



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*January 26, 2016
6:30 p.m.*

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

CLOSED SESSION AT 6:30 PM- DISCUSSION ON SOUTHGATE LAWSUIT

1. **APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**
Special City Council Meeting 1/13/2016
2. **SCHEDULE MEETINGS**
Study Commission- hosted by Ken Weaver and Judith Mathre 2/18/2016@5:15pm
3. **REQUEST OF CITIZENS & PUBLIC COMMENT**
Letter from Citizen
4. **APPOINTMENTS**
5. **PROCLAMATIONS**
6. **STAFF REPORTS**
Samantha Malenovsky-Flood Issue Update
7. **CITY COUNCIL COMMENTS**
8. **MAYOR COMMENTS**
9. **COMMITTEE RECOMMENDATIONS**
10. **BID OPENINGS**
BID AWARDS
11. **PUBLIC HEARINGS**

12. **UNFINISHED BUSINESS**

13. **NEW BUSINESS**

- A. **ORDINANCE NO. 1301: *(First Reading)* An Ordinance Enacting Section 2-233 of the Code of Ordinances of the City of Miles City Requiring that Certain Contributions be Made to the General Fund Capital Improvement Fund From General Fund Cash Carryover**
- B. **ORDINANCE NO. 1302: *(First Reading)* An Ordinance Amending Section 2-106(7) of the Code of Ordinances of the City of Miles City, Montana, With Regards to the Mayor's Veto of Resolutions and Ordinances**
- C. **RESOLUTION NO. 3879: A Resolution Adopting Findings of Fact and Approving the Amended Plat For the purpose of Boundary Line Relocation of Tracts C,D&E of the Lothspeich Minor Subdivision Within the City of Miles City**
- D. **RESOLUTION NO. 3882: 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**
- E. **RESOLUTION NO. 3883 : A Resolution Approving a Montana Department of Commerce Community Development Block Grant Contract to Provide Funding for Preparation of an Active Transportation Plan**
- F. **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

SPECIAL COUNCIL MEETING January 13, 2016
7:00 p.m.

CALL TO ORDER

The Special Council meeting was held Wednesday, January 13, 2016, in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana. Mayor John Hollowell called the meeting to order. Council Members present were Ken Gardner, Rachel Sloan, Dwayne Andrews, Susanne Galbraith, Jeff Erlenbusch and John Uden

Also present were Police Chief Doug Colombik, Public Utilities Director Allen Kelm, Fire Chief Gary Warren, Public Works Director Scott Gray and City Clerk/Minute Recorder Lorrie Pearce.

PLEDGE OF ALLEGIANCE

Mayor Hollowell led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 12/22/2015

****** *Councilperson Gardner moved to approve the minutes of the Regular Council Meeting of December 22, 2015, and seconded by Councilperson Sloan. The motion **passed** by unanimous consent, 6-0.*

Human Resource Meeting Minutes: 12/16/15

****** *Councilperson Galbraith moved to approve the minutes of the Human Resource Meeting of December 16, 2015, and seconded by Councilperson Gardner. The motion **passed** by unanimous consent, 6-0*

Finance Committee Meeting Minutes: 12/17/2015

****** *Councilperson Galbraith moved to approve the minutes of the Finance Committee Meeting of December 17, 2015, and seconded by Councilperson Sloan. The motion **passed** by unanimous consent, 6-0.*

Finance Committee Meeting Minutes: 12/22/15

- ** *Councilperson Galbraith moved to approve the minutes of the Finance Committee Meeting of December 22, 2015, and seconded by Councilperson Gardner. The motion **passed** by unanimous consent, 6-0.*

SCHEDULE MEETINGS

| | |
|---------------------------|-------------------------------|
| Study Commission Meeting | Jan 21 st @ 5:15pm |
| Special Council Meeting | Feb 2 nd @ 7pm |
| Finance Committee Meeting | Jan 21 st @ 6pm |

REQUEST OF CITIZENS & PUBLIC COMMENT

APPOINTMENTS

Standing Committees:

Finance Committee- Susan Galbraith, Rachel Sloan, Dwayne Andrews, Kathy Wilcox

Public Safety Committee- John Uden, Ken Gardner, Jeff Erlenbusch, Kathy Wilcox

Public Services Committee- Dwayne Andrews, Ken Gardner, John Uden, Brant Kassner

Human Resources Committee- Sue Galbraith, Rachel Sloan, Jeff Erlenbusch, Kathy Wilcox

Flood Control Committee- Ken Gardner, Rachel Sloan, Jeff Erlenbusch, Brant Kassner

- ** *Councilperson Uden moved to approve all designated committees, seconded by Councilperson Sloan.*

- ** *Councilperson Galbraith moved to amend the original motion to add Dwayne Andrews and remove Jeff Erlenbusch from the flood control committee, seconded by Councilperson Gardner. The motion **failed** 4-2, with Councilperson Uden and Erlenbusch voting yes.*

*** Councilperson Uden's original motion passed 6-0*

Solid Waste Board

*** Councilperson Galbraith moved to nominate herself for the Solid Waste Board, seconded by Councilperson Erlenbusch, and on roll call vote passed 6-0.*

Economic Development Board

*** Councilperson Galbraith moved to nominate Jeff Erlenbusch for the Economic Development Board, seconded by Councilperson Uden, and on roll call vote passed 6-0*

Airport Commission

*** Councilperson Uden moved to nominate Mayor Hollowell for the Airport Commission, seconded by Councilperson Galbraith, and on roll call vote passed 6-0*

Zoning Commission

Removed- no positions were needed.

Miles City Urban Renewal Agency Board of Commissioner- Harold Klem

*** Councilperson Galbraith moved to nominate Harold Klem for the Miles City Urban Renewal Agency Board of Commissioner, seconded by Councilperson Gardner, and on roll call vote passed 6-0*

Planning Board: Colette Butcher, Roxanna Brush, Ally Capps and one member from Council

After a long discussion Brant Kassner volunteered himself to be on the Planning Board.

*** Councilperson Uden moved to approve Mr. Kassner to be added to the Planning Board appointees, seconded by Councilperson Erlenbusch, and on roll call vote passed 6-0*

PROCLAMATIONS

None

STAFF REPORTS

Clerk Pearce invited the Mayor and Council Members to a Municipal Training scheduled January 27, 2016 in Forsyth.

Director Kelm welcomed the new Council members and said if they had any questions to please ask. He added, if anyone would be interested in touring the Cities facilities, please call him. Director Gray and Chief Warren seconded his statement.

Chief Colombik said he was going to start giving the Miles City Star a weekly status of all misdemeanor or higher. He added that anyone interested could also get on the Police Facebook for the updates.

CITY COUNCIL COMMENTS

None

MAYOR COMMENTS

Mayor Hollowell comments were:

- All Council agendas are in their control, in Roberts Rules it states the Council President takes care of the agenda and Council approves. In an Ordinance states that Council takes care of Council business. He asked for the Council to see if it would like to change the process, if not the City Clerk would continue on taking care of the agenda and business.
- Would like Councils input as to the vision of the City
- LEPC is meeting tomorrow at 10 am in Sheriff's Office and March 16, 2016 in room MCC 106.
- He had taken a tour of some City facilities and was very impressed with the people that work for the City. He felt that everyone should see firsthand and if interested, please e-mail him.

STANDING COMMITTEE RECOMMENDATIONS

None

BID OPENINGS

None

BID AWARDS

None

PUBLIC HEARINGS

A. RESOLUTION NO. 3873: A Resolution Pursuant to 7-6-4006 of

the Montana Code Annotated, Authorizing Amendment of Final Budget for FY 2015-2016 to Increase the Budgeted Amount in Fund # 4050-383000 From Sale Proceeds From the Sale of Real Property Located at 502 Marion, Miles City, Montana

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

UNFINISHED BUSINESS

A. RESOLUTION NO. 3873: *(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 the Budgeted Amount in Fund # 4050-383000 From Sale Proceeds From the Sale of Real Property Located at 502 Marion, Miles City, Montana

****** *Councilperson Galbraith moved to approve the Resolution with correction of adding 002 to the 1000-521000-820 code and change the date of Council meeting to 13th of January, seconded by Councilperson Erlenbusch. After a short conversation, the motion passed 6-0.*

NEW BUSINESS

A. RESOLUTION NO. 3878: A Resolution Approving the Sub Recipient Interlocal Agreement Between the City of Miles City and Miles Community College

****** *Councilperson Galbraith moved to approve the Resolution with correction to the date of Council meeting to 13th of January, seconded by Councilperson Andrews.*

Miles City Area Economic Development Council Executive Director Mike Coryell explained the City of Miles City is the sub recipient and its signature is required. He added that with the City signing the grant, it would not cost the City any money.

Councilperson Galbraith thought with all grants presented to Council in the future that there should be a copy of any MCA, and CFR standard attached. She couldn't vote for the passage of the Resolution without knowing what they all meant.

****** *Councilperson Uden moved to recess so Mr. Coryell could*

*make a phone call, seconded by Councilperson Galbraith.
The motion passed 6-0*

Mayor Hollowell called the meeting back to order.

*** After a long discussion, the original motion passed 5-1,
with Councilperson Galbraith voting no*

B. RESOLUTION NO. 3879: A Resolution Adopting Findings of Fact and Approving the Amended Plat For the Purpose of Boundary Line Relocation of Tracts C,D & E of the Lothspeich Minor Subdivision Within the City of Miles City

*** Councilperson Galbraith moved to postpone the matter, seconded by Councilperson Andrews, on roll call vote the motion passed 6-0*

C. RESOLUTION NO. 3880: A Resolution of Intention of the City of Miles City, Montana to Increase Rates For the Users of the City's Sewer System

*** Councilperson Gardner moved to approve the Resolution, by title only, seconded by Councilperson Sloan.*

Cody Steiner, 1500 North Haynes said there was no way the City was not going through with the rate increase. He asked if charging a city or fuel tax to City's residents would be something that could be done. Director Kelm said he would ask those questions at a meeting he will be attending at the end of January.

Councilperson Uden said money raised from taxes would not come in fast enough. If improvements are not completed by the deadline the City would receive a \$10,000 a day fine for everyday not completed.

Kathy Wilcox, 2217 Brisbin, asked where the City is now in the process.

Director Kelm explained the City is under an Administrative Order of Consent and with its old discharge permit the City was supposed to have the UV disinfection upgrades in by December 31, 2014. After working with DEQ it was agreed to have the UV disinfection upgrades operating properly by December 31, 2016 and total compliance by February 2017. The City is about one month behind, but will begin construction this summer and completed by November 2016. He added that he contacted the Cities bonding company to investigate a process where anyone could donate money to the City and then that money would help a justified hardship account.

Mayor Hollowell said there were two citizens that wanted their vote to be known that they were against the rate increase. They were:

- Ralph Dukart
- Rob Pederson

**** On roll call vote the original motion passed 6-0. Resolution No. 3880 passed**

D. Election of Council President

****** *Councilperson Andrews moved to nominate Councilperson Galbraith, seconded by Councilperson Uden.*

****** *Councilperson Uden moved for the nomination to cease, seconded by Councilperson Erlenbusch and passed 6-0.*

****** *Councilperon Andrews original motion passed 6-0*

E. COUNCIL HEARING: Interview for Ward III Council Vacancies

****** *Councilperson Uden moved to accept both applicants with Kathy Wilcox assigned to the four-year term and Brant Kassner assigned to the two-year term, seconded by Councilperson Gardner. After a short discussion and on roll call vote the motion passed 6-0.*

After the motion passed, Mayor Hollowell swore Kathy Wilcox and Brant Kassner into the Ward III positions that were vacant.

F. APPROVAL OF DECEMBER CLAIMS

****** *Councilperson Andrews moved to approve the December claims, seconded by Councilperson Galbraith, and on roll call vote passed 6-0.*

ADJOURNMENT

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

The meeting was adjourned at 8:50 p.m.

John Hollowell, Mayor

Lorrie Pearce, City Clerk

ORDINANCE NO. 1301

AN ORDINANCE ENACTING SECTION 2-233 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY REQUIRING THAT CERTAIN CONTRIBUTIONS BE MADE TO THE GENERAL FUND CAPITAL IMPROVEMENT FUND FROM GENERAL FUND CASH CARRYOVER.

BE IT ORDAINED, by the City Council of the City of Miles City, Montana, as follows:

Section 1. The following section is hereby enacted within the Code of Ordinances of the City of Miles City:

Section 2-233. Contribution to general fund capital improvement fund.

At the end of each fiscal year, if the balance in the general fund capital improvement fund is less than \$250,000, the City Council shall transfer funds from general fund cash carryover for the fiscal year to said capital improvement fund, as called for in this provision. The amount which is required to be transferred shall be equal to the amount needed to increase the balance of the general fund capital improvement fund to \$250,000; however said required annual transfer amount shall be the lesser of \$100,000, or 50% of the available general fund cash carryover balance. Nothing in this provision shall prohibit the City Council from making contributions to said general fund capital improvement fund in an amount which exceeds \$100,000 per year, or in an amount which increases the fund balance beyond \$250,000.

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 26th day of January, 2016.

JOHN HOLLOWELL, Mayor

ATTEST:

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this 9th day of February, 2016.

JOHN HOLLOWELL, Mayor

ATTEST:

Lorrie Pearce, City Clerk

ORDINANCE NO. 1302

AN ORDINANCE AMENDING SECTION 2-106(7) OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA, WITH REGARDS TO THE MAYOR'S VETO OF RESOLUTIONS AND ORDINANCES.

WHEREAS, the City Council of the City of Miles City has determined that it is necessary and appropriate to amend Section 2-106(7) of the Code of Ordinances of the City of Miles City so as to require a written veto by the Mayor to be presented to all members of the City Council, and to explain the reasoning behind such veto in writing.

BE IT ORDAINED, by the City Council of the City of Miles City, Montana, as follows:

Section 1. Section 2-106(7) shall be amended to read as follows:

“Sec. 2-106. - Powers and duties generally.

(7) Veto procedure.

a. Veto of ordinances. The veto power of the mayor as to ordinances must be exercised in writing, shall include the mayor's reason for exercising the veto, and shall be presented to the entire city council prior to the next regularly scheduled meeting of the council. If the mayor vetoes an ordinance, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the mayor fails to act, the ordinance shall take effect.

b. Veto of resolutions. The veto power of the mayor as to resolutions must be exercised in writing, shall include the mayor's reason for exercising the veto, and shall be presented to the entire city council prior to the next regularly scheduled meeting of the council. If the mayor fails to act, the resolution is approved. If the mayor vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the mayor fails to act, the resolution shall take effect.

Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 26th day of January, 2016.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

FINALLY PASSED AND ADOPTED this 9th day of February, 2016.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Return To:
City of Miles City
Box 728
Miles City MT 59301

RESOLUTION NO. 3879

A RESOLUTION ADOPTING FINDINGS OF FACT AND APPROVING THE AMENDED PLAT FOR THE PURPOSE OF BOUNDARY LINE RELOCATION OF TRACTS C & D OF THE LOTH SPEICH MINOR SUBDIVISION WITHIN THE CITY OF MILES CITY

WHEREAS, Vision Enterprises, LLC has requested that the City of Miles City approve a boundary line relocation involving Tracts C & D of the Lothspeich Minor Subdivision within the City of Miles City, Custer County, Montana;

AND WHEREAS, the City of Miles City is authorized to approve the relocation of common boundary lines for five or fewer lots within a platted subdivision pursuant to Section 76-3-207(1)(d), MCA.

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

It does hereby adopt the Staff Report to City Council, File #BLA 2015-06, attached hereto as Exhibit "A" as findings of fact, and based on such findings of fact, approves the "AMENDED PLAT Lothspeich Minor Subdivision Tract C, & D, Env. 501A, Doc # 153677 SE1/4NE1/4, Section 34, Township 8 North, Range 47 East, P.M.M. City of Miles City, Custer County, Montana," said amended plat being attached hereto as Exhibit "B."

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 26TH DAY OF JANUARY, 2016.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Exhibit B

**Report for City Council
File #BLA-2015-06
Lothspeich Minor Subdivision Boundary Line Adjustment
January 26, 2016**

The subject property is the Lothspeich Minor Subdivision, Tracts C and D on S. Haynes Ave in Miles City, MT. Tracts B and E of the original subdivision are not affected by the proposed boundary line adjustment. The applicant, Roger Lothspeich of Vision Enterprises, 2323 S. Haynes Ave, Miles City, MT, proposes a boundary line adjustment to facilitate the immediate sale of the resulting amended Tract D. The applicant intends to follow this boundary line adjustment with an application for a Subsequent Minor Subdivision, which will address all subdivision design and approval requirements serving the lots of the subdivision.

The proposed Amended Plat of the Lothspeich Minor Subdivision reconfigures Tracts C and D. This amended plat is exempt from Subdivision Review per MCA section 76-3-207(1)(d) but is subject to the survey requirements in MCA 76-3-401.

76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

The Amended Plat of the Lothspeich Minor Subdivision does not create new tracts of record. Tract C is reconfigured to acquire a portion of Tract D at the west side, increasing the acreage of Tract C from 2.01 acres to 2.838 acres. Tract D is reconfigured from 2.00 acres to 1.171 acres.

All tracts are appropriately zoned General Commercial. Tract C is adjacent to a Residential A (RA) zone to the north and Residential B (RB) to the west. Tract D is surrounded by General Commercial (GC) zones. No change in land use is proposed. Requirements of Sec 24-59 of the Miles City Code of Ordinances (MCCO) will apply to development on all tracts within this subdivision.

Easements #3 and #4 as shown on the previous plat (Env #503B) have been amended and shown as #5 and 'B' on this amended plat. Easement B is a private road and public utility easement and includes the previously granted Easement #6 as defined in Doc # 163091. Easement #5, created on 9/8/2014, was an easement for a private road and utilities, described in Doc #161560. Easement A, located on the western property line of Tract C, is intended as an easement for a public water main service line and access from Tract C to Tract B as described on the face of the plat.

No development is proposed on any tracts at this time. When the City receives a development application, the site plan will be re-evaluated on the criteria below and the review criteria in MCCO 24-96 Site Plan Review Procedure. Therefore, this boundary line adjustment will not:

- create additional lots or tracks of land
- impact the ability of the government to provide local services
- endanger public health and safety
- create or expand a non-conforming use
- create an expansion or cost of services
- increase the amount of roads currently being maintained by the City
- increase emergency response times, traffic load, fire protection levels, schools and school routes, or landfill requirements
- create any special or rural improvement districts that would obligate the local government either administratively or financially.

Per MCA 76-3-207, the proposed amended plat is not a subdivision, is not subject to subdivision review and does not appear to be an attempt to evade subdivision review. This plat will be reviewed by Custer County's Examining Land Surveyor for compliance with surveying requirements of 76-3-401. Therefore, staff recommends approval of the amended plat as proposed.



File No. _____
(for official use only)

SUBDIVISION EXEMPTION CLAIM APPLICATION

Miles City Community Services & Planning
17 South 8th Street, PO Box 910
Miles City, MT 59301

Date Received: _____
(for official use only)

Attach a check payable to the City of Miles City for \$200.00 and submit the application materials (Original, plus 2 copies) to the City of Miles City Community Services and Planning Department, 17 S. 8th Street, Miles City, MT, 59301.

1. Property owner(s): (If more than 2, please attach additional sheets)

a. Name: Vision Enterprises, LLC Occupation: _____
Address: 2323 S Haynes Ave. Phone: (406) 951-1254
City, State, Zip: Miles City, MT 59301 Email: rlrmcc@hotmail.com

b. Name: First Interstate Bank Occupation: Banking
Address: 401 N 31st ST Phone: _____
City, State, Zip: Miles City, MT 59301 Email: _____

2. Surveyor/Representative:

Name: Quinn Wright Firm: DOWL
Address: 713 Pleasants St Phone: 406-234-6666
City, State, Zip: Miles City, MT 59301 Email: qwright@dowl.com

3. Parcel Description(s) of Existing Tract(s): (If more than 2, please attach additional sheets)

a. Address: S Haynes AVE
Tax ID Number: 000RFC0077 Geocode: 14-1740-34-1-06-01-0000
Section: 34 Township: 8 N Range: 47E
Other legal description: Tracts C, Lothspeich Minor Subdivision
Zoning District: commercial Minimum Lot Size: 2.0 ac.
How and when the parcel was created (example: Subdivision: X Addition, 10/3/92):
Lothspeich Minor Subdivision ENV. 501, Doc. 153677 3/15/2012

b. Address: S Haynes AVE
Tax ID Number: 000RFC2183 Geocode: 14-1740-34-1-06-03-0000
Section: 34 Township: 8 N Range: 47E
Other legal description: Tracts D, Lothspeich Minor Subdivision
Zoning District: commercial Minimum Lot Size: 2.0 ac.
How and when the parcel was created (example: Subdivision: X Addition, 10/3/92):
 Lothspeich Minor Subdivision ENV. 501, Doc. 153677 3/15/2012

c. Address: S Haynes AVE
Tax ID Number: 000RFC2184 Geocode: 14-1740-34-1-06-04-0000
Section: 34 Township: 8N Range: 47E
Other legal description: Tracts D, Lothspeich Minor Subdivision
Zoning District: commercial Minimum Lot Size: 2.0 ac
How and when the existing parcel was created (example: Subdivision: X Addition, 10/3/92):
 Lothspeich Minor Subdivision ENV. 501, Doc. 153677 3/15/2012

4. Proposed Exemption(s):

This application is used for proposals to relocate common boundaries between adjoining properties, and/or the aggregation of lots, or miscellaneous exemptions (MCA 76-3-. Please indicate which exemptions apply to this proposal by checking the appropriate box(es):

- A division made outside of platted subdivisions for the purpose of relocating common boundary line(s) between adjoining properties. [76-3-207(1)(a), MCA]
- For five or fewer lots within a platted subdivision, the relocation of common boundaries. [76-3-207(1)(d), MCA]
- A division made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas. [76-3-207(1)(e), MCA]
- Aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas. [76-3-207(1)(f), MCA]
- A division of land that is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter [76-3-201(1)(h), MCA]
- Other (please describe) _____

a. Reasons/justification for use of the exemption:
_____ to create a smaller parcel (tract D Amended) for sale so the buyer can start the designing phase for the new dental office _____

b. Intentions for uses of the property (List or discuss the property owners' intentions for the use of each resulting parcel. For example, will the parcel(s) be used for agriculture, commercial, residences, etc.):

___ All property will be used as commercial sites _____

c. Intentions for disposition (For example, is the intent to correct a building or fence encroachment, to bring the property into compliance with zoning requirements, to prepare tracts for sale, etc.):

___ to prepare tract D Amended for sale and prepare Tract C Amended for a major subdivision _____

5. Required attachments:

Submit the original, signed application, along with two additional copies of the completed application and the information listed below.

- a. Copies of recorded deeds documenting present ownership of affected parcels.
- b. Copies of all deeds, contracts, restrictions, and covenants related to this property recorded or entered into within the past year.
- c. Site plan (or draft certificate of survey or subdivision/amended plat) showing the approximate gross and net lot sizes (in acreage or square feet), proposed property lines, and all existing and proposed structures. The site plan should also identify property line setbacks, parking spaces, and any other information necessary to demonstrate compliance with the zoning code.
- d. Documentation of approved variances from zoning requirements related to the affected parcels.
- e. Copies of existing and proposed deed restrictions or covenants, if any.
- f. All documentation in support of the sanitation exemption(s), if applicable.
- g. Copies of any existing permits for the development on the property (building permits, floodplain permits, etc.), as applicable.

6. Acknowledgments:

I/We, the undersigned landowner(s) and exemption claimant(s) understand that the State of Montana provides that 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 or local subdivision regulations.

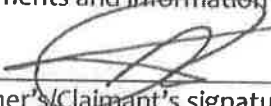
I/We affirm that this exemption claim is not an attempt to evade the Montana Subdivision and Platting Act or the Miles City Subdivision Regulations.

I/We recognize that I/We may be subject to penalties if my actions are deemed to be an effort to evade subdivision review, as set forth in Montana law:

- 76-3-301(3), MCA: If transfers not in accordance with the Montana Subdivision and Platting Act are made, the City Attorney shall commence action to enjoin further sales or transfers and complete compliance with all provision of the Montana Subdivision and Platting Act. The cost of such action shall be imposed against the party not prevailing.
- Violations: Any person who violates any provision of the Montana Subdivision and Platting Act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.
- I/We also recognize that making false statements on this form could subject me to criminal prosecution for False Swearing (per MCA 45-7-202) and Perjury (per MCA 45-7-201).
- I/We also recognize that per 45-7-203(1), MCA (Unsworn falsification to authorities), A person commits an offense under 45-7-203 if, with the purpose to mislead a public servant in performing an official function, the person:
 - (a) makes any written false statement that the person does not believe to be true;
 - (b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements from being misleading;
 - (c) submits or invites reliance on any writing that the person knows to be forged, altered, or otherwise lacking in authenticity; or
 - (d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object that the person knows to be false.


7. Signatures:

I/We, as Claimant(s), has/have read the foregoing Exemption Claim Application, and affirm that my/our statements and information are true and correct to the best of my/our knowledge.



Date: 12-22-15

Property owner's/Claimant's signature
Stockman Bank of Montana

by 

Date: 12-22-15

Return to:

Lucas & Tonn, P.C.
P. O. Box 728
Miles City, Montana 59301

161560 Fee: \$59.00

Custer County Recorded 9/8/2014 At 7:28 PM
Linda Corbett, Clk & Rcdr By *Linda Corbett*
Return to: Lucas & Tonn, P.C. P.O. Box 728
Miles City MT 59301

AMENDMENT TO EASEMENT AGREEMENT

THIS AMENDMENT TO EASEMENT AGREEMENT is made this 27 day of August 2014, by and between **VISION ENTERPRISES, LLC**, a Montana limited liability company of 2323 S. Haynes, Miles City, Montana 59301, hereinafter referred to as "Vision", **MILES COMMUNITY COLLEGE**, of 2715 Dickinson Street, Miles City, Montana 59301, hereinafter referred to as "MCC", and **LANDMARK LAND COMPANY, LLC**, a North Dakota limited liability company registered to do business in Montana of P.O. Box 1881, Dickinson, North Dakota 58602, hereinafter referred to as "Landmark".

RECITALS:

A. This Amendment to Easement Agreement adds additional easement area (Easement 3 and Easement 5) to the previous Easement Agreement between **VISION ENTERPRISES, LLC** and **LANDMARK LAND COMPANY, LLC** dated June 12, 2012 and recorded on June 12, 2012 in the office of the County Clerk and Recorder in and for Custer County, Montana as Document 154305 (hereinafter the "Easement Agreement").

B. Vision is the owner of record of certain real property situated in Custer County, Montana, more particularly described as follows (the "Vision Property"):

TOWNSHIP 8 NORTH, RANGE 47 EAST, M.P.M.

Section 34: Tracts C, D, and E of the Lothspeich Minor Subdivision, being a tract of land located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34, Township 8 North, Range 47 East, M.P.M., according to Certificate of Survey, filed for record on March 15, 2012, as Document No. 153677, in Envelope No. 501A of the Plat Cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.

C. Miles Community College is the owner of record of certain real property situated in Custer County, Montana, more particularly described as follows (the "MCC Property"):

TOWNSHIP 8 NORTH, RANGE 47 EAST, M.P.M.

Section 34: Tract F of the Lothspeich Minor Subdivision, being tracts of land located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34, Township 8 North, Range 47 East, M.P.M., according to Certificate of Survey, filed for record on March 15, 2012, as Document No. 153677, in Envelope No. 501A of the Plat Cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.

D. Landmark is the owner of record of that certain real property adjacent to the Vision and MCC Property situated in Custer County, Montana, more particularly described as follows (the "Landmark Property"):

TOWNSHIP 8 NORTH, RANGE 47 EAST, M.P.M.

Section 34: Tract B of the Lothspeich Minor Subdivision, being a tract of land located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34, Township 8 North, Range 47 East, M.P.M., according to Certificate of Survey, filed for record on March 15, 2012, as Document No. 153677, in Envelope No. 501A of the Plat Cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.

E. All parties are subject to the Easement Agreement, which created Easement 1 Easement 2 and Easement 4, and are agreeable to granting additional easement area in order to ensure access to Haynes Avenue for all parties.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and by this reference are incorporated into the terms and conditions of the Easement Agreement.

2. **Grant of Private Road and Utility Easement.** Subject to the terms and conditions of the Easement Agreement, Vision hereby grants unto Landmark and MCC, two additional non-exclusive private road and utility easements over, under and across the Vision Property, hereinafter referred to as "Easement No. 3" and "Easement No. 5".

Easement No. 3 shall be an additional 60' x 186.52' area across Tract D that abuts the northern portion of Easement No. 5 and the west side of Haynes Avenue as depicted by "Easement No. 3" in Exhibits A and B. The purpose of this additional easement area is to allow Landmark access to Haynes Avenue through a cut-out that is located in Easement No. 3. Landmark agrees that in the event said cut-out is moved to Easement No. 1, Easement No. 4, or Easement No. 5, or an additional cut-out is constructed on Haynes Avenue in Easement No.

161560 Fee: \$59.00

Custer County Recorded 9/8/2014 At 1:28 PM

1, Easement No. 4, or Easement No. 5, Landmark will vacate use of Easement No. 3 and Easement No. 3 shall be extinguished.

Easement No. 5 shall be an additional 70' x 185.16' area across Tract E that abuts the northeastern portion of Easement No. 1 and the west side of Haynes Avenue as depicted by "Easement No. 5" in Exhibit B. The purpose of this additional easement area is to allow Landmark access to Haynes Avenue through a cut-out that is located in Easement No. 5. Landmark agrees that in the event said cut-out is moved to Easement No. 1, or Easement No. 4, or an additional cut-out is constructed on Haynes Avenue in Easement No. 1 or Easement No. 4, Landmark will vacate use of Easement No. 5 and Easement No. 5 shall be extinguished.

Exhibit A depicts Easement 1, Easement 2, and Easement 4, which were the original easement areas granted in the Easement Agreement. Exhibit B depicts a close up view of Easement 3 and Easement 5, which are the additional easement areas being granted in this Amendment to Easement Agreement. Both Exhibits are hereby incorporated into the terms and conditions of the Easement Agreement.

3. Appurtenant Nature of Easement. Subject to the provisions of the Easement Agreement, the additional Easements shall run with the land and therefore be deemed to pass with any conveyances or transfers of the Vision Property, whether or not such conveyances or transfers specifically describe or include the same.

4. Amendment. Except as amended by this Amendment, all of the original terms and provisions of the Easement Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the day and year first above written.

VISION ENTERPRISES LLC

By: 

Its: Managing Member

"Vision"

LANDMARK LAND COMPANY LLC

By: 

Its: Manager

"Landmark"

MILES COMMUNITY COLLEGE

By: 

Its: VP of Administrative Services & Finance

"MCC"

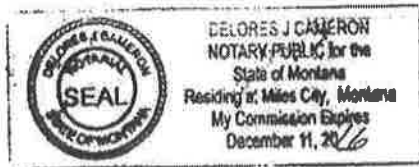
161560 Fee: \$59.00

Custer County Recorded 9/8/2014 At 1:28 PM

STATE OF MONTANA)
) ss
COUNTY OF CUSTER)

On this 27 day of August, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Roger L. Kathspeich, known to me to be the Managing member of VISION ENTERPRISES LLC, a Montana limited liability company, that executed the within instrument and acknowledged to me that they executed the same on behalf of VISION ENTERPRISES LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

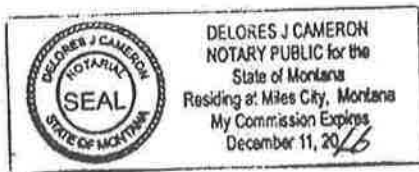


Delores J. Cameron
Signature of Notary

STATE OF MONTANA)
) ss
COUNTY OF CUSTER)

On this 27th day of August, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Sheryl J. Cathey, known to me to be the Manager of LANDMARK LAND COMPANY LLC, a Montana limited liability company, that executed the within instrument and acknowledged to me that they executed the same on behalf of LANDMARK LAND COMPANY LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



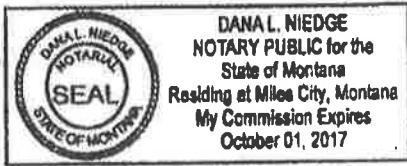
Delores J. Cameron
Signature of Notary

161560 Fee: \$59.00
Custer County Recorded 9/8/2014 At 1:28 PM

STATE OF MONTANA)
)
 COUNTY OF CUSTER) ss

On this 27 day of August, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Lisa Watson, known to me to be the VP of AS&F of the MILES COMMUNITY COLLEGE, that executed the within instrument and acknowledged to me that they executed the same on behalf of MILES COMMUNITY COLLEGE.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Dana L. Niedege
 Signature of Notary

161560 Fee: \$59.00
Custer County Recorded 9/8/2014 At 1:28 PM

EXHIBIT "A"

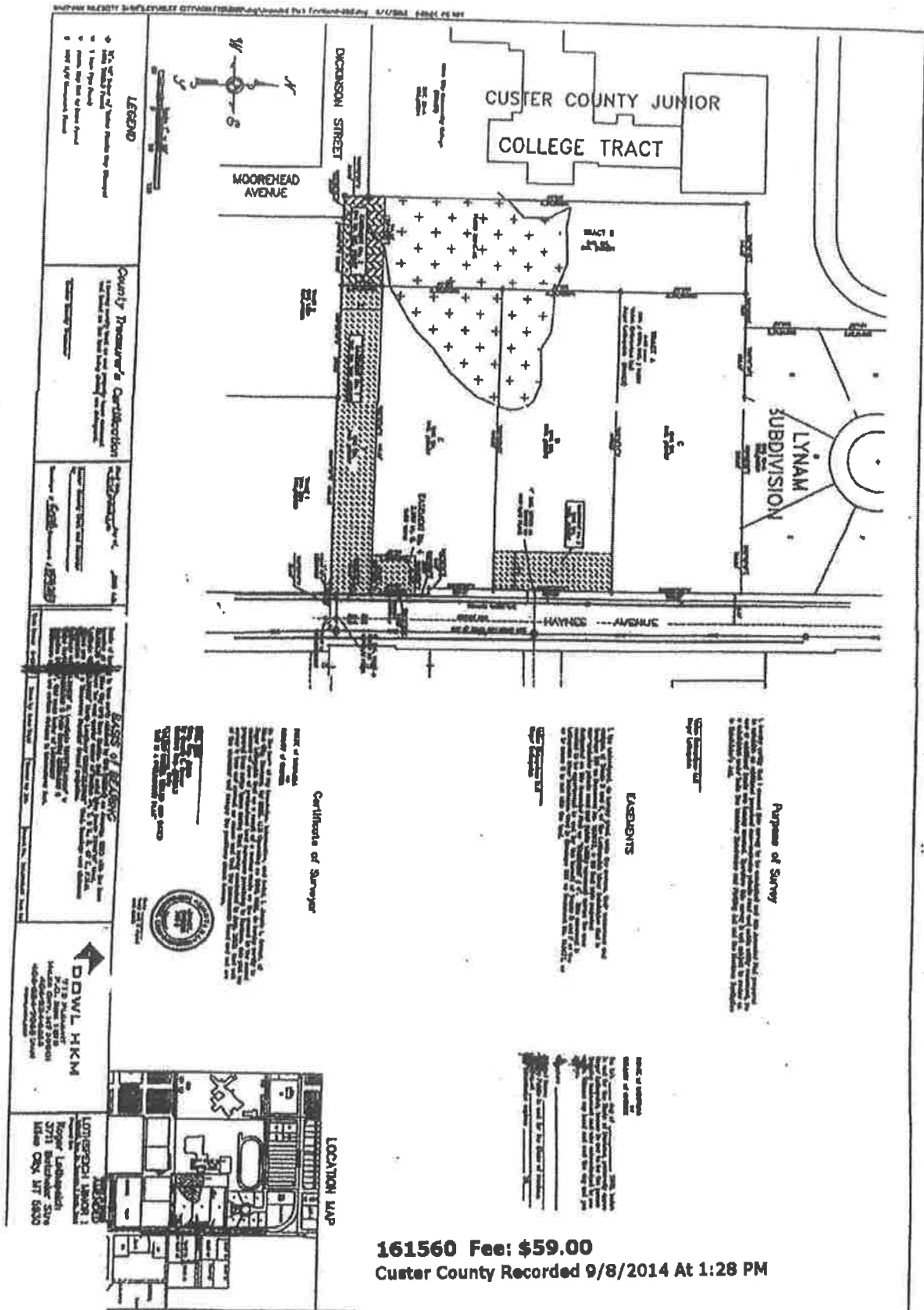
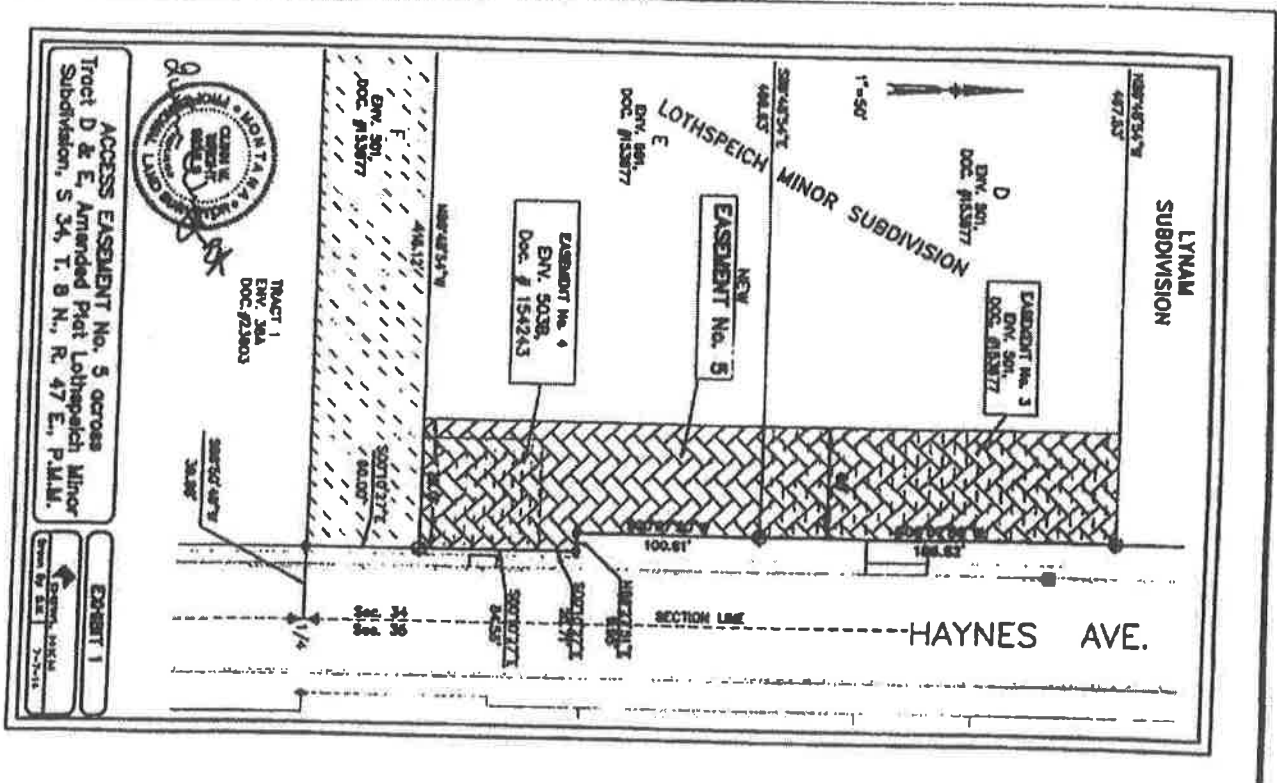


EXHIBIT "B"



ACCESS EASEMENT No. 5 across Tract D & E, Amended Plat Lothspeich Minor Subdivision, S 34, T. 8 N., R. 47 E., P.M.M.



EXHIBIT 1
 Survey by G.E. 7-2-14

161560 Fee: \$59.00
 Custer County Recorded 9/8/2014 At 1:28 PM

| | | |
|---|--|-----------------------------------|
|  First American Title™ | Guarantee Face Page | |
| | ISSUED BY First American Title Insurance Company | |
| Guarantee | GUARANTEE NUMBER 5010500- 801195 | Security Abstract File # 26026 |



First American Title Insurance Company



Dennis J. Gilmore
President



Jeffery S. Robinson
Secretary



Security Abstract & Title Company

P.O. Box 1588
510 Main Street
Miles City, MT 59301
(406) 234-3415
Fax: (406) 234-3447

A Policy-Issuing Agent of First American Title Insurance Company



Authorized Signatory

GUARANTEE

Fee \$ 150.00

File No. 26026

Policy No. 801195

Subdivision or
Proposed Subdivision:

Tracts C and D of the Lothspeich Minor Subdivision located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, in Township 8 North, Range 47 East, M.P.M., in Custer County, Montana.

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY, AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, FIRST AMERICAN TITLE INSURANCE COMPANY, A CORPORATION HEREIN CALLED THE COMPANY, GUARANTEES:

VISION ENTERPRISES, LLC and/or DOWL Engineering

for the purposes of aiding its compliance with Custer County Subdivision Regulations,

in a sum not exceeding \$1,000.00,

THAT according to those public records which, under the recording laws of the State of Montana, impart constructive notice of matters affecting the title to the land(s) described as follows:

**Township 8 North, Range 47 East, M.P.M., in Custer County, Montana
Section 34: TRACT C and TRACT D of the Lothspeich Minor Subdivision, being parcels of land located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34, as created and described by the Plat/Survey filed for record on March 15, 2012, as Document No. 153677 in Envelope No. 501A of the plat cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.**

1) Parties having a record title interest in said lands whose signatures are necessary under the requirements of Custer County Subdivision Regulations on the certificates consenting to the recordation of Plats and offering for dedication any streets, roads, avenues, and other easements offered for dedication by said Plat are:

Vision Enterprises, LLC, a Montana limited liability company.

2) Parties holding liens or encumbrances on the title to said land(s) are:

STOCKMAN BANK OF MONTANA, by

Mortgage, dated December 30, 2011, filed for record on January 4, 2012, at 2:42 P.M., as Document No. 153065, in the real estate records of Custer County, Montana, made by VISION ENTERPRISES LLC, whose address is 2323 S. Haynes Ave., Miles City, MT 59301-5806, as GRANTOR, in favor of STOCKMAN BANK OF MONTANA, whose address is 700 Main Street, P.O. Box 250, Miles City, MT 59301, as LENDER, given to secure a promissory note in the original principal amount of \$991,035.00, and any other amounts and/or obligations secured thereby, payable and due under the terms thereof.

3) Easements, claims of easements and restriction agreements of record are:

- a. All terms, conditions and provisions of Highway Right Of Way Easement, dated January 6, 1936, filed for record on January 17, 1936, as Document No. 122955, in Deed Book 55, at Page 220, in the real estate records of Custer County, Montana, in favor of the STATE OF MONTANA, its successor or successors in interest.
- b. All terms, conditions and provisions of Bargain And Sale Deed, dated April 25, 1983, filed for record on May 25, 1983, as Document No. 66148, in Deed Book M-21, at Page 1063, in the real estate records of Custer County, Montana.
- c. All terms, conditions and provisions of Right-Of-Way Easement, dated August 10, 1992, filed for record on August 21, 1992, as Document No. 90593, in Miscellaneous Book M-63, at Page 563, in the real estate records of Custer County, Montana, in favor of MID-RIVERS TELEPHONE COOPERATIVE, INC., its successors or assigns.
- d. All terms, conditions and provisions of Right-Of-Way Easement, dated August 15, 2001, filed for record on August 30, 2001, as Document No. 118621, in the real estate records of Custer County, Montana, in favor of MID-RIVERS TELEPHONE COOPERATIVE, INC., and its affiliates, which may be assigned without consent to any parent, subsidiary or successor controlling entity.
- e. All terms, conditions and provisions of Amended Resolution, Designation Of Limited Access Highway, dated June 4, 1996, filed for record on July 23, 1996, as Document No. 102876, in Miscellaneous Book M-84, at Page 815, in the real estate records of Custer County, Montana, executed by the DEPARTMENT OF TRANSPORTATION OF THE STATE OF MONTANA and the TRANSPORTATION COMMISSION OF THE STATE OF MONTANA.
- f. All terms, conditions and provisions of Amended Resolution, Designation Of Controlled Access Highway And Facility, dated July 13, 2006, filed for record on July 17, 2006, as Document No. 135524, in the real estate records of Custer County, Montana, executed by the DEPARTMENT OF TRANSPORTATION OF THE STATE OF MONTANA and the TRANSPORTATION COMMISSION OF THE STATE OF MONTANA.
- g. All loss, costs, claims and attorney fees resulting from discrepancies existing between the legal description contained in Warranty Deed, filed for record in Deed Book M-1, at Page 752, and the legal descriptions contained in the following plats/surveys: Document No. 143311, Envelope No. 477B; Document No. 153677, Envelope No. 501A; and Document No. 154243, Envelope No. 503B.
- h. All terms, conditions and provisions of unrecorded State of Montana, Montana Department of Transportation, Driveway Approach Application and Permit:

F.A. Route No.: P-23/MT Hwy 59
Milepost: 1.39
Project: F-23-1(6)1
Approach Station: 29+86 RT
District: Glendive
County: Custer
Maint Section No.: 4301

- i. All terms, conditions and provisions of:
 - i1. Easement Agreement, dated June 12, 2012, filed for record on June 12, 2012, as Document No. 154305, in the real estate records of Custer County, Montana, executed by and between VISION ENTERPRISES LLC and LANDMARK LAND COMPANY LLC.
 - i2. Amendment To Easement Agreement, dated August 27, 2014, filed for record on September 8, 2014, as Document No. 161560, in the real estate records of Custer County, Montana, executed by and between VISION ENTERPRISES LLC, LANDMARK LAND COMPANY LLC and MILES COMMUNITY COLLEGE.
- j. All terms, conditions and provisions of Easement, dated April 29, 2015, filed for record on April 29, 2015, as Document No. 163091, in the real estate records of Custer County, Montana, in favor of the owner's of Tracts B, C, D and E of the Lothspeich Minor Subdivision, their successors and assigns.
- k. Resolution No. 3586, passed and adopted by the City of Miles City on April 23, 2013, filed for record on April 30, 2013, as Document No. 157220, in the real estate records of Custer County, Montana, wherein the Lothspeich Minor Subdivision and Tract 1 of the Stoltz Tracts in Section 34, Township 8 North, Range 47 East, MPM, were annexed into the City of Miles City, Montana.
- l. All matters, covenants, conditions, restrictions (including attached restrictions, if any, made by the Montana Department of Health and Environmental Sciences, or any other governing body or agency), easements/rights-of-way and any rights, interests or claims which may exist by reason thereof, disclosed by the following plats/surveys filed in the office of the County Clerk and Recorder in and for Custer County, Montana: Plat/Survey - Document No. 143311, Envelope No. 477B; Plat/Survey - Document No. 153677, Envelope No. 501A; and Plat/Survey - Document No. 154243, Envelope No. 503B, but deleting any covenants, conditions or restrictions indicating a preference limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604.
- m. Assessments, rules and regulations of the Tongue and Yellowstone River Irrigation District, and all matters concerning easements, ditches, canals, laterals and roads pertaining thereto.
- n. Current or future annual assessments for street lighting, street maintenance and solid waste disposal, which assessments are, or will be, included in the general tax statement for Custer County, Montana.

NOTE:

Tax Status:

2015 Tax Parcel ID# RFC0077 [covers Tract C]
 1st Half - \$2,300.19 - DELINQUENT
 2nd Half - \$2,300.19 - Not Paid
 TOTAL - \$4,600.38 - Plus PENALTY & INTEREST

2015 Tax Parcel ID# RFC2183 [covers Tract D]
 1st Half - \$2,284.28 -
 2nd Half - \$2,284.27 -
 TOTAL - \$4,568.55 - Paid in Full

Guarantee date: December 2, 2015 at 7:00 A.M.

FIRST AMERICAN TITLE INSURANCE COMPANY, through Security Abstract & Title Company, Agent.

Mitchell R. DeLich

Authorized Signatory

determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to furnish the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY.

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. DETERMINATION AND EXTENT OF LIABILITY.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS (Continued)

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A or in Part 2;
- (b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
- (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

8. LIMITATION OF LIABILITY.

- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
- (c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. PAYMENT OF LOSS.

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. SUBROGATION UPON PAYMENT OR SETTLEMENT.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against

any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. ARBITRATION.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT.

- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
- (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at **First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Phone: 888-632-1642.**

RESOLUTION NO. 3882

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

WHEREAS, the City of Miles City, pursuant to authorization of the City Council, maintains the following designated accounts at Stockman Bank, 700 Main Street, Miles City, Montana, to-wit:

City of Miles City General Fund
City of Miles City ACH Account
City of Miles City ACH 2 Account
City of Miles City Airport Account
City of Miles City Repo Account

AND WHEREAS the City of Miles City desires to authorize certain officers of the City of Miles City to sign Accounts Agreements for such accounts and to sign checks and other withdrawals from such accounts;

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

1. It does hereby authorize ANY TWO to the following named officers, to wit:

Mayor: John Hollowell

City Treasurer: John Moorehead

City Clerk: Lorrie Pearce **or** Deputy City Clerk: Linda Wilkins

to execute Account Agreements and to sign checks and other withdrawals from the following accounts of the City of Miles City maintained at Stockman Bank, Miles City, Montana:

City of Miles City General Fund
City of Miles City ACH Account
City of Miles City ACH2 Account
City of Miles City Airport Account
City of Miles City Repo Account

2. All prior corporate authorizations as to the above accounts are hereby revoked.

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 26th DAY OF JANUARY, 2016.

John Hollowell, Mayor

Attest: Lorrie Pearce, City Clerk

RESOLUTION NO. 3883

**A RESOLUTION APPROVING A MONTANA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT TO PROVIDE FUNDING
FOR PREPARATION OF AN ACTIVE TRANSPORTATION PLAN.**

WHEREAS, the City of Miles City desires to contract for the development and preparation of an Active Transportation Plan;

AND WHEREAS the City has been awarded a Montana Department of Commerce Community Development Block Grant to assist with the funding of said project, and desires to accept said grant and enter into a grant contract with the Montana Department of Commerce;

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

1. The “Montana Department of Commerce Community Development Block Grant Contract #MT-CDBG-15PL-09” between the City of Miles City and the Montana Department of Commerce, attached hereto as Exhibit “A”, and made a part hereof, is hereby approved and adopted by the Council;
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Contract on behalf of the City of Miles City and to bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED
QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS
26th DAY OF JANUARY, 2016.**

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

EXHIBIT A
**MONTANA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT
CONTRACT #MT-CDBG-I5PL-09**

This Contract is entered into by the City of Miles City (DUNS #134230325) Montana (the Grantee), and the Montana Department of Commerce, Helena, Montana, (the Department).

The Grantee and the Department hereby agree to the following terms:

Section 1. PURPOSE

The purpose of this Contract is to provide funding to the Grantee for project activities approved by the Department under the Montana Community Development Block Grant Program (hereinafter "Program") for FFY 2015.

Section 2. AUTHORITY

This contract is issued under authority of Section 90-1-103, Montana Code Annotated, and the Administrative Rules of Montana, Title 8, Chapter 94, Subchapter 37.

Section 3. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for Program assistance, including any written modifications resulting from the review of the applications by the Department (collectively, the "Project"), is specifically incorporated into this Contract by this reference and the representations made therein are binding upon the Grantee.

Section 4. ACCEPTANCE OF CDBG PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable parts of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §§ 5301, *et seq.*; the applicable Department of Housing and Urban Development (HUD) regulations, including but not limited to 24 CFR Part 570 and Form HUD-4010, as now in effect or as they may be amended during the term of this contract; all administrative directives and procedures established by the Department, including the most recent version of the CDBG/NSP Grant Administration Manual; and all other applicable local, state, and federal laws, regulations, administrative directives, procedures, ordinances, or resolutions.
- (b) The Grantee agrees that all contracts entered into by it for the completion of the activities described in Section 6, SCOPE OF WORK will require such contractors, subcontractors, and subrecipient entities to also comply with all applicable local, state, and federal laws, regulations, administrative directives, procedures, ordinances, and resolutions, including the most current version of the CDBG Application Guidelines for Housing, Public Facilities and Economic Development Planning Grants, as amended.
- (c) The Grantee expressly agrees to repay to the Department any funds advanced to the

Grantee under this Contract that the Grantee, its contractors, subcontractors, or subrecipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract, the statutes and regulations governing the Program, or any other applicable local, state, or federal requirements.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

- (a) This Contract shall take effect upon execution by the parties and will terminate upon October 6, 2016, unless terminated earlier in accordance with the terms of this Contract.
- (b) All authorized expenses to be reimbursed must be incurred by the Grantee between October 7, 2015 and October 6, 2016. All Requests for Funds must be submitted to the Department within 60 days after the Department's approval of the Grantee's Project Completion Report.
- (c) The activities to be performed by the Grantee will be completed according to the implementation schedule set forth in Exhibit A. The Grantee may modify the implementation schedule set forth in Exhibit A only upon obtaining the prior written approval of the Department.
- (d) The Department may grant a Contract extension upon request by the Grantee if the Department determines, in its sole discretion, that the Grantee has demonstrated progress toward completion of the Project, has engaged in a good faith effort to comply with the duties, terms, and conditions of this Contract, and that the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control. A written request for an extension must be submitted at least 60 days prior to the termination date of the Contract.

Section 6. SCOPE OF WORK

The Grantee will complete the Project and administer this Contract in compliance with the application reviewed and approved by the Department and as may be amended from time to time by mutual agreement of the parties, specifically incorporated herein by this reference and binding upon the Grantee. The Grantee will use CDBG funds for the following components of the Project:

- Prepare an Active Transportation Plan;
- provide the final product both in one (1) printed and one(1) electronic copy; and
- limited administration of this Contract, in accordance with the current version of the CDBG Application Guidelines for Housing, Public Facilities and Economic Development Planning Grants.

Section 7. BUDGET

- (a) The total amount to be awarded to the Grantee under this Contract will not exceed \$20,100.
- (b) A copy of the Project Budget is attached hereto as Exhibit B to this Contract and specifically incorporated herein by this reference. Any changes to the budget as proposed and incorporated within this contract require a written request to, and approval by, the Department.
- (c) Any authorized funds not expended under this grant by October 6, 2016 or otherwise accounted for in accordance with the provisions of this Section will revert to the Department and will be used to finance other CDBG projects.

Section 8. METHOD OF REIMBURSEMENT

- (a) The Department will authorize the Grantee to draw up to \$20,100 against the funding reserved for it by the Department. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department in the most current CDBG Application Guidelines for Housing, Public Facilities and Economic Development Planning Grants.
- (b) The Department agrees to reimburse the Grantee as set forth in this Section for successfully completing the activities set forth in Section 6 SCOPE OF WORK as eligible Project costs are incurred on or after October 7, 2015, supported by adequate documentation submitted by the Grantee, and upon the Department's approval of the Grantee's Request for Funds. In requesting reimbursement, the Grantee will follow the instructions supplied by the Department in the most current CDBG Application Guidelines for Housing, Public Facilities, and Economic Development Planning Grants.
- (c) Payment to the Grantee for approved Project activities under the Contract will generally be in accordance with the disbursement schedule listed below:
 - (i) Payment #1 – 50% of the grant award amount will be available after the Department receives a draft of the Project deliverables, documenting that the Grantee is adequately proceeding toward the preparation of a complete and acceptable final product; and
 - (ii) Payment #2 – The remaining 50% of the grant award amount will be available after the Department receives a final copy of all required deliverables to be completed under the Contract, a Project Completion Report, the Grantee's final Request for Funds and proof of match.
- (d) In order to request payment from the Department, grantees must submit a Request for Funds Form with supporting documentation including invoices detailing the project expenses incurred and a breakdown of hourly billing rate by employee, activity, and timeframe, as applicable. To receive final payment, the grantee must also include both a hard copy and an electronic copy of the planning deliverables (PAR, PER, etc.). Commerce will determine, in its sole discretion, whether supporting documents for a request for payment are sufficient and adequate to approve reimbursement; the

Department may request additional documentation as needed. If the grantee fails to obligate expenses on or before the termination date of the grant contract, Commerce cannot reimburse the grantee planning grant award funds, unless the grantee can demonstrate, to the satisfaction of Commerce, a reasonable basis for the delay in requesting reimbursement. All documentation and requests for reimbursement must be received by the department within 60 days of termination of the grant contract.

- (e) The Department will not reimburse the Grantee for any costs incurred prior to October 7, 2015; for any expenses not included in Exhibit B or an approved adjustment thereto; for any ineligible expenses as set forth in the CDBG Application Guidelines for Housing, Public Facilities and Economic Development Planning Grants; or for any expenses not clearly and adequately supported by the Grantee's records. Project expenses incurred are contingent upon the Grantee's completion of Section 18, SPECIAL PROJECT START-UP CONDITIONS.
- (f) As further set forth in Section 23 TERMINATION OF CONTRACT, if the Grantee fails to or is unable to comply with any of the terms and conditions of this Contract, any costs incurred will be the Grantee's sole responsibility.
- (g) The Department is allowed 15 working days to process a Request for Funds once adequate supporting documentation has been received by the Department. The Grantee shall provide banking information at the time of Contract execution in order to facilitate electronic funds transfer payments.
- (h) If the Grantee changes one of its sources of funding or the cost of the Project increases after the Grantee has obtained the firm commitment of non-CDBG funds, the Department may, at its discretion, suspend the distribution of CDBG funds until the Grantee obtains a firm commitment of funds for the full Project budget.
- (i) If actual Project expenses are lower than projected by the Grantee in Exhibit B, or the Grantee obtains a greater amount of grant funds from other sources than as presented in the Project application, the Department, at its discretion, may reduce the amount of CDBG grant funds to be provided to the Grantee under this Contract in proportion to all other project funding sources.
- (j) The Department of Commerce may, at its discretion, withdraw from the Grantee the commitment of any CDBG funds that remain undispersed 24 months after October 7, 2015.
- (k) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract or has breached the terms of this Contract, the Department may withhold reimbursement to the Grantee until such time as the Department and the Grantee agree on a plan to remedy the deficiency.
- (l) At the request of the Department, Requests for Funds for contracted or subcontracted services must attach appropriate documentation demonstrating compliance with contract requirements.

- (m) If needed, the Grantee's travel expenses, meals, and lodging will be reimbursed at the prevailing local rate at the time such expense is incurred. The Grantee may not use monies provided through this Contract as payment for Project costs that are reimbursed from other sources.
- (n) The Department will issue a final Project closeout approval when the grantee has fulfilled all requirements as set forth in the most current version of the CDBG Application Guidelines for Housing, Public Facilities and Economic Development Planning Grants.
- (o) If any obligations remain as of the date of Project closeout, the Department shall prepare and the parties shall execute a Closeout Agreement specifying the conditions and requirements governing those remaining obligations, in accordance with the requirements set forth in 24 CFR § 570.509(c).

Section 9. REPORTING REQUIREMENTS

- (a) **Quarterly Update Report:** During the term of this Contract, the Grantee will submit a quarterly update report, if requested by the Department. This report shall follow the report format specified in the most recent version of the CDBG Application Guidelines for Housing, Public Facilities and Economic Development Planning Grants, and shall describe the status of the Project with respect to the activities set forth in Section 6, SCOPE OF WORK, including, at a minimum, the percentage complete, costs incurred, funds remaining, and projected completion date. The report must also describe any significant problems encountered and any necessary scope, implementation or budget modifications requested.
- (b) **Project Progress Reporting:** During the term of this Contract, the Grantee will submit a Project Progress Report with any Requests for Funds. The report will describe the use of the funds requested for each administrative and activity line item. The report should also describe any anticipated changes in the budgeted amounts.
- (c) **Status of Fund Reporting:** During the term of this Contract, the Grantee will submit a Status of Funds Report with any Requests for Funds.
- (d) **Project Completion Report:** Upon completion of the Project, the Grantee will submit a final Project Completion Report for approval by the Department. The Project Completion Report will describe the total costs incurred for the Project, identify the final completion date, and summarize any significant problems encountered in carrying out the Project. Upon receipt of the Project Completion Report, the Department will issue the Notice of Project Close-out.

Section 10. LIAISONS

All project management and coordination on behalf of the Department shall be through a single point of contact designated as the Department's liaison. The Grantee shall designate a liaison

that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this Contract shall be coordinated between the State's liaison and the Grantee's liaison. The liaisons for this Contract are:

For the Department:

Maria Jackson (or successor)
CDD Planning Specialist, MDOC
301 S. Park Avenue
PO Box 200523
Helena, MT 59620-0523
406-841-2770
mjackson3@mt.gov

For the Grantee:

Dawn Colton, Grants Administrator
City of Miles City
PO Box 910
Miles City, MT 59301
406-234-6339
dawncolton@milescity-mt.org

Section 11. ACCESS TO AND RETENTION OF RECORDS

- (a) The Grantee agrees to create and maintain records supporting the services covered by this Contract, including but not limited to financial records, supporting documents, and such other records as are required by law or other authority, for a period of four (4) years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Grantee's offices in Miles City, Montana.
- (b) The Grantee shall provide the Department, HUD, Comptroller General of the United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance, or their authorized agents access to any records necessary to determine contract compliance.
- (c) The Grantee agrees to include in first-tier subcontracts under this Contract a clause substantially the same as paragraph 11(a) and (b).

Section 12. PROJECT MONITORING

- (a) The Department or any of its authorized agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with Section 6, SCOPE OF WORK, and other technical and administrative requirements of this Contract, including the adequacy of the Grantee's records and accounts. The Department will advise the Grantee of any specific areas of concern and provide the Grantee opportunity to propose corrective actions acceptable to the Department.