TONN, P.C.**

By: \_\_\_\_\_  
Daniel Z. Rice, President

ATTEST:

\_\_\_\_\_  
Bryant S. Martin, Secretary



INFORMATION FOR  
KRON BOUNDARY LINE ADJUSTMENT

2/25/14 Council Meeting

APPENDIX D

COUNTY APPLICATION FOR EXEMPTION  
FROM SUBDIVISION CLAIM

A. GENERAL INFORMATION

Name of Claimant(s) If more than two claimants, use additional sheets.

#1 Name Lynne Kron

Address 600 North 7<sup>th</sup> Street

Phone 406-232-2038

#2 Name Crystal Pistol Inc

Address 600 North 7<sup>th</sup> Street

Phone 406-232-2038

Name of Surveyor Quinn Wright DOWL HKM

Address 713 Pleasant St, Miles City, MT 59301

Phone 406-234-6666

Location (nearest town) Miles City, MT

Parcel(s) If more than two parcels, use additional sheets.

#1 Address 600 North 7<sup>th</sup> Street, Miles City, MT 59301

Legal Description (1/4 section) Lot 11-A, Doc. #87181 Env. #272B

Existing Zoning and Zoning District \_\_\_\_\_

How and When Parcel Created (example, COS 432, 6/4/2001) Hunter's Addition Amended Plat, 05/23/1991

#2 Address 600 North 7<sup>th</sup> Street, Miles City, MT 59301

Legal Description (1/4 section) Lot 12-A, Doc. #87181 Env. #272B

Existing Zoning and Zoning District \_\_\_\_\_

How and When Parcel Created (example, COS 432, 6/4/2001) Hunter's Addition Amended Plat, 05/23/1991

**B. EXEMPTION TYPE**

**Family Conveyance**

Recipient(s)	Relationship to Claimant	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_ Attach copies of all deeds, contracts, restrictions and covenants related to this property recorded within the past year.

\_\_\_\_\_ If recipients are under age 18, attach documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act, etc.

Date Claimant(s) became sole owner(s) of parcel to be divided: \_\_\_\_\_

**See Attached Exemption Supplement A for Family Conveyance that must be completed and signed and is subject to the following Affidavit.**

**Agricultural Exemption** (Covenant running with the land, revocable only by mutual consent of the Governing Body and the property owner, that the land will be used exclusively for agricultural purposes. No structure requiring water or sewer facilities shall be utilized on this parcel.)

Description of current and proposed agricultural use \_\_\_\_\_

**Relocation of Common Boundary Lines** (All lots outside of a platted subdivision or a lot within a platted subdivision and adjoining unplatted land.)

Description, which type proposed? \_\_\_\_\_ Relocation of common boundary line outside of a platted subdivision \_\_\_\_\_

Reason or justification

**Lot Aggregation/Relocation of Common Boundary Lines Within Platted Subdivision** (All lots inside of a platted subdivision.)

Reason or justification:

To separate the Paco Building and the house on two separate lots.

**E. APPLICATION MATERIALS**

---

**Security for Construction** ("mortgage survey".)

\_\_\_\_\_ Attach signed and notarized statement from the lending institution confirming that the exempt parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

\_\_\_\_\_ Letter stating how tract will be created and who will have title to and possession of the remainder of the original parcel.

**Other**

Reason or justification

---

---

---

---

---

**C. INTENTIONS FOR USE**

---

Claimants' and recipients' intentions for the **use** of **each** parcel (including existing, new and remainder parcels) (e.g will parcels be used for agriculture, residences, etc.?)

Lot 11-B will be used for residential purposes. Lot 12-B will be used for commercial purposes.

---

---

---

---

**D. INTENTIONS FOR DISPOSITION**

---

Claimants' and recipients' **long term and short term** for the **disposition** of **each** parcel (including existing, new and remainder parcels) (e.g. will parcels be gifted, sold, retained, etc.?)

Lot 11-B will be retained by Lynne Kron. Lot 12-B will be intended to sell.

---

---

---

**Certificate of Survey:**

- Two paper copies (four for family conveyance or complex boundary realignments)
- Two Mylar copies, with all required certificates, including:
  - County Commission's
  - Clerk and Recorder's
  - Surveyor's, signed
  - Treasurer's certificate, signed
  - Claimant's certificates of exemption, signed and notarized

**Copies of recorded deeds** documenting present ownership in all affected parcels

**Copies of proposed deed restrictions or covenants** if any are proposed

If claim is for family conveyance, **Copies of all deeds, contracts, restrictions and covenants related to the property recorded within the past year.**

If recipients are under age 18, **attach documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act, etc**

If claim is for mortgage exemption, **Statement from lending institution confirming need.**

**F. ACKNOWLEDGEMENTS**

---

**I understand** that the State of Montana provides certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Montana Subdivision and Platting Act.

**I affirm** that this exemption claim is **not** an attempt to evade the Montana Subdivision and Platting Act.

**I recognize** that I may be subject to penalty if my actions are deemed to be an effort to evade subdivision review, as set forth in the Montana Code Annotated:

- 76-3-301(3) If transfers not in accordance with this chapter [e.g. Chapter 3 Local Regulation of Subdivisions] are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.
- 76-3-105 Violations. Any violation of the provisions of these this chapter [e.g. Chapter 3 Local Regulation of Subdivisions] or these Regulations is an offense punishable by a fine of not less than \$100.00 nor more than \$500.00 or imprisonment in a county jail for not more than three months or by both fine and imprisonment. Each sale or transfer, or offer of sale or transfer, of each separate parcel of land in violation of any provision of these regulations shall be deemed a separate and distinct offense.

**G. AFFIDAVIT**

---

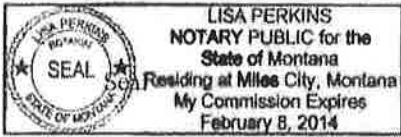
Lynne Kron Claimant(s) being first duly sworn upon oath, deposes and says as follows:

We, as Claimants, have read the foregoing Application for Exemption from Subdivision Claim, and affirm that it is true and correct.

Lynne Kron Date: 11/7/14  
Claimant's signature

State of: Montana  
County of: Custer

Subscribed and sworn to before me on this 7th day of JANUARY, 2014.



Lisa Perkins  
Notary Public for the State of Montana  
Residing at: Miles City  
My commission expires: Feb 8, 2014

130301 Fee: \$ 48.00

CUSTER COUNTY Recorded 11/03/2004 At 10:15 AM  
Marie Wehr, Clk & Rodr By *Anna Corbett, Deputy*  
Return to: Wells Fargo Bank P.O. Box 31557  
Billings, MT 59107-9900

After Recording Return To:  
Wells Fargo Bank, N.A.  
P. O. BOX 31557  
BILLINGS, MT 59107  
DOCUMENT MANAGEMENT

State of Montana \_\_\_\_\_ Space Above This Line For Recording Data \_\_\_\_\_  
REFERENCE# 20042647000467 ACCOUNT# 1864-654-11458168-0001

**DEED OF TRUST**  
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is 01/07/2004 and the parties, their addresses and tax identification numbers, if required, are as follows:

**GRANTOR:**  
MARK KRON AND LYNNE M. KRON, HUSBAND AND WIFE, AS JOINT TENANTS AND TO THE SURVIVOR OF SAID NAMED JOINT TENANTS

If checked, refer to the attached Addendum incorporated herein, for additional Grantors, their signatures and acknowledgements.

**TRUSTEE: WELLS FARGO FINANCIAL NATIONAL BANK**  
c/o Specialize Services  
401 West 24<sup>th</sup> Street  
National City, CA 91950

**LENDER:** Wells Fargo Bank, N.A.  
P. O. BOX 31557  
BILLINGS, MT 59107

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property:  
LOTS ELEVEN (11) AND TWELVE (12) OF HUNTER'S ADDITION TO THE CITY OF MILES CITY, MONTANA, ACCORDING TO THE OFFICIAL PLAT AND SURVY THEREOF NOW ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF CUSTER COUNTY, MONTANA.

RM S 3 7-44

MONTANA - DEED OF TRUST  
EQ126A (10/2003)

The property is located in CUSTER

at 007 NORTH 7TH STREET

(County) MILES CITY, Montana, 53301  
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property.")

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$50,000.00. This total principal amount includes all sums advanced for the insurance, protection, and preservation of the Property or Lender's interest in the Property. This principal amount also assumes that nothing contained in this Security Instrument constitutes a commitment to make additional or future loans or advances, in any amount, beyond those defined as "Secured Debt" below. Any such commitment must be agreed to in a separate writing.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
  - A. Debt incurred under the terms of the promissory note, revolving line of credit agreement, contract, guaranty or other evidence of debt dated 10/07/2004, together with all amendments, extensions, modifications or renewals. The maturity date of the Secured Debt is 10/13/2019.
  - B. All future advances from Lender to Grantor under such evidence of debt, whether obligatory or discretionary. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances which exceed the amount shown in Section 3. Any such commitment must be agreed to in a separate writing.
  - C. All sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.
5. **PAYMENTS.** Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
6. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, convey, and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees:
  - A. To make all payments when due and to perform or comply with all covenants.
  - B. To promptly deliver to Lender any notices that Grantor receives from the holder.
  - C. Not to allow any modification or extension of, any note or agreement secured by the lien document without Lender's prior written consent.
  - D. To restrict lien priority of any prior security interest allowing future advances by recording a notice of limitation as provided in M.C.A. 71-1-206(3).
8. **CLAIMS AGAINST TITLE.** Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor will keep the Property free of noxious weeds and grasses. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor

130301 Fee: \$ 48.00

MONTANA - DEED OF TRUST  
EQ126B (10/2003)

CUSTER COUNTY Recorded 11/09/2004 At 10 15 AM



notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

11. **AUTHORITY TO PERFORM.** If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.
12. **ASSIGNMENT OF LEASES AND RENTS.** Grantor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, as additional security all the right, title and interest in and to any and all existing or future leases, subleases, and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases") and rents, issues and profits (all referred to as "Rents"). Grantor will promptly provide Lender with true and correct copies of all existing and future Leases. Grantor may collect, receive, enjoy and use the Rents so long as Grantor is not in default under the terms of this Security Instrument. Grantor agrees that this assignment is immediately effective between the parties to this Security Instrument. Grantor agrees that this assignment is effective as to third parties when Lender or Trustee takes affirmative action prescribed by law, and that this assignment will remain in effect during any redemption period until the Secured Debt is satisfied. Grantor agrees that Lender or Trustee may take actual possession of the Leases and Rents without the necessity of commencing legal action and that actual possession is deemed to occur when Lender, or its agent, notifies Grantor of default and demands that any tenant pay all future Rents directly to Lender. On receiving notice of default, Grantor will endorse and deliver to Lender any payment of Rents in Grantor's possession and will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Any amounts collected will be applied as provided in this Security Instrument. Grantor warrants that no default exists under the Leases or any applicable landlord/tenant law. Grantor also agrees to maintain and require any tenant to comply with the terms of the Leases and applicable law.
13. **LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the property is a unit in a Condominium Project or is part of a Planned Unit Development ("PUD"), Grantor agrees to the following:
  - A. **Obligations.** Grantor shall perform all of Grantor's obligations under the Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project or PUD and any homeowners association or equivalent entity ("Owners Association"); (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Grantor shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.
  - B. **Hazard Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project or PUD which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then Grantor's obligation under Section 19 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owner's Association policy. Grantor shall give Lender prompt notice of any lapse in required hazard insurance coverage. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to Property, whether to the unit or to common elements, any proceeds payable to Grantor are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to Grantor.
  - C. **Flood Insurance.** Grantor agrees to maintain flood insurance for the life of the Secured Debt which is acceptable, as to form, amount and extent of coverage to Lender.
  - D. **Public Liability Insurance.** Grantor shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.
  - E. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Grantor in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 18.
  - F. **Lender's Prior Consent.** Grantor shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project or PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the

130301 Fee: \$ 48.00

MONTANA - DEED OF TRUST  
EQ126C (10/2003)

USTER COUNTY Recorded 11/03/2004 At 10:15 AM

express benefit of Lender; (iii) termination of professional management and assumption of self-management by the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

- G. Remedies. If Grantor does not pay condominium or PUD dues and assessments when due, then Lender may pay them. Any amount disbursed by Lender under this section shall become additional debt of Grantor secured by this Security Instrument. Unless Grantor and Lender agree to other terms of payment, those amounts shall bear interest from the date of disbursement at the Secured Debt rate and shall be payable, with interest, upon notice from Lender to Grantor requesting payment.
14. **DEFAULT.** Grantor will be in default if any party obligated on the Secured Debt fails to make payment when due. Grantor will be in default if a breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guaranteeing the Secured Debt. A good faith belief by Lender that Lender at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired shall also constitute an event of default.
15. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default. At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the Property. If there is a default, Trustee shall, in addition to any other permitted remedy, at the request of the Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale including the time, terms and place of sale and a description of the property to be sold as required by the applicable law in effect at the time of the proposed sale. Upon sale of the property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.
16. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Grantor agrees to pay all of Lender's expenses if Grantor breaches any covenant in this Security Instrument. Grantor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lenders' rights and remedies under this Security Instrument. This amount may include, but is not limited to, reasonable attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.
17. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," or "hazardous substance" under any Environmental Law.
- Grantor represents, warrants and agrees that:
- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.

130301 Fee: \$ 48.00

CUSTER COUNTY Recorded 11/03/2004 At 10 18 AM

- B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
- C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
- D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
18. **CONDEMNATION.** Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
19. **INSURANCE.** Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument. All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor. Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.
20. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.
21. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to transfer, mortgage and convey Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Grantor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Grantor's consent. Such a change will not release Grantor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
22. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

130301 Fee: \$ 48.00

CUSTER COUNTY Recorded 11/03/2004 At 10:15 AM

23. **RECONVEYANCE.** When Grantor has paid the Secured Debt in full and all underlying agreements have been terminated, Lender shall request in writing that Trustee release the Deed of Trust and shall produce for Trustee, duly canceled, all notes evidencing debts secured by this Deed of Trust. Trustee shall release this Deed of Trust and reconvey the property without further inquiry or liability.
24. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee by recording a substitution of trustee instrument in the county where the Property is located. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
25. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
26. **WAIVERS.** Except to the extent prohibited by law, Grantor waives all appraisal and homestead exemption rights relating to the Property.
27. **AREA OF PROPERTY.** The area of the Property is not more than 40 acres.
28. **REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR SECURITY INSTRUMENT.** Grantor and Lender request the holder of any mortgage, deed of trust, or other encumbrance with a lien which has priority over this Security Instrument to give notice to Lender, at Lender's address set forth on this Security Instrument of any default under the superior encumbrance and of any sale or other foreclosure action.
29. **OTHER TERMS.** If checked, the following are applicable to this Security Instrument:
- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
  - Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
  - Fixture Filing.** Grantor grants to Lender a security interest in all goods that Grantor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
  - Additional Terms.**
30. **RIDERS.** If checked, the following are applicable to this Security Instrument. The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.
- Third Party Rider
  - Leasehold Rider
  - Other N/A

130301 Fee: \$ 48.00

CUSTER COUNTY Recorded 11/03/2004 At 10:15 AM

31. HOMESTEAD NOTICE. GRANTOR UNDERSTANDS THAT THE REAL PROPERTY DESCRIBED IN THIS DEED OF TRUST IS NOT EXEMPT FROM EXECUTION AS A HOMESTEAD BECAUSE UNDER M.C.A 70-32-202 IT IS SUBJECT TO EXECUTION OR FORCED SALE TO SATISFY A JUDGMENT OBTAINED ON A DEBT SECURED BY A MORTGAGE OR OTHER ENCUMBRANCE ON THE PREMISES.

Lynne M. Kron \_\_\_\_\_ 10/7/04  
(Grantor) LYNNE M KRON (Date)

Mark Kron \_\_\_\_\_ 10/7/04  
(Grantor) MARK KRON (Date)

\_\_\_\_\_  
(Grantor) (Date)

\_\_\_\_\_  
(Grantor) (Date)

\_\_\_\_\_  
(Grantor) (Date)

\_\_\_\_\_  
(Grantor) (Date)

SIGNATURES: By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

Lynne M. Kron \_\_\_\_\_ 10/7/04  
(Grantor) LYNNE M KRON (Date)

Mark Kron \_\_\_\_\_ 10/7/04  
(Grantor) MARK KRON (Date)

\_\_\_\_\_  
(Grantor) (Date)

\_\_\_\_\_  
(Grantor) (Date)

\_\_\_\_\_  
(Grantor) (Date)

\_\_\_\_\_  
(Grantor) (Date)

130301 Fee: \$ 48.00  
CUSTER COUNTY Recorded 11/03/2004 At 10:15 AM

**ACKNOWLEDGEMENT:**

(Individual)

State of Montana

County of Rosebud

This instrument was acknowledged before me on October 7, 2004 (date) by \_\_\_\_\_

Lynne M. Krom (name(s) of person(s)).



(Notarial Seal)

Darcie Racki  
(Signature of notarial officer)

Darcie Racki  
(Title)  
Notary Public  
My commission expires: August 1, 2008

Notary Public for the state of Montana, residing at Forsyth city.

**ACKNOWLEDGEMENT:**

(Individual)

State of Montana

County of Rosebud

This instrument was acknowledged before me on October 9, 2004 (date) by \_\_\_\_\_

Mark Krom (name(s) of person(s)).



(Notarial Seal)

Darcie Racki  
(Signature of notarial officer)

Darcie Racki  
(Title)  
Notary Public  
My commission expires: August 1, 2008

Notary Public for the state of Montana, residing at Forsyth city.

**After Recording Return To:**  
Wells Fargo Bank, N.A.  
P. O. BOX 31557  
BILLINGS, MT 59107  
DOCUMENT MANAGEMENT

**130301 Fee: \$ 48.00**

**CUSTER COUNTY Recorded 11/03/2004 At 10:15 AM**

MONTANA - DEED OF TRUST  
EQ126H (10/2003)



Dawn Colton  
City Planning Dept.  
City Hall  
Miles City

11/6/14

In regards to the lot adjustment request my intention is to sell the building if possible and keep the house. I have no interest in operating any business.  
Thanks for your consideration.

Sincerely,  
Lyane Kron  
604 N 7th  
Miles City

PS - Crystal Pistol competition  
has been dissolved  
for several years.

---



**Staff Report BLA-2014-01  
Kron Common Boundary Relocation  
Jan 6, 2014**

**I. GENERAL INFORMATION**

**A. Project Applicant**

**Applicant/Owner:** Lynne Kron  
600 North 7<sup>th</sup> Street  
Miles City, MT

**Technical Assistance:** Quinn Wright  
Dowl HKM  
713 Pleasant  
Miles City, MT

**B. Project Description**

Relocation of common boundary for five or fewer lots within a platted subdivision. This request is exempt from subdivision review per MCA 76-3-207(1)(d), but is subject to survey requirements and zoning regulations. See Attachment "A", Letter of Intent.

**C. Legal Description of Subject Property**

SW ¼ SE ¼ of Sec 33, T 8 N, R 47E, Block 6, Lots 11-A & 12-A, Hunters Addition

**D. Location**

See Attachment "B", draft amended plat

**E. Boundary Adjustment Detail**

	<b>Current</b>	<b>Proposed</b>
Total Acreage:	<b>12,024.3 sq ft</b>	<b>12,024.3 sq ft</b>
Lot 11-A/B	<b>5750.4</b>	<b>7154.7</b>
Lot 12-A/B	<b>6249.6</b>	<b>4870.6</b>

**Easements:**

Existing: None Known

Proposed: None

**F. Land Use & Zoning**

**Current Land Use:** One home, two businesses

**Proposed Land Use:** No Change

**Current Zoning:** General Commercial

**G. Surrounding Land Use & Zoning**

**General Description:** The subject property is the Crystal Pistol/Paco Packers building and Kron home on the NE corner of N 7<sup>th</sup> St and Phillips St.

**Surrounding Uses**

North – Business

South – Business

East – Business

West – Home

**Surrounding Zoning**

North – General Commercial

South – General Commercial

East – Industrial

West – General Commercial

**II. EXAMINATION [21-17(f)(2)(b-d)]**

**Exemption from Subdivision Review**

This is a simple boundary line adjustment within a platted subdivision. Per MCA 76-3-207(1)(d), this proposal is exempt from subdivision review.

**Compliance with Miles City Subdivision Regulations.**

**21-18(1). Conformance with Regulations**

This proposal conforms to the Code of Ordinances of Miles City Sec 21-17 (Exemption from Review); Montana Code Annotated Title 76 Chapter 3-Subdivisions; and the Administrative Rules of Montana Surveying Requirements, 24.183.1107.

**24-11, 24-59 & 24-62. Compliance with Local Zoning**

Both buildings on the existing lots are non-conforming uses. The home is located in a GC zone, which does not permit single-family dwellings. Paco Packers is a manufacturing facility located in a GC zone which does not permit industrial uses. The Crystal Pistol is a conforming use in the GC zone, classified by the 2009 International Building Code as a Group A-2 use, food and/or drink establishment; although, it is currently closed for business.

*Finding #1:* The proposed boundary line adjustment will not create a new non-conforming uses. No new construction or changes in current usage is proposed at this time. [24-11(b)]

(b) *Expansion of nonconforming use.* The right to expand nonconforming uses to meet natural expansion is necessary to protect the original property interest in the tract and is essentially a constitutional right protected by the due process of law. However, this rule, like all other rules, is subject to limitations. More specifically, the expansion must be reasonable, must not expand to create a new nonconforming use, must be only that which is absolutely necessary to accommodate the expansion of the nonconforming use, and should be permitted only to the extent that it is not inconsistent with public interest.

*Finding #2.* The fire department has concerns with fire safety issues. Though two businesses are housed in one building, there is no firewall between the Crystal Pistol and Paco Packers areas. This may not be an issue unless the Crystal Pistol is opened for business in the future. Also, there is no firewall between the Paco Packers portion of the building and the Kron home.

*Mitigation:* Termination of a non-conforming use may be required only under circumstances listed in 24-11(c) through (e). If and when a building permit or an occupancy permit application is submitted, the building inspector may require the construction of a firewall(s).

(c) A building in which a nonconforming use is located may be repaired or reconstructed without structural alteration, to the extent not greater than 50 percent of the replacement costs of the building, exclusive of foundations.

(d) If a nonconforming use is discontinued for a period of 12 consecutive months, any future use of such building or premises shall conform to the provisions of this chapter.

(e) If a building housing a nonconforming use is destroyed to the extent of 50 percent or more of its replacement cost, said use shall be discontinued.

### III. DETERMINATION

Staff has determined that the use of the exemption is not intended to evade the purposes of the MSPA and complies with the statutes and criteria set forth in the Code of Ordinances of Miles City. Lynne Kron is the current owner of both lots and is requesting the relocation of an existing boundary line in order to facilitate the sale of Lot 12-B (Paco Packers/Crystal Pistol building), as reconfigured, to the current leaser. There is no intended change in the current usages.

### IV. RECOMMENDATION

Staff recommends that the City Council adopt this report as findings of fact and approve the boundary line adjustment based on the information contained in the report.

