



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*September 22, 2015
7:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
 - A. City Council Meeting 09/08/2015

2. SCHEDULE MEETINGS

3. REQUEST OF CITIZENS & PUBLIC COMMENT

4. APPOINTMENTS
City/County Health Board – Donna Faber
City/County Health Board - Amber Trenka

5. PROCLAMATIONS
6. STAFF REPORTS
7. CITY COUNCIL COMMENTS
8. MAYOR COMMENTS
9. COMMITTEE RECOMMENDATIONS
Public Safety Committee – First Interstate Bank: Building site plan

10. BID OPENINGS
BID AWARDS

11. PUBLIC HEARINGS
RESOLUTION NO. 3842: A Resolution Pursuant to 7-6-4006 of the Montana Code Annotated, Authorizing Amendment of Final Budget for FY 2015-2016 to Increase Budgeted Amounts in the Water Fund 5210 and Sewer Fund 5310

12. UNFINISHED BUSINESS
RESOLUTION NO. 3842: (Second Reading) A Resolution Pursuant to 7-6-4006 of the Montana Code Annotated, Authorizing Amendment of Final Budget for FY 2015-2016 to Increase Budgeted Amounts in the Water Fund 5210 and Sewer Fund 5310

13. NEW BUSINESS

- A. RESOLUTION NO. 3843: A RESOLUTION TO ESTABLISH AN URBAN RENEWAL AGENCY PURSUANT TO TITLE 7 CHAPTER 15 PART 42 OF THE MONTANA CODE ANNOTATED TO BE KNOWN AS THE MILES CITY DOWNTOWN URBAN RENEWAL BOARD OF COMMISSIONERS AND TO ACT AS AN ADVISORY BOARD ONLY TO THE MILES CITY CITY COUNCIL
- B. RESOLUTION NO. 3844: A RESOLUTION APPROVING THE DEFERMENT OF THE WATER CONNECTION AND DEVELOPMENT FEES AND SEWER DEVELOPMENT FEE FOR THE MILES CITY LIVESTOCK COMMISSION
- C. RESOLUTION NO. 3845: A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH DOWL HKM ENGINEERING, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.
- D. RESOLUTION NO 3846: A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH INTERSTATE ENGINEERING, INC., FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD
- E. RESOLUTION NO. 3847: A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH KADRMAS, LEE & JACKSON D/B/A KLJ, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD
- F. RESOLUTION NO. 3848: A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH ROBERT PECCIA & ASSOCIATES, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD
- G. RESOLUTION NO. 3849: A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH SANDERSON STEWART, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD
- H. RESOLUTION NO. 3850: *(First Reading)* A RESOLUTION PURSUANT TO 7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2015-2016 TO INCREASE BUDGETED AMOUNTS IN THE TREASURER FUND 1000
- I. RESOLUTION NO. 3851: *(First Reading)* A RESOLUTION PURSUANT TO 7-

6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2015-2016 TO INCREASE BUDGETED AMOUNTS IN THE CITY HALL MAINTENANCE FUND 1000

- J. RESOLUTION NO. 3852: A RESOLUTION GRANTING A REVOCABLE LICENSE TO CARLA DICKERSON, PATRICIA SAX, LAURA SAX, MARK SAX, AND GLENN SAX, FOR THE INSTALLATION OF A SEWER SERVICE LINE IN THE RIGHT OF WAY AREA AT THE INTERSECTION OF WELLS STREET AND NORTH FIFTH STREET**

- K. RESOLUTION No. 3853: RESOLUTION RELATING TO \$59,703.00 FOR THE CITY OF MILES CITY SPECIAL IMPROVEMENT DISTRICT NO. 211 BOND; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR**

- L. RESOLUTION NO. 3854: A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF MILES CITY, MONTANA, AND INTERSTATE ENGINEERING, INC., FOR DEVELOPMENT OF THE MILES CITY LONG RANGE TRANSPORTATION PLAN**

- M. RESOLUTION NO. 3855: A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A MONTANA DEPARTMENT OF COMMERCE COAL BOARD CONTRACT TO ASSIST IN FUNDING THE FRANK WILEY MILES CITY AIRPORT IMPROVEMENT PROJECT**

- N. ORDINANCE NO. 1299: (*First Reading*) AN ORDINANCE ADOPTED PURSUANT TO THE MONTANA INTERIM ZONING STATUTE CONTAINED IN SECTION 76-2-306 MCA EXTENDING INTERIM ZONING ORDINANCE 1290 PERTAINING TO THE ZONING OF SEXUALLY ORIENTED BUSINESSES.**

- O. Approval of Cowtown Agriculture to Create Diagonal Parking on 5th St**

14. 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

REGULAR COUNCIL MEETING **September 8, 2015** 7:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, September 8, 2015, in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana. Mayor Grenz called the meeting to order. Council Members present were Roxanna Brush, Mark Ahner, Dwayne Andrews, Ken Gardner, Susanne Galbraith, John Hollowell and Jerry Partridge.

Also present were City Attorney Dan Rice, Police Chief Doug Colombik, Public Works Director Scott Gray, Public Utilities Director Al Kelm, Sergeant Mike Willems, Fire Chief Gary Warren, Grant Writer/Planner in Transition Dawn Colton, Grant Administrator /Historic Preservation Officer Connie Muggli, and City Clerk/Minute Recorder Lorrie Pearce.

PLEDGE OF ALLEGIANCE

Mayor Grenz led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 08/25/2015

- ** *Councilperson Galbraith moved to approve the minutes of the Regular Council Meeting of August 25, 2015, seconded by Councilperson Brush. On roll call vote the motion **passed** unanimously, 7-0.*

Public Safety Minutes: 08/27/2015

- ** *Councilperson Gardner moved to approve the minutes of the Public Safety Meeting of August 27, 2015, seconded by Councilperson Ahner. On roll call vote the motion **passed** unanimously, 7-0.*

Finance Committee Minutes: 08/19/2015

- ** *Councilperson Galbraith moved to approve the minutes of the Finance Committee Meeting of August 19, 2015, seconded by Councilperson Andrews. On roll call vote the motion **passed** unanimously, 7-0.*

SCHEDULE MEETINGS

The following meetings will be held in the City Hall Conference Room:

- Public Service Meeting: Wednesday, September 16th @ 6:00 pm
- Human Resource Meeting: Wednesday, September 16th @ 6:00pm
- Study Commission Meeting: Thursday September 17th @ 5:15pm

REQUEST OF CITIZENS & PUBLIC COMMENT

First Interstate Bank: Introduction of building site plans on Haynes Avenue

First Interstate Bank President Jeffrey Rodenbaugh presented a map to show their proposed plan of the new First Interstate Bank building on South Haynes Avenue. The last 60 days they have been working with neighbors to get a new cut out road through the property. Once the project is complete, they would like to dedicate the road to the City. Stacy Klippenstein President of Miles City Community College shared his support for the project.

** *Councilperson Brush moved to send the proposal to Public Service, seconded by Councilperson Galbraith and passed unanimously, 7-0.*

PROCLAMATIONS

None

STAFF REPORTS

Director Kelm said there was an 8 inch pipe that blew out on Fifth and Wells Street. He thought water would be restored by 10:00 or 10:30 tonight.

CITY COUNCIL COMMENTS

None

MAYOR COMMENTS

Veto of Treasurer's Insurance

Mayor Grenz declared that line item 1000-009-410540-143 (Health Insurance) be vetoed from the FY 15/16 budget:

VETO

§7-5-4205(3) MCA and §2-106(6) of the Code of Ordinances of Miles City, Montana provide that the mayor has the power to “veto any objectionable part of a resolution or ordinance and approve the other parts.” §2-106(7)(b) of the Code of Ordinances of Miles City, Montana provides that “the veto power of the mayor as to resolutions must be exercised in writing at the next regular meeting.” Accordingly, I hereby veto the following parts of Resolution 3819, as amended and passed by the City Council at its regular meeting of August 25, 2015.

1. \$7,726.00 of the appropriation for Account 1000-009-410540-143, as reflected in the FY 2015-2016 Budget attached as Exhibit “A” to said Resolution 3819, by striking the line item for said account number, which is the line item for health insurance for the position of City Treasurer.

2. In the event that a Court of competent jurisdiction should rule that the veto of the above portions of Resolution 3819, as amended are ineffective, then it is my intent of this veto to veto Resolution 3819, as amended, in its entirety. I am not in agreement with a budget for FY 2015-2016 that includes the expenditures that I have vetoed above.

My objections to the Resolution, as amended, are:

1. The addition of health insurance to the City Treasurer position may set a precedent to add health insurance to all elected official positions, which would not be fiscally responsible or sustainable.

DONE at the regular City Council meeting of September 8, 2015.



C.A. Grenz, Mayor

Attorney Rice said the veto needs to be confirmed or overridden by a 2/3 vote, and can be done at this meeting or the next.

** *Councilperson Galbraith moved to override the veto, seconded by Councilperson Partridge.*

Veto Discussion:

Councilperson Galbraith said that there are three half time positions, and she thought that the insurance should be given to all three or none.

Councilperson Ahner said that several years ago the Council voted to give the Mayor insurance to improve the applicant pool. The Treasurer deals with

money and neither the Mayor nor the Treasurer works 8 hours a day. But he doubts that the Treasurer receives calls late at night or early in the morning. The Mayor's reasonability's are much greater than the Treasurer. If the City offered insurance to all elected positions and Council, that would be a \$65,000 a year burden on tax payers.

Councilperson Galbraith said that the Council is not considered half time position. She didn't think any of the Council members would want insurance. She felt that the Treasurer is taxed to handle four million dollars a year of revenue and deserves it.

Councilperson Hollowell said that the insurance has never been offered to the Treasurer. He felt that that position is the only one getting stung.

Councilperson Brush said that most of the Council has tried to be fair. The Human Resource Committee looked at surrounding states and local communities as to what their wages are and if insurance was offered. City Council voted on a \$2,000 increase for the Mayor, Treasurer and Judge and then the Finance Committee turned around and took the increase away from the Treasurer and offered the position insurance without letting anyone know.

Councilperson Hollowell said that he did feel that the Finance Committee was acting in a manner which they felt was financially better for the City. Going with the insurance route, it would save the City \$1,000.

Councilperson Partridge said the Treasurer position has come close in the last three years to getting insurance, and felt it was time for that position to receive insurance.

Mayor Grenz felt that the City would be setting a precedent if the Treasurer received the insurance.

*** Councilperson Ahner called for question, seconded by Gardner, the motion **failed** on roll call vote 3-4. The vote would of had to receive 2/3 vote to pass. Councilperson Gardner, Ahner, Brush and Andrews voted yes.*

*** Councilperson Galbraith's original motion, on roll call vote **failed**, 4-3, with Councilperson Gardner, Ahner and Brush voting no. The motion to override a veto would have had to pass by a 2/3 vote. **The veto was confirmed.***

STANDING COMMITTEE RECOMMENDATIONS

None

BID OPENINGS/AWARDS

None

PUBLIC HEARINGS

- A. HOUSING SOLUTIONS, LLC: Whether Its Proposed Qualifying Low-income Rental Housing Complex, Located Behind Albertson's and Referred To As Stower Commons, Meets A Community Housing Need In Miles City, Montana

Mayor Grenz called for comments from proponents three times.

Housing Solution LLC Representative Alex Burkhalter said that his company is very interested in building affordable rental property in Miles City. He explained the difference from his first proposal:

- From last year's proposal the units were scaled down from 30 units to 24 units
- Would be 1,2 and 3 bedrooms apartments
- Would be for employees receiving entry level wages
- 40 to 60% is based on income
- Cannot occupy college students

He added that the funding for his proposal wasn't in the pool last year. And the pool is very competitive again this year.

Councilperson Andrew asked if there is a need for affordable housing in Miles City. Mr. Burkhalter said that the studies show there is a need and was very surprised that there isn't already a project like this in Miles City.

Mayor Grenz called for comments from proponents three times, then opponents three times and, hearing none, the hearing was closed.

UNFINISHED BUSINESS

None

NEW BUSINESS

- A. **DECISION ON INTERVIEW AND APPOINTMENT OF CITY COUNCIL REPLACEMENT**

Consensus of the Council was to have the Council interview all

applicants at a Council meeting

B. RESOLUTION NO. 3837: A Resolution of the City of Miles City, Approving a Loan in the Amount of \$169,530, Together With Interest Thereon at the Rate of 1.625% Per Annum on the Unpaid Balance of the Principal Until Paid, From the Aeronautics Division of the Department of Transportation of the State of Montana To The City of Miles City

** *Councilperson Galbraith moved to adopt the resolution by title only, seconded by Councilperson Gardner. The motion passed by roll call vote, 7-0. Resolution No. 3837 passed*

C. RESOLUTION NO. 3838: A Resolution to Adopt an Agreement Between the Miles City Urban Renewal District and the Miles City Public Utilities Department to Provide Direct Assistance to the Brewery Company Within the Miles City Urban Renewal District

** *Councilperson Gardner moved to adopt the resolution by title only, seconded by Councilperson Brush.*

Councilperson Ahner asked if it would be a loan between the water/sewer departments to the Urban renewal District.

Administrator Muggli explained that the water department has agreed to install a sewer pipe and fire line for the brewery. The Water Department would bill the Urban Renewal District and they would have 5 years to pay the loan back. She did not have an accurate dollar amount at this time, but thought it would be approximately \$15,000.

Director Kelm said that the water/sewer department will install a 2" sewer pipe and a 4" fire line for the brewery. The City would purchase the material needed and complete the work. They would record the labor and bill the Urban renewal District for both the material and labor. He added that the Council could choose to add interest, but suggested not to.

Chair of TIF Committee Brent Leischner said the group reviewed the business plan and recommended to go forward with it.

Councilperson Ahner asked how many employees the Brewery will have.

Project Manager Barry Matthews said around 5 in the first year,

but could double or triple in the future.

Councilperson Hollowell asked what the TIF District is expecting to bring in.

Administrator Muggli said \$17,000 to \$18,000 in the first year. She said that the dollar amount does not include the Utility companies, which include the railroad.

* *By roll call vote, the resolution passed unanimously, 7-0.*
Resolution 3838 passed

D. RESOLUTION NO. 3839: A Resolution Granting A Revocable License to Ronald J. Bartkowski for a Carport Encroachment Upon City of Miles City Right of Way For South Montana Avenue for the Benefit of the North 81 Feet and 1 Inch of Lot 12 in Block 85 of the Miles City original Townsite, Commonly Known As 313 South Montana Avenue

** *Councilperson Brush moved to approve the resolution read by title only, seconded by Councilperson Gardner and, on roll call vote, passed unanimously, 7-0. Resolution No. 3839 passed.*

E. RESOLUTION NO. 3840: A Resolution Authorizing Certain Officers of the City of Miles City as Signatories Upon Bank Accounts of the City of Miles City at Stockman Bank

** *Councilperson Brush moved to adopt the resolution by title only, seconded by Councilperson Andrews. The motion passed by unanimous consent, 7-0. Resolution No. 3840 passed*

F. RESOLUTION NO. 3841: A Resolution Approving the Waiver of 40% of Building Permit Fees and 40% of Water and Sewer Connection fees and Reducing Parking Requirements to 1.5 Stalls Per Unit for the Stower Commons Affordable Housing Property

** *Councilperson Galbraith moved to adopt the resolution by title only, seconded by Councilperson Gardner. After brief discussion, the motion passed with a vote of 6-1. Councilperson Partridge voted no. Resolution No. 3841 passed*

G. RESOLUTION NO. 3842: (First Reading) A Resolution Pursuant to 7-6-4006 of the Montana Code Annotated, Authorizing

**Amendment of Final Budget for FY 2015-2016 to Increase
Budgeted Amounts in the Water Fund 5210 and Sewer Fund 5310**

****** *Councilperson Galbraith moved to adopt the resolution by title only, seconded by Councilperson Gardner. On roll call vote, the motion passed by unanimous consent, 7-0. **Resolution No. 3842 passed on first reading***

**H. APPROVAL OF SITE PLAN REVIEW: Diamond J Construction:
(AT&T Site)**

****** *Councilperson Brush moved to approve the site plan review and adoption of the staff report as finding of facts and conditions in the letter that was presented to Council before the meeting. The motion was seconded by Councilperson Hollowell.*

Councilperson Brush read the finding of facts and condition letter.

City of Miles City
Miles City Planning Board
PO Box 910
Miles City, MT 59301

Mayor Chris Grenz
City Council Members

RE: Site Plan Review for Diamond J Construction


The City Planning Board has reviewed the proposed site plan and recommends to the City Council that the proposal be approved subject to the following conditions:

CONDITIONS:

- Any modification to the approved application and plans that impact building codes or zoning regulations shall require additional review by the City of Miles City.
- The owner shall maintain adequate parking space for employees at a minimum of one space per employee and reasonably adequate spaces for visitor parking as required by Miles City Code of Ordinances for the Heavy Commercial (HC) District Section 24-61 and the 2012 International Building Codes.
- The owner shall comply with all applicable codes in the Miles City Code of Ordinances Section 15 concerning Public Nuisances.

- The owner shall obtain an occupancy permit prior to initiating the proposed use.
- The water, sewer and other utilities connections shall be approved by the applicable service providers prior to construction.
- In the event, construction activity disturbs an area equal to or greater than one acre, a Storm water Pollution Prevention Plan (SWPPP) permit from Montana DEQ will need to be obtained prior to start of site improvements and construction. Prior to construction, the applicant will need to document the entire area of disturbance, not just the finished construction area.
- The owner shall submit a letter of review from the Miles City Fire Department indicating adequate fire protection plans have been developed and the department can adequately respond to emergencies at the facility. Any fire department requirements, such as fire hydrants, access plans/improvements, sprinkler systems, firewalls, and other fire code requirements shall be approved by the fire department prior to occupancy.

Respectfully,



Roxanna Brush, President
Miles City Planning Board

Councilperson Hollowell said that there were South Gates residents at the Planning Board meeting and they had no concern with the site plan review being approved. Their only concern was the engineering of the drainage.

Planner Colton said that the drainage is 8' wide on the bottom and 20' wide on top. The numbers in her staff report were correct.

Councilperson Brush said that there was an e-mail received from Attorney Ryder at 4:59pm today asking Council to deny approval of the proposed site plan. A copy was made and distributed to all Council members before the meeting.

Diamond J's Representative Attorney Erica Griffith said that the area is zoned as heavy commercial property and the storm water drainage had been reviewed and will be approved. The project would not increase traffic on Horizon Parkway, so it's an ideal place for this type of business. She added that there was a concern with the oil/sand separator, and Diamond J has agreed to take care of the matter. For the record she read the two letters from the proponents.

**** The motion passed by unanimous consent, 7-0. AT&T site plan was approved**

I. APPROVAL OF AUGUST CLAIMS

**** Councilperson Galbraith moved to approve August claims, seconded by Councilperson Hollowell. The motion passed by a vote of 6-1, with Councilperson Ahner voting no**

ADJOURNMENT

**** Councilperson Galbraith moved to adjourn the meeting, seconded by Councilperson Hollowell and passed unanimously.**

The meeting was adjourned at 8:26 p.m.

C.A. Grenz, Mayor

Lorrie Pearce, City Clerk

Public Hearing

Same as Unfinished Business

RESOLUTION NO. 3842

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2015-2016 TO INCREASE BUDGETED AMOUNTS IN THE WATER FUND 5210 AND SEWER FUND 5310.

WHEREAS, the City of Miles City wishes to amend the budget for Fiscal Year 2015-2016 to account for budgeting in the Water and Sewer funds, for certain projects being undertaken by the City;

AND WHEREAS, such amendment of the final budget will result in an overall increase in appropriation authority within funds 5210 and 5310,

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

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

The appropriations for the Final Budget for Fiscal Year 2015-2016 shall be increased in the following amounts:

Water Fund	
5210-022-430530-214	\$3,000- Small Item of Equipment
5210-022-430530-940	\$130,000- Machinery and Equipment
5210-023-430550-940	\$1,913,000- Machinery and Equipment
5210-080-430540-214	\$9,200- Small Item of Equipment
5210-080-430540-230	\$9,500- Repair and Maintenance
5210-080-430540-930	\$15,500- Improvement other than building

Sewer Fund	
5310-031-430630-940	\$ 23,000- Machinery and Equipment
5310-032-430690-214	\$29,500- Small Item of Equipment
5310-032-430690-230	\$8,500- Repair and Maintenance
5310-033-430640-214	\$25,000- Small Item of Equipment
5310-033-430640-230	\$13,500- Repair and Maintenance
5310-033-430640-940	\$6,800,000- Machinery and Equipment

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2015-2016 on the 22nd day of September, 2015, at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2

times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE
THIS 8TH DAY OF SEPTEMBER, 2015.

C. A. GRENZ, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF
MILES CITY, MONTANA, THIS 22ND DAY OF SEPTEMBER, 2015.

C. A. GRENZ, Mayor

ATTEST:

Lorrie Pearce, City Clerk

New Business

RESOLUTION NO. 3843

A RESOLUTION TO ESTABLISH AN URBAN RENEWAL AGENCY PURSUANT TO TITLE 7 CHAPTER 15 PART 42 OF THE MONTANA CODE ANNOTATED TO BE KNOWN AS THE MILES CITY DOWNTOWN URBAN RENEWAL BOARD OF COMMISSIONERS AND TO ACT AS AN ADVISORY BOARD ONLY TO THE MILES CITY CITY COUNCIL.

WHEREAS, the Miles City City Council has previously adopted resolutions finding that: (1) one or more blighted areas exist in the City of Miles City and the rehabilitation, redevelopment, or a combination thereof of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of the City; and

WHEREAS, the Miles City City Council has previously adopted Ordinance 1294 establishing the Miles City Downtown Urban Renewal District to be overseen by the Historic Preservation Office; and

WHEREAS, the Miles City council has previously appointed a steering committee consisting of downtown property owners, representatives of local finance institutions, and city officials for a term of one year, charged with developing administrative and fiscal policy and direction during the initial creation phase, which must now transition into a permanent term appointed Board responsible for advising the City Council as to the expenditure of TIF dollars generated in the district, and

WHEREAS, pursuant to *MCA 7-15-4232* the Miles City City Council finds that it would be in the best interests of the city to establish an Urban Renewal Agency to be known as the Miles City Urban Renewal Board of Commissioners for the purpose of assisting the City Council in evaluating and proposing urban renewal plans and projects; and

WHEREAS, pursuant to *MCA 7-15-4233*, the City of Miles City hereby authorizes the Miles City Urban Renewal Board of Commissioners to adopt appropriate bylaws, attached herein as Attachment A, in order to exercise the following urban renewal project powers: (a) to formulate and coordinate a workable program as specified in *7-15-4209*; (b) to assist city staff in the preparation of urban renewal plans or modifications to such plans and make recommendations to the Miles City City Council; (c) to review urban renewal projects and make recommendations to the Miles City City Council regarding the funding of such projects; (d) to undertake and carry out urban renewal projects as required by the local governing body; (f) to disseminate blight clearance and urban renewal information; (h) to perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body, as provided in *MCA 7-15-4233*. Any powers granted in *MCA 7-15-4233* that are not included in this Resolution as powers of the urban renewal agency in lieu thereof may only be exercised by the local governing body.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA:

SECTION 1. That pursuant to *MCA 7-15-4232* the Miles City City Council hereby

establishes an Urban Renewal Agency to be known as the Miles City Downtown Urban Renewal Board of Commissioners for the purpose of assisting the City Council in evaluating and proposing urban renewal plans and projects.

SECTION II. That the Miles City Urban Renewal Board of Commissioners shall have the authority to (a) to formulate and coordinate a workable program as specified in 7-15-4209; (b) to assist city staff in the preparation of urban renewal plans or modifications to such plans and make recommendations to the Miles City City Council; (c) to review urban renewal projects and make recommendations to the Miles City City Council regarding the funding of such projects; (d) to undertake and carry out urban renewal projects as required by the local governing body; (e) to disseminate blight clearance and urban renewal information; ((f) to perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body as provided in MCA 71-15-4233. Any powers granted in MCA 7-15-4233 that are not included in this Resolution as powers of the urban renewal agency in lieu thereof may only be exercised by the local governing body.

SECTION III: That pursuant to MCA 7-15-4234 the Urban Renewal Agency be administered by appointed board of commissioners as follows:

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each subsequent appointment must be for 4 years. A certificate of the appointment or reappointment of a commissioner must be filed with the clerk of the municipality, and the certificate is conclusive evidence of the proper appointment of the commissioner.

(3) Each commissioner shall hold office until a successor has been appointed and has qualified.

(4) A commissioner may not receive compensation for services but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.

SECTION IV: This resolution shall become effective immediately.

PASSED AND APPROVED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF THE CITY OF MILES CITY THIS _____ DAY OF _____, 2015.

Mayor

ATTEST:

City Clerk

ATTACHMENT A

TAX INCREMENT FINANCE AGENCY
FOR THE
MILES CITY DOWNTOWN URBAN RENEWAL DISTRICT
BY-LAWS

ARTICLE I

NAME

As authorized by the City of Miles City and City Ordinance 1294, this body shall be known as the Miles City Urban Renewal Board of Commissioners for the Miles City Downtown Urban Renewal District. The Agency's purpose, as explained in the Downtown Urban Renewal Plan adopted May 12, 2015, is to advise the City Council of Miles City in the expenditure of Tax Increment Finance dollars generated in the Downtown District.

ARTICLE II

MEMBERS

Miles City Urban Renewal Board of Commissioners for the Miles City Downtown Urban Renewal District will consist of five members, recommended by the Agency, appointed by the Mayor and approved by the Miles City Council for three year staggered terms.

ARTICLE III

MEETINGS

Section 1. The Agency shall conduct a minimum of four regularly scheduled meetings per calendar year which shall be held at times designated by the Agency. The meetings will be held at City Hall or other location the Agency may determine.

Section 2. Special meetings may be called by the Chair or at the call of the Agency, provided that proper notice thereof is given to all Agency members at least two days in advance in addition to proper public notice.

Section 3. A majority of the members shall constitute a quorum at all meetings of the Agency.

Section 4. All questions presented for a vote of the Agency shall be decided by a simple majority of the quorum, including the vote of the Chairperson.

Section 5. Any member of the Agency who misses three consecutive meetings without good cause shall be deemed to have resigned, and the Agency will recommend to the Mayor and City Council that a replacement be appointed for the balance of the unexpired term.

Section 6. Robert's Rules of Order shall govern in the parliamentary procedure of the Agency, in all cases to which they are applicable and in which they are not inconsistent with these by-laws.

ARTICLE IV

OFFICERS

Section 1. The Officers of the Agency shall be a Chairperson and Vice Chairperson and a Secretary.

Section 2. Officers shall be elected and take office at the first regular meeting of the calendar year.

Section 4. Vacancies in office shall be handled as follows:

a) In the event of resignation or incapacity of the Chairperson, the Vice Chairperson shall become the Chair for the unexpired portion of the term.

b) Vacancies in offices other than the Chairperson shall be filled for the unexpired term by special election.

Section 5. Duties of the Officers shall be as follows:

a) Chair:

- i. Preside at all meetings
- ii. Represent the Agency at City Council meetings, public hearings and public functions
- iii. Appoint special committees
- iv. Assist Tax Increment Finance (TIF) District Coordinator in establishing the agenda for each meeting. Agenda items requested by any Agency member will also be included.
- v. Assist the Tax Increment Finance (TIF) District Coordinator in developing the annual operating and management budget for the District.
- vi. In the event of resignation or incapacity of the Historic Preservation Officer, the Chairperson shall request the Mayor, with approval of City Council, designate or appoint qualified City staff as TIF District Coordinator.

b) Vice-Chairperson:

- i. Assist the Chairperson in directing the affairs of the Agency and act in the Chairperson's absence.

c) Secretary

- i. Maintain the written minutes and other records of the Board of Commissioners in accordance with City of Miles City policy and audit requirements.
- ii. Assist the Chairperson in directing the affairs of the Agency and act in the Chairperson's and Vice-Chairperson's absence.

ARTICLE V

TERMS

- i. The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each subsequent appointment shall be for 4 years.
- ii. Each commissioner shall hold office until a successor has been appointed and has qualified.
- iii. A commissioner may not receive compensation for services, but may be reimbursed for travel related to duties of the office.
- iv. Any persons may be appointed as commissioners if they reside or own real estate within the municipality and have applicable experience in finance, business ownership, commercial development and real estate marketing.
- v. A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.

ARTICLE VI

COMMITTEES

Section 1. Committees may be appointed for special purposes by the Chairperson and with the consent of the majority of the Agency. These Committees automatically dissolve upon completion of their assignment.

ARTICLE VII

Section 1. The TIF District Coordinator shall be an ex-officio member of the Agency.

ARTICLE VII

POWERS AND DUTIES OF AGENCY MEMBERS

Section 1.

a) Agency members shall:

- i. Abide by applicable ordinances of the City of Miles City.
- ii. Act in the best interest of the City of Miles City and the Miles City Downtown Tax Increment Finance District at all times.
- iii. Effectively budget and manage Tax Increment District Revenue in accordance with MCA 7-15-4288 and 7-15-4237
- iv. Encourage in every way possible the development and advancement of Tax Increment Finance District.
- v. Act in an advisory capacity to the City Council, the Mayor and Department Heads in management of the TIF District.
- vi. Assist and advise the Historic Preservation Officer (TIF District Coordinator) with administrative management of the District.
- vii. Assist in interpreting Montana statute (MCA), Administrative Rules of Montana (ARM), policies and functions of the Tax Increment Finance District.
- viii. Protect the business, personal and financial information identified as confidential within the Non-Disclosure Agreement by private citizens proposing projects within the District.
- ix. Exercise those urban renewal project powers described and assigned in Resolution No. 3842) adopted by the City of Miles City on (date), specifically:
 - (a) to formulate and coordinate a workable program as specified in 7-15-4209 for approval by the City Council;
 - (b) to assist city staff in the preparation of urban renewal plans or modifications to such plans and make recommendations to the Miles City City Council;

- (c) to review urban renewal projects and make recommendations to the Miles City City Council regarding the funding of such projects;
- (d) to undertake and carry out urban renewal projects as required by the Miles City City Council;
- (e) to disseminate blight clearance and urban renewal information;
- (f) to perform such duties as the Miles City City Council may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body, as provided in MCA 71-15-4233.

x. Sign a Conflict of Interest and Confidentiality Agreement.

ARTICLE VIV

AMENDMENTS

Section 1. These by-laws may be amended by a majority vote at any regular meeting, provided all agency members have been notified of the proposed amendments at least ten days prior to such meeting. Such amendment would then be subject to approval by the City Council.

**Miles City Council
Staff Summary
Resolution 3843**

A RESOLUTION TO ESTABLISH AN URBAN RENEWAL AGENCY PURSUANT TO TITLE 7 CHAPTER 15 PART 42 OF THE MONTANA CODE ANNOTATED TO BE KNOWN AS THE MILES CITY DOWNTOWN URBAN RENEWAL BOARD OF COMMISSIONERS AND TO ACT AS AN ADVISORY BOARD ONLY TO THE MILES CITY CITY COUNCIL.

As background for this Resolution, I've prepared a summary of the MCA Statutes that have guided the steps taken by the committee to develop their recommendations on how to structure and manage the District in the most effective, cost efficient manner.

The Bylaws established in Resolution 3843, support the two primary duties of the Urban Renewal Agency Board of Commissioners:

- To strengthen and enhance the value of the Urban Renewal District with Tax Increment Finance Authority, and
- To steward the tax increment revenue in a manner that allows the Committee to fulfil the first role.

The Urban Renewal Plan, adopted by Ordinance 1294 established the basic administrative structure for the District:

- **ADMINISTRATION**

The Downtown Miles City Urban Renewal District will be administered by the City of Miles City Historic Preservation Office. A steering committee consisting of downtown property owners, representatives of local finance institutions, and city officials will be charged with developing administrative and fiscal policy and direction during the initial creation phase. Following adoption of the plan, this committee will transition into a term appointed Board responsible for advising the City Council as to the expenditure of TIF dollars generated in the district. The HPO will provide staff support to the steering committee and will facilitate the implementation of the Urban Renewal Plan. This is a key component of any successful Urban Renewal District.

The Interim Tax Increment Finance District Committee reviewed the corporate structure and bylaws of other TIFD agencies around the state. The Committee decided that of the choices offered under 7-15-4231. *Exercise of powers related to urban renewal*, that it would be more cost efficient to create a new "department" or agency within the City government to administer the TIFD revenue, rather than rather than pay administrative overhead to an outside agency. Other than Kalispell (and perhaps a few others I'm not aware of), most Montana cities with TIFDs have elected to appoint or hire an outside "agency" to manage their Districts. This is typically a Downtown Business Improvement organization, or an economic development group of some sort.

- MCA 7-15-4231. Exercise of powers related to urban renewal. A municipality may itself exercise its urban renewal project powers as herein defined or may, if the local governing body

by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency created by 7-15-4232 or a department or other officers of the municipality as they are authorized to exercise under this part and part 43.

- As MCA 7-15-423. Employment of necessary staff requires the municipality provide sufficient staff to administer the District, it makes more sense to use city staff already on salary, appropriating a percentage of the annual increment revenue to assist with a portion of that cost. This avoids the typically much higher percentage of increment revenue an outside agency would charge to cover overhead costs such as building rental and salary.

Whether in house, or contracted out, under *MCA 7-15-4233*, the City can grant either full or partial authority to manage the increment revenue to that department or agency, setting limits according to the subparts of that statute. After discussion with the City Attorney, Resolution 3843 is closely modeled after Kalispell's Bylaws, delegating only those "powers" specified in 7-15-4233 to the Urban Renewal Board of Commissioners and Historic Preservation Office will require to effectively manage the Department, while leaving the final approval of projects and expenditures up to the City Council. The full statute is below for your reference:

7-15-4233. Powers which may be exercised by urban renewal agency or authorized department. (1) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

- (a) to formulate and coordinate a workable program as specified in 7-15-4209;
- (b) to prepare urban renewal plans;
- (c) to prepare recommended modifications to an urban renewal project plan;
- (d) to undertake and carry out urban renewal projects as required by the local governing body;
- (e) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;
- (f) to disseminate blight clearance and urban renewal information;
- (g) to exercise the powers prescribed by 7-15-4255, except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;
- (h) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;
- (i) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;
- (j) to insure real or personal property as provided in 7-15-4258;
- (k) to effectuate the plans provided for in 7-15-4254;
- (l) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;
- (m) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;
- (n) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;
- (o) to negotiate for the acquisition of land;
- (p) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;
- (q) to organize, coordinate, and direct the administration of the provisions of this part and part 43;

(r) to perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

(2) Any powers granted in this part or part 43 that are not included in subsection (1) as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

Budget

MCA 7-15-4286 is very specific in how tax increment revenue must be managed, accounted for and spent:

MCA 7-15-4286. Procedure to determine and disburse tax increment. (2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district, except for the university system mills levied and assessed against property, must be paid into a special fund held by the treasurer of the local government and used as provided in 7-15-4282 through 7-15-4294.

Tax increment revenue must be held in a separate fund and managed and used only for those expenses provided in statute. This requirement designates it, under municipal accounting GASB Rule #54 as “Special Revenue” which is reserved for a specific purpose, i.e. expenditure in the District as restricted by relevant MCA. Statute also allows for additional “external funding” to supplement tax increment revenue, i.e. grants, loans, etc.

The types of expenditures provided in 7-15-4282 through 7-15-4294 are too extensive to list here, but essentially, the new Urban Renewal Agency within the Historic Preservation Office will administer the budget in a manner that will complement the City’s overall budget by working with other Department Directors to provide grant match, and budget allocations for projects within the TIF District.

Some cities grant full authority to the outside agency to expend the increment revenue - just turn the total revenue over to them each year, approve their budget and require an annual report. Other cities require the outside agency to gain City Council approval prior to expenditures. All must report to the City annually under *7-15-4237 Annual report*.

However, again, in order to keep costs low and make sure the expenditure of funds align with the City’s intent in regard to managing the Urban Renewal District, the Urban Renewal Plan adopted under Ordinance 1294 states the TIFD Committee will develop an annual budget, which will be administered in accordance with City policy. This budget will be established through the typical channels, working with the Mayor, Finance Committee and Department Directors to allocate as much increment revenue as possible, subject to City Council approval, that will enable and support the two primary duties of the Urban Renewal Agency Board of Commissioners:

- To strengthen and enhance the value of the Urban Renewal District with Tax Increment Finance Authority, and
- To steward the tax increment revenue in a manner that allows the Committee to fulfil the first role.

- **ANNUAL BUDGET**

The Miles City Urban Renewal District Steering Committee shall prepare an annual program budget that accurately reflects anticipated revenues and operating expenditures, allocating budget for projects aligned with goals of the Plan. The Budget shall be managed in accordance with sound fiscal management policy developed by the Steering Committee, in accordance with City Policies and municipal fund management principles and subject to audit as required. Program and budget may be amended during the course of the fiscal year, to meet changing opportunities, subject to review and approval by the City Council of the City of Miles City.

Tax increment revenues are just that – “increment revenue” based on increases in property values in the district over the previous year. The worst case scenario would be that it might take longer to repay the water department, if in any particular year revenues are down. By incentivizing sound development projects in the district the URD Commissioners are ensuring increment revenue will be realized in subsequent years.

In each year, DOR certifies the values of all property in August. Until August of each year, the URD Department can safely make only two assumptions in regard to budget: 1) they will receive some tax increment revenue each year, and 2) the amount of increment revenue they receive will vary each year. In the new two-year reappraisal process instituted by DOR this year, a variety of circumstances trigger increment revenue, however the main four are: a) sale of real property, b) improvement of real property, c) acquisition of business equipment (taxed as personal property), and d) expansion of centrally assessed real property within the district.

The circumstances in which the District might not receive increment revenue would occur only under very extreme or unusual conditions: total economic failure as in a severe depression, or absolutely no improvements occur in the District in a given year.

Taxable value of the properties within the District for 2015, as certified by the DOR, provide a very conservative budget estimate for the first year budget of between \$ 21,497.52 and \$22,150. That estimate does not include the revenue for all of the “centrally assessed” properties, so we know it will be higher than that. Of that amount, in early budget planning), the committee has estimated 15% will go to salary/operational costs and the remaining 85% will be dedicated to funding projects in the district. That represents a range of \$18,273 and \$18,827 at the very least, for projects during the first 2016-2017 fiscal year. Under the two year reappraisal cycle, property values will remain the same for both years, unless a change occurs in the property value as triggered by one of the circumstances listed above. Regardless, the DOR will reappraise all property in two years, and, it is doubtful that properties in the district as a whole will lose so much value that no increment is realized.

Respectfully Submitted,

Connie Muggli
Historic Preservation Officer

RESOLUTION NO. 3844

A RESOLUTION APPROVING THE DEFERMENT OF THE WATER CONNECTION AND DEVELOPMENT FEES AND SEWER DEVELOPMENT FEE FOR THE MILES CITY LIVESTOCK COMMISSION

WHEREAS, Bart Meged of the Miles City Livestock Commission has requested that the City of Miles City defer payment of \$5,280 for \$4,920 in water connection and development fees and \$360 sewer development fee for a period of one year for the Miles City Livestock Commission to assist in rebuilding after the catastrophic fire in time for the fall livestock shipping season in Miles City; and

WHEREAS, the City has deemed the request to be appropriate and beneficial to the community;

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

1. The City of Miles City agrees to defer payment of the of the \$5,280 for \$4,920 water connection and development fees and the \$360 sewer development fee for a period of one year for the Miles City Livestock Commission property to assist in rebuilding in time for the fall livestock shipping season in Miles City.
2. The Mayor of the City of Miles City is hereby authorized to execute and deliver the approval letter attached hereto as Exhibit "A," the contents of which are hereby ratified and adopted by the City Council.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS _____ DAY OF SEPTEMBER, 2015

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk



CITY OF MILES CITY, MONTANA

P.O. Box 910
Miles City, MT 59301-3214

Telephone: (406) 234-3462
Fax: (406) 234-2903

September 22, 2015

RE: Miles City Livestock Commission

Dear Mr. and Mrs. Meged,

Please accept this letter as our strong support of your effort to rebuild the Miles City Livestock Commission following the devastating fire you experienced earlier this summer. Your courage and resourcefulness in the face of such a loss is to be commended, as is your determination to be ready to meet the demand of our fall livestock shipping season!

The Livestock Commission is deeply woven into the fabric of this City's history and traditions and has played a huge role in making Miles City what it is today. The sales yard serves a very important role in our local agricultural economy and we recognize that your achievement and success are the result of hard work and dedication to providing excellence in service to those in the livestock industry, not just in Miles City, but regionally as well.

The attached Resolution reflects the terms of the City's agreement to assist your effort by deferring payment of sewer and water development and connection fees for one year.

Please contact us with any further questions for needs for your project.

Kindest Regards,

Chris A Grenz, Mayor

RESOLUTION NO. 3845

A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH DOWL HKM ENGINEERING, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.

WHEREAS, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

AND WHEREAS, the City of Miles City wishes to contract with Dowl HKM Engineering for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Dowl HKM Engineering has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The “Short Form of Agreement between Owner and Engineer for Professional 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.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS _____ DAY OF _____, 2015.

C.A. Grenz, Mayor

ATTEST:

City Clerk

Exhibit A

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

Prepared by

EJCDC 

**ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

_____ City of Miles City, Montana _____ (“Owner”)

and

_____ Dowl Engineering _____ (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

_____ General Engineering Services for a period of 5 years from effective date.

Engineer’s Services under this Agreement are generally identified as follows:

_____ Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
 - 2. Engineer's Standard Hourly Rates are attached as Attachment 1.
 - 3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Attachment 1.

Attachments:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: _____

Title: _____

Date Signed: _____

Address for giving notices:

City of Miles City _____

P.O. Box 910 _____

Miles City, MT 59301 _____

(406) 234-3493 _____

ENGINEER:

By: _____

Title: _____

Date Signed: _____

Engineer License or Firm's Certificate
Number: _____

State of: Montana _____

Address for giving notices:

Dowl Engineering _____

713 Pleasant _____

Miles City MT 59301 _____

406-234-6666 _____

RESOLUTION NO. 3846

A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH INTERSTATE ENGINEERING, INC., FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.

WHEREAS, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

AND WHEREAS, the City of Miles City wishes to contract with Interstate Engineering, Inc. for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Interstate Engineering, Inc. has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional 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.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS ____ DAY OF _____, 2015.

C.A. Grenz, Mayor

ATTEST:

City Clerk

Exhibit A

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

_____ City of Miles City, Montana _____ (“Owner”)

and

_____ Interstate Engineering, Inc. _____ (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

_____ General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

_____ Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.