



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*December 26, 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 | 12/12/2017 |
| B. Finance Committee Meeting | 12/07/2017 |
| C. Human Resource Committee Meeting | 12/07/2017 |
| D. Finance Committee Meeting | 12/19/2017 |

2. SCHEDULE MEETINGS

3. REQUEST OF CITIZENS & PUBLIC COMMENT

4. APPOINTMENTS

Oath of Office for Councilpersons Ken Gardner, Rick Huber, Brant Kassner and City Judge Ken Stein
Board of Appeals- Rock Wankel and Noah Mahan
Zoning Commission- Nancy Mitchell and LeRoy Meidinger
Planning Board- Michelle Simpson

5. PROCLAMATIONS

6. STAFF REPORTS

DNRC- Flood Variance Training scheduled for 1/23/18 at 5:30pm in Conference Room

7. CITY COUNCIL COMMENTS

8. MAYOR COMMENTS

Thank you letter from Troop 222, Boy Scouts of America

9. COMMITTEE RECOMMENDATIONS

10. BID OPENINGS

11. BID AWARDS

12. PUBLIC HEARINGS

13. UNFINISHED BUSINESS

14. NEW BUSINESS

- A. **RESOLUTION NO. 4118- A Resolution Approving the Extension of the Lease Agreement Between the City of Miles City and Linda Larsen for the lease of Certain Industrial Site Property**

- B. **RESOLUTION NO. 4119- A Resolution Authorizing the Assignment of a Certain Lease Agreement Between the City of Miles City and Linda Larsen to Center AG Supply, LLC for the Lease of Certain Industrial Site Property**

- C. **RESOLUTION NO: 4121- A Resolution Approving A Task Order to Kadrmas, Lee & Jackson, Inc., For Services related to the Darling Addition Street and utilities Rehabilitation Project**

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

Minutes

REGULAR COUNCIL MEETING December 12, 2017
7:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, December 12, 2017, 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 Brant Kassner, Ken Gardner, John Uden, Rick Huber, Jeff Erlenbusch, Kathy Wilcox and Susanne Galbraith. Excused was Dwayne Andrews

Also present were City Attorney Dan Rice, Police Chief Doug Colombik, Fire Chief Branden Stevens, Public Utilities Director Allen Kelm, Water/Wastewater Operator Tom Speelmon, EMS Officer Sarah Lewin, Acting Battalion Chief Mike Miller, Captain Edward Kanduch, Firefighters Taylor Lee, Jacob Richards, and Tanner Harbaugh, Probationary Firefighters Brad Davis, Jason Berry, and Ian DeMoney and Deputy City Clerk/Minute Recorder Linda Wilkins.

PLEDGE OF ALLEGIANCE

Mayor Hollowell led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 11/28/2017

***Councilperson Uden moved to approve the minutes of the Regular Council Meeting of November 28, 2017, subject to any changes, and seconded by Councilperson Huber. The motion passed by unanimous consent, 7-0.*

SCHEDULE MEETINGS

None

REQUEST OF CITIZENS & PUBLIC COMMENT

Kevin Oster, 11 Palmer presented to the City a plaque for their assistance to the Sweet Grass District of Montana, Quad District Spring Camporee at Spotted Eagle May 5-7, 2017.

APPOINTMENTS

Airport Commission: Phillip Emmons and Doug Phair

***Councilperson Uden moved to approve the appointment of Phillip Emmons and Doug Phair to the Airport Commission, and seconded by Councilperson Huber. On roll call vote, the motion passed, 7-0.*

Urban Renewal Board of Commissioner- Jeff Erlenbusch

***Councilperson Galbraith moved to approve the appointment of Jeff Erlenbusch to the Urban Renewal Board of Commissioners, and seconded by Councilperson Gardner. On roll call vote, the motion passed, 7-0.*

Mayor Hollowell administered the oath of office.

City Council: Dwayne Andrews

Fire Chief - Branden Stevens

***Councilperson Galbraith moved to approve the appointment of Branden Stevens as Fire Chief, and seconded by Councilperson Erlenbusch. On roll call vote, the motion passed, 7-0.*

Mayor Hollowell administered the oath of office.

PROCLAMATIONS

None

STAFF REPORTS

Acting Fire Chief- Firefighter Taylor Lee completion of Paramedic Training and Firefighters Jason Berry, Bradley Davis and Ian DeMoney completed academy

Chief Stevens presented to the Council year-to-date statistics for the Fire Department. He turned the floor over to Acting Battalion Chief Miller who introduced Probationary Firefighters Berry, Davis and DeMoney to the Council and commended them for completion of the Fire Academy. Chief Stevens commented there would be much more training for these individuals and welcomed them to the Miles City Fire Department. He turned the floor over to EMS Officer Lewin who congratulated and commended Firefighter Taylor Lee for completing the Paramedic Course at Montana State University – Billings.

CITY COUNCIL COMMENTS

None

MAYOR COMMENTS

The County Commissioners have requested a meeting to discuss the joint lease of the Airport. He asked for volunteers to meet with the Commissioners. Councilpersons Kassner, Galbraith and Gardner volunteered. They will coordinate a time with the Commissioners.

STANDING COMMITTEE RECOMMENDATIONS

None

BID OPENINGS

None

BID AWARDS

Lagoon Lease

***Councilperson Galbraith moved to accept Levi Gordons bid, which was the highest bid, as recommended by the Finance Committee, and seconded by Councilperson Wilcox. On roll call vote, the motion passed, 7-0.*

PUBLIC HEARINGS

- A. **RESOLUTION NO. 4117: A Resolution Pursuant to §7-6-4006 of the Montana Code Annotated, Authorizing Amendment of Final Budget for FY 2017-2018 to Increase the Budgeted Amount in Water Funds # 5210-22-430530-940, 5210-23-430550-940 and 5210-80-430540-940**

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. 4117: (Second Reading) A Resolution Pursuant to §7-6-4006 of the Montana Code Annotated, Authorizing Amendment of Final Budget for FY 2017-2018 to Increase the Budgeted Amount in Water Funds # 5210-22-430530-940, 5210-23-430550-940 and 5210-80-430540-940**

***Councilperson Gardner moved to approve the Resolution, read by title only and seconded by Councilperson Wilcox. On roll call vote, the motion passed by unanimous consent, 7-0. Resolution No. 4117 passed.*

NEW BUSINESS

- A. **ORDINANCE NO. 1317 (First Reading)- An Ordinance Revising Zoning Code Sections 24-90, 24-91, and Article V (Definitions), so as to Call For Review of Conditional Use Permits by City Council**

***Councilperson Kassner moved to approve Ordinance 1317 as read by title only, and seconded by Councilperson Gardner.*

- Attorney Rice stated that this Ordinance was drafter under the

assumption that the Zoning Commission would approve the change. The Zoning Commission has recommended this Ordinance not be approved. There needs to be a change to the language on the 1st page under the 3rd whereas should be amended to show these changes were not approved by the Commission.

***Councilperson Wilcox moved to amend the Ordinance to “did not recommend”, seconded by Councilperson Kassner and passed unanimously 7-0.*

***On roll call vote, the Ordinance passed as amended 7-0.*

B. Approval on Outlaw’s request to move CABA’s Tournament to July 4th weekend

***Councilperson Galbraith moved to send approval on Outlaw’s request to move CABA’s Tournament to July 4th weekend back to the Public Works Director, seconded by Councilperson Erlenbusch.*

- Councilperson Galbraith thought this issue should be worked out with the Public Works Director.
- Mayor Hollowell stated the Director was unable to attend the first meeting so he stepped in to assist.
- Councilperson Uden stated that Legion and Little League baseball were established long before these tournaments were scheduled. He thought we should stick with historic dates.
- Councilperson Erlenbusch stated that CABA made an attempt to work with the Legion. He thought it could be worked out.
- Councilperson Wilcox thought it could be worked out.
- Councilperson Huber thought the economics were good for the City and the children. The two tournaments should complement each other so let’s make it work.

***Councilperson Galbraith amended her motion to send both sides to the Public Works Director and come up with a solution, seconded by Councilperson Wilcox.*

- Chuck Notbohm, 298 Sunset Dr. spoke as a promoter. He has tried to work with MCYBA. CABA has attempted to address the concerns of MCYBA such as fundraising, the use of Tedesco Field, and invited MCYBA to participate in the tournament. He thought at this point mediation could possibly solve the issues, but stressed the urgency of coming to a settlement.

- Blayne Watts, 2815 Tompy stated that the conflict between the two tournaments had been settled with the issuance of the 2016 Park User Permit which is in effect for five years.

***On roll call vote the amended motion passed, 7-0.*

C. Approval on City paying for Black Mountain Software for TIFD taxes

***Councilperson Galbraith moved to approve the City paying for Black Mountain Software for TIFD taxes and the County to pay for the yearly maintenance fees, and seconded by Councilperson Uden.*

- Todd Gillette, 213 N. 12th, Chairman of the Urban Renewal Board commented that the TIFD was just getting off the ground and thought the funds for the TIFD could be put to better use.
- Councilperson Galbraith commented that the General Fund would make the initial payment and arrangements would be made for TIFD to reimburse the money to the General Fund.

***Councilperson Wilcox amended the original motion to the City pay 50% and the County pay 50%, and seconded by Councilperson Kassner.*

- Councilperson Galbraith said the County had come to the City for a straw poll. The City said they would pay for the software.
- Councilperson Erlenbusch said it is not the duty of the City to collect taxes that is the responsibility of the County.

***Councilperson Kassner moved to table the approval until the next meeting to look into it a little deeper, seconded by Councilperson Wilcox. On roll call vote the motion passed, 7-0.*

D. RESOLUTION NO. 4115- A Resolution Revising City of Miles City Personnel Policies Regarding Discipline and Discharge

- Mayor Hollowell commented that when disciplinary action is taken the employee should have the opportunity to write a response to the action taken.

***Councilperson Wilcox moved to table the Resolution, seconded by Councilperson Erlenbusch. On roll call vote the motion passed by unanimous consent, 7-0.*

E. RESOLUTION NO. 4120- A Resolution Approving a Memorandum of

**Understanding With the Local No. 600 Bargaining Unit Regarding
Battalion Chief Hours of Duty and Vacation**

***Councilperson Uden 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. 4120 passed.*

F. Approval of November claims

***Councilperson Kassner moved to approve the November claims, seconded by Councilperson Wilcox. On roll call vote, the motion passed, 7-0.*

ADJOURNMENT

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

The meeting was adjourned at 8:32 p.m.

John Hollowell, Mayor

Linda Wilkins, Deputy City Clerk

Finance Committee Meeting

December 7, 2017

The Finance Committee met Thursday, December 7, 2017 at 6:00 p.m. in the City Hall Conference room. Present were Committee Chairperson Susanne Galbraith and Committee Members Kathy Wilcox and Dwayne Andrews. Committee Member Rick Huber was excused.

Also present was: Mayor John Hollowell, Planner II Dawn Colton and City Clerk/Recorder Lorrie Pearce.

Committee Chairperson Galbraith called the meeting to order.

1. Request of Citizens & Public Comment

None

2. Discussion and recommendation on payment for TFID software

*** Committee Member Galbraith recommended that \$10,000 is paid out of General Fund and Custer County pays the \$2,000 yearly maintenance fee, seconded by Committee Member Andrews. After a long conversation the motion passed 3-0*

3. Review and Recommendation on Old Lagoon Lease Bids Received

Four bids were received:

- Doug McLean- \$2,050
- Robert E. Smith- \$2,099
- Northside Auto Dismantlers LLC- \$2,548
- Levi Gordon- \$2,798

*** Committee Member Wilcox recommended that the bid from Levi Gordon for an amount of \$2,798 be accepted, seconded by Committee Member Galbraith.*

Committee Member Andrews was concerned that the area would get overgrazed and would like to add the following to the lease:

1. Turn in and turn out dates (Late spring, early summer)
2. How many animals by species will be grazed at a time

He felt that 4 horses for 5 months should be the maximum on 81 acres. Planner Colton thought she could add those items to the lease.

*** The motion passed 3-0*

4. Discussion and Recommendation on \$521.01 Water Bill for Stanley Park

*** Committee Member Andrews moved to bill the parks department for \$521.01, seconded by Committee Member Wilcox.*

The committee thought there were other parks that needs attention and would like to see them being taken care of first.

Mayor Hollowell explained that the Outlaws plan is to turn the field into a good playing field. They will have fundraisers to purchase an underground sprinklers system, which he thought should extend to the Art Center. They would also perform all the maintenance in and around the field.

The consensus of the committee was that there should be a written contract for the project.

*** The motion passed 3-0*

5. Discussion and Recommendation on reimbursing City's representative on Economic Development Board for monthly travel

*** Committee Member Galbraith moved to pay the City's Economic Development Board member an retro amount of \$255.62 which is three trips, paying the state mileage rate, and pay for the mileage in the future for this position, seconded by Committee Member Andrews. After a short discussion, the motion passed 3-0*

6. Discussion and Recommendation on Resolution No. 4118- A Resolution Approving the Extension of the Lease Agreement Between the City of Miles City and Linda Larsen for the Lease of Certain Industrial Site Property

*** Committee Member Wilcox moved to recommend to Council to approve Resolution No. 4118, seconded by Committee Member Galbraith.*

Committee Member Andrews asked why the lease was so long. He thought a lease of 2-5 years would be ample and why is the City leasing the property to Ms. Larsen and then turning around and subleasing to someone else.

Citizen Monty Lesh, 182 River Drive said he had talked to City Attorney Rice and he said that Ms. Larsen has the right to ask for an extension of the lease. If she does not renew the lease of the land, it would go out for public bid. He also thought the City should annex the area, so it could make its money on the taxes and not the lease.

Citizen Steve Morris, 1804 Sudlow said the bank would not give anyone a loan without a long term lease. It would not want to invest its money into something that would be guaranteed for only five years. There is a lot of interest in the Industrial Park area to grow and they need infrastructure. He felt without a long term lease that nothing in the area would be stable.

Citizen Jerry Singleton, 305 South 3rd Street thought the city and the lessees should work together for the best interest of both.

Committee Member Galbraith said she wanted to postpone the decision until she was

caught up with things that have been happening for the last five weeks since she has been gone.

*** Committee Member Galbraith moved to postpone the Resolution until the next meeting, seconded by Committee Member Wilcox. The motion passed 3-0*

7. Discussion and Recommendation on Resolution No. 4119- A Resolution Authorizing the Assignment of a Certain Lease Agreement Between the City of Miles City and Linda Larsen to Center AG Supply, LLC for the Lease of Certain Industrial Site Property

*** Committee Member Andrews moved to postpone the Resolution until the next meeting, seconded by Committee Member Galbraith. The motion passed 3-0*

8. **Adjournment**

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

The meeting was adjourned at 6:57 p.m.

Susanne Galbraith, Chairperson

Lorrie Pearce, City Clerk/Recorder

Human Resources Committee
December 7, 2017

The **Human Resources Committee** met Thursday, December 7, 2017, at 5:50 p.m. in the Conference Room at City Hall. Present were Committee Members Kathy Wilcox, Susanne Galbraith, and John Uden. Absent was Jeff Erlenbusch. Also present was Deputy City Clerk/HR Officer /Committee Recorder Linda Wilkins.

Committee Chairperson Kathy Wilcox called the meeting to order.

1. Public Comment
None

2. Review and Recommend: Revised Grievance Policy.

Officer Wilkins brought to the attention of the committee City Ordinance #1198 that outlines the duties of the Human Resources Committee in the process of settling grievances. The committee would like to have the duties of the committee reviewed and clarified. In the ordinance there is reference to "Phase II" of union grievances that come to the Human Resources Committee which they believe is an inconsistency. Review of this ordinance will be added to the next Human Resources Committee agenda. The committee reviewed the grievance policy as amended from the Human Resource Committee meeting of October 19, 2017.

***Committee Member Uden moved the committee approve the grievance policy as amended, seconded by Committee Member Galbraith. On roll call vote, the motion passed 3-0.*

3. Review and Recommendation – Position Description Historic Preservation/TIFD

There was discussion regarding the supervision of this position. Committee members thought that this position was largely related to Engineering and Operations as duties relate to the improvement of infrastructure. The committee want to review this issue.

*** Committee Member Uden moved to table the position description for Historic Preservation/TIFD, seconded by Committee Member Galbraith. The motion passed by unanimous consent 3-0.*

4. Adjournment

***Committee Member Galbraith moved to adjourn, seconded by Committee Member Uden. The motion passed unanimously 3-0.*

The meeting was adjourned at 5:56 p.m.

Respectfully submitted,

Chairperson Kathy Wilcox

Recorder Linda Wilkins

Finance Committee Meeting

December 19, 2017

The Finance Committee met Tuesday, December 19, 2017 at 12:00 p.m. in the City Hall Conference room. Present were Committee Chairperson Susanne Galbraith and Committee Members Kathy Wilcox and Dwayne Andrews. Absent was Committee Member Rick Huber

Also present were: Public Utilities Director Allen Kelm, City Attorney Dan Rice, Planner II Dawn Colton, Mayor John Hollowell and City Clerk/Recorder Lorrie Pearce.

Committee Chairperson Galbraith called the meeting to order.

1. **Request of Citizens-**
None

2. **Discussion and Recommendation on Payment for TIFD Software**

*** Committee Member Wilcox moved to recommend to Council to pay for the TIFD software, seconded by Committee Member Andrews.*

Urban Renewal Board chairman Todd Gillette explained that any unapproved money that is spent out of the TIFD approved budget would need to be approved by the TIFD board and then passed down to Council for its approval. He said the fund did not have enough money in it to pay the \$10,000 and added if the board was involved in the process of buying the software; the board would have never supported it. Committee Member Wilcox asked how much the fund could afford and Mr. Gillette answered \$500 and thought the City should discuss the issue with the County. Committee Member Andrews said one reason the TIFD was approved was because it was promised that General Fund or the City would not have to pay for anything, and thought the District needs to pay for it. Committee Member Wilcox thought the city should pay half and no more. It should be 50/50 with the County and County pays the yearly maintenance fee.

*** Committee Member Wilcox moved to amend her main motion to say that the County and City pays 50/50 of the \$10,000 and TIFD pays \$1,000 a year for five years to the City beginning in fiscal year 18/19, seconded by Committee Member Andrews.*

*** The main and amended motion passed 3-0*

3. **Review and Recommendation on Old Lagoon Lease Agreement**

*** Committee Member Galbraith moved to recommend to Council the approval of the lease, subject to any changes, seconded by Committee Member Wilcox.*

Committee Member Andrews said the comparison of 1 cow equals 1 horse is not correct; it should be 1 cow equals 1.25 horses. He also thought the grazing chart should be added to the lease. He noted that the grazing would be 8 cows from July to mid-November for 135 days or four and a half months.

Mayor Hollowell said at one time he had heard if anything happens to the waste water treatment plant, that area would need to be used to spray solids on it. Chairperson Galbraith said if there is a change it could happen at Council meeting.

*** Committee Member Galbraith moved to amend her main motion to add the grazing chart to the lease as Exhibit A and change 1 cow equals 1 horse to 1 cow equals 1.25 horses.*

*** The main and amended motion passed 3-0*

4. **Discussion and Recommendation on Resolution No. 4118- A Resolution Approving the Extension of the Lease Agreement Between the City of Miles City and Linda Larsen for the Lease of Certain Industrial Site Property**

*** Committee Member Wilcox moved to recommend to Council to approve the Resolution, seconded by Committee Member Andrews.*

*** The motion passed 3-0*

5. **Discussion and Recommendation on Resolution No. 4119- A Resolution Authorizing the Assignment of a Certain Lease Agreement Between the City of Miles City and Linda Larsen to Center AG Supply, LLC for the Lease of Certain Industrial Site Property**

*** Committee Member Wilcox moved to recommend to Council to approve the Resolution, seconded by Committee Member Andrews.*

*** The motion passed 3-0*

6. **Discussion and Recommendation on Task Order No. 2416112 for Storm Water and Sanitation Reconstruction**

*** Committee Member Galbraith moved to recommend to Council to approve task order no. 2416112, seconded by Committee Member Wilcox.*

Director Kelm explained the task order is to replace water and sewer lines and storm sewer line on South Merriam from Main Street to Stower Street, which includes Merriam, Jordan and Custer Streets. A lot of fire hydrants had been replaced, the 4" water lines in those areas, won't support the pressure needed for the hydrants to properly work. Three funds will pay for the project and it is scheduled for FY17/18, 18/19, and possibly 19/20.

*** The motion passed 3-0*

7. **Adjournment**

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

The meeting was adjourned at 12:28 p.m.

Susanne Galbraith, Chairperson

Lorrie Pearce Recorder/City Clerk

December 14, 2017

Doug Columbik, Chief of Police, City of Miles City
P. O. Box 910
Miles City, MT 59301-0910

Dear Chief Columbik:

Detective Dan Baker, and Officer Mark Winkley, of Miles City's Police Department, organized an instruction session, given on December 6, 2017, to provide Boy Scouts of Troop 222, Miles City, the opportunity to earn the Fingerprinting Merit Badge. Detective Baker and Officer Winkley met with 6 Scouts of Troop 222 to provide First Aid training to the Scouts in accordance with BSA guidelines. We earnestly appreciate this opportunity, and commend Detective Baker and Officer Winkley for their patience, skill, and professionalism in talking to the Scouts. They answered all questions candidly, and were adept at talking to the age level of the group.

The Scouts and leaders of Troop 222 certainly agree that these Miles City Policemen reflect credit not only on themselves, but also on the Miles City Police Department. Any Law Enforcement organization could use more employees like them.

We also truly appreciate your time in this matter, and ask that you please give your Firefighters our Thanks, as well.

Sincerely,


Dave Swogger, Scoutmaster

Troop 222, Boy Scouts of America
Miles City, Montana

cc. Mayor John Hollowell, City of Miles City

New Business

RESOLUTION NO. 4118

A RESOLUTION APPROVING THE EXTENSION OF THE LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND LINDA LARSEN FOR THE LEASE OF CERTAIN INDUSTRIAL SITE PROPERTY.

WHEREAS, the City of Miles City owns certain real property located in the Industrial Site, which it currently leases to Linda Larsen (Tenant) pursuant to a certain Lease Agreement dated June 6, 1967 and approved by Resolution No. 1618; extended by Resolution No. 4063, said property described as: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 40,500 square feet, more or less;

AND WHEREAS, the City has revised its lease policies to allow the City and a Tenant to negotiate the long term renewal of certain leaseholds upon which the Tenant has constructed permanent substantial improvements, which is the case with Tenant's leasehold;

AND WHEREAS, the City, to promote the best use of this Leasehold, finds it in the best interest of the City to renew Tenant's lease at the current lease rate, for the reasons set forth in a certain Staff Report which has been prepared by the Office of the City Planner;

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

1. The Staff Report of Dawn Colton, attached hereto as Exhibit "A," is hereby adopted as Findings of Fact to support the renewal of the lease between the City of Miles City, and Linda Larsen; and
2. The City of Miles City approves the Lease Agreement between the City of Miles City and Linda Larsen, for the lease of certain real property described below, for a period of five (5) years, with four (4) subsequent renewal terms of five (5) years each, at Tenant's option: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 40,500 square feet, more or less, attached hereto as Exhibit "B."

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A 2/3 VOTE OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 26TH DAY OF DECEMBER, 2017.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

**City Council Staff Report
Industrial Site Leases
Renewal of Stratford Lease
Meeting Date: December 12, 2017**

STRATFORD LEASE HISTORY:

The Stratford lease of Lot 2 and the east half of Lot 3 originated on June 12, 1967 at a fixed rate of \$112.50 for 50 years, expiring on June 30, 2017. No provision for a rate increase or an option for renewal was included in the agreement. A building was constructed on the property in 1968 and was subsequently leased to several businesses over the years. Linda Larsen (tenant), a descendant of the original lessee currently manages the lease. Ms. Larsen has expressed a desire to sell the building, which is located upon the leasehold, and approached the City approximately two years ago regarding the same. The City Attorney advised that the City's lease policy at the time did not have a provision which would allow renewal or extension of an expired lease, regardless of whether the tenant owned improvements upon the leasehold; and that City Staff and the City Attorney would be making a recommendation to the City Council that the lease policy be revised to allow the City to extend or renew a lease when the tenant owns substantial permanent improvements upon the leasehold. The City and the tenant agreed to extend the lease for a one year period at the current lease rates to allow the City time to work on a revised lease policy, and this lease was extended until June 30, 2018 (Res #4063), and the lease rate was increased to \$1012.50 per year. BNSF Railway leases the building from the tenant and their private party agreement was recently extended to expire on June 30, 2018, to coincide with the City Property lease expiration date.

POLICY ISSUES

The expiration date of the above-described lease (and others – to be addressed in different staff reports) brought to light some flaws in City policy for land leases. The policies did not anticipate long-term lease renewals; neither did the policies provide for automatic or negotiated renewals on leases that had substantial improvements constructed on the leased property. These leases simply expire. Under the City's previous lease policy, the property was required to be put out to public bid, without regard for the fact that the existing tenant had constructed substantial permanent improvements upon the leasehold. Any improvements on the property may be removed, torn down, or given to the City; and if the improvements were given to the City, the tenant would then be required to bid against the public for the lease of not only the ground, but also the improvements, which were constructed at the lessee's expense. None of these options is appropriate or user-friendly for lessees with active businesses.

The City Attorney and City Planner began reviewing local leasing policies and State requirements. Staff provided a proposed revised version of the lease policies to reflect more favorable terms for the City's long-term lessees and City interests. The City Council approved the updated policies with Resolutions #4053 and #4100.

Resolution #4100 has a new provision that allows a lessee with substantial improvements on their leased property to negotiate with the City to renew a lease without going through the public bidding process.

Section 4. Extension of Leases With Substantial Permanent Improvements.

The City has previously leased parcels of real property and allowed the tenants to construct substantial permanent improvements upon the same. Given the impracticality for a tenant to relocate such improvements upon lease expiration, the City may, in the City's sole discretion, agree to renew such leases in circumstances where the City has allowed the Tenant to construct substantial permanent improvements, without advertising the same for lease under the provisions of Section 1. Should the City Council determine that a renewal is appropriate; any extension granted by the City Council shall be at the current lease rates established by the City Council. "Substantial Permanent Improvements" shall be determined by the City Council and shall include buildings and other improvements of significant value, but shall not include fencing or corrals.

Current banking practices also contribute to the above predicaments. Banks are rarely willing to grant

**City Council Staff Report
Industrial Site Leases
Renewal of Stratford Lease
Meeting Date: December 12, 2017**

loans for building improvements or other business reasons unless a long-term lease is established to cover the loan payback terms. Lack of funds for business improvements leads to buildings falling into disrepair and possibly creating a blighted area; thus reducing taxable value. Reduction in taxable value does not provide any benefit to the public, the owner, or the City.

PROCEDURE

Prior to expiration of the lease on June 30, 2018, the lessee shall submit a completed "Standard Form of Lease Agreement" to the Finance Committee on Dec 7th for a recommendation of approval or denial to the Council. The parties can negotiate terms. If the Stratford proposal is approved by the City Council, then Ms. Larsen proposes assigning her lease to a new tenant and owner of the building.

COUNCIL ACTION:

Approval: Approval of the renewal agreement will give Ms. Larsen the lease until July 2043 if all renewal options are exercised. Since she is no longer interested in leasing the property, she intends to assign the lease to whomever purchases the improvements on the property. She currently leases the improvements to BNSF and has been working with them on the purchase of the building. BNSF renewed their lease with Larsen to coincide with the expiration of the land lease, June 30, 2018, to allow time for further negotiations. Apparently, the talks broke down and today there is a buy-sell agreement between Ms. Larsen and a different party ready for signature, contingent on Council approval of the new agreement and assignment of the lease.

Denial: Should Council decide not to renew the Stratford lease agreement; the land lease must go out the public bid process for a new lessee. The current property owner may sell the improvements on the property, remove the improvements (likely through demolition), or turn over said improvements to the City (with or without compensation, as an alternative to demolition). The City has no control over who purchases the personal property on the leasehold, as the improvements are privately owned.

Risks: *If Council's intention is not to renew the lease in order to be in a position to trade the property lease for the truck route ROW in an even swap, the following risks will be in play:*

- ❖ *If the owner is unable to sell the building in conjunction with the extension and assignment of this lease, the building may be removed, torn down or given to the City (likely with compensation from the City). If the City were to gain ownership, the City can then sell/lease the building or tear it down.*
- ❖ *A denial will send the message to other lessees that they have no reason to believe that the City has any interest in supporting their business enterprises, and that the City is perfectly willing to forgo positive business relationships in favor of revenue. This very concern was brought up by Ken Stabler and Jerry Singleton at the 11/14 Council meeting.*

RECOMMENDATION:

Through review of leasing policies and considering the extenuating circumstances, staff recommends that the City Council adopt this staff report as findings of fact and recommend approval of granting a new lease agreement for the Stratford/Larsen lease with 5 year renewal increments for at least the next twenty (25) years.

EXHIBIT B

Standard Form of Lease
CITY PROPERTY LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, by and between the **CITY OF MILES CITY, MONTANA**, a Montana municipal corporation, of 17 S. Eighth Street, Miles City, Montana 59301, hereinafter referred to as the "**CITY**" and Linda Larsen, of 2001 Plaza Dr., Billings, MT 59102, hereinafter referred to as "**TENANT**".

RECITALS:

WHEREAS the CITY owns certain real property located in the City of Miles City, Custer County, Montana, more particularly described as follows:

Legal Description: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site, west of Miles City, in Custer County, Montana containing approximately 40,500 square feet, more or less;

AND WHEREAS it is the desire of TENANT to lease the above described Leasehold for a term of five (5) years, subject to the option to renew as hereinafter provided.

AND WHEREAS CITY is agreeable to providing such five (5) year term lease, together with the option to renew for additional five year terms, upon the Leasehold under the following terms and conditions;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

I. AGREEMENT

The CITY, for and in consideration of the rents to be paid and the covenants to be performed by TENANT, does hereby demise, lease, and let unto TENANT the real property located in the Miles City Industrial Site and more particularly described as follows:

Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site, west of Miles City, in Custer County, Montana containing approximately 40,500 square feet, more or less, hereinafter "*Leasehold*".

II. INITIAL TERM

The term of this Agreement shall be for a period of five (5) years, beginning on July 1, 2018 and expiring at midnight on June 30, 2023, hereinafter, "*the initial lease term*", subject to the option to renew this lease as provided for in Article IV of this lease.

III. RENTAL

The annual rental for the initial lease term described in Section II. shall be in accordance with the rates established by the CITY, as follows:

Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site, west of Miles City, in Custer County, Montana, containing 40,500 sq. ft. @ \$0.025 per sq. ft.) for a total rental of One Thousand Twelve and 50/100 Dollars (\$1,012.50) for each year of the initial lease

term. Payment for the first year of this agreement shall be paid upon contract execution date. Payments in subsequent years shall be due and payable in advance of July 1st of each subsequent year of the lease term, commencing July 1, 2018 through June 30, 2023.

THE FOLLOWING SECTION IS SUBJECT TO THE RECOMMENDATION OF THE FINANCE COMMITTEE AND THE WILL OF THE CITY COUNCIL:

IV. OPTION TO RENEW.

FOLLOWING the "INITIAL LEASE TERM", TENANT shall have the option to renew this lease a maximum of four (4) times, for renewal periods of (5) years each. TENANT shall provide notice to the CITY of TENANT'S intent to renew not more than 90 days and not less than 30 days prior to the expiration of the initial or renewal term. Rental rates at each payment period shall be at the standard rates set by resolution adopted by City Council.

V. RESPONSIBILITIES OF THE TENANT

TENANT does hereby acknowledge, covenant and agrees as follows:

A. Purpose.

TENANT desires to lease the premises described above for the following general purposes:

SUBLET PROPERTY TO COMMERCIAL ENTITIES AND/OR SMALL BUSINESS ENTERPRISES

TENANT agrees to use the premises for the stated purpose and the stated purpose only, and covenants that it will not use or occupy said premises, or allow the same to be used or occupied, for any unlawful purpose or any purpose deemed extra hazardous due to fire or otherwise.

B. Compliance with Laws.

TENANT shall comply with, conform to, and obey all present and future laws, ordinances, rules and regulations of all governmental authorities or agencies, respecting the use and occupation of the premises.

C. Independent Investigation.

TENANT acknowledges that it has carefully examined and inspected the premises and improvements and it is fully familiar and acquainted therewith, and agrees to accept the same in their present conditions, and that it is not leasing the premises because of any warranty, representation, information or promises made by the CITY or anyone acting for or on behalf of the CITY, which are not specifically set forth in this Agreement.

D. Maintenance.

TENANT agrees to keep the premises and improvements thereon in good repair and upkeep, reasonable wear and tear alone excepted, and further agree neither to permit nor cause any waste on the property, or with respect to any improvements thereon. Tenant shall not create any condition which would be considered a public nuisance as defined in Chapter 15 of the Miles City Code of Ordinances. Tenant shall keep the premises in a clean and orderly condition and not allow accumulations of junked or inoperable automobiles, trucks, farm equipment, or scrap upon the premises.

E. Improvements to Remain.

Within sixty (60) days immediately following the expiration of this lease, the TENANT shall remove any improvements located on the leasehold and shall restore, at TENANT'S expense, the leasehold premises to level with the adjoining property and in a debris free condition. "Improvements" shall not include stormwater drainage facilities or other permanent improvements provided as City Services. If inclement weather during such sixty (60) day period delays such removal and restoration, CITY shall provide TENANT with a reasonable time, not to exceed an additional sixty (60) days in which to remove the improvements and restore the leasehold. If TENANT fails to remove such improvements within such sixty (60) day period, CITY, at its option, may (1) cause the removal of such improvements and restoration of the leasehold premises to be done and shall be entitled to recover all costs and expenses of such removal and restoration from TENANT or (2) may retain all such improvements as property of CITY without compensation to TENANT. Provided, however, that upon termination of the Lease, TENANT, within such same sixty (60) day period, shall have the right to sell the improvements upon the Leasehold to a successor tenant.

In the event that any financial institution holds a security interest upon any of the improvements hereon, then, in the event of termination of this lease, whether by expiration of term or uncured default, the financial institution holding such security agreement shall be allowed to remove any improvements upon which it holds a security interest within the times provided for the TENANT to remove improvements, as set forth in the first paragraph of this subsection.

F. Right to Inspect.

The CITY or the CITY'S authorized agents shall have the right to enter upon the premises after providing twenty-four (24) hours' written notice and during normal business hours, in order to inspect and determine whether TENANT complies with the terms of this Agreement.

G. Utilities.

TENANT agrees to pay for the use and maintenance of all utility services on the premises, including gas, electricity, telecommunications, water, sewer and solid waste disposal, if applicable.

H. Taxes and Assessments.

TENANT shall pay any and all taxes and assessments which may be lawfully levied against TENANT'S occupancy or use of the premises or any improvements thereon as a result of TENANT'S occupancy.

I. Indemnification.

TENANT shall indemnify and hold the CITY harmless for any loss, damage, claim and/or liability occasioned by, growing out of, or arising or resulting from any default hereunder, or any tortious

or negligent act on the part of TENANT, its agents, employees or customers, and TENANT hereby agrees to indemnify and hold harmless the CITY for any such loss or damage. The obligations hereunder shall survive the termination of this lease.

J. Insurance.

TENANT agrees to maintain with a good and reputable insurance company a policy of fire and extended coverage insurance covering the improvements on the premises involved herein to the maximum insurable value, and said policy of insurance shall have a loss-payable clause specifically naming and covering the interests of the CITY. TENANT further agrees to carry minimum liability insurance in the amount of ONE MILLION AND NO/100THS DOLLARS (\$1,000,000.00) each accident, and to carry Worker's Compensation Insurance as required by the laws of the State of Montana. TENANT shall provide evidence of such current and valid insurance upon approval of this lease by the City Council of Miles City and, thereafter, each year on or before July 1, or upon demand by the lease administrator of the CITY.

K. Environmental Warranty.

TENANT warrants and agrees to neither cause nor allow to be caused any release of hazardous substances from, into, or upon the premises, nor to cause or allow to be caused any contamination by hazardous waste or substances with respect to the premises, and that, when applicable, TENANT shall comply with all local, state and federal environmental laws and regulations.

TENANT agrees to indemnify, defend and hold harmless the CITY, its employees, agents, members, successors and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorneys and other fees, arising out of, or in any way connected to, any condition in, on or of the property, that is caused or allowed to be caused by TENANT, its agents, employees or customers. Such duty of indemnification shall include, but not to be limited to, damage, liability or loss pursuant to all local, state and federal environmental laws and regulations, strict liability and common law. The obligations hereunder shall survive the termination of this lease.

Should the occupancy involve activities that include hazardous materials, the City may require the TENANT to store those materials in a separate containment unit in accordance with local building and fire codes.

TENANT shall not be responsible under this Section for preexisting environmental hazards, if any.

L. Compliance with ADA.

TENANT agrees to comply with the Americans with Disabilities Act as the same may apply to TENANT.

M. Non-Discrimination.

TENANT hereby agrees that the premises not be used in any manner that would discriminate against any person or persons on the basis of sex, age, physical or mental handicap, race, creed, religion, color, or national origin.

VI. ASSIGNABILITY OF INTEREST

TENANT shall not assign this Lease, nor sublet the premises, nor any part thereof, without the prior written consent of the CITY, which consent shall not be unreasonably withheld. No permitted sublease shall release TENANT from its obligations under this Lease.

VII. DEFAULT

If TENANT shall at any time be in default in the payment of rent due hereunder, or in the performance of any of the covenants or provisions of this Lease, and TENANT shall fail to remedy such default within thirty (30) days after receipt of written notice thereof from the CITY, then it shall be lawful for the CITY to enter upon the premises, and again repossesses and enjoy the same as if the Lease had not been entered into, and thereupon this Lease and everything herein contained on the part of the CITY to be done and performed shall cease and terminate, without prejudice, however, to the right of the CITY to recover from TENANT all rent due up to the time of such entry. In the case of such default and entry by the CITY, the ownership of any and all improvements on the premises shall vest in the CITY (if the same shall not have already vested), and the CITY may re-let the premises for the remainder of TENANT'S term for the highest rent obtainable and may recover from TENANT any deficiency between the amount so obtained and the rent due hereunder from TENANT. If the default is in the performance of any of covenants or provision of this Lease, other than failure to timely pay the rental called for herein, and, by the nature of the default, it cannot reasonably be cured within a thirty (30) day period, so long as TENANT commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then TENANT shall have a further reasonable time to complete such cure, not to exceed an additional sixty (60) days after the expiration of the initial thirty (30) day cure period. Payments not received by the City within thirty (30) calendar days of the annual due date shall be subject to a late fee at a rate of 10% per annum.

IX. MISCELLANEOUS PROVISIONS

If is further mutually understood and agreed as follows:

A. Notice.

Any notice hereunder shall be in writing and may be delivered personally or by registered or certified mail with postage prepaid. Postal notice shall be deemed complete when deposited in a United States Post Office addressed to the tenant with proper postage attached.

B. Oral Modification Prohibited.

No modification or alteration of this Agreement shall be valid unless evidenced by a writing signed by the parties hereto.

C. Attorneys Fees and Costs.

Should either party incur any costs or expenses, including reasonable attorney fees, in enforcing this Agreement or any provision hereunder, or protecting its rights and interest hereunder, the other or unsuccessful party shall reimburse the prevailing party upon demand.

D. Binding Effects.

This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto; provided, however, that no assignment by, from, through or under TENANT in violation of the provisions hereof shall vest in the assignee(s) any right, title, or interest whatsoever.

E. Time of the Essence.

Time is of the essence of this Agreement and all obligations of this Agreement shall be performed on or before the dates set forth herein.

F. Incorporation of Recitals.

The Recitals set forth above are incorporated into the terms and conditions of this Agreement and made a part hereof by reference.

G. Executed Copy.

Each of the parties hereby acknowledges receiving an executed copy of this Agreement.

H. Interpretation.

This Agreement shall be governed and construed in all respects according to the laws of the State of Montana.

I. Contingent Upon Approval of City Council.

This Agreement shall not become effective until a resolution approving this lease has been adopted by the affirmative vote of two-thirds of the membership of the City Council of the City of Miles City, pursuant to §7-8-4201(2) MCA.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement the date and year first hereinabove written.

CITY OF MILES CITY

By: _____
IT'S MAYOR

ATTEST:

**CITY CLERK
TENANT:**

**TENANT:
LINDA L. LARSON**

By: _____
Linda L. Larsen

RESOLUTION NO. 4119

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF A CERTAIN LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND LINDA LARSEN TO CENTER AG SUPPLY, LLC FOR THE LEASE OF CERTAIN INDUSTRIAL SITE PROPERTY.

WHEREAS, the CITY currently leases certain property within the Industrial Site west of Miles City, to Linda Larsen, as approved by Resolution No. 4118, described as: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 40,500 square feet, more or less;

AND WHEREAS, Linda Larsen intends to sell certain improvements upon said leasehold to Center Ag Supply, LLC ("Purchaser"), and the parties desire that the CITY approve the assignment of said lease to Purchaser;

AND WHEREAS, an "Assignment of Lease Agreement" between the parties has been prepared and presented to the City Council for approval.

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

That the "Assignment of Lease Agreement" attached hereto as Exhibit "A," and made a part hereof, is hereby approved by the City Council of the City of Miles City.

PASSED AND ADOPTED BY A 2/3 VOTE of the City Council this 26th day of December, 2017.

By: _____
John Hollowell, Mayor

Attest:

Lorrie Pearce, City Clerk

ASSIGNMENT OF LEASE AGREEMENT

This ASSIGNMENT, made and entered into this ____ day of December, 2017, by and between the City of Miles City, Montana, a Montana municipal corporation, of 17 S. 8th Street, Miles City, Montana 59301, hereinafter "CITY," Linda Larsen, of 2001 Plaza Drive, Billings, Montana, hereinafter "ASSIGNOR," and Center Ag Supply, LLC, of P.O. Box 1094, Miles City, Montana, hereinafter "ASSIGNEE,"

WHEREAS, the CITY currently leases certain property within the Industrial Site to ASSIGNOR for use as a agricultural supply business pursuant to a certain Lease Agreement approved by Resolution No. 4118, for the following real property: Lot 2 and the east half of Lot 3 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 40,500 square feet, more or less;

AND WHEREAS, ASSIGNOR intends to sell certain improvements upon said leasehold to ASSIGNEE, and ASSIGNOR desires to assign her interest in said Lease Agreement with CITY to ASSIGNEE, which requires approval of CITY;

AND WHEREAS, ASSIGNEE has agreed to comply with all conditions of said Lease Agreement;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

ASSIGNMENT

The ASSIGNOR hereby assigns, and the CITY hereby approves, the Lease Agreement between CITY and Linda Larsen, dated _____, as approved by Resolution No. 4118, to ASSIGNEE, contingent upon ASSIGNEE purchasing the improvements which are situated upon the leasehold from ASSIGNOR. ASSIGNEE agrees to be bound by all conditions of said Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this ASSIGNMENT OF LEASE AGREEMENT the date and year first hereinabove written.

CITY OF MILES CITY:

By: _____
John Hollowell, Mayor

Attest:

Lorrie Pearce, City Clerk

Exhibit "A"

ASSIGNOR:

Linda Larsen

ASSIGNEE:

Center Ag Supply, LLC

By: _____

RESOLUTION NO. 4121

A RESOLUTION APPROVING A TASK ORDER TO KADRMAS, LEE & JACKSON, INC., FOR SERVICES RELATED TO THE DARLING ADDITION STREET AND UTILITIES REHABILITATION PROJECT.

WHEREAS, the City of Miles City requires services related to the Darling Addition Street and Utilities Rehabilitation Project, and has engaged Kadrmas, Lee & Jackson, Inc. (KLJ), a City of Miles City retained engineering firm, for assistance.

AND WHEREAS, pursuant to the procedure for issuing task orders to KLJ, the City desires to issue a Task Orders for the reconstruction of city streets and intersections, water mains, sanitary sewers and storm drain utilities;

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

1. The Task Order attached hereto as Exhibit "A" and made a part hereof, is hereby approved by the City of Miles City.

2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Task Order 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 REGULAR MEETING THIS 26TH DAY OF DECEMBER, 2017.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

This is a Task Order for KLJ Project
No. 2416112, consisting of five (5) pages.

Task Order for the City of Miles City

In accordance with Agreement dated September 22, 2015 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- A. Effective Date of Task Order: _____
- B. Owner: City of Miles City, Montana
- C. Engineer: Kadrmas, Lee & Jackson, Inc.
- D. Specific Project (title): Darling Addition Street and Utilities Rehabilitation
- E. Specific Project
The reconstruction of city streets and intersections, water mains, sanitary sewers and storm drain utilities as shown in Attachment 1 to Exhibit A. The project is located in the Darling Addition of Miles City in the general area between Main Street and Stower Street, and between South Custer Avenue and South Merriam Avenue.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are the services set forth in the following sections:
 - Preliminary Design and Report Phase As defined in Exhibit A, A1.02 and A1.03
 - Design Phase To be determined (TBD) by Amendment
 - Bidding or Negotiating Services TBD by Amendment
 - Construction Phase Services TBD by Amendment
 - Post-Construction Phase Services TBD by Amendment
- B. Resident Project Representative (RPR) Services are TBD by Amendment
- C. Other Services

Engineer shall also provide the following services:

Other services are not anticipated, but may be identified in the Preliminary Design and Report Phase or subsequent phases. If other required services are identified, these will be provided only after Owner's written approval.
- D. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services

Additional Services that may be authorized or necessary under this Task Order are as follows:

As described in Exhibit A, Part 2. Additional Services require prior written authorization of Owner.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth below:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- E. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- F. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract

Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

- G. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- H. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- I. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Furnish to Engineer data as to Owner’s anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- M. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- N. Perform or provide the following:
 - 1. Pay all associated costs related to any permit(s) from governmental authorities having jurisdiction to approve work designed or specified by Engineer for this Project.

5. Task Order Schedule

The parties shall meet the following schedule, pending acceptable weather conditions for field work:

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Conduct field survey.	Within 45 days of the Effective Date
Engineer	Develop base drawings.	Within 60 days of the Effective Date
Engineer	Furnish four (4) review copies of the Report including the Geotechnical Investigation to Owner.	Within 80 days of the Effective Date
Owner	Submit comments regarding Report to Engineer.	Within 14 days of the receipt of Report from Engineer.
Engineer	Furnish four (4) copies of the final Report to Owner.	Within 10 days of the receipt of Owner’s comments.
Engineer	Design and subsequent Services.	TBD

6. Payments to Engineer

A. Article 7.01 is amended to show the basis of compensation for this Task Order as shown below:

Description of Service	Amount	Basis of Compensation
1. Basic Services		
a. Preliminary Design and Report Phase	\$152,800.00	Hourly Rates, Not-to-Exceed
b. Design Phase	TBD	TBD
c. Bidding or Negotiating Phase	TBD	TBD
d. Construction Phase	TBD	TBD
e. Resident Project Representative *	TBD	TBD
f. Post-Construction Phase	TBD	TBD
g. Other Services	TBD	TBD
TOTAL COMPENSATION (lines above)	\$152,800.00	
2. Additional Services	TBD	Hourly Rates

*Based on a [TBD]-month continuous construction period.

Unless otherwise indicated, compensation items and totals based in whole or in part on Hourly Rates are estimates only. When the basis of compensation above is noted “not-to-exceed” then Engineer will not exceed the amount indicated without Owner’s written authorization.

Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer’s labor, overhead, profit, reimbursable expenses (if any), and Consultants’ charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 2.01 of the Agreement.

7. Engineer’s Consultants retained as of the Effective Date of the Task Order:

None at time of Effective Date, but will retain the services of SK Geotechnical Corporation.

8. Other Modifications to Agreement and Exhibits:

Affirmative Action: This Owner and Engineer shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

5.01.H To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other’s employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer’s total liability to Owner under this Task Order shall be limited to \$500,000 or the total amount of compensation received by Engineer, whichever is greater.

9. Attachments:

Exhibit A – Engineer’s Services

10. Other Documents Incorporated by Reference:

None

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____.

OWNER: City of Miles City

ENGINEER: Kadrmas, Lee & Jackson, Inc.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Engineer License or Firm’s Certificate No. (if required): PEL-EF-LIC-37
State of: Montana

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Scott Gray

Name: Carl Jackson

Title: Public Works Director

Title: Project Manager

Address: PO Box 910
Miles City, MT 58301

Address: PO Box 80303
Billings MT, 59108-0303

E-Mail Address: sgray@milescity-mt.org

E-Mail Address: carl.jackson@kljeng.com

Phone: 406-234-3462

Phone: 406-245-5499

EXHIBIT A
Engineer's Services
KLJ Task Order – Darling Addition Street and Utilities Rehabilitation

The Task Order is supplemented to include the following.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Project Scope and Location

- A. This project includes the reconstruction of seven blocks of streets and intersections, reconstruction of four additional intersections, seventeen blocks of water mains, four blocks of sanitary sewers and twelve and a half blocks of storm drain utilities as shown in Attachment 1 to Exhibit A. The project is located in the Darling Addition in the general area between Main Street and Stower Street, and between South Custer Avenue and South Merriam Avenue.

- B. The project is located in Miles City Montana.

A1.02 Preliminary Design and Report Phase

- A. In addition to responsibilities identified in Part 4 of the Task Order, Owner Shall:
 - 1. Provide sanitary sewer, storm drain and water main atlas drawings and maintenance records for the project service area.
 - 2. Determine sizes of water mains, sanitary sewers and storm drains to be designed by Engineer.
 - 3. Provide available sanitary sewer or storm drain CCTV recordings for the project service area.
 - 4. Assist Engineer in opening manholes and catch basins as needed.
 - 5. Clean out manholes and catch basins as needed to facilitate Engineer's assessment.

- B. Engineer Shall:
 - 1. Organize and facilitate kick-off meetings (one each) with Owner and Engineer's project teams to confirm roles, responsibilities and expectations for completing the project.
 - 2. Provide project management services consisting of creating a work breakdown structure and detailed project schedule, creating and implementing a project management plan, facilitating weekly progress meetings and team coordination, reviewing time and expenses and generating monthly invoices, providing routing status updates to Owner, and general overseeing the day-to-day project activities.

3. Provide a Preliminary Design Report (Report) for rehabilitating existing streets, sanitary sewers, storm drains and water mains as indicated in Attachment 1 (project area). Engineer's services specifically include the following:
 - a. Provide a geotechnical investigation, including up to eleven bore holes 10 to 15 feet deep, suitable for the design of the rehabilitations within the project area. The investigation will include evaluation of bearing capacities, corrosion potential, ground water depth, if encountered, and laboratory testing. This investigation will be the basis of pavement design evaluations and used in the determination of suitability for using in situ materials as trench backfill.
 - b. Conduct an inventory of street and curb conditions within the project area and make recommendations for replacement, repairs or areas of no-work. This includes areas where full street reconstruction is not taking place. One (1) day on-site is anticipated to complete this task.
 - c. Inventory storm drain inlets, and sanitary sewer and storm drain manholes within the project area for condition, and recommend structures to be replaced. One (1) day on-site is anticipated to complete this task.
 - d. Evaluate trenchless construction methods to increase storm sewers from 12-inch to 18-inch for the four blocks where only the storm drain is being replaced. Recommend replacement method (trenchless or open cut) for streets that are not scheduled for reconstruction within the project area.
 - e. Research and document existing public and privately-owned utilities, and evaluate if existing or potential conflicts necessitate utility relocation. Prepare for and facilitate one (1) preliminary utility coordination meeting in Miles City with Owner and other utility owners. Provide a written recommendation. Completing a Subsurface Utility Engineering (SUE) survey is not included in this scope of work.
 - f. Identify and analyze requirements of governmental authorities having jurisdiction to approve the Project.
 - g. Develop Engineer's Opinion of Probable Costs for each block of the project area to assist Owner with developing a multi-phase project implementation plan.
 - h. Develop a project implementation outline including phasing and schedules, to represent Owner's direction based on budget considerations.
 - i. Develop a Report to summarize results of preceding activities, identify technical issues requiring further analysis (if any), and make recommendations on design and construction approach, and overall project implementation.
 - j. Organize and facilitate a meeting with Owner to present report findings, outline recommendations and finalize project approach.

A1.03 *Topographic Survey Phase*

A. Owner Shall:

1. Clean out any valve boxes, manholes or catch basins to facilitate the survey of the project area.

2. Mark curb stops, valves, manholes and sewer services throughout the project area.
3. Provide subdivision plats, certificates of survey or similar records already on-file, along with information pertaining to known location of property corner monuments.

B. Engineer Shall:

1. Provide topographic (design) survey for the rehabilitation of the existing streets, sanitary sewers, storm drains and water mains as indicated in Attachment 1. The design survey task will include the following:
 - a. Complete and furnish preliminary ground survey of project limits to include site contours, existing surface features, and above- and below-ground utilities. Topographic survey will generally be bounded within right-of-way limits, and occasionally beyond as needed to verify grades, adjacent features, and structures. The topographic survey will be accomplished by conventional survey methods. Primary horizontal control points will be based on NAD83 (2011); adjustment and elevation will be referenced to NAVD88 vertical datum. Prior to beginning topographic data collection, a level network will be run through all control points. As topographic data is collected an ongoing QC-QA process will verify all data and make sure pertinent features are included on the map.
 - b. Engineer's fee is based on the assumption that the above work will occur over a six (6) week (50 hours per week) period.
2. Provide right-of-way and parcel ownership research and mapping. Research property boundaries based on plats and certificates of survey obtained from public records. The right-of-way survey is projected to include ties only to existing Public Land Survey System monuments and readily identifiable property corners in order to allow survey maps on each side to be computed and attached to the base drawing. This procedure is anticipated to be sufficiently accurate to reasonably determine the existing right-of-way and decide if right-of-way acquisition should be evaluated in greater detail. If acquisition is necessary, subject properties likely will require individual surveys and lot lines verified, the work associated with which is not included in this scope of work and will be addressed as Additional Services.
3. Create a base drawing depicting calculated parcel boundaries, topographic survey data, and record drawings provided by Owner and other utility owners.

A1.04 *Design Phase*

- A. The scope of this phase will be developed based on findings of the Preliminary Design and Report Phase and included by Amendment.

A1.05 *Bidding or Negotiating Phase*

- A. The scope of this phase will be developed based on findings of the Preliminary Design and Report Phase and included by Amendment.

A1.06 *Construction Phase*

- A. The scope of this phase will be developed based on findings of the Preliminary Design and Report Phase and included by Amendment.

A1.07 *Post-Construction Phase*

- A. The scope of this phase will be developed based on findings of the Preliminary Design and Report Phase and included by Amendment.

PART 2 – ADDITIONAL SERVICES

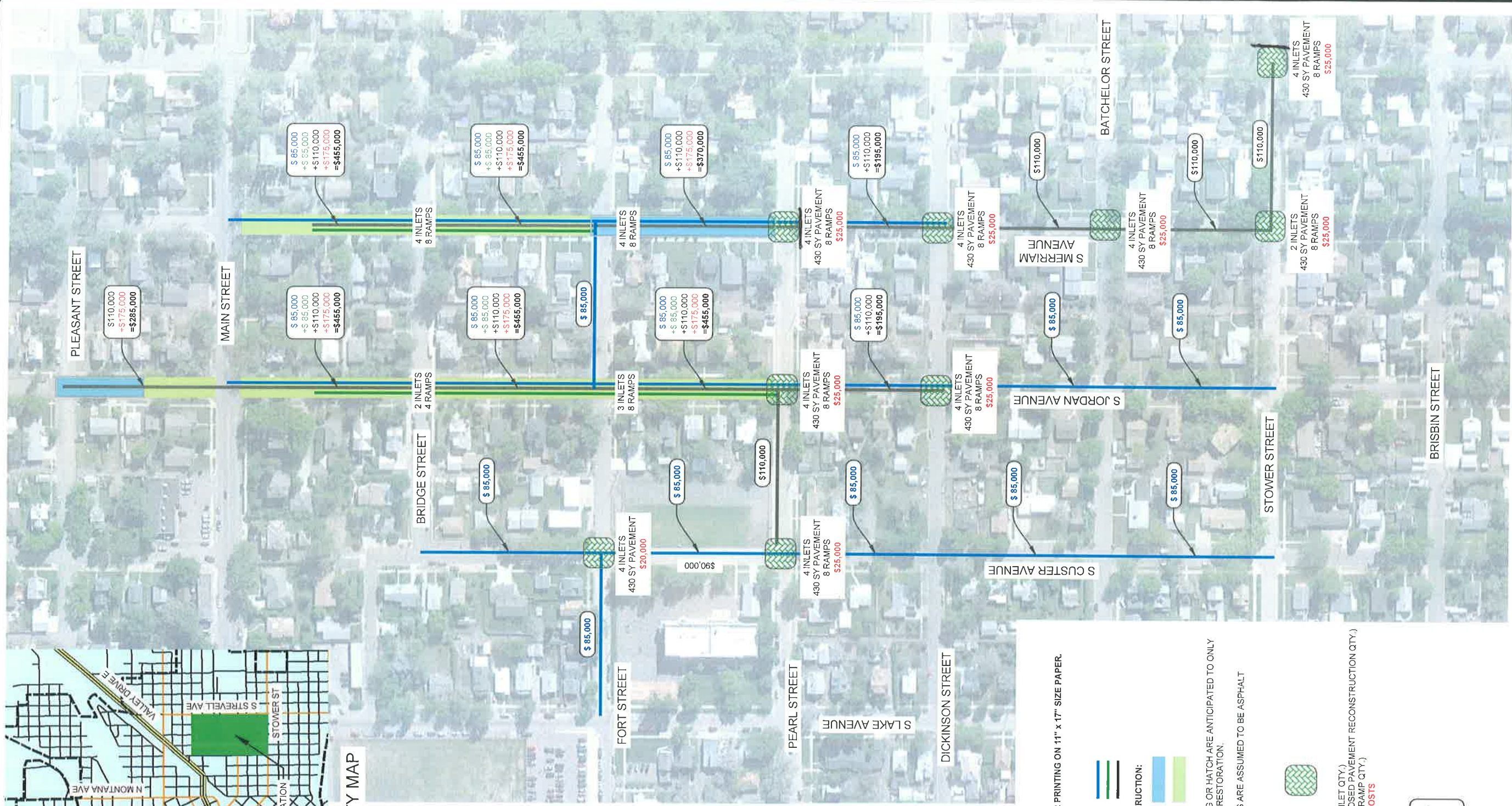
A2.01 *Additional Services Requiring Owner’s Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others, Additional Services of the types listed below.
 - 1. Hydraulic modeling and detailed analyses of the water system and sanitary sewer system, or other tasks required to determine water main and sanitary sewer sizes
 - 2. Hydraulic modeling of the storm drain system, detailed analysis of inlet capacity, evaluating potential overflow routes or flooding, or other tasks required to determine storm drain sizes.
 - 3. Environmental Investigations
 - 4. Vacuum excavation (potholing) to verify underground utility locations and depths.
 - 5. Services resulting from Owner’s request to evaluate additional alternative solutions beyond those agreed to in Part 1.
 - 6. Services resulting from significant changes in the scope, extent, or character of the portions of the Specific Project designed or specified by Engineer, or the Specific Project’s design requirements, including, but not limited to, changes in size, complexity, Owner’s schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer’s control.
 - 7. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
 - 8. Permit Applications (to be included in future phases)
 - 9. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner’s Written Authorization - None*



VICINITY MAP



LEGEND:

THIS DRAWING IS INTENDED FOR PRINTING ON 11" x 17" SIZE PAPER.

UTILITY REHABILITATION:

- WATER
- SANITARY SEWER
- STORM DRAIN

STREET REHABILITATION/CONSTRUCTION:

- REMOVE ASPHALT
- REMOVE CONCRETE

STREETS WITH NO SHADING OR HATCH ARE ANTICIPATED TO ONLY REQUIRE UTILITY TRENCH RESTORATION.

RECONSTRUCTED STREETS ARE ASSUMED TO BE ASPHALT PAVEMENT.

INTERSECTIONS:

- RECONSTRUCT INTERSECTION PAVEMENTS

- INLETS (PROPOSED INLET QTY.)
- SY PAVEMENT (PROPOSED PAVEMENT RECONSTRUCTION QTY.)
- RAMPS (PEDESTRIAN RAMP QTY.)

ESTIMATED PAVING COSTS

ESTIMATED COSTS PER BLOCK:

WATER COSTS
SANITARY SEWER COSTS
STORM DRAIN COSTS
PAVING COSTS
TOTAL COST

DARLING ADDITION REHABILITATION

ANTICIPATED CONSTRUCTION: 2018 & 2019
MILES CITY, MT

PRELIMINARY SUMMARY OF WORK EXHIBIT

DRAWN BY	MJC
REVIEWED BY	CCJ
PROJECT NUMBER	2415121
DATE	09/21/2017



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