



CITY OF MILES CITY AGENDA

*Regular Council Meeting
City Council Chambers*

*June 26, 2018
6:00 p.m.*

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. **APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**
 - A. Regular City Council Meeting 6/12/2018
 - B. Finance Committee Meeting 6/19/2018
2. **SCHEDULE MEETINGS**
3. **REQUEST OF CITIZENS & PUBLIC COMMENT**
4. **APPOINTMENTS**

Airport Commission- Bob Lunde
5. **PROCLAMATIONS**
6. **STAFF REPORTS**
7. **CITY COUNCIL COMMENTS**
8. **MAYOR COMMENTS**
9. **COMMITTEE RECOMMENDATIONS**
10. **BID OPENINGS**
11. **BID AWARDS**
12. **PUBLIC HEARINGS**
 - A. **RESOLUTION NO. 4160- A Resolution Approving the Work Plan and Budget For Fiscal Year 2018-2019 for Business Improvement District No. 101, to Include an Increase in Bed Tax From \$1 to \$2, and providing for Hearing Thereon**
 - B. **ORDINANCE NO. 1326- An Ordinance Granting a Cable Television Franchise to Cable & Communications Corporation, and Providing an Effective Date Thereof**
13. **UNFINISHED BUSINESS**
 - A. **RESOLUTION NO. 4160- (Second Reading) A Resolution Approving the Work Plan and Budget For Fiscal Year 2018-2019 for Business Improvement District No. 101, to Include an Increase in Bed Tax From \$1 to \$2, and providing for Hearing Thereon**

- B. **ORDINANCE NO. 1326- *(Second Reading)* An Ordinance Granting a Cable Television Franchise to Cable & Communications Corporation, and Providing an Effective Date Thereof**
- C. **Approving an Alcohol Variance in Wibaux Park for MCI²**

14. NEW BUSINESS

- A. **RESOLUTION NO. 4163- A Resolution Authorizing the City of Miles City to Contract With Dennis Hirsch for Building Inspection Services for Fiscal Year 2018-2019**
- B. **Resolution NO. 4165- A Resolution Pursuant to §16-48 of the Miles City Code of Ordinances, Establishing Dates, Times and Locations for Discharge of Fireworks Within the City Limits for the Year 2018**
- C. **RESOLUTION NO. 4166- 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 2018-2019**
- D. **RESOLUTION NO. 4167- *(First 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 Fund # 2420-048-430263-533**
- E. **RESOLUTION NO. 4168- *(First 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 Fund # 2400-046-430263-341 & # 2400-046-430263-533**
- F. **RESOLUTION NO. 4169- A Resolution Authorizing the City of Miles City to Enter Into an Agreement Entitled “Interlocal Agreement for Montana Firefighters Testing Consortium” With Certain Cities and Fire Districts in the State of Montana**
- G. **Discussion and approval on accepting property located on Hawley Street donated to the City**
- H. **Discussion and approval on the conclusion of the BNSF Depot 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 **June 12, 2018** **6:00 p.m.**

CALL TO ORDER

The Regular Council meeting was held Tuesday, June 12, 2018, 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, Dwayne Andrews, Ken Gardner, John Uden, Rick Huber, Jeff Erlenbusch, Kathy Wilcox and Susanne Galbraith.

Also present were City Attorney Dan Rice, Fire Chief Branden Stevens, Flood Plain Administrator/Auto Cad/Assistant PWPU Samantha Malenovsky, Dispatch Supervisor Lyne Anderson and City Clerk/Minute Recorder Lorrie Pearce.

PLEDGE OF ALLEGIANCE

Mayor Hollowell led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 5/22/2018

****** *Councilperson Uden moved to approve the minutes of the Regular Council Meeting of May 22, 2018, subject to any changes, and seconded by Councilperson Erlenbusch. The motion **passed** by unanimous consent, **8-0**.*

Finance Committee Minutes: 5/17/2018

****** *Councilperson Galbraith moved to approve the minutes of the Finance Committee Meeting of May 17, 2018, and seconded by Councilperson Andrews. The motion **passed** by unanimous consent, **8-0**.*

Public Safety Committee Minutes: 5/30/2018

****** *Councilperson Erlenbusch moved to approve the minutes of the Finance Committee Meeting of May 30, 2018, and seconded by Councilperson Gardner. The motion **passed** by unanimous consent, **8-0**.*

SCHEDULE MEETINGS

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

- Finance Committee: Tuesday, June 19th @ 7:00 p.m.

- Human Resource Committee Thursday, June 21st @ 5:15 p.m.

REQUEST OF CITIZENS & PUBLIC COMMENT

None

APPOINTMENTS

None

PROCLAMATIONS

None

STAFF REPORTS

Branden Stevens: Reported that the deputy fire inspector position will be filled soon. One hundred and eighty five applications were handed out at the consortium, and a few have been sent back and received. Ambulance 24 broke down in May and he had to call for mutual aid assistance from Rosebud County because the City did not have a working ambulance available. Ambulance 24 has been permanently taken out of service because it is not safe. The City should receive its new ambulance by June 29th. EMT class scheduled for this summer ended up with three students. The old section of the fire station has been condemned by the building inspector and he has given the department until this fall to move out. Chief Stevens is working on a contingency plan as to how the department will set up for winter.

Samantha Malenovsky: Thanked the public works crew for setting up barriers on the levy during Memorial Day weekend. Explained that the National Weather Service saw a big storm heading to Miles City and it predicted that the Yellowstone River could jump up to 17.9 feet, which would have put us above the 2011 levels. A decision was made to close the levy off for safety purposes. Over the weekend the NWS lowered their prediction to 13 feet. She thanked dispatch and 911 for getting the public service messages out to the public. And added that the levy does not get closed just because the river is high; it gets closed a lot of the times because there is potential damage to the levy.

Tom Speelmon: Reported that his crew and the Public Works crew are working on filling potholes and repairing service cuts caused by water breaks this last winter. Director Gray's crew is also working on alleys, concrete pours and cleaning up after the last storm. Concrete has been poured for the press box stairs. The waste plant was having problems with the digesters and they got inspected this week. All three membrane cassette will have to be replaced. They were damaged because of leaves and cotton choking them out and covers are needed.

Lyne Anderson: Reported that 911 received 2,870 calls in May. The police responded to 604 of them. Call volume is increasing because of the weather and

more calls on animals are coming in. She anticipated that there will be an additional 4,000 calls this year if the pace continues.

CITY COUNCIL COMMENTS

Susanne Galbraith: Said she inspected the May invoices and found on dispatches Midrivers invoice a pie chart that shows approximately 63.6 GB for entertainment was used, which adds up to over 30% of usage. She felt if the public knew that their tax dollars were being spent on watching Hulu, Netflix and HBOGo they would be outraged. She talked with Dispatch Supervisor Anderson and found that the jailers are using the services to watch movies. After a long discussion, most Council Members felt that communication with the County is needed to stop the behavior.

MAYOR COMMENTS

Mayor Hollowell received an e-mail from Jim Atchison, Executive Director of Southeastern Montana Development, on developing a potential EDA Grant Application for water/sewer infrastructure improvements in the West End industrial Area. He reminded Council that there will be budget training at the Courthouse on June 19th.

COMMITTEE RECOMMENDATIONS

None

BID OPENINGS

None

BID AWARDS

None

PUBLIC HEARINGS

- A. **RESOLUTION NO. 4161- 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 Fund # 4000-101000**

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. 4161- (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 Fund # 4000-101000**

*** Councilperson Uden moved to approve the Resolution, read by title only and seconded by Councilperson Gardner. On roll call vote, the motion passed by unanimous consent, 8-0. Resolution No. 4161 passed*

- B. Update on Burlington Northern Santa Fe Depot**
Mayor Hollowell reported that there was no new information available.

Councilperson Uden said the City has been dealing with the depot for about ten years and moved to schedule on the next meeting a roll call vote as to whether the City wants to proceed with it or turn it back to BNSF for demolition. The motion was seconded by Councilperson Wilcox, and passed by anonymous vote. **8-0**

Councilperson Uden asked for a minute of silence for the passing of Kathy Doeden.

NEW BUSINESS

- A. RESOLUTION NO. 4160- (First Reading) A Resolution Approving the Work Plan and Budget For Fiscal Year 2018-2019 for Business Improvement District No. 101, to Include an Increase in Bed Tax From \$1 to \$2, and providing for Hearing Thereon**

*** Councilperson Huber moved to approve the Resolution, read by title only and seconded by Councilperson Andrews. On roll call vote, the motion passed by unanimous consent, 8-0. Resolution No. 4160 passed first reading*

- B. RESOLUTION NO. 4164- A Resolution Approving an Engagement Letter With Jackson Murdo & Grant, P.C. For Certain Legal Services Related to the Custer County Miles City Flood Protection Project**

*** Councilperson Galbraith moved to approve the Resolution, read by title only and seconded by Councilperson Erlenbusch. On roll call vote, the motion passed by unanimous consent, 8-0. Resolution No. 4164 passed.*

- C. ORDINANCE NO. 1326- (First Reading) An Ordinance Granting a Cable Television Franchise to Cable & Communications Corporation, and Providing an Effective Date Thereof**

*** Councilperson Galbraith moved to approve the Ordinance, read by title only and seconded by Councilperson Gardner. On roll call vote, the motion passed by unanimous consent, 8-0. Ordinance No. 1326 passed first reading*

D. **Approval of May Claims**

- ** *Councilperson Galbraith moved to approve the May claims, seconded by Councilperson Andrews and passed unanimously, 8-0.*

ADJOURNMENT

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

The meeting was adjourned at 6:47 p.m.

John Hollowell, Mayor

Lorrie Pearce, City Clerk

Finance Committee Meeting

June 19, 2018

The Finance Committee met Tuesday, June 19, 2018 at 7:00 p.m. in the City Hall Conference room. Present were Committee Chairperson Susanne Galbraith and Committee Members Rick Huber, Dwayne Andrews and Kathy Wilcox.

Also present were: Public Works Director Scott Gray, Building Inspector Dennis Hirsch and City Clerk/Recorder Lorrie Pearce.

Committee Chairperson Galbraith called the meeting to order.

1. Request of Citizens:

2. Review and Recommendation on Resolution No. 4163- A Resolution Authorizing the City of Miles City to Contract With Dennis Hirsch for Building Inspection Services for Fiscal Year 2018-2019

Inspector Hirsch explained that the fund can only keep so much money at the end of the year. If the money is not spent, it goes to the State. He said that over the last few years he has bought computers, carpet and updated lighting in the upstairs offices. He felt with his request of a 10% increase of the gross amount of the fees, there would be enough money in the fund to continue buying supplies and pay for wages.

Clerk Pearce asked if item (b) in section two should be deleted. After a short discussion it was decided to recommend to Council to delete the item from the contract, but noted "inspector shall provide his own vehicle for travel and performance of his services hereunder" should be kept in the contract.

*** Committee Member Galbraith moved to recommend to Council to approve the resolution, seconded by Chairperson Wilcox. The motion passed 4-0*

3. Review and Recommendation on Resolution No. 4166- 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 2018-2019

Director Gray explained that he talked with District Administrator Mentz and the State did not have a problem with the labor and equipment increase.

*** Committee Member Andrews moved to recommend to Council to approve the resolution, and seconded by Committee Member Huber. The motion passed 4-0*

4. Adjournment

*** Committee Member Galbraith moved to adjourn the meeting, seconded by Committee Member Huber and passed unanimously, 4-0.*

The meeting was adjourned at 7:12 p.m.

Susanne Galbraith, Chairperson

Lorrie Pearce Recorder/City Clerk

**PUBLIC HEARINGS
&
UNFINISHED BUSINESS**

RESOLUTION NO. 4160

A RESOLUTION APPROVING THE WORK PLAN AND BUDGET FOR FISCAL YEAR 2018-2019 FOR BUSINESS IMPROVEMENT DISTRICT NO. 101, TO INCLUDE AN INCREASE IN BED TAX FROM \$1 TO \$2, AND PROVIDING FOR HEARING THEREON

WHEREAS, the City of Miles City by Ordinance 1202 established Business Improvement District No. 101;

AND WHEREAS, §7-12-1132 MCA requires the trustees of such business improvement district to annually submit to the City Council of the City of Miles City, for its approval, a work plan and proposed budget for the ensuing fiscal year;

AND WHEREAS, on May 14, 2018, the trustees of said District did submit to the City Council their proposed work plan for FY 2018-2019;

AND WHEREAS, the City Council has considered and approves of such work plan and proposed budget, to include the proposed increase in bed tax from \$1 per bed to \$2 per bed, and desires to finally approve the same, following a public hearing as required by §7-12-1132(3) MCA.

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

Upon hearing and full consideration, the City Council of the City of Miles City hereby approves the work plan and proposed budget, to include an increase in bed tax from \$1/room to \$2/room, of Business Improvement District No. 101 for FY 2018-2019, attached hereto as Exhibit "A" and made a part hereof.

BE IT FURTHER RESOLVED that pursuant to §7-12-1132(3) MCA, a public hearing shall be held on the above proposed approval on the 26th day of June, 2018, at 7:00 p.m. in the Council Chambers at City Hall, 17 S. Eighth Street, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §15-10-203 MCA, at least 2 times with at least 6 days separating each publication. Such publication

shall be placed in a portion of the newspaper other than that portion utilized for legal and classified advertisements.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 12th DAY OF JUNE, 2018.

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 26TH DAY OF JUNE, 2018.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

ORDINANCE NO. 1326

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO CABLE & COMMUNICATIONS CORPORATION, AND PROVIDING AN EFFECTIVE DATE THEREOF

WHEREAS the City of Miles City, has determined that the financial, legal and technical ability of Cable & Communications Corporation, a Montana corporation, doing business as Mid-Rivers Cable Television, is reasonably sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community

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

SECTION I Definition of Terms

1.1 Terms: For the purpose of this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular number and words in the singular number include the plural number:

A. "Affiliate" means an entity which owns or controls, is owned or controlled by or is under common ownership with Grantee.

B. "Basic Cable" is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

C. "Cable Act" means the Cable Communications Policy Act of 1984, as amended.

D. "Cable Service" means (i) the one-way transmission to subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection of such Video Programming or any other lawful communication service.

E. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment or other communications equipment that is designed to provide Cable Service and other service to subscribers.

F. "FCC" means Federal Communications Commission or successor governmental entity thereto.

G. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of

the Cable System for the purpose of offering Cable Service or other service to Subscribers.

H. "Franchising Authority" means the City of Miles City or the lawful successor, transferee, or assignee thereof.

I. "Grantee" means Cable & Communications Corporation, a Montana corporation, doing business as Mid-Rivers Cable Television, or the lawful successor, transferee, or assignee thereof.

J. "Gross Revenues" mean the monthly Basic Cable Service revenues received by Grantee from Subscribers of the Cable System plus all other revenues received directly, or indirectly, from the operation of the cable system, including, but not limited to, installation and reconnection fees, premium pay services, converter rentals, additional outlet charges, program guides, and local advertising imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

K. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

L. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing or transmitting Grantee's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.

M. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

N. "Service Tier" means a category of Cable Service or other services, provided by Grantee and for which a separate charge is made by Grantee.

O. "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other service therefrom with Grantee's express permission.

P. "Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2 **Grant of Franchise**

2.1 Grant: The City hereby grants to Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under or in any manner connected with Public Ways with the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, or over, under, upon, across, or along wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.2 Term: The Franchise granted pursuant to this Ordinance shall be for an initial fifteen (15) years from the effective date of the Franchise as set forth in Section 2.3, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.3 Acceptance; Effective Date: Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing same with the City Clerk or other appropriate official or agency of the Franchising Authority within sixty (60) days after the passage and final adoption of this Ordinance. Subject to the acceptance by Grantee, the effective date of this Ordinance shall be the sixtieth day after its passage and final adoption.

2.4 Favored Nations: In the event the Franchising Authority enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than Grantee to enter into the Franchising Authority's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

SECTION 3 **Standards of Service**

3.1 Conditions of Street Occupancy: All transmission and distribution structures, poles, other lines and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

3.2 Restoration of Public Ways: If, during the course of Grantee's construction, operation or maintenance of the Cable System, there occurs a disturbance of any Public Way by Grantee, it shall,

at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation at Request of Franchising Authority: Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way or remove from the Public Way, any property of Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

3.4 Relocation at Request of Third Party: The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

3.5 Trimming of Trees and Shrubbery: The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables or other equipment. Grantee shall be permitted to charge persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar changes are assessed by and paid the utilities or the Franchising Authority for tree trimming. The Grantee shall reasonably compensate the Franchising Authority for any damages caused by such trimming in public right-of-way, or shall, at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction or operation of the system undertaken by Grantee.

3.6 Safety Requirements: Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

3.8 Aerial and Underground Construction: In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric

services are both aerial and underground, Grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Nothing contained in this Section 3.8 shall require Grantee to construct, operate and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section 3.8, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities facilities at the time that such are placed underground.

Grantee shall keep complete plats and records accurately indicating the sites of its facilities and systems situated within the public ways of the Franchising Authority and keep a copy of said plat thereof on file with the Franchising Authority.

3.9 Required Extensions of Service: The Cable System, as constructed as of the date of the passage and final adoption of this Ordinance, substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least eight (8) Subscribers within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible and if it will not adversely affect the operation, financial condition or market development of the Cable System, or as provided for under Section 3.10 of this Ordinance.

3.10 Subscriber Charges for Extensions of Service: No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than eight (8) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing strand feet of its trunks or distribution cable and whose denominator equals eight (8) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital construction in aid of construction borne by such potential Subscribers be paid in advance.

3.11 Service to Public Buildings: The Grantee shall provide without charge one (1) outlet of the most commonly received level of service, not to include Premium Channels, to the Franchising

Authority's office building(s), fire station(s), police station(s) and public school building(s) that are passed by its Cable System. The outlets of Cable Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including, but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section 3.11, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Cable Service are provided to such buildings, the building owner shall pay the usual installation fees associate therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Cable Service and the additional outlets thereto.

3.12 Emergency Override: In the case of any emergency or disaster, the Grantee shall, upon request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during the emergency or disaster period. The Franchising Authority shall hold the Grantee, its agents, employees, officers and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorney's fees and costs.

3.13 Customer Service: Grantee shall provide its customers toll free telephone access to its office or representatives. Additionally, Grantee agrees to use its best efforts to respond to customer's service complaints by 5:00pm the following business day. Nothing contained herein shall be interpreted to contradict those provisions set forth in Section 7.5.

SECTION 4

Regulation by Franchise Authority

4.1 Franchise Fee:

A. **Fee:** Grantee shall pay to the Franchising Authority a franchise fee equal to five (5) percent of Gross Revenues (as defined in Section 1.1 of this Franchise) received by Grantee from the operation of the Cable System on a quarterly basis; provided, however; (i) the term franchise fee includes any tax, fee or assessment of any kind imposed by Franchising Authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such; (ii) the term franchise fee does not includes any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers). For the purpose of this Section, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year, unless otherwise agreed to in writing by the Franchising Authority and Grantee. The franchise fee payment shall be due and payable thirty (30) days after the close of the preceding quarter. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation. In no event, shall the

franchise fee payments required to be paid by Grantee exceed five (5) percent of Gross Revenues received by Grantee in any 12-month period.

B. Limitation on Franchise Fee Actions: The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by Grantee is due. Unless within five (5) years from and after said payment due date the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recover shall be barred and the Franchising Authority shall be stopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies within said five (5) years. However, no acceptance of any franchise fee payment by the Franchising Authority shall be construed as a release, waiver or as an accord and satisfaction of any claim the Franchising Authority may have for further or additional sums payable under this Franchise.

4.2 Rates and Charges: The Franchising Authority may not regulate the rates for the provision of Cable Service and other services, including, but not limited to, ancillary charges relating thereto, except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto. Notice of any proposed rate increases shall be filed with the Franchising Authority at least 30 days in advance of the proposed effective date of any such increase.

In the event that Basic Cable Service rate increases are subject to approval of the Franchising Authority, the Grantee may, at its discretion and without consent of the Franchising Authority, increase rates relating to the provision of Basic Service by an amount which is equal to five (5) percent per year or such lesser amount to comply with applicable federal and state law.

4.3 Renewal of Franchise: The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify Grantee of its preliminary assessments regarding the identify of future cable-related community needs and interests, as well as, the past performance of Grantee under the then current Franchise term. The Franchising Authority further agrees that such preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express

provisions of Section 626 of the Cable Act. A reproduction of Section 626 of the Cable Act as such existed as of the effective date of the Cable Act is attached hereto as Schedule 1 and incorporated herein by this reference.

4.4 Condition of Sale: Subject to applicable federal, state and local law, if a renewal of Grantee's Franchise is denied and the Franchising Authority either lawfully acquires ownership of the Cable System or effects the transfer of ownership of the Cable System to another person, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Franchise itself, or if the Franchise is lawfully revoked for cause and the Franchising Authority acquires ownership of the Cable System or effects the transfer of ownership of the Cable System to another person, any such acquisition or transfer shall be at an equitable price.

4.5 Transfer of Franchise: Grantee's right, title or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for the transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title or interest on Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 5

Compliance and Monitoring

5.1 Testing for Compliance: The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operation of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate and that the results thereof shall be made available to the Grantee upon Grantee's request.

5.2 Books and Records: The Grantee agrees that the Franchising Authority may review such of its books and records, during normal business hours and on a non-disruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonable deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by Grantee to it as confidential and only to disclose it to employees, representatives and agents thereof that have a need to

know or in order to enforce the provisions hereof.

SECTION 6

Insurance, Indemnification and Bonds or Other Surety

6.1 Insurance Requirements: Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. Said insurance shall designate the Franchising Authority as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. Grantee agrees to provide the Franchising Authority with a Certificate of Insurance@ listing the Franchising Authority as an additional insured party.

6.2 Indemnification: The Grantee agrees to indemnify, save and hold harmless and defend the Franchising Authority, its officers, boards, agents and employees from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs.

6.3 Bonds and Other Surety: Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Cable Services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith. If a bond is required, Grantee may provide other surety of guarantee reasonably acceptable to the Franchising Authority in lieu of bond.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation: In the event the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance or default. Further, if the Franchising Authority believes that Grantee has

become insolvent or is in bankruptcy, (also events of defaults), the Franchising Authority shall give written notice thereof to Grantee.

7.2 Grantee's Right to Cure and Respond: Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1; (a) to respond to the Franchising Authority contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing: In the event that Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 7.1, the Franchising Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduling meeting of the Franchising Authority which is scheduled at a time which is no less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

7.4 Enforcement: Subject to applicable federal, state and local law, in the event the Franchising Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchising Authority may, in addition to all other remedies it has under applicable law:

A. Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;

B. Commence an action at law for monetary damages or seek other equitable relief;

C. In the case of a substantial default of a material provision of the Franchise, or the Grantee is in bankruptcy proceedings or insolvent, declare the Franchise Agreement to be revoked; or

D. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

None of the above remedies shall be deemed exclusive.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance.

7.5 Acts of God: The Grantee shall not be held in default or noncompliance with the

provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 8 **Unauthorized Reception**

8.1 Misdemeanor: It shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove or injure any property, equipment or part of the Cable System or use any unauthorized means of receiving Cable Service or other services provided thereto. Subject to applicable federal and state law, the Franchising Authority shall enforce criminal misdemeanor law which will enforce the intent of this Section 8.1. In the absence of applicable federal and state laws, the Franchising Authority shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which will enforce the intent of this Section 8.1.

SECTION 9 **Miscellaneous Provisions**

9.1 Documents Incorporated and Made a Part Hereof: The following documents shall be incorporated herein by this reference, and in the case of a conflict or ambiguity between or among them, the document of latest date shall govern:

- A. Any enabling ordinance in existence as of the date hereof; and,
- B. Any proposal submitted by Grantee pursuant to a franchise renewal procedure, as amended and supplemented during the franchise renewal negotiation process;
- C. Any franchise agreement between Grantee and Franchising Authority reflecting the renewal of the Franchise, if any.

9.2 Preemption: If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall be superseded regarding the matter in question.

9.3 Actions of Franchising Authority: In any action by the Franchising Authority or representative thereto mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

9.4 Notice: Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U. S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Miles City
Attn: Mayor
P.O. Box 910
Miles City, Montana 59301

The notices or responses to the Grantee shall be addressed as follows:

Cable & Communications Corporation
P.O. Box 280
Circle, Montana 59215

Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

9.5 Descriptive Headings: The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.6 Severability: If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision thereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SAID ORDINANCE READ AND PUT UPON ITS PASSAGE THIS 12TH DAY OF JUNE, 2018.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

SAID ORDINANCE PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS

26TH DAY OF JUNE, 2018 BY THE FOLLOWING VOTE.

AYES: _____
NOES: _____
ABSENT: _____

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Accepted by:

CABLE & COMMUNICATIONS CORPORATION, a Montana corporation, Subject to applicable federal, state and local Law

By: _____
President

Date: _____

ATTEST:

Corporate Secretary

RESOLUTION NO. 2826

A RESOLUTION PROHIBITING THE GRANTING OF OPEN CONTAINER VARIANCES IN WIBAUX PARK

WHEREAS, Ordinance Section 3-63 of the Miles City Code of Ordinances prohibits the drinking or possessing of an open container of an alcoholic beverage within a public building, on public premises, or upon the public streets, alleys, parks or athletic fields, or other public places within the City without prior approval of the city manager or his delegate in accordance with guidelines approved by the City Council; and

WHEREAS, the City Council feels that because of the proximity of Wibaux Park to residential neighborhoods and because its use is primarily family oriented, open containers of alcoholic beverages should not be allowed in Wibaux Park.


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

That it shall be the policy of the City Council to prohibit the drinking or possessing of alcoholic beverages in Wibaux Park, and any application for a variance from the provisions of Section 3-63 of the Miles City Code of Ordinances for Wibaux Park shall be denied.

SAID RESOLUTION PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22nd DAY OF SEPTEMBER, 1998.


GEORGE T. KURKOWSKI, MAYOR

ATTEST:


Patricia D. Huss, City Clerk

New Business

RESOLUTION NO. 4163

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO CONTRACT WITH DENNIS HIRSCH FOR BUILDING INSPECTION SERVICES FOR FISCAL YEAR 2018-2019.

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, 2018 through June 30, 2019.
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 12TH DAY OF JUNE, 2018.

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, 12th day of June, 2018, and effective as of July 1, 2018, between the **CITY OF MILES CITY**, a municipal corporation of the State of Montana, hereby called the City, and **DENNIS HIRSCH** of 26 Sunset Drive, 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%~~) (70%) 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.
- 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 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.

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

This agreement shall remain in effect from its effective date until June 30, 2019 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**

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

FIRST CLASS BUILDING INSPECTIONS

26 Sunset Drive - *Dennis Hirsch* - ICC Inspector

Category NO: 1131725-10

Phone: 406.234.1571 Fax: 406.234.1445

To Whom It May Concern,

I, Dennis Hirsch, am a self-employed Building Inspector. I have been contracted with the City of Miles City as their Building Official-Code Division, ever since July 2007.

When I took this position, the building inspection department was \$60,000 in debt. Currently the Miles City Building Code Division is \$172,000 in the black.

This Building Department is regulated by the State of Montana and the Montana State Legislature. The State of Montana only allows a reserve equal to the amount of the budget.

As the Code Official, I am authorized to spend this money for issues directly related to the building department. I have authorized the purchase of 3 copiers; new chairs and carpeting throughout the department; and new LED lighting throughout all of the office including the City Attorney's office.

The money I receive for building permits and inspections has also been used to increase the wage of the Flood Administrator, Samantha Malenovsky, pay 10% of Dianna Larson's wage and furnish money for any other office expenses that are related to the building codes.

Job duties have been added to my position. I assist the zoning, planning and flood administrator with no increase in wage compensation. I am responsible to pay my own Workman's Compensation, Health and Liability insurance. I also furnish my own vehicle with no compensation from the City. Since this position requires travel to do the required inspections which leads to high mileage and costly vehicle upkeep.

With these rising costs of doing business, I am requesting a 10% increase in my wage (currently is 60%, increase to 70%). I have received no wage increase in the 11 years that I have been in this position. Kindly consider this increase.

Respectfully,



Dennis Hirsch
City of Miles City
Building Official

RESOLUTION NO. 4165

A RESOLUTION PURSUANT TO §16-48 OF THE MILES CITY CODE OF ORDINANCES, ESTABLISHING DATES, TIMES AND LOCATIONS FOR DISCHARGE OF FIREWORKS WITHIN THE CITY LIMITS FOR THE YEAR 2018

WHEREAS, §16-48 of the Miles City Code of Ordinances permits the City Council to establish special times and places at which fireworks may be discharged within the city limits of the City of Miles City;

AND WHEREAS, the City Council desires to establish certain locations and certain times and dates at which fireworks may be discharged within the city limits during the 4th of July holiday period in 2018;

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

1. The discharge of fireworks shall be allowed between the hours of 10:00 a.m. and 10:00 p.m. on Tuesday, July 3, 2018, and between 10:00 a.m. and midnight on Wednesday, July 4, 2018, ~~and 10:00 a.m. and 10:00 p.m. on Thursday, July 5, 2018~~ only at the following locations within the City of Miles City, to-wit:

Bender Park, ~~Riverside Park~~, Jaycee Field, Tedesco Field

2. Non-aerial fireworks, being those fireworks which do not project themselves into the air, or fire projectiles into the air, shall be allowed within the City limits on Wednesday, July 4, 2018, but shall not be allowed on any other day except on the days and places hereinbefore designated.

3. All fireworks so discharged shall comply with all State of Montana and federal regulations.

4. The discharge of fireworks within the city limits, or upon any property of the City of Miles City, on any other dates, at any other times, or at any other locations is prohibited and such prohibition shall be enforced by the Miles City Police Department.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 26TH DAY OF JUNE, 2018.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 4166

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 2018-2019.

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 26TH DAY OF JUNE, 2018.

ATTEST: Lorrie Pearce, City Clerk

John Hollowell, Mayor

Montana Department of Transportation
Miles City Maintenance Division

217 North Fourth Street
Miles City, Montana 59301

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, 2018.

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, 2018 through October 15, 2018 and begin again on April 15, 2019 through June 30, 2019, 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 \$1800.00 per month for a period of six months beginning July 1, 2018 and ending June 30, 2019. 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, 2019. 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.

NON-DISCRIMINATION NOTICE

During the performance of this Agreement, _____ (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the

RESOLUTION NO. 4167

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 FUND # 2400-046-430263-341 & 2400-046-430263-533.

WHEREAS, the City of Miles City wishes to amend the budget for Fiscal Year 2017-2018 to authorize unbudgeted expenses related to Lighting District #165 electric services and machinery and equipment rental;

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

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

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

The appropriations for the Final Budget for Fiscal Year 2017-2018 for LTG District #165 Fund 2400-046-430263-341 shall be increased in the amount of \$4,000 (electric services) and Fund 2400-046-430263-533 shall be increased in the amount of \$12,500 (machinery and equipment rental)

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2017-2018 on the 10th day of July, 2018, at 6:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 26th DAY OF JUNE, 2018.

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 10th DAY OF JULY, 2018.

JOHN HOLLOWELL, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 4168

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 FUND # 2420-048-430263-533.

WHEREAS, the City of Miles City wishes to amend the budget for Fiscal Year 2017-2018 to authorize unbudgeted expenses related to Lighting District # 167 Machinery and Equipment Rental;

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

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

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

The appropriations for the Final Budget for Fiscal Year 2017-2018 for LTG District #167 Fund 2420-048-430263-533 shall be increased in the amount of \$960 (machinery and equipment rental)

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2017-2018 on the 10th day of July, 2018, at 6:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 26th DAY OF JUNE, 2018.

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 10th DAY OF JULY, 2018.

JOHN HOLLOWELL, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 4169

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT ENTITLED "INTERLOCAL AGREEMENT FOR MONTANA FIREFIGHTERS TESTING CONSORTIUM" WITH CERTAIN CITIES AND FIRE DISTRICTS IN THE STATE OF MONTANA

WHEREAS, the City of Miles City desires to enter into an agreement with the Big Sky Fire Department, City of Billings, City of Bozeman, City-County of Butte-Silverbow, City of Great Falls, City of Helena, Lockwood Rural Fire District, City of Missoula, Missoula Rural Fire District and City of Havre for the joint testing of potential employment candidates;

AND WHEREAS the provisions of Title 7, Chapter 11, Part 1, MCA, permit public agencies to contract with other public agencies for the provision of services;

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

1. The Interlocal Agreement for Montana Firefighters Testing Consortium, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; 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 Agreement 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 26th DAY OF JUNE, 2018.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

EXHIBIT A

INTERLOCAL AGREEMENT
FOR CREATING
MONTANA FIREFIGHTERS TESTING CONSORTIUM
Second Amended and Restated

This Second Amended and Restated Interlocal Agreement (“Agreement”) is made in the state of Montana by public agencies organized and existing under the laws of the state of Montana and which are signatories to this Agreement (“Members”).

RECITALS

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a local government unit may (a) cooperate in the exercise of any function, power, or responsibility with, (b) share the services of any officer or facilities with, (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

WHEREAS, Montana’s Interlocal Cooperation Act provides that its purpose is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities (Montana Code Annotated § 7-11-102).

WHEREAS, Montana’s Interlocal Cooperation Act further provides that one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service (Montana Code Annotated § 7-11-104).

WHEREAS, a public agency is any political subdivision, including municipalities, counties, and fire districts (Montana Code Annotated § 7-11-103).

WHEREAS, the Members each provide fire protection services and each is responsible for hiring qualified firefighters.

WHEREAS, each Member has its own recruiting and hiring processes, and would otherwise at various times have to conduct expensive and time-consuming testing.

WHEREAS, the duties of firefighters for each Member, as determined by a task analysis, are similar.

WHEREAS, the Members would all benefit in terms of efficiency and economy by consolidating their recruiting and testing efforts for firefighter candidates by establishing a pool of qualified firefighter candidates for consideration in hiring.

NOW THEREFORE, in consideration of the covenants and mutual benefits described herein, the Members agree as follows:

I. **DEFINITIONS**

- A. **Board of Directors (the Board):** The whole created by all of the sets of two Member Representatives of each Member; see also Section III (B).
- B. **Candidate:** Any person who has timely paid the application fee and submitted a complete application to take the Test.
- C. **Consortium:** The Montana Firefighters Testing Consortium.

- D. **Test:** The combined physical and written test offered annually by the Consortium.
- E. **Member:** Any public agency, as defined by Montana Code Annotated § 7-11-103, including a municipality, fire district, fire service area, local government, or other political subdivision which is both (1) a signatory of this Agreement, or any amended versions thereof, and (2) in compliance with the terms of this Agreement, or any amended versions thereof, and with the membership requirements set forth in the Consortium's bylaws or any subsequent amendments thereof.
- F. **Member Representative:** One of two individuals designated by a Member to represent the Member's interests at meetings of the Consortium.

II. DURATION

The duration of this Agreement shall be perpetual unless terminated by the Members in accord with Section VII (E) below.

III. CREATION OF THE AUTHORITY

- A. Pursuant to the Interlocal Cooperation Act, a public entity, separate and distinct from the parties hereto, is hereby created and shall henceforth be known as the *Montana Firefighters Testing Consortium* ("the Consortium").
- B. The Consortium shall be administered by a joint board of two representatives from each Member ("Member Representatives"). This joint board shall be called the Board of Directors ("the Board"), which shall be responsible for effectuating this Agreement.

IV. PURPOSE

The purpose of this Agreement is to set forth the general and statutorily required terms of operation and financing the Consortium, which shall be responsible for the Members' undertaking of a joint testing program for the identification of qualified candidates for consideration in hiring for the position of entry-level firefighter.

V. GOALS

The goals of the Consortium are as follows:

- A. To develop, establish, and modify, as the Board deems necessary, operational policies, protocols, and procedures to achieve the purpose of this Agreement;
- B. To implement and coordinate the financial, operational, and procedural aspects of the Test application and testing processes, procedures, and protocols;
- C. To share in the costs of administering this Agreement and achieving its purpose;
- D. To provide for the consistency of administration of the application and testing processes; and
- E. To create a list of qualified candidates after each testing cycle from which each Member may select candidates to interview and possibly hire for the position of entry-level firefighter.

VI. FINANCING

- A. The Members shall be responsible to share equally in the costs related to this Agreement, including administering and coordinating the Test application and testing processes.
- B. The Board shall be responsible for establishing a budget each fiscal year, which shall run from July 1 through June 30 of the following year.
- C. Sources of funding may include the following:
 - 1. **Dues:** Each Member, as a condition of membership, must pay its initial membership dues and its annual dues.

- a. The amount each new Member shall be required to pay as its initial membership dues, as well as the amount of the annual dues any Member shall be required to pay, shall be as set from time to time by a simple majority vote of the Board.
 - b. The Board may set reduced initial membership dues and reduced annual dues for Members whose financial circumstances, in the Board's sole discretion, warrant such a reduction.
2. Fees: Additional funding of the Consortium is also derived from the Test application fees received from Candidates.
 3. The Consortium may also from time to time apply for and receive other sources of revenue, such as grant funds.

VII. TERMINATION

- A. A Member may withdraw from the Consortium and this Agreement by giving the Board 60 days' written notice of the intent to withdraw.
- B. Any Member whose withdrawal would otherwise become effective 30 days or less before the scheduled Test shall not be permitted to withdraw until after the Test is completed, including tear down, and shall be required to participate, assist, and staff the testing in the same manner and effect as if the Member had not submitted notice of the intent to withdraw.
- C. When a Member withdraws, this Agreement shall remain in full force and effect with regard to the remaining Members.
- D. So long as at least two Members remain parties to this Agreement, the Consortium shall continue to operate.
- E. This Agreement may be completely terminated at any time upon the vote of 100% of the Members' governing bodies.
- F. The Consortium shall continue to exist and operate after complete termination, however, for the purpose of retiring any debt, including paying any remaining bills for operational expenses, disposing of all claims, selling all real and personal property in accord with Section VIII (B) herein, and distributing all assets equally, including cash accounts, and performing all other functions necessary to conclude the affairs of the Consortium.
- G. Following complete termination of this Agreement, Members who were Members on the date the vote in favor of terminating the Agreement was made may be required to pay an assessment to the Consortium, as determined by the Board, to enable final disposition of all remaining balances due for operational expenses and other minor costs of doing business.

VIII. PROPERTY

- A. The real or personal property owned by the Consortium shall be owned proportionally by the Members, regardless of when they become Members. A Member which withdraws from the Consortium foregoes all interest it has in the Consortium's real or personal property so long as the Consortium continues to operate.
- B. In the case of the complete termination of this Agreement in accord with Section VII (E), any real or personal property owned by the Consortium shall be sold at fair market value and the proceeds, if any remain after disposition of all remaining balances due for operational expenses and the other minor costs of doing business, shall be divided equally, distributed, and deposited to the general funds of each of the Members who were Members on the date of the vote in favor of terminating this Agreement was made.

IX. PARTIES TO THIS AGREEMENT

- A. Each Member, as a party to this Agreement, certifies that it intends to and does contract with, for the purposes and to the extent as herein provided, all other parties who are signatories of this Agreement, or may later become signatories of this Agreement.
- B. The addition of any new Member to this Agreement shall constitute an Amendment

subject to the requirements of Section XIII.

- C. Each Member further certifies that a Member's voluntary termination of this Agreement as to its own participation as a Member, as well as a Member's involuntary removal as party to this Agreement for failure to meet the Member's Responsibilities, as set forth in Section XI herein, shall not affect this Agreement nor the remaining Members' intentions to work cooperatively to achieve the goals and objectives set forth herein.

X. CONSORTIUM RESPONSIBILITIES AND OBLIGATIONS

- A. Prior to each Test, the Board shall select and hire an independent consultant to validate each Member's job descriptions and requirements for the position of entry-level firefighter.
 - 1. Validation consists of comparing job descriptions, job analysis questionnaire results, and the CPAT, or such other similar test as the Board may adopt, for compatibility of activities.
 - 2. All Members must use the same validation procedures.
- B. The Board shall purchase and maintain liability insurance with liability limits of \$1,500,000 per occurrence and \$3,000,000 aggregate per policy year. The insurance shall name each Member as an additional insured and shall cover the Board of Directors, Members and their employees, and volunteers. The Board Chairperson shall provide a copy of the current insurance policy to each Member at the beginning of each policy year.
- C. The Board shall adopt bylaws, which shall be consistent with this Agreement and the law, and shall set forth the operational and procedural policies, protocols, and guidelines necessary to implement the Agreement's terms and achieve the Consortium's purpose and goals, including the creation of an Executive Committee, which shall handle the day-to-day business of the Consortium and which shall have powers as more particularly described in the bylaws. At a minimum, the bylaws shall provide as follows:
 - 1. The Officers of the Consortium shall be a chairperson, a vice-chairperson, a secretary, and a treasurer. The latter two officer positions may be combined and the offices filled by one Member Representative.
 - 2. Officers shall be selected from the Member Representatives, except that the secretary position or the combined secretary-treasurer position may be filled by an independent contractor selected by the Board.
 - 3. A quorum exists when a simple majority of the Member Representatives are present, either in person, by telephonic or other electronic means, such that they can hear, be heard, and meaningfully participate.
 - 4. A vote of a simple majority at a meeting where a quorum is present shall constitute the action of the Board.
 - 5. Minutes shall be taken at all meetings.
 - 6. The treasurer shall provide all necessary administrative and accounting functions for the Board and shall have the custody of and disburse funds. The treasurer may delegate disbursing authority to such persons as may be authorized by the Board to perform the disbursement function.
 - 7. As a deliberative body, the Consortium will follow basic standards of parliamentary procedure in the conduct of all its meetings, and *Robert's Rules of Order* and *Mason's Manual of Legislative Procedure* may be used for general guidance at any meeting.
 - 8. All Board meetings shall be noticed, held, and conducted in compliance with the Open Meeting and Notice statutes of the state of Montana.
 - 9. The adoption of the bylaws and any amendments to the bylaws shall be consistent with this Agreement and the law and shall be accomplished by an affirmative written ballot of a simple majority or more of the Member Representatives.
 - 10. Each Member and Member Representative shall receive a copy of the bylaws or any amendments thereof.
 - 11. The Consortium shall abide by all applicable local, state, and federal laws and regulations.

XI. MEMBER RESPONSIBILITIES

Members have the following responsibilities:

- A. To share equally in the cost of accomplishing the Consortium's purpose and goals, including the costs of coordinating and administering the Test.
- B. To provide, at their own expense, personnel to assist in coordinating and administering the Test, including providing personnel to staff both components of the Test.
- C. To pay their own costs in the validation of their own job descriptions and requirements for the position of entry-level firefighter.
- D. In the case of a new Member, to promptly pay the initial membership fee, as shall be established by the Board.
- E. To promptly pay their annual dues as the Board shall set from time to time.
- F. To regularly attend and meaningfully participate in all meetings and in every testing event.

XII. CONSORTIUM RIGHTS

- A. The Board, in its sole discretion, shall determine the type of testing it will use to identify qualified candidates for consideration for hiring for the position of entry-level firefighter, including the testing processes, procedures, protocols, instruments, and equipment to be used.
- B. The Board, in its sole discretion, shall determine the intervals at which the testing will be offered, the location at which the testing will take place, and the number of candidates it will allow to take part in the testing.
- C. The Board, in its sole discretion, shall determine the number of meetings which are necessary, as well as the date, time, and location of all meetings.
- D. The Board, in its sole discretion, shall determine the amount of annual dues which shall be paid by each Member and the date when due.
- E. The Board shall have the power to contract as needed to carry out the purpose of the Consortium and this Agreement.

XIII. AMENDMENTS

This Agreement may be amended at any time by a vote of a simple majority of the Members acting through their governing bodies. Amendments become effective when the Board receives written confirmation from a simple majority of the Members, through their Member Representatives, that their governing bodies have approved an amendment.

XIV. EFFECTIVE DATE

This Agreement shall be effective and binding upon a Member when its governing body becomes a signatory hereto.

XV. FILING

- A. In accord with Montana Code Annotated § 7-11-107, this Agreement shall be filed with the county clerk and recorder of the county or counties wherein each Member is situated and with the secretary of state. Upon the amendment of this Agreement, the amended version shall then be recorded as provided herein.
- B. The Board shall designate the person or persons who shall be responsible for the filing of this Agreement and any subsequent amended versions hereof.

XVI. ASSIGNMENT

Members may not assign any right, claim, or interest it may have as a consequence of being a party to this Agreement, and no creditor, assignee, or third party beneficiary of any Member shall have a right, claim, or title to any fund or asset of the Consortium.

XVII. EXECUTION

This Agreement shall be executed on behalf of the Member by its chief executive officer or chairperson and attested by its clerk or secretary, as appropriate, upon approval of the Agreement by the Member's governing body. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same document.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date subscribed hereto.

DATE: _____

BIG SKY FIRE DISTRICT

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CENTRAL VALLEY FIRE DISTRICT

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CITY OF BILLINGS

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CITY OF BOZEMAN

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CITY-COUNTY OF BUTTE-SILVER BOW

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CITY OF GREAT FALLS

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CITY OF HAVRE

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CITY OF HELENA

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

LOCKWOOD RURAL FIRE DISTRICT

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CITY OF MILES CITY

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

CITY OF MISSOULA

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

DATE: _____

MISSOULA RURAL FIRE DISTRICT

By: _____
Signature of Chief Executive Officer/Chair

Printed Name of Chief Executive Officer/Chair

Its: _____

Attest:

Signature of Clerk/Secretary

Printed Name of Clerk/Secretary

Its: _____

Hawley

Legend



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