



CITY OF MILES CITY AGENDA

*Regular Council Meeting
Via Zoom.us*

*June 23, 2020
6:00 p.m.*

During the COVID-19 emergency, City of Miles City-City Council will be meeting by remote means. To attend the meetings by mobile phone, please log on to zoom.us and download the Zoom app from its "Download Center". The meeting information will be posted on the City of Miles City's website at miles-city-mt.org. If you would like to receive a personal invite, please email your email address to the City Clerk at the address below with the request. Documents for the meetings can be accessed by calling 874-8602 or emailing cityclerk@miles-city-mt.org with the request.

CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
 - A. Regular City Council Meeting 06/09/2020
 - B. Finance Committee Meeting 06/08/2020
 - C. Public Safety Meeting 06/16/2020
2. SCHEDULE MEETINGS
3. REQUEST OF CITIZENS & PUBLIC COMMENT
4. APPOINTMENTS
5. PROCLAMATIONS
6. STAFF REPORTS
Firefighter Confirmation- Matthew Delong
7. CITY COUNCIL COMMENTS
8. MAYOR COMMENTS
9. COMMITTEE RECOMMENDATIONS
Bid Award- City Hall
10. BID OPENINGS
Abate public Nuisance
11. BID AWARDS
12. PUBLIC HEARINGS
13. UNFINISHED BUSINESS
14. NEW BUSINESS
 - A. RESOLUTION NO. 4327- 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 2020

- B. RESOLUTION NO. 4328- A Resolution Establishing the Payment of Out-of-Town EMS Transfers to Part Paid Firefighter & Emergency Care Providers**
- C. RESOLUTION NO. 4329- A Resolution Approving a Park Use Permit Between the City of Miles City, Montana, and the Torez Moto X Club for use of the Miles City Motocross Track at Spotted Eagle**
- D. Discussion on Updates for Police Building Prospects and How to Move Forward**
- E. Discuss and Approve steps to move forward on filling the Building Inspector's position**

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 9, 2020
6:00 p.m.

CALL TO ORDER

The Regular Council meeting was held Tuesday, June 9, 2020, via Zoom.us, Miles City, Montana. Mayor John Hollowell called the meeting to order. Council Members present were Dwayne Andrews, Ken Gardner, Rick Huber, Austin Lott, and Curtis Reese. Kathy Wilcox and Brant Kassner were excused

Also present were City Attorney Dan Rice, Public Works Director Scott Gray, Police Chief Doug Colombik, Fire Chief Branden Stevens, Planner In Training Ally Capps, Public Utilities Director Tom Speelmon 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: 5/26/2020

** *Councilperson Reese moved to approve the minutes of the Regular Council Meeting of May 26, 2020, and seconded by Councilperson Gardner. The motion passed by unanimous consent, 5-0.*

Finance Committee Minutes: 5/22/2020

** *Councilperson Lott moved to approve the minutes of the Finance Committee Meeting of May 22, 2020, and seconded by Councilperson Gardner. The motion passed by unanimous consent, 5-0.*

SCHEDULE MEETINGS

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

REQUEST OF CITIZENS & PUBLIC COMMENT

None

APPOINTMENTS

None

PROCLAMATIONS

None

STAFF REPORTS

Dennis Hirsch- Presented the awards that he had received at the International Code Council (ICC) meeting. They were as follows:

- State of Montana (ICC) Chapter- He received a belt buckle for leadership in Montana. He served six years as the president in the charter
- Regional (ICC), which includes six states- He received a plaque for his dedication to Region 2 and his work in starting the charter
- International (ICC) presented him with a plaque naming him honoree lifetime member. This honor will allow him to vote on all codes.

There were 1100 nominated for the honor and 5 were chosen

Doug Colombik- Reported that the City was awarded the COP grant which will allow the City to have a Special Resource Officer for schools. The award pays for the officer wages at seventy five percent for the first year, fifty percent for the second year and twenty five percent the third year. Starting the fourth year the City would need to pay one hundred percent. This will take the police officers count to seventeen.

Scott Gray- There will be a walk through on Strevell Street next week and hopefully that portion of the project will be completed. Phase III of the Darling project is well ahead of schedule. The twenty-inch pipe should be installed on Pearl Street next week. Phase II of Covid-19 has allowed youth sports to begin and the opening of the Oasis. Things seem to be going good at this time.

Branden Stevens- As of date there are no confirmed Covid-19 cases and the departments personal protection equipment is well stocked. The International Organization for Standardization (ISO) inspection was completed this week and the City should receive a report soon. Council will be seeing a request to approve paying part paid employees the same wages as full-time employees for making ambulance trips. It needs to go to Human Resource Committee for approval first. He reported back to Councilperson Reese on insurance companies paying the City for responding to a fire in City limits. He said there was an Ordinance passed in either 2014 or 2015 that states the City will not bill City residents for fire responses on structures.

CITY COUNCIL COMMENTS

None

MAYOR COMMENTS

Asked Council if there are any objections to post the Council vacancy on dispatches site. There were no objections. He also asked if Council felt it was time to return to Council meetings in the conference room. The consensus was to return to regular meeting in the conference room.

COMMITTEE RECOMMENDATIONS

Janitorial Bids for City Hall, Police Department

Councilperson Lott explained the two bids were received for City Hall with the same bid amount. The committee needed to check the references and will present their recommendation at the next Council meeting.

One bid was received for the Police Department.

*** Councilperson Andrews moved to approve Marilyn Foreman bid for \$350 a month, seconded by Councilperson Lott. The motion **passed** by unanimous consent 5-0*

BID OPENINGS

None

BID AWARDS

None

PUBLIC HEARINGS

None

UNFINISHED BUSINESS

None

NEW BUSINESS

- A. RESOLUTION NO. 4326- A Resolution Authorizing the City of Miles City to Enter Into Sales Agreements With Ritchie Bros. Auctioneers (America), Inc. For the Sale of City Owned Equipment

*** Councilperson Lott moved to approve the Resolution, read by title only and seconded by Councilperson Gardner. On roll call vote, the motion **passed** 5-0. **Resolution No. 4326 passed.***

A. **Approval of May Claims**

*** Councilperson Andrews moved to approve Mays claims and seconded by Councilperson Lott. On roll call vote, the motion **passed** 5-0*

ADJOURNMENT

*** Councilperson Lott moved to adjourn the meeting, seconded by Councilperson Gardner and **passed** unanimously.*

The meeting was adjourned at 6:24 p.m.

John Hollowell, Mayor

Lorrie Pearce, City Clerk

Finance Committee Meeting June 8, 2020

The Finance Committee met Monday, June 8, 2020 at 6:30 p.m. by remote means (Zoom). Present were Committee Members Austin Lott, Brant Kassner and Curtis Reese.

Also present were: Public Utilities Director Tom Speelmon, Public Works Director Scott Gray, Police Chief Doug Colombik, Planner in Training Ally Capps, Fire Chief Branden Stevens, Dispatch Supervisor Lyne Anderson, Deputy City Clerk Mary Rowe & City Clerk/Recorder Lorrie Pearce.

Chairperson Lott called the meeting to order.

1. Request of Citizens and Public Comment:

None

2. Discuss and Recommendation on Torez Motocross Club Lease

Planner Capps thought that the land could be presented as a Park Usage Permit instead of a lease. This would give the club exclusive use of the area without sending it out for bid, because of its specific needs. She had met with Attorney Rice, and he felt that the permit would be appropriate. The permit would be effective July 1, 2020 and will expire in five years. The City can pull the permit at any time if it felt the permit was not being followed. If the land is leased the cost would be approximately \$780 a year and the club is asking for the cost to be waived. Park Usage Permits have no yearly charges attached to them.

*** Committee Member Kassner moved to recommend to Council to approve the Park Usage Permit, seconded by Committee Member Lott. The motion **passed** unanimously.*

3. Review and Recommendation on Janitorial Bids

Two bids were received for janitorial services to City Hall, they are as follows:

- Samantha Malenovsky at \$700 per month
- Dales Cleaning Service at \$700 per month

The Committee scored the bids received, but had not contacted the references. It was decided that Chairperson Lott will call the references and report at the next Finance meeting.

*** Committee Member Reese moved to postpone recommending a janitor for City Hall until the next Finance meeting, seconded by Committee Member Lott. The motion **passed** unanimously.*

One bid was received for janitorial services to the Police department:

- Marilyn Foreman at \$350 per month

** *Committee Member Kassner moved to recommend to Council to accept Marilyn Foreman's bid to clean the police department , seconded by Committee Member Lott. The motion **passed** unanimously.*

No bids were received for the Library.

4. Review and Recommendation on Planner Wage Split

Director Speelmon proposed a split as follows:

- a. 29 percent from District 204
- b. 7 percent from District 205
- c. 18 percent from Water
- d. 18 percent from Sewer
- e. 18 percent from General Fund
- f. 5 percent from Historic Preservation
- g. 5 percent from Tax Increment Fund

** *Committee Member Kassner moved to present in the budget the Planner split as discussed, seconded by Committee Member Reese. The motion **passed** unanimously.*

5. Review of funding options for buildings, including rentals or purchases, regarding City Public Safety

Items that were discussed:

- A meeting is set up for this Thursday to visit all the buildings that are available
- An email was received from the Veteran Administration (VA) stating that the building will not close until early 2021. This gives the City a little lead way to look at all its options. But the City can not pause on its decision, it will need to be finalized very soon
- Low interest loans (Intercap) will be limited because of the General Fund limited cash flow. The City will need to decide as to what loan is needed the most, flood or building. City could loan from other institutes, but the interest would be a lot higher and did not think that General Fund can handle the payments
- Director Gray will compile a list of City Hall staff's need if it moves
- Cost of moving the police department into City Hall and then moving City Hall staff to another building will cost the City double when it comes to moving phone hook ups, internet, IT lines and services associated with all of them. A quote from Midrivers will be presented to the Finance Committee by the next meeting

6. Discussion on options for helping General Fund

The goal of the City is to set aside as much money possible to build up cash in General Fund. The discussion was postponed until all personnel involved are at a meeting together.

7. Adjournment

*** Committee Member Kassner moved to adjourn the meeting, seconded by Committee Member Reese and **passed** unanimously.*

The meeting was adjourned at 7:47 p.m.

Austin Lott, Committee Chairperson

Lorrie Pearce, Recorder

**Public Safety Committee Meeting
June 16, 2020**

The Public Safety Committee met Tuesday, June 16, 2020, at 6:00 pm via Zoom Conferencing in the Human Resources Office at City Hall, 17 S. 8th. Present were Committee Members Kathy Wilcox, Ken Gardner and Austin Lott. Also present were: Police Chief Doug Colombik, Mayor John Hollowell, Fire Chief Branden Stevens, Battalion Chief Johnny Hoskins, and Human Resources Officer/Recorder Linda Wilkins.

Chairperson Lott called the meeting to order.

1. Request of Citizens

None

2. Committee Member Comments

None

3. Review and recommendation on Discharge of Fireworks on July 4

The committee discussed options for the discharge of fireworks on July 4, after a brief discussion it was decided to allow the discharge of fireworks at the parks as listed in last year's resolution #4246, but limit the days to July 3 and 4 only. The committee recommend that a public service announcement be issued encouraging social distancing due to the active outbreak of COVID-19 in the community. They also thought it would be good to contact the county regarding use of the fairgrounds parking area for viewing of the fireworks display.

***Chairperson Lott moved to recommend Council the discharge of fireworks on July 3 and 4 in the places and times of day as outlined in last year's Resolution #4246, seconded by Committee Member Wilcox. By unanimous consent the motion passed 3-0.*

4. Review and recommendation on City Building Inspector Contract language

The committee discussed that the building permit form should be changed so that both the building inspector and the flood plain administrator would need to sign off on the permit, this would ensure compliance with both building code and flood code. The committee discussed the language of the current contract. The committee thought the percentage of building fees billed by the building inspector should be lowered. The also wanted paragraph "b" of Section Two reinserted into the contract from the original contract regarding code enforcement, other than public nuisances. The committee discussed splitting the plan review fee with flood plan administration, public works, public utilities, fire and police. They wanted a comparison of the current contract with the original contract from several years back, with a review by the City Attorney.

***Committee Member Wilcox recommend the revisions, as presented, to the city building inspector contract language for the city attorney and have the contract come back to the committee for review., seconded by Committee Member Lott. By unanimous consent the motion passed 3-0.*

5. Review and recommendation on paying out-of-town stipends to Part Paid Firefighters

Committee Chair Lott explained that this recommendation had been reviewed by the Finance Committee and approved, but required recommendation by the Public Safety Committee. A number of calls for out of-town transfers had not been accepted by the Fire Department. Chief Stevens explained that part paid firefighters are not currently receiving the stipend for taking the trip, that full time firefighters currently receive. The out-of-town transport are aiding in reducing the deficit in the ambulance fund and if the stipends were paid to part paid firefighters they would be willing to take more out-of-town transports.

***Committee Member Wilcox moved that out-of-town stipends be paid to part paid firefighters at the same rate as full time firefighters, seconded by Committee Member Gardner. By unanimous consent the motion passed 3-0.*

6. Adjournment

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

The meeting was adjourned at 5:50 p.m.

Respectfully Submitted:

Austin Lott, Chairperson

Linda Wilkins, Recorder

New Business

RESOLUTION NO. 4327

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 2020

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 2020;

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 Friday, July 3, 2020, and between 10:00 a.m. and **8:00 pm (Riverside Park only) all other locations are from 10:00 am to midnight** on Saturday, July 4, 2020 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 Saturday, July 4, 2020, 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 all fireworks, within the City limits shall be prohibited when a Red Flag Warning has been issued by the National Weather Service encompassing the City of Miles City and such prohibition shall be enforced by the Miles City Police Department.
5. 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 23rd DAY OF JUNE, 2020.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 4328

A RESOLUTION ESTABLISHING THE PAYMENT OF OUT-OF-TOWN EMS TRANSFERS TO PART PAID FIREFIGHTER & EMERGENCY CARE PROVIDERS.

WHEREAS, Section 7-4-4201 MCA requires the City Council to determine by resolution or ordinance the compensation of city employees;

AND WHEREAS, Resolution 4300 established such compensation for Fiscal Year 2019-2020;

AND WHEREAS, the City Council of the City of Miles City wishes to amend the compensation for Part Paid Firefighter and Emergency Care Providers, effective upon the date of final passage of this resolution;

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

1. Resolution 4300 is hereby amended to the extent that, effective upon passage of this resolution, the positions in the category of "Fire Department" shall be compensated at a premium, per run, for out-of-town EMS transfers over a 100 mile radius of Miles City based on EMS licensure in the following amounts:

- a. EMT \$97.13;
- b. EMT w/Endorsements & AEMT \$129.51;
- c. Paramedic \$161.89;
- d. Critical Care Paramedic \$194.27

2. Resolution 4300 shall remain in full force and effect in all respects with exception of the foregoing.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 23rd DAY OF JUNE, 2020.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

RESOLUTION NO. 4329

A RESOLUTION APPROVING A PARK USE PERMIT BETWEEN THE CITY OF MILES CITY, MONTANA, AND THE TOREZ MOTO X CLUB FOR USE OF THE MILES CITY MOTOCROSS TRACK AT SPOTTED EAGLE.

WHEREAS, the City of Miles City desires to allow The Torez Moto X Club the use of certain park property owned by the City, being the motocross track located at Spotted Eagle park;

AND WHEREAS, the terms and conditions of the use of said park property, namely the Miles City Motocross Track, has been reduced to writing, in the form of a Park Use Permit.

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

1. The City adopts the Staff Report attached hereto as Exhibit "A" as findings of fact in support of the granting of this permit.
2. The Park Use Permit between the City of Miles City and The Torez Moto X Club, attached hereto as Exhibit "B", and made a part hereof, is hereby approved and adopted by this Council;
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute said permit on behalf of the City of Miles City and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING THIS 23RD DAY OF JUNE, 2020.

JOHN HOLLOWELL, Mayor

ATTEST:

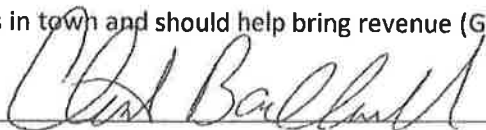
Lorrie Pearce, City Clerk

Torez Moto X Club Proposal

Our vision is to reopen Spotted Eagle riding area. It will provide people the opportunity who have interest with riding in Miles City to be able to do so at a designated place. With very limited places to legally ride currently this would provide a safe, controlled, and positive area for families to participate at. We want to rebuild the motocross track, build a mini bike track, and build a BMX track.

- Torez Moto X Club is a nonprofit club. All proceeds and donations go back into the area used.
- The area will be maintained by the club including the road and inside gate parking area.
- Each member will sign a release and waiver to be able to enter and use the area.
- Members will only be able to enter the area through the gate (which is currently not there) with a key card lock system.
- Members will pay an annual fee to offset the costs of up keep of the area. \$175 per year for a family up to 4, \$125 for single membership, \$50 FOR BMX track only use.
- All bikes will have appropriate mufflers systems that keep noise down.
- All riders will be required to wear the appropriate safety gear: helmets, boots, and pants.
- Possibly 1 portable out house other wise use of bathrooms currently on premises.
- No service or shop work will be done on property. For example, if someone gets a flat tire, they will be allowed to change their own tire but it's not considered a service job.
- Club will be responsible for trash cans on the track and members are encouraged to pack in pack out process.
- No buildings or pop up buildings will take place on property anytime during the lease.
- Fund Raisers will be through the club and directed by a club official or party.
- Current fencing is in good shape and will be repaired by club if needed and a second gate will be installed before 1st big water crossing and maintained by the club.
- Providing a multi-purpose riding area for the community of Miles City.

The Lease proposal's time line requested 5 years with a waiver of lease payment, The property is on City land and will be a complete nonprofit operation that has shown a lot of interest from out of town as well as in town and should help bring revenue (Gas, Lodging, Food) to Miles City on a weekly basis.



Date: 5.7.20

**Staff Report to City Council
Torez Moto X Club proposal;
Spotted Eagle Recreation Area Park Use Permit request
Report Date: June 18, 2020**

I. General Information

Type of Request: Request to use land in the city-owned Spotted Eagle Recreation Area for recreational purposes on an ongoing, recurring basis for five years

Requestor: Torez Moto X Club, represented by Clint Backlund

Date of Finance Committee meeting: June 8, 2020

Date of City Council meeting: June 23, 2020

II. Introduction/History

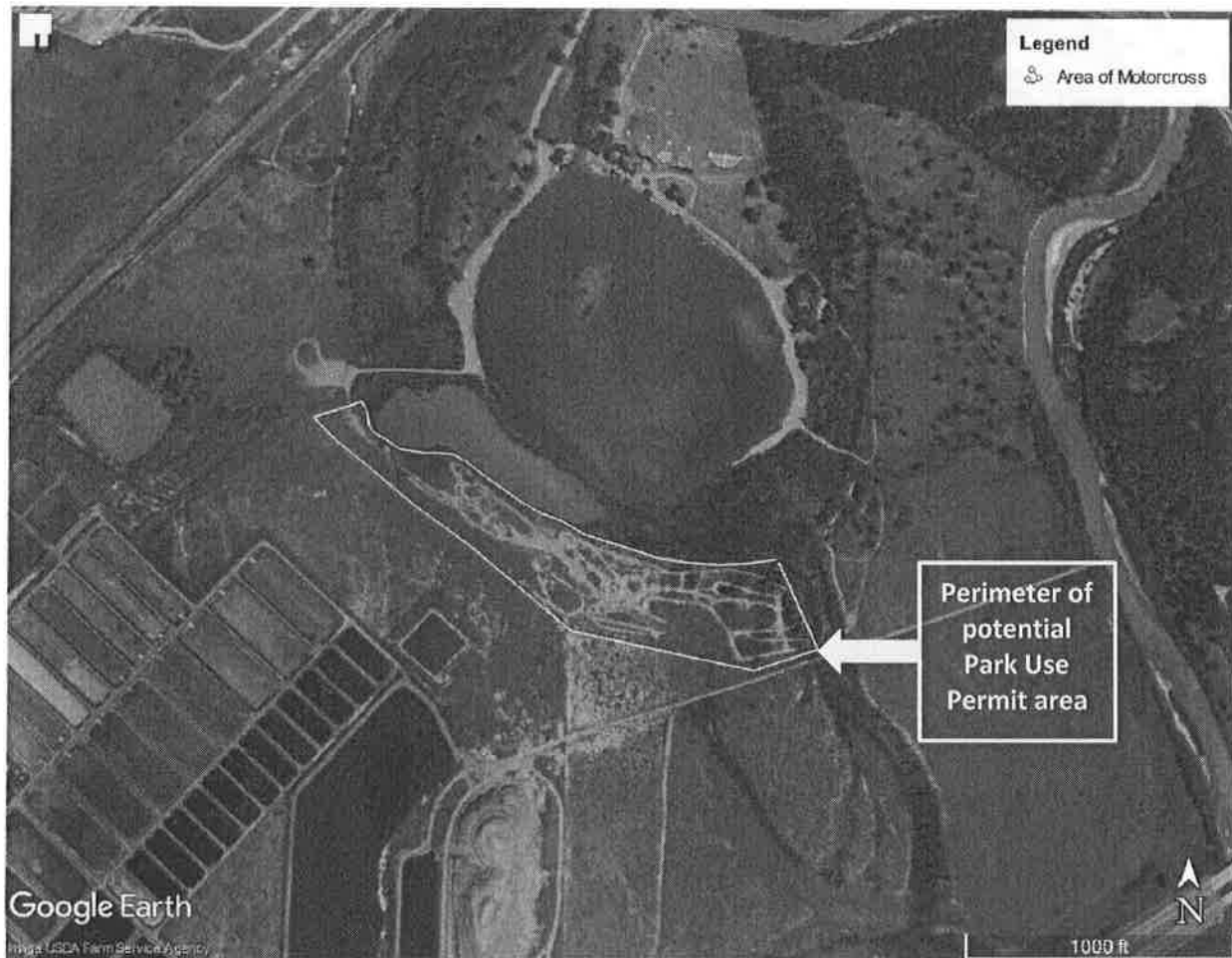
The City of Miles City owns the Spotted Eagle Recreation Area and operates the area as a parks and recreational area under Chapter 17 of the Miles City Code of Ordinances. The Recreation Area is located south of downtown between MT Highway 59 and Interstate 94, outside the city limits. The area of city land comprising the site is approximately 122.7 acres in size, with approximately 23 acres being Spotted Eagle Lake in the central portion of the property, and the rest of which is open space, public park, roads, trails, parking areas, bathroom facilities, a boat ramp, a dock, and a shooting range for a private gun club.

Clint Backlund from Torez Moto X Club recently inquired with the City of Miles City through Ally Capps, City Planner and Lease Administrator, regarding the potential for the Club to lease (at no cost, as proposed) an area of the Recreation Area property that was formerly used as a dirt track for off-road motorcycle riding. Through internal staff discussion, it was determined by city staff that it would be more appropriate for the city to review and administer the potential use of the city-owned property for the motocross track through a Park Use Permit administered under Chapter 17, Parks and Recreation, of the Municipal Code. Further discussion of the Club's proposal may be found in Section V of this report.

The following 'Map 1', made by city staff, shows the approximate area of historic motocross track usage in relation to Spotted Eagle Lake; the area delineated within the yellow boundary south of the lake represents the area staff is reviewing for a potential Park Use Permit.

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Map 1: Area map showing the subject portion of the Spotted Eagle Recreation Area south of the lake within the yellow boundary, which represents the area being reviewed for a potential Park Use Permit.



III. Applicable City Codes/Policies

Because the Recreation Area is located entirely outside the city limits of Miles City, city ordinances typically do not apply except as stated otherwise in City Code. Per [Section 1-9 of the City Codes](#), subsection (1), the application of city regulations is extended beyond the city limits to include the Spotted Eagle Recreation Area, which is one of several specific areas that the city owns, leases and controls which are within three miles of the city limits.

The primary City Codes that apply to the project are those for “Parks and Recreation” found in Chapter 17. The following are the applicable sections and other provisions of Chapter 17 that should be considered with this proposal, along with occasional staff footnotes regarding their applicability.

**Staff Report to City Council
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Chapter 17 - PARKS AND RECREATION

ARTICLE I. - IN GENERAL

Sec. 17-1. - Authority to establish parks and recreational facilities.

The city council shall have the power and authority to procure, establish, equip, maintain, regulate and operate parks, playgrounds, swimming pools, skating rinks, civic centers, youth centers and other recreational projects and facilities, and combinations thereof. The council shall have power and authority to adopt rules and regulations for the care and operation of such facilities, to establish reasonable and uniform charges for the privilege of their use and to perform such other duties as may be necessary to comply with the laws of the state.

ARTICLE II. - SUPERINTENDENT OF CITY PARKS

Sec. 17-26. - Appointment.

The mayor shall appoint, with the consent of the city council, a superintendent of city parks¹. The appointment shall be for a probationary term of one year. If the probationary term of the appointment has been satisfactory, the mayor, with consent of the council, may make the appointment permanent, so long as the appointee is competent and maintains good conduct.

Sec. 17-27. - Duties.

It shall be the duty of the superintendent of city parks to supervise the management and control of all parks belonging to the city, including baseball parks, and of all trees and other plants in the parks, subject at all times to such regulations and orders as may be promulgated by the city council.

ARTICLE III. - COMMUNITY PARKS ADVISORY COUNCIL²

Sec. 17-46. - Creation.

There is hereby created, pursuant to the authority of MCA 7-1-317, a community parks advisory council.
(Ord. No. 1002, § 1, 4-24-90)

Sec. 17-47. - Functions.

The functions of the community parks advisory council shall be as follows:

(1) To advise the city council as to projects that should be included and funded within a park improvement

¹ There is no appointed, official 'Superintendent of City Parks'; the Public Works Director directs and oversees the management of city parks and recreation areas.

² The Community Parks Advisory Council appears defunct pursuant to Sec. 17-53 (see below).

**Staff Report to City Council
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district of the city;

(2) To advise the city council as to long range projects and uses of city parks and recreational areas;

(3) To advise the city council as to sources of revenue and use fees for use of city parks and recreational areas;

(4) To advise the city council as to coordination of use of the city parks and recreational areas; and

(5) To advise the city council on such further issues concerning city parks and recreational areas as the city council may from time to time refer to the advisory council.

Sec. 17-48. - Membership.

(text omitted)

Sec. 17-49. - Terms of members.

(text omitted)

Sec. 17-50. - Officers.

(text omitted)

Sec. 17-51. - Compensation of members; meetings.

(text omitted)

Sec. 17-52. - Limitation on powers.

(text omitted)

Sec. 17-53. - Duration of existence.

The community parks advisory council shall cease to exist six years from the date of final passage of the ordinance from which this article is derived, or sooner by act of the city council, unless the existence of such community parks advisory council is extended by affirmative act of the city council.³

ARTICLE IV. - BOAT LAKES AND WATERWAYS

[Sec. 17-76 through Sec. 79 are omitted because they only apply to boats on waterways]

Sec. 17-80. - Swimming and wading.

Swimming and wading, other than as is necessary as a part of waterskiing or watersledding rescue or loading or unloading a motorboat or other watercraft, is prohibited in a boat lake, except swimming and wading is permitted at Spotted Eagle Recreation Area during the dates and times and in the areas

³ Staff is unaware of an extension of the community parks advisory council's existence by the City Council; therefore, it appears the advisory council is defunct, as more than six years have passed since final passage of Ord. No. 1002 in April 1990. The staff is therefore providing the advisory functions of the council to the City Council with this report.

**Staff Report to City Council
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designated by the city council.

Sec. 17-81. - User fees.

Pursuant to section 7-16-4103 of the Montana Code Annotated and section 17-1 of the Code of Ordinances of the City of Miles City, there shall be fees for the use of Spotted Eagle Recreation [Area] as follows:

Vehicles (including vehicles with non-motorized boats or watercraft) \$ 2.50
—Season Pass (if family, can be used for up to two vehicles per family) 25.00
Vehicles with boat or watercraft 5.00
—Season Pass 40.00
Motorcycle 1.00
Pedestrians 0.50

Said fees shall be charged from the Saturday of Memorial Day weekend through and including the Monday of Labor Day weekend.

ARTICLE V. - PARK USE PERMITS

Sec. 17-100. - Park use permit required.

Any person or entity desiring to reserved the exclusive use of a park ground, or recreational facility of the city shall apply for and obtain a park use permit from the city for such exclusive use.

Sec. 17-101. - Application for park use permit.

Application for a park use permit shall be submitted to the lease administrator of the city, as designated from time to time by the mayor. All applications shall be on a form and in a format as provided by the city.

Sec. 17-102. - Application review.

The lease administrator shall review such application and determine whether exclusive use of a part or all of a park ground, recreational facility, or other city facility is reasonable in relationship to the area requested and the requested duration of use, and is required to protect public property or the public health, safety or welfare. The lease administrator shall further review such application to determine whether the requested use conflicts with other applications for exclusive use or anticipated applications for exclusive use of the same park ground, or recreational facility.⁴

Sec. 17-103. - Issuance of nonrecurring park use permit.⁵

⁴ See Section IV of this report for discussion of other uses and potential conflicts.

⁵ Because the proposed motocross use is ongoing and repeated, the application is being reviewed as a 'recurring' park use permit (see below).

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If the application is for a planned, nonrecurring social occasion such as birthday parties, weddings, or programs, or a nonrecurring recreational activity, does not conflict with another application or anticipated application, and is reasonable in relationship to the area requested and the requested duration of use, the lease administrator may issue a park use permits allowing use of the park area or other recreational facility by one or more persons, to the exclusion of others, during the requested date and time of use, or such reduced time as the lease administrator deems reasonable in relationship to the use requested.

Sec. 17-104. - Resolution of issues on nonrecurring park use permit.

If, upon review, the lease administrator determines that the application conflict with another application or anticipated application, or is not reasonable in relationship to the area requested or the requested duration of use, the lease administrator shall meet with the applicant to attempt to resolve such issues. If, upon meeting, such issues are not resolved to the mutual satisfaction of the lease administrator and the applicant, then the issue shall be submitted to the city council who shall determine whether to grant a park use permit and any limitations or revisions as to area and/or duration the permitted use, based upon the best interests of the city and of the public.

Sec. 17-105. - Issuance of recurring park use permit.

If the application is for a recurring occasion, or recurring recreational or sport activity, and does not conflict with another application or anticipated application, and is reasonable in relationship to the area requested and the requested duration of use, the lease administrator shall determine insurance requirements and other terms and conditions necessary or advisable for the protection of the best interests of the city, complete, and have the applicant execute a recurring park use permit in the format established from time to time by resolution of the city council.

Sec. 17-106. - Resolution of issues on recurring park use permit.

If the application is for a recurring occasion, or recurring recreational or sport activity, and, upon review the lease administrator determine that the application conflicts with another application or anticipated application, or is unreasonable in relationship to the area requested or the requested duration of use the lease administrator shall meet with the applicant and any conflicting applicants or anticipated conflicting applicants and attempt to arrive at a coordinated plan of use or resolution of the area and/or duration of use. If a coordinated plan of use or resolution of the area and/or duration of use is not agreeable to all parties, then the issue shall be submitted to the city council who shall determine either a plan of coordinated use or exclusive use by one or more of the applicants, and any limitations or revisions as to area and/or duration the permitted use, based upon the best interests of the city and of the public.

Sec. 17-107. - Authorized persons only permitted to enter or remain upon permitted areas or facilities.

No entity, person or persons other than the entity, person or persons authorized by the park use permit shall enter or remain on the park areas or recreational facility areas designated in the park use permit during the period covered by the permit.

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Sec. 17-108. - Posting and reservation of permitted areas or facilities.

Whenever a park use permit for any area of any park ground or recreational facility has been issued, the area permitted may be posted and closed to the use of all persons not associated with that exclusive use during the days and hours of the permitted use. The lease administrator shall have the authority to post reservation notices at park areas or recreational facilities notifying the public that a park area or recreational facility is reserved for exclusive use during a specified time period, pursuant to a park use permit. No person shall disobey any reservation notice posted or issued by the lease administrator relating to the use of any park area or recreational facility identified in the park use permit.

Sec. 17-109. - Permits not transferable.

All park use permits issued may only be used by the permit holder and only at the location, dates and times permitted. Park use permits are nontransferable.

Sec. 17-110. - No right to issuance of permit.

Nothing herein shall be construed as establishing any right to any person or entity to the issuance of a park use permit, such issuance ultimately being in the sound discretion of the city council.

Sec. 17-111. - Surrender of possession to permit holder.

Any person not having a permit for the use of a park facility shall surrender or turn over possession of the park area or recreational facility to any person or entity having possession of a valid park use permit. It shall be unlawful for any person not having a valid park use permit to refuse to or fail to surrender the use of the permitted park area or recreational facility for the duration of the permitted use to any person or entity who has a valid park use permit for such park area or recreational facility during the period of such permitted use.

Sec. 17-112. - No right to park use permit.

Nothing herein shall be construed as establishing any right to any person or entity to the issuance of a park use permit, such issuance ultimately being in the sound discretion of the city council.

Sec. 17-113. - Violation a misdemeanor; penalty.

Any person violating any provisions of this article shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00, or imprisonment for a term not to exceed six months, or both.

Sec. 17-114. - Liability insurance required.

Liability insurance shall be required for certain uses of city owned property. All policies of liability

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insurance required in this part shall name the City of Miles City, Montana, as an additional insured, on a primary/noncontributory basis.

(1) Prior to the issuance of a park use permit, or any permit for the use of any city owned property, the following insurance requirements shall apply, for each requested use, and based on the hazard level designation set forth in this part:

a. For activities included under hazard level I which will include less than 50 people in attendance, no liability insurance shall be required.

b. For activities included under hazard level I which are anticipated to include 50 or more people, and for activities included under Hazard Level II, proof of liability insurance in the amount of \$500,000.00 per claim, \$1,000,000.00 per occurrence, shall be required.

c. For activities included under hazard level III, proof of liability insurance in the amount of \$750,000.00 per claim, \$1,500,000.00 per occurrence, shall be required.

(2) Liquor liability coverage in the same amount as is required for each hazard designation, but not less than the amount required for hazard level 1 events attended by 50 or more people, shall be required for all events which include the sale or consumption of alcohol, with the exception of host provided alcohol, or privately provided alcohol, consumed at private events which are attended by 50 or fewer people, for which no admission or other fee is paid, and so long as an alcohol variance has been properly obtained from the city.

(3) Property damage coverage in the amount of \$50,000.00 shall be required for all hazard level I events which are anticipated to include 50 or more people in attendance, and for all hazard level II events. Property damage coverage in the amount of \$100,000.00 shall be required for all hazard level III events.

(4) In the event multiple organizations, entities, or vendors will be operating under one permit, each must be covered and show proof of all insurance required herein.

(5) All permittees shall ensure that employees are covered by workers compensation, and may be required to provide proof of the same.

(6) All vehicles which are used on city owned property must be covered by personal or business liability auto coverage.

(7) The following hazard level designations shall be used for determination of required insurance coverages in this part. Any proposed use which is not covered by the following shall be assigned a hazard level designation by the city's lease administrator. The City of Miles City reserves the right to increase the hazard level of an activity based on information received by the city which tends to show that the activity is of a greater risk than that designated below. The City of Miles City may refuse to issue a park use permit, or any permit for the use of city owned property, for an activity for which the city may determine, through its lease administrator, poses too great a risk for public safety, regardless of the hazard level classification of the activity.

a. *Hazard level I:* Antique shows, art festivals/shows, auctions, auto shows, awards presentations, ballets, banquets, bazaars, beauty pageants, bingo games, boat shows, body building contests, business meetings/shows, chamber of commerce events, charity benefits (including auctions/sales), cinemas, civic club meetings, classical music concerts, indoor concerts under 1,500 people, symphony concerts, consumer shows, indoor conventions, craft shows, dance shows (including rehearsals), debutante balls, dinner theaters, drill team exhibitions/competitions, educational exhibitions, electronics conventions, indoor exhibitions/exhibits, indoor expositions, fashion shows, indoor fishing events, flower shows,

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garden shows, graduation ceremonies, gymnastics competitions, harvest festivals, home/housing shows, ice skating shows, instructional classes (non-mechanical), civic club events, lectures, luncheons, indoor meetings, mobile home shows, motion picture theaters, musicals (not including rock music), operas/operettas, organized sightseeing tours, pageants, parties/celebrations (no liquor), picnics, plays, proms, pumpkin patches/corn mazes, recitals (music, dance, piano), religious assemblies, RV shows, scouting jamborees, seminars, speaking engagements, teleconferences, telethons, theatrical stage performances, trade shows (indoor), vacation shows, weddings and receptions wedding photography.

b. *Hazard level II:* Aerobics/jazzercise classes, animal training, block parties/street enclosures, Christmas tree lots/farms, outdoor concerts under 1,500 (except as otherwise addressed herein), corporate events, dances, debuts, dog shows, evangelistic meetings (revivals), outdoor exhibitions, outdoor exposition, outdoor fishing events, food concessions, graduation night (university only, no high school), haunted houses, horse shows, hotel shows, jam and jazz sessions, job fairs, marathons, outdoor meetings, parades, parties/celebrations (with liquor, other than those addressed under hazard I), political rallies, reunions, rummage sales, school band exhibitions/competitions, séances, sidewalk sales, state and county fairs, street fairs, trade shows (outdoors), voter registration.

c. *Hazard level III:* Bounce castles or houses or similar structures or activities, animal shows, bicycle rallies, carnivals (no rides), casino and lounge shows, comedy shows, rock concerts under 5,000, alternative music concerts under 1,500, country western events (no equine), film productions, head of state events, kiddielands (no rides), live entertainment (except as otherwise addressed herein), livestock shows, martial arts events, night club shows, petting zoos, promoters, recreational events, skating parties, ski events/demos, sporting events (indoor, outdoor, baseball, basketball, softball, soccer, tennis, etc.), swimming events, theatrical road shows, union meetings, zoos.

ARTICLE VI. - PARK REGULATIONS

Sec. 17-120. - Definitions.

For purposes of this article, *to camp* means:

- (1) To erect of a tent or shelter of natural or synthetic material, prepare a sleeping bag or other bedding material for use, or park a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy;
- (2) To sleep at any time between the hours of 11:00 p.m. and 6:00 a.m. outdoors, with or without bedding, sleeping bag, blanket, mattress, tent, hammock, or other similar protection;
- (3) To sleep at any time between the hours of 11:00 p.m. and 6:00 a.m. in, on, or under any structure or object, any motor vehicle, motor home, or trailer, with or without bedding, sleeping bag, blanket, mattress, tent, hammock, or other similar protection; or
- (4) To establish or maintain outdoors or in, on, or under any structure or thing not intended for human occupancy, at any time between the hours of 11:00 p.m. and 6:00 a.m., a temporary or permanent place for sleeping, by setting up any bedding, sleeping bag, blanket, mattress, tent, hammock, or other sleeping equipment or device or setting up any cooking equipment with the intent to remain in that location overnight.

Sec. 17-121. - Camping prohibited.

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It shall be unlawful for any person to camp in any public park within the city limits.

Sec. 17-122. - Violation a misdemeanor; penalty.

Any person violating any provisions of this Article shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00, or imprisonment for a term not to exceed six months, or both.

IV. Existing Lease Agreements/Park Use Permits

The Lease Administrator has been unable to locate other Park Use Permits for land uses on the site that could impact or interfere with this proposed use. The shooting range on the north side of Spotted Eagle Lake has been in existence for decades; but no documentation of an agreement with the gun club that uses the property has been found. Given the fact that the two uses are expected to occur on separate portions of the Recreational Area (and the configuration of the shooting ranges and distance between the two uses), no substantial conflicts between the uses are expected, and standard terms of the Park Use Permit include provisions for the city staff to administer and resolve potential conflicts. Other passive uses of the motocross area, such as walking and hiking, could be disrupted during events, a common and expected occurrence when park use permits are issued for recreational uses by single groups.

V. Staff Analysis

- A. The applicants, the Torez Moto X Club, represented Clint Backlund, submitted their proposal on May 8, 2020 when discussion was for a potential lease agreement. Since that time, staff has reviewed the City Codes and applicable city resolutions that apply to leases of city property, and in consultation with Dan Rice, City Attorney, have determined the potential use of the area would be better reviewed, administered, and authorized as a recurring Park Use Permit under Chapter 17 of the City Codes rather than a long-term lease agreement.
- B. The applicant's proposal is attached as Attachment 1. The proposal outlines how the Club intends to manage the area, minimize impacts, and their fee waiver request.
- C. City Attorney Dan Rice has drafted a Park Use Permit with consultation with city staff, including Planner/Lease Administrator Ally Capps, Public Works Director Scott Gray, and Land Solutions contract planners Joel Nelson and Dave DeGrandpre. The draft permit is attached to this report as Attachment 2 (with multiple exhibits). The draft permit is based on previously-issued permits, so includes standard terms and conditions of the agreement, along with provisions specific to this project and the applicants' proposal. The permit attempts to address Chapter 17 and other applicable sections of City Code. It should be understood that city staff (and the City Attorney) will need to work with the applicants to complete some information contemplated by the draft permit that is yet to be determined.

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D. Regarding fees, the Club is requesting that the city waive any potential fees for the use of the land. The Club is stated to be a nonprofit organization, and the application rationalizes the fee waiver request by indicating the users and activities will result in increased revenue to the city. Whether the City Council is willing to waive any fees associated with the use of the city land is at the discretion of the City Council. Sec. 17-81 outlines user fees for boats, other vehicles (including motorcycles) and pedestrians during the summer season, but fees for organized group uses like this that are to be issued Park Use Permits are not specifically detailed in Chapter 17. Fees are not typically charged for park use permits; but a long term project like this could be assessed lease fees. For instance, Resolution No. 4124 establishes minimum base rent costs for the Industrial Site and other city leaseholds. Said resolution includes the following minimum rentals:

- Tracts with Highway 10 & 12 frontage \$.40 per square foot per year;
- Tracts with paved road frontage \$.025 per square foot per year;
- Tracts with gravel road frontage \$0.20 per square foot per year.
- Rates above these minimal base rates may be charged based on the cost of city services or city owned improvements provided as part of the lease.
- Rates for leases of City owned property outside of the Industrial Site will be evaluated on a case by case basis.

Although this request is not being processed as a long-term lease agreement, because the Park Use Permit would authorize a recurring, long-term use that will effectively preclude most other uses on that portion of the property (at least during active club motocross events), and because the City Council appears to have discretion to assess a fee for the permit's uses, the likely cost of a long-term lease of the project area if administered as a five year lease is worth consideration by City Council. With an estimated area of 596,000 square feet (or ±13.7 acres), and access via a gravel road, a minimum lease rate of \$11,920 per year would be authorized under the lease management resolution for Industrial Site land. Because lease rates outside the Industrial Site are to be evaluated on a case by case basis, and because other factors apply (such as this permit not granting full-time exclusive use, and with no substantial improvements or city water, sewer and similar services), adjustments would likely be made by City Council if the property were offered or negotiated for a long-term lease. However, the figure of \$11,920/year should be a baseline figure for consideration of approximate fees being waived. The City Council also has the option to set a rate for the use of the area, or even a bond to ensure maintenance provisions are complied with, with specific conditions to be met to apply the waiver; thus allowing fees to be assessed if circumstances change, proper maintenance is not being performed, or the conditions for applying the fee waiver are not met.

VI. Finance Committee Action

The Finance Committee was approached about the proposed lease in early 2020, and then was provided an update on June 8th after staff began discussion of the project as a Park Use Permit. The Finance Committee was not provided a staff report or thorough analysis, but did recommend to City Council to

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approve a park permit for a 5 year term. Because presently, park permits do not have fees, it is the recommendation of the Finance Committee that this permit should not incur any charges either.

VII. City Council Action

The City Council could approve, deny or table the proposed Park Use Permit per the draft permit (Attachment 2) prepared by the City Attorney. The following are the potential actions that the City Council could take to approve or deny:

A. Approval:

Approval of the Park Use Permit for a five year period commencing July 1, 2020, and terminating June 30, 2025. This permit shall be renewable for one additional three year period at the mutual consent of both parties to the permit. Use of this permit shall be year round during the permit term, which shall become effective July 1, 2020 and payable by June 30, 2020 (if any fees are required). The permit would be subject to the stated terms of the agreement to be completed by city staff, the City Attorney, and approved and signed by the City Council at a future date. The City Council may include additional conditions or terms, including an imposition of use permit fees that may also be subject to waivers by City Council.

B. Denial:

Should Council decide not to agree to the Park Use Permit, the City Council may deny the request, take other action, or outline what additional information is needed.

VIII. Staff Recommendation

After review of the proposal and applicable City Codes and policies, staff recommends that the City Council adopt this staff report as findings of fact and approve the Park Use Permit and agreement as prepared by the City Attorney and attached to this report, subject to the following modifications:

- Add to Exhibit A: General map of Permit Use Area (may use a city-prepared map, such as Map 1 of this report or other as approved by city staff)
- Add to Exhibit F: **“Daily cleanup** of the track and other common areas within the permitted area will be required and the obligation of the permittee.”
- Add to Exhibit H: **“Permittee is responsible for obtaining any other government permits and approvals for the use of the property and associated activities. Miles City reserves the right to withhold the permit if the permittee is unable to furnish evidence that a potential other government approval or permit is required for the project or associated activities.”**

In addition, city staff, City Attorney, or City Council reserves the right to require additional provisions to promote the purpose of the agreement, to clarify administrative provisions, or outline regulatory or statutory requirements.

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IX. List of Attachments

Attachment 1: Proposal by the applicants entitled "Torez Moto X Club Proposal"

Attachment 2: Draft "PARK USE PERMIT" prepared by the City Attorney

Attachment 3: Draft Resolution to approve the permit prepared by the City Attorney

PARK USE PERMIT

THIS AGREEMENT, effective 1st day of July, 2020, by and between **CITY OF MILES CITY, MONTANA**, a municipal corporation, of 17 South Eighth Street, Miles City, Montana, 59301, hereinafter called "*City*", and the

TOREZ MOTO X CLUB, of Miles City, Montana, 59301, hereinafter called "*Permittee*".

1. **DESCRIPTION of PERMITTED PREMISES.** The City hereby grants to the Permittee permission to occupy and use for the purposes stated herein, that certain real property (hereinafter "*permitted premises*") located in Miles City, Custer County, Montana, as set forth in Exhibit "A", attached hereto and made a part hereof.

2. **PERMIT TERM.** The term of this permit shall be for a five year period commencing July 1, 2020, and terminating June 30, 2025. This permit shall be renewable for one additional three year period at the mutual consent of both parties to the permit.

Use of this permit shall be year round during the permit term.

3. **PERMIT FEE.** The Permittee agrees to pay the City as a fee for this permit those amounts set forth in Exhibit "B", attached hereto and made a part hereof, on or before those dates set forth in said Exhibit "B". All fees shall be paid in the name of the City of Miles City and shall be remitted through the City Clerk of the City of Miles City, Montana. In addition to the cash fees provided herein, Permittee, as additional consideration for this permit, shall perform those obligations set forth in Exhibit "B" as "Other Consideration" on or before the due dates provided in said Exhibit for their performance.

4. **USE OF PREMISES BY PERMITTEE.** Permittee shall use the premises permitted hereunder for the purposes set forth in Exhibit "C", attached hereto and made a part hereof, and shall not change the use thereof without the prior written consent of the City.

5. **RETAINED USES OF CITY.** City (or such other parties that the City permits) is allowed, without diminution of fees, to use and occupy the premises for other events, activities, functions, or uses during the term of this Permit that do not unduly conflict or interfere with the Permittee's reasonable use of the premises as set forth in Exhibit "C". City, or its permittees, shall notify the Permittee of such events or uses in advance, provided, however, as to any uses listed on Exhibit "C" as "*Specific Reserved Uses of City or its Permittee*", such uses are hereby reserved to the City without any further notice to Permittee. Attached hereto as Exhibit "D", is Permittee's list of its scheduled events for the term of this Permit. Dates for which no events are scheduled on Exhibit "D" shall be presumed as available for other uses by the City, or its permittees.

City retains the right of access to the permitted premises at all times for any purpose, including, but not limited to, inspection as to Permittee's compliance with the terms of this

permit, construction, repair, alteration, remodel, or removal of improvements, and such maintenance of existing improvements as the City may desire.

6. POSSESSION AND CONTROLLED ACCESS. The Permittee shall be entitled to possession of the permitted premises at the commencement of the term of this Permit, subject to the retained uses of the City and its permittees, and Permittee shall immediately surrender possession upon termination of the term of this Permit, or upon earlier termination as otherwise provided for in this Permit. The Permittee shall control and limit access to the park to the club's members, and shall ensure that all members adhere to the club's safety rules. Permittee shall prohibit club members from operating motorcycles and ATVs on adjacent City owned property, and restrict such use to the confines of the park.

7. CONSTRUCTION OF IMPROVEMENTS. Permittee shall not construct any improvements upon the permitted premises, nor alter, remodel, or remove any existing improvements upon the permitted premises without the express written consent of the City.

In the event that the Permittee desires to construct, alter, remodel or remove any improvement, Permittee shall submit to the City either written plans showing the proposed construction, alteration, or remodel or a written description of the construction, alteration or remodel, and shall secure the written approval of the plans or basic written description by the City prior to the beginning of construction, alteration, remodel or removal.

In the event that the City approves such construction, alteration, remodel, or removal, in writing, Permittee shall not make any contract for construction, alteration, remodel, repair, or removal on, in, of or to the permitted premises, or any part thereof, for any work to be done or materials to be furnished on or to the permitted premises, or any part thereof, without providing in such contract or agreement that no lien of mechanics or materialmen shall be created or shall arise against the permitted premises or the buildings or other improvements at any time located thereon. All persons furnishing any work, labor or materials, as well as all other persons whatsoever shall be bound by this provision and the notice therefrom and after the date of this Permit, and notice is hereby given that no mechanic's lien, materialman's lien, or any other encumbrance made by or obtained against Permittee or its interest in the permitted premises or the building or improvements thereon shall in any manner or degree effect the title or interest of the City in such land and building and improvements thereon. To that end, Permittee agrees that it will not make any contract or agreement, either oral or written, for any labor, services, fixtures, materials or supplies in connection with construction, demolition, altering, repairing or improving the permitted premises without providing in such contract or agreement that the contractor shall waive all rights to a construction lien, and waive all right of any subcontractor's construction liens, by reason of furnishing any labor, services and materials under such contract or contracts whether written or oral, and that a copy of such contract or contracts, shall, upon execution, be immediately furnished to the City.

All alterations, additions and improvements made by Permittee pursuant to this section shall belong to the City and shall remain with the permitted premises upon termination of this Permit, whether by expiration or default. Provided, however, that, so long as Permittee is not in

default under the terms of this Permit, Permittee shall be permitted to remove business and trade fixtures upon termination of the Permit if such removal can be made without damage to the permitted premises. Such removal shall be made within fourteen (14) days of expiration of this Permit or the vacating of the permitted premises by Permittee, whichever occurs first. Items not removed within such fourteen (14) day period shall become the property of the City at the expiration of such period without any offset or other compensation to Permittee. At the option of the City, the City may remove such property and store it at the risk and expense of the Permittee and sell such property for such removal and storage charges.

8. **TAXES.** Permittee shall pay all taxes and assessments, if any, upon any personal property of Permittee kept or utilized upon the permitted premises and shall pay any sales, use, or ad valorem tax, or similar tax or assessment, imposed upon any activities of Permittee conducted upon the permitted premises.

9. **UTILITIES.** Permittee, during the term of this permit, shall pay those utilities set forth in Exhibit "E", attached hereto and made a part hereof. City shall not be obligated to provide or pay for any utilities to or upon the permitted premises, such provision and payment being in the sole discretion of the City.

10. **REPAIRS AND MAINTENANCE.** Permittee shall perform, at its expense, during the term of this Permit, those maintenance and repair obligations set forth in Exhibit "F", attached hereto and made a part hereof. In addition to the items set forth in Exhibit "F", Permittee shall perform at its expense, or shall reimburse City for City's materials and labor, for any repairs necessitated by the negligent or intentional acts of Permittee, its officers, directors, members, employees, agents, guests, customers, participants, or invitees.

City may undertake, in its sole discretion, such repairs or maintenance of the permitted premises that are not the obligation of the Permittee hereunder, but the City is under no obligation or duty to conduct any repairs or maintenance of the permitted premises.

11. **NUISANCE.** Permittee shall not conduct any activities upon the permitted premises that are prescribed by the laws of the United States, the State of Montana or local ordinance or the rules of any regulatory agencies of either the United States, State of Montana or City of Miles City. Permittee will not conduct any activities upon the permitted premises that would constitute either a private or public nuisance or waste or which interfere with the quiet and peaceful enjoyment of the adjoining property of the City.

12. **HAZARDOUS MATERIALS.** Permittee will not apply, use, store or dispose of any substance in, upon or beneath the permitted premises that would constitute an environmental hazard and would impose a cleanup obligation upon the owners of the permitted premises under any local, state or federal laws or regulations.

13. **INSURANCE.** Permittee, at Permittee's expense, shall, at all times during the term of this Permit, maintain in effect a policy of public liability insurance with policy limits of at least those set forth in Exhibit "F" attached hereto and made a part hereof. The City shall be

named as an additional named insured on each such policy of insurance. Such policy of insurance shall be maintained with an insurance company licensed to do business in the State of Montana with an A.M. Best rating of at least "A". Permittee shall provide to the City at the commencement of the permit term satisfactory evidence of the existence of such policy of insurance and shall, during the term of this permit, upon reasonable request of the City, provide to the City evidence of the continued existence of such policy of insurance and the entire policy of insurance.

14. **INDEMNIFICATION.** Permittee agrees to indemnify, defend and hold harmless the City from any and all loss, damages, claims and/or liability occasioned by, arising out of, or resulting from any tortious or negligent act of Permittee, its officers, directors, members, employees, agents, guests, customers, participants, or invitees.

15. **ASSIGNMENT.** This permit is personal as to the Permittee and may not be assigned or sub permitted by Permittee without the prior written consent of the City.

16. **VIOLATION OF PERMIT.** Upon failure of Permittee to carry out any material provision of this permit, the City shall serve written notice upon the Permittee specifying the violation. The Permittee shall have ten (10) days to correct the violation and, if the violation is not corrected as charged the City may, at its option, either correct the violation and collect the cost from the Permittee, or cancel this permit and collect damages caused by the violation from the Permittee. In the event that the City elects to cancel this permit, Permittee agrees to immediately redeliver possession of the permitted premises to the City.

17. **NOTICES.** Any notice hereunder shall be in writing and may be delivered personally or by registered or certified mail with postage prepaid. Notice shall be deemed complete when deposited in a United States Post Office addressed to the City at the following address:

City of Miles City
Public Works Director
P.O. Box 910
Miles City, Montana 59301

and to the Permittee at the following address:

Torez Moto X Club

Miles City, Montana 59301

If either party changes their address then they shall give written notice to the other party of the change of address. Any notice given under this contract shall be deemed complete when deposited in a United States post office.

18. **INSPECTION; DISCLAIMER OF WARRANTIES.** Permittee has inspected the permitted premises and has made its independent investigation and evaluation of the suitability

of the permitted premises for the uses by Permittee permitted hereunder and is not relying upon any warranties, representations, promises, or information by or from the City in this regard. The City does not warrant, represent, inform or promise that the premises permitted hereunder are suitable for the uses for which permission is granted under this permit or for any other uses of Permittee.

19. **COMPLIANCE WITH A.D.A.** Permittee agrees, at all times during the term of this permit, to comply with the provisions of the Americans with Disabilities Act as they may apply to Permittee.

20. **NONDISCRIMINATION.** Permittee agrees, at all times during the term of this permit, not to discriminate any person in its permitted uses hereunder, or its utilization of the permitted premises, on the basis of race, creed, color, religion, national origin, sex, marital status, mental or physical handicap, except as permitted by law or applicable regulation.

21. **SPECIAL PERMIT PROVISIONS.** Permittee shall at all times comply with the additional provisions contained in Exhibit "H", attached hereto and made a part hereof.

22. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, agreements and memoranda. This Agreement may be modified only by written instrument executed by all parties to the Agreement.

23. **BINDING EFFECT.** This agreement shall be binding upon the heirs, successors and assigns of the parties hereto. Nothing herein shall be construed as waiving or otherwise modifying the prohibition against assignment or sub permitting contained herein.

24. **BINDING AUTHORITY.** Permittee hereby represents and warrants that the person executing this Agreement on behalf of Permittee has full authority to bind the Permittee to the terms and conditions of this permit and does so bind Permittee, and that all organizational actions necessary have been undertaken by Permittee to authorize such person to bind Permittee.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above set forth.

CITY OF MILES CITY

By: _____
Mayor

TOREZ MOTO X CLUB:

By: _____

Title: _____

EXHIBIT "A"
DESCRIPTION OF PERMITTED PREMISES

Miles City Motocross Track at Spotted Eagle

EXHIBIT "B"
PERMIT FEES

Cash Fees:

The sum of _____ Dollars (\$ _____) per year, payable in advance, upon the execution of this permit, and on each anniversary thereof.

EXHIBIT "C"
PERMITTED USES OF PERMITTED PREMISES

During the term of the permit, Permittee shall use the permitted premises for the following uses: *Motocross and ATV riding, and uses incidental*

EXHIBIT "D"
SCHEDULE OF EVENTS

The City may require that the Permittee create an activity schedule at any point during the duration of this permit, however, no schedule is being required at the time of approval of this permit.

EXHIBIT "E"
UTILITIES

During the term of this Permit, Permittee shall pay for all utilities upon the permitted premises and used by them.

(Note: All utilities that Permittee is required to pay under this Exhibit, shall be maintained in an account solely in the name of Permittee, unless otherwise designated herein or by separate written agreement of the City.)

EXHIBIT "F"
REPAIR AND MAINTENANCE OBLIGATIONS OF PERMITTEE

Permittee shall be responsible for maintaining the track and all common areas, as well as fencing, gates, roads, parking areas, and all other improvements. If portable toilet facilities are brought to the premises, they shall be maintained in a safe and sanitary manner. Permittee is authorized to install a second gate near the first large water crossing when accessing the park.

Daily cleanup of the track and other common areas within the permitted area will be required and the obligation of the permittee.

EXHIBIT "G"
INSURANCE LIMITS

INSURANCE LIMITS:

Each occurrence	\$1,500,000
Fire damage	\$ 300,000
Medical	\$ 5,000
Personal & Adv Injury	\$1,000,000
Products - Comp/Op/Agg	\$1,000,000

(See attached insurance cover sheet)

EXHIBIT "H"
SPECIAL PERMIT PROVISIONS

All excavation activities must include contact with **Call Before You Dig** prior to construction of any type.