



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*May 24, 2016
7:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
 - A. Regular City Council Meeting 5/10/2016
 - B. Finance Committee Meeting 5/05/2016
2. SCHEDULE MEETINGS
Study Commission Meeting 5/26/2016 @ 5:15pm
3. REQUEST OF CITIZENS & PUBLIC COMMENT
4. APPOINTMENTS
5. PROCLAMATIONS
STAFF REPORTS
6. CITY COUNCIL COMMENTS
7. MAYOR COMMENTS
8. COMMITTEE RECOMMENDATIONS
9. BID OPENINGS
Lease of land- Tract E, Lot 8 in Industrial Site
- BID AWARDS
10. PUBLIC HEARINGS
11. UNFINISHED BUSINESS
12. NEW BUSINESS
 - A. **RESOLUTION NO. 3918- A Resolution Authorizing the City of Miles City to Award A Downtown Façade Improvement Grant to BuyMT.Com**
 - B. **RESOLUTION NO. 3919- A Resolution Authorizing the City of Miles City to**

Award A Downtown Façade Improvement Grant to Sullivan's Furniture

- C. **RESOLUTION NO. 3920- A Resolution Authorizing the City of Miles City to Award A Downtown Façade Improvement Grant to Shear Fun Salon**
- D. **RESOLUTION NO. 3921- *(Revisited)* A Resolution Approving Amendment of the Interlocal Agreement Between the City of Miles City and the County of Custer for Provision of Health Services**
- E. **RESOLUTION NO. 3922- A Resolution Authorizing the City of Miles City to Contract With Dennis Hirsch for Building Inspection Services for Fiscal Year 2016-2017**
- F. **RESOLUTION NO. 3923- *(First Reading)* A Resolution Adopting A City of Miles City Insufficient Funds Policy, and Setting A Public Hearing Thereon**
- G. **RESOLUTION NO. 3924- A Resolution Providing for Procedures to Assure Public Participation in Governmental Decisions of the City of Miles City Government**
- H. **RESOLUTION NO. 3925- 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 2016-2017**
- I. **RESOLUTION NO. 3926- A Resolution Establishing Pay Rate for 283-A Seasonal Employees**
- J. **RESOLUTION NO. 3927- A Resolution Approving an Agreement Between the City of Miles City and Process Wastewater Technologies for Purchase of a Dewatering Equipment Package**
- K. **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 May 10, 2016
7:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, May 10, 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 John Uden, Rachel Sloan, Dwayne Andrews, Susanne Galbraith, Brant Kassner, Jeff Erlenbusch, Ken Gardner and Kathy Wilcox.

Also present were Police Chief Doug Colombik, Public Utilities Director Allen Kelm, Fire Chief Gary Warren, Public Works Director Scott Gray, Fire Captain Mike Miller, Firefighter/EMT Taran Harbaugh, Firefighter/EMT Eric Hartse 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

Special City Council Minutes: 4/27/2016

****** *Councilperson Uden moved to approve the minutes of the Regular Council Meeting of April 27, 2016, and seconded by Councilperson Erlenbusch. The motion **passed** by unanimous consent, 8-0.*

Public Safety Committee Meeting Minutes: 4/19/2016

****** *Councilperson Gardner moved to approve the minutes of the Public Safety Committee Meeting of April 19, 2016, and seconded by Councilperson Galbraith. The motion **passed** by unanimous consent, 8-0*

SCHEDULE MEETINGS

Human Resource	May 18, 2016 at 5:15pm
Finance Committee	May 18, 2016 at 6:00pm

REQUEST OF CITIZENS & PUBLIC COMMENT

None

APPOINTMENTS

Marvin Starck, 1214 Hwy 59S- to the Board of Appeals

** *Councilperson Gardner moved to approve the appointment of Marvin Starck to the Board of Appeals, and seconded by Councilperson Uden. On Roll call vote, the motion **passed** 8-0*

PROCLAMATIONS

Mayor Hollowell proclaimed the month of May as Building Safety Month, and May 21, 2016 as Kids to Parks Day.

STAFF REPORTS

Fire Captain/Training Officer Miller updated Council on training in the last year at the Fire and Ambulance Department.

- One person trained and graduated from Paramedic class, which involved 1700 hours of training
- One more person is ready to graduate as a Paramedic and two others are ready for training. The employees do pay for the training and volunteer their time for the training
- Fire training- #1 level Certification- The entire staff will be certified in a week

#2 In-house training will start in January. This training will bring all employees up to standard. All employees do the training on their time off

- Pump operator class- Employees are receiving certification to lower liability risk and risk to citizens and themselves
- 12 employees (the entire staff) are certified in swift water rescue
- 4 employees are certified in ice rescue
- 3 employees are certified in confined space rescue
- A few employees are certified for Airport fire rescue. It's not as important now as it was in the past
- Majority of employees are certified in Defensive driving
- 2 employees have received the National Fire Academy certification
- Hazmat training - increased from awareness to operational
- 1 certified as building inspector

Captain Miller added the Fire Department is working with the Custer County volunteer fire department in building a training center for fire fighters. This would help with a more realistic scenario as far as going in homes that are engulfed. He said the trailer is a great tool, but once you have gone through it a couple of times, you tend to memorize it.

Chief Warren reported on calendar 2016 alarm statistics through the end of April:

- 411 total calls for service
- 102 calls for service in April
- 10 percent of the call were for County EMS
- 72 percent of the calls were for City EMSC
- 17 percent of the calls were for Fire/Non-EMS

Citizen Jim Diggins, 107 North Center thought the City should purchase a used tow truck to remove abandoned vehicles from the streets. He felt that vehicles that were abandoned had to be controlled. Mayor Hollowell said the City could look into that.

CITY COUNCIL COMMENTS

Councilperson Gardner reminded everyone that this weekend is Keep Miles City Beautiful cleanup day. He said it would be nice to see some people volunteer for it.

Councilperson Uden asked how the issuing of tickets for vehicles, abandoned trailer and so forth were going. Mayor Hollowell said that about 90 to 95 percent of tickets issued were taken care of. He added the process is to give a warning with a certain amount of time to take care of the issue. After that time if the issue is not taken care of then they would go to court, and a fine is added and possible jail time. Councilperson Gardner added in his area one burned trailer had been torn apart but still in a pile, one other trailer house had received a public nuisance ticket and the trailer on Wells street had been removed.

Chief Colombik said the Judge and Prosecutor make the decision and every complaint had to start over. Mayor Hollowell said he is working on getting that changed.

MAYOR COMMENTS

None

STANDING COMMITTEE RECOMMENDATIONS

None

BID OPENINGS

Lease of land-Wastewater Treatment Plant/Old Lagoon

Clerk Pearce opened the bids received:

1. Robert Smith for an amount of \$1,888.00
2. James Diggins for an amount of \$2,227.50, noted that he would like to add a well

*** Councilperson Uden moved to approve the lease of the land at waste water treatment plant and old lagoon to Mr. Diggins bid for an amount of \$2,227.50 a year, Councilperson Erlenbusch second the motion.*

Director Kelm questioned if the highest bid was at the minimum bid advertised.

*** Councilperson Galbraith moved to send the bids to Finance, seconded by Councilperson Sloan. After a brief discussion the motion passed by roll call vote. 8-0*

BID AWARDS

Bids for paving Maintenance District # 204 & 205

*** Councilperson Galbraith moved to approve the bid received for maintenance district 204 and 205, seconded by Councilperson Andrews. On roll call vote, the motion passed 8-0*

PUBLIC HEARINGS

- A. RESOLUTION NO. 3903- A Resolution of Intent and Final Resolution Levying an Amended Assessment upon Benefited Property in the City of Miles City, Montana, Special Improvement District 211, to Defray the Cost of the Paving of Arrowhead Lane**
Mayor Hollowell called for comments from proponents three times, then opponents three times and, hearing none, **the hearing was closed.**
- B. RESOLUTION NO. 3915- 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 the General Fund for Various Unbudgeted Expenditures**
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. 3903- (Second Reading) A Resolution of Intent and Final Resolution Levying an Amended Assessment upon Benefited Property in the City of Miles City, Montana, Special Improvement District 211, to Defray the Cost of the Paving of Arrowhead Lane**

*** Councilperson Galbraith moved to approve the Resolution, by title only, seconded by Councilperson Gardner. On roll call vote passed 8-0. Resolution No. 3903 passed*

B. RESOLUTION NO. 3914- A Resolution Approving an Agreement With Ovivo, USA, for Goods and Special Services Pertaining to the Miles City Wastewater Improvements Phase II Project

*** Councilperson Uden moved to approve the Resolution, by title only, seconded by Councilperson Sloan. On roll call vote passed 8-0. Resolution No. 3914 passed*

C. RESOLUTION NO. 3915- (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 the General Fund for Various Unbudgeted Expenditures

*** Councilperson Galbraith moved to approve the Resolution, by title only, seconded by Councilperson Andrews. On roll call vote passed 8-0. Resolution No. 3915 passed*

NEW BUSINESS

A. RESOLUTION NO. 3917- A Resolution Approving an Agreement With Trojan Tech, for Goods and Special Services Pertaining to the Miles City Wastewater Improvements Phase II Project

*** Councilperson Galbraith moved to send the resolution to Finance for review, seconded by Councilperson Sloan.*

Director Kelm said the resolution had been to Finance for review.

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

*** Councilperson Galbraith moved to reconsider our action on Resolution No. 3917, a resolution approving an agreement with Trojan Tech, for goods and special services pertaining to the Miles City wastewater improvements phase II project, seconded by Councilperson Andrews. On roll call vote, the motion passed 8-0*

*** Councilperson Galbraith moved to change "a resolution approving an agreement with Trojan Tech, for goods and*

special services pertaining to the Miles City wastewater improvements phase II project” to “a resolution approving an agreement between the City of Miles City and Trojan Technologies for wastewater ultraviolet disinfection equipment”, seconded by Councilperson Andrews. On roll call vote, the motion passed 8-0

B. AMENDMENT – Interlocal agreement between the City of Miles City and Custer County, regarding the 5th position on the Health Board

Mayor Hollowell said the amendment had been assigned to Resolution No. 3921.

*** Councilperson Uden moved to approve the Amendment, by title only, seconded by Councilperson Kassner.*

Councilperson Galbraith asked if the only change were to strike out having a doctor on the committee, and hadn't there always been a doctor on the board? Mayor Hollowell said the position was hard to fill with a doctor, that is why the change.

Councilperson Wilcox suggested that some licensed practitioner or someone with a medical license be on the board.

Councilperson Uden said the reason why a doctor had always been on the board is that in the event of a communicable disease they are the only ones who had the authority to shut down a home.

Councilperson Erlenbusch said that MCA, Section 50-2-106 does not require a board member to be a medical doctor and the County Commissioners had signed off on it.

Councilperson Wilcox added that a medical provider can work under the supervision of a physician who could order the quarantine.

Councilperson Erlenbusch said the City Council has the authority to appoint two members and one of them could be from the medical field.

*** On roll call vote passed 8-0.*

C. APPROVAL OF APRIL CLAIMS

*** Councilperson Sloan moved to approve April claims, seconded by Councilperson Galbraith. On roll call vote the motion passed 8-0.*

ADJOURNMENT

****** *Councilperson Wilcox moved to adjourn the meeting, seconded by Councilperson Andrews, and **passed** unanimously.*

The meeting was adjourned at 8:05 p.m.

John Hollowell, Mayor

Lorrie Pearce, City Clerk

Finance Committee Meeting

May 5, 2016

The Finance Committee met Thursday, May 5, 2016 at 6:00 p.m. in the City Hall Conference Room. Present were Committee Chairperson Susanne Galbraith and Committee Members Rachel Sloan and Kathy Wilcox. Councilperson Dwayne Andrews was excused.

Also present were Public Works Director Scott Gray, Public Utilities Director Allen Kelm, Fire Captain Mike Miller and Fire Fighter Eric Hartse.

Committee Chairperson Galbraith called the meeting to order.

1. Request of Citizens:

Firefighter/EMT Eric Hartse said the information that he had on the ambulance was outdated and would present an updated report on the 19th.

2. Review and recommendation on RESOLUTION NO. 3914- A Resolution Approving an Agreement With Ovivo, USA, for Goods and Special Services Pertaining to the Miles City Wastewater Improvements Phase II Project

*** Committee Member Sloan moved to recommend to Council approval of Resolution No. 3914, seconded by Committee Member Wilcox. The motion passed 3-0.*

3. Review and recommendation on RESOLUTION NO. 3915- 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 the General Fund for Various Unbudgeted Expenditures

*** Committee Member Sloan moved to recommend to Council to approve Resolution No. 3915, seconded by Committee Member Wilcox. The motion passed 3-0*

4. Review and recommendation on RESOLUTION NO. 3917- A Resolution Approving an Agreement With Trojan Tech, for Goods and Special Services Pertaining to the Miles City Wastewater Improvements Phase II Project

*** Committee Member Wilcox moved to recommend to Council to approve Resolution No. 3917, seconded by Committee Member Sloan. The motion passed 3-0*

5. Review and recommendation on bids received for paving of maintenance district # 204 & 205

*** Committee Member Galbraith moved to recommend to Council to approve Century Construction bid received for an amount of \$407,500, seconded by Committee Member Wilcox. The motion passed 3-0*

6. Adjournment

** *Committee Member Galbraith moved to adjourn the meeting, seconded by Committee Member Wilcox and **passed** unanimously, 3-0.*

The meeting was adjourned at 6:27 p.m.

Susanne Galbraith, Chairperson

New Business

RESOLUTION NO. 3918

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO AWARD A
DOWNTOWN FAÇADE IMPROVEMENT GRANT TO BUYMT.COM**

WHEREAS, the City has established a Façade Improvement Grant for qualified applicants within the Miles City Downtown Urban Renewal District, *and*

WHEREAS, the City has adopted Guidelines for said grant program, and

WHEREAS, BuyMT.com has applied for a Downtown Façade Improvement Grant and has met all program criteria set forth in said Guidelines,

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

1. The City hereby awards a Downtown Façade Improvement Grant to BuyMT.com in the amount of \$2,000 to assist with replacing the awning on their building at 819 Main Street, Miles City Montana.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may be necessary to facilitate the delivery said award.

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

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3919

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO AWARD A
DOWNTOWN FAÇADE IMPROVEMENT GRANT TO SULLIVAN’S FURNITURE**

WHEREAS, the City has established a Façade Improvement Grant for qualified applicants within the Miles City Downtown Urban Renewal District, *and*

WHEREAS, the City has adopted Guidelines for said grant program, and

WHEREAS, Sullivan’s Furniture Store has applied for a Downtown Façade Improvement Grant and has met all program criteria set forth in said Guidelines,

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

1. The City hereby awards a Downtown Façade Improvement Grant to the Sullivan’s Furniture Store in the amount of \$2,000 to assist with repairing and repainting the façade and awning at their building at 900 Main Street, Miles City Montana.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may be necessary to facilitate the delivery said award.

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

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3920

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO AWARD A DOWNTOWN FAÇADE IMPROVEMENT GRANT TO SHEAR FUN SALON

WHEREAS, the City has established a Façade Improvement Grant for qualified applicants within the Miles City Downtown Urban Renewal District, *and*

WHEREAS, the City has adopted Guidelines for said grant program, and

WHEREAS, Shear Fun Salon has applied for a Downtown Façade Improvement Grant and has met all program criteria set forth in said Guidelines,

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

1. The City hereby awards a Downtown Façade Improvement Grant to the Shear Fun Salon in the amount of \$2,000 to assist with repair and painting of the facade on their building at 121 North 7th Street, Miles City Montana.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may be necessary to facilitate the delivery said award.

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

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3921

A RESOLUTION APPROVING AMENDMENT OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MILES CITY AND THE COUNTY OF CUSTER FOR PROVISION OF HEALTH SERVICES.

WHEREAS, the City of Miles City and the County of Custer have entered into an interlocal agreement for the cooperative provision of health services

AND WHEREAS, the City and the County desire to amend certain provisions within the same;

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

1. The Amendment to the Interlocal Agreement between the city of Miles City and the County of Custer to Cooperate in the Provision of Health Services, 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 Amendment 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 24th DAY OF MAY, 2016.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Exhibit A

Amendment

AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MILES CITY
AND THE COUNTY OF CUSTER TO COOPERATE IN THE
PROVISION OF HEALTH SERVICES

It is proposed that the interlocal agreement described above be amended as follows. Under section III subpart A (c) the phrase "who must be a medical doctor" be removed. Section 50-2-106 M.C.A. does not require a board member to be a medical doctor.

III. MEMBERSHIP OF CITY/COUNTY HEALTH BOARD

- A. The City-County Health Board shall be composed of five (5) members in accordance with the provision of Section 50-2-106 M.C.A. and appointed as follows:
 - a. Two (2) members shall be appointed by the County Commissioners. One (1) of these appointees and only one (1) may be an elected County official. None of these appointments shall be subject to review or confirmation by the City Council.
 - b. Two (2) members shall be appointed by the City Council. One (1) of these appointees and only one (1) may be an elected city official. None of these appointments shall be subject to review or confirmation by the County Commissioners.
 - c. One (1) at-large member, ~~who must be a medical doctor,~~ shall be appointed by the City-County Board of Health, subject to the approval of the City Council and the County Commissioners.

DATED this _____ day of _____, 2016.

CITY OF MILES CITY

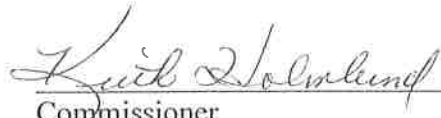
CUSTER COUNTY BOARD
OF COUNTY COMMISSIONERS

MAYOR OF MILES CITY

 4-27-16

Chairman

CITY COUNCIL PRESIDENT



Commissioner

ATTEST:



Commissioner

City Clerk

ATTEST:

Clerk & Recorder

RECEIVED

FEB 24 2016

CUSTER COUNTY
HEALTH BOARD APPLICATION

COPY

Name: John Goff

Address: P.O. Box 683 Miles City, MT 59301

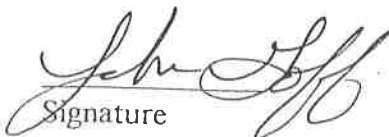
Phone Number: Work 406-234-2191

Home 406-853-2191

Briefly summarize any experience or education you have that would assist you in performing the duties of a County Health Board Member.

As an owner/operator of a septic & sewer company for 7+ years dealing with a variety of environmental sanitary issues along with the continued septic inspection training certifications as well as the owner of a Janitorial and Chemical Company that sells and trains on Quat Disinfectants and the proper uses of Disinfectants. I feel that this board would not only benefit from my involvement but could also help advise the different departments of changes or updates that based on our continued education in our industries and our everyday operation could possibly benefit the board.

I'm interested in sitting on this board as I was invited to a board meeting in the past and was able to give many useful insights and ideas at that meeting that I felt was useful to the board.


Signature

Date: 2-19-16

RESOLUTION NO. 3922

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO CONTRACT WITH DENNIS HIRSCH FOR BUILDING INSPECTION SERVICES FOR FISCAL YEAR 2016-2017.

WHEREAS, the City of Miles city desires to contract with Dennis Hirsch for building inspection services as permitted by §50-60-304(3) MCA;

AND WHEREAS the terms of the contract attached hereto as Exhibit "A" and made a part hereof are acceptable to the City of Miles City;

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

1. The Building Inspection/Code Services Contract between the City of Miles City, Montana and Dennis Hirsch, attached hereto as Exhibit "A", and made a part hereof, is hereby renewed, approved and adopted by this Council for a period from July 1, 2016 through June 30, 2017.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Building Inspection/Code Services Contract on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Building Inspection/Code Services Contract and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 24th DAY OF MAY, 2016.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

EXHIBIT A

**CITY OF MILES CITY BUILDING
INSPECTION/CODE ENFORCEMENT SERVICES
CONTRACT**

This agreement entered into on this, 24th day of May, 2016, and effective as of July 1, 2016, between the **CITY OF MILES CITY**, a municipal corporation of the State of Montana, hereby called the City, and **DENNIS HIRSCH** of Route 2, Box 3135, City of Miles City, County of Custer, State of Montana, herein called Inspector.

**SECTION ONE Contract for
Inspection Services**

Pursuant to §50-60-304(3) MCA, City hereby contracts with Inspector for the performance of enforcement of its building codes, including the review and granting of building permits, building permit inspections, and enforcement of all rules and regulations for the construction, alteration, removal, demolition, and equipment used in the construction, location, and maintenance of buildings within the City of Miles city as prescribed by the Uniform Building Code, and other similar codes, including zoning ordinances, adopted by reference in Sections 5,15, 20 and 24 of the Miles City Code of Ordinances.

**SECTION TWO
Compensation**

City shall pay Inspector for services rendered hereunder according to the following schedule:

- a) For all projects, in which a fee is collected, the Inspector shall receive sixty percent (60%) of the gross amount of the fee. For purposes of this subsection, "projects, in which a fee is collected" includes all activities incidental to applying for, determining, receiving, and securing a building permit, and specifically includes inspections, attendance at all board of appeals hearings, court proceedings, or any other meetings, pertaining to the ultimate issuance of a building permit. If a building permit is not ultimately issued, then such time is compensated under subsection (b) below.
- b) For all other projects the sum of \$18.00 per hour for work outside the scope of building permit issuance and inspections. Other projects include services required for acting as the code enforcement officer for the City of Miles City. In addition, when the Inspector is requested to act as code enforcement officer, he shall be reimbursed mileage at the rate provided for under §2-18-503 and 504 MCA. Inspector shall provide his own vehicle for travel and performance of his services hereunder.
- c) Inspector will make arrangements with the City to review all projects by no later than Wednesday of each week and agrees to accomplish the undertaking and completion of those projects within a reasonable time frame after receipt. In the event the Inspector is not available by Wednesday of each week, alternative arrangements for review of

EXHIBIT A

projects may be made through mutual agreement of the parties.

SECTION THREE
Non-Assignability; Personal
Performance

Both parties recognize that this contract is one for personal services and neither it, nor the duties of Inspector hereunder, may be transferred, assigned, delegated or subcontracted by Inspector without the prior written consent of the City. All services hereunder shall be personally performed by Inspector and not by any employee or agent of inspector.

SECTION FOUR Monthly
Reports and Claims

Inspector will submit a written report concerning the status of building permits and other work projects, together with his monthly claim for services, prior to the first regular meeting of the City Council in each month.

For each construction of a new residential property, Inspector will fully complete and sign the Residential Construction Inspection check list, attached hereto as Exhibit "A" and made a part hereof. For each residential property remodel project, Inspector will complete and sign the Residential Construction Inspection check list (Exhibit "A") for all applicable components of the remodel. For each construction of a new commercial property, Inspector will fully complete and sign the Commercial Construction Field Inspection check list, attached hereto as Exhibit "B" and made a part hereof. For each commercial property remodel project, Inspector will complete and sign the Commercial Construction Field Inspection check list (Exhibit "B") for all applicable components of the remodel. A copy of each signed Residential Construction Inspection check List or Commercial Construction Field Inspection check list completed by the Inspector shall be delivered by the Inspector to the City's Director of Public Works, its Mayor, and to the owner of the project inspected.

SECTION FIVE
Independent
Contractor

For purpose of Montana Worker's Compensation Law, and all other purposes, it is understood that the Inspector is an independent contractor and is not the employee or agent of the city. Inspector shall not hold himself out as, nor represent himself to be, an employee or agent of the City.

EXHIBIT A

As a condition precedent to any obligations of City under this Contract, Inspector shall obtain and file with the City an independent contractor certification from the Montana Department of Labor and Industry, in compliance with §39-71-417.

Inspector will perform services hereunder in compliance with all applicable Montana laws and regulations, but inspector will determine when and where to perform the work, the methods for performance of the work, the tools and equipment to use, and the order and sequence of work.

Inspector will provide his own tools, equipment, facilities and materials, and other costs of doing business for the performance of the work. City, at City's expense, will provide Inspector with building permit forms satisfactory to the City.

Inspector will pay his own Social Security and Medicare Taxes and all other necessary and reasonable expenses involved with the operation of his business. In the event the amount earned in a calendar year exceeds Six Hundred Dollars (\$600), the City will issue an IRS Form 1099. Inspector will provide the City Clerk with a completed and signed Form W-9 at the inception of this Contract.

SECTION SIX **Qualifications**

Inspector represents and warrants that he has sufficient qualifications and all required licenses and certifications, if any, to legally serve in the capacity as a building inspector for the City under Title 50, Chapter 60, Part 3, MCA. The City will purchase and make available to inspector all code books and instructional materials required to perform the services hereunder Inspector shall pay all membership dues needed to maintain his certification by the international Conference of Building Officials.

SECTION **SEVEN Duties**

In addition to services as Building Inspector, the Inspector will provide additional services as a code enforcement officer as set forth under the Miles City Code of Ordinances, other than under Chapter 15, Nuisances. The contractor represents and warrants that he has reviewed Chapters 5, 20 and 24 of the Code of Ordinances of the City of Miles City and he is able and qualified to serve in that capacity. Compensation for the position as code enforcement officer is set forth in Section Two, subsection (b) of this agreement.

SECTION EIGHT **Termination and Renewal**

EXHIBIT A

This agreement shall remain in effect from its effective date until June 30, 2017 and may be renewed under the same terms and conditions for additional consecutive one-year terms through June 30th of succeeding years upon mutual agreement of the parties. Provided, however, the Mayor of the City may terminate this contract, with advice and consent of the City Council upon thirty (30) days advance written notice to Inspector. In the cases of misconduct, malfeasance, or non-performance by the Inspector, this contract may be terminated by City, immediately, without prior notice.

SECTION NINE

Nondiscrimination; Compliance with Governmental Code of Fair Practices.

Inspector shall comply fully with the Montana Governmental Code of Fair Practices (Title 49, Chapter 3 MCA) and, in the performance of this contract, all hirings by Inspector shall be on the basis of merit and qualifications and there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

SECTION TEN

Insurance and indemnity

At all times during the terms of this Contract, Inspector shall maintain a policy or policies of insurance, insuring Inspector against general liability and errors or omissions, on an occurrence basis, in a sum of not less than Seven Hundred Fifty thousand Dollars (\$750,000.00) per claim and in aggregate, with the City of Miles City named in each policy of insurance as an additional insured. Each policy of insurance shall provide that it is primary coverage over any insurance coverage maintained by the City of Miles City. At the commencement of this contract, and upon reasonable request of the City thereafter, Inspector shall provide to the City Clerk conforming certificates of insurance, including any endorsements necessary to include the City as a named insured under such policy of insurance. Each such certificate shall provide that the insurer will provide to the City at least ten (10) days prior notice before terminating, non-renewing, or materially altering the provisions, coverage or limits of liability of such policy of insurance.

Inspector shall assume, indemnify, defend and hold the City harmless from any and all claims and damages arising out of Inspector's performance of services hereunder.

SECTION ELEVEN

Completeness of Agreement

EXHIBIT A

This document contains all the terms and conditions of this agreement and any alteration or variations of the terms of this agreement shall be Void unless made in writing and signed by all the parties. There are no other understandings, representations or agreements, written or verbal, not incorporated herein.

SECTION TWELVE
Effective Date; Ratification by City
Council

This agreement shall become effective upon its signature by Inspector, Inspector's compliance with all conditions precedent hereunder, and ratification of this agreement by the City Council of the City of Miles City.

John Hollowell
Mayor of Miles City
Date:

Dennis Hirsch, Inspector
Date:

ATTEST

Lorrie Pearce
City Clerk

RESOLUTION NO. 3923

A RESOLUTION ADOPTING A CITY OF MILES CITY INSUFFICIENT FUNDS POLICY, AND SETTING A PUBLIC HEARING THEREON.

WHEREAS, the City of Miles City finds it to be in the best interest of its operations and citizens to allow citizens to make payment to the City by checks and ACH payment, and requires an updated police regarding the handling of insufficient funds payments to the City;

AND WHEREAS, the City is required to hold a public hearing prior to implementing a policy establishing fees, such as the administrative fee called for in the proposed policy;

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

1. The City of Miles City Insufficient Funds Policy, attached hereto as Exhibit "A," is hereby approved and adopted by the City Council.

BE IT FURTHER RESOLVED that a public hearing shall be held on said policy on the 14th day of June, 2016, 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, pursuant to §7-1-4128 MCA, 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 24th day of May, 2016.

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 14th day of June, 2016.

JOHN HOLLOWELL, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Exhibit A

 CITY OF MILES CITY POLICY & PROCEDURES	Effective Date:	June 14, 2016
	Last Revised:	
Insufficient Funds Policy		
RESOLUTION # 3923		

POLICY STATEMENT: This policy is to help guide City staff and the general public regarding the handling of insufficient funds payments, including but not limited to checks, electronic payments, and automated clearing house (ACH) transactions.

PROCEDURE: The following rules and procedures shall be used by staff when dealing with returned payments on all utility accounts, service connection fees, and any other payment tendered to the City of Miles City.

1. Upon receiving notice from the City of Miles City's financial institution that payment cannot be processed as a result of insufficient funds, the following procedure shall be followed:

- a. The City will make reasonable effort to provide 48 hours notice of the insufficient funds payment to the customer. Said notice may include a phone call, a notice hung on the customer's door, or other reasonable means. Such notice, or attempted notice, is a courtesy to the Customer, and shall not be required by the City.
- b. If timely payment is not made to the City of Miles City's financial institution by the Customer, the City Treasurer will buy back the check from the financial institution. The Customer will then be charged a \$30.00 Administrative fee, which will be invoiced to the customer by the City Clerk. The insufficient funds payment will be treated the same as nonpayment, and the City will follow appropriate policies for termination of services, collection of debt, or other applicable policies related to such nonpayment.
- c. If a Customer has had previous instances of issuing insufficient funds payments to the City, the City reserves the right to contact the Customer's financial institution to verify that funds are available prior to accepting or processing any check, electronic payment, or ACH transaction.
- d. If a Customer has three insufficient funds payments tendered to the City within a one year period, regardless of whether payment is made prior to an

administrative fee being assessed, the Customer will be notified that the only acceptable means of payment to the City will be by cash, cashier's check, money order, or credit card. After a period of one year with no defaults on City accounts, this restriction shall be lifted. Any attempt during said period of restricted payment by the Customer to tender payment to the City by any means other than cash, cashier's check, money order, or credit card, shall be refused by the City and returned to the Customer, and shall be treated as nonpayment.

RESOLUTION NO. 3924

A RESOLUTION PROVIDING FOR PROCEDURES TO ASSURE PUBLIC PARTICIPATION IN GOVERNMENTAL DECISIONS OF THE CITY OF MILES CITY GOVERNMENT.

WHEREAS, Article II, Section 8 of the 1972 Montana Constitution provides for a right of public participation in governmental decisions prior to their final adoption;

AND WHEREAS, §2-3-103 MCA mandates each local government to establish procedures for permitting and encouraging the public to participate in governmental decisions;

AND WHEREAS, the City of Miles City desires to establish rules and procedures providing for public participation prior to final action on decisions of the City of Miles City government that are of significant interest to the public;

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

1. **Meetings Covered by Rules and Procedures.** These rules and procedures shall apply to, but are not limited to, all regular and special City Council meetings, Committee of the Whole meetings, City Council Committee meetings, and meetings of the Miles City Zoning Commission, Miles City Board of Appeals, Library Board, Historical Preservation Commission, Miles City Housing Authority, Planning, and Downtown Urban Renewal Agency Board.

In order to meet the intent of this resolution, no items other than emergent (which may include claims) will be carried forth to a City Council meeting if such meetings occur the Thursday, Friday or Monday prior to a regularly scheduled City Council meeting; it will be carried to the next regularly scheduled City Council meeting.

2. **Agendas.** The presiding officer, or designee, for all covered meetings, shall cause to be prepared and distributed, prior to the meeting

3. **Posting and Distribution of Agenda.** At least 48 hours, excluding weekends, prior to the date and time of the meeting the City Clerk shall:

- a. post the agenda on the City Hall bulletin board;
- b. post the agenda to the City's internet website;
- c. transmit by facsimile or otherwise deliver a copy of the agenda to the City Library for posting;
- d. transmit by facsimile or otherwise deliver a copy of the agenda to each broadcast media that maintains a transmitting studio in Custer County, Montana and each newspaper of general circulation in Custer County, Montana that publishes daily editions at least five (5) days per week; and
- e. maintain a written record of the time of posting and transmittal of each agenda accompanied by a copy of the agenda posted.

4. **Distribution of Agenda to Public.** The City Clerk shall provide, upon request of a member of the public, a copy of the posted agenda without charge.

5. **Council Packets.** Persons responsible for providing supporting documents for agenda topics for the regularly scheduled City Council meeting agendas will ensure that the City Clerk is provided the documentation in order for the City Clerk to prepare and distribute "Council Packets", including the agenda and all supporting documents, to the Mayor, City Council members, and the media (as described in Subsection 3(d) above) no later than 1:00 p.m. on the Friday immediately preceding the regularly scheduled City Council meeting.

6. **Non-Agenda Items.** The presiding officer at each covered meeting will ensure that action on any topic presented during a meeting which was not included as a topic on the agenda for such meeting, and which is of significant interest to the public, is deferred until the next scheduled meeting and is included in the agenda for such next meeting.

7. **Emergent Situations.** In the event that emergent or other extenuating circumstances, as determined by the presiding officer, do not allow sufficient time for the 48 hour minimum notice provided above, the following procedure shall apply:

- a. The City Clerk shall immediately post the agenda on the City Hall bulletin board;
- b. The City Clerk shall immediately post the agenda to the City's Internet website;
- c. The City Clerk shall immediately transmit by facsimile or otherwise deliver a copy of the agenda to the City Library for posting;
- d. The City Clerk shall immediately transmit by facsimile or otherwise deliver a copy of the agenda to each broadcast media that maintains a transmitting study in Custer County, Montana and advise each broadcast station of its obligation under Section 2-3-106 through 107 MCA, including their obligation to retain a copy of each notice broadcast.
- e. The City Clerk shall maintain a written record of the time of posting and transmittal of each agenda under this section, accompanied by a copy of the agenda posted and shall obtain from each broadcast station who broadcast the agenda an affidavit of publication as provided by Section 2-3-107 MCA.

8. **Opportunity of Public to Submit Views.** Prior to final action on any issue of significant interest to the public, the presiding officer, at each meeting, shall afford members of the public a reasonable opportunity to submit data, views, or arguments, orally, or in written form.

The presiding officer is permitted to provide reasonable limitations on the timing and duration of such presentations. All public comments shall be addressed to the presiding officer and committee or board members rather than to other presenters or the audience.

9. **Exceptions.** The above provisions do not apply to:

- a. a governmental decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;
- b. a governmental decision that must be made to maintain or protect the interests of the government, including, but not limited to, the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or
- c. a governmental decision involving no more than a ministerial act.

10. **Open Meetings.** All meetings, as defined by Section 2-3-202 MCA, shall be open to the public. Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about who the discussion pertains, and, in that event, the meeting must be open.

11. **Exceptions to Open Meeting Requirement.** A meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency. A meeting may not be closed to discuss strategy to be followed in litigation where the only parties are public bodies or associations described in Section 2-3-203(1) or (2) MCA.

12. **Recording of Meetings.** Accredited press representatives may not be excluded from any open meeting and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding Officer may assure that such activities do not interfere with the conduct of the meeting.

13. **Minutes of Meetings; Public Inspection of Minutes.** Appropriate minutes of all meetings required to be opened hereunder shall be kept and available for inspection by the public. Such minutes shall include, at a minimum:

- a. the date, time and place of the meeting;
- b. a list of the individual members of the committee or board in attendance;
- c. the substance of all matters proposed, discussed, or decided; and
- d. at the request of any members of the committee or board, a record by individual members of any votes taken.

14. **Conformance with State Statute.** Should any state statute, rule or regulation require notice of greater duration or posting, publication or mailing, other than is provided for herein, such statute, rule or regulation shall take precedence over the rules and procedures provided for herein.

15. **Effective Date.** This resolution, and the rules and procedures provided for herein, shall become effective upon its final passage.

**SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 24th
DAY OF MAY, 2016.**

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 3925

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 2016-2017.

WHEREAS, pursuant to Section 60-2-204 MCA the City of Miles City has negotiated an agreement with the Montana Department of Transportation for the City of Miles City to provide street sweeping and flushing services upon specific sections of state highway within or abutting the City of Miles City, a copy of which is attached hereto as Exhibit "A";

AND WHEREAS, the City Council of the City of Miles City finds that it is in the best interest of the City of Miles City to enter into such agreement with the Montana Department of Transportation;

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

- I. The Agreement for the provision of street sweeping and flushing service between the City of Miles City, Montana and the Montana Department of Transportation, 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 Agreement on behalf of the City of Miles City and to bind the City of Miles City thereto.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement 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 24th DAY OF MAY, 2016.

ATTEST: Lorrie Pearce, City Clerk

John Hollowell, Mayor



Miles City Area Office

P.O. Box 460
217 North Fourth Street
Miles City, Montana 59301

Exhibit "A" Street Sweeping Agreement

This agreement is between the City of Miles City and the Montana Department of Transportation (MDT) for defining street sweeping and flushing responsibilities of the City and MDT in accordance with state law which allows MDT to enter into an agreement with local governments to provide maintenance of State routes with provision for full reimbursement. The term of this agreement shall be for one year beginning July 1, 2016.

LIMITS OF AGREEMENT: The listing of streets and intersections identified under ITEMS COVERED is a full and complete listing of areas covered by this agreement. Unless otherwise defined, that list includes all intersections along the route and intersecting streets for a distance of 15' or to the end of the curb radius return, whichever is greater, and shall include all of the street right of way. During the term of this Agreement, additional areas may be added by written Agreement of the parties.

SCOPE OF AGREEMENT: This agreement covers all activities ordinarily associated with street sweeping and flushing activities.

ITEMS COVERED: Payment to the City for this Agreement shall be for the following:

STREET CLEANING ACTIVITIES:

The City will flush the streets identified below once per week and sweep and clean the streets identified below once every other week, unless otherwise noted. This will begin July 1, 2016 through October 15, 2016 and begin again on April 15, 2017 through June 30, 2017, approximately six months.

- a. Main Street beginning at the westernmost end of the Tongue River bridges proceeding east to the intersection of Main Street and Haynes Avenue.
 - b. North Seventh Street beginning 15' south of the intersection of North Seventh Street and Main Street and proceeding North to the old Milwaukee Railroad tracks.
 - c. Haynes Avenue beginning at the intersection with East Main Street and proceeding south to the south side of the entrance to the Comfort Inn, south of the Broadus Interchange. *The City of Miles City will sweep and flush every 3rd week of the month.
 - d. The Montana Department of Transportation will assist in sweeping activities when excessive sand or leaves have been deposited on the designated state routes.
- If additional sweeping or flushing is requested by the Montana Department of Transportation, and approved by the Maintenance Chief, the agreed rate will be \$55.00 per hour for sweeping and \$32.00 per hour for flushing.

MONTANA PRODUCT PREFERENCE: The City will provide Montana-made goods where those goods are comparable in price and quality to those required by this Agreement pursuant to Section 18-1-112(1), MCA.

COSTS / PAYMENT: The costs associated with this Agreement shall be \$1415.00 per month for a period of six months beginning July 1, 2016 and ending June 30, 2017. This will be a lump sum cost for the activity described, and shall be paid to the City on an annual basis.

The City shall submit billing and a narrative summary of the work done in the period of this Agreement on or before June 10, 2017. MDT agrees to make payment within 20 calendar days of receipt of the billing.

RECORDS: The labor, equipment and materials used on the streets covered in this Agreement shall be assigned a special budget category by the City. No record keeping shall be attempted to break contractual costs against individual streets that are covered in this Agreement. All City records concerning this project are open for review and/or audit by representatives of MDT or the Legislative Auditor at any reasonable time.

TERMINATION: This Agreement may be terminated upon thirty days written notice, delivered by certified mail, return receipt requested, by either party. Upon service of such notice, MDT is liable only for actual work completed as of the date of the notice.

HOLD HARMLESS / INDEMNIFICATION: MDT agrees to hold harmless and/or indemnify the City for damages resulting from the construction or design done by MDT of the streets and areas covered by this Agreement. This holds harmless / indemnification clause shall not cover damages, which are caused whether directly or indirectly by the work done by the City pursuant to this Agreement. The City agrees to defend, protect, indemnify and save harmless MDT and the State against and from all claims, liabilities, demands, causes of action, judgments, and losses claimed to be due to the City's performance of the activities of this Agreement.

CIVIL RIGHTS COMPLIANCE: The City must comply with all applicable Federal and State laws including, but not limited to, prevailing wage laws and those laws referred to in the two-page NOTICE attached hereto, which is made a part of this Agreement by its reference.

LAW AND VENUE: The laws of Montana govern This Agreement. The parties agree that, in the event of any dispute concerning this Agreement, any litigation will be adjudicated utilizing the appropriate, established legal/judicial systems.

ENTIRE AGREEMENT: This document, with the attached Notice, contains the entire Agreement between the parties, and no statements, promises or inducements made by either party or its agents which in any way modifies, alters or changes the contents of the document is binding. Any subsequent modification must be done by a separate written document.

IN WITNESS THEREOF, the parties hereto caused this Agreement to be executed in duplicate by their duly authorized officers.

**STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION**

By: _____ Date _____
District Administrator

CITY OF MILES CITY

By: _____ Date _____

Title: _____

Attest: _____

Enclosures

Notice Approved for Legal Content per the attached signature page of the original Agreement.

RESOLUTION NO. 3926

A RESOLUTION ESTABLISHING PAY RATE FOR 283-A SEASONAL EMPLOYEES.

WHEREAS, the City of Miles City (“City”) and the Montana State Council No. 9 Of The American Federation Of State, County And Municipal Employees, AFL-CIO Local No. 283-A union (“Union”) have entered into a Collective Bargaining Agreement dated October 5, 2011 (“CBA”);

AND WHEREAS, the City and the Union agree that seasonal employees in the Union should be compensated at the rate of \$11.00/hour;

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

1. The CBA between the City and the Union shall be amended to reflect that seasonal employees in Union shall be compensated at the rate of \$11.00/hour;
2. This Resolution shall not be effective unless and until the same is approved by the Union.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 24th DAY OF MAY, 2016.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

The foregoing resolution establishing a pay rate of \$11.00/hour for seasonal employees is hereby APPROVED.

AFL-CIO

Local 283-A

By: _____
Name/Title:

By: _____
Name/Title:

RESOLUTION NO. 3927

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MILES CITY AND PROCESS WASTEWATER TECHNOLOGIES FOR PURCHASE OF A DEWATERING EQUIPMENT PACKAGE.

WHEREAS, the City of Miles City has solicited bids for the provision of a dewatering equipment program as part of the Miles City Wastewater Improvements project, Phase II;

AND WHEREAS said bid was awarded to the only bidder for the project, being Process Wastewater Technologies;

AND WHEREAS, Process Wastewater Technologies has indicated that they are unable to meet the bonding requirements of the agreement which was part of the bid package, and the City finds it in the best interest of the parties to revise certain terms of said agreement;

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

1. The Agreement for the purchase of dewatering equipment, 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 Agreement 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 24th DAY OF MAY, 2016.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

EXHIBIT A

AGREEMENT

THIS AGREEMENT is by and between City of Miles City (“Buyer”) and Process Wastewater Technologies (“Seller”).

Buyer and Seller hereby agree as follows:

ARTICLE 1 – GOODS AND SPECIAL SERVICES

1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Goods and Special Services may be the whole or only a part, is identified as follows: Miles City Wastewater Improvements Phase II-2016 Equipment Procurement, Schedule Two: Dewatering Equipment Package.

ARTICLE 3 – ENGINEER

3.01 The Contract Documents for the Goods and Special Services have been prepared by Robert Peccia and Associates ("Engineer"), which is to act as Buyer's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with Seller's furnishing of Goods and Special Services.

ARTICLE 4 – POINT OF DESTINATION

4.01 The Point of Destination is designated as: *Miles City Wastewater Treatment Facility unless Buyer notifies Seller otherwise. In any case delivery will be within the confines of Miles City, MT.*

ARTICLE 5 – CONTRACT TIMES

5.01 *Time of the Essence*

A. All time limits for Milestones, if any, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services are modified from those shown in the Contract Documents as stated in this Article. The timeframes herein are the essence of the Contract. All equipment provided under this Contract shall be delivered to the City of Miles City (Point of Destination as listed above) by **October 15, 2016**.

5.02 *Milestones*

- A. *Date for Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Contract Documents to Buyer for Engineer's review and approval within 21 days of the issuance of the Notice to Proceed. It is the intent of the parties that (1) Engineer conduct such review and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within 14 days of Seller's submittal of such Shop Drawings and Samples; and (2) resubmittals be limited whenever possible. If more than one resubmittal is necessary for reasons not the fault and beyond the control of Seller, then Seller shall be entitled to seek appropriate relief under Paragraph 7.02.B of the General Conditions.
- B. *Date for Delivery of Goods:* The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery by **October 15, 2016**.

5.03 *Buyer's Final Inspection*

- A. *Days to Achieve Final Inspection:* Buyer shall make a preliminary inspection of the Goods pursuant to Paragraph 8.01.C of the General Conditions within 10 days after Buyer's acknowledgement of receipt of delivery of the Goods and Seller's completion of furnishing Special Services, if any.

5.04 *Liquidated Damages*

- A. Buyer and Seller recognize that Buyer will suffer financial loss if the Goods are not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified in Paragraph 5.02 above, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the requirements of Paragraph 5.02. Further, they recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Accordingly, instead of requiring such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$ 500.00 for each day that expires after the time specified in Paragraph 5.02.B for delivery of acceptable Goods.

ARTICLE 6 – CONTRACT PRICE

- 6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as follows:

- A. A Lump Sum of \$ 466,500.00. (To paid out in accordance with Article 7 herein).

ARTICLE 7 – PAYMENT PROCEDURES

7.01 *Submittal and Processing of Payment*

- A. Seller shall submit Applications for Payment in accordance with Section 8 of the Special Provisions. Applications for Payment will be processed by Engineer as provided in the Special Provisions.

7.02 *Progress Payments*

- A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment. Application for Payment shall be modified from those included in the original Contract Documents. These progress payments shall be submitted as follows:
 - B. There shall be three (3) progress payments based upon 1) After insurance certificates have been received and submittals have been approved; 2) Following Startup, Testing, and Training; and 3) At the end of the Warranty Period. A payment of up to 10% of the contract price will be allowed once Insurance Certificates and Submittals have been received and approved. A payment of up to 87% of contract price will be allowed once manufacturer's startup, testing and operator training has occurred, and corrective work that may be warranted has been completed. The second Application for Payment may only be submitted after the Engineer has signed the Certificate of Substantial Completion and all punch list items have been addressed as described in Supplementary 18. A Final Payment less any liquidated damages and reimbursable engineering expenses will be allowed once the Warranty Period has expired and any corrective work has been completed.

ARTICLE 8 – INTEREST

- 8.01 All monies not paid when due as provided in Article 10 of the General Conditions shall bear interest at the statutory rate.

ARTICLE 9 – SELLER'S REPRESENTATIONS

- 9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:
 - A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents, as applicable to Seller's obligations identified in Article 1 above.
 - B. If required by the Bidding Documents to visit the Point of Destination and site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any local condition may affect cost, progress, or the furnishing of the Goods and Special

Services, Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, and the furnishing of the Goods and Special Services.

- C. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and the furnishing of the Goods and Special Services.
- D. Seller has carefully studied, considered, and correlated the information known to Seller; information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided; information and observations obtained from Seller's visits, if any, to the Point of Destination and site where the Goods are to be installed or Services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Point of Destination and the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Contract Documents.
- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 8, inclusive);
 - 2. Performance Bond (pages 1 to 4, inclusive);
 - 3. Payment Bond (pages 1 to 4, inclusive);
 - 4. Other bonds
 - a. _____ (pages ___ to ___, inclusive);
 - b. _____ (pages ___ to ___, inclusive);
 - c. _____ (pages ___ to ___, inclusive);
 - 5. General Conditions (pages 1 to 31, inclusive);

6. Supplementary Conditions (pages 1 to 14, inclusive);
7. Specifications as listed in table of contents of the Project Manual;
8. Drawings, consisting of a cover sheet and sheets numbered 1 through 5, inclusive, with each sheet bearing the following general title: Wastewater Improvements Phase II
9. Addenda (Numbers 1 to 1, inclusive);
10. Exhibits to this Agreement (enumerated as follows): Not Applicable
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Change Order(s);
 - c. Work Change Directive(s).
- B. The documents listed in Paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 10.
- D. The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

11.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 *Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.05 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.05:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Buyer, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

11.06 *Limitations*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Contract. Upon assignment the terms of this Paragraph 11.06.A shall be binding upon the assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against

the other based on any of the following: (a) contribution or indemnification, (b) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.

- B. Upon assignment the terms of this Paragraph 11.06.B shall be binding upon both the assignor and assignee with respect to Seller's liability, and upon Seller with respect to both assignor's and assignee's liabilities. The terms of this mutual limitation do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification with respect to third-party claims, losses, and damages; (b) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.

Ben Lewis Ambient H2O
Alex Davey, Process Water Technologies
525 St. John's Ave, STE D
Billings, Montana 59102

Alex:

This letter is being written under very unusual circumstances. Your company bid a project which included specific terms and requirements. Following submission of your bid, you have been unwilling or unable to meet these requirements. Specifically, you have not provided a bond or letter of credit in the amount of the Contract. Bonding protects the City and we are unwilling to take much risk in this regard.

As such, we are transmitting to you (2) copies of a modified Agreement to provide the equipment and services outlined in the Contract Documents. The terms included in this Agreement represent the farthest reaches that our City is willing to go to accommodate you. Please note that your failure to provide what your bid stated you would provide has put our project schedule in jeopardy under the terms of the Contract Documents in regard to schedule. Therefore we are requiring that all equipment be delivered to the project site by October 15, 2016.

The fact that you are unable or unwilling to provide bonding for this project is very concerning and constitutes special circumstances. If you are agreeable to the terms of the Agreement as modified in the enclosed, please sign and return to me along with financial statements for PW Tech for the past two years. If the City feels like the financial records you provide are acceptable, the City will consider a motion to accept these modified Agreements.

Sincerely
CITY OF MILES CITY

Allen Kelm
Public Utilities Director