



# CITY OF MILES CITY AGENDA

*Regular Council Meeting  
City Council Chambers*

*July 11, 2017  
7:00 p.m.*

## CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES

- |                                 |           |
|---------------------------------|-----------|
| A. Regular City Council Meeting | 6/27/2017 |
| B. Flood Control Meeting        | 6/22/2017 |

2. SCHEDULE MEETINGS

3. REQUEST OF CITIZENS & PUBLIC COMMENT

4. APPOINTMENTS

5. PROCLAMATIONS

6. STAFF REPORTS

7. CITY COUNCIL COMMENTS

8. MAYOR COMMENTS

9. COMMITTEE RECOMMENDATIONS

Finance Committee: Send an amount of \$16,283.30 to collections for the Ambulance fund

10. BID OPENINGS

11. BID AWARDS

12. PUBLIC HEARINGS

- A. **RESOLUTION NO. 4073- A Resolution Pursuant to §7-6-4006 of the Montana Code Annotated, Authorizing Amendment of Final Budget for FY 2016-2017 to Increase the Budgeted Amount in Various Funds for Various Unbudgeted Expenditures**
- B. **ORDINANCE NO. 1312- An Ordinance Revising Section 2-51 of the Code of Ordinances of the City of Miles City, Montana, So as Revise Provisions Regarding the Salaries of City Council Members**
- C. **ORDINANCE NO. 1313- An Ordinance Revising Section 16-48 of the Code of Ordinances of the City of Miles City, Montana, so as Revise Provisions Regarding the Use of Fireworks Within the City Limits**

13. UNFINISHED BUSINESS

- A. **RESOLUTION NO. 4073-** *(Second Reading)* **A Resolution Pursuant to §7-6-4006 of the Montana Code Annotated, Authorizing Amendment of Final Budget for FY 2016-2017 to Increase the Budgeted Amount in Various Funds for Various Unbudgeted Expenditures**
- B. **ORDINANCE NO. 1312-** *(Second Reading)* **An Ordinance Revising Section 2-51 of the Code of Ordinances of the City of Miles City, Montana, So as Revise Provisions Regarding the Salaries of City Council Members**
- C. **ORDINANCE NO. 1313-** *(Second Reading)* **An Ordinance Revising Section 16-48 of the Code of Ordinances of the City of Miles City, Montana, so as Revise Provisions Regarding the Use of Fireworks Within the City Limits**

14. NEW BUSINESS

- A. **RESOLUTION NO. 4076-** **A Resolution Authorizing the City of Miles City to Enter Into a Grade Crossing Signals Tri-Party Agreement With the Montana Department of Transportation and BNSF Railway Company**
- B. **RESOLUTION NO. 4077-** **A Resolution Authorizing the City of Miles City to Enter Into a State Maintained Route Construction Agreement With the Montana Department of Transportation**
- C. **RESOLUTION NO. 4078-** **A Resolution Granting a Revocable License to Custer County District High School For an Encroachment Upon City of Miles City Right of Way For Fort Street, For the Benefit of Block 19 and The South Half of Blocks 13 and 14 of the Miles Addition to the City of Miles City**

15. ADJOURNMENT

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

**REGULAR COUNCIL MEETING June 27, 2017**  
**7:00 p.m.**

**CALL TO ORDER**

The Regular Council meeting was held Tuesday, June 27, 2017, in the City Hall Conference Room at City Hall, 17 S. 8<sup>th</sup> Street, Miles City, Montana. Mayor John Hollowell called the meeting to order. Council Members present were Brant Kassner, Dwayne Andrews, John Uden, Rick Huber, Jeff Erlenbusch, Kathy Wilcox and Susanne Galbraith. Council Member Ken Gardner was excused.

Also present were City Attorney Dan Rice, Police Chief Doug Colombik, Fire Chief Gary Warren, 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: 6/13/20157**

- \*\* *Councilperson Uden moved to approve the minutes of the Regular Council Meeting of June 13, 2017, subject to any changes, and seconded by Councilperson Kassner. The motion **passed** by unanimous consent, 7-0.*

**Human Resource Committee Minutes: 6/06/2017**

- \*\* *Councilperson Wilcox moved to approve the minutes of the Human Resource Committee Meeting of June 6, 2017, and seconded by Councilperson Erlenbusch. The motion **passed** by unanimous consent, 7-0.*

**Public Safety Minutes: 6/13/2017**

- \*\* *Councilperson Galbraith moved to approve the minutes of the Public Safety Committee Meeting of June 13, 2017, and seconded by Councilperson Kassner. The motion **passed** by unanimous consent, 7-0.*

**Finance Committee Minutes: 6/08/2017**

- \*\* *Councilperson Galbraith moved to approve the minutes of the Finance Committee Meeting of June 8, 2017, and seconded by Councilperson Kassner. The motion **passed** by unanimous consent, 7-0.*

## SCHEDULE MEETINGS

None

## REQUEST OF CITIZENS & PUBLIC COMMENT

Comments on environmental impacts for the Coal Board Grant application for Preliminary Engineering Report and Snow Removal Equipment at the Airport. **There were no comments.**

Jeanne Cline and Scott Rapson, representatives of Custer County High School, asked the Council for an easement to install two eight foot metal benches on City's right of way on fourth and Center Street.

*\*\* After a short discussion, Councilperson Uden moved to send the request to Public Service for recommendation, seconded by Councilperson Erlenbusch. The motion passed 7-0*

## APPOINTMENTS

None

## PROCLAMATIONS

None

## STAFF REPORTS

None

## CITY COUNCIL COMMENTS

**John Uden:** Thanked Councilperson Galbraith and Finance Committee for the hard work being on the budget. He also commended Chief Colombik, Code Enforcer Winkley and City Attorney Rice for the outstanding job that was being done on cleaning up properties. Attorney Rice explained that he had looked into Glendive's City code for tall weeds and grass. Glendive does not take the public nuisance to court it is presented to Council for solutions. Their code gives the property owner 10 days to start the cleanup. If it is not completed in 30 days the City will move in and take action and bill them for the work that was completed. Mayor Hollowell asked Council if that would be something that Miles City would like to do. The consensus of Council was yes.

**Rick Huber:** Was at the Southeastern Montana Development Corporation quarterly meeting, and it was announced that Wiley Field Airport was awarded a \$43,900 Coal Board grant.

## MAYOR COMMENTS

None

## STANDING COMMITTEE RECOMMENDATIONS

None

**BID OPENINGS**

None

**BID AWARDS**

None

**PUBLIC HEARINGS**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

**A. RESOLUTION NO. 4060- A Resolution Authorizing the City of Miles City to Enter Into an Agreement With the Montana Department of Transportation for Street Sweeping for Fiscal Year 2017-2018**

**\*\*** *Councilperson Uden moved to approve the Resolution, by title only, and seconded by Councilperson Huber, and on roll call vote, passed unanimously, 7-0. Resolution No. 4060 passed*

**B. RESOLUTION NO. 4069- A Resolution Approving an Application for Tax Exemption and Reduction for Remodeling, Reconstruction or Expansion of Existing Commercial Buildings or Structures for DNJ, LLC**

**\*\*** *Councilperson Uden moved to approve the Resolution, by title only, and seconded by Councilperson Andrews.*

Councilperson Galbraith and Uden thanked the property owners for the improvements of the building. Councilperson Galbraith asked why the request is being presented after the 12 month completion date as stated in A, item 3.

Property owner, Denis Leidholt, 21 Cemetery Road explained that he had started the process with SEMDC representative Mike Coryell. Mr. Coryell retired, and his replacement could not help him in the process. He then talked to a Department of Revenue representative that helped him with the application. He said the property had an improvement that increased the value at least five percent, which allows him to receive the tax exemption if granted. The tax exemption on the improvements would be twenty percent for the first year, forty percent for the second, sixty percent for the third year and eighty percent for the fourth year. The fifth year the full amount of taxes on the improvement would be paid. He said if the tax

exemption was granted to him that it would help him get his feet back on the ground.

**\*\* On roll call vote, the motion passed by unanimous consent, 7-0  
Resolution No. 4069 passed**

**C. RESOLUTION NO. 4070- A Resolution of the City of Miles City  
Notifying the Custer County Election Administrator of the City's  
Desire to Conduct the 2017 City General Election by Mail Ballot in  
Accordance With 13-19-202 Montana Code Annotated (MCA)**

**\*\* Councilperson Galbraith moved to approve the Resolution, by title only and  
seconded by Councilperson Andrews. On roll call vote, the motion passed by  
unanimous consent, 7-0 Resolution No. 4070 passed**

**D. RESOLUTION NO. 4071- A Resolution Adopting a Policy Governing  
Approval of and Revision to Employee Position Descriptions**

**\*\* Councilperson Erlenbusch moved to approve the Resolution, read by title  
only, and seconded by Councilperson Galbraith. On roll call vote, the motion  
passed by unanimous consent, 7-0 Resolution No. 4071 passed.**

**E. RESOLUTION NO. 4072- A Resolution Adopting a Policy Governing  
Wage Increase Requests**

**\*\* Councilperson Erlenbusch moved to approve the Resolution, by title only, and  
seconded by Councilperson Andrews. On roll call vote, the motion passed  
unanimously, 7-0 Resolution No. 4072 passed**

**F. RESOLUTION NO. 4073- ( First Reading) A Resolution Pursuant to  
§7-6-4006 of the Montana Code Annotated, Authorizing Amendment  
of Final Budget for FY 2016-2017 to Increase the Budgeted Amount in  
Various Funds for Various Unbudgeted Expenditures**

**\*\* Councilperson Galbraith moved to approve the Resolution, by title only, and  
seconded by Councilperson Kassner. On roll call vote, the motion passed by  
unanimous consent, 7-0. Resolution No. 4073 passed on first reading.**

**G. RESOLUTION NO. 4074- A Resolution Approving an Amendment to  
the Agreement With Kadrmas, Lee & Jackson, INC., For Task Order  
Services Related to the Custer County Miles City Flood Protection  
Project**

Attorney Rice explained that Resolution No. 4074 and 4075 cover the same task orders. He asked for Resolution No 4074 to be removed from the agenda. Mayor Hollowell **removed** Resolution No. 4074 from the agenda.

**H. ,RESOLUTION NO. 4075- A Resolution Approving an Amendment to the Agreement With Kadrmas, Lee & Jackson, INC., For Task Order Services Related to the Custer County Miles City Flood Protection Project, and Task Order Pertaining to the Same**

**\*\*** *Councilperson Erlenbusch moved to approve the Resolution, by title only, and seconded by Councilperson Galbraith. On roll call vote, the motion passed by unanimous consent, 7-0. Resolution No. 4075 passed*

**I. ORDINANCE NO. 1312- ( First Reading) An Ordinance Revising Section 2-51 of the Code of Ordinances of the City of Miles City, Montana, So as Revise Provisions Regarding the Salaries of City Council Members**

**\*\*** *Councilperson Andrews moved to approve the Ordinance, read by title only, and seconded by Councilperson Kassner. On roll call vote, the motion passed by unanimous consent, 7-0. Ordinance No. 1312 passed on first reading and sent to Finance Committee for review.*

**J. ORDINANCE NO. 1313- ( First Reading) An Ordinance Revising Section 16-48 of the Code of Ordinances of the City of Miles City, Montana, so as Revise Provisions Regarding the Use of Fireworks Within the City Limits**

**\*\*** *Councilperson Galbraith moved to approve the Ordinance, read by title only, and seconded by Councilperson Andrews. After a short discussion, Councilperson Galbraith amended her original motion to add into the Ordinance “may be altered or suspended by Resolution of the City Council or by Executive Order of the Mayor”, seconded by Councilperson Andrews. On roll call vote, the motion passed by unanimous consent, 7-0. Ordinance No. 1313 passed on first reading and sent to Public Safety to review.*

**ADJOURNMENT**

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

The meeting was adjourned at 7:42 p.m.

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**John Hollowell, Mayor**

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**Lorrie Pearce, City Clerk**

**Flood Control Committee**  
**June 22, 2017**

The **Flood Control Committee** met Thursday, June 22, 2017 at 5:15 p.m. in the City Hall Conference Room. Present were Committee members; Jeff Erlenbusch, Rick Huber and Brant Kassner. Committee member Ken Gardner was absent. Also present were Floodplain Administrator Malenovsky and Recorder Payroll/Claims Clerk Ally Capps.

**1. Request of Citizens/Public Comment**

**-None-**

**2. Committee Member Comments**

**-None-**

**3. Unfinished Business**

**-None-**

**4. New Business**

**A. Recommendation to Council to approve the modification to the pending KLJ Master Services Agreement.**

Floodplain Administrator Malenovsky explained the modification of the KLJ Master Service Agreement is by KLJ on the Task Order Edition, Article 1 – Service of Engineer 1.01 Scope; D. Task Orders executed as part of this agreement pertain to Engineer providing general on-call professional services related to flood control, floodplain management and associated tasks. These services may include, but are not limited to, assisting with the Army Corps of Engineers Section 205 Feasibility Study and subsequent related professional service requested by Owner for Task Order related to flood control and floodplain management as well as ancillary tasks and projects.

Committee Member Huber asked if the wording modification was going to cost the City more money or why this wording is needed to the agreement. Floodplain Administrator Malenovsky explained that KLJ omitted this wording to the contract originally and KLJ wanted to specify this contract was only for flood control/floodplain management. Committee Member Huber wanted it to be on record that this original omission was by KLJ.

*\*\* Committee Member Kassner moved to recommend to Council the approval of the Modification of the Pending KLJ Master Service Plan seconded by Committee Member Huber, motion passed unanimously, 3-0.*

**B. Recommendation to Council to approve the KLJ Task Order for WIK service relating to Section 205 study (Program Management and Misc. Engineering Services; Government**



**Relations & Public outreach/involvement; Hazardous, toxic and radioactive waste (HTRW) investigation; interior drainage; and structure inventory.**

Floodplain Administrator Samantha Malenovsky explained the modification to the pending KLJ Master Service Plan. Both the Program Management and Government Relations tasks will require KLJ providing some services that are not eligible for work-in-kind credit. The following list of initial Task Orders have been approved by the Flood Control Steering Committee and City Council during the Section 205 overall project scoping progress. The next step is to have KLJ and the City formally sign the Task Orders to authorize KLJ to begin the project.

Chairperson Erlenbusch asked if the Finance Committee had approved the agreement. Floodplain Administrator Malenovsky responded that the fees were associated with the Finance Committee approval. The approval was for the total dollar amount, the Task Order now has an appropriation of the fees.

*\*\* Committee Member Huber moved to accept the motion; for recommendation to Council to approve the KLJ Task Order for WIK service relating to Section 205 study (Program Management and Misc. Engineering Services; Government Relations & Public outreach/involvement; Hazardous, toxic and radioactive waste (HTRW) investigation; interior drainage; and structure inventory, seconded by Committee Member Kassner and passed unanimously, 3-0.*

**5. Adjournment**

*\*\* Committee Member Huber moved to adjourn the meeting, seconded by Committee Member Kassner and passed unanimously, 3-0.*

Next Flood Control Meeting set for July 18 2017, at 5:15 p.m. in the City Hall Conference Room.

There being no further business, the Committee adjourned at 5:30 p.m.

Respectfully Submitted,

Flood Control Committee Chairperson

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Ally Capps Recorder

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Jeff Erlenbusch Chairperson

**PUBLIC HEARINGS**  
**&**  
**UNFINISHED BUSINESS**

**RESOLUTION NO. 4073**

**A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2016-2017 TO INCREASE THE BUDGETED AMOUNT IN VARIOUS FUNDS FOR VARIOUS UNBUDGETED EXPENDITURES.**

*WHEREAS*, the City of Miles City wishes to amend the budget for Fiscal Year 2016-2017 to provide increased funding in the amount of \$81,374.74 for 2260 (Emergency Disaster), 2350 (Study Commission) 2400 (Ltg District #165), 3670 (SID211), 4056 (Airport CIP) expenditures, as permitted by §7-6-4006 MCA;

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

*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 2016-2017 shall be increased in the following amount:

Fund No. 2260-202-521000-820 in the sum of \$95.85 (Transfer to GF)  
Fund No. 2350-302-521000-820 in the sum of \$5,263.77 (Transfer to GF)  
Fund No. 2400-046-430263-533 in the sum of \$19,000 (Machinery and Equipment)  
Fund No. 3670-110-521000-820 in the sum of \$2,985 (Transfer to 3400)  
Fund No. 4056-087-521000-820 in the sum of \$54,030.12 (Transfer to 5610)

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2016-2017 on the 11<sup>th</sup> day of July, 2017, 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 27<sup>th</sup> DAY OF JUNE, 2017.

\_\_\_\_\_  
JOHN HOLLOWELL, 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 11<sup>th</sup> DAY OF JULY, 2017.

\_\_\_\_\_  
JOHN HOLLOWELL, Mayor

ATTEST:

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

**ORDINANCE NO. 1312**

**AN ORDINANCE REVISING SECTION 2-51 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA, SO AS REVISE PROVISIONS REGARDING THE SALARIES OF CITY COUNCIL MEMBERS.**

**BE IT ORDAINED**, by the City Council of the City of Miles City, Montana, pursuant to the authority granted by MCA 7-4-4201, as follows:

**Section 1.** Section 2-51 shall be amended to read as follows:

**“Sec. 2-51. - Salaries of members.**

The salary for city council members, including the chairman of the city council, shall be \$333.34 per month payable in equal installments twice per month. Council member salaries shall be paid on the same dates as other city employees.

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

Said Ordinance read and put on its passage this 27<sup>th</sup> day of June, 2017.

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

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

**FINALLY PASSED AND ADOPTED** this 11<sup>th</sup> day of July, 2017.

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

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

**ORDINANCE NO. 1313**

**AN ORDINANCE REVISING SECTION 16-48 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA, SO AS REVISE PROVISIONS REGARDING THE USE OF FIREWORKS WITHIN THE CITY LIMITS.**

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

**Section 1.** Section 16-48 shall be amended to read as follows:

**“Sec. 16-48. - Fireworks.**

It shall be unlawful for any person to discharge or cause to be discharged any fireworks, as defined by state law, within the city limits; provided that the city council may grant a permit for a supervised public display of fireworks to be held by the city, fair association, amusement park or other organizations or groups of individuals. The city council, by resolution, may allow the discharge of fireworks at special times and places as deemed appropriate as long as such use is in accordance with state law and any other reasonable restrictions which the council may impose in order to preserve the public peace and safety. Notwithstanding the foregoing, the discharge of fireworks shall be allowed between the hours of 10:00 a.m. and 10:00 p.m. on July 2<sup>nd</sup> and July 3<sup>rd</sup>; between 10:00 a.m. and midnight on July 4<sup>th</sup>; and between 10:00 a.m. and 10:00 p.m. July 5<sup>th</sup>; at the following locations within the City of Miles City, to-wit: Bender Park, Riverside Park, Jaycee Field, Tedesco Field. Furthermore, non-aerial fireworks, being those fireworks which do not project themselves into the air, or fire projectiles into the air, shall be generally allowed within the City limits on July 4<sup>th</sup> of each year, but shall not be allowed on any other day except as hereinbefore set forth. The foregoing allowances may be altered or suspended by Resolution of the City Council, or by Executive Order of the Mayor.

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

Said Ordinance read and put on its passage this 27<sup>th</sup> day of June, 2017.

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John Hollowell, Mayor

ATTEST:

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Lorrie Pearce, City Clerk

**FINALLY PASSED AND ADOPTED** this 11<sup>th</sup> day of July, 2017.

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John Hollowell, Mayor

ATTEST:

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Lorrie Pearce, City Clerk

# New Business



**RESOLUTION NO. 4076**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A GRADE CROSSING SIGNALS TRI-PARTY AGREEMENT WITH THE MONTANA DEPARTMENT OF TRANSPORTATION AND BNSF RAILWAY COMPANY.**

*WHEREAS*, the Montana Department of Transportation and the BNSF Railway Company will be funding the installation of crossing signal equipment at the Spotted Eagle Road railroad crossing, and desire to enter into an Agreement with the City pertaining to the same, and in doing so for the City to agree to undertake certain responsibilities pertaining to the project, including the installation and maintenance of advanced railroad crossing signs and pavement marking and other related obligations;

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

1. The “GRADE CROSSING SIGNALS TRI-PARTY AGREEMENT,” attached hereto as Exhibit “A”, and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto.

**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 11<sup>TH</sup> DAY OF JULY , 2017.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

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



June 20, 2017

Scott Gray  
Director of Public Works  
City of Miles City  
PO Box 910  
Miles City, Montana 59301

**Subject: Highway-Rail Grade Crossing Signal**  
RR Xing – Spotted Eagle Rd – Miles City  
RRP 9(18), [9123]  
U.S. DOT 092 656Y

Attached are three original tri-party signal agreements between the City of Miles City, BNSF Railway Company, and the State, to cover subject signal project.

Please sign and have attested each original, and return all three original agreements to us for further processing. Please **do not date** these agreements, your fully executed original will be returned to you.

If you have any questions or concerns call me at (406) 444-7247 or e-mail [jalthof@state.mt.us](mailto:jalthof@state.mt.us).

John W. Althof  
Rail/Highway Safety Manager

Attachments

copies: Shane Mintz, Glendive District Administrator  
File w/attach

EXHIBIT A  
GRADE CROSSING SIGNALS  
TRI-PARTY AGREEMENT  
RR XING-SPOTTED EAGLE RD  
RRP 9(18), [9123]  
CUSTER COUNTY, MONTANA

DIVISION - Montana  
SUB - Forsyth  
LS - 40

RR Milepost 79.07  
U.S. DOT 092 656Y

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the STATE OF MONTANA, acting through its Department of Transportation, hereinafter called the "STATE", City of Miles City, a Political Subdivision of the State of Montana, herein represented and acting through its City Council, hereinafter called the "CITY", and BNSF Railway Company, a Delaware Corporation, hereinafter called the "RAILROAD";

WITNESSETH:

WHEREAS, in the interest of aiding vehicular travel and public safety, the STATE is undertaking a project RRP 9(18), [9123] to upgrade the existing at-grade crossing signals and activation equipment as shown in the scope of work. This project is located at crossing U.S. DOT 092 656Y as indicated on map marked exhibit "A" attached hereto and by this reference made a part hereof;

WHEREAS, the parties agree that the RAILROAD will receive no real benefit from the installation of the crossing signal equipment;

WHEREAS, the **STATE will pay 80 percent** of the acquisition and installation of crossing signal equipment, with STATE, using, in part, Federal Section 130 funds, and the **RAILROAD will pay 20 percent** and consents to acquire and install the crossing signal equipment as shown in scope of work, and upon the terms and conditions herein stated.

WHEREAS, the CITY will have in place signs and pavement markings as indicated and shall maintain them as per paragraph XV;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**I**

Scope of Work

**RAILROAD signal work funded by project.**

1. Total replacement of existing signal system with new mast mounted 12inch LED flashing lights and gates in accordance to the Manual on Uniform Traffic Control Device (MUTCD).
2. Engineering and acquisition of material for signal installation.
3. Installation of constant warning time circuitry.
4. Installation of new signal hut a minimum of thirty (30) feet from shoulder of roadway in accordance to the MUTCD.

**II**

The crossing signal equipment will be installed at the railroad grade crossing shown on Exhibit "A" attached, in accordance with the Manual on Uniform Traffic Control Devices and in accordance with plans and estimates prepared by the RAILROAD and approved by the STATE and Federal Highway Administration.

### III

Eighty percent of the cost of materials and labor to install the crossing signal equipment will be paid by the STATE, using, in part, Federal Section 130 funds as provided in 23 Code of Federal Regulations, including but not limited to Parts 1, 140 (subpart I), 172, 646, hereafter referred to as "23 CFR", which is hereby incorporated into and made part of this agreement by reference.

### IV

Preliminary engineering costs are part of the RAILROAD's overhead rates. Preliminary engineering includes all costs incurred for developing this agreement.

### V

The RAILROAD will, using its own forces and under its own labor agreements, install the crossing signal equipment. The RAILROAD will furnish all materials from its store stock or by purchase in accordance with the provisions of 23 CFR.

Should it become necessary for the RAILROAD to obtain the services of a consultant after this agreement is completed and due to any exigency of the RAILROAD and the project, the STATE and the RAILROAD will mutually agree, in writing, as to the area of need and the RAILROAD's selection of a consultant. All work performed and costs incurred under this agreement will be in accordance with 23 CFR and 48 Code of Federal Regulations, including but not limited to Chapter 1, Part 31, hereafter referred to as "48 CFR", which is hereby incorporated into and made part of this agreement by reference.

### VI

The RAILROAD will dispose of all scrap from the railroad's work covered in this agreement at STATE expense.

### VII

The RAILROAD will provide a detailed estimate of RAILROAD construction engineering, installation labor and material costs required for this project. The STATE will pay for eighty percent for the acquisition and installation of crossing signal equipment, with STATE and Federal funds, based on the actual cost of labor and material. The detailed estimate will be titled Exhibit "B", attached hereto and by this reference made part hereof. If electrical service is required from a public utility the RAILROAD will provide an estimated installation cost in Exhibit "B".

### VIII

The RAILROAD may submit progress bills to the STATE during the progress of the work included in this agreement for the actual cost of services and expenses incurred by the RAILROAD. The STATE will reimburse the RAILROAD for the actual cost and expense incurred in connection with said work. Actual cost reimbursed must be in accordance with the provisions of 23 CFR.

It is further agreed that the RAILROAD will make every effort to finalize and complete billing of all incurred costs no later than six (6) months after installation. All cost records of the RAILROAD pertaining to this project will be subject to inspection and audit at any time by representatives of the STATE, including the legislative auditor and fiscal analyst, and the Federal Highway Administration. All such records will be retained for a period of not less than three (3) years from the date of final payment.

### IX

Upon completion of the installation of the crossing signal equipment, the RAILROAD, at its expense, will operate and maintain the crossing signal equipment in a proper condition; provided, however, in the event of passage of law by the State of Montana or other governmental authority

providing for the apportionment of cost of maintenance of grade crossing signals, the RAILROAD will have the benefit of such law.

#### X

STATE Administrative rule ARM 18.6.311 stipulates; "The road authority will own the railroad signal".

If the grade crossing is abandoned, or if for any reason the signals are no longer required at this location, the RAILROAD and CITY will determine if the signals are to be installed at another location or used for replacement parts.

#### XI

If a railway or a highway improvement project necessitates a rearrangement, relocation, or alteration of the signals at the crossing, the party whose improvement causes such change will pay the cost thereof.

#### XII

If the RAILROAD enters into a contract or agreement with a contractor to perform any of the work which the RAILROAD is required to perform under the terms of this agreement, the RAILROAD, for itself, its assigns, and successors in interest, agrees that it will not discriminate in the choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "C" attached hereto and made a part hereof, in any such contract or agreement.

#### XIII

The RAILROAD will, upon finding damage to the crossing signal equipment, immediately notify the city police department at (406) 234-6273.

Pursuant to Mont. Admin. R. § 18.6.311(3), the STATE will pay for the repair or replacement cost (damage maintenance cost) of the signal and activation equipment in the event of damage and the responsible party for the damage cannot be identified or will not pay.

#### XIV

If any of the crossing signal equipment installed pursuant to this agreement cannot, through age, be maintained, or by virtue of their obsolescence require replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable STATE signal warrants at the time of replacement.

#### XV

The CITY will have in place advanced railroad crossing warning signs and standard pavement markings, if required by the Manual on Uniform Traffic Control Devices (MUTCD) at this crossing prior to the acceptance on this project by STATE (see Exhibit "D" attached hereto and by this reference made part hereof for partial details).


The CITY assumes full responsibility for the maintenance of advanced warning signs and pavement markings, and agrees to hold harmless and indemnify the STATE for any claim, damages or loss, in whole or in part, caused by or due to the failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.

#### XVI

In addition to the terms herein set forth, the STATE agrees to administer the project with respect to inspection and acceptance. The STATE's obligation will end upon acceptance of the completed said project and reimbursements to the RAILROAD.

**XVII**

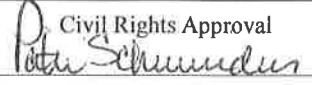
This agreement will inure to the benefit of and be binding on the parties hereto, their successors, and assigns.

APPROVED FOR  
LEGAL CONTENT  
 5/17/17  
Signature Date

**STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION**

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

Dustin Rouse, P.E.  
Preconstruction Engineer

Civil Rights Approval  
  
Signature Date 5.17.17

**BNSF RAILWAY COMPANY**

BY:  \_\_\_\_\_  
FRENCH THOMPSON

TITLE: Dir. Public Projects

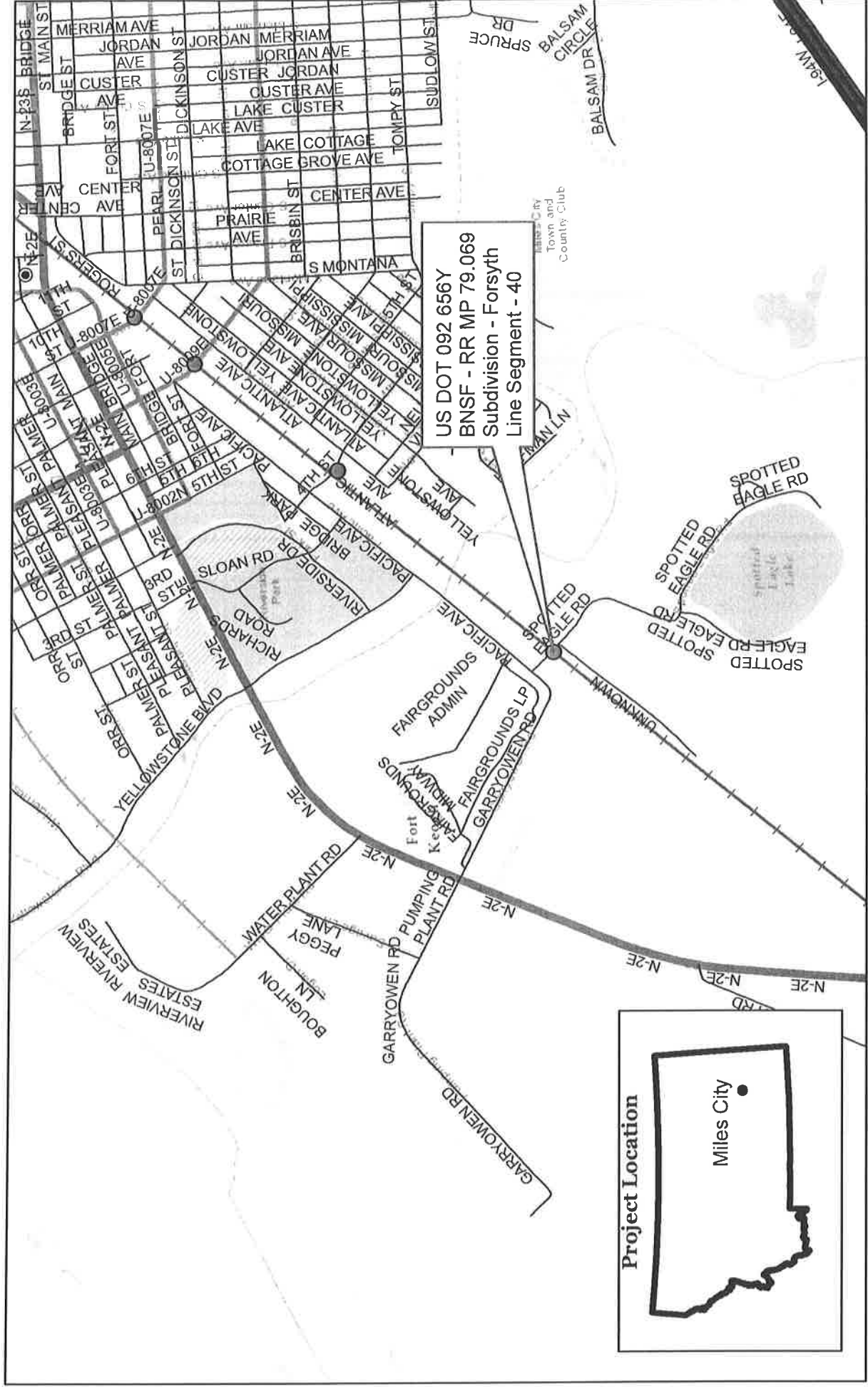
**CITY OF MILES CITY**

ATTEST: \_\_\_\_\_  
Clerk and Recorder

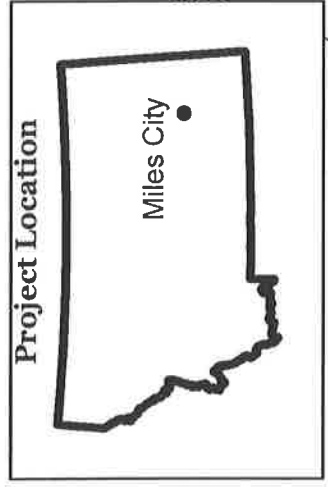
BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**RRXING - SPOTTED EAGLE ROAD**  
**RRP 9(18), [9123]**  
**CUSTER COUNTY, MONTANA**



US DOT 092 656Y  
 BNSF - RR MP 79.069  
 Subdivision - Forsyth  
 Line Segment - 40



**EXHIBIT "A"**

**EXHIBIT “B”**



**MDT NONDISCRIMINATION  
AND**

Rev. 01/2017

**DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

**Federal protected classes**

Race, color, national origin, sex, sexual orientation, gender identity, age, disability, & Limited English Proficiency

**State protected classes**

Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

**(1) Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**(2) Non-discrimination:**

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
  - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
  - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
  - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
  - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

**(3) Participation by Disadvantaged Business Enterprises (DBEs):**

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at [mdt.mt.gov/business/contracting/civil/dbe.shtml](http://mdt.mt.gov/business/contracting/civil/dbe.shtml)
- b. By signing this agreement the PARTY assures that: *The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*
- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

**(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

**(5) Information and Reports:** The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(6) Sanctions for Noncompliance:** In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

**(7) Pertinent Non-Discrimination Authorities:** During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

*Federal*

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

*State*

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

**(8) Incorporation of Provisions:** The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

Figure 8B-6. Example of Placement of Warning Signs and Pavement Markings at Grade Crossings

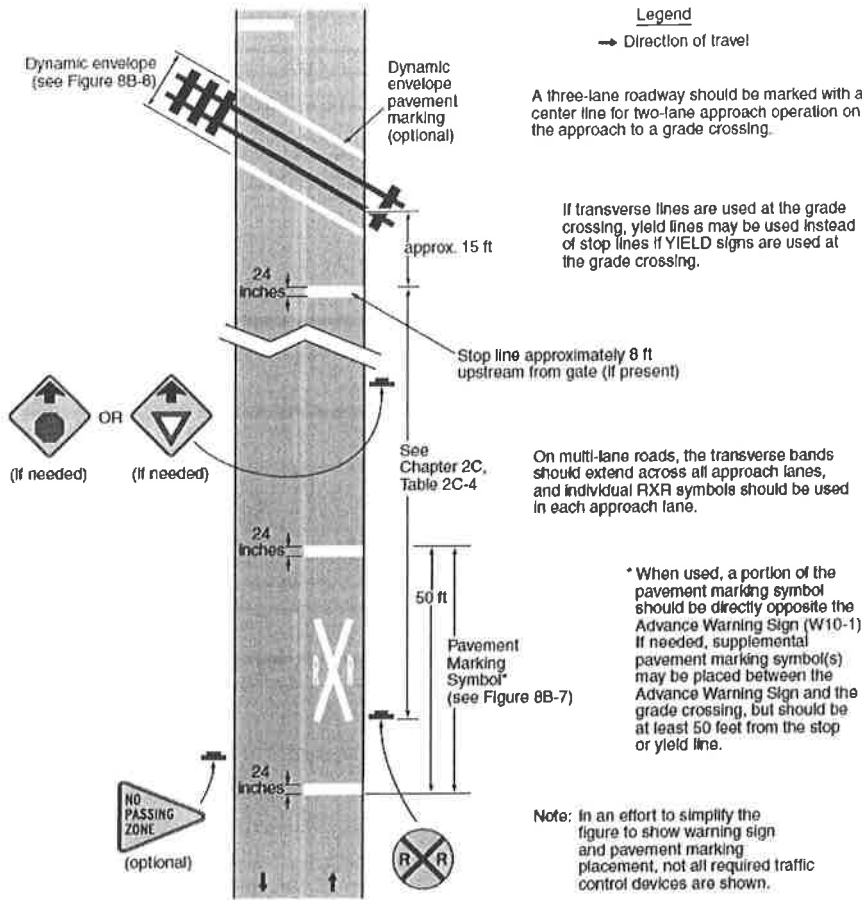
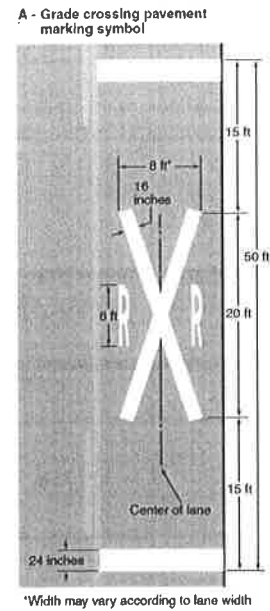


Figure 8B-7. Grade Crossing Pavement Markings



For more information go to website: <http://mutcd.fhwa.dot.gov>

Table 2C-4. Guidelines for Advance Placement of Warning Signs

Posted or 85th-Percentile Speed	Advance Placement Distance <sup>1</sup>								
	Condition A: Speed reduction and lane changing in heavy traffic <sup>2</sup>	Condition B: Deceleration to the listed advisory speed (mph) for the condition							
		0 <sup>3</sup>	10 <sup>4</sup>	20 <sup>4</sup>	30 <sup>4</sup>	40 <sup>4</sup>	50 <sup>4</sup>	60 <sup>4</sup>	70 <sup>4</sup>
20 mph	225 ft	100 ft <sup>6</sup>	N/A <sup>5</sup>	—	—	—	—	—	—
25 mph	325 ft	100 ft <sup>6</sup>	N/A <sup>5</sup>	N/A <sup>5</sup>	—	—	—	—	—
30 mph	460 ft	100 ft <sup>6</sup>	N/A <sup>5</sup>	N/A <sup>5</sup>	—	—	—	—	—
35 mph	565 ft	100 ft <sup>6</sup>	N/A <sup>5</sup>	N/A <sup>5</sup>	N/A <sup>5</sup>	—	—	—	—
40 mph	670 ft	125 ft	100 ft <sup>6</sup>	100 ft <sup>6</sup>	N/A <sup>5</sup>	—	—	—	—
45 mph	775 ft	175 ft	125 ft	100 ft <sup>6</sup>	100 ft <sup>6</sup>	N/A <sup>6</sup>	—	—	—
50 mph	885 ft	250 ft	200 ft	175 ft	125 ft	100 ft <sup>6</sup>	—	—	—
55 mph	990 ft	325 ft	275 ft	225 ft	200 ft	125 ft	N/A <sup>6</sup>	—	—
60 mph	1,100 ft	400 ft	350 ft	325 ft	275 ft	200 ft	100 ft <sup>6</sup>	—	—
65 mph	1,200 ft	475 ft	450 ft	400 ft	350 ft	275 ft	200 ft	100 ft <sup>6</sup>	—
70 mph	1,250 ft	550 ft	525 ft	500 ft	450 ft	375 ft	275 ft	150 ft	—
75 mph	1,350 ft	650 ft	625 ft	600 ft	550 ft	475 ft	375 ft	250 ft	100 ft <sup>6</sup>

<sup>1</sup> The distances are adjusted for a sign legibility distance of 180 feet for Condition A. The distances for Condition B have been adjusted for a sign legibility distance of 250 feet, which is appropriate for an alignment warning symbol sign. For Conditions A and B, warning signs with less than 6-inch legend or more than four words, a minimum of 100 feet should be added to the advance placement distance to provide adequate legibility of the warning sign.

<sup>2</sup> Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. Typical signs are Merge and Right Lane Ends. The distances are determined by providing the driver a PRT of 14.0 to 14.5 seconds for vehicle maneuvers (2005 AASHTO Policy, Exhibit 3-3, Decision Sight Distance, Avoidance Maneuver E) minus the legibility distance of 180 feet for the appropriate sign.

<sup>3</sup> Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield Ahead, Signal Ahead, and Intersection Warning signs. The distances are based on the 2005 AASHTO Policy, Exhibit 3-1, Stopping Sight Distance, providing a PRT of 2.5 seconds, a deceleration rate of 11.2 feet/second<sup>2</sup>, minus the sign legibility distance of 180 feet.

<sup>4</sup> Typical conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, Reverse Turn, or Reverse Curve. The distance is determined by providing a 2.5 second PRT, a vehicle deceleration rate of 10 feet/second<sup>2</sup>, minus the sign legibility distance of 250 feet.

<sup>5</sup> No suggested distances are provided for these speeds, as the placement location is dependent on site conditions and other signing. An alignment warning sign may be placed anywhere from the point of curvature up to 100 feet in advance of the curve. However, the alignment warning sign should be installed in advance of the curve and at least 100 feet from any other signs.

<sup>6</sup> The minimum advance placement distance is listed as 100 feet to provide adequate spacing between signs.

**RESOLUTION NO. 4077**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A STATE MAINTAINED ROUTE CONSTRUCTION AGREEMENT WITH THE MONTANA DEPARTMENT OF TRANSPORTATION.**

*WHEREAS*, the Montana Department of Transportation will be constructing certain improvements to the I94 interchange at Haynes Avenue, and desires to enter into an agreement with the City governing certain City and State obligations pertaining to the construction and maintenance of the highway; sidewalks along the route; signage and speed limits; parking; lighting; and other matters related to the route being constructed, improved and maintained.

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

1. The “STATE MAINTAINED ROUTE CONSTRUCTION AGREEMENT,” attached hereto as Exhibit “A”, and made a part hereof, is hereby approved and adopted by this Council.

2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto.

**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 11<sup>TH</sup> DAY OF JULY, 2017.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

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



**Montana Department of Transportation**

*Michael T. Tooley, Director*

2701 Prospect  
PO Box 201001  
Helena MT 59620-1001

*Steve Bullock, Governor*

zero deaths | zero serious injuries  
on Montana roadways

June 20, 2017

Scott Gray  
Public Works Director  
P.O. Box 910  
City Hall  
Miles City, MT 59301

Subject: Broadus Intchg – Miles City  
IM 94-4(82)138  
UPN 7565000  
Work Type 150-Major Rehabilitation with added capacity

RE: State Maintained Route Construction Agreement

Scott, enclosed are two copies of the State Maintained Route Construction Agreements for the subject project. Please have both copies signed and returned to me. Once we receive the two originals MDT will sign and return one copy of the agreement for your records.

If you have any questions or concerns, please contact Michael DaSoglio of the Consultant Design Bureau at (406) 444-6250.

Bryan L. Miller, P.E.  
Consultant Plans Engineer

BLM:msd:7565000CDAGREECOV\_signed\_dist

Attachments: Original County Resolution

copies: Shane Mintz, P.E., District Administrator–Glendive  
Consultant Design Contract File

**STATE MAINTAINED ROUTE  
CONSTRUCTION AGREEMENT**

THIS AGREEMENT is made and entered into by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called the "State" or "Department", and the City of Miles City, a Montana Municipal Corporation, hereinafter called the City.

**WITNESSETH THAT:**

THE PURPOSE OF THIS AGREEMENT IS TO SET FORTH THE RESPONSIBILITIES AND DUTIES OF THE STATE AND THE CITY WITH RESPECT TO A FEDERAL AID HIGHWAY AND ADJACENT PEDESTRIAN FACILITIES PROJECT WITHIN THE CITY OF MILES CITY, MONTANA.

I. WHEREAS, the State proposes to construct and/or reconstruct a certain highway AND ADJACENT PEDESTRIAN FACILITIES (SIDEWALKS) in and through the City, the construction being known as Federal Aid Project No. IM-NHPB 94-4(83)138, also known as Broadus Interchange – Miles City, and

WHEREAS, the construction will be over and upon Route N-23 (South Haynes Avenue) in the City of Miles City, beginning at approximately station 64+00 and extending southerly ending at station 74+90; the project also includes Interstate 94 generally between the Cemetery Road underpass bridge structures at RP 137.5 (station 378+00) and extending easterly approximately 1.0 mile to the Love Street underpass tunnel structure at approximately RP 138.5 (station 430+00), and

WHEREAS, the State desires to receive Federal funds to construct the highway, and

WHEREAS, in accordance with the State's agreement with the Federal Highway Administration (FHWA) of the U. S. Department of Transportation, the State must ensure that certain requirements are met in order for the State to fulfill its obligations to the FHWA and for the project to be eligible for federal funds. Accordingly, the State includes federal requirements, which are among those hereinafter set forth, for this project, and the City agrees to them, and

WHEREAS, this document must be duly executed and on record with the State and FHWA before the work contemplated can be awarded to contract, and

WHEREAS, the City hereby concurs in the designation of the highway which was designated under Section 60-2-110, MCA, and

WHEREAS, the City desires to have the construction done, the City deeming it to be a valuable and beneficial consideration,

II. NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AT STATE EXPENSE, THE STATE AGREES TO DESIGN THE PROJECT, LET IT TO CONTRACT AND ADMINISTER THE CONTRACT FOR CONSTRUCTION AND WILL PERFORM ALL THE REMAINING FUNCTIONS AND DUTIES AND RESPONSIBILITIES SET FORTH HEREIN IN EXCHANGE FOR WHICH THE CITY AGREES THAT UPON COMPLETION OF THE PROJECT, DEEMING THE CONSTRUCTION A GOOD AND VALUABLE CONSIDERATION, IT WILL PERFORM ALL OF THE FUNCTIONS AND DUTIES AND RESPONSIBILITIES SET FORTH IN THIS AGREEMENT. THE DUTIES AND RESPONSIBILITIES OF EACH PARTY TO THIS AGREEMENT ARE LIMITED TO THE PROJECT AREA FROM ROUTE N-23 (SOUTH HAYNES AVENUE) IN THE CITY OF MILES CITY, BEGINNING AT APPROXIMATELY STATION 64+00 AND EXTENDING SOUTHERLY ENDING AT STATION 74+90 AS SHOWN ON **EXHIBIT B**.

(A) The City agrees to conform in all regards to Chapter 8 of Title 61, MCA, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Chapter 8 of Title 61, MCA, with specific reference, but not limited to, the following matters:

(1) Installing any signs, signals, or markings not in conformance with the Standards approved by the FHWA pursuant to 23 USC §109(d).

(2) Establishing a speed limit less than twenty-five (25) miles per hour in any urban district on the highway.

(3) Establishing a speed limit of less than thirty-five (35) miles per hour outside an urban district on the highway. The City will modify or alter such established speed limits on the highway after a traffic and engineering investigation is made at the request of the State.

(4) Erecting any markings, sign, signal or traffic control device that will give preference to local routes which intersect with the highway and no sign, signal or traffic control device will be erected or constructed, nor shall the establishment or modification of any speed zone, parking regulation or traffic marking which will affect traffic on the highway be made without express written permission of the State, and then only after proper traffic and engineering study indicates that such markings, sign, signal or traffic control device is required.

(5) Erecting any lighting on the highway without express written permission of the State, and then only after proper traffic and engineering study indicates that such lighting devices are required. The plans for such lighting installation shall be approved by the State before erection.

(6) Not requiring the stopping of all traffic at all intersecting streets, alleys and driveways before entering the highway. Where the City considers that such traffic control creates a hazardous situation, it will request a traffic and engineering study by the State. The State, after the study, may authorize express written modifications in the traffic control devices as may be in the public interest from a safety and convenience standpoint.

(7) Prohibiting parallel parking on the highway; and

(8) Allowing stopping, standing or parking of a vehicle in a place prohibited by §61-8-354, MCA.

(9) For lighting projects inside of incorporated municipalities, the cost of operation and maintenance of the lighting shall be paid by the State; however, where an existing lighting district, which is paid for by a city, town or special improvement district, is replaced or upgraded, the city, town or special improvement district shall continue paying the amount of the previous payments toward the cost of operation and maintenance of the new or revised lighting system. If and when the cost of energy or maintenance is raised by the utility company, the city, town or special improvement district shall pay their proportionate share of the rate increase.

(B) The State, after a traffic and engineering investigation of any speed zone, parking regulation or traffic control device, may require the City to modify or remove such existing speed zone, parking regulation or traffic control device upon the highway.

(C) The State will retain the authority and responsibility for issuing approach and encroachment permits onto, upon or over right-of-way of the highway by anyone.

(D) Should the City incorporate beyond the present City limits, and such newly annexed area include portions of this Federal Aid Project not now within the City limits, then this agreement, by reference herein, will also apply to the newly annexed area.

(E) The City has reviewed and approved the plans.

(F) The City will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operation of the improvements as planned.

(G) All signs required to enforce City ordinances shall be maintained by the City.

(H) Landscaping and Right of Way ("R/W") maintenance

(1) The State will construct the landscaping elements as shown on the States construction plans (**Exhibit B**) in the center islands for both the north and south roundabouts.

(2) North Roundabout: The center island will consist of a metal life-sized horse sculpture, wagon wheel shape consisting of red scoria (lava rock) for the spokes



with grey landscaping rock for the area between the spokes, and will include up-lighting to highlight the sculpture. The City will provide the horse sculpture for installation by MDT's contractor.

(3) South Roundabout: The center island will consist of a metal rocking MC symbol attached to a decorative fake rock along with a wagon wheel shape consisting of red scoria (lava rock) for the spokes with grey landscaping rock for the area between the spokes, and will include up-lighting to highlight the symbol. The City will provide the decorative rocks with the rocking MC symbol attached for installation by MDT's contractor.

(4) Upon completion of and in consideration for the project, and at no additional cost to the State, the City agrees to assume responsibility for and control of maintenance of both the north and south roundabout center islands.

(5) For purposes of the center islands maintenance, "maintenance" means maintaining the landscaping as constructed, including debris removal and minor repairs. In case of damage or vandalism to the landscaping requiring repairs, the City and State will discuss implementation of the appropriate repairs. The state is not responsible to replace any part of the landscaping, sculptures, and fake rocks due to vandalism or auto collision.

(6) The State may remove the horse sculpture or decorative rock when, in the State's opinion, it poses a threat to public safety.

(7) MDT is responsible for payment of the electricity costs for the up-lighting in the center islands of both roundabouts.

(8) MDT intends to acquire a public RW as an easement in the name of the city on the existing access street that goes from Haynes Ave to Motel 6 (**See Shaded Area - Exhibit C**). The City agrees to assume responsibility and maintenance of this access street after construction is complete. MDT will reconstruct this access street with the overall project as shown in the attached plans.

(I) Sidewalk Maintenance.

(1) Upon completion of and in consideration for the project, and at no additional cost to the State, the City agrees to assume full responsibility for and control of maintenance of the sidewalks bordering the project, except that the State is responsible for the maintenance of sidewalks and pedestrian/bike facilities on bridges, overpasses and related facilities. Specifically, the City will maintain or cause to be maintained the sidewalks adjacent to both sides of Route N-23 (South Haynes Avenue) in the City of Miles City, beginning at approximately station 64+00 and extending southerly ending at station 74+90. The City may, in its discretion, enforce state laws and its local ordinances, if any, to recover all costs associated with its sidewalk maintenance activities from persons or entities who own property adjacent to the sidewalks and/or who receive the

benefit of the maintenance performed.

(a) For purposes of this section, "Maintenance" means: removal of and/or surface repair of any obstacles or impediment to the safe and efficient use of the sidewalk by pedestrians, including removal of snow and ice, repair of chipped, fractured, or broken walk or curb from any cause including but not limited to frost, landscaping (tree roots), or permitted encroachments.

(b) The City may by ordinance or regulation impose landscaping and/or sidewalk construction responsibilities on property owners whose property abuts the state facility provided that any new sidewalk construction completed under the City authority on the highway right of way meets or exceeds the specifications and standards of the State including compliance with any state or federal handicapped access laws and regulations.

(c) For purposes of this agreement, "Maintenance" does not mean repair or replacement of any sidewalk segment six feet or more in continuous length which cannot be repaired without complete removal and replacement of the existing walk and subsurface base. Upon notice that a segment of sidewalk must be replaced, the State will take whatever steps necessary to complete the replacement within 120 days, (weather permitting), subject only to the temporary fix referred to in: I(2) below.

(d) In the event of a disagreement as to whether a sidewalk segment can be repaired or must be replaced, the parties agree that the issue will be resolved by agreement by the Public Works Director or his designee and the Department of Transportation Maintenance Administrator or his designee. If necessary, the Director of the Department of Transportation and the Mayor may be asked to resolve the issue.

(2) The parties agree that they have a joint and mutual interest to build and maintain the sidewalks in a safe manner. To that end there is a joint responsibility to inspect the sidewalks on a periodic basis, at least annually to discover any potential sections that require repair or replacement. Regardless of who identifies an area of potential harm, they shall immediately notify the other party to the agreement and shall jointly take whatever steps necessary to warn the users of the walk until such time as repair or replacement can be completed. In the event replacement is deemed necessary, temporary repairs may be performed until such time as reconstruction can be programmed and completed. In the event replacement or reconstruction is required, the State shall use any eligible state or federal funding to perform the work and upon completion notify the City after which the City once again is responsible for future maintenance.

(3) City agrees that the maintenance responsibility is in effect until the sidewalks are reconstructed as provided in paragraph (e), unless otherwise agreed to by the parties.

(4) If at any time, the City believes that the useful life of any of these sidewalks has come to an end - i.e., that complete reconstruction of these sidewalks is the most reasonable economic alternative - it shall promptly notify the State in writing of its determination and the engineering basis therefor. Upon receipt of the written notice, the State shall respond in writing within thirty (30) calendar days to the City's determination that complete reconstruction is the most reasonable economic alternative for continued maintenance or repair of a sidewalk. If, after notification, the State agrees that reconstruction of all of the sidewalk is the most reasonable economic alternative, the City's duty to maintain the sidewalk shall terminate. If, after notification, the State disagrees that reconstruction is the most reasonable economic alternative, the State may, within an additional thirty (30) calendar days, obtain another opinion from an independent engineer at State expense. If that engineer determines that reconstruction is the most reasonable economic alternative, the City's duty to maintain the sidewalks shall terminate until the reconstruction is completed or as otherwise agreed to by the parties. In the event of a disagreement as to whether complete reconstruction is the most reasonable economic alternative for continued maintenance or repair of a sidewalk the parties agree that the issue will be resolved by agreement by the Public Works Director or his designee and the Department of Transportation Maintenance Administrator or his designee. If necessary, the Director of the Department of Transportation and Mayor may be asked to resolve the issue.

(5) If, during its inspections, the City encounters a condition on the sidewalk that it believes is caused by a design or construction defect or by the negligent act or omission of a State agent or employee, the City will immediately notify the State of the existence and location of the defect and provide the State with a detailed explanation of the engineering basis for its belief that the condition is caused by a design or construction defect or the negligent act or omission of a State agent or employee.

(6) The State agrees to protect, indemnify, defend and save harmless the City against and from all claims, liabilities, demands, causes of action, judgments, and losses (including costs and attorney's fees incurred by the City in the defense thereof) to them arising in favor of or asserted by any person or entity on account of personal injury, death or damage to property arising solely out of, or in connection with, a defect in the State's design or construction of the project (including, but not limited to, a defect in the State's construction or design of the sidewalks bordering the project as described above) or from the negligent or intentional act of Department employees that in any way interfere with or damage the maintenance work of the City.

The City agrees to protect, indemnify, defend and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments, and losses (including costs and attorney's fees incurred by the State in the defense thereof) to them arising in favor of or asserted by any person or entity (including, but not limited to, the City) on account of personal injury, death or damage to property arising, in whole or in part, out of, or in connection with, the maintenance of the subject sidewalks.

(7) This section does not supersede, discharge, or extinguish any prior agreement between the parties, nor will any future agreement between the parties supersede, discharge, or extinguish this agreement, unless by specific reference and in clear terms.

(J) The City will continue adequate engineering capabilities to ensure that a continuing traffic engineering function is carried out on the project.

III. The CITY, for itself, its assignees and successors in interest, agrees to comply with the provisions of **Exhibit A**, "MDT Nondiscrimination and Disability Accommodation Notice," which is attached hereto and incorporated by reference. The CITY is referred to as the "PARTY" in said **Exhibit**, and the City's duties and responsibilities are those duties and responsibilities of the "PARTY."

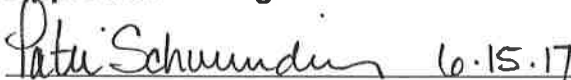
THE PARTIES UNDERSTAND AND AGREE THAT THE FAILURE OF EITHER PARTY TO PERFORM THE DUTIES AND RESPONSIBILITIES SET FORTH IN THIS AGREEMENT MAY BE DEEMED A MATERIAL BREACH OF THE CONTRACT FOR WHICH ANY AVAILABLE REMEDY PROVIDED BY LAW MAY BE ASSERTED IN THE DISTRICT COURT. IN ANY LEGAL PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS COSTS AND ATTORNEY'S FEES.

IN WITNESS WHEREOF, the State's authorized representative has signed on behalf of the State of Montana, and the Mayor of the City of Miles City, on behalf of the City, has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_, 2017  
**Administrator - Engineering Division**

By   
**Approved for Legal Content**

By  6.15.17  
**Approved for Civil Rights Content**

ATTEST:

CITY OF Miles City

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

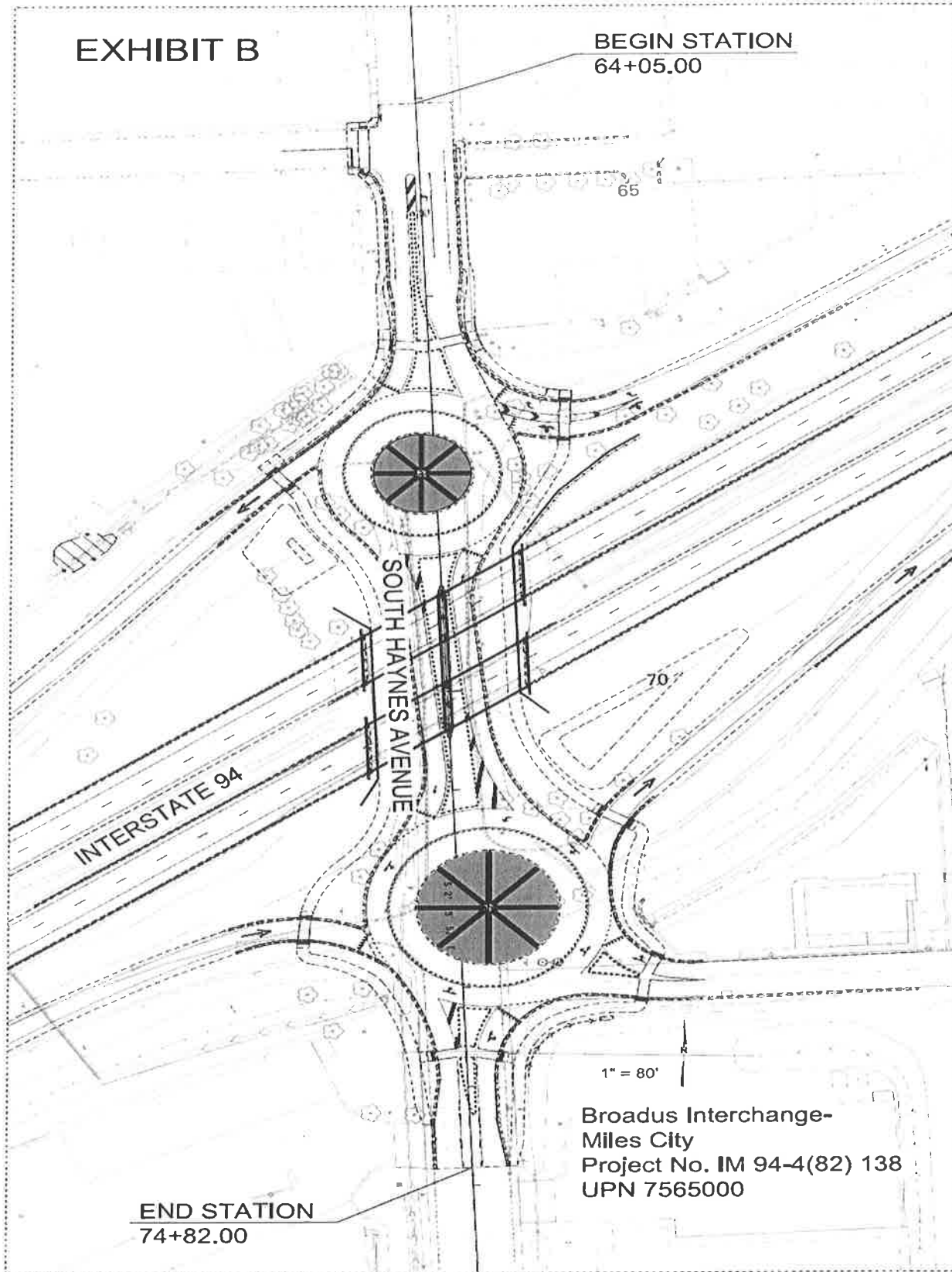
By \_\_\_\_\_  
John Hollowell, Mayor,

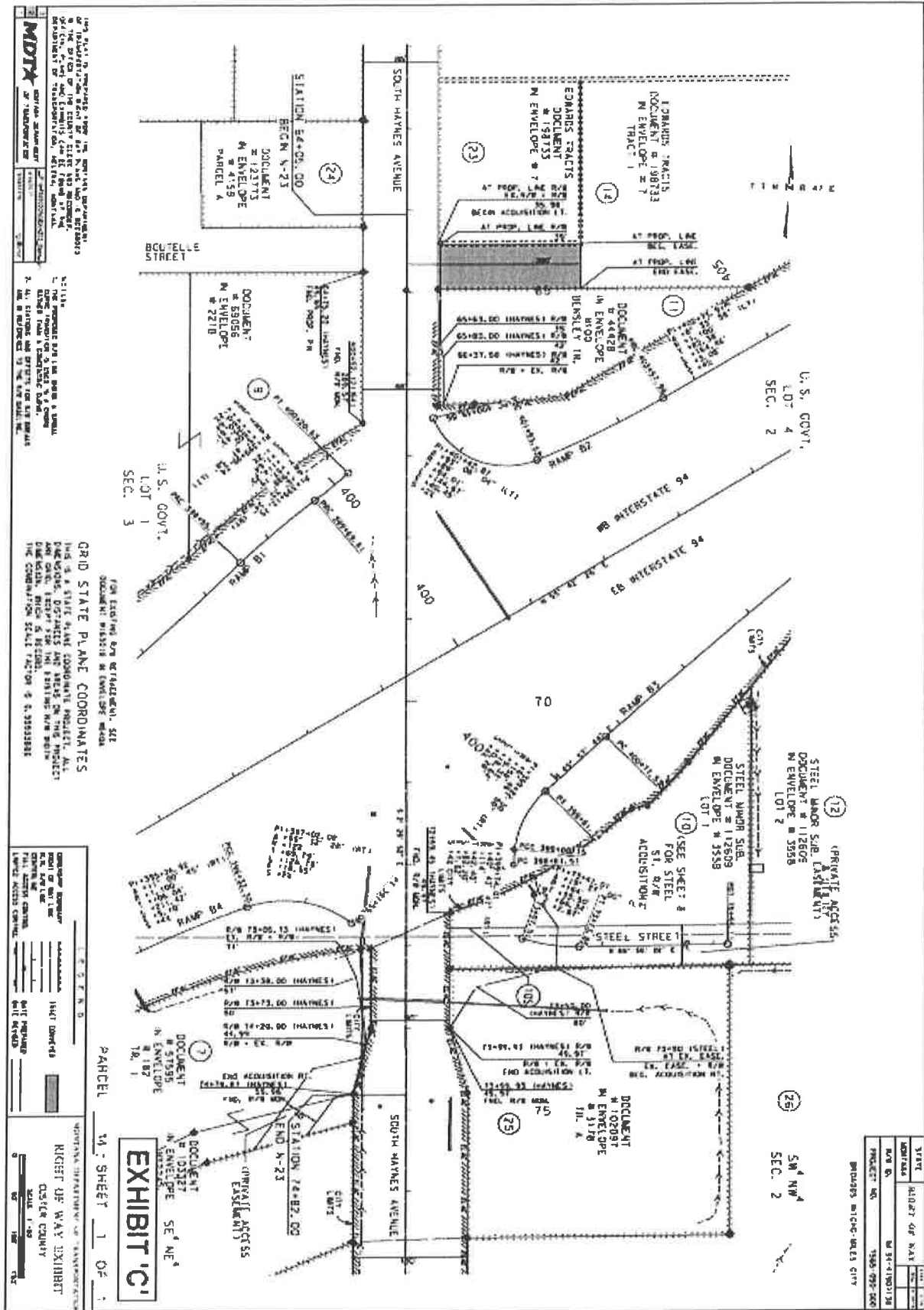
APPROVED AS TO FORM:

By \_\_\_\_\_  
Dan Rice, City Attorney

I, Lorrie Pearce, City Clerk of the City of Miles City, hereby certify that this agreement was regularly adopted by the City Council at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2017; and that the City Council authorized the City Mayor to sign this agreement on behalf of the City Council.

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





THIS PLAT IS PREPARED BY THE SURVEYOR FROM THE ORIGINAL RECORDS OF THE OFFICE OF THE COUNTY CLERK AND IS SUBJECT TO THE PROVISIONS OF THE CONSTITUTION, STATUTES, AND ORDINANCES OF THE STATE OF MISSISSIPPI.

**MDTA** MISSISSIPPI DEPARTMENT OF TRANSPORTATION

FOR EXISTING EBM REFERENCE, SEE DOCUMENT #187 IN ENVELOPE #108.

**GRID STATE PLANE COORDINATES**

THIS IS A STATE PLANE COORDINATE SYSTEM. THE DATUM IS THE MISSISSIPPI STATE DATUM. THE PROJECTION IS THE UTM PROJECTION. THE ZONE IS 18N. THE SCALE FACTOR IS 0.999999999.

DATE OF PLAT: 10/10/16  
 COUNTY: MISSISSIPPI  
 TOWN: WAY  
 PARCEL: 1A - SHEET 1 OF 1

**EXHIBIT 'C'**

MISSISSIPPI DEPARTMENT OF TRANSPORTATION  
 OFFICE OF THE SURVEYOR  
 1000 BAYVIEW BLVD., SUITE 100  
 BILOBI, MISSISSIPPI 39260  
 PHONE: 601-373-3000  
 FAX: 601-373-3001  
 WWW.MDTA.MISSISSIPPI.GOV

STATE	MISSISSIPPI
COUNTY	WAY
TOWN	WAY
PROJECT NO.	1500-000-000
DATE	10/10/16

**EXHIBIT A  
MDT NONDISCRIMINATION  
AND  
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

**Federal protected classes**

Race, color, national origin, sex, sexual orientation, gender identity, age, disability, & Limited English Proficiency

**State protected classes**

Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

**(1) Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**(2) Non-discrimination:**

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
  - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
  - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
  - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.



- iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

**(3) Participation by Disadvantaged Business Enterprises (DBEs):**

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at [mdt.mt.gov/business/contracting/civil/dbe.shtml](http://mdt.mt.gov/business/contracting/civil/dbe.shtml)
- b. By signing this agreement the PARTY assures that:

*The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

**(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

**(5) Information and Reports:** The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(6) Sanctions for Noncompliance:** In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

**(7) Pertinent Non-Discrimination Authorities:**

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

*Federal*

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

#### *State*

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

**(8) Incorporation of Provisions:** The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

Return To:  
City of Miles City, Montana  
P.O. Box 910  
Miles City, MT 59301

**RESOLUTION NO. 4078**

**A RESOLUTION GRANTING A REVOCABLE LICENSE TO CUSTER COUNTY DISTRICT HIGH SCHOOL FOR AN ENCROACHMENT UPON CITY OF MILES CITY RIGHT OF WAY FOR FORT STREET, FOR THE BENEFIT OF BLOCK 19 AND THE SOUTH HALF OF BLOCKS 13 AND 14 OF THE MILES ADDITION TO THE CITY OF MILES CITY.**

*WHEREAS*, Custer County District High School has made application for an encroachment upon the right of way of Fort Street adjacent to the following described real property located in Miles City, Custer County, Montana owned by the Custer County District High School:

Block 19 and the South Half of Blocks 13 and 14 of the Miles Addition to the City of Miles City, Custer County, Montana according to the plat and survey thereof on file in the office of the Clerk and Recorder of Custer County, Montana.

*AND WHEREAS*, such encroachment consists of park benches to be constructed adjacent to the sidewalk and within the right of way for Fort Street;

*AND WHEREAS*, the City Council finds that the granting of a revocable license for such encroachment, pursuant to certain terms and conditions, is advisable.

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

It does hereby authorize and grant to Custer County District High School a revocable license to erect and maintain benches on the above described right of way, subject to the following terms and conditions:

1. The final location of the benches are subject to the review and final approval of the Public Works Director of the City of Miles City;
2. The licensee shall maintain the benches in good and slightly condition at all times;
3. All construction and maintenance of the benches shall be at licensee's expense;
4. This license shall terminate and licensee shall, at licensee's expense, completely remove the benches from the City of Miles City right of way and restore the location to compacted, level grade, upon ninety (90) days advanced written notice to licensee by the City of Miles City
5. This license shall be recorded with the Clerk and Recorder for Custer County, Montana, and shall run with the above described real property, subject to the terms, conditions and right to terminate provided herein.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY  
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY,  
MONTANA, THIS 11<sup>TH</sup> DAY OF JULY, 2017.**

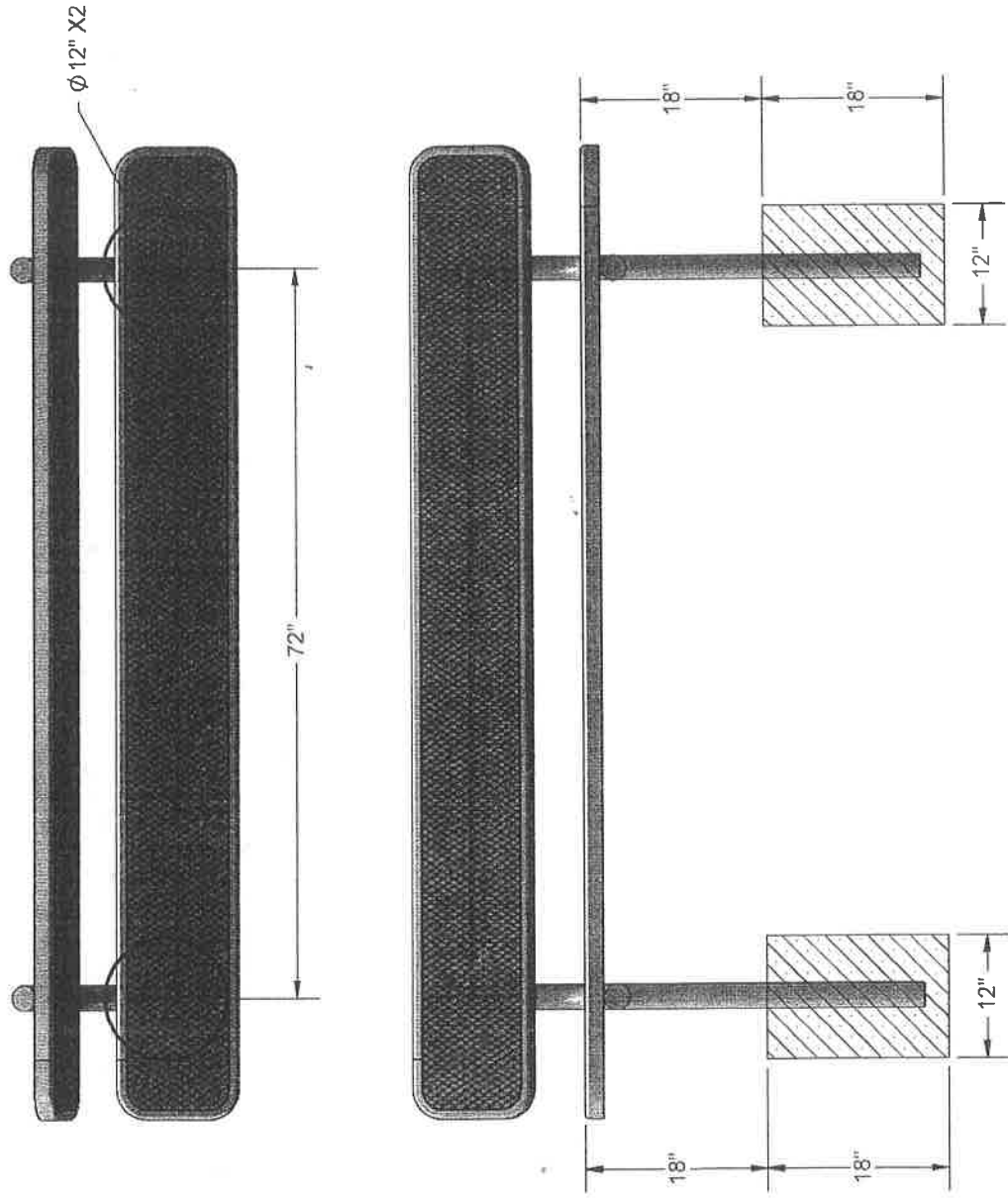
\_\_\_\_\_  
John Hollowell, Mayor

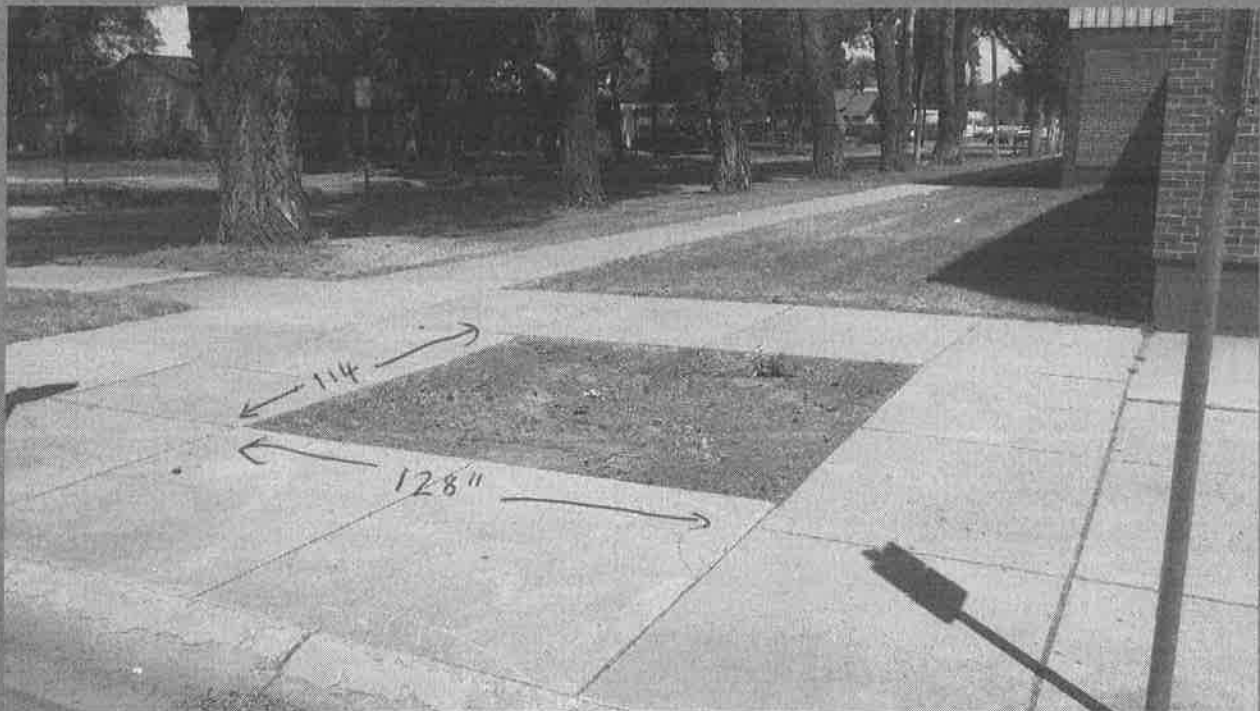
ATTEST:

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

# FOOTINGS

Estimated Required Concrete: 7 - 50lb Bags of Concrete Mix





# Google Maps 1600 Fort St

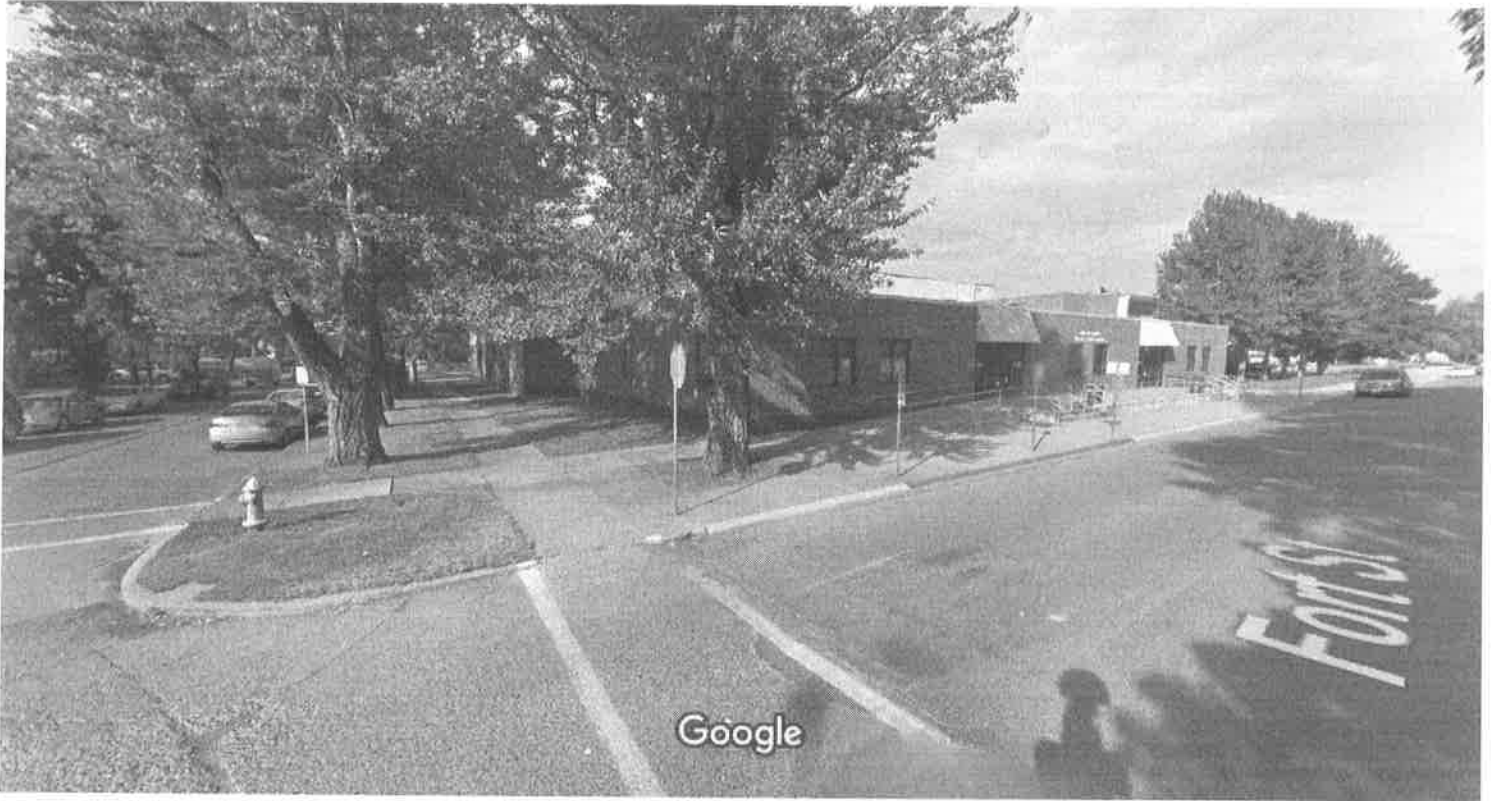


Image capture: Sep 2013 © 2017 Google

Miles City, Montana

Street View - Sep 2013

