

RESOLUTION NO. 4379

A RESOLUTION APPROVING AN AGREEMENT WITH WILLIAM ECKART FOR MITIGATION OF CERTAIN FLOODPLAIN VIOLATIONS.

WHEREAS, the City of Miles City alleges that William Eckart and Eckart Trucking, Inc., have violated local, state, and federal floodplain regulations with the construction of a certain unpermitted building addition located on property near the Yellowstone River;

AND WHEREAS, the parties have entered into a certain Agreement in an effort to resolve said alleged violations, with a plan to mitigate the same;

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

1. The "Agreement – Miles City, Montana and William Eckart" attached hereto as Exhibit "A" and made a part hereof, is hereby approved and adopted by the Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and to bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 13TH DAY OF OCTOBER, 2020.

John Hollowell, Mayor

ATTEST.

Lorrie Pearce, City Clerk

AGREEMENT
MILES CITY, MONTANA and WILLIAM ECKART

This Agreement ("Agreement") is made by and between the City of Miles City, Montana a Montana municipality ("City") and William Eckart and Eckart Trucking, Inc. (collectively "Eckart") effective on the ___ day of _____, 2020.

WHEREAS, the City claims that Eckart has violated certain provisions of its municipal code when he constructed improvements to real property in the Milwaukee Park Addition to the City of Miles City, Sec. 28, T8N, R47E, with an address of 1415 N. 6th Street inside the exterior boundaries of the City (Real Property) including violations of the City's Floodplain Hazard Management Regulations (Regulations);

WHEREAS, Eckart believes that the construction on the Real Property is lawful and has certain legal and equitable defenses to the City's claims;

WHEREAS, the City and Eckart have obvious differences on their respective positions, where each party believes they will prevail in any administrative, equitable or legal proceeding (Dispute);

WHEREAS, the Federal Emergency Management Agency has put the City on notice that the City must create a corrective action plan to resolve the alleged violations of the City's Regulations and federal law based on the construction on the Real Property in order for the City and its residents to not be ~~further~~ formally sanctioned under the National Flood Insurance Program (NFIP);

WHEREAS, the City and Eckart have engaged in good faith negotiations, to resolve the Dispute;

WHEREAS, both the City and Eckart intend to resolve the Dispute in accordance with the terms and conditions of this Agreement;

WHEREAS, the City Council and Eckart have authority to resolve this matter pursuant to Montana law; and

WHEREAS, the City and Eckart have discussed terms upon which to amicably resolve the Dispute without any party admitting the validity or accuracy of any potential claims or defenses that could be raised nor any party admitting any liability based on the terms and conditions of this Agreement.

NOW, THEREFORE in consideration of the mutual promises contained herein and other good and valuable consideration, the City and Eckart agree that the foregoing recitals are true and correct and as follows:

1. Eckart shall conduct the following in order create a corrective action plan for Real Property:
 - a. Within 50 days, retain properly credentialed professionals including engineers, using standard engineering practice, to evaluate and analyze the hydrologic and hydraulic properties of the Real Property as well as plan and design any mitigation to comply with the Regulations or federal law. Said professionals shall request from FEMA's Data Library the effective model covering the subject property during said 30 day period.
 - b. Within 120 days of receipt of the FEMA effective model covering the subject property, based on the evaluation, analysis and determinations of flood elevations and levels, as well as other necessary information regarding the Real Property relevant to the Regulations and federal law, Eckart will present the City a plan and submittals for the purpose of determination of impact on flood elevations and levels and compliance with the Regulations and NFIP regulations. Additionally, Eckart will submit plans for any potential mitigation that may be necessary.
 - c. If Eckart's plans and submittals are accepted he shall cause the completion of any further design, survey and construction on the Real Property consistent with the same which shall be completed within 120 days from the date in which the City has reviewed and accepted said submittals, and issued all necessary permits. Eckart will allow for any reasonable inspections of construction work on the Real Property under the Regulations or applicable state and federal law.

- d. Eckart will provide all necessary documentation, plans, elevations, and other elements to the City for review for permits under the Regulations applicable state and federal law or any other applicable City code, including for building and occupancy permits, as well as flood permits; with said flood permit to refer to the FEMA Section 1316 designation, and to this Agreement, as justification for not requiring said structure to be in strict compliance with the City's flood code provisions. Eckart will allow reasonable inspections for such permits. Such permits may have reasonable maintenance requirements pursuant to the Regulations or state and federal law.
- e. Should any mitigation improvements be required to carry out the terms of this agreement, said mitigation improvements shall be maintained by Eckart and subject to annual inspection by the City, as well as inspection following any extraordinary weather events which may have compromised the integrity of said improvements, however, no inspection shall be completed without providing 48 hours written notice to Eckart, and inspections shall be strictly limited to the mitigation improvements upon the subject property. Maintenance deficiencies which are noted shall be repaired within 30 days of written notice of the same, with reasonable allowances for extension of time should weather make repairs within 30 days impractical. A memorandum of said limited annual and emergency inspection requirements shall be recorded with the Clerk and Recorder in and for Custer County, Montana, in the event such improvements are required as a result of the mitigation efforts called for herein.
- f. Upon Eckart's request, the City shall review plans for modifications to the existing structure provided by Eckart to determine whether or not said improvements would bring structure into compliance, along with any other documentation that would be needed to retract the "1316". Once the structure is brought into compliance the City would then submit the needed documentation to FEMA for approval to retract the current "1316" designation upon the property.
- g. Eckart agrees that storage of hazardous materials upon the subject property shall be in conformance with the Regulations as well as state and federal law.

2. During the course of this Agreement is in full force and effect, the City shall not file any action in any court against Eckart based on the construction or location of improvements previously completed on the Real Property.

3. The parties agree that they have entered the contract evidenced by this Agreement as a bargain, supported by consideration, between mutually situated parties represented by legal counsel. The parties agree that pecuniary compensation may not afford adequate relief pursuant to the terms of this contract and thus they agree that a court with appropriate personal and subject matter jurisdiction entertain requests by either party to grant injunctive relief or specific performance to compel compliance with its terms as long as the Agreement has not been terminated.

4. Either party may terminate this Agreement with 30 days written notice to the other party.

5. The provisions of this Agreement, including the recitals set forth above, shall apply to and be binding upon the parties, their heirs, assignees, successors, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto.

6. The terms stated in this Agreement constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those that are expressly set forth herein. The terms of this Agreement supersede all previous letters, memoranda of understanding, notes, conversations, and agreements, whether expressed or implied. This Agreement may not be modified verbally. Once the terms of this Agreement have been completed, the ongoing obligations herein shall be binding on the heirs, successors, and assigns of the parties hereto.

7. The Parties shall execute any additional documents and cooperate as reasonably necessary to effectuate the terms of this Agreement.

8. The parties acknowledge by signing this Agreement that they have read and understand its terms and that they have the legal authority to bind the entity or agency on whose behalf they sign.

CITY OF MILES CITY, MONTANA

By: _____, its _____

WILLIAM ECKART and ECKART TRUCKING, INC.

William Eckart, individually, and as President of Eckart Trucking, Inc.

DRAFT