



# CITY OF MILES CITY AGENDA

*Regular Council Meeting  
City Council Chambers  
and zoom.us*

*May 11, 2021  
6:00 p.m.*

## CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. **APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**

- A. Public Service Committee Meeting 04/22/2021  
B. Public Safety Committee Meeting 04/22/2021

2. **SCHEDULE MEETINGS**

3. **REQUEST OF CITIZENS & PUBLIC COMMENT**

4. **APPOINTMENTS**

Ward IV Council Member  
-Steve Palmeri

Zoning Commission  
-Amber Trenka  
-Leif Ronning  
-Leroy Meidinger  
-Nancy Mitchell

Planning Board  
-George Luther Jr. (County Commissioner appointed member)

Police Commissioner  
-Don Neese

5. **PROCLAMATIONS**

Kids to Parks Day ~ May 15<sup>th</sup>, 2021

6. **STAFF REPORTS**

7. **CITY COUNCIL COMMENTS**

8. **MAYOR COMMENTS**

9. **COMMITTEE RECOMMENDATIONS**

10. **BID OPENINGS**

11. **BID AWARDS**

12. **PUBLIC HEARINGS**

- A. **File # CV 2020-01 - Preliminary Plat Review of City View Subdivision,  
a Proposed Subsequent Minor Subdivision of Lot 2 of Block 5 of the Amended  
Plat of Southgate Meadows Subdivision**

13. **UNFINISHED BUSINESS**

14. NEW BUSINESS

- A. **ORDINANCE NO. 1348 (*First Reading*) – AN ORDINANCE AMENDING SECTION 22-245 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY ESTABLISHING REVISED TRUCK ROUTES.**
- B. **RESOLUTION NO. 4402 - A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND BIG SKY CREMATION SERVICES L.L.C., LOCATED WITHIN THE INDUSTRIAL SITE OWNED BY THE CITY OF MILES CITY.**
- C. **RESOLUTION NO. 4403 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH KADRMAS, LEE & JACKSON D/B/A KLJ, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- D. **RESOLUTION NO. 4404 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH BROSZ ENGINEERING, INC. FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- E. **RESOLUTION NO. 4405 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH ROBERT PECCIA & ASSOCIATES, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- F. **RESOLUTION NO. 4406 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH GREAT WEST ENGINEERING, INC. FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- G. **RESOLUTION NO. 4407 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH INTERSTATE ENGINEERING, INC., FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- H. **RESOLUTION NO. 4408 - A RESOLUTION APPROVING A STANDARD ABBREVIATED FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT FOR PROFESSIONAL SERVICES WITH SDI ARCHITECTS + DESIGN, FOR THE PROVISION OF ARCHITECTURAL SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- I. **RESOLUTION NO. 4409 - A RESOLUTION APPROVING A TASK ORDER BETWEEN THE CITY AND INTERSTATE ENGINEERING, INC. FOR SERVICES RELATED TO THE 2021 TRANSPORTATION ALTERNATIVES PROGRAM CAPITAL IMPROVEMENT PROJECT**

**J. APPROVAL OF CITY OF MILES CITY PLANNING BOARD PRELIMINARY PLAT APPLICATION FOR THE CITY VIEW SUBDIVISION**

**K. APPROVAL OF APRIL CLAIMS**

**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

**PUBLIC SERVICE COMMITTEE MEETING**  
**April 22, 2021**

The Public Service Committee met Thursday April 22<sup>nd</sup>, and online at zoom.us at 5:15pm in the City Hall Conference Room, 17 S. 8<sup>th</sup> Street, Miles City, Montana. Present were Committee Members, Dwayne Andrews, Ken Gardner, Kathy Wilcox, and Rick Huber.

Also present were City Planner-in-Training Ally Capps, City Clerk Mary Rowe, and Deputy City Clerk/Recorder Jody Kinsey.

Committee Member Andrews opened the meeting

**1. Elect A New Chair Person**

\*\* *Councilperson Wilcox moved to nominate Dwayne Andrews to continue to be the chair person. Councilperson Huber seconded the nomination. The motion passed, 3-1 with Councilperson Andrews voting no.*

**2. Request of Citizens**

**-None-**

**3. Committee Member Comments**

**-None-**

**4. Review and Recommend Ordinance 1346: An Ordinance revising city code sections 7-57 through 7-62 pertaining to the city of Miles City Urban Renewal District Board of Commissioners and providing for effective date thereof**

Planner-in-Training Ally Capps explained to the Committee that the Resolution did not match the Ordinance. She stated that it was not in compliance with MCA. These changes were necessary to make the board compliant. The reporting will also now only need to be done once a year, in September.

\*\* *Committee Member Wilcox moved to accept and recommend approving the Ordinance as read, and seconded by Committee Member Huber. The motion passed, 4-0.*

**5. Adjournment**

\*\* *Committee Member Wilcox motioned to adjourn the meeting, seconded by Committee Member Gardner. Motion passed, 4-0.*

*The meeting was adjourned at 5:23pm*

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Dwayne Andrews, Chairperson

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Jody Kinsey, Deputy City Clerk

**Public Safety Committee Meeting**  
**April 22, 2021**

The Public Safety Committee met Thursday, April 22, 2021, at 6:00 pm via live attendance and Zoom Conferencing in the City Hall Conference Room, 17 S. 8th. Present were Committee Members Elizabeth Patten, Kathy Wilcox, and Ken Gardner. Also present were: Fire Chief Branden Stevens, Animal Control Officer Mark Winkley, Council Member Rick Huber, Council Member Dwayne Andrews, Custer County Fund for Animals Members – Cindy Conley, Kathryn Kellogg, Tracy Schwarzkopf, Kaitlyn Perkins, Dispatch Supervisor Lyne Anderson, Public Works, Police Chief Doug Colombik, Director Scott Gray and HR Officer/Recorder Linda Wilkins.

Chairperson Patten called the meeting to order.

**1. Request of Citizens for Public Comment**

Custer County Fund for Animals thanked and recognized Officer Winkley for his work with animals.

**2. Staff Comments**

Chief Stevens reported that call volume is up, the department is taking a record number of transfers which consequentially adds mileage to the ambulances. Tower 19 is out of service, there is concern over the stability of the ladder, which hopefully can be repaired. Custer County Fire Chief Peterson has requested the City to respond to County calls during the day, apparently there has been issue with response by the County volunteer firefighter. The interlocal agreement was discussed regarding an adjustment to charges for services provided by the City. He has discussed with the Montana Legislative Budget Chair regarding funding related to the issues with the department building. The City is ahead of the game because there is a Preliminary Architectural Report (PAR). A mold assessment report has been received and will be forwarded to the Public Safety Committee. The ridge cap on the roof has been repaired and replaced.

**3. Committee Member Comments**

Chairperson Patten stated that beginning July 1 Miles City and Sidney will become dispatch cities for prevailing wages which will help bring construction costs down.

**4. Discussion and Recommendation regarding pigeon abatement**

Officer Winkley stated the epicenter of the pigeon population is in the 300, 400 and 500 blocks of Main Street, the old Farmers Union Building and the BN Depot; he had done some research on options:

1. There an individual out of Billing who traps, shots and disposes of pigeons out of Billings.
2. There is an individual who traps pigeons to use for dog training.

He had left a message for the Mayor and was waiting for his response. Chairperson Patten stated she would speak with the Mayor. Committee Member Wilcox suggested doing both options.

**5. Discussion and Recommendation of the Animal Ordinance regarding cats**

Officer Winkley state there is currently no limit on the number of cats that can be owned by a household, currently three (3) dogs are allowed per household. There was discussion on the number of cats allowed per household ranging from 6 to 3. It was also discussed addressing the time frame for fostering or rescuing cats in a household beyond the number of cats allowed to be owned per household. A question arose regarding licensing cats, Officer Winkley will check and see if the current ordinance requires cats to be licensed. Committee Member

Wilcox appreciates the amount of time dedicated to the enforcement of the current ordinance and suggested a draft be prepared for the next meeting addressing licensing and the number of cats per residence. Members of the community are also trapping cats which also needs to be addressed. Officer Winkley stated he would do research regarding the number of cats' other city's allow per residence and licensing. Chairperson Patten stated trapping also needs to be addressed.

**6. Update on if Prairie County will join Southeastern Montana Dispatch, potential timeline, and what this will look like for future staffing**

Supervisor Anderson received notification Tuesday that Prairie County will be joining dispatch on July 1, 2021. There is a lot of transition work to be done. She would like to have two (2) additional dispatchers added, but one (1) by July 1. There will be an additional \$100,000 of revenue for dispatch taking on Prairie County.

**7. Discussion and Recommendation regarding new Truck Route**

Chairperson Patten stated that the change in the route would alleviate large numbers of trucks passing through town and use the Interstate as much as possible for truck traffic. Director Gray stated there is a large volume of truck traffic routing through town going north to hauling wind farm construction material and road construction trucks for the change to the highway going north. The route through the City will use Pacific Avenue instead of Bridge Street. The Montana Department of Transportation (MTDOT) has placed signage up to direct truck traffic down Garryowen Road to Pacific. The redefinition of the truck route will also alleviate truck traffic past the high school and residential areas, sharp turns that have often knocked fire hydrants down. The City will need to pass a new truck ordinance with routing directions. New signage will be placed for the truck route in town and start the process for funding from MTDOT.

*\*\*Committee Member Patten moved to recommend and proceed with the Ordinance for the new truck route, seconded by Committee Member Wilcox.*

Committee Member Gardner commented he like the new route.

*\*\*The motion passed unanimously, 3-0.*

**8. Update on MCPD remodel timeline**

Hardy Construction was here on Tuesday at 1:00 p.m. they were advised the City would not be able to provide staff or exterior demolition; Hardy will be providing a budget for interior and exterior demolition. The architectural plans are being worked on, the mechanical engineers report will be out at the end of April. The fire sprinkler system is out for bid.

**9. Adjournment**

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

The meeting was adjourned at 7:10 p.m.

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Chairperson Elizabeth Patten

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Recorder Linda Wilkins

To whom this may concern,

My name is Steven Palmeri and I am a resident in ward 4. My address is 118 N Merriam Ave Miles City, Mt 59301. I am interested in filling the opening on City Counsel. I thank you for the consideration and your time.

I hope all is well



Steven Palmeri

[stevopalmeri@gmail.com](mailto:stevopalmeri@gmail.com)

918-200-7588





# Public Hearing

Additional Information Regarding Landscaping Plans,  
Water/Sewer Plans, Stormwater Plans, and Subdivision  
Submittal are Available for Viewing at the City Clerk's  
Office, 17 S 8<sup>th</sup> Street, Miles City, Montana.

**Planning Board Report to the City Council**  
**File # CV 2020-01**  
**Preliminary Plat Review of City View Subdivision,**  
**a Proposed Subsequent Minor Subdivision of Lot 2 of Block 5 of the**  
**Amended Plat of Southgate Meadows Subdivision**  
**May 4, 2021**

**I. GENERAL INFORMATION**

**A. Review Period**

This proposal constitutes a subsequent minor subdivision as defined by the Miles City Subdivision Regulations (MCSR) and as outlined by Montana law. The allotted time for the preliminary plat review of a subsequent minor subdivision is 60 working days. The Miles City Planning Board held a special meeting and introductory public hearing regarding this subdivision on Wednesday, March 24, 2021 at 6:00pm. The Planning Board then held a 2<sup>nd</sup> public hearing on the proposal on Tuesday, April 20, 2021 at 6:00pm at its regular quarterly meeting. At the conclusion of the April public hearing, the Planning Board made a recommendation on the proposal to the Miles City City Council. The City Council is required to take final action on or before the review deadline of May 11, 2021. The City Council is scheduled to review the subdivision at 6:00pm on Tuesday, May 11, 2021, with a 3<sup>rd</sup> public hearing scheduled at that time.

**B. Project Characteristics**

- 1. Type of Project:** Four-lot subsequent minor subdivision (preliminary plat)
- 2. Proposed Lot Sizes:** Lot 2A: 4.982 acres  
Lot 2B: 2.920 acres  
Lot 2C: 3.315 acres  
Lot 2D: 11.198-acres
- 3. Zoning:** City of Miles City General Commercial (GC) Zoning District (current – no proposed change)
- 4. Present land use:** Vacant
- 5. Proposed land uses:** Commercial and other non-residential land uses allowed in General Commercial (GC) Zoning District

- 6. **Access:** Approaches to City streets: Horizon Parkway and Parkhill Drive; project includes proposed improvements to Horizon Parkway and other staff/planning board-recommended improvements
- 7. **Utilities:** Electrical and telecommunications utilities available in Horizon Parkway public right-of-way
- 8. **Water/Sewer:** Extensions of Miles City and Custer County Water and Sewer infrastructure with water and wastewater services provided by Miles City's municipal systems

**C. Project Proponents**

- 1. **Applicant:** Matthew Lothspeich, *for*  
L & L Developers, LLC (subdivider)  
2323 South Haynes Avenue  
Miles City, MT 59301
- 2. **Landowner:** L & L Developers, LLC  
2323 South Haynes Avenue  
Miles City, MT 59301
- 3. **Local Agent:** Cory Wilhelm, PLS, CFedsS  
Wilhelm Land Surveying, LLC  
713 Pleasant Street  
P.O. Box 1518  
Miles City, MT 59301
- 4. **Project Engineer:** Shannon Hewston, PE  
Brosz Engineering  
109 South Main Street  
Bowman, ND 58623

**D. Property Description**

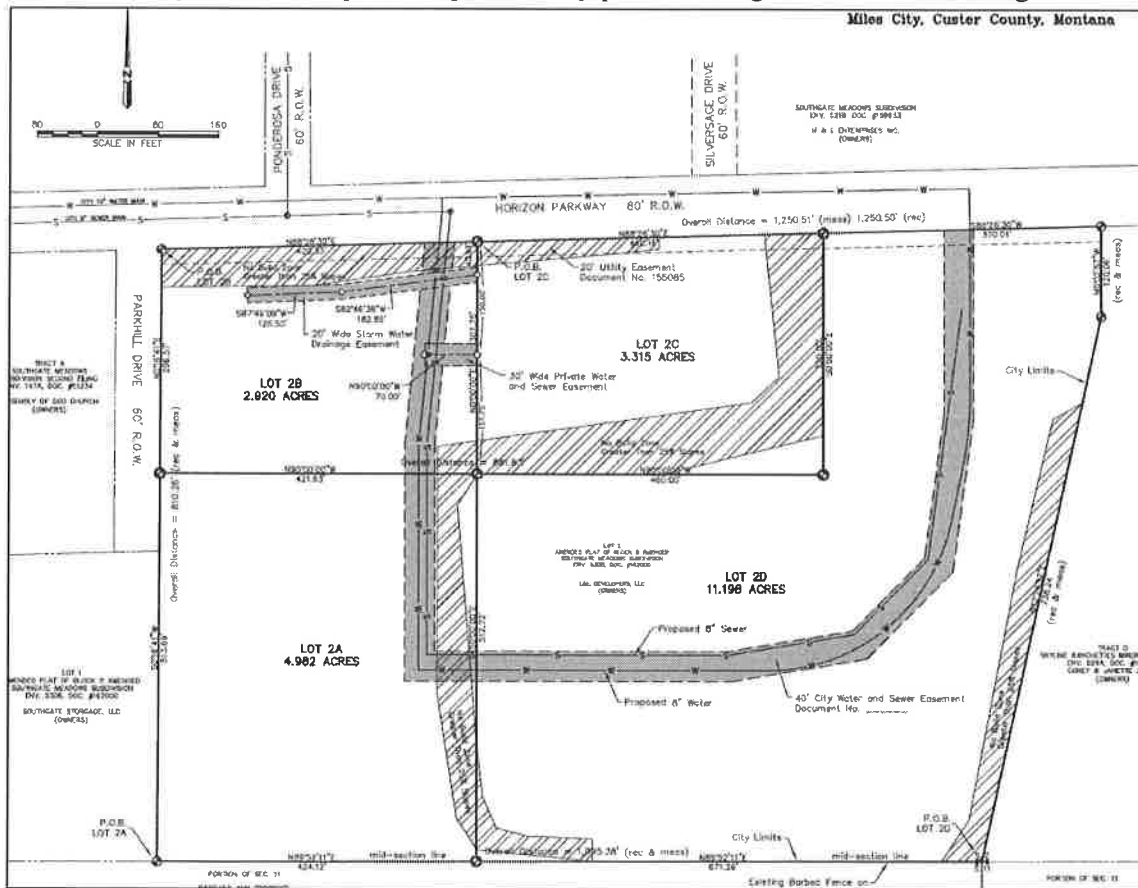
The ±22.4-acre tract of land is located at 501 Parkhill Drive in the southeast portion of Miles City, along the south side of Horizon Parkway approximately 1,530 feet east of MT Highway 59. See Figure 1, 'Vicinity Map'.



## E. Project Description

The proposed subdivision would create four lots ranging in size from 2.92-acres to 11.198-acres from the 22.4-acre tract (See Figure 2). All four lots would be provided municipal (City of Miles City) water and sewage disposal services via the Custer County Water and Sewer District, with water and sewer mains looping through the subdivision on all four lots. Access to Lots 2C and 2D would be directly off Horizon Parkway, a city street. Access to Lots 2A and 2B would be directly off Parkhill Drive, a city street that connects to Horizon Parkway at the northwest corner of the subject property. Improvements to portions of Horizon Parkway and pedestrian facilities are proposed by the subdividers along north boundary of the subject property to bring the facilities up to City standards to the approach to Lot 2D.

**Figure 2:** Excerpt of the preliminary plat, showing the subdivision design.



All four lots are proposed for undetermined commercial uses in compliance with the GC Zoning District. Lot 2D is proposed for a later condominium development that would provide for 10 commercial condominium units to be exempt from subdivision review as



## **F. Variance Requests**

The subdivision application includes two variance requests to the MCSR: (1) to allow three lots to be divided by an easement contrary to Sec. 21-18(a)(6)(b) MCSR, and (2) for the subdivision to rely upon a road, Horizon Parkway, that does not provide a second or emergency access as required by Sec. 21-18(a)(8)(a)(8) MCSR. Variance requests are subject to review per Sec. 21-22(a) MCSR and are further analyzed in Section II.A of this report.

## **G. Recommended City Council Motions:**

Variations: The project includes two variance requests. Each variance should be acted on and voted on individually.

-Recommended motions:

1. *“Having reviewed and considered the submitted variance request for lot design, the variance discussion and analysis in the planning board report, public comment, and all information presented, I hereby move to adopt the findings presented in the report for Variance Request #1 and grant approval of the requested variance from the requirements for lot design to allow three lots to be divided by an easement.”*
2. *“Having reviewed and considered the submitted variance request for lack of a second or emergency access, the variance discussion and analysis in the planning board report, public comment, and all information presented, I hereby move to adopt the findings presented in the report for Variance Request #2 and grant approval of the requested variance from the requirement for the subdividers to provide a second or emergency access.”*

Alternatives:

1. Recommend approval of the variance with the recommended findings (per above);
2. Recommend approval of the variance with modifications to the findings and/or recommended conditions;
3. Recommend denial of the variance based on findings of non-compliance with the applicable variance criteria contained within the applicable laws and regulations;  
or
4. Continue the hearing to provide for further information and analysis of the requested variance, with specific direction to staff and/or the subdividers to supply additional information or to address specific items of concern.

Preliminary Plat/Application Motion: *“Having reviewed and considered the planning*



*board report, application materials, public comment, and all information presented, I hereby move to adopt the findings presented in the report for the City View subdivision and grant preliminary approval subject to the conditions of approval as recommended by the City Planning Board.”*

Alternatives:

1. Recommend approval of the preliminary plat application with the planning board-recommended findings and conditions (per above);
2. Recommend approval of the application with modifications to the recommended findings and/or conditions;
3. Recommend denial of the application based on findings of non-compliance with the applicable criteria contained within the applicable laws and regulations; or
4. Continue the public hearing on the subdivision application, with specific direction to staff and/or the subdividers to supply additional information or to address specific items of concern.

## **II. PROJECT DETAILS**

### **A. Property and Project History**

The pertinent history of the Southgate Meadows subdivision and creation of the subject tract of record is included as Appendix A. The appendix also provides information on easements and street dedications.

Court Order:

The subdivision involves some unique circumstances as a result of the litigation surrounding the subdivision that created the subject tract. To comply with a court order stemming from the case (Montana Sixteenth Judicial District Court Cause No. DV 2014-129), the City of Miles City is to take steps to ensure that subdivision review of this application is conducted in full compliance with the Montana Subdivision and Platting Act (MSPA), including public participation. In order to ensure ample public participation, two public hearings will be held as part of the City Planning Board review of this matter. Further, staff reports and other materials have been provided to the attorneys of record for the Plaintiffs in the foregoing court action for their review and comment. The City Council is also to hold a public hearing on May 11.

Pre-application for this subdivision (March 2020):

On March 26, 2020, the subdividers' agent, Cory Wilhelm emailed the Subdivision Administrator and other City staff a pre-application meeting request, the first step required

in a subdivision review process. The City failed to respond specifically to the submittal requesting a pre-application meeting, possibly due to the time of submittal aligning with the start of the COVID-19 pandemic. In any event, following preliminary plat submittal in June 2020 during the initial element review (discussed further below), it was agreed that the City would process the preliminary plat application without requiring a pre-application meeting, and the Subdivision Administrator would review the application for completeness and sufficiency based on what the Subdivision Regulations require, as opposed to following a list that would typically be provided as part of pre-application review, which was never created for the subdivision proposal.

Preliminary plat review of this application (June 18, 2020 – present):

The following is a timeline of events surrounding the current City View subdivision preliminary plat application:

- Preliminary plat application received by the City on June 18, 2020, giving a 1<sup>st</sup> Element Review deadline of June 25, 2020 for the Subdivision Administrator to respond.
- 1<sup>st</sup> Element Review completed on June 25, 2020 (Day 5 of 5). Application found incomplete.
- Additional information received on July 6, 2020, giving a deadline of July 13, 2020 for the Subdivision Administrator to complete the 2<sup>nd</sup> five working day Element Review and respond.
- 2<sup>nd</sup> Element Review completed on July 10, 2020 (Day 4 of 5). Application found incomplete.
- Additional information received on July 17, 2020, giving a deadline of July 24, 2020 for the Subdivision Administrator to complete the 3<sup>rd</sup> five working day Element Review and respond.
- 3<sup>rd</sup> Element Review completed on July 22, 2020 (Day 3 of 5) and sent on July 23, 2020 (Day 4 of 5). Application found incomplete.
- Additional information received on July 23, 2020, giving a deadline of July 30, 2020 for the Subdivision Administrator to complete the 4<sup>th</sup> five working day Element Review and respond. Subsequent additional information was also submitted on July 24, 2020, which was reviewed during the 4<sup>th</sup> Element Review.
- 4<sup>th</sup> Element Review completed on July 30, 2020 (Day 5 of 5). Application found incomplete.

- Additional information received on August 24, 2020, giving a deadline of August 31, 2020 for the Subdivision Administrator to complete the 5<sup>th</sup> five working day Element Review and respond.
- 5<sup>th</sup> Element Review completed on August 26, 2020 (Day 2 of 5). Application found complete, triggering 15 working day Sufficiency Review #1 and a deadline of September 17, 2020 for the Subdivision Administrator to complete the sufficiency review and respond.
- 1<sup>st</sup> Sufficiency Review completed on September 17, 2020 (Day 15 of 15). Application found insufficient.
- Additional information received on November 13, 2020, triggering 15 working day Sufficiency Review #2 and a deadline of December 7, 2020 for the Subdivision Administrator to complete the sufficiency review and respond.
- 2<sup>nd</sup> Sufficiency Review completed on December 7, 2020 (Day 15 of 15). Application found insufficient.
- Additional information received on December 30, 2020, triggering 15 working day Sufficiency Review #3 and a deadline of January 25, 2021 for the Subdivision Administrator to complete the sufficiency review and respond.
- 3<sup>rd</sup> Sufficiency Review completed on January 25, 2021 (Day 15 of 15). Application found insufficient.
- Additional information received on February 5, 2021, triggering 15 working day Sufficiency Review #4 and a deadline of March 1, 2021 for the Subdivision Administrator to complete the sufficiency review and respond.
- 4<sup>th</sup> Sufficiency Review completed on February 16, 2021 (Day 6 of 15). Application found sufficient for review, triggering the 60 working day public review period, during which time at least one Planning Board public hearing is required, followed by a City Council meeting and decision. Review deadline is May 11, 2021.
- A public hearing with the Planning Board was initially scheduled for March 16, 2021 but was later postponed until March 24, 2021, and a Planning Board organizational meeting was tentatively planned for early- to mid-March.
- Legal notice for a March 24, 2021 public hearing was completed on March 9, 2021.
- While preparing for the Planning Board organizational meeting for March and the March 24, 2021 public hearing, on or around March 8<sup>th</sup>, City staff discovered the City

Planning Board lacked sufficient, properly-appointed membership to conduct an organizational meeting, which was therefore cancelled on March 12<sup>th</sup>.

- On March 15<sup>th</sup>, City staff scheduled a City Council meeting to properly appoint the members of the Planning Board for March 23, 2021. The public hearing scheduled for March 24<sup>th</sup> remained scheduled, but with concern that a full Planning Board would not be appointed until the evening prior to the public hearing, which would not be in time to review a staff report with a full recommendation on the subdivision, it was determined the March 24<sup>th</sup> public hearing would be introductory in nature, and a noticed second public hearing for a Planning Board recommendation would be scheduled.
- Following the Planning Board bylaws' requirement that required, quarterly April Planning Board meetings be held on the third Tuesday of that month, the second public hearing was scheduled for April 20, 2021.
- Legal notice was planned to be completed on April 5, 2021, 15 days prior to the April 20 public hearing, with a legal notice submitted to the Miles City Star on April for publication on April 5, 2021, and certified mailings to adjacent property owners, the subdividers and landowners sent on April 1.
- On April 7, 2021, City staff became aware that the Miles City Star did not publish the legal notice on the requested date of April 5, which was the deadline to meet the statutory requirement that the notice be published not less than 15 days prior to the date of the hearing. The notice was instead published on April 6, which was 14 days prior to the hearing. However, the March 24 public hearing's legal notice met the requirements, and to ensure public notice is sufficient, and even beyond the requirements, the City Council's May 11, 2021 meeting will include a fully-noticed public hearing, which was legally noticed with publication in the Miles City Star on April 22, 2021, certified mail notices mailed on April 26, and the property posted by the subdividers.
- The City Council will hold a public hearing on the proposed subdivision on May 11, 2021, the review deadline.
- Within 30 working days of a decision on the preliminary plat and application, a decision letter will be sent to the subdividers.

### III. STAFF/PLANNING BOARD ANALYSIS AND FINDINGS OF FACT

#### A. Project Specifics and Design Elements.

The following are discussions on the various aspects of subdivision design and similar elements of the project as they pertain to the design standards found in Sec. 21-18 of the MCSR:

##### 1. Lot and Block Design:

Sec. 21-18(a)(6) MCSR outlines design standards for lots, and Sec. 21-18(a)(7) outlines those for blocks. Because the subdivision does not utilize a ‘block’ pattern, those standards do not apply to this subdivision design. The lots comply with the lot design standards, with one exception described below, for which a variance is requested. Sec. 21-18(a)(6) MCSR generally requires that “each lot intended for building purposes must contain a satisfactory building site and conform to health board regulations, applicable zoning regulations, and these regulations.

The following Table II.16 provides the GC District Specifications that outline critical regulations/specifications of the zoning code that must be considered:

TABLE II.16: GC DISTRICT SPECIFICATIONS

Regulations	Specifications
Minimum lot width	50 feet
Minimum lot size	None
Minimum front yard setback	15 feet
Minimum side yard setback	0 feet
	Corner lots - 10 feet for side yard adjacent to street
	Uses abutting residential districts - 5 feet
Minimum rear yard setback	0 feet
	Uses abutting residential districts - 15 feet
Maximum lot coverage	80%
Maximum building height	Primary building - 40 feet
	Accessory buildings - 18 feet

Based on the GC specifications, each lot complies and appears developable in compliance with Table II.16 of the Zoning Code.

Variance Request #1 (lots divided by easements):

Sec. 21-18(a)(6)(b) MCSR states, “*No single lot may be divided by a public or private road, alley or utility right-of-way or easement*”. With the design of the subdivision including proposed water and sewer main extensions in a looped manner through the subdivision, the proposed 40’ wide city water and sewer easement that would contain the infrastructure also loops through the subdivision such that the easement ‘divides’ Lots 2A, 2B, and 2D, with areas on each side of each lot. Therefore, the application included a variance request to allow for the proposed 40’ wide city water and sewer easement that ‘divides’ Lots 2A, 2B, and 2D, which is attached to this report.

The requested variance must be reviewed according to Sec. 21-22(a), MCSR, “Variances”. Procedurally, the section requires the subdivider to include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The subdivision administrator and planning board will consider the requested variance and recommend its approval or denial to the governing body. The governing body may grant the variance(s) if it meets the specific variance criteria, as discussed below. In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations, and when a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based. The variance review criteria are listed and underlined below, followed by *the Subdivision Administrator/Planning Board’s analysis and Planning Board-recommended findings in italics*.

Sec. 21-22(a)(1), MCSR, “Variances authorized”: The governing body may grant variances from section 21-18, design and improvement standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations. The governing body will not approve a variance unless it finds that (note: all four criteria must be met):

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

*Staff/Planning Board Analysis: The granting of the variance to allow Lots 2A, 2B, and 2D to be divided by the proposed 40’ wide city water and sewer easement is not expected to be detrimental to the public health, safety, or general welfare, or injurious to other adjoining properties.*

*No concern with the nonconforming lot design has been raised by any service providers. The Subdivision Administrator and Planning Board cannot foresee any potential detriments to public health, safety, or general welfare or potential for the design standard to be injurious to other adjoining properties. The City utilities that will be located within the easements will be primarily underground and will not substantially interfere with development of the lots or affect the public or adjoining property owners in any manner that would be detrimental to public health, safety, general welfare, or adjoining properties.*

- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;

*Staff/Planning Board Analysis: According to the submitted variance request, the variance/easement is simply to allow the Custer County Water and Sewer District access to their water and sewer lines on private land, and there is no other way to install the water and sewer mains on this subdivision due to ground elevations for water pressure. At the April 20 planning board hearing, the subdividers' agent stated the easement would be granted to the City and the water/sewer infrastructure would be City infrastructure instead of the easement and infrastructure being granted to the Water and Sewer District. If this is the preferred location of the infrastructure and easement, which appears to be the case, it appears the variance is necessary and results from the physical surroundings, shape, and topographical conditions of the property involved. Strict compliance with the regulations would impose an undue hardship on the owner and potentially the service providers.*

- c. The variance will not cause a substantial increase in public costs; and

*Staff/Planning Board Analysis: Based on the statement that there is no other way to install the water and sewer mains on this subdivision due to ground elevations for water pressure, it appears the noncompliant design standard is intended to minimize public costs by placing the water and sewer infrastructure and associated easement in a preferred location relative to the physical conditions of the site. Considering these factors, it appears approval of the variance will not cause any increase in public costs, and would instead minimize public costs.*

- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

*Staff/Planning Board Analysis: The Subdivision Administrator has reviewed the zoning regulations and consulted with the Zoning Administrator regarding the subdivision, and has found no provision of the zoning regulations that applies to the variance request for the lots to be divided by water/sewer easements. Without evidence indicating otherwise, the variance will not place the subdivision in nonconformance with any adopted zoning regulations.*

*Staff/Planning Board Summary and Recommendation on Variance Request #1: In light of the above Analyses on Variance #1, it appears approval of the requested variance would meet all required criteria; therefore, the Subdivision Administrator and Planning Board recommend approval of the variance.*

## **2. Streets:**

The subject property is currently accessed via Horizon Parkway and Parkhill Drive. The subdivision application proposes access to Lots 2C and 2D directly off Horizon Parkway, and access to Lots 2A and 2B directly off Parkhill Drive. A segment of Horizon Parkway along the subdivision's north boundary is proposed to be improved by the subdividers to serve the subdivision.

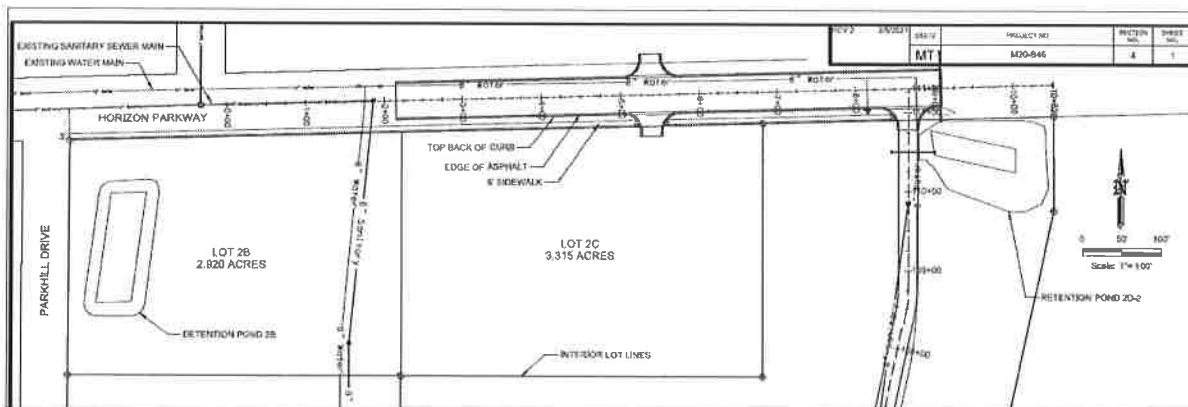
Sec. 21-18(a)(8) MCSR outlines design standards for streets. Many of the street design standards depend upon the type of street, which are defined in Sec. 21-5 MCSR (see 'Street types'). The street types are based largely on the volume of average daily traffic the streets carry. To assist with determinations of street types and projected traffic volumes, Sec. 21-14(a)(5)(a) and (b) MCSR may require a "Transportation impact analysis or transportation plan" and/or "Traffic study by a registered engineer for non-residential subdivisions" to be included with preliminary plat applications. To meet the requirement, the application included a "Limited Traffic Analysis" prepared by the project engineer, dated December 17, 2021. The engineer also supplemented the analysis with a letter dated February 5, 2021, with which the engineer clarified items in the analysis and projected traffic counts, and acknowledged Horizon Parkway is an "Arterial Street" (the previous submittal indicated Horizon Parkway east of Ponderosa Drive is a "Major Collector" based on traffic projections, but following a meeting with city staff, it was agreed that based on potential traffic from the subdivision and because although that existing segment may currently carry less traffic, all of Horizon Parkway constitutes an arterial, and the improvements up to Lot 2D's approach should be subject to design standards for Arterial Streets).



Horizon Parkway:

Horizon Parkway is a city street, which occurs along the north side of the subject property within an 80' wide right-of-way that was dedicated on the original subdivision plat of Southgate Meadows. Between Horizon Parkway's intersection with MT Highway 59 and the subject property, the right-of-way is 100-feet wide and the street has a paved driving surface varying in width from 32 to 44 feet in width. From a point near the proposed common boundary between Lot 2B and Lot 2C of the subdivision, Horizon Parkway becomes a gravel road and begins to narrow to approximately 30-feet in width. The majority of Horizon Parkway lacks sidewalks, the only exception being a segment of sidewalk along the Assembly of God Church property, and curb and gutter exists only from the NW corner of the Assembly of God Church property where the Southgate Meadows subdivision begins, along the subject property up to the gravel.

Being an Arterial Street, Horizon Parkway and its improvements to serve the subdivision are subject to the design and construction standards for Arterials as outlined in Sec. 21-18(a)(8) MCSR, including those found in Table 1 of that section. To provide sufficient access to the subdivision, Horizon Parkway is proposed to be improved to the Arterial street standards from where the current pavement ends to the proposed new approach to Lot 2D. The design plans call for matching the current 44' street width from inside of gutter to inside of gutter. The improvements along that segment would include curbs and gutters, with improved intersections and a 6' wide sidewalk along the south side of the street. The following snapshot of the site grading plans provide a general overview of the location of the proposed improvements to Horizon Parkway:



Variance Request #2 (No second or emergency access):

Sec. 21-18(a)(8)(a)(8) MCSR states, “*Second or emergency access. To facilitate access by emergency vehicles and to allow an escape route for residents in emergency*

*situations, the subdivider shall provide a second access in major subdivisions and all subdivisions located in high fire hazard areas.”* Because Southgate Meadows is a major subdivision, and this subsequent subdivision increases the number of lots in Southgate Meadows, a second access is required to serve the subdivision, unless a variance is granted. Further, according to MCSR Section 21-16(a), subsequent minor subdivisions qualify for review under the requirements for major subdivisions where second accesses are required. The application included a variance request to allow for no secondary access for the subdivision, which is attached to this report.

Public comment to date for this subdivision, and previous reviews, include concern for the lack of a second access to Southgate Meadows. It is noteworthy that based on the location and dimensions of the subject property, this subdivision cannot provide a secondary access on the subject property to comply with the MCSR because any additional street proposed on the property would not lead to any other streets.

The requested variance must be reviewed according to Sec. 21-22(a), MCSR, “Variances”, as discussed with Variance Request #1 above. The variance review criteria are listed and underlined below, followed by *the Subdivision Administrator/Planning Board’s analysis and Planning Board-recommended findings in italics*.

The governing body will not approve a variance unless it finds that (note: all four criteria must be met):

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

*Staff/Planning Board Analysis: The granting of the variance to allow for this subdivision without provision of a second or emergency access to facilitate access by emergency vehicles and to allow an escape route for occupants in emergency situations may be detrimental to the public health, safety, or general welfare and may be injurious to other adjoining properties.*

*An essential element of evaluating the variance and its possible detriments to public health, safety, or general welfare can be input from the local emergency service providers, in particular the first responders, e.g., the fire department, ambulance service, and law enforcement. The following are the Fire Chief’s comments on the subdivision’s impact to Miles City Fire & Rescue (the local agency that provides fire protection and ambulance services):*

*“Regarding the submitted plans for the Southgate Meadows Subdivision. I see some minimal impacts to the Fire Department. Impacts related to the Fire Department operations would include increased structure protection, increased demand for emergency medical services, and increased demand for fire code enforcement and inspections for commercial occupancies. I do not feel that these minimal impacts should prevent the process for this subdivision from moving forward.*

*Access and egress for future reference. As continued development progresses off of Horizon Parkway, I see a need for alternative access and egress in to and out of these types of subdivisions, the wildland urban interface situation will continue to be an ongoing concern for areas such as these.”*

*It is noteworthy that the Fire Chief indicates the impacts on Fire Department operations that result in increased demands on their services from this subdivision are minimal and should not prevent the subdivision process from moving forward, but the Fire Chief also notes a need for alternative access as development progresses off of Horizon Parkway. The Fire Chief does not identify at what threshold development no longer becomes acceptable, but notes an issue that applies to development off Horizon Parkway.*

*Written comment from the Chief of Police for the Miles City Police Department was also included with the application, noting the Police Chief reviewed the “three-lot” minor subdivision paperwork sent and [the department sees] minimal impact with this development.*

*The main purpose of a secondary or emergency access is stated within the design standard itself: to facilitate access by emergency vehicles and to allow an escape route for residents in emergency situations. For example, an emergency situation may result in the blockage of Horizon Parkway while also requiring emergency service vehicle access to a situation within Southgate Meadows, and/or escape by people that rely upon use of Horizon Parkway to flee the emergency or vacate the area of other reasons. There are scenarios under which this could occur, such as wildfires and vehicular accidents. Without a second access, public health may be impacted because members of the public and emergency services providers may not be able to escape emergency situations or obtain medical assistance in incidents that may include medical or health emergencies. Public safety may be impacted because emergency service responses to such types of emergencies when*

*a secondary access is critical are likely could be hindered by limited access. The results of such health and safety risks are increased by additional lots and users being added to an area that relies wholly one access. Therefore, this subdivision would be a contributing cause to diminished public welfare. In combination, the resulting impacts on public health, safety, and general welfare may be significant, with all property owners who rely upon Horizon Parkway for access, including owners of property adjacent to the subdivision, potentially impacted. Therefore, the granting of the variance could be injurious to adjoining properties.*

- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;

*Staff/Planning Board Analysis: The physical conditions and geographic location of the property in combination with the initial development of the Southgate Meadows Subdivision with only one access contribute to the hardship that would be imposed on the current subdividers if strict compliance with the regulations is required. The non-compliant situation (lack of a second access) is existing. The current subdivision proposal will exacerbate the situation, and the subdividers cannot solve the problem without utilizing land or roads outside the subject property, which demonstrates it is the physical conditions of the property involved that results in the hardship that would be caused if the regulation is strictly enforced. The hardship is not personal or financial, as it is not entirely the subdividers' personal or financial situation that limits their ability to provide the secondary access. It is not a self-imposed hardship either; the subdividers did not create the situation, which is existing. However, this project does exacerbate the problem. Considering these factors, it appears, the hardship of strict compliance with the regulations is undue on this owner, and is, to a large extent, the result of physical surroundings, shape, topographical, and historical conditions of the property involved.*

- c. The variance will not cause a substantial increase in public costs; and

*Staff/Planning Board Analysis: The variance, if approved, may cause a substantial increase in public costs if an emergency situation related to the subdivision occurs in the future that results in public costs that would be avoided or minimized with a second access or in the absence of the subdivision. It may also cause a substantial increase in public costs if the variance is approved without appropriate and proportional mitigation by the current subdividers in conjunction with the city or*

*public. Therefore, with appropriate mitigation, including ensuring the subdividers and/or future property owners within the City View Subdivision would be required to contribute a proportional share of the costs if and when the city or public acts to provide a second or emergency access, the approval of the variance will not cause a substantial increase in public costs. Alternatively, without appropriate mitigation, approval of the variance has the potential to cause a substantial increase in public costs.*

- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

*Staff/Planning Board Analysis: The Subdivision Administrator has reviewed the zoning regulations and consulted with the Zoning Administrator regarding the subdivision, and has found no provision of the zoning regulations that applies to the variance request for lack of a second or emergency access. Without evidence indicating otherwise, the variance will not place the subdivision in nonconformance with any adopted zoning regulations.*

*Staff/Planning Board Summary and Recommendation on Variance #2: In light of the above Analyses on Variance #2, the Subdivision Administrator and Planning Board recommend approval of the variance request only if the subdividers are required to waive the right to protest creation of a Special Improvement District to provide a second access and contribute a proportional share toward providing the access improvements as stated in the conditions of approval.*

Parkhill Drive:

Parkhill Drive is a 27- to 32- foot wide hard-surfaced (recycled asphalt millings) city street that occurs within a 60' wide right-of-way that was dedicated to the City of Miles City in 1978 on the plat referred to as the Second Filing of Southgate Meadows Subdivision, Env. 147A. Currently, Parkhill Drive provides access to the two adjacent lots (Assembly of God Church and a ministorage facility) and the subject property. Proposed Lots 2A and 2B of the subdivision are proposed to utilize Parkhill Drive for legal and physical access. The traffic analysis submitted with the application indicates Lots 2A and 2B will add approximately 141 average daily trips to the existing traffic. Based on these figures, it is likely Parkhill Drive is currently either a Minor Street or Minor Collector, and with the additional traffic, will become a Minor Collector. Based on recent improvements and the current standards of Parkhill Drive, staff notes the existing street substantially complies with the design standards for a Minor Collector and will provide sufficient access to the lots. However, Parkhill Drive lacks an

established turnaround area within an easement/right-of-way. As indicated by Table 2 in Sec. 21-18(a)(8) MCSR and Sec. 21-18(a)(8)(a)(6), no dead-end streets shall be permitted without an approved turnaround. Where streets terminate, the developer shall provide either a cul-de-sac or "T" turnaround at the terminus. Currently there are large areas for vehicular turnarounds at the end of Parkhill Drive, but such turnaround maneuvers require use of private driving/parking areas on the adjacent Assembly of God Church property or storage facility property. Because these areas lack publicly-dedicated easement or right-of-way area for any turnaround portion of Parkhill Drive, staff and the Planning Board are recommending a condition of approval that would require a turnaround area to be established within an adequate easement or dedicated right-of-way, which could be accomplished with an extension of a turnaround leg where the proposed approach to Lot 2A would currently be located.

**3. Water:**

As part of the preliminary plat review process, 76-3-622, MCA outlines water and sanitation information that is required to accompany preliminary plat. To provide water service to the lots in the proposed subdivision, the subdividers propose to extend the City of Miles City waterlines within the Horizon Parkway right-of-way and south of Horizon Parkway to loop through the subdivision within a proposed easement. According to the submitted engineering report for water and sewer, the portions of the proposed water system within the Horizon Parkway right-of-way will be taken over and maintained by the City of Miles City and the portions of the proposed water system south of Horizon Parkway right-of-way will be taken over and maintained by the Custer County Water & Sewer District. At the April 20 planning board hearing, the subdividers' agent stated the easement would be granted to the City and the water/sewer infrastructure would be City infrastructure instead of the easement and infrastructure being granted to the Water and Sewer District. Prior to final plat approval, DEQ and City approval of the subdivision's plans for water services will be required.

**4. Sewer:**

As part of the preliminary plat review process, 76-3-622, MCA outlines water and sanitation information that is required to accompany preliminary plat. Similar to the above-described plans for water service, to provide sanitary sewer service to the lots in the proposed subdivision, the subdividers propose to extend the City of Miles City sewer lines within the Horizon Parkway right-of-way and south of Horizon Parkway to loop through the subdivision within a proposed easement. According to the submitted engineering report for water and sewer, the portions of the proposed sewer system within the Horizon Parkway right-of-way will be taken over and maintained by the City of Miles City and the portions of the proposed sewer system south of Horizon Parkway

right-of-way will be taken over and maintained by the Custer County Water & Sewer District. At the April 20 planning board hearing, the subdividers' agent stated the easement would be granted to the City and the water/sewer infrastructure would be City infrastructure instead of the easement and infrastructure being granted to the Water and Sewer District. Prior to final plat approval, DEQ and City approval of the subdivision's plans for sewer services will be required.

**5. Stormwater management/drainage facilities:**

Sec. 21-18(a)(9), MCSR outlines city requirements for drainage facilities in subdivisions. The section requires a grading and drainage plan, with drainage system and facilities required for storm run-off affecting the subdivision subject to approval by the governing body. In addition, subdivisions containing lots less than 20 acres in size also must be reviewed and approved by the Montana DEQ under MCA Title 76, Chapter 4, the Sanitation in Subdivisions Act. As part of the preliminary plat review process, 76-3-622, MCA outlines water and sanitation information, including that for storm water systems, that is required to accompany preliminary plat. Other specific regulatory requirements that apply to stormwater drainage include:

- Curbs and gutters or swales will be required as determined by the governing body according to the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended according to current specifications of local and state authorities. (Sec. 21-18(a)(9)(c), MCSR).
- The subdivider must provide suitable drainage facilities for any surface runoff affecting the subdivision; these facilities must be located in street rights-of-way or in perpetual easements of appropriate widths and are subject to approval by the governing body. (Sec. 21-18(a)(9)(e), MCSR)
- Each drainage facility must accommodate potential runoff from upstream drainage areas. (Sec. 21-18(a)(9)(f), MCSR)
- Drainage systems must not discharge into any sanitary sewer facility. (Sec. 21-18(a)(9)(g), MCSR)
- The grading and drainage system must be designed and certified by a professional engineer. (Sec. 21-18(a)(9)(h), MCSR)
- The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be drawn on the plat and a signed statement granting the easements must appear on the plat. (Sec. 21-18(a)(9)(i), MCSR)
- Sec. 24-46 of the Miles City Zoning Code also outlines requirements for stormwater management plans.

- Per the Montana Pollutant Discharge Elimination System (MPDES), depending upon project specifics, the subdividers may need to obtain a General Permit for Storm Water Discharges Associated with Construction Activity from Montana Department of Environmental Quality , or written documentation that no permit is required. Staff and the Planning Board are therefore recommending a condition requiring the approved permit or other written authorization issued by the Montana Department of Environmental Quality to be included with the final plat application.

The preliminary plat application included grading plans for the subdivision that addresses grading and future stormwater management. The plans were prepared by the project engineer. The plans call for four detention ponds and one detention pond, with conveyance pipes, culverts and drainage swales directing stormwater to the ponds. It appears the stormwater management plans substantially comply with the applicable requirements, subject to approval by the City Council and Montana DEQ.

One item that is not entirely clear regarding the site grading (and drainage) plans is whether any or all of the stormwater retention/detention ponds, conveyance facilities and other stormwater-related facilities will be shared amongst more than one lot. Such shared facilities would require proper easements in appropriate locations, which should be shown and dedicated on the final plat, and a declaration(s) of shared use and maintenance agreement should be established per Sec. 21-14(b)(6) MCSR. The recommended conditions of approval address proper easements and maintenance agreement for stormwater facilities, which will likely also be required by DEQ requirements under the Sanitation in Subdivisions Act.

#### **6. Utilities:**

The application does not substantially address the location of existing electrical and telecommunication facilities or the future provision of these services, but it appears there are electrical and telecommunication facilities in the right-of-way for Horizon Parkway. The application included copies of the subdividers' agents' request for comments from the applicable service providers, which include Montana-Dakota Utilities and Mid-Rivers Communications. The application did not include any responses from these agencies. The City Subdivision Administrator also attempted to solicit comments from these agencies by sending letters and subdivision information to them on March 12, 2021, and as of the date of this report, no responses have been received.

Sec. 21-18(a)(13), MCSR addresses utility requirements in subdivisions. Because each lot abuts the publicly-dedicated city streets where utilities exist, the application



complies with Sec. 21-18(a)(13)(a), MCSR, which requires that the subdivider must provide adequate and appropriate easements for existing utilities and the construction of planned utilities within the subdivision. The recommended conditions of approval further address compliance with Sec. 21-18(a)(13), MCSR, and would require that each lot have electrical and telecommunication utilities extended to the lot or immediately adjacent to the lot within sufficient easements or public rights-of-ways as per applicable requirements of the utility service providers, along with the providers' documented approvals of any necessary requirements to meet these conditions.

**7. Fire Protection:**

Requirements for “fire protection” in subdivisions are outlined by Sec. 21-18(a)(17), MCSR. The application included a fire risk rating analysis indicating the subdivision lies in a “Moderate” fire rating, citing a Wildland Fire Assessment System map. Based on the moderate rating, the potential “special standards” that apply to subdivisions in high fire hazard areas per Sec. 21-18(a)(17)(e) do not apply to this subdivision.

On March 31, 2021, Fire Chief Branden Stevens provided written comments on the subdivision, which are attached to this report. The following is a summary of the fire department comments:

- I see some minimal impacts to the Fire Department.
- Impacts related to the Fire Department operations would include increased structure protection, increased demand for emergency medical services, and increased demand for fire code enforcement and inspections for commercial occupancies.
- I do not feel that these minimal impacts should prevent the process for this subdivision from moving forward.
- Access and egress for future reference. As continued development progresses off of Horizon Parkway, I see a need for alternative access and egress in to and out of these types of subdivisions, the wildland urban interface situation will continue to be an ongoing concern for areas such as these.

It appears the primary concern to be addressed through the subdivision review is the lack of an alternative (second) access to the area with continued development off of Horizon Parkway. This is the subject of Variance #2, which is analyzed with consideration for the Fire Chief's comments in Section III.A.2 of this report.

**8. Parkland:**

Sec. 21-18(a)(16), MCSR and 76-3-621, MCA outline potential park dedication (or cash-in-lieu) requirements for certain types of subdivisions. Per Sec. 21-18(a)(16)(b)(2), MCSR and 76-3-621(3), MCA, a park dedication is not required for

“subdivision into parcels that are all nonresidential”. Because all four lots are proposed for commercial/nonresidential uses, this subdivision is exempt from any park dedication requirements. It should be noted that although “Multifamily dwellings” are a “permitted use” in the GC Zoning District, the lots are not proposed for residential uses and because the application has not addressed potential residential uses or related requirements for residential lots, such as park dedication, the subdivision should be restricted to nonresidential uses without further review and approval by the City of Miles City. Recommended condition of approval #14 addresses this matter.

**9. Landscaping:**

Sec. 21-18(a)(18), MCSR outlines “Landscaping standards for commercial development”, and Sec. 24-49 of the Miles City Zoning Code outlines “Landscaping requirements” in general. Although Sec. 21-18(a)(18)(g) MCSR states the applicable subsection of the subdivision regulations shall complement the landscaping section of the Miles City Zoning Code, the landscaping requirements between the two sets of regulations are not entirely consistent, with some minor conflicts between the two. Sec. 24-7, “Conflict with other laws and ordinances” addresses this type of situation, stating, *“Wherever conflicts exist between the standards imposed by these regulations and any such standard imposed by other local ordinances or regulations or state statutes, the higher or more restrictive standards shall govern. See MCA 76-2-309.”*

The result of the two regulations’ landscaping requirements are as follows: The MCSR require the preliminary plat application to show existing and proposed landscape buffers and demonstrate compliance with the zoning regulations. The Zoning Code outlines requirements for landscape plans, and states (Sec. 24-49(b)(2)), *“...these provisions shall be used as the basis for determining the landscaping plans for future subdivisions and planned unit developments, and such developments’ landscaping plans shall meet or exceed these landscape standards.”* However, the regulations’ do not require the plans to be implemented and the landscaping elements (vegetation, irrigation system, groundcover, etc.) installed until each lot is newly developed (or redeveloped or developed with expanded land uses).

Therefore, the application included a Landscaping Plan for the subdivision that demonstrates the ability for each lot to comply with the landscaping requirements of the zoning and subdivision regulations upon individual lot development, with installation tied to the building permit timelines. See Sec. 24-49(j) of the Zoning Code, which outlines ‘Timing’ of landscape installations.

With submittal of future building permit applications for the lots after the final plat is filed, future applicants/lot owners will have the ability to utilize the subdivisions' landscape plan as the basis for the individual lot development plans. Future development will need to demonstrate compliance with the applicable regulations at the time lot development is proposed, based on project specifics. Recommended condition of approval #13 addresses the landscaping plan and its applicability to future individual lot development as follows:

*“The landscaping plan submitted for the subdivision, which shall be held on file at the City Planning Department at City Hall, shall be referenced on the face of the final plat to notify future lot owners of the plan. The plan may be used as a basis for individual lot development, but any such future individual lot development is subject to approval by the City of Miles City in accordance with the regulations in place at the time of proposed development, which may require modifications to the subdivision’s landscape plan, supplemental information, or a new landscape plan.”*

**B. Findings of Fact based on the requirements for a governing body decision and documentation.**

Sec. 21-16(a)(9) MCSR outlines requirements for the governing body (City Council) decision and documentation on major and subsequent minor subdivisions, which also reflect those outlined in Sec. 21-16(a)(5) MCSR that must be considered by the Planning Board at its public hearing when making a recommendation to the City Council. The Planning Board’s recommended findings of fact are outlined below and are based on the subdivision application materials and preliminary plat provided by the subdividers and in accordance with the Miles City Subdivision Regulations (MCSR), last updated in 2018, the 2015 Miles City Growth Policy, and other applicable laws and regulations.

**1. Prerequisites to approval (Sec. 21-16(a)(9)(a) MCSR):**

The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- Provides easements within and to the proposed subdivision for existing utilities and for the location and installation of any planned utilities;

*Finding: The subdivision provides adequate easements within and to the proposed subdivision for existing utilities and for the location and installation of utilities to each lot. Existing electrical and telecommunications are located*

*in the public right-of-way for Horizon Parkway, which abut Lots 2B, 2C, and 2D. Parkhill Drive is a 60' wide public right-of-way that may be used for any necessary utility extensions for Lot 2A. Further, the recommended conditions of approval address utility extension requirements within rights-of-way/easements.*

- Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument of transfer concerning the parcel;

*Finding: The subdivision is provided primary legal and physical access via Horizon Parkway, an existing Miles City arterial street with an established 80' wide right-of-way, which will be improved to city arterial street standards from the NW corner of Lot 2C to a proposed approach to Lot 2D. Lots 2A and 2B will be provided legal and physical access by existing Horizon Parkway and Parkhill Drive, both being city streets. As described in Section III.A.2 of this report, improvements are proposed to bring the substandard portion of Horizon Parkway up to city arterial standard to the last approach into the subdivision. Parkhill Drive lacks an established turnaround area within an easement/right-of-way, and the application has not included a variance request for the lack of a turnaround. In addition, a variance is being requested to the MCSR's requirement for major subdivisions to have a second access.*

*Staff and the Planning Board are recommending conditions of approval to require compliance with the MCSR's requirements for legal and physical access, including the proposed improvements to Horizon Parkway, requirements to provide a turnaround at the end of Parkhill Drive, and to waive the right to participate in provision of a secondary or emergency access through a Special Improvement District process.*

- Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section 21-14(b)(7) of these regulations;

*Finding: Based on the recommended conditions of approval, the subdivision would require numerous improvements to be installed or guaranteed prior to final plat approval. The application includes a proposal to bond for all improvements through a proposed Subdivision Improvements Agreement (SIA) with financial security provided by a letter of credit. The proposed SIA appears*

*reasonable in terms of content, but the final SIA would be subject to approval by City Council during final plat review.*

*76-3-507, MCA addresses such proposals to bond for improvements, which is entitled, "Provision for security requirements to ensure construction of public improvements." Subsection (4) states, "The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."*

*Sec. 21-14(b)(7) MCSR (under the final plat subsection) addresses improvements agreements and the above statute. It states in part, "The governing body may require 50 percent of all improvements or 100 percent of any improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security for purposes of filing a final plat." Because all of the improvements proposed to be secured by the SIA are related to public health and safety, this section of the regulations included specific consideration by the Planning Board, and the Planning Board's recommendation modified the staff recommended conditions in favor of allowing more improvements to be deferred to the SIA.*

*Please also note the following from Sec. 21-14(b)(7) of the MCSR: "...If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125 percent by the highest bid..." If and when a SIA is proposed as part of the final plat application, the regulations will require three bids per this section.*

*Staff and the Planning Board are concerned with the extent of the proposed improvements that the subdividers wish to secure through a SIA. Should the subdividers default on the agreement, the subdivision lots would be created without provision of very important items related to public health and safety, such as legal and physical access that complies with minimum standards, direct access to a water supply or sewage disposal facilities, and stormwater facilities. Staff therefore recommended a list of improvements to be installed prior to final plat approval, as opposed to including said improvements in the SIA, as well as a list of improvements that could be included in the SIA. However, upon*

*discussion between the Planning Board and subdividers' agent at the April 20 public hearing, the Planning Board modified the lists and Condition #16. The Planning Board is recommending the following improvements be installed prior to final plat approval, as opposed to including said improvements in the SIA:*

- *Site grading per the grading plans, including erosion control required by these conditions.*
- *Reseeding and weed treatment associated with this list.*
- *Parkhill Drive: construction of full turnaround area to proper city street/turnaround standards within a public easement/right-of-way, with the only exception of surface paving/hard-surfacing.*
- *All engineering costs (design, construction, and certification), permitting, and reseeding/weed treatment of the improvements not included in the SIA.*

*The following shall be included in the SIA, which should allow up to 12 months for the subdividers to complete the improvements:*

- *All water mains and fire hydrants.*
  - *All sewer mains and related facilities.*
  - *Stormwater conveyance and retention/detention facilities.*
  - *Horizon Parkway: widening, construction, curb and gutter, with the only exception of surface paving.*
  - *Sidewalk along Horizon Parkway.*
  - *Remaining erosion control, reseeding and weed treatment.*
  - *Electrical and telecommunication utilities to each lot (if not in place currently)*
  - *Paving of Horizon Parkway from current end of pavement to and including the approach to Lot 2D.*
  - *Surface paving/hard-surfacing of the turnaround at the terminus of Parkhill Drive.*
  - *Traffic signs.*
  - *Mail facilities.*
  - *Remaining engineering costs (design, construction, and certification) and permitting (including all required by these conditions).*
- Assures that the requirements of MCA 76-3-504(1)(j), regarding the disclosure and disposition of water rights as set forth in section 21-18(a)(15) have been considered and will be accomplished before the final plat is filed;

*Finding: According to the submitted subdivision application, the Montana DNRC Water Right Query System does not show any existing water rights on this property. This property does not contain any existing water wells or irrigation ditches/canals. This is consistent with staff/planning consultant (Land Solutions) research. With no water rights in place, Sec. 21-18(a)(15) MCSR has no applicable provisions for the subdivision to further address.*

- Assures that the requirements of MCA 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in section 21-18(a)(14) have been considered and will be accomplished before the final plat is filed; and

*Finding: The subdivision is not included within a known irrigation district, nor does it contain irrigation facilities that would necessitate water course and irrigation easements or otherwise prompt actions to comply with Sec. 21-18(a)(14) MCSR, which is inapplicable to the current subdivision.*

- Provides for the appropriate park dedication or cash-in-lieu.

*Finding: Because this subdivision is proposed only for commercial, non-residential uses, any potential park land or cash-in-lieu of park dedication requirements do not apply per Sec. 21-18(a)(16)(b)(2) MCSR and 76-3-621(3)(b), MCA, which state a park dedication is not required for subdivision into parcels that are all nonresidential. Condition(s) of approval should reflect the lack of review and approval of non-residential uses.*

## **2. Consideration—Standards (Sec. 21-16(a)(9)(b) MCSR):**

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider subsection (a)(5)b. above, and whether the proposed subdivision complies with:

- These regulations, including, but not limited to, the design and improvement standards set forth in section 21-18;

*Finding: Section III.A of this report includes a thorough analysis and recommended findings of fact regarding the subdivision's compliance with the design and improvement standards set forth in section 21-18. The standards of the MCSR are being considered with this review; the subdivision includes two variance requests that are discussed in Section III.A of this report. The*

*subdivision is proposed in substantial compliance with the applicable design standards, and the recommended actions on the variance requests and recommended conditions of approval further ensure compliance with the design standards.*

- Applicable zoning regulations:

*Finding: The lots that would be created by the proposed subdivision comply with the Miles City Zoning Code, including the requirements for the General Commercial (GC) District. Future lot development will be required to demonstrate compliance with the zoning regulations based on specific individual lot development plans.*

- Other applicable regulations:

*Finding: Other applicable regulations known to potentially apply to the project include Sec. 20-41 of the Miles City Code of Ordinances for sidewalks and the laws and rules administered by DEQ under the Montana Pollutant Discharge Elimination System (MPDES), which may require permit coverage under the authority of a General Permit for Storm Water Discharges Associated with Construction Activity. A recommended condition of approval addresses this potential requirement, which would require the subdividers to provide authorization from DEQ, through a permit or written documentation that no permit is required. The recommended condition would require the approved Storm Water Pollution Prevention Plan Permit and/or General Permit for Storm Water Discharges Associated with Construction Activity or other written authorization issued by the Montana Department of Environmental Quality to be included with the final plat application.*

- The MSPA, including but not limited to the following impacts:

*[Note: State law requires growth policies to include a statement explaining how governing bodies will define specific subdivision review criteria and evaluate and make decisions regarding proposed subdivisions with respect to these criteria. Therefore, the findings on the criteria below include the definitions Miles City has adopted along with how they are evaluated and how decisions are made with respect to those criteria during subdivision review.]*

- Impact on agriculture:



Finding:

*According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Agriculture means the direct use of land for grazing and cropping to produce food, feed, and fiber commodities. This includes crop cultivation and tillage of the soil; grazing for milk, egg, meat, and breeding animal production; and animal feed production. It does not include farm animal confinement facilities or structures associated with farming and ranching."*

*The 2015 Miles City Growth Policy states, "A subdivision proposal may have an unacceptable impact on agriculture if it permanently removes good and prime irrigated soils from agricultural production, does not include measures to control noxious weeds from proliferating to surrounding agricultural properties, does not fence livestock from entering subdivision lots, does not provide a sufficient buffer between residential developments and surrounding agricultural operations, does not take steps to prevent pets from harassing livestock, or does not notify future property owners of the right to farm by surrounding agricultural landowners. If a subdivision proposal in an agricultural area includes adequate measures to minimize the impacts on agricultural operations and resources, it is likely to be found to have little or no significant impact on agriculture."*

*The subject property is not currently used for agriculture, and is located in a developing area on the edge of Miles City, with residential development to the north and commercial development to the west. Tracts to the east and south are similarly-situated and used, with potential for livestock grazing and similar agricultural uses.*

*According to the USDA/NRCS soils information submitted with the application, the soils on the property are not prime farmland, but the southwest portions of the property include some soils (Kobase silty clay loam, comprising approximately 19% of the site) classified as farmland of statewide importance. However, given the location of the site, the lack of irrigation water, the slopes and disturbed status of the soils, the conversion of the site to commercial uses will not result in a significant elimination of agricultural land.*

*To control noxious weeds from proliferating to surrounding agricultural properties, the application included a proposed noxious weed management*

*plan with the Custer County Weed District. The plan has not been signed by the Weed District. The recommended conditions of approval address the weed plan.*

*Staff and the Planning Board are not recommending the fencing of the property to keep livestock out of the subdivision, primarily due to the lack of significant livestock grazing in this area.*

*The commercial use of the subject property will provide a sufficient buffer between residential developments to the north and surrounding agricultural operations to the south and east.*

*As proposed, the subdivision does not take steps to prevent pets from harassing livestock, and does not notify future property owners of the right to farm by surrounding agricultural landowners. Staff and the Planning Board are recommending statement(s) on the final plat notifying future property owners of the right to farm by surrounding agricultural landowners and measures that may be taken to prevent pets from harassing livestock.*

*Considering these factors, the recommended conditions of approval, and the lack of significant surrounding agricultural uses and commercial development of the area, the likely impact on agriculture caused by the subdivision will be minimal.*

○ Impact on agricultural water user facilities:

*Finding: According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Agricultural water user facilities means those facilities which provide water for agricultural land or the production of agricultural crops or animals including, but not limited to, canals, ditches, pipes, water-control devices, springs, dams and dugouts with associated collection areas, and water-spreading systems."*

*The 2015 Miles City Growth Policy states, "A subdivision proposal may be found to have an unacceptable impact on agricultural water user facilities if it does not comply with the irrigation provisions of the Miles City Subdivision Regulations or fails to implement a reasonable mechanism for delivering irrigation water to lots that will be assessed for irrigation district*

*operation and maintenance, does not include sufficient easements for ditch and system maintenance, or is likely to result in the disruption of service to other water users. If the proposal complies with the subdivision regulations, includes measures to limit the impacts to other users and meets the requirements of the Tongue & Yellowstone (T & Y) Irrigation District, the proposal is likely to be viewed as having no significant impact on agricultural water user facilities.”*

*The subject property is not currently irrigated and contains no agricultural water user (irrigation) facilities. Based on these factors and the lack of applicability of subdivision regulations’ standards to address potential impacts on agricultural water user facilities, the subdivision is expected to have no impact on agricultural water user facilities.*

○ Impact on local services:

*Finding: According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, “Local services means any and all services and facilities that local government entities are authorized to provide. Examples of local services include, but are not limited to, those related to water, sewer, storm water, solid waste, transportation, emergency services, law enforcement, education, recreation, and public utilities and telecommunications.” Examples of local services listed by the Growth Policy include, but are not limited to, those related to water, sewer, storm water, solid waste, transportation, emergency services, law enforcement, education, recreation, and public utilities and telecommunications.*

*The 2015 Miles City Growth Policy states, “A subdivision proposal may be found to have an unacceptable impact on local services if it provides a substantial and unmitigated demand on local services, decreases the service provider’s ability to provide timely services to the existing public, does not provide adequate facilities for service providers to serve the subdivision, provides barriers to service provisions, or is found to result in similar impacts without appropriate mitigation. If service providers comment on a subdivision and all applicable service provider and regulatory requirements are met, a proposal is likely to have minimal impacts on local services.”*

*The following are brief discussions on the subdivision's potential impacts on local services:*

*Water:* *The application included a copy of a letter dated June 18, 2020 from Miles City Public Utilities Director Thomas Speelmon to DEQ regarding water and sewer for the subdivision, and stated the City has sufficient capacities in both the city water and sewer systems to provide those services to the proposed subdivision. Considering these comments and the requirements for DEQ approval of the proposed connections to the municipal systems, impacts on local water service provider, being Miles City and (possibly) the Custer County Water and Sewer District, are expected to be minimal, and offset by future fees paid to the service providers.*

*Sewer:* *The application included a copy of a letter dated June 18, 2020 from Miles City Public Utilities Director Thomas Speelmon to DEQ regarding water and sewer for the subdivision, and stated the City has sufficient capacities in both the city water and sewer systems to provide those services to the proposed subdivision. Considering these comments and the requirements for DEQ approval of the proposed connections to the municipal systems, impacts on local sewer service provider, being Miles City and (possibly) the Custer County Water and Sewer District, are expected to be minimal, and offset by future fees paid to the service providers.*

*Storm water:* *The above-mentioned letter from Public Utilities Director Thomas Speelmon noted no deficiencies in the stormwater drainage plans for the subdivision, which will be subject to approval by DEQ.*

*Solid waste:* *Solid waste from the subdivision will be addressed as part of DEQ review. It is expected that private local haulers or individual lot owners will be able to transport solid waste to the local landfill. No solid-waste related impacts are expected from the proposed four-lot subdivision.*

*Transportation:* *Vehicular and non-motorized transportation is addressed extensively throughout this report. Subject to the streets that serve the subdivision, including Horizon Parkway, Parkhill Drive, and potentially a second access, being improved to sufficient city standards and as deemed*

*appropriate by variance, the subdivision's impacts on the transportation network are expected to be minimal.*

*Emergency services:* *According to the letter from the Miles City Fire Chief, the impacts from the subdivision to Miles City Fire & Rescue are expected to be minimal. Impacts related to Fire Department operations include increased structural fire protection, increased demand for emergency medical services, and increased demand for fire code enforcement and inspections for commercial occupancies. The Fire Chief indicated he does not feel that these minimal impacts should prevent the process for this subdivision from moving forward. For future reference, the Fire Chief added that as continued development progresses off of Horizon Parkway, he sees a need for alternative access and egress in to and out of these types of subdivisions, the wildland urban interface situation will continue to be an ongoing concern for areas such as these.*

*Law enforcement:* *Written comment from the Chief of Police for the Miles City Police Department was included with the application, and [the department sees] minimal impact with this development.*

*Education:* *Because the subdivision is proposed for commercial development only and not residential uses, which is also recommended as a condition of approval, the educational facilities and school system are not expected to be impacted by the subdivision.*

*Recreation:* *Because the subdivision is proposed for commercial development only and not residential uses, which is also recommended as a condition of approval, the future occupants of the subdivision are not expected to be additional residents with recreational needs to be provided within the subdivision; the occupants will be businesses and employees that reside and recreate elsewhere. The project is exempt from park land or cash dedication in lieu of parkland due to the entirely non-residential use of the subdivision being proposed.*

*Public utilities:* *Electrical utilities are located in the adjacent right-of-way, and will be required to be extended to each lot in accordance with the MCSR and requirements of the service providers. The application included a copy of a letter sent to Montana-Dakota Utilities; however, no response from Montana-Dakota Utilities was include with the application. The*

*recommended conditions of approval address installation of utilities to each lot with approval by the service providers.*

Telecommunications: *Telecommunications utilities are located in the adjacent right-of-way, and will be required to be extended to each lot in accordance with the MCSR and requirements of the service providers. The application included a copy of a letter sent to Mid-Rivers Communications; however, no response from Mid-Rivers Communications was include with the application. The recommended conditions of approval address installation of utilities to each lot with approval by the service providers.*

○ Impact on the natural environment:

Finding: *According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, “Natural environment means the physical conditions [which/that] exist within a given area, including land, air, water, mineral, flora, fauna, sights, sound, and smells and objects of historic, aesthetic, or community significance.”*

*The 2015 Miles City Growth Policy states, “A subdivision proposal may have an unacceptable impact on the natural environment if it is found to have direct or indirect negative impacts on the physical conditions that comprise an area’s natural environment or if the subdivision fails to comply with the applicable federal, state, and local regulations related to the natural environment. Any such negative impacts may require mitigation efforts by the subdivider. If a subdivision complies with all applicable regulations and mitigation measures are properly implemented, the proposal is likely to have no significant impact on the natural environment.”*

*Regarding the natural environment, the subject property is not in a particularly sensitive area, with no surface waters on or immediately adjacent to the property. The vegetation on the property is primarily sage brush, grasses, and weeds, and vegetation on portions of the property has been denuded by relatively recent disturbances. The subdivision application included a noxious weed plan and grading plan, as well as long-term plans for stormwater management. The project will require DEQ review of the subdivision, and most likely, a stormwater discharge permit for disturbance of over one acre.*

*The Montana State Historic Preservation Office has commented on the subdivision, and stated the following:*

*"I have conducted a cultural resource file search for the above-cited project located in Section 2, T7N R47E. According to our records there have been a few previously recorded sites within the designated search locale. project area. In addition to the sites there have been a few previously conducted cultural resource inventories done in the areas. I've attached a list of these sites and reports. If you would like any further information regarding these sites or reports, you may contact me at the number listed below.*

*It is SHPO's position that any structure over fifty years of age is considered historic and is potentially eligible for listing on the National Register of Historic Places. If any structures are to be altered and are over fifty years old, we would recommend that they be recorded, and a determination of their eligibility be made.*

*As long as there will be no disturbance or alteration to structures over fifty years of age, we feel that there is a low likelihood cultural properties will be impacted. We, therefore, feel that a recommendation for a cultural resource inventory is unwarranted at this time. However, should structures need to be altered or if cultural materials be inadvertently discovered during this project, we would ask that our office be contacted, and the site investigated."*

*Staff is concerned with the current status of the site, specifically the exposed soils along the south side of Horizon Parkway where a denuded, unvegetated slope exists as a result of disturbances. This may be addressed through the General Permit for Storm Water Discharges Associated with Construction Activity per the Montana Pollutant Discharge Elimination System (MPDES); however, in the event a General Permit is not required in the near future, and until the site is stabilized, the area will continue to erode and silt will enter the city drainage gutters along Horizon Parkway. Therefore, staff and the Planning Board are recommending a condition that addresses stabilization of the site and implementation of erosion control measures so that the subdividers do not wait until all improvements are completed, which could take years.*

*Considering the above, as well as recommended conditions of approval that address DEQ review requirements, site stabilization, a noxious weed plan, and notification to future owners that if cultural materials are discovered during construction that SHPO be contacted to provide for the site to be further investigated, the subdivision is expected to have minimal impact on the natural environment.*

○ Impact on wildlife;

*Finding: According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, “Wildlife means living creatures (e.g. mammals, birds, reptiles, [and] fish) which are neither human nor domesticated.”*

*The 2015 Miles City Growth Policy states, “A subdivision proposal may have an unacceptable effect on wildlife if it directly displaces or removes wildlife from an area or it does not include measures to prevent conflict between wildlife and subdivision inhabitants, including pets. Any such negative impacts may require mitigation efforts by the subdivider. Examples of wildlife mitigation measures include preserving vegetative cover along riparian and migration corridors, requiring building setbacks from water bodies, reducing development density in areas of important habitat, donating a monetary sum to an applicable wildlife or habitat preservation organization, and developing covenants that educate lot buyers and reduce the potential for human-wildlife conflict. If mitigation measures are properly implemented or a subdivision is not in a known wildlife area, the proposal is likely to have no significant impact on wildlife.”*

*The subdivision is in a developing commercial area of the City and is not known to be in a wildlife area of any special significance; therefore, the proposal is likely to have no significant impact on wildlife.*

○ Impact on wildlife habitat; and

*Finding: According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, “Wildlife habitat [includes] geographic areas containing physical or biological features essential to wildlife for living, breeding, or nesting either permanently or seasonally, or essential to the conservation of listed endangered and threatened species under the Endangered Species Act.”*



*The 2015 Miles City Growth Policy states, "A subdivision proposal may have an unacceptable effect on wildlife habitat if it destroys or otherwise removes important or critical wildlife habitat or concentrates human-related activities near important or critical wildlife habitat in a manner that has a significant negative impact on the wildlife the habitat supports. Any such negative impacts may require mitigation efforts by the subdivider. Examples of wildlife habitat mitigation measures include preserving vegetative cover along riparian and migration corridors, requiring building setbacks from water bodies, reducing development density in areas of important habitat, donating a monetary sum to an applicable wildlife or habitat preservation organization, and developing covenants that educate lot buyers and reduce the potential for human-wildlife conflict. If mitigation measures are properly implemented or a subdivision is not in the vicinity of important or critical wildlife habitat, the proposal is likely to have no significant impact on wildlife habitat."*

*The subdivision is in a developing commercial area of the City and is not known to contain or be in the immediate vicinity of important or critical wildlife habitat; therefore, the proposal is likely to have no significant impact on wildlife habitat.*

○ Impact on public health and safety.

*According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Public health and safety means a condition of optimal well-being, free from danger, risk, or injury for the community at large or for all people, not merely for the welfare of a specific individual or a small class of persons. Examples of conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards; rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards."*

*The 2015 Miles City Growth Policy states, "A subdivision proposal may have an unacceptable effect on public health and safety if it is located in an area that cannot be effectively served by emergency responders or is located in an area that is prone to natural or man-made hazards. Examples are*

*development on steep slopes or within high fire hazard areas or areas not served by a fire department. If steps are taken to ensure that the residents of a subdivision can be adequately served by emergency service providers, the dangers posed by natural or man made hazards are mitigated, and the proposal complies with state and local regulations, a subdivision proposal is likely to be viewed as having little impact on public health and safety.”*

*As described in the submitted Environmental Assessment and with project modifications as recommended by staff and the Planning Board, and imposition of conditions of approval that address the potential impacts to public health and safety, the identified impacts from the subdivision will be mitigated to an acceptable level.*

- Proposed mitigation.

*Finding: The subdivision application in full represents the subdividers’ current plan for proposed mitigation to date, such as the proposed improvements and submitted documents that outline steps to be taken by the subdividers as part of the project. Additional mitigation measures are part of the recommended conditions of approval.*

*Sec. 21-16 MCSR addresses the “Subdivider’s preference for mitigation” as follows:*

*“(a) No later than two working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider’s comments on and responses to the planning board’s recommendations as well as any proposed mitigation measures not already discussed with the planning board.*

*(b) If the governing body determines the newly proposed mitigation measures to be material, the governing body shall either not consider the mitigation proposal or direct the subdivider to follow the procedures provided for under subsection (11) below, for amended applications.*

*(c) If newly proposed mitigation measures are determined not material, the governing body will consult with the subdivider and will give due weight*

*and consideration to the subdivider's expressed preference regarding mitigation prior to making the decision. (MCA 76-3-608(5)(b))”*

*The subdividers discussed the staff-recommended conditions with the Planning Board, and the Planning Board modified the conditions. At least two working days before the City Council meeting, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations as well as any proposed mitigation measures not already discussed with the planning board.*

### **3. Consideration—Evidence.**

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider and weigh the following, as applicable:

1. The subdivision application and preliminary plat;
2. The environmental assessment;
3. The summary of probable impacts;
4. Proposed mitigation;
5. The growth policy;
6. Information and testimony provided by potentially impacted parties at or before the public hearing;
7. The planning board report and recommendations;
8. Comments, evidence and discussions at the governing body's meeting; and
9. Any additional information authorized by law.
10. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that information provided in the application or information submitted during public review indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations that the governing body has the authority to enforce.
11. Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

*Finding: The City Council members have received copies of the preliminary plat application, including the preliminary plat, Environmental Assessment, summary of probable impacts, water and sanitation information, etc. Within 10 working days after the Planning Board's scheduled April 20 public hearing, the subdivision administrator,*

*working on behalf and with the consent of the planning board is submitting the Planning Board's report and recommendations to the City Council, which includes summaries of mitigation proposed to date, discussions and findings on the subdivision's compliance with the growth policy, information regarding public hearing testimony, comments and discussions from the public hearings, and other information as outlined above. All such information may be considered and weighed by the City Council when making its decision on the proposed subdivision. If changes are made to the recommended findings of fact and/or recommendation by the Planning Board by the City Council, the changes should be reflective of the evidence those changes are based on.*

*Regarding the subdivision's compliance with the 2015 Miles City Growth Policy, the following statutes apply to use of an adopted growth policy:*

*“76-1-605. Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:*

*(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;*

*(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and*

*(c) adoption of zoning ordinances or resolutions.*

*(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.*

*(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.”*

*-Subdivision Administrator's emphasis is underlined above. The growth policy's definitions of the subdivision review criteria along with how they are evaluated and how decisions are made with respect to those criteria during subdivision review are included in the above findings. Therefore the growth policy, primarily the “Subdivision Review” section, has been thoroughly considered with this review. Conditions have not been recommended based solely on compliance with the growth policy; rather, some conditions have been recommended based on impacts to the subdivision review criteria (as defined by the growth policy, along with how they are evaluated and decisions made) as required by state law.*

*There are other provisions of the growth policy to consider. Pages 61 – 62 of the growth policy describes how all public hearings will be conducted for the review of subdivision proposals when a public hearing is required. In addition, the following goals, objectives, and actions should be observed:*

- *Land Use Goal #2 - Promote Citizen Involvement in Land Use Issues.*
  - *Objective 2.1: Engage citizens during public review of land use issues and make information available.*
    - *Action 'a': Post land use application materials, public hearing dates, agendas and meeting minutes on the City's website and make copies available for public review.*
    - *Action 'b': Incorporate citizen comments into land use decisions by addressing them prior to making motions.*
- *Land Use Goal #3 - Balance Property Rights with the Common Interests of the Community.*
  - *Objective 3.1: Protect private property rights and respect property owners' wishes to enjoy and gain economic return from their properties and investments while ensuring that other public and private interests are not unreasonably compromised or impacted by land uses and development projects.*
    - *Action 'a': While considering land use decisions, balance the rights of applicants with those of potentially impacted parties.*
- *Land Use Goal #4 - Provide for the Logical Expansion of the City's Boundaries that is Compatible with Existing Development and is Fiscally Responsible*
  - *Objective 4.1: Generally require that developers and future users of municipal services pay the upfront costs of extending services.*
    - *Action 'a': Maintain policies that require developers and users of municipal services to pay for the costs of serving development unless extraordinary circumstances exist.*
- *Wildland-Urban Interface Goal #1 - Ensure New Development is Protected from Risks Associated with Wildland Fire*
  - *Objective 1.1: Work with Miles City Fire Rescue and Custer County Fire Department to ensure existing and new development has adequate water for fire protection and egress routes.*
    - *Action 'a': Develop second access from Southgate into town.*

*It is noteworthy that the City is the only partner listed to accomplish the above Action 'a' to develop a second access from Southgate into town, and that the timeline is considered "long-term" (actions are initiated or completed generally 5-10 years or longer after adoption of the plan).*

*Public comments from the March 24, 2021 first public hearing of the Planning Board are attached (meeting minutes and written comments), as are those (and draft meeting minutes) from the April 20 public hearing. All written comments submitted by the public have been provided to the Planning Board and will also be provided to City Council.*

#### IV. PLANNING BOARD RECOMMENDATION

The City of Miles City Planning Board recommends approval of the preliminary plat application for the City View Subdivision, subject to the following actions on the variance requests and imposition of the conditions stated below. After each condition in parentheses are the regulations and statutes that were used as a basis for the imposition of the conditions. All conditions are based on the findings identified in this report and are recommended in order to reasonably minimize potentially significant adverse impacts according to 76-3-608, MCA. The Planning Board votes on the motions to recommend approval of the two variances and the vote to grant preliminary approval subject to the conditions as written below were all unanimous (7 – 0).

##### **Variations:**

1. The subdividers have requested a variance to Sec. 21-18(a)(6)(b) MCSR, which states, “*No single lot may be divided by a public or private road, alley or utility right-of-way or easement*”. Approval of the variance would allow Lots 2A, 2B, and 2D to be divided by the proposed 40’ wide city water and sewer easement. In light of the Staff/Planning Board Analysis of Variance #1 in Section III.A.1 of the report, it appears approval of the requested variance would meet the required criteria; therefore, the Subdivision Administrator and Planning Board recommend approval of the variance.
2. The subdividers have requested a variance to Sec. 21-18(a)(8)(a)(8) MCSR, which states, “*Second or emergency access. To facilitate access by emergency vehicles and to allow an escape route for residents in emergency situations, the subdivider shall provide a second access in major subdivisions and all subdivisions located in high fire hazard areas.*” In light of the Staff/Planning Board Analysis of Variance #2 in Section III.A.2 of the report, the Subdivision Administrator and Planning Board recommend approval of the variance with mitigation in the form of a condition requiring the property owner, heirs, and assigns to waive the right to protest creation of a Special Improvement District to provide a second access from Highway 59 to the subject property.

##### **Conditions:**

1. The final plat and plans shall be in substantial compliance with the preliminary plat and plans reviewed and approved by the City of Miles City, except as modified by these conditions. *[Sec. 21-14(b)(1) Miles City Subdivision Regulations (MCSR)]*
2. The approval period for the preliminary plat is three years. All conditions of preliminary approval shall be met within three years or the preliminary plat approval is null and void, unless an extension(s) is requested and agreed to by the governing body. The final

subdivision plat must be filed and recorded with the Custer County Clerk and Recorder within the three-year approval period or extended period, if applicable. *[Sec. 21-16(a)(9)(e) MCSR and 76-3-610(1), MCA]*

3. The final plat and supplements shall comply with the Uniform Standards for Final Subdivision Plats and shall be reviewed by Custer County's Examining Land Surveyor and Miles City's Subdivision Administrator prior to final approval. *[Sec. 21-14(b) MCSR and 76-3-402 and 76-3-611(2), MCA]*
4. All existing and proposed easements shall be identified as to purpose, dimensions and recipients of the dedication. *[MCSR and ARM 24.183.1107]*
5. The final plat application shall provide a title report or updated abstract dated no older than 30 calendar days prior to the date of submittal of the final plat application, with documentation showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land. The final plat application shall also include the written, signed, dated, and notarized statement with consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land. The Subdivision Administrator is authorized to provide for the review of the abstract or certificate of title of the land in question by the city attorney. *[Sec. 21-14(b)(2)(a) MCSR and 76-3-612, MCA]*
6. The City Council will only approve the final plat if the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid. *[Sec. 21-16(a)(9)(e) MCSR and 76-3-611(1)(b), MCA]*
7. The City of Miles City will collect public comment submitted at the public hearings regarding the information presented pursuant to 76-3-622, MCA and shall make any comments submitted or a summary of the comments submitted available to the subdividers within 30 days after conditional approval of the subdivision application and preliminary plat. The subdividers shall, as part of the subdividers' application for sanitation approval, forward the comments or the summary provided by the City of Miles City to DEQ. *[76-3-607(7), MCA and ARM 17.36.103(1)(t)]*
8. The proposed plans for solid waste collection and water and wastewater treatment systems shall be reviewed by the Miles City Sanitarian and approved by the Montana Department of Environmental Quality. All applicable specifications and requirements of the approved plans shall be met and certified by a professional engineer prior to final plat approval. The



approved plans shall be filed with the final plat. [Sec. 21-18(a)(10) through (12) MCSR, Sec. 21-14(b)(2)(a)(6) MCSR, and ARM 24.183.1107(3)]

9. A storm water drainage plan, designed by a professional engineer who is licensed in the State of Montana, shall be reviewed by the Miles City Sanitarian and approved by the Montana Department of Environmental Quality. All applicable specifications and requirements of the approved plans shall be met and certified by a professional engineer prior to final plat approval. The approved plans shall be filed with the final plat. [Sec. 21-18(a)(9) MCSR, Sec. 21-14(b)(2)(a)(6) MCSR, and ARM 24.183.1107(3)]
10. Easements and a declaration(s) of shared use and maintenance agreement shall be established on and with the final plat for any stormwater-related facilities that will be shared amongst more than one lot. [Planning Board Report III.A.5 and Sec. 21-14(b)(6) MCSR]
11. The subdividers shall provide authorization from Montana Department of Environmental Quality, through a permit or written documentation that no permit is required, under the authority of a *General Permit for Storm Water Discharges Associated with Construction Activity* per the Montana Pollutant Discharge Elimination System (MPDES). The approved *Storm Water Pollution Prevention Plan Permit* and/or *General Permit for Storm Water Discharges Associated with Construction Activity* or other written authorization issued by the Montana Department of Environmental Quality shall be included with the final plat application. [Planning Board Report III.B.2; 76-3-608(3)(a), MCA, impacts on the natural environment; 75-5-101 et seq, MCA; and ARM 17.30.1101, 17.30.1301 et seq, and 17.30.601 et seq]
12. Prior to final plat approval, the exposed soils on the property along the south side of Horizon Parkway, where a denuded, unvegetated slope exists, shall be stabilized with implementation of erosion control measures. The City encourages the subdividers to take erosion control measures as soon as possible, with the intent being that the subdividers do not wait until all subdivision-related improvements are completed. [Planning Board Report III.B.2 and 76-3-608(3)(a), MCA, based on impacts on the natural environment]
13. The landscaping plan submitted for the subdivision, which shall be held on file at the City Planning Department at City Hall, shall be referenced on the face of the final plat to notify future lot owners of the plan. The plan may be used as a basis for individual lot development, but any such future individual lot development is subject to approval by the City of Miles City in accordance with the regulations in place at the time of proposed development, which may require modifications to the subdivision's landscape plan,

supplemental information, or a new landscape plan. *[Planning Board Report III.A.9, Sec. 24-49 of Miles City Zoning Code, and Sec. 21-18(a)(18)(g) MCSR]*

14. Future uses of the lots shall be in accordance with the Miles City Zoning Code and DEQ-approved Certificate of Subdivision Approval to be issued as referenced in these conditions. In addition, because the project has only been proposed for the non-residential uses allowed by the current General Commercial district regulations and the preliminary plat application did not contemplate non-residential uses and associated impacts, such as those on the education system and parks and recreation resources, no residential uses are allowed without further review and approval by the City of Miles City and if necessary, DEQ. *[Miles City Zoning Code, Planning Board Report III.A.9 and III.B.2]*
  
15. Prior to filing of the final plat, all improvements shall be installed or otherwise guaranteed as proposed and as outlined by these conditions, including as specifically identified by Condition #16. All improvements shall be completed in place or the developer shall enter into a written subdivision improvements agreement with City Council guaranteeing the construction and certification of such improvements and shall provide an acceptable financial security guarantee, in accordance with the Miles City Subdivision Regulations. *[Planning Board Report III.A, III.B.1 – 3, Sec. 21-14(b)(7) MCSR, and 76-3-507, MCA]*
  
16. A: The following improvements must be installed prior to final plat approval, as opposed to including said improvements in the SIA:
  - Site grading per the grading plans, including erosion control required by these conditions.
  - Reseeding and weed treatment associated with this list.
  - Parkhill Drive: construction of full turnaround area to proper city street/turnaround standards within a public easement/right-of-way, with the only exception of surface paving/hard-surfacing.
  - All engineering costs (design, construction, and certification), permitting, and reseeded/weed treatment of the improvements not included in the SIA.
  
- B: The following shall be included in the SIA:
  - Remaining erosion control, reseeded and weed treatment.
  - Electrical and telecommunication utilities to each lot (if not in place currently)
  - All water mains and fire hydrants.
  - All sewer mains and related facilities.
  - Stormwater conveyance and retention/detention facilities.
  - Horizon Parkway: widening, construction, curb and gutter, with the only exception of surface paving.

- Sidewalk along Horizon Parkway.
- Paving of Horizon Parkway from current end of pavement to and including the approach to Lot 2D.
- Surface paving/hard-surfacing of the turnaround at the terminus of Parkhill Drive.
- Traffic signs.
- Mail facilities.
- Remaining engineering costs (design, construction, and certification) and permitting (including all required by these conditions).

*[Planning Board Report III.A, III.B.1 – 3, Sec. 21-14(b)(7) MCSR, and 76-3-507, MCA]*

17. The proposed improvements to Horizon Parkway shall be completed by the subdividers, certified by the subdividers' engineer, and approved by the Miles City Public Works Department. The improvements shall include pedestrian facilities along the south side of Horizon Parkway adjacent to the subject property in accordance with Sec. 20-41 of the Miles City Code of Ordinances (MCCO). *[Sec. 21-18(a)(8) MCSR, Sec. 20-41 MCCO]*
  
18. All street, water, sewer, and stormwater improvement plans shall be reviewed and approved by the Miles City Public Works Department and be built to applicable city standards. All applicable specifications and requirements of the approved plans shall be met and certified by a professional engineer. *[Planning Board Report III.A & B; Sec. 21-18(a)(5), Sec. 21-18(a)(8), Sec. 21-18(a)(9) – (12), MCSR; and 76-3-608(3)(a), MCA, impacts on public health and safety]*
  
19. The proposed water and sewer systems within the Horizon Parkway right-of-way and south of Horizon Parkway right-of-way shall be dedicated to, taken over and maintained by the City of Miles City. *(proposal in June 10, 2020 Water and Sanitary Sewer Engineering Report modified by subdividers' agent at April 20 public hearing; Sec. 21-14(b)(1) MCSR; and 76-3-608(3)(a), MCA, impacts on local services)*
  
20. Parkhill Drive shall be improved with a turnaround area that meets Miles City standards within an adequate permanent or temporary right-of-way or easement for the turnaround area. A leg of the turnaround may also serve as the driveway approach to Lot 2A as long as parking is not allowed in the turnaround's easement area. Should such additional easement be nonperpetual, termination of the easement shall be contingent upon Parkhill Drive being established with another turnaround area at its terminus in compliance with Miles City standards. The turnaround area improvements are subject to city approval but do not require an engineer design or certification of construction specifications. *[Planning Board Report III.A.2 & III.B, Sec. 21-18(a)(8) MCSR, and 76-3-608(3)(a), MCA, impacts on public health and safety]*

21. The subdividers shall file with the Custer County Clerk & Recorder an executed Waiver of Right to Protest Creation of Special Improvement District in a form acceptable to the City stating that the subdivider and all heirs and assigns waive the right to protest creation of a Special Improvement District to provide a second or emergency access for the portion of Southgate Meadows that Block 5 is located in, in a manner that complies with Sec. 21-18(a)(8)(a)(8) MCSR for this subdivision. The improvement district may include all costs related to engineering, surveying, land, easement, and right-of-way acquisition, materials, construction, and all appurtenant costs necessary to build a roadway to be used for emergency ingress and egress from the subdivision to Highway 59. This waiver of the right to protest shall extend for 20 years beginning on the date the final subdivision plat is filed with the Custer County Clerk & Recorder. *[Planning Board Report III.A.2 & III.B, Sec. 21-18(a)(8)(a)(8) MCSR, and 76-3-608(3)(a), MCA, impacts on public health and safety]*
22. Any intended or required traffic signs shall be installed by the subdivider with the street improvements. Traffic signs shall be of the size, shape, height, and placement in accordance with the Manual of Uniform Traffic Control Devices. Traffic sign plans shall be approved by the planning department, which may consult with other departments or contracted agents to ensure adequacy. *[Sec. 21-18(a)(8)(f) MCSR]*
23. Electrical and telecommunication utilities shall be installed to each lot in the subdivision in accordance with Sec. 21-18(a)(13) MCSR. Prior to final plat approval (unless secured by SIA), the subdividers shall submit letters from the utility service providers indicating utilities have been installed to their specifications and within appropriate easements as shown on the final plat. *[Sec. 21-18(a)(13) MCSR]*
24. In addition to showing the location of utility easements on the plat with dashed lines, the following statement shall be on the final plat:  
*"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, telecommunications, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'utility easement' to have and to hold forever."* *[Sec. 21-18(a)(13) MCSR]*
25. The applicant shall meet the requirements of the United States Postal Service (USPS) for mail delivery. A plan for mail delivery shall be included with the final plat application with

approval by the local United States Post Office. If postal service will not be provided to each individual lot within the subdivision, the subdividers must provide an off-street area for mail delivery within the subdivision in cooperation with the United States Post Office. If a CBU system is required, it shall be shown on the final plat with an appropriate easement. If the plans call for a shared facility, responsibility for maintenance of the area and postal facilities shall be included as part a maintenance agreement. *[Sec. 21-18(a)(8)(h)(7) MCSR]*

26. The proposed noxious weed management plan shall be approved by the Custer County Weed District and filed with the final plat. The plan shall be implemented during development. *[Planning Board Report III.B.2 and 76-3-608(3)(a), MCA, impacts on the natural environment and agriculture]*
27. Statement(s) on the final plat and/or attached Conditions of Approval Sheets per the Uniform Standards for Final Subdivision Plats shall notify future property owners of the right to farm by surrounding agricultural landowners and measures that may be legally taken to prevent pets from harassing livestock. *[Planning Board Report III.B.2 and 76-3-608(3)(a), MCA, impacts on agriculture]*
28. If during ground disturbance and construction of subdivision improvements and individual lot development, if cultural materials are inadvertently discovered, the Montana State Historic Preservation Office (SHPO) shall be contacted to provide for site investigation and mitigation according to SHPO requirements or recommendations. Statement(s) on the final plat and/or attached Conditions of Approval Sheets per the Uniform Standards for Final Subdivision Plats shall notify future property owners of the requirement. *[Planning Board Report III.B.2 and 76-3-608(3)(a), MCA, impacts on the natural environment]*
29. The subdividers shall comply with all other standards and procedures of the Miles City Subdivision Regulations, which are applicable to this subdivision to obtain final plat approval, as well as all conditions and mitigations offered through the application which were not altered or amended during the review process. Any regulations, laws, procedures, mitigations, or provisions that are not specifically listed as conditions of approval are not waived or varied by omission. *[compliance with MCSR and MCA 76-3]*

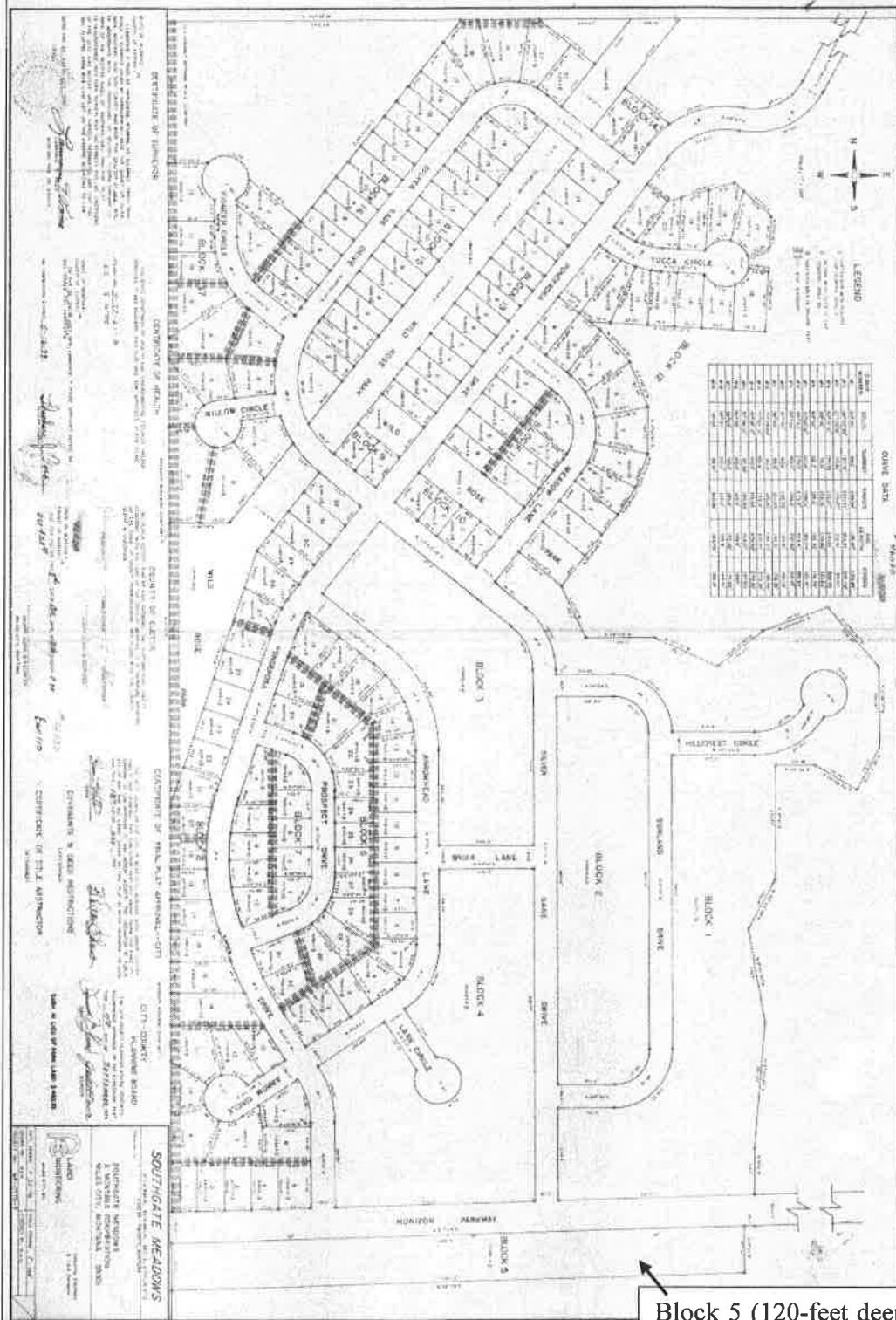
This recommendation for preliminary plat approval is for the creation of four lots to be used in compliance with the Miles City Zoning Code. Any changes to the approval would require additional review and approval by the City of Miles City.

## **Appendix A: Property and Project History**

### Southgate Meadows, original (1976), Env. 110:

Southgate Meadows is a major subdivision whose subdivision plat was recorded in December 1976 with approvals by Custer County and Miles City. With that recording, numerous lots, blocks, and public street dedications were platted, thus establishing the Southgate Meadows neighborhood, which is now mostly developed. The portion of the subdivided property located south of Horizon Parkway was platted as 'Block 5', a tract of ±177,531 square feet in size (±4.08-acres). See Figure 4, the final plat of Southgate Meadows, with Block 5 labeled.

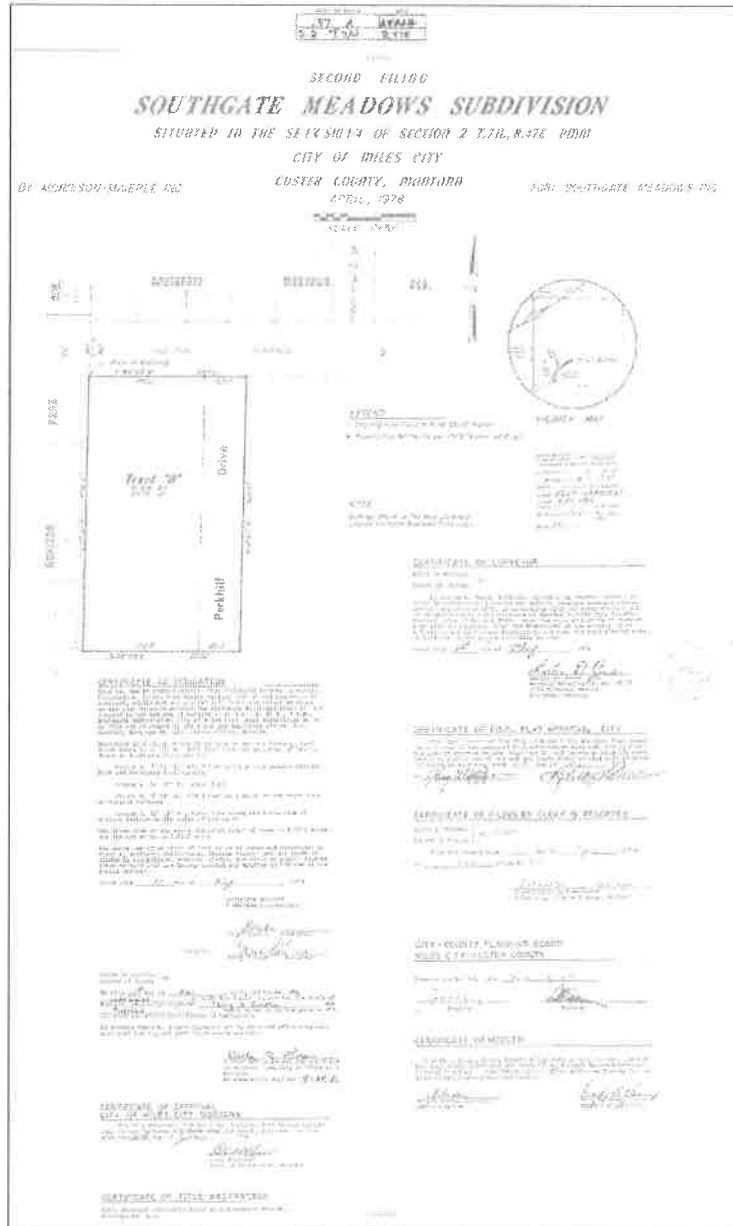
Figure 4: Final recorded plat of Southgate Meadows, Env. 110



Block 5 (120-foot deep as measured from Horizon Parkway)

Second Filing of Southgate Meadows Subdivision, Tract "A" (1978), Env. 147A:  
 In July 1978, a plat entitled "SECOND FILING SOUTHGATE MEADOWS SUBDIVISION" was recorded, which created Tract "A" (from Block 5), which also included Parkhill Drive as a publicly dedicated street accepted by the City of Miles City. Tract "A" is now developed with the Assembly of God Church, located directly west of the subdivision, across Parkhill Drive. See Figure 5 below, the Second Filing of Southgate Meadows Subdivision.

**Figure 5:** the Second Filing of Southgate Meadows Subdivision, Env. 147A





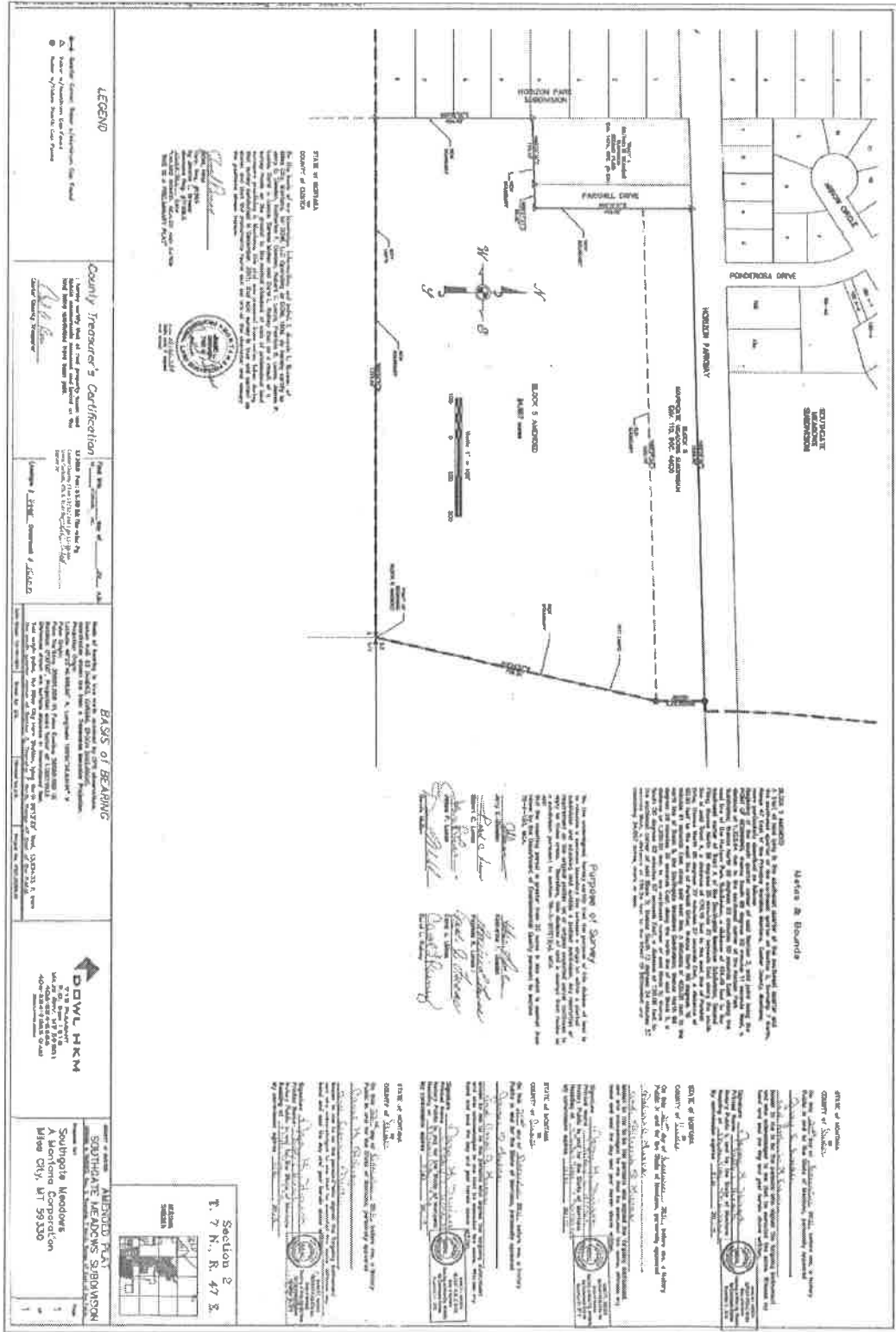
Amended Plats (1979- ):

Several amended plats of Southgate Meadows have been recorded for various purposes. Most of the amended plats are essentially inconsequential to the current project, until the following amended plats of Block 5.

Amended Plat of Southgate Meadows, Block 5 (2011), Env. 499A:

In December 2011, an amended plat of Southgate Meadows was recorded, which amended Block 5 using a boundary line relocation exemption to make Block 5 (less Tract "A" of the Second Filing) larger, becoming Block 5 Amended, at 24.557 acres in size. See Figure 6 below, the Amended Plat of Southgate Meadows, Block 5, Env. 499A.

Figure 6: the Amended Plat of Southgate Meadows, Block 5), Env. 499A



Certificate of Survey filed in Env. 511A: Retracement/Easements (2013):

In February 2013, a Certificate of Survey (COS) was filed in Env. 511A, with purposes being to retrace the boundaries of existing tracts of land and to provide material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States Bureau of Land Management. The COS depicted several easements granted to and accepted by the City of Miles City, and referenced easements previously recorded. See Figures 7A, 7B, and 7C below, the Certificate of Survey filed in Env. 511A.

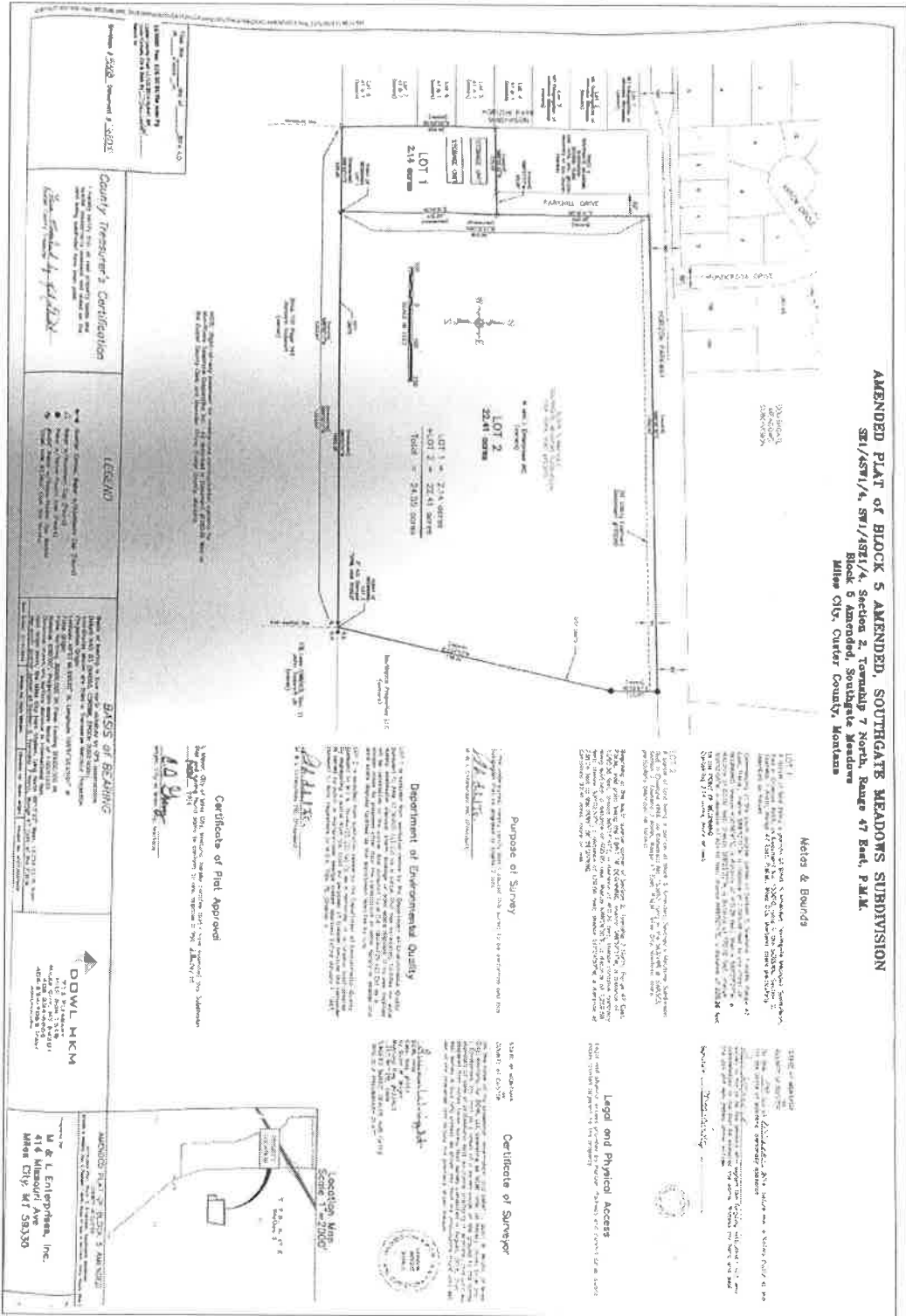






Amended Plat of Block 5 Amended, Southgate Meadows Subdivision (2014), Env. 530B:  
In November 2014, the Amended Plat of Block 5 Amended, Southgate Meadows Subdivision, was filed in Env. 530B. This subdivision was completed following subdivision review, with preliminary plat review occurring in November 2014 and the final plat also being approved and recorded in November 2014. The plat created Lots 1 and 2; Lot 1 is developed with a ministorage facility and the subject property proposed for the City View subdivision is Lot 2. See Figure 8 below.

**Figure 8: the Amended Plat of Block 5 Amended, Southgate Meadows Subdivision (2014), Env. 530B**





# City Planning Board

PO Box 910  
Miles City, MT 59301  
(406) 234-6339

## Meeting Minutes

April 20, 2021  
6:00 pm

Call to Order: The City Planning Board met in the Conference Room on Tuesday April 20, 2021. The meeting was called to order by Board President (BP) Brant Kassner at 6:05 pm and requested a roll call. Board Members (BM) present were Brant Kassner, Dennis Hirsch, Leif Ronning, Tyler Kennedy, Steven Palmeri and Jason Oddy. Board Member (BM) Michelle Simpson appeared via zoom as well as Joel Nelson of Land Solutions. Others present were Ally Capps, Planner in Training, Scott Gray, Public Works Director, Dan Rice, Attorney for the City, Fire Chief Brandon Stevens, Mayor Hollowell and Nicole Richardson served as recorder. Others present can be seen on the attached sign in sheet.

Approval of Minutes: BP Kassner called for approval of the minutes from March 24, 2021 meeting.

*\*\* Palmeri moved for approval of the minutes from the March 24, 2021 meeting, second by Oddy. All in favor; motion approved.*

Citizen/Visitor Request: None present.

Open Public Hearing – Introduce sub-division proposal: Joel Nelson of Land Solutions gave a brief overview of the City View staff report for preliminary plat review. This public hearing is for the Planning Board to make a recommendation and proposal to the City Council. City Council will hold a public hearing on Tuesday May 11, 2021 which is the review deadline. Joel skipped to page 2 of the staff report which is the project proponents as well as the property description. The proposed subdivision would create 4 lots from the 22.4-acre tract. Access to Lots 2C and 2D would be directly off Horizon Parkway and access from Lots 2A and 2B would be directly off Parkhill Drive. Lot 2D is proposed for a later condominium development which will provide 10 commercial condominium units to be exempt from subdivision review. Figure 3 on page 5 shows the projects landscape plan with the possible condominium units. Page 6 includes the two variance requests as well as a recommended motion for each variance. There are alternatives included as well if any board member wishes to make any alternate motions. It is recommended a different motion will be made on the preliminary plat application. On March 26, 2020, Cory Wilhelm emailed the Subdivision Administrator and other staff a pre-application meeting request. The City failed to respond specifically to the submittal requesting a pre-application meeting. Following preliminary plat submittal in June 2020 it was agreed upon that the City would process the preliminary plat application without requiring a pre-application meeting. A timeline of events surrounding the current City View subdivision preliminary plat application is on pages 8-10 of the staff report. Staff analysis and findings of fact is on page 11 of the staff report. The subdivision does not utilize a “block” pattern as in Sec. 21-18(a)(7) MCSR these standards for blocks do not apply to this subdivision design. Included on page 11 is the Table II.16: GC District Specifications showing setback specifications, lot coverage and building height. Variance request #1 to have the lots divided by easements is discussed on page 12. The variance review criteria are listed and underlined on pages 12-14 of the staff report followed by the

Subdivision Administrator's analysis and draft findings. The staff summary and recommendation on variance request #1 is found on page 14. The Subdivision Administrator is recommending approval of the variance. The next point made in the staff report is regarding the traffic study and the classification of the streets in the subdivision. On the bottom of page 14 the improvements to Horizon Parkway are discussed and on page 15 is a snap shot of the proposed improvements. Moving onto variance request #2 no second or emergency access. Southgate Meadows is a major subdivision and this subsequent subdivision will expand that which is the need for a second exit. Information has been provided that it is not a high hazard fire area. Page 16 goes over this variance criteria. The staff summary and recommendation on variance #2 is approval of the variance only if the subdividers are required to waive the right to protest creation of a S.I.D. to provide a second access and contribute a proportional share toward providing the access improvements as stated in the conditions of approval. Parkhill Drive lacks a turnaround area within an easement/right-of-way. Sec. 21-18(a)(8) MCSR and Sec. 21-18(a)(8)(a)(6) no dead-end streets shall be permitted without an approved turnaround. The developer shall provide either a cul-de-sac or "T" turnaround at the terminus. Staff is recommending a condition of approval that would require a turnaround area to be established within an adequate easement or dedicated right-of-way, which could be accomplished with an extension of a turnaround leg where the proposed approach to Lot 2A would currently be located. This subdivision will require DEQ approval of the extensions of the water and sewer mains. The status of the storm water infrastructure is unknown, if any shared infrastructure is used for storm water management, easements and maintenance agreements should be included as stated in the conditions of approval. The application does not address the location of existing electrical and telecommunication facilities. The staff-recommended conditions of approval further address compliance with Sec. 21-18(a)(13), MCSR, and would require each lot have electrical and telecommunications extended to the lot or immediately adjacent. Page 23 discusses the written comments from the Fire Chief Brandon Stevens on the subdivision. It is noted there will be minimal impact to the Fire Department. As continued development progresses off Horizon Parkway a need for alternative access and egress in to and out of these types of subdivisions will continue to be an ongoing concern for areas such as these. A park dedication is not required for "subdivision into parcels that are all nonresidential". Because all four lots are proposed for commercial/nonresidential uses the subdivision is exempt from any park dedication requirements. It is included a recommended condition of approval that will limit it to a nonresidential use or another approval process will be triggered to change to residential uses. The landscaping plan is in detail on page 24 with a condition of approval to include status of landscape plan and how to use it in the future for individual lot development and must follow zoning regulations but it is not a requirement of the subdivision. Page 28 the 'Finding of Facts' and prerequisites of approval and standards the City has to follow for improvements and bonding. There are many improvements with this subdivision and the subdivider does propose to bond. State Statute and the Miles City Subdivision Regulations (MCSR) state; the governing body may require fifty percent of all improvements or one hundred percent of any improvements of any improvements necessary to protect public health and safety to be completed before allowing bonding or any other reasonable security for purposes of filing a final plat. (MCA (76)(3)(507)(4)). There are a lot of improvements related to public health and safety, we are recommending certain improvements be required and not bonded including; site grading, erosion control, reseeding and weed treatment, all water mains and fire hydrants, all sewer mains and related facilities. Storm water conveyance and retention and detention facilities, widening of Horizon Parkway road, curb and gutter with the only exception of surface paving. The sidewalk along Horizon Parkway and the Parkhill Drive turnaround, traffic signs and all engineering costs. A full list of staff recommendation for improvements is located on page 28 to be included in the S.I.A. Starting on page 27 is a list of improvements staff recommends be installed prior to final plat approval and not be bonded. Getting into the subdivision review criteria on page 30-39 is the impact on agriculture, agricultural water use facilities,

local services, natural environment, wildlife, wildlife habitat and public health and safety. The finding on top of page 40 discusses the proposal for mitigation. Staff Recommendation on page 44 reviews both variances and the approval of them both along with 29 conditions that are found on pages 44-50.

Do any board members wish to declare conflict of interest in the sub-division: No conflict of interest expressed.

Planning Board may ask questions to the Sub-Division Administrator: No questions from the board.

Questions to the Subdivider or designated agent: No questions for the subdivider or designated agent.

Members of the Planning Board may ask questions of the subdivider: No questions from the board.

Open Public Hearing to Public Comment: Cory Wilhelm spoke up with some questions and clarification on a few things. The first thing brought up is the City will be handling the sewer and water including the private property area. Originally it was discussed the County was going to do a district and they have decided not to. Easements have been updated and given to DEQ for it to be the City. In the staff report Parkhill Drive was brought up and Cory inquired why it is just now being brought up that improvements are needed there. Joel explained Park Hill Drive should have been brought up during the element review or the sufficiency review. It came up while Joel was doing the staff report and he was under the impression it was previously figured out. When you look at a road like Parkhill Drive is supposed to have a turnaround area. This was probably missed there are current areas that can be used as a turnaround area such as the Church and Storage Unit parking areas. The issue with not having a designated turnaround area is the current ones could be gated off on the easement cause there to not be a turnaround area. Scott Grey explained no improvements need to be made to Parkhill Drive itself, what is being addressed is just the turnaround. The turnaround can temporarily be gravel, the condition on the turnaround does say unpaved. On page 47 number 16. A: the last bullet point discusses what has to be built and not included in the SIA. Wilhelm is needing further explanation on what all is included in the last bullet point on page 47 number 16. A. Engineering costs on stuff is nearly impossible to include. Is the City looking for a deal to be made with the County Weed District? Nelson explained that certain improvements need to be done prior to final plat approval. The main goal is so there isn't a huge outstanding bill to the engineer. The City doesn't want to see the developer propose a bond for the entire engineering bill. Wilhelm added with DEQ approval in a few weeks there won't be anymore engineering necessary. The next thing Wilhelm wanted to address was the right to waive protest on a SID for the second access. To make sure Matt wasn't going to be held 100% financially reliable to do that but rather a prorated rate that all of Southgate would be apart of. The goal is to sell a condo lot to a company who has expressed interest soon as this process has already been ongoing for a year and a half. Can they start a condo submittal to the City after the Preliminary Plat has been approved? In the past it would go to City Council for preliminary plat approval with simple conditions such as install water and sewer or build the road, then go to final plat and they could be sold right away. The main concern is the time frame in which this will all be handled. Joel hasn't seen a condominium declaration done before you establish a new legal description. Statue does address once the preliminary plat is approved you can enter into a contract for deed. The Planning Board's recommendation can choose what part of the staff recommendation is being required and take those recommendations to City Council.

Attorney Gary Ryder spoke as an opponent commented; in the past, there was an attempt to put Brawler Industries manufacturing plant on this piece of property. Probably would have been outside General Commercial and there are certain risks involved with the purchase of this lot. Ryder feels the Court Order speaks for itself and the City Council resolution on this matter he feels inaccurately described what took place with landowners, Southgate and his clients land out in Southgate. Planning, zoning and subdivision

review is important for the development of a town and rules need be enforced equally and fairly. It is very important that rules be followed. Ryder works in Billings often and states Billings is booming. When this thing first started every one in Miles City thought growth would happen south of town, there was one house built. I am glade there is a process that is different from the one that took place with the Brawler property.

Mayor Hollowell questioned if Custer County Weed District had any jurisdiction over this property. After brief discussion between Joel and Cory it was decided jurisdiction needed to be clarified.

*\*\* Palmeri moved for an amendment to the staff report in regards to the dedication of water and sewer to the City. All in favor. Motion approved.*

Kassner called for motion for recommendation on variance #1.

*\*\* Palmeri read the recommended motion #1 located on page 6 of the staff report. Second by Ronning. A roll call was requested. Kassner - aye; Hirsch - aye; Ronning - aye; Kennedy - aye; Simpson - aye; Palmeri - aye; Oddy - aye. Motion passed.*

Kassner called for motion for recommendation on variance #2.

*\*\* Palmeri read the recommended motion #2 on page 6 of the staff report. Second by Kennedy. A roll call was requested Kassner - aye; Hirsch - aye; Ronning - aye; Kennedy - aye; Simpson - aye; Palmeri - aye; Oddy - aye. Motion passed.*

Unfinished Business: *\*\*Kennedy moves to adopt the staff report as findings of fact and recommend approval of the preliminary plat to City Council. Second by Palmeri.*

Wilhelm has concern with #16A and wants to see if the Planning Board sees a reason before going to City Council to change a few of the requirements. Such as things that have to be built to things that can go onto the SIA. The big things to Wilhelm are water, sewer, street design and storm design. Dan asked Joel if there was a list of things that has to be built and can't be a part of the SIA. Joel rereads conditions 16A. The engineering costs pertain to weed control and seeding. The developer will need to demonstrate all incurred engineering costs are caught up on and any future engineering costs can be bonded. Wilhelm asked the Planning Board if they could recommend to move everything from A to B on condition #16. Wilhelm explained you can go to final plat if you bond everything and meet all other conditions you can go to final plat and get final plat done and can do the condo association as long as its bonded. Joel said it is all up to the discretion of City Council and the main idea is public health and safety.

*\*\* Palmeri moved to amend #16A and keep points 1, 2, 8, 10 and delay 3, 4, 5, 6, 7 and 9 for 1 year as well as change "can be" to "shall be". Second by Hirsch.*

Scott Gray wanted to clarify that in #16A the turnaround could be gravel but in #16B it would have to be hard surfaced.

*\*\* Kassner called for a roll call vote on the amendment. Kassner - aye; Hirsch - aye; Ronning - aye; Kennedy - aye; Simpson - aye; Palmeri - aye; Oddy - aye. Amendment passed.*

*\*\*Kassner called for a roll call vote on the recommendation to the City Council. Kassner - aye; Hirsch - aye; Ronning - aye; Kennedy - aye; Simpson - aye; Palmeri - aye; Oddy - aye. Recommendation passed.*

Adjournment: On motion, the meeting was adjourned at 7:35 pm.

Respectfully submitted,

\_\_\_\_\_  
Nicole Richardson  
Recording Secretary

\_\_\_\_\_  
Date \_\_\_\_\_  
Brant Kassner  
Board President

## Responses to questions submitted by Dave Jewell:

-Subdivision Administrator responses

- **Question....Where is MCFR response to this proposed subdivision?**

### Response:

The preliminary plat application included a copy of a letter from Wilhelm Land Surveying to Miles City Fire & Rescue attempting to solicit comments on the project. No response from MCFR was included with the application.

On March 12, the Miles City Planning Department sent letters to several agencies including Miles City Fire & Rescue regarding this project. To date, no response has been received.

It is important to note the following language from 76-3-504(1)(i), MCA: *"...A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body."*

That said, as the reviewers, we concur that comment from Miles City Fire & Rescue regarding the subdivision application and the variance request for the lack of a second access would be very helpful.

### **1. Has DEQ reviewed, issued any permits, or given approval of any storm water plans?**

#### Response:

We are unaware of any approvals or permits issued by DEQ for this project. The application for DEQ subdivision review was submitted to DEQ, with information on the DEQ submittal and review included with the application at City Hall, which is available for public inspection.

It is our understanding that the applicants are awaiting the public comments from the city review to submit to DEQ in accordance with state law. Per 76-3-604(7)(a), MCA, *"The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat. (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the: (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres..."*

We therefore encourage comments regarding water, sewer, stormwater and solid waste be submitted in writing.

2. We would like to see all the current plans, grading, storm water plan, landscaping, sidewalks, curb and gutter, lighting, water and sewer, streets, utilities, etc and cost estimates from 3 sources included in the Subdivision Improvements agreement. Will the developer be required to fully comply with the requirements of the agreement and how will the agreement be enforced?

**Response:**

Please note the required improvements for the subdivision have not yet been determined. Staff will make a recommendation based on the regulations and review criteria, as will the Planning Board. The conditions of preliminary approval, if granted by City Council, will outline the required improvements that must be completed prior to final plat approval, unless secured through a proposed Subdivision Improvements Agreement (SIA). A draft SIA was submitted for the improvements being proposed by the subdividers, per Sec. 21-14(5)(a) MCSR, which includes "A form of subdivision improvements agreement, if proposed" as a potentially required 'supplement to the preliminary plat', which was required during element review of this application. It would be premature to include bids and estimates at this time, because the required improvements have not been determined through the public subdivision review process and detailed in a conditional approval letter.

The acceptance of a proposed SIA will be contingent upon City Council approval. The proposal to bond for the improvements is part of the current preliminary plat proposal, which is under review. Please note that 76-3-507, MCA addresses this, which is entitled, "Provision for security requirements to ensure construction of public improvements." Please note subsection (4) states, "*The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.*"

Sec. 21-14(b)(7) of the MCSR (under the final plat subsection) addresses improvements agreements and the above statute. It states in part, "*The governing body may require 50 percent of all improvements or 100 percent of any improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security for purposes of filing a final plat.*" Because the improvements proposed to be secured by the SIA are related to public health and safety, this section of the regulations is important to consider, and will be addressed in the upcoming staff recommendation.

Please also note the following from Sec. 21-14(b)(7) of the MCSR: "*...If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125 percent by the highest bid...*" If and when an SIA is proposed as part of the final plat application, the regulations will require three bids as you have suggested.

In regards to enforcement of the SIA, the terms of the draft agreement outline how the agreement is to be administered. The agreement and financial security must remain in place until improvements are completed and as obligations are completed by the developers, but the security may be reduced incrementally until all improvements are complete. If improvements are not completed by the developers per the agreement, the idea of the agreement is that upon default, the City would be able to access the financial security and cause the improvements to be completed as required.

### **3. What is the difference between a residential condominium and a commercial condominium?**

**Response:**

As Joel Nelson explained at the March 24 hearing, the main difference between a residential condominium and commercial condominium seems to be the use (residential vs. commercial). "Condominium" is a form of ownership. Please see the Montana Unit Ownership Act at [MCA Title 70, Chapter 23](#), and the definition of condominium (70-23-102(7), MCA): "*Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter. The term does not include a townhome, a townhouse, a community land trust, or a housing unit located on land belonging to a community land trust.*

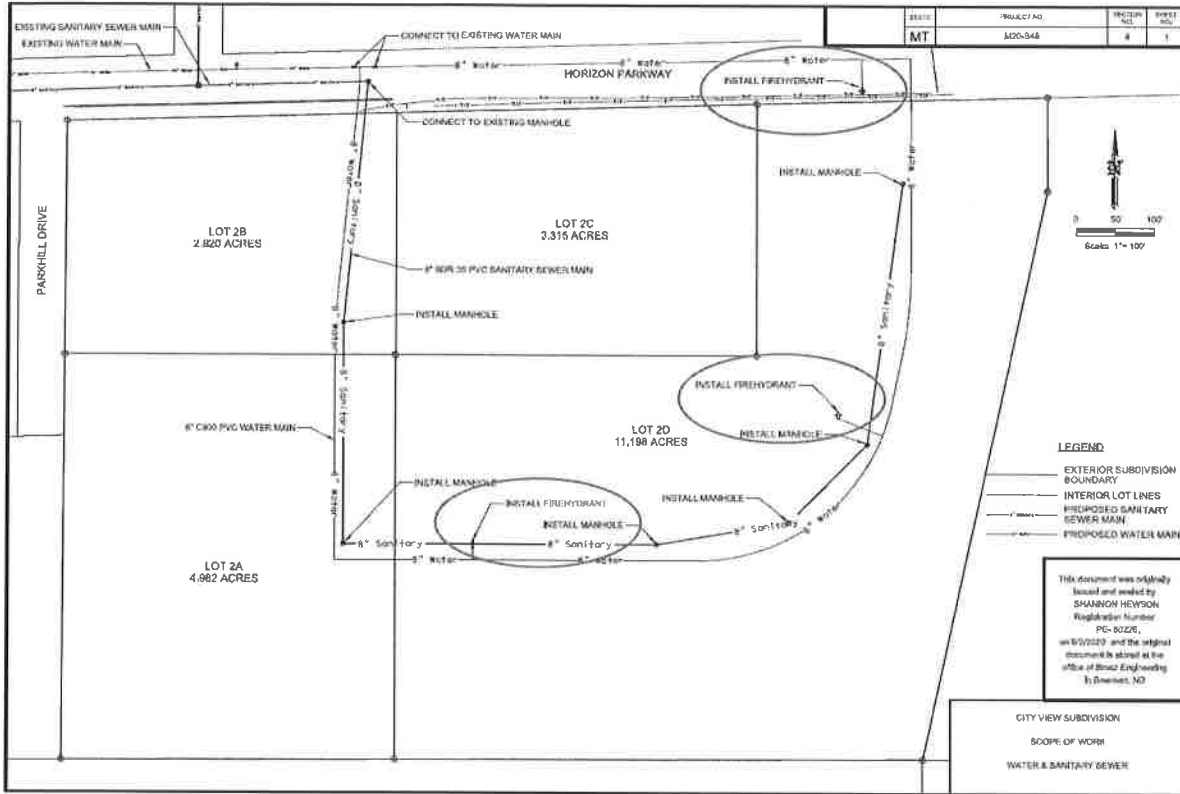
-other definitions in the Unit Ownership Act also apply to condominium projects and may help to answer your question.

### **4. Will additional fire hydrants be installed on the south side of Horizon Parkway? Current fire hydrants are on the north side and in a fire event the entire residential portion may be blocked.**

**Response:**

The requirement is subject to City Council action, but the submittal proposes fire hydrants at the locations shown on the following map excerpt, on which we circled the hydrants shown:





5. We would like a copy of the draft final finding of facts and recommendations report from the planning board that it will deliver to the City Council along with a completed Subdivision Improvement Agreement. How and when will these documents be available?

The report with the *Planning Board's* findings and recommendations will be available within ten working days after the April 20 public hearing (May 4) per Sec. 21-16(a)(5)(d), MCSR and 76-3-605(4), MCA. We will email you a copy of that report when it is completed.

There will also be a *staff report* prior to the April 20 public hearing of the Planning Board. This will include the staff-recommended findings of fact and recommendations on the application and requested variances. The regulations and state law do not dictate a deadline for that report, but staff's internal goal for completing and distributing the staff report to the Planning Board is one week prior to the hearing (approximately April 13, but again, without a hard deadline). We will email you a copy of that report when it is completed.

# New Business

## ORDINANCE NO. 1348

### AN ORDINANCE AMENDING SECTION 22-245 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY ESTABLISHING REVISED TRUCK ROUTES.

WHEREAS, the City of Miles City in consultation with the Montana Department of Transportation has determined that the existing truck routes in the City of Miles City require revision, to promote orderly flow of truck traffic, and for the safety of the residents of the City of Miles City;

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

**Section 1.** Section 22-245 of the Code of Ordinances of the City of Miles City is revised to read as follows:

**“Sec. 22-245. - Truck routes established.**

There are hereby established within the city the following truck routes:

- (1) Jordan to Billings: South on MT-59 (North 7<sup>th</sup> St.), Turn right onto Pacific Ave., Turn Right onto Garryowen Rd., Turn Left onto US-12 (I-94 Business Loop), Exit 135 West on I-94 to Billings.
- (2) Jordan to Broadus: South on MT-59 (North 7<sup>th</sup> St.), Turn right onto Pacific Ave., Turn Right on Garryowen Rd., Turn Left on US-12 (I-94 Business Loop), Exit 135 East on I-94, Eastbound off ramp Exit 138, Turn Right onto MT-59 South to Broadus.
- (3) Jordan to Baker: South on MT-59 (North 7<sup>th</sup> St.), Turn right onto Pacific Ave., Turn Right on Garryowen Rd., Turn Left on US-12 (I-94 Business Loop), Exit 135 East on I-94, Eastbound off ramp Exit 141, Turn Right onto US-12 East to Baker.
- (4) Jordan to Glendive: South on MT-59 (North 7<sup>th</sup> St.), Turn right onto Pacific Ave., Turn Right on Garryowen Rd., Turn Left on US-12 (I-94 Business Loop), Exit 135 East on I-94 to Glendive.
- (5) Broadus to Jordan: North on MT-59, Exit 138 West on I-94, Westbound off ramp Exit 135, Turn Right onto US-12 (I-94 Business Loop), Turn Right onto Garryowen Rd., Turn Left onto Pacific Ave., Turn Left onto North 7<sup>th</sup> St., North on MT-59 to Jordan.

- (6) Broadus to Baker: North on MT-59, Exit 138 East on I-94, Eastbound off ramp Exit 141, Turn Right onto US-12 to Baker.
- (7) Baker to Jordan: West on US-12, Exit 141 West on I-94, Westbound off ramp Exit 135, Turn Right onto US-12 (I-94 Business Loop), Turn Right onto Garryowen Rd., Turn Left onto Pacific Ave., Turn Left onto North 7<sup>th</sup> St., MT-59 North to Jordan.
- (8) Glendive to Jordan: Westbound off ramp Exit 135, Turn Right onto US-12 (I-94 Business Loop), Turn Right onto Garryowen Rd., Turn Left onto Pacific Ave., Turn Left onto South 7<sup>th</sup> St, MT-59 North to Jordan.
- (9) Local delivery. Atlantic Avenue from Fourth Street to Tenth Street is hereby designated a portion of the truck route for local delivery only.”

**Section 2.** This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 11<sup>th</sup> day of May, 2021.

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

**FINALLY PASSED AND ADOPTED** this 25<sup>th</sup> day of May, 2021.

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

## RESOLUTION NO. 4402

### A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND BIG SKY CREMATION SERVICES L.L.C., LOCATED WITHIN THE INDUSTRIAL SITE OWNED BY THE CITY OF MILES CITY.

**WHEREAS** the CITY owns certain real property located in the “Industrial Site” which desires to lease to an appropriate tenant the following;

**Legal Description:** Lots 4 and 5 of Tract “E” of the Industrial Site West of Miles City, Montana, containing approximately 50,000 square feet, more or less.

**AND WHEREAS**, the CITY presently leases the foregoing property to TENANT Big Sky Cremation Services, LLC, which is the successor in interest to Bullis-Graves Memorial Chapel/Eastern Montana Cremation Service, pursuant to a certain lease agreement dated August 9, 1996;

**AND WHEREAS**, TENANT desires to make additional use of the leasehold for cremation of human remains and to erect a human crematorium, and has requested that an amended lease be approved by the CITY;

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

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

**Lot 4 of Tract “E”** of the Industrial Site, west of Miles City, in Custer County, Montana, containing 25,000 sq. ft. @ \$0.025 per sq. ft.) *Paved frontage roads*, for a total rental of six hundred and twenty five and Dollars (\$625.00)

**Lot 5 of Tract “E”** of the Industrial Site, west of Miles City, in Custer County, Montana, containing 25,000 sq. ft. @ \$0.020 per sq. ft.) *Gravel frontage roads*, for a total rental of five hundred and 00/100 Dollars (\$550.00) for each year of the initial lease term.

*Total annual payments for lot 4 and 5 will total One thousand one hundred 75/100 dollars (\$1,175.00). Payments in subsequent years shall be due and payable in advance of July 1 of each subsequent year of the lease term, commencing July 1, 2021 through June 30, 2026.*

**AND WHEREAS** the City Council finds that it is in good interest of the City to accept the request for the assignment of such lease and should be granted;

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

The City Council hereby authorizes and approves the terms and condition of the Lease Agreement between the City of Miles City, and Big Sky Cremation Services L.L.C., attached hereto as Exhibit "A", and made a part hereof, and hereby authorizes the Mayor of the City of Miles City to execute such lease and bind the City of Miles City thereto and to perform the terms and conditions of such lease.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AN AFFIRMATIVE VOTE OF 2/3 OR THE MEMBERSHIP OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

**ATTEST:**

**CITY OF MILES CITY**

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**Mary Rowe, CITY CLERK**

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**John Hollowell, MAYOR**

## ***CITY PROPERTY LEASE AGREEMENT***

**THIS AGREEMENT** made and entered into this 11<sup>th</sup> day of May 2021 by and between the **CITY OF MILES CITY, MONTANA**, a Montana municipal corporation, of 17 S. Eighth Street, Miles City, Montana 59301, hereinafter referred to as the "**CITY**" and Big Sky Cremation Services LLC, of 1806 Main Street, Miles City, MT 59301, hereinafter referred to as "**TENANT**".

### **RECITALS:**

**WHEREAS** the CITY owns certain real property located in the "Industrial Site" which desires to lease to an appropriate tenant the following;

**Legal Description:** Lots 4 and 5 of Tract "E" of the Industrial Site West of Miles City, Montana, containing approximately 50,000 square feet, more or less.

**AND WHEREAS**, the CITY presently leases the foregoing property to TENANT Big Sky Cremation Services, LLC, which is the successor in interest to Bullis-Graves Memorial Chapel/Eastern Montana Cremation Service, pursuant to a certain lease agreement dated August 9, 1996;

**AND WHEREAS**, TENANT desires to make additional use of the leasehold for cremation of human remains and to erect a human crematorium, and has requested that an amended lease be approved by the CITY;

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

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

### ***I. AGREEMENT***

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

Lots 4 and 5 of Tract "E" of the Industrial Site, west of Miles City, in Custer County, Montana containing approximately 50,000 square feet, more or less, hereinafter "*Leasehold*".

### ***II. INITIAL TERM***

The term of this Agreement shall be for a period of five (5) years, beginning on May 11, 2021 and expiring at midnight on June 30, 2026, hereinafter, "*the initial lease term*", subject to the option to renew this lease as provided for in Article IV of this lease.

### ***III. RENTAL***

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

**Lot 4 of Tract "E"** of the Industrial Site, west of Miles City, in Custer County, Montana, containing 25,000 sq. ft. @ \$0.025 per sq. ft.) *Paved frontage roads*, for a total rental of six hundred and twenty five and Dollars (\$625.00)

**Lot 5 of Tract "E"** of the Industrial Site, west of Miles City, in Custer County, Montana, containing 25,000 sq. ft. @ \$0.020 per sq. ft.) *Gravel frontage roads*, for a total rental of five hundred and 00/100 Dollars (\$550.00) for each year of the initial lease term.

*Total annual payments for lot 4 and 5 will total One thousand one hundred 75/100 dollars (\$1,175.00).* Payments in subsequent years shall be due and payable in advance of July 1 of each subsequent year of the lease term, commencing July 1, 2021 through June 30, 2026.

#### ***IV. OPTION TO RENEW.***

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

#### ***V. RESPONSIBILITIES OF THE TENANT***

TENANT does hereby acknowledge, covenant and agrees as follows:

##### **A. Purpose.**

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

*Operate Big Sky Cremation Services (crematory) and holding facility (refrigerated unit)*

- Commercial Building "A" existing pet crematorium 27'X36'
- Commercial Building "B" newly erected human crematorium 30'X50'

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

##### **B. Compliance with Laws.**

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

##### **C. Independent Investigation.**

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



**D. Maintenance.**

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

**E. Improvements to Remain.**

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

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

**F. Right to Inspect.**

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

**G. Utilities.**

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

**H. Taxes and Assessments.**

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

**I. Indemnification.**

TENANT shall indemnify and hold the CITY harmless for any loss, damage, claim and/or liability occasioned by, growing out of, or arising or resulting from any default hereunder, or any tortious or negligent act on the part of TENANT, its agents, employees or customers, and TENANT hereby agrees to indemnify and hold harmless the CITY for any such loss or damage. The obligations hereunder shall survive the termination of this lease.

**J. Insurance.**

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

**K. Environmental Warranty.**

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

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

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

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

**L. Compliance with ADA.**

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

**M. Non-Discrimination.**

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

#### ***VI. ASSIGNABILITY OF INTEREST***

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

#### ***VII. DEFAULT***

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

#### ***IX. MISCELLANEOUS PROVISIONS***

If is further mutually understood and agreed as follows:

##### **A. Notice.**

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

##### **B. Oral Modification Prohibited.**

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

##### **C. Attorneys Fees and Costs.**

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

**D. Binding Effects.**

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

**E. Time of the Essence.**

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

**F. Incorporation of Recitals.**

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

**G. Executed Copy.**

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

**H. Interpretation.**

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

**I. Contingent Upon Approval of City Council.**

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

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

**ATTEST:**

**CITY OF MILES CITY**

\_\_\_\_\_  
**Mary Rowe, CITY CLERK**

By: \_\_\_\_\_  
**John Hollowell, MAYOR**

**TENANT:  
BIG SKY CREMATION SERVICES L.L.C.**

By: \_\_\_\_\_  
**Joe Stevenson, Individual**

**RESOLUTION NO. 4403**

**A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH KADRMAS, LEE & JACKSON D/B/A KLJ, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Kadrmas, Lee & Jackson d/b/a KLJ for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Kadrmas, Lee & Jackson d/b/a KLJ has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional Services," 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.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

---

John Hollowell, Mayor

ATTEST:

---

Mary Rowe, City Clerk

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

---

AMERICAN SOCIETY OF CIVIL ENGINEERS

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between

City of Miles City, Montana (“Owner”)

and

Kadmas, Lee & Jackson (dba KLJ) (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

## 2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

    - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.



- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Attachment 1.

Attachments:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Address for giving notices:

City of Miles City \_\_\_\_\_

P.O. Box 910 \_\_\_\_\_

Miles City, MT 59301 \_\_\_\_\_

(406) 234-3493 \_\_\_\_\_

ENGINEER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_

State of: Montana \_\_\_\_\_

Address for giving notices:

Kadmas, Lee & Jackson (dba KLJ) \_\_\_\_\_

2611 Gabel Road \_\_\_\_\_

Billings MT 59102-7329 \_\_\_\_\_

406-245-5499 \_\_\_\_\_



**RESOLUTION NO. 4404**

**A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH BROSZ ENGINEERING, INC. FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Brosz Engineering, Inc. for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Brosz Engineering, Inc. has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional Services," 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.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

---

John Hollowell, Mayor

ATTEST:

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City Clerk

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

---

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

---

AMERICAN SOCIETY OF CIVIL ENGINEERS

---

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Copyright © 2009 National Society of Professional Engineers

SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”)  
between

City of Miles City, Montana (“Owner”)

and

Brosz Engineering, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.



2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Attachment 1.

Attachments:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Address for giving notices:


City of Miles City \_\_\_\_\_

P.O. Box 910 \_\_\_\_\_

Miles City, MT 59301 \_\_\_\_\_

(406) 234-3493 \_\_\_\_\_

ENGINEER:

By:  \_\_\_\_\_

Title: President \_\_\_\_\_

Date Signed: May 1, 2021 \_\_\_\_\_

Engineer License or Firm's Certificate

Number: DEL-EF-LIC-274

State of: Montana \_\_\_\_\_

Address for giving notices:

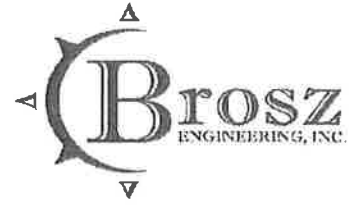
Brosz Engineering, Inc. \_\_\_\_\_

P.O. Box 357 \_\_\_\_\_

Bowman, ND 58623 \_\_\_\_\_

701-523-3340 \_\_\_\_\_





**ENGINEERING & SURVEYING SERVICES  
2021 HOURLY RATE SHEET**

SENIOR ENGINEER I	\$155.00
SENIOR ENGINEER II	\$145.00
ENGINEER I	\$135.00
ENGINEER II	\$125.00
ENGINEER III	\$115.00
ENGINEER IV	\$105.00
SENIOR ARCHITECT	\$160.00
LANDSCAPE ARCHITECT	\$125.00
SENIOR ENGR. TECH. I	\$120.00
SENIOR ENGR. TECH. II	\$110.00
ENGINEER TECH. I	\$100.00
ENGINEER TECH. II	\$95.00
ENGINEER TECH. III	\$85.00
ENGINEER TECH IV	\$70.00
SURVEY PRINCIPAL (Field)	\$145.00
SURVEY PRINCIPAL (Computations)	\$135.00
SURVEY MANAGER (Field)	\$140.00
SURVEY MANAGER (Computations)	\$125.00
REG. LAND SURVEYOR (Field)	\$135.00
REG. LAND SURVEYOR (Computations)	\$115.00
SURVEYOR I (Field)	\$125.00
SURVEYOR I (Computations)	\$95.00
SURVEY ASSISTANT	\$85.00
DRONE SURVEY	\$250.00
GIS COORDINATOR	\$90.00

The above rates include all labor, mileage, per diem and normal supplies. For field work, chargeable time is applied from the time we leave our office location until we return

**A:** 109 S. Main PO Box 357, Bowman, ND 58623    **P:** (701) 523-3340    **W:** [broszeng.com](http://broszeng.com)

**BOWMAN, STANLEY & WATFORD CITY NORTH DAKOTA    MITCHELL, PIERRE, SIOUX FALLS & STURGIS SOUTH DAKOTA**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/05/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> American Family Brokerage Inc 6000 American Parkway  Madison WI 53783		<b>CONTACT NAME:</b> Stephanie Jo Germann <b>PHONE (A/C, No, Ext):</b> (701) 523-5573 <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> sgermann@amfam.com	
<b>INSURED</b> Brosz Engineering Inc 109 S Main  Bowman ND 58623		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Continental Casualty Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		<b>NAIC #</b>	

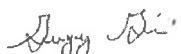
**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <b>EXCESS LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional & Pollution Incident Liability Insurance		Y	AEH113770528	09/01/2020	09/01/2021	\$1,000,000 Occ/\$2,000,000 Agg \$125,000 deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

City of Miles City PO BOX 910  Miles City MT 59301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
05/03/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


<b>PRODUCER</b> Western Frontier Insurance Agency 105 South Main Street, PO Box 184 Bowman ND 58623-0184		<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 701-523-4333 FAX (A/C, No): 701-523-4331 E-MAIL ADDRESS: wflath@westernfrontierins.com	
<b>INSURED</b> Brosz Engineering, Inc PO Box 357 109 S Main Street Bowman ND 58623		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: United Fire Group INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: 20210503063921870 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	N N	X60495496	09/01/2020	09/01/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY	N N	# 60495496	09/01/2020	09/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	N N	6049549 6	09/01/2020	09/01/2021	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A N	080495496	09/01/2020	09/01/2021	PER STATUTE OTH-ER E L EACH ACCIDENT \$ 1,000,000 E L DISEASE - EA EMPLOYEE \$ 1,000,000 E L DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b> City of Miles City PO Box 910 Miles City MT 59301 Email: tspeelmon@milescity-mt.org	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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**RESOLUTION NO. 4405**

**A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH ROBERT PECCIA & ASSOCIATES, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Robert Peccia & Associates for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Robert Peccia & Associates has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional Services," 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.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

---

John Hollowell, Mayor

ATTEST:

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Mary Rowe, City Clerk

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between

City of Miles City, Montana (“Owner”)

and

Robert Peccia & Associates (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Attachment 1.



Attachments:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Address for giving notices:

City of Miles City \_\_\_\_\_

P.O. Box 910 \_\_\_\_\_

Miles City, MT 59301 \_\_\_\_\_

(406) 234-3493 \_\_\_\_\_

ENGINEER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_

State of: Montana \_\_\_\_\_

Address for giving notices:

Robert Peccia & Associates \_\_\_\_\_

P.O. Box 5653 \_\_\_\_\_

Helena MT 59604 \_\_\_\_\_

406-447-5000 \_\_\_\_\_



**RESOLUTION NO. 4406**

**A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH GREAT WEST ENGINEERING, INC. FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Great West Engineering, Inc. for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Great West Engineering, Inc. has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional Services," 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.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

---

John Hollowell, Mayor

ATTEST:

---

Mary Rowe, City Clerk

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between

City of Miles City, Montana (“Owner”)

and

Great West Engineering, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

## 2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and



Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Attachment 1.

Attachments:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Address for giving notices:

City of Miles City \_\_\_\_\_

P.O. Box 910 \_\_\_\_\_

Miles City, MT 59301 \_\_\_\_\_

(406) 234-3493 \_\_\_\_\_

ENGINEER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_

State of: Montana \_\_\_\_\_

Address for giving notices:

Great West Engineering \_\_\_\_\_

6780 Trade Center Avenue \_\_\_\_\_

Billings, MT 59101 \_\_\_\_\_

406-652-5000 \_\_\_\_\_



**RESOLUTION NO. 4407**

**A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH INTERSTATE ENGINEERING, INC., FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Interstate Engineering, Inc. for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Interstate Engineering, Inc. has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional Services," 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.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

---

John Hollowell, Mayor

ATTEST:

---

Mary Rowe, City Clerk

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”)  
between

City of Miles City, Montana (“Owner”)

and

Interstate Engineering, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

## 2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
  - 1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

  - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.



- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
  - 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  - 2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  - 3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Attachment 1.

Attachments:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Address for giving notices:

City of Miles City \_\_\_\_\_

P.O. Box 910 \_\_\_\_\_

Miles City, MT 59301 \_\_\_\_\_

(406) 234-3493 \_\_\_\_\_

ENGINEER:

By: Paul Moore \_\_\_\_\_

Title: Regional Vice President \_\_\_\_\_

Date Signed: 4.30.2021 \_\_\_\_\_

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_

State of: Montana \_\_\_\_\_

Address for giving notices:

Interstate Engineering, Inc. \_\_\_\_\_

P.O. Box 20953 \_\_\_\_\_

Billings, MT 59104-0953 \_\_\_\_\_

406-256-1920 \_\_\_\_\_





**SCHEDULE OF RATES**

**ATTACHMENT #1**

ENGINEERS

ENG I	\$98.00 per hour
ENG II	\$133.00 per hour
ENG III	\$165.00 per hour
ENG IV	\$188.00 per hour
ENG V	\$206.00 per hour
ENG VI	\$230.00 per hour
ENG VII	\$250.00 per hour

SURVEYORS

SURV I	\$90.00 per hour
SURV II	\$105.00 per hour
SURV III	\$125.00 per hour
SURV IV	\$154.00 per hour
SURV V	\$174.00 per hour
SURV VI	\$193.00 per hour
SURV VII	\$207.00 per hour

PLANNERS

PLANNER I	\$83.00 per hour
PLANNER II	\$106.00 per hour
PLANNER III	\$138.00 per hour
PLANNER IV	\$165.00 per hour

TECHNICIANS

TECH I	\$60.00 per hour
TECH II	\$92.00 per hour
TECH III	\$112.00 per hour
TECH IV	\$132.00 per hour
TECH V	\$142.00 per hour
TECH VI	\$166.00 per hour
TECH VII	\$179.00 per hour
TECH VIII	\$205.00 per hour

ADMINISTRATIVE

ADMIN I	\$67.00 per hour
ADMIN II	\$77.00 per hour

INFORMATION TECHNOLOGISTS

IT I	\$135.00 per hour
IT II	\$185.00 per hour

EXPERT WITNESS

\$275.00 per hour

CHARGEABLE EXPENSES

Subsistence.....	Actual cost	8 1/2" X 11" Prints per Page.....	\$0.15 – black & white, \$0.50 - color
Travel Vehicle.....	\$0.58 per mile	11" x 17" Prints per Page.....	\$0.25 – black & white, \$0.50 - color
Survey Vehicle.....	\$0.68 per mile	24" x 36" Prints per Page.....	\$9.00
Aircraft.....	Actual cost	Mylar.....	\$3.00 per ft <sup>2</sup>
Any But Ordinary First-Class Postage.....	Actual cost	ATV.....	\$75.00 per day
Subconsultant Services.....	Cost plus 10%	UTV.....	\$150.00 per day
Plat Certification per Certification.....	\$35.00	ATV / UTV with Tracks.....	\$125.00 / \$200.00 per day
Recordation per Monument.....	\$35.00	Snowmobile.....	\$200.00 per day
Cost of surveying materials, filing fees, drafting materials and other materials required for the job.....Cost plus 25%			
Any and all sales and use tax, TERO or other special fees which apply to this contract.			

Professionals you need, people you trust.

P.O. Box 2035 • 1903 12<sup>th</sup> Avenue SW • Jamestown, ND 58402-2035 • P: 701-252-0234 • F: 701-252-0203 • [www.interstateeng.com](http://www.interstateeng.com)

Offices in: North Dakota • Montana • Minnesota • South Dakota • Wyoming

**RESOLUTION NO. 4408**

**A RESOLUTION APPROVING A STANDARD ABBREVIATED FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT FOR PROFESSIONAL SERVICES WITH SDI ARCHITECTS + DESIGN, FOR THE PROVISION OF ARCHITECTURAL SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for architectural services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with SDI Architects + Design for the provision of general architectural services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, SDI Architects + Design has agreed to be available to the City of Miles City to provide general architectural services upon request of the City during said five (5) year period;

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

1. The "Standard Abbreviated Form of Agreement Between Owner and Architect for Professional Services," 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.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

---

John Hollowell, Mayor

ATTEST:

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Mary Rowe, City Clerk



# AIA<sup>®</sup> Document B104™ – 2017

## Standard Abbreviated Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Eleventh day of May in the year Two Thousand Twenty-One  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*

City of Miles City  
17 South 8th Street  
Miles City MT 59301  
Telephone Number: 406-874-8603

and the Architect:  
*(Name, legal status, address and other information)*

SDI Architects + Design, Subchapter S Corporation  
909 Main Street  
Miles City, MT 59301  
Telephone Number: 406-234-0777  
Fax Number: 406-234-8777

for the following Project:  
*(Name, location and detailed description)*

City of Miles City MSA  
Miles City  
This Agreement will serve as the Master Service Agreement (MSA) based on the City's 2021 Request for Qualifications (RFQ) for Architectural Services set at a (5) year term, with an option to renew for another (5) years, starting on May 11, 2021.

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

*(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)*

The City of Miles City agrees to employ SDI Architects + Design for projects requiring architectural services during the established term. Projects may, at the Owner's request, require an Addendum to this MSA, but in any event, unless a separate project Addendum is signed by both parties, this Agreement will be the basis of all agreements.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

*(Paragraphs Deleted)*

### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.8:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

Init.



.1 General Liability

\$1,000,000 each occurrence; \$1,000,000 aggregate Business Owner's Liability.

.2 Automobile Liability

covered for Hired and Non-Owned autos liability under our General Liability.

.3 Workers' Compensation

\$100,000 Bodily Injury by Accident, Each Accident; \$100,000 Bodily Injury by Disease, Each Employee; \$500,000 Policy Limit.

.4 Professional Liability

\$1,000,000 each occurrence; \$1,000,000 aggregate Professional Liability.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

#### § 3.2 Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.

§ 3.2.3 The Architect shall consider the relative value of alternative materials, building systems and equipment, together with other considerations based on program, aesthetics, and any sustainable objectives, in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.5 The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

Init.

### **§ 3.3 Construction Documents Phase Services**

**§ 3.3.1** Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

**§ 3.3.2** The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

**§ 3.3.3** The Architect shall submit the Construction Documents to the Owner, update the estimate for the Cost of the Work and advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

**§ 3.3.4** The Architect, following the Owner's approval of the Construction Documents and of the latest estimate of the Cost of the Work, shall assist the Owner in obtaining bids or proposals and awarding and preparing contracts for construction.

### **§ 3.4 Construction Phase Services**

#### **§ 3.4.1 General**

**§ 3.4.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A104–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

**§ 3.4.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

**§ 3.4.1.3** Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### **§ 3.4.2 Evaluations of the Work**

**§ 3.4.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.2, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

**§ 3.4.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

**§ 3.4.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 3.4.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### § 3.4.4 Submittals

§ 3.4.4.1 The Architect shall review and approve, or take other appropriate action, upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

### § 3.4.5 Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

### § 3.4.6 Project Completion

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the

Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services are not included in Basic Services but may be required for the Project. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. Supplemental Services may include programming, site evaluation and planning, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.2, value analysis, interior architectural design, tenant related services, preparation of record drawings, commissioning, sustainable project services, and any other services not otherwise included in this Agreement.

*(Identify below the Supplemental Services that the Architect is required to provide and insert a description of each Supplemental Service, if not further described in an exhibit attached to this document.)*

Supplemental and Additional Services will be evaluated as needed for the services being provided.

§ 4.2 The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner. The Architect shall not provide the Additional Services until the Architect receives the Owner's written authorization. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect shall provide services necessitated by a change in the Initial Information, changes in previous instructions or approvals given by the Owner, or a material change in the Project including size; quality; complexity; the Owner's schedule or budget for Cost of the Work; or procurement or delivery method as an Additional Service.

*(Paragraph Deleted)*

§ 4.2.3 The Architect shall, as an Additional Service, provide services made necessary by a Contractor's proposed change in the Work. The Architect shall prepare revisions to the Architect's Instruments of Service necessitated by Change Orders and Construction Change Directives as an Additional Service.

*(Paragraph Deleted)*

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project; a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the

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Owner and the Owner's consultants. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.5 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests; tests for air and water pollution; and tests for hazardous materials.

§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.10 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

#### **ARTICLE 6 COST OF THE WORK**

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, construction procurement activities have not commenced within 90 days after the Architect submits the Construction Documents to the Owner the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

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§ 6.6 If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

**ARTICLE 8 CLAIMS AND DISPUTES**

**§ 8.1 General**

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other, for damages, except such rights as they may have to the proceeds of such insurance as set forth in other Contracts or Agreements between Owner and Contractor. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6

**§ 8.2 Mediation**

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
*(Check the appropriate box.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

*(Paragraphs Deleted)*

**ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any

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expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

*(Paragraphs Deleted)*

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum  
*(Insert amount)*

.2 Percentage Basis  
*(Insert percentage value)*

( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other  
*(Describe the method of compensation)*

Compensation will be based on SDI's Published Rates for Time & Expense at the time of services being provided.

§ 11.2 For Supplemental Services identified in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

Compensation will be based on SDI's Published Rates for Time & Expense at the time of services being provided.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

Compensation will be based on SDI's Published Rates for Time & Expense at the time of services being provided.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent ( 10%), or as follows:

*(Paragraph Deleted)*

*(Table Deleted)*

*(Paragraphs Deleted)*

*(Table Deleted)*

## § 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally maintained by the Architect and the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10.00 %) of the expenses incurred.

## § 11.9 Payments to the Architect

*(Paragraphs Deleted)*

### § 11.9.2 Progress Payments

§ 11.9.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

12 % per annum

§ 11.9.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.9.2.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

*(Include other terms and conditions applicable to this Agreement.)*

§ 12.1 Agreed Remedy: The Owner agrees that the total liability of the Architect, their employees and Consultants, to the Owner and anyone claiming through or under the Owner, for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorney's fees, arising out of or in any way related to the Architect's services, the Projects or this Agreement from any cause or causes whatsoever, including but not limited to negligence, strict liability, breach of Contract or breach of warranty shall not exceed the total fee received by the Architect for that specific project OR the available limit on our Professional Liability policy as indicated in § 2.2.1, whichever is greater.

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**ARTICLE 13 SCOPE OF THE AGREEMENT**

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

| *(Paragraphs Deleted)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER (Signature)**

| John Hollowell, Mayor  
*(Printed name and title)*

\_\_\_\_\_  
**ARCHITECT (Signature)**

Brandon Janshen, President  
*(Printed name, title, and license number, if required)*

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# **Additions and Deletions Report for** **AIA® Document B104™ – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 23:50:21 ET on 05/04/2021.

## **PAGE 1**

**AGREEMENT** made as of the Eleventh day of May in the year Two Thousand Twenty-One

...

City of Miles City  
17 South 8th Street  
Miles City MT 59301  
Telephone Number: 406-874-8603

...

SDI Architects + Design, Subchapter S Corporation  
909 Main Street  
Miles City, MT 59301  
Telephone Number: 406-234-0777  
Fax Number: 406-234-8777

...

City of Miles City MSA  
Miles City  
This Agreement will serve as the Master Service Agreement (MSA) based on the City's 2021 Request for Qualifications (RFQ) for Architectural Services set at a (5) year term, with an option to renew for another (5) years, starting on May 11, 2021.

## **PAGE 2**

The City of Miles City agrees to employ SDI Architects + Design for projects requiring architectural services during the established term. Projects may, at the Owner's request, require an Addendum to this MSA, but in any event, unless a separate project Addendum is signed by both parties, this Agreement will be the basis of all agreements.

...

~~§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

...

~~§ 4.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

PAGE 3

\$1,000,000 each occurrence; \$1,000,000 aggregate Business Owner's Liability.

...

covered for Hired and Non-Owned autos liability under our General Liability.

...

\$100,000 Bodily Injury by Accident, Each Accident; \$100,000 Bodily Injury by Disease, Each Employee; \$500,000 Policy Limit.

...

\$1,000,000 each occurrence; \$1,000,000 aggregate Professional Liability.

PAGE 6

Supplemental and Additional Services will be evaluated as needed for the services being provided.

...

~~§ 4.2.2 The Architect has included in Basic Services ( ) visits to the site by the Architect during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.~~

...

~~§ 4.2.4 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~

PAGE 9

~~§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other, for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A104 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, other Contracts or Agreements between Owner and Contractor. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.~~

...

Litigation in a court of competent jurisdiction

...

### § 8.3 Arbitration

...

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.~~

...

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

...

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

...

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

...

### § 8.3.4 Consolidation or Joinder

...

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

...

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

...

~~§ 8.3.4.3~~ The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

...

~~§ 8.4~~ The provisions of this Article 8 shall survive the termination of this Agreement.

PAGE 10

~~§ 9.7~~ In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

...

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

...

~~.1~~ Termination Fee:

...

~~.2~~ Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

...

~~§ 9.8~~ Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

PAGE 11

Compensation will be based on SDI's Published Rates for Time & Expense at the time of services being provided.

...

Compensation will be based on SDI's Published Rates for Time & Expense at the time of services being provided.

...

Compensation will be based on SDI's Published Rates for Time & Expense at the time of services being provided.

...

~~§ 11.4~~ Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent ( 10%), or as follows:

...

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

...

Design-Phase		percent (		%)
Construction Documents Phase		percent (		%)
Construction Phase		percent (		%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

...

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

...

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

...

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

...

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

...

Employee or Category	Rate
----------------------	------

PAGE 12

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10.00 %) of the expenses incurred.

...

§ 11.9.1 Initial Payment



...

An initial payment of (\$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

...

§ 11.9.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

12 % per annum

...

§ 12.1 Agreed Remedy: The Owner agrees that the total liability of the Architect, their employees and Consultants, to the Owner and anyone claiming through or under the Owner, for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorney's fees, arising out of or in any way related to the Architect's services, the Projects or this Agreement from any cause or causes whatsoever, including but not limited to negligence, strict liability, breach of Contract or breach of warranty shall not exceed the total fee received by the Architect for that specific project OR the available limit on our Professional Liability policy as indicated in § 2.2.1, whichever is greater.

PAGE 13

§ 13.2 This Agreement is comprised of the following documents identified below:

...

~~.1 AIA Document B104™ 2017, Standard Abbreviated Form of Agreement Between Owner and Architect~~

...

~~.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

...

*(Insert the date of the E203-2013 incorporated into this agreement.)*

...

~~.3 Exhibits:~~

...

*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.)*

...

4—Other documents:

...

*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

...

John Hollowell, Mayor

Brandon Janshen, President

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 23:50:21 ET on 05/04/2021 under Order No. 6398664036 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B104™ - 2017, Standard Abbreviated Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*



## PUBLISHED RATES & REIMBURSABLE EXPENSES

Effective April 30, 2021

The following time and expense rates will apply to work performed on an **HOURLY PLUS EXPENSES** basis:

### **TIME:**

Brandon Janshen, Principal Architect	\$120/hr
Chad Sutter, Project Designer	\$90/hr
Mark Toennis, Project Manager	\$90/hr
Jenna Janshen, Interior Designer	\$75/hr
Intern	\$60/hr
Clerical/Other	\$50/hr

### **REIMBURSABLE EXPENSES:**

Consultants (Engineers & Specialists)	Cost + 10%
Mileage	\$0.55/mile
Plotting, Printing, & Scanning (by SDI)	per Published Rates
Plotting, Printing, & Scanning (by others)	Cost + 10%
Postage	Cost + 10%



PUBLISHED PLOTTING, PRINTING, & SCANNING RATES

Effective January 01, 2021

**PLOTTING COSTS:**

COLOR PRINTS	Regular, Bond Paper	\$1.00/SQUARE FOOT
B&W PRINTS	Regular, Bond Paper	\$0.75/SQUARE FOOT
COLOR PRINTS	Poster Paper	\$1.25/SQUARE FOOT
B&W PRINTS	Poster Paper	\$1.00/SQUARE FOOT

\$25 MINIMUM

\$50 MINIMUM IF SAME DAY

**PRINTING COSTS:**

COLOR PRINTS	8.5" x 11" Regular, Bond Paper	\$0.50/PAGE
COLOR PRINTS	11" x 17" Regular, Bond Paper	\$1.00/PAGE
COLOR PRINTS	8.5" x 11" Poster Paper	\$1.00/PAGE
B&W PRINTS	8.5" x 11" Regular, Bond Paper	\$0.25/PAGE
B&W PRINTS	11" x 17" Regular, Bond Paper	\$0.50/PAGE
B&W PRINTS	8.5" x 11" Poster Paper	\$0.50/PAGE

\$25 MINIMUM

\$50 MINIMUM IF SAME DAY

**SCANNING COSTS:**

ALL NEW PRINTS	\$0.50/SQUARE FOOT
ALL OLD PRINTS	\$1.00/SQUARE FOOT
BURN TO DISK	\$5.00/DISK

\$25 MINIMUM

\$50 MINIMUM IF SAME DAY

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\*\*\* SDI Architects + Design will not be held accountable for any damage incurred to original documents under any circumstances \*\*\*

**RESOLUTION NO. 4409**

**A RESOLUTION APPROVING A TASK ORDER BETWEEN THE CITY AND INTERSTATE ENGINEERING, INC. FOR SERVICES RELATED TO THE 2021 TRANSPORTATION ALTERNATIVES PROGRAM CAPITAL IMPROVEMENT PROJECT.**

**WHEREAS**, the City of Miles City has engaged Interstate Engineering, Inc., for assistance related to the preparation of a 2021 Transportation Alternatives Program Capital Improvement project application;

**AND WHEREAS**, in accordance with Article 1 of the Agreement to Furnish Engineering Services entered into between the City and Interstate Engineering, Inc., which is effective May 11, 2021, the parties have prepared "Task Order Number One (1)" setting forth certain services to be provided by Interstate Engineering pertaining to the preparation of an application for the 2021 Transportation Alternatives Program Capital Improvement project;

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

1. The "Task Order Number One (1)" between the City and Interstate Engineering, Inc. for services related to the Miles City 2021 Transportation Alternatives Program Capital Improvement project, attached hereto as Exhibit "A," 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 Task Order on behalf of the City of Miles City, and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING THIS 11<sup>TH</sup> DAY OF MAY, 2021.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

Exhibit A  
TASK ORDER NUMBER ONE (1)  
AGREEMENT TO FURNISH ENGINEERING SERVICES

TO THE

CITY OF MILES CITY, MONTANA

For

Montana Department of Transportation 2021 Transportation Alternatives Program Capital Improvement  
Application

This Task Order provides for professional engineering services to be performed by INTERSTATE ENGINEERING, INC., (hereinafter the Engineer), for the City of Miles City, Montana (hereinafter the Owner or City), in accordance with Article 1 of the Agreement to Furnish Engineering Services to the City, dated May 11, 2021 (hereinafter the Agreement). This Task Order represents an authorization to proceed with the scope of services, schedule, and compensation described herein. This Task Order, when executed by both parties, shall become a supplement to, and part of, the basic Agreement.

**ARTICLE 1. SCOPE OF SERVICES**

Engineer's services under this Task Order are generally identified as follows:

The Project consists of: 1) completing all necessary items for one (1) application outlined in the Montana Department of Transportation (hereinafter the MDT) 2021 Transportation Alternative Program Capital Improvement Application (hereinafter the Application) shown in Attachments for a sidewalk from the interchange of I-94/Frontage Road along Frontage Road south to Cemetery Road (hereinafter SW22) including sidewalk from the intersection of Frontage Road/Horizon Parkway along Horizon Parkway east to Ponderosa Parkway throughout the Ponderosa Parkway Subdivision (hereinafter SW23) (see Attachments for project locations) and; 2) attend/prepare materials for one (1) Public meeting regarding the Application and projects outlined in the Application.

Below are the itemized tasks with an estimated fee to complete each task:

**Task 1 – Application**

Engineer will complete and submit a single Application to the MDT regarding SW22 & SW23 described in *Miles City Long-Range Transportation Plan 2017* that includes the following:

- |                           |                       |
|---------------------------|-----------------------|
| • Project Name            | • Project Description |
| • Project Sponsor         | • Project Eligibility |
| • Population              | • Project Benefits    |
| • Project Contact         | • Risk Analysis       |
| • Estimated Project Costs |                       |

The City will have an opportunity for one (1) review of the Application prior to submittal to the MDT.

**Task 2 – Public Meeting**

Engineer will prepare necessary materials and assist the City in one (1) Public Meeting regarding the Application.

## **Exclusions**

The following items are specifically excluded from this Scope of Services:

1. An update to *Miles City Long-Range Transportation Plan 2017*.
2. Any engineering design or topographic survey.
3. Exploratory excavation of existing utilities.
4. Fees for necessary permits, regulatory agency review or the Application.
5. Fees for recording any necessary easements or rights-of-way. Should any right-of-way or easement surveys or documents be necessary, the Engineer reserves the right for additional budget for such.
6. Landowner negotiations for rights-of way or easements.
7. Coordination with local businesses.
8. SHPO archeological-cultural resource survey.
9. Asbestos survey, sampling, and testing for existing concrete structures, including manholes.
10. Geotechnical exploration and preparation of a geotechnical report and recommendations prepared by a Montana licensed geotechnical engineering firm.
11. Research, exploration, and soil sampling for the possible presence of petroleum products, petroleum product residues, or other contaminants.
12. Additional Applications other than described in Task 1.

## **ARTICLE 2. ATTACHMENTS**

The following attachments are included with and made a part of this Task Order No. 1:

1. Interstate Engineering Schedule of Rates
2. MDT Application
3. Project Area

## **ARTICLE 3. SCHEDULE**

The Engineer will provide the draft Application within ten (10) days after receipt of an executed Task Order. Final Application for submittal to MDT will be delivered to Owner within 5 days after receipt of Owner's review and comments of the Draft Application documents. If acceptance of Task Order or Owner comments are delayed, a revised schedule may need to be provided.

The Engineer will provide the Owner a digital copy of all presentation materials ten (10) days prior to Public Meeting. Any comments from the Owner of materials provided by Engineer must be submitted within 5 days of Public meeting.



**ARTICLE 4. COMPENSATION**

**A. BUDGET**

For **Task 1 – Application**, the Owner will pay the Engineer on a Time and Materials basis in accordance with the rate schedule included with this Task Order and the Master Services Agreement. The Estimated fee is \$8,298.00.

For **Task 2 – Public Meeting**, the Owner will pay the Engineer on a Time and Materials basis in accordance with the rate schedule included with this Task Order and the Master Services Agreement. The Estimated fee is \$3,424.00.

This Task Order budget may be modified by the Owner and Engineer in writing as needed.

**B. PAYMENT SCHEDULE**

Payment compensation shall be made by the Owner to the Engineer monthly beginning after the issuance of a fully executed copy of this Task Order No. 1 to the Engineer. By signing below, the Owner authorizes the Engineer to proceed with Task Order No. 1 as described above.

Engineer relies on payments by the Owner when due to meet the Engineer's payroll and other costs of doing business. Therefore, in the event that the Owner fails to make payment for services within thirty days after receipt of the billing, the Owner hereby agrees to pay interest charges at the maximum rate of interest allowed by law on the unpaid balance or fraction thereof, when payment to the Engineer is delayed.

**Limitations of Liability**

**A. Limitation of Engineer's Liability**

1. **Engineer's Liability Limited to Amount of Insurance Proceeds:** Engineer shall procure and maintain insurance. Notwithstanding any other provision of the Master Services Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$1,000,000.

2. **Exclusion of Special, Incidental, Indirect, and Consequential Damages:** To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Master Services Agreement, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:

Loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, and regulatory fines. Engineer's total liability for such damages shall not exceed \$1,000,000.


Attachments: Appendix 1, Engineer's Standard Hourly Rates  
Appendix 2, MDT TAP Application  
Appendix 3, Project Location

IN WITNESS WHEREOF, the parties hereto have executed this Task Order, the Effective Date of which is indicated on Page 1.

Owner: City of Miles City, Montana

Engineer: Interstate Engineering, Inc.

By: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

By:  \_\_\_\_\_  
Print name: Lowell J. Cutshaw, PE  
Title: Sr. Project Engineer  
Date Signed: 11 May 2021

Engineer License or Firm's Certificate No. (if required):

State of: MT PE Lic. # 38524

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

PO Box 910

1211 Grand Avenue, Suite 6

Miles City, MT 59301

Billings, MT 59102



**SCHEDULE OF RATES**

**ATTACHMENT #1**

ENGINEERS

ENG I	\$98.00 per hour
ENG II	\$133.00 per hour
ENG III	\$165.00 per hour
ENG IV	\$188.00 per hour
ENG V	\$206.00 per hour
ENG VI	\$230.00 per hour
ENG VII	\$250.00 per hour

SURVEYORS

SURV I	\$90.00 per hour
SURV II	\$105.00 per hour
SURV III	\$125.00 per hour
SURV IV	\$154.00 per hour
SURV V	\$174.00 per hour
SURV VI	\$193.00 per hour
SURV VII	\$207.00 per hour

PLANNERS

PLANNER I	\$83.00 per hour
PLANNER II	\$106.00 per hour
PLANNER III	\$138.00 per hour
PLANNER IV	\$165.00 per hour

TECHNICIANS

TECH I	\$60.00 per hour
TECH II	\$92.00 per hour
TECH III	\$112.00 per hour
TECH IV	\$132.00 per hour
TECH V	\$142.00 per hour
TECH VI	\$166.00 per hour
TECH VII	\$179.00 per hour
TECH VIII	\$205.00 per hour

ADMINISTRATIVE

ADMIN I	\$67.00 per hour
ADMIN II	\$77.00 per hour

INFORMATION TECHNOLOGISTS

IT I	\$135.00 per hour
IT II	\$185.00 per hour

EXPERT WITNESS

\$275.00 per hour

CHARGEABLE EXPENSES

Subsistence.....	Actual cost	8 1/2" X 11" Prints per Page.....	\$0.15 – black & white, \$0.50 - color
Travel Vehicle.....	\$0.58 per mile	11" x 17" Prints per Page.....	\$0.25 – black & white, \$0.50 - color
Survey Vehicle.....	\$0.68 per mile	24" x 36" Prints per Page.....	\$9.00
Aircraft.....	Actual cost	Mylar.....	\$3.00 per ft <sup>2</sup>
Any But Ordinary First-Class Postage.....	Actual cost	ATV.....	\$75.00 per day
Subconsultant Services.....	Cost plus 10%	UTV.....	\$150.00 per day
Plat Certification per Certification.....	\$35.00	ATV / UTV with Tracks.....	\$125.00 / \$200.00 per day
Recordation per Monument.....	\$35.00	Snowmobile.....	\$200.00 per day
Cost of surveying materials, filing fees, drafting materials and other materials required for the job.....Cost plus 25%			
Any and all sales and use tax, TERO or other special fees which apply to this contract.			

Professionals you need, people you trust.

P.O. Box 2035 • 1903 12<sup>th</sup> Avenue SW • Jamestown, ND 58402-2035 • P: 701-252-0234 • F: 701-252-0203 • [www.interstateeng.com](http://www.interstateeng.com)

Offices in: North Dakota • Montana • Minnesota • South Dakota • Wyoming



Montana Department of Transportation  
Alternatives (TA) Program  
2021 TA Application  
*Capital Improvement Project*

Review the instruction prior to filling out this application for a Capital Improvement Project.  
Fill in all the sections and do not leave any blank.

1. Project Name:

2. Project Sponsor:

3. Project Sponsor Population:

4. Project Sponsor Single Point of Contact:

5. Project Cost Estimate

	Total Cost	Federal Share (TA)	Match (if required)	Additional Contribution
Preliminary Engineering (PE)				
Construction (CN)				
Construction Engineering (CE)				
Right-of-Way (RW)				
Incidental Construction (Utility involvement)(IC)				
<b>Total</b>				

Match Type:     State Match         Local Match         Combination         No Match Required

If the match is a combination between State and Local, indicate amounts of each:

State:

Local:

\*As a reminder, if matching funds are required, the cost split between Federal Share TA and Matching funds is 86.58% Federal Share TA and 13.42% Match



**Montana Department of Transportation  
Alternatives (TA) Program  
2021 TA Application  
*Capital Improvement Project***

**6. Description of Project:**

A large, empty rectangular box with a thin black border, intended for the user to provide a detailed description of the project.



**Montana Department of Transportation**  
**Alternatives (TA) Program**  
**2021 TA Application**  
***Capital Improvement Project***

**7. Project Eligibility:**

A large, empty rectangular box with a thin black border, intended for the applicant to provide details regarding project eligibility.



**Montana Department of Transportation  
Alternatives (TA) Program  
2021 TA Application  
*Capital Improvement Project***

**8. Project Benefits (100 points)**

**a) Safety:**

A large, empty rectangular box with a thin black border, intended for the applicant to provide details regarding safety project benefits. The box occupies the majority of the page below the section header.



**Montana Department of Transportation  
Alternatives (TA) Program  
2021 TA Application  
*Capital Improvement Project***

**b) Accessibility:**

A large, empty rectangular box with a thin black border, intended for the applicant to provide details regarding accessibility for the project.





**Montana Department of Transportation**  
**Alternatives (TA) Program**  
**2021 TA Application**  
***Capital Improvement Project***

**c) Connectivity:**

A large, empty rectangular box with a thin black border, intended for the applicant to provide details regarding connectivity for the project.



**Montana Department of Transportation  
Alternatives (TA) Program  
2021 TA Application  
*Capital Improvement Project***

**9. Risk Analysis (100 points)**

**a) Budget:**

**b) Matching Funds:**



**Montana Department of Transportation  
Alternatives (TA) Program  
2021 TA Application  
*Capital Improvement Project***

**c) Public Involvement:**

[Empty rectangular box for Public Involvement content]

**d) MDT Coordination:**

[Empty rectangular box for MDT Coordination content]



**Montana Department of Transportation  
Alternatives (TA) Program  
2021 TA Application  
*Capital Improvement Project***

**e) Project Independence:**

**f) Project Ownership and Maintenance:**



**Montana Department of Transportation**  
**Alternatives (TA) Program**  
**2021 TA Application**  
***Capital Improvement Project***

**g) Project Right-of-Way and Railroad:**

[Empty response box for Project Right-of-Way and Railroad]

**h) Project Utility Impacts:**

[Empty response box for Project Utility Impacts]



**Montana Department of Transportation  
Alternatives (TA) Program  
2021 TA Application  
*Capital Improvement Project***

**10. Appendix (add attachments):**

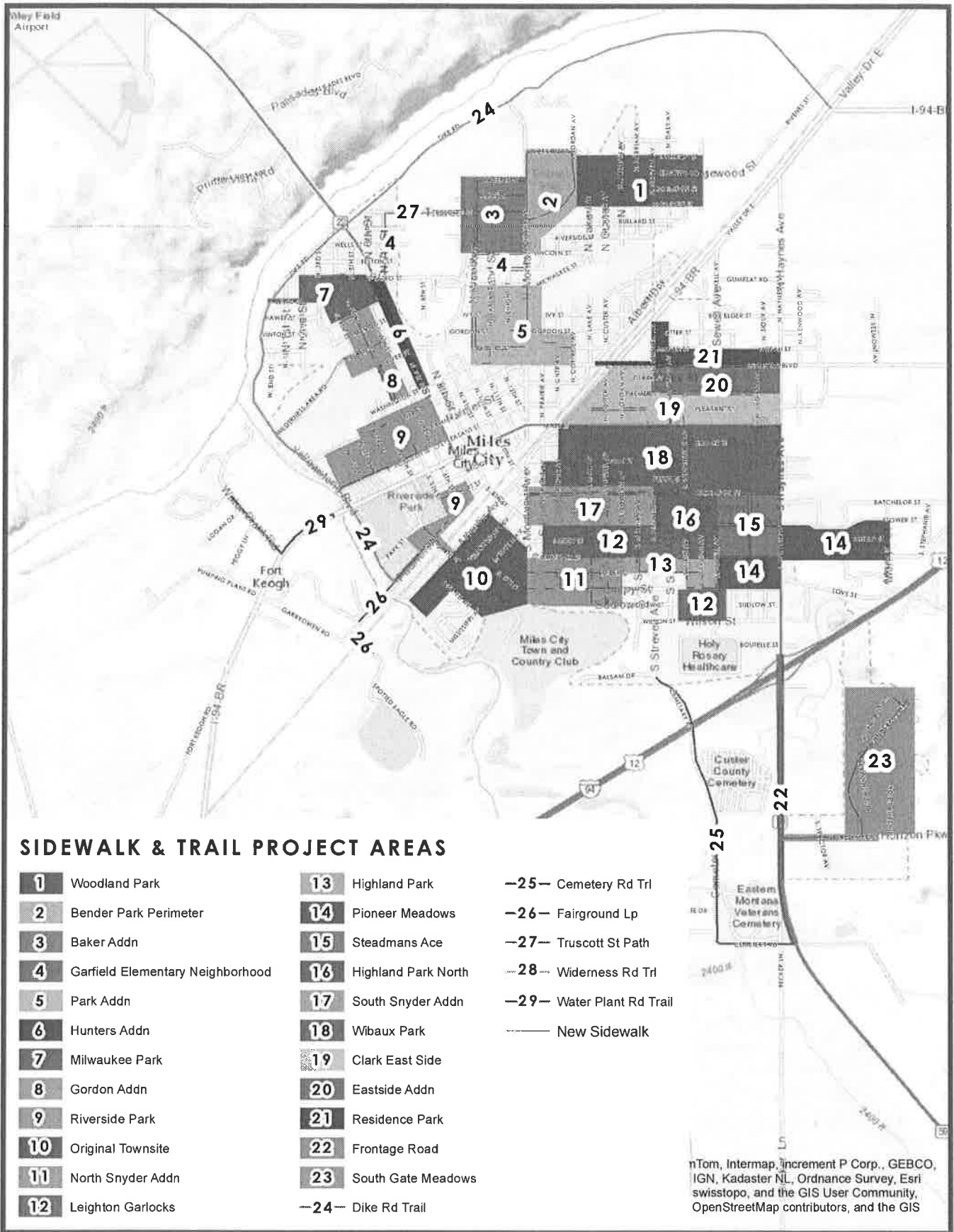


Figure 6-2: Sidewalk & Trail Projects

# Claims



\* Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
133992	84099S	3039 UTILITIES UNDERGROUND LOCATION		186.83					
1	1045093	04/30/21 April Locates		93.42		29575	5210 23 430550	220	101000
2	1045093	04/30/21		93.41		29575	5310 31 430630	220	101000
134016	84100S	4262 R.G. MURPHY CO		9,094.20					
1	04/07/21	March Permits		4,772.40		29540	2394 18 420531	350	101000
2	04/30/21	April Permits		4,321.80		29575	2394 18 420531	350	101000
134046	84101S	4218 CUSTER COUNTY TRANSIT		83.00					
1	03012021	03/01/21 Volunteer Rides		15.00		28197	2985 15 450330	379	101004
2	312021B	03/01/21		5.00		28197	2985 15 450330	379	101004
3	030221	04/05/21		31.00		29254	2985 15 450330	379	101004
4	04021	05/03/21		32.00		29259	2985 15 450330	379	101000
134121	-99708C	4019 WEX BANK		8,853.95					
1	03/31/21	FUEL		518.05		29541	1000 13 460433	231	101000
2	04/30/21	FUEL		0.00			1000 201 431200	370	101000
3	03/31/21	FUEL		1,897.39		29541	2510 107 430220	231	101000
4	03/31/21	FUEL		474.35		29541	2520 108 430220	231	101000
5	04/30/21	FUEL		0.00			6040 910 430220	231	101000
6	03/31/21	FUEL		61.20		28841	5210 22 430530	231	101000
7	03/31/21	FUEL		61.20		28841	5210 80 430540	231	101000
8	03/31/21	FUEL		61.20		28841	5310 33 430640	231	101000
9	03/31/21	FUEL		76.52		28841	5310 32 430690	231	101000
10	03/31/21	FUEL		480.83		28976	1000 7 420460	231	101000
11	03/31/21	FUEL		1,058.59		28976	5510 10 420730	231	101000
12	03/31/21	FUEL		2,354.61		28920	1000 5 420140	231	101000
13	03/31/21	FUEL		80.23		28920	1000 21 440600	231	101000
14	04/30/21	FUEL		0.00			1000 5 420160	231	101000
15	03/31/21	FUEL		773.05		29564	5210 23 430550	231	101000
16	03/31/21	FUEL		773.05		29564	5310 31 430630	231	101000
17	03/31/21	FUEL		183.68		1246	5610 87 430300	231	101000
134122	84102S	1535 LUCAS & TONN PC		1,160.00					
1	04/23/21	Westlaw ~ Professional Service		100.00*			1000 4 411100	350	101000
2	SHIP2021	03/29/21 Consulting Ship 2021		590.00*		29409	1000 4 411100	350	101000
3	SHIP2021	04/28/21 Consulting Ship 2021		470.00*		29411	1000 4 411100	350	101000
134123	84103S	2914 TOURISM BUSINESS IMPROVEMENT		3,116.00					
2	04/30/21	TBID ~ April 2021		3,116.00			7370 212500		101000

05/07/21  
11:39:05

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 2 of 17  
Report ID: AP100

\* ... Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134124	84104S	2062 BUILDING CODES		31.00					
1	20113	04/23/21 Legion Park Warming Park		31.00		29754	1000 13 460433	334	101000
134125	84096S	394 BOSS INC		1,044.99					
1	382252	04/21/21 Finance		40.65		29408	1000 3 410500	210	101000
2	383112	04/21/21		49.78		29408	5210 25 430510	210	101000
3	384780	04/21/21		49.75		29408	5310 29 430610	210	101000
4	380626	04/21/21 City Attorney		326.92		27419	1000 4 411100	220	101000
5	382218	04/21/21 Police		417.95		28914	1000 5 420140	210	101000
6	383870	04/21/21		73.55*		28914	1000 5 420140	220	101000
7	377775	04/21/21 Dispatch		56.60		29209	1000 5 420160	210	101000
8	377658	04/21/21 Planning		9.93		29526	1000 36 411020	210	101000
9	377658	04/21/21		7.94*		29526	2510 107 430220	210	101000
10	377658	04/21/21		1.99		29526	2520 108 430220	210	101000
11	377658	04/21/21		9.93		29526	2394 18 420531	210	101000
134126	84105S	3292 MONTANA AIR CARTAGE		430.40					
1	YN233121	04/01/21 Partners Program crate deliv		258.00		28395	2880 39 460100	311	101020
2	813126	03/02/21 Delivery Charge		102.40		28838	5210 80 430540	352	101000
3	828279	03/05/21		70.00		28838	5310 33 430640	352	101000
134127	84090S	2830 STAR PRINTING & SUPPLY		147.82					
1	04/22/21	CityMC		0.00			1000 3 410500	220	101000
2	287938	03/25/21		55.26		29407	5210 25 430510	220	101000
4	287938	03/25/21		55.26		29407	5310 29 430610	220	101000
5	04/23/21	City Court		0.00			1000 6 410300	210	101000
6	04/05/21	MCFIRE		0.00			1000 7 420460	214	101000
7	04/05/21			0.00*			5510 10 420730	214	101000
8	04/22/21			0.00			1000 7 420460	220	101000
9	04/22/21			0.00			5510 10 420730	220	101000
10	04/11/21	RSVP		0.00			2985 15 450330	220	101004
11	04/25/21	Library		0.00			2220 16 460100	320	101000
12	288337	03/25/21 Public Works		2.91*		29522	2520 108 430233	210	101000
13	288337	03/25/21 Public Works		11.63*		29522	2510 107 430233	210	101000
14	287954	03/25/21 Planning		22.76		27626	1000 36 411020	320	101000
134128	84097S	572 VERIZON WIRELESS		490.34					
1	9877084306	04/07/21 MDT Fees & Cell Phone Fees		490.34*		28942	1000 5 420140	220	101000

\* Over spent expenditure

Claim Line #	Check	Vendor #/Name/ Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134130	84088S	1921 MONTANA MUNICIPAL INTERLOCAL	302.40					
1	04/05/21	April Retiree Premiums	302.40			1000 362022		101000
134132	84106S	4022 MARILYNN FORMAN	350.00					
1	04/21/21	April PD Cleaning	350.00*		28946	1000 5 420140	350	101000
134134	-99709E	373 MASTERCARD	25,891.89					
1	04/20/21		7.16			1000 3 410500	220	101000
2	04/20/21		172.25*			1000 5 420140	220	101000
3	04/20/21		580.96*			1000 5 420140	230	101000
4	04/20/21		17.55			1000 5 420140	311	101000
5	04/20/21		250.00			1000 5 420140	380	101000
6	04/20/21		0.00*			1000 5 420140	230	101000
7	04/20/21		0.00			1000 5 420140	311	101000
8	04/20/21		0.00			1000 5 420140	366	101000
9	04/20/21		0.00			1000 5 420140	380	101000
10	04/20/21		22.46			1000 5 420160	210	101000
13	04/20/21		0.00			1000 6 410300	210	101000
14	04/20/21		31.10			1000 7 420460	210	101000
15	04/20/21		50.94			1000 7 420460	214	101000
16	04/20/21		12.73			1000 7 420460	220	101000
17	04/20/21		87.00			1000 7 420460	226	101000
18	04/20/21		232.98			1000 7 420460	230	101000
19	04/20/21		55.90			1000 7 420460	345	101000
20	04/20/21		669.06			1000 7 420460	364	101000
21	04/20/21		130.00			1000 7 420460	375	101000
22	04/20/21		80.00			1000 7 420460	382	101000
23	04/20/21		8.75			1000 7 420460	400	101000
24	04/20/21		130.69			1000 13 460433	230	101000
25	04/20/21		1,296.54			1000 13 460433	363	101000
26	04/20/21		96.77			1000 21 440600	220	101000
27	04/20/21		16.37			1000 21 440600	230	101000
28	04/20/21		84.00			1000 36 411020	331	101000
30	04/20/21		348.00*			1000 36 411020	334	101000
31	04/20/21		318.00			1000 36 411020	380	101000
34	04/20/21		55.00			2220 16 460100	214	101000
36	04/20/21		23.36			2220 16 460100	224	101000
37	04/20/21		160.20			2220 16 460100	311	101000
38	04/20/21		481.47			2220 16 460100	382	101000
39	04/20/21		279.99			2510 107 430220	226	101000
40	04/20/21		12.79			2510 107 430220	231	101000
41	04/20/21		1,620.86			2510 107 430220	363	101000
42	04/20/21		69.99			2520 108 430220	226	101000
43	04/20/21		3.20			2520 108 430220	231	101000

\* ... Over spent expenditure

Claim	Vendor #/Name/	Document \$/	Disc \$						Cash
Line #	Check Invoice #/Inv Date/Description	Line \$		PO #	Fund Org Acct	Object Proj	Account		
44	04/20/21		405.21		2520 108 430220	363	101000		
46	04/20/21		1,432.98*		2985 15 450340	220	101000		
47	04/20/21		0.00		2520 108 430220	363	101000		
48	04/20/21		148.73		5210 22 430530	220	101000		
49	04/20/21		291.29		5210 22 430530	230	101000		
50	04/20/21		509.69		5210 22 430530	231	101000		
51	04/20/21		1,000.00		5210 22 430530	360	101000		
52	04/20/21		172.18*		5210 22 430530	363	101000		
53	04/20/21		646.67		5210 23 430550	214	101000		
54	04/20/21		559.40		5210 23 430550	220	101000		
55	04/20/21		59.99		5210 23 430550	226	101000		
56	04/20/21		1,863.35		5210 23 430550	230	101000		
57	04/20/21		2,959.44		5210 23 430550	235	101000		
59	04/20/21		7.16		5210 25 430510	210	101000		
60	04/20/21		31.57		5210 80 430540	220	101000		
61	04/20/21		448.92		5210 80 430540	222	101000		
62	04/20/21		161.70		5210 80 430540	230	101000		
63	04/20/21		509.69		5210 80 430540	231	101000		
64	04/20/21		4.80		5210 80 430540	311	101000		
65	04/20/21		119.00		5210 80 430540	334	101000		
66	04/20/21		7.16		5310 29 430610	220	101000		
67	04/20/21		366.92		5310 31 430630	220	101000		
68	04/20/21		60.00		5310 31 430630	226	101000		
69	04/20/21		29.04		5310 31 430630	230	101000		
70	04/20/21		31.57		5310 32 430690	220	101000		
73	04/20/21		161.70		5310 32 430690	230	101000		
74	04/20/21		105.88		5310 33 430640	220	101000		
75	04/20/21		1,064.45		5310 33 430640	222	101000		
76	04/20/21		338.11*		5310 33 430640	230	101000		
77	04/20/21		611.23		5310 33 430640	231	101000		
78	04/20/21		1,066.25*		5310 33 430640	360	101000		
79	04/20/21		183.14		5310 33 430640	363	101000		
80	04/20/21		720.53*		5510 10 420730	222	101000		
81	04/20/21		22.60		5510 10 420730	230	101000		
82	04/20/21		35.74		5510 10 420730	345	101000		
85	04/20/21		537.88		5510 10 420730	364	101000		
86	04/20/21		25.93*		5610 87 430300	210	101000		
87	04/20/21		47.95		5610 87 430300	220	101000		
88	04/20/21		1,359.48*		5610 87 430300	230	101000		
89	04/20/21		73.00*		5610 87 430300	311	101000		
90	04/20/21		106.55		5610 87 430300	345	101000		
91	04/20/21		198.94		6040 910 430220	214	101000		
92	04/20/21		0.00		5310 32 430690	380	101000		
93	04/20/21		0.00		5310 33 430640	220	101000		
94	04/20/21		0.00		5310 33 430640	222	101000		

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 5 of 17  
Report ID: AP100

\* ... Over spent expenditure

Claim	Vendor #/Name/	Document \$/	Disc \$						Cash
Line #	Check Invoice #/Inv Date/Description	Line \$		PO #	Fund Org Acct	Object Proj	Account		
95	04/20/21	0.00			5310 33 430640	226	101000		
96	04/20/21	0.00*			5310 33 430640	230	101000		
97	04/20/21	0.00			5310 33 430640	370	101000		
98	04/20/21	0.00			5310 33 430640	380	101000		
99	04/20/21	0.00*			5510 10 420730	214	101000		
100	04/20/21	0.00*			5510 10 420730	222	101000		
101	04/20/21	0.00			5510 10 420730	231	101000		
102	04/20/21	0.00			5510 10 420730	241	101000		
103	04/20/21	0.00			5510 10 420730	345	101000		
104	04/20/21	0.00*			5510 10 420730	350	101000		
105	04/20/21	0.00			5510 10 420730	364	101000		
106	04/20/21	0.00			5510 10 420730	370	101000		
107	04/20/21	0.00*			5610 87 430300	210	101000		
108	04/20/21	0.00			5610 87 430300	220	101000		
109	04/20/21	0.00*			5610 87 430300	230	101000		
110	04/20/21	0.00			5610 87 430300	334	101000		
111	04/20/21	0.00			5610 87 430300	345	101000		
112	04/20/21	0.00*			5610 87 430300	363	101000		
113	04/20/21	0.00			6040 910 430220	214	101000		
134135	-99704C 4187 MOFI	1,162.96							
1	04/05/21 Fire Training Center Payment24	571.30			1000 7 490500	654	101000		
2		591.66			1000 7 490500	655	101000		
134136	84091S 4076 EXPRESS LAUNDRY, LLC COMMERCIAL	203.50							
1	40309 03/09/21	50.50*		29511	1000 8 411230	360	101000		
2	40662 03/23/21 City Hall Rugs	50.50*		29511	1000 8 411230	360	101000		
3	City Hall Rugs	0.00			2510 107 430220	226	101000		
4		0.00			2520 108 430220	226	101000		
5	40615 03/19/21	20.50		29511	6040 910 430220	360	101000		
6	38761 12/25/20 Shop	20.50		29511	6040 910 430220	360	101000		
7	40406 03/12/21 WWTP	15.00*		28825	5310 33 430640	360	101000		
8	40425 03/17/21 WWTP	19.50		28825	5210 22 430530	360	101000		
9	40302 03/09/21 PD	13.50		28490	1000 5 420140	360	101000		
10	40656 03/23/21	13.50		28911	1000 5 420140	360	101000		
134137	-99703E 1970 MONTANA DAKOTA UTILITIES	39,800.97							
1	GAS/ELECTRIC ~ FD	344.93			1000 7 420460	341	101000		
2	GAS/ELECTRIC ~ FD	231.31			1000 7 420460	344	101000		
3	GAS/ELECTRIC ~ City Hall	245.59			1000 8 411230	341	101000		
4	GAS/ELECTRIC ~ City Hall	241.77			1000 8 411230	344	101000		
5	GAS/ELECTRIC ~ Parks	661.56			1000 13 460433	341	101000		
6	GAS/ELECTRIC ~ Parks	284.39			1000 13 460433	344	101000		
7	GAS/ELECTRIC ~ Bath House	100.06			1000 14 460445	341	101000		
8	GAS/ELECTRIC ~ Animal Shelter	40.33*			1000 21 440600	341	101000		

\* Over spent expenditure

Claim	Vendor #/Name/	Document \$/	Disc \$						Cash
Line #	Check Invoice #/Inv Date/Description	Line \$		PO #	Fund Org Acct	Object Proj	Account		
9	GAS/ELECTRIC ~ Animal Shelter	64.94			1000 21 440600	344	101000		
10	GAS/ELECTRIC ~ Library	441.99			2220 16 460100	341	101000		
11	GAS/ELECTRIC ~ Library	175.98			2220 16 460100	344	101000		
14	GAS/ELECTRIC ~ District 165	4,133.27			2400 46 430263	341	101000		
15	GAS/ELECTRIC ~ Rental Fee	8,836.60			2400 46 430263	533	101000		
16	GAS/ELECTRIC ~ District 167	583.29			2420 48 430263	341	101000		
17	GAS/ELECTRIC ~ Rental Fee	1,054.80			2420 48 430263	533	101000		
18	GAS/ELECTRIC ~ District 171	171.74*			2430 49 430263	341	101000		
19	GAS/ELECTRIC ~ District 172	1,444.91			2440 50 430263	341	101000		
20	GAS/ELECTRIC ~ District 202	120.99			2470 72 430263	341	101000		
21	GAS/ELECTRIC ~ Rental Fee	325.90			2470 72 430263	533	101000		
22	GAS/ELECTRIC ~ District 173	35.27			2480 47 430263	341	101000		
23	GAS/ELECTRIC ~ Sewer Lift	100.45			2510 107 430220	341	101000		
28	GAS/ELECTRIC ~ Water Plant	4,499.15			5210 22 430530	341	101000		
30	GAS/ELECTRIC ~ Water Plant	878.52			5210 22 430530	344	101000		
31	GAS/ELECTRIC ~ Fish & Game	20.38			5210 23 430550	341	101000		
32	GAS/ELECTRIC ~ Fish & Game	31.64*			5210 23 430550	344	101000		
33	GAS/ELECTRIC ~ Fish & Game	20.38			5310 31 430630	341	101000		
34	GAS/ELECTRIC ~ Fish & Game	31.64			5310 31 430630	344	101000		
35	GAS/ELECTRIC ~ Sewer Lift	1,676.65			5310 32 430690	341	101000		
36	GAS/ELECTRIC ~ Sewer Lift	130.33			5310 32 430690	344	101000		
38	GAS/ELECTRIC ~ Ambulance	154.97			5510 10 420730	341	101000		
39	GAS/ELECTRIC ~ Ambulance	103.92			5510 10 420730	344	101000		
42	GAS/ELECTRIC ~ Shop	649.57			6040 910 430220	341	101000		
43	GAS/ELECTRIC ~ Shop	180.64			6040 910 430220	344	101000		
44	FISH & GAME ~ ELECTRIC	32.60			2510 107 430220	341	101000		
45	FISH & GAME ~ ELECTRIC	50.62			2510 107 430220	344	101000		
46	FISH & GAME ~ ELECTRIC	8.15			2520 108 430220	341	101000		
47	FISH & GAME ~ ELECTRIC	12.66			2520 108 430220	344	101000		
50	Airport Electric	1,047.22*			5610 87 430300	341	101000		
51	Airport Gas	473.37			5610 87 430300	344	101000		
54	N Daly Sewer Treatment Plant	10,014.45			5310 33 430640	341	101000		
55	419 N 7th Gallery New PD	94.85*			1000 5 420140	220	101000		
56	419 N 7th New PD	49.19*			1000 5 420140	220	101000		
134138	84107S 395 VA MONTANA HEALTHCARE SYSTEM	3,115.83							
1	436-K10CBJ 05/01/21 May Rent ~ MCPD	3,115.83		28940	1000 5 420140	530	101000		
134139	84108S 872 EASTERN MONTANA IND	325.00							
1	435088 03/31/21 Library Cleaning Contract	325.00		28394	2220 16 460100	360	101000		

\* Over spent expenditure

Claim Line #	Check	Vendor #/Name/ Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134140	84109S	700 CUSTER COUNTY WATER & SEWER	19,587.32					
1	04/30/21	CCWSD Water/Sewer Collections	19,587.32			7980 211020		101000
134141	84110S	371 GENERAL DISTRIBUTING CO.	243.41					
1	987645	04/23/21 O2 on Account # 47473	211.91*		28986	5510 10 420730	222	101000
2	991424	04/30/21 O2	31.50*		28989	5510 10 420730	222	101000
134142	84111S	4186 BUCKY JOHNSON	32.00					
1	04/19/21	Cell Phone Reimbursement	16.00*		29566	5210 23 430550	345	101000
2	04/19/21		16.00*		29566	5310 31 430630	345	101000
134143	84112S	721 DALES CLEANING SERVICE	700.00					
1	04/26/21	City Hall ~ April Cleaning	700.00*		29752	1000 8 411230	360	101000
134144	84113S	4013 SOLESTONE REIMB SERVICES	3,908.90					
1	11866	04/06/21 March Billing	3,908.90*		28980	5510 10 420730	350	101000
134145	84114S	4008 PITNEY BOWES	274.17					
1	04/21/21	Postage Quarterly Lease	91.39			1000 3 410500	220	101000
2	04/21/21		91.39			5210 25 430510	220	101000
3	04/21/21		91.39			5310 29 430610	220	101000
134147	84092S	1721 MID RIVERS TELEPHONE CORP	3,079.87					
1		CITY COURT	100.13			1000 6 410300	345	101000
2			0.00			1000 6 410300	347	101000
3		LIBRARY	96.71			2220 16 460100	345	101000
4			116.10			2220 16 460100	347	101000
5		CITY POOL	0.00			1000 14 460445	345	101000
6		911 EMERGENCY	353.63			2850 105 420140	345	101000
7		RSVP	125.84*			2985 15 450340	345	101000
8		AIRPORT	57.52			5610 87 430300	345	101000
9			143.95*			5610 87 430300	319	101000
10			12.00			5610 87 430300	347	101000
11		MAYOR	43.82			1000 1 410200	345	101000
12		FINANCE	70.05*			1000 3 410500	345	101000
13			8.70			1000 3 410500	347	101000
14		ATTORNEY	78.42*			1000 4 411100	345	101000
15		POLICE	300.55			1000 5 420140	345	101000
16			57.86			1000 5 420140	347	101000
17		PD/DISPATCH	162.53			1000 5 420160	345	101000
18		FIRE	195.58			1000 7 420460	345	101000
19			50.69			1000 7 420460	347	101000
20		TREASURER	25.28*			1000 9 410540	345	101000
21		PARK DEPT	44.08			1000 13 460433	345	101000

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 8 of 17  
Report ID: AP100

\* Over spent expenditure

Claim Line #	Check	Vendor #/Name/ Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
22			26.82			1000 13 460433	347	101000
23		ANIMAL CONTROL	42.73			1000 21 440600	345	101000
24			44.95			1000 21 440600	347	101000
25		PLANNING	10.32			1000 36 411020	345	101000
26		Flood	21.49*			1000 201 431200	345	101000
27		BUILDING INSPECTION	47.54			2394 18 420531	345	101000
28		MMD #204	104.46*			2510 107 430220	345	101000
29		MMD #205	46.58*			2520 108 430220	345	101000
30		WATER PLANT	54.82			5210 22 430530	345	101000
31			22.82			5210 22 430530	347	101000
32		WATER LINES	102.25*			5210 23 430550	345	101000
33			11.83			5210 23 430550	347	101000
34		WATER ADMIN	29.87			5210 25 430510	345	101000
35			1.04			5210 25 430510	347	101000
36		WASTE WATER ADMIN	29.86			5310 29 430610	345	101000
37			1.04			5310 29 430610	347	101000
38		SEWER LINES	102.26*			5310 31 430630	345	101000
39			11.83			5310 31 430630	347	101000
40		WWTP	41.86			5310 33 430640	345	101000
41			44.95			5310 33 430640	347	101000
42		AMBULANCE	99.67			5510 10 420730	345	101000
43			24.96			5510 10 420730	347	101000
44		CITY SHOP	75.22*			6040 910 430220	345	101000
45			26.92			6040 910 430220	347	101000
46		HISTORICAL PRESERVATION	0.00			2935 11 460461	345	101000
47			0.03			2935 11 460461	347	101000
48		URBAN RENEWAL	9.82			2310 11 460462	345	101000
49			0.49			2310 11 460462	347	101000
134148	84116S	316 DATA IMAGING SYSTEMS, INC	31,473.00					
1		Finance General	162.09			1000 3 410500	360	101000
2		Finance & Administration Water	101.44			5210 25 430510	360	101000
3		Finance & Administration Sewer	101.44			5310 29 430610	360	101000
4		Mayor	54.03			1000 1 410200	360	101000
5		Planning & Community Services	54.03			1000 36 411020	360	101000
6		Public Utilities Water	116.71			5210 23 430550	360	101000
7		Public Utilities Sewer	116.71			5310 31 430630	360	101000
8		Public Works Maint 204	76.72			2510 107 430220	360	101000
9		Public Works Maint 205	41.06			2520 108 430220	360	101000
10		Treasurer	54.03			1000 9 410540	360	101000
11		TIF	54.03			2310 11 460462	360	101000
12		Building Inspector	116.71			2394 18 420531	360	101000
13	6981	01/20/21 MDT Purchase 911 Grant	30,424.00*		29214	2850 105 420140	941	101000



05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 9 of 17  
Report ID: AP100

\* Over spent expenditure

Claim Line #	Check	Vendor #/Name/ Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134149	84089S	523 CITY SERVICE, INC.	32,859.42					
1	0493701	6003 Gallons AV Jet	14,055.69		1245	5610 87 430300	237	101000
2	493941	5002 Gallons AV Gas 100LL	18,803.73		1245	5610 87 430300	237	101000
134150	-99707E	4332 MONTANA DEPT OF JUSTICE	7.87					
1		CDL Background Check	6.30			2510 107 430220	350	101000
2			1.50			2520 108 430220	350	101000
3			0.07			2540 109 430220	350	101000
134151	-99706E	4332 MONTANA DEPT OF JUSTICE	7.87					
1		CDL Background Check	3.94			5210 23 430550	350	101000
2			3.93*			5310 31 430550	350	101000
134152	-99705E	4332 MONTANA DEPT OF JUSTICE	7.87					
1		CDL Background Check	6.30			2510 107 430220	350	101000
2			1.50*			2520 107 430220	350	101000
3			0.07			2540 109 430220	350	101000
134154	84093S	4247 FRED WACKER AGENCY, INC.	1,165.00					
1	482021	Annual Liability Insurance Cre	1,165.00*		1248	5610 87 430300	512	101000
134155	84094S	999999 KEN STEIN	279.00					
1		Travel Advance COLJ Conf	279.00			1000 6 410300	370	101000
134156	84117S	869 EAST MONT COMMUNICATIONS	480.00					
1		Fire Tac #2	480.00		28981	1000 7 420460	350	101000
134157	84118S	2510 QUAD K SUPPLY	296.48					
1	60233	04/15/21 Glass Cleaner	36.60		28982	1000 7 420460	210	101000
2	60233	04/15/20	23.40		28982	5510 10 420730	210	101000
3	60148	04/07/21 Bunn Filters	11.90		28979	1000 7 420460	220	101000
4	60148	04/07/21	7.60		28979	5510 10 420730	220	101000
5	60231	04/19/21 Towels & TP	108.99*		29548	1000 8 411230	360	101000
6	60192	04/12/21 Cleaning Supplies	42.12		28992	5510 10 420730	220	101000
7	60192	04/12/21	65.87		28992	1000 7 420460	220	101000
134158	84119S	4321 231 EMS CONSULTING	450.00					
1	1003	03/25/21 QA/QI Results Feb Reports	450.00		28972	5510 10 420730	380	101000

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 10 of 17  
Report ID: AP100

\* Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134160	84120S	4333 BODE CELLMARK FORENSICS INC		2,369.03					
1	33026	03/21/21 DNA Analysis for Assault Case		2,369.03*		28919	1000 5 420140	350	101000
134161	84121S	291 ECOLAB PEST ELIMINATION DIVISION		107.12					
1	4337057	04/06/21 Pest Control		65.35		28977	1000 7 420460	220	101000
2	4337057	04/06/21		41.77		28977	5510 10 420730	220	101000
134162	84095S	2831 MILES CITY STAR PUBLISHING		1,072.00					
1	232819	03/01/21 Request for Architect legal		245.00*		28934	1000 5 420140	220	101000
2	233484	03/26/21 Legal Ad Ordinance #1345		156.00*		28933	1000 5 420140	220	101000
3	232820	03/01/21 Request for Engineer		119.00		29547	2510 107 430220	331	101000
4	232820	03/01/21		29.75*		29547	2520 108 430220	331	101000
5	232820	03/01/21		74.37		29547	5210 23 430550	331	101000
6	232820	03/01/21		74.38		29547	5310 31 430630	331	101000
7	232971	03/09/21 Subdivision Notice		149.50		27631	1000 36 411020	331	101000
8	233249	03/22/21 PSA Permits		60.00		29544	1000 201 431200	331	101000
9	233249	03/22/21		60.00		29544	2394 18 420531	331	101000
10	232876	03/03/21 Legal 406 Wells		104.00		28018	1000 201 431200	331	101000
134163	84122S	2847 STEADMANS ACE HARDWARE		313.82					
1	456428	Plumbing Parts		164.89*		1243	5610 87 430300	230	101000
2	456569	Plumbing Parts		91.91*		1243	5610 87 430300	230	101000
3	457016	Garage Door Parts		18.98*		1243	5610 87 430300	230	101000
4	458806	Hardware		2.76*		1243	5610 87 430300	230	101000
5	459414	Electrical Parts		1.95*		1243	5610 87 430300	230	101000
6	461276	Plumbing Parts		9.38*		1258	5610 87 430300	230	101000
7	461584	Plumbing Parts		-0.60*		1258	5610 87 430300	230	101000
8	462518	Plumbing Parts		24.55*		1258	5610 87 430300	230	101000
134164	84123S	1780 MILES CITY MOTOR SUPPLY		193.40					
1	849964	Battery for GPU		123.71*		1244	5610 87 430300	230	101000
2	854598	Filter, Tool, & Hardware		14.85*		1244	5610 87 430300	363	101000
3	854600	Tape		8.49*		1244	5610 87 430300	363	101000
4	857627	Bulb		3.69*		1259	5610 87 430300	363	101000
5	857710	Bulb Socket		20.99*		1259	5610 87 430300	363	101000
6	859241	Radiator Cap		7.69*		1259	5610 87 430300	363	101000
7	859297	Fitting		13.98*		1259	5610 87 430300	363	101000
134165	84124S	4149 Gordon Repair, LLC		184.36					
1	01-3083	Hose Repair		184.36*		1247	5610 87 430300	363	101000

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 11 of 17  
Report ID: AP100

\* ... Over spent expenditure

Claim	Vendor #/Name/	Document \$/	Disc \$					Cash
Line #	Check Invoice #/Inv Date/Description	Line \$		PO #	Fund Org Acct	Object Proj	Account	
134166	84125S 800 DOEDEN CONSTRUCTION	3,812.48						
1	C59017 City Shop	588.44		29538	2510 107 430220	350	101000	
2	C59017	147.11		29538	2520 108 430220	350	101000	
3	C59026	367.78		29538	5210 23 430550	220	101000	
4	C59026	367.78		29538	5310 31 430630	220	101000	
5	C59039	448.78		29538	5210 23 430550	220	101000	
6	C59065 04/01/21	757.03		29765	2510 107 430220	350	101000	
7	C59063 04/06/21	189.26		29765	2520 108 430220	350	101000	
8	C59076 04/08/21	473.15		29765	5210 23 430550	220	101000	
9	C59076 04/08/21	473.15		29765	5310 31 430630	220	101000	
134167	84126S 313 FASTENAL	9.89						
1	MTMIE84890 03/26/21 Unit 21 Bolts	4.56		29539	2510 107 430220	363	101000	
2	MTMIE84890 03/23/21	5.33		29539	2520 108 430220	363	101000	
134168	84127S 2255 NORMONT EQUIPMENT CO	5,969.96						
1	24680 04/01/21 Unit 33	1,773.41		29455	2510 107 430220	363	101000	
2	24680 04/01/21	443.35		29455	2520 108 430220	363	101000	
3	24854 04/21/21 Unit 44	3,002.56		29453	2510 107 430220	363	101000	
4	24854 04/21/21	750.64		29453	2520 108 430220	363	101000	
134169	84128S 2537 RDO EQUIPMENT CO	1,652.91						
1	P7489412 04/06/21 Unit 38	107.66		29542	2510 107 430220	363	101000	
2	P7489412 04/06/21	26.92		29542	2520 108 430220	363	101000	
3	P7489412 04/06/21	67.29		29542	5210 23 430550	220	101000	
4	P7489412 04/06/21	67.28		29542	5310 31 430630	220	101000	
5	P7531712 04/13/21 Unit 45	345.94		29550	5210 23 430550	230	101000	
6	P7531712 04/13/21	345.94		29550	5310 31 430630	230	101000	
7	P7531812 04/13/21 Unit 46	553.50		29550	2510 107 430220	363	101000	
8	P7531812 04/13/21	138.38		29550	2520 108 430220	363	101000	
134170	84129S 2560 REGAN PLUMBING & HEATING	1,775.80						
1	221-10615 04/07/21 City Hall Water Fountain	87.50*		29543	1000 8 411230	220	101000	
2	221-10646 04/06/21 Wibaux Supplies/ Riverside	781.95		29546	1000 13 460433	230	101000	
3	221-10878 04/23/21 Tot lot/ Denton/ Splash Pad	906.35		29753	1000 13 460433	230	101000	
134171	84130S 636 CRIDCO, LLC	160.00						
1	04/09/21 Water/ 3 Months	160.00		1249	5610 87 430300	220	101000	

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 12 of 17  
Report ID: AP100

\* ... Over spent expenditure

Claim Line #	Check	Vendor #/Name/ Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134172	84131S	790 DPC INDUSTRIES	170.00					
1	DE72000065	03/31/21 Demurrage	100.00		28842	5210 80 430540	222	101000
2	DE72000065	03/31/21	70.00		28842	5310 33 430640	222	101000
134173	84132S	4192 YELLOWSTONE ENVIROMENTAL	540.55					
1	9536	04/12/21 Strand Wire/ Wibaux	462.00		29545	1000 13 460433	230	101000
2	9682	04/28/21 Wibaux Park	78.55		29760	1000 13 460433	230	101000
134174	84133S	2151 Morrison-Maierle System	1,188.46					
1	39823	04/08/21 Repair Printer & update comput	156.25*		28930	1000 5 420140	350	101000
2	39861	04/19/21 Net Gear Switch	33.00		29216	2850 105 420140	350	101000
3	39861	04/19/21 Travel	100.11		29216	2850 105 420140	350	101000
4	39861	04/19/21 Full Access Net Motion Lic	899.10		29216	2850 105 420140	350	101000
134175	84134S	504 Cintas	557.30					
1	5058116196	04/08/21 Medical Cabinet Refill	557.30*		28927	1000 5 420140	220	101000
134176	84135S	4308 SDI ARCHITECTS & DESIGN	1,836.00					
1	03/31/21	Architechct Fees March	1,836.00*		28926	1000 5 420140	350	1 101000
134177	84136S	1331 HOLY ROSARY HEALTH CENTER-CLINIC	241.70					
1	500314688	03/31/21 DUI Blood Draw	241.70*		28931	1000 5 420140	350	101000
134178	84137S	4334 STROHMAN ENTERPRISE INC	3,919.90					
1	21-1863	04/08/21 Patrol Rifle Optics (10)	3,919.90*		28929	1000 5 420140	227	101000
134179	84138S	999999 ALLY CAPPS	93.00					
1	41451	04/14/21 Plat 530B	10.00		27630	1000 36 411020	327	101000
2	ATRO426	04/26/21 Rural Water Conference	83.00		27632	1000 36 411020	370	101000
134180	84139S	4335 AMERICAN SEPTIC WRX	130.00					
1	414	03/24/21 Pumped Septic	65.00		28839	5210 22 430530	360	101000
2	414	03/24/21	65.00		28839	5210 80 430540	360	101000
134182	84140S	4336 NORTHERN INDUSTRIAL HYGIENE INC	1,891.67					
1	29230	04/06/21 Environmental Consult	1,891.67		28978	1000 7 420460	350	101000
134183	84141S	2170 NALCO CHEMICAL CO	585.50					
1	6600266363	04/01/21 H-7, H-6	219.70		28840	5210 80 430540	222	101000
2	6600274496	04/06/21 50-274 Titrant	365.80		28844	5210 80 430540	222	101000

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 13 of 17  
Report ID: AP100

\* Over spent expenditure

Claim	Vendor #/Name/	Document \$/	Disc \$					Cash
Line #	Check Invoice #/Inv Date/Description	Line \$		PO #	Fund Org Acct	Object Proj	Account	
134184	84142S 1859 MLEA	876.00						
1	20511 04/14/21 Legal Equivalancy Course	438.00		28932	1000 5 420140	380	101000	
2	20527 02/23/21 SFST Training Apr 19-23	300.00		28944	1000 5 420140	380	101000	
3	20527 02/23/21 Lodging at MLEA	75.00*		28944	1000 5 420140	370	101000	
4	20527 02/23/21 Meals at MLEA	63.00*		28944	1000 5 420140	370	101000	
134185	84143S 2477 PRINCE INC	9,368.40						
1	86277 04/09/21 Ton 4A Cover Material	7,494.72		29549	2510 107 430233	230	101000	
2	86277 04/09/21	1,873.68		29549	2520 108 430233	350	101000	
134186	84144S 763 DIAMOND J CONSTRUCTION	1,000.00						
1	1988 04/13/21 Sidewalks Pleasant	1,000.00		29565	5210 23 430550	220	101000	
134187	84145S 499 CHECKERS INC	40.00						
1	109425 Pre-Employment Drug Test	31.60			2510 107 430220	350	101000	
2	109425	8.00			2520 108 430220	350	101000	
3	109425	0.40			2540 109 430220	350	101000	
134188	84146S 4171 FERGUSON WATERWORKS #1701	3,032.25						
1	776793 04/15/21 Macros	915.68		29568	5210 23 430550	230	101000	
2	778480 04/20/21 BLT SDL 8" Service	135.47		29570	5210 23 430550	230	101000	
3	774186 04/27/21 2 Port Radios 3W	215.88		29571	5210 23 430550	214	101000	
4	779537 04/28/21 Radios	834.95		29572	5210 23 430550	214	101000	
5	778476 04/29/21 6" Macro	930.27		29572	5210 23 430550	230	101000	
134189	84147S 1480 LAWSON PRODUCTS INC	432.95						
1	9308363538 04/09/21 Sandpaper	173.18		29751	2510 107 430220	360	101000	
2	9308363538 04/09/21	43.30		29751	2520 108 430220	360	101000	
3	9308363538 04/09/21	108.24		29751	5210 23 430550	220	101000	
4	9308363538 04/09/21	108.23		29751	5310 31 430630	220	101000	
134190	84148S 4009 PITNEY BOWES RESERVE ACCOUNT	1,113.04						
1	Reserve Account Postage	1,000.00			1000 3 410500	311	101000	
2	Red Ink Cartridge	37.68			1000 3 410500	210	101000	
3		37.68			5210 25 430510	210	101000	
4		37.68			5310 29 430610	210	101000	
134191	84149S 999999 STEVE STANHOPE	92.96						
1	04/17/21 Reimburse for flags	79.98		28983	1000 7 420460	241	101000	
2	04/17/21 Flagpole	12.98		28983	1000 7 420460	241	101000	

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 14 of 17  
Report ID: AP100

\* Over spent expenditure

Claim Line #	Check	Vendor #/Name/ Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134192	84150S	4178 Board by Board Construction, LLC	800.00					
1	Roofing		800.00		28984	1000 7 420460	400	101000
134193	84151S	4303 PARKER, HEITZ, & COSGROVE, PLLC	3,101.49					
1	2021-287	03/31/21 City V. Eckart	3,101.49*		29410	1000 2 410100	350	101000
134194	84152S	999999 COY SHEETS	17.00					
1	Meals for Glendive Training		17.00*		28937	1000 5 420140	370	101000
134195	84153S	999999 SPENCER ANDERSON	17.00					
1	Meals for Training in Glendive		17.00*		28935	1000 5 420140	370	101000
134196	84154S	999999 HELEN JONES	1,022.81					
1	Ambulance Refund		1,022.81			5510 342026		101000
134197	84155S	999999 JAMES KINCAID	93.86					
1	Ambulance Refund		93.86			5510 342026		101000
134198	84156S	999999 LINDA HETZER	50.00					
1	Ambulance Refund		50.00			5510 342026		101000
134199	84157S	268 MILES CITY SANITATION INC.	1,089.00					
1	042021	04/21/21 Garbage 1 Bins 04/20- 03/21	1,089.00		1250	5610 87 430300	220	101000
134200	84158S	999999 BETTY VAIL	255.79					
1	04/22/21	Air Purifier	255.79*		29255	2985 15 450340	220	101000
134201	84159S	999999 RICK HUBER	89.60					
1	04/22/21	Travel to SEMT Dev. Corp.	89.60			1000 2 410100	370	101000
134202	84160S	999999 DUSTIN SLOAN	17.00					
1	04/21/21	Meals for Glendive Training	17.00*		28936	1000 5 420140	370	101000
134203	84161S	317 BILLINGS CLINIC	600.00					
1	2021-033	03/05/21 Sexual Assult Exam	600.00*		28943	1000 5 420140	350	101000
134204	84162S	1638 ENVIRO-CLEAN INTERMOUNTAIN LLC	924.25					
1	21-54381	04/15/21 Unit 30	462.13		29457	5210 23 430550	230	101000
2	21-54381	04/15/21	462.12		29457	5310 31 430630	230	101000

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 15 of 17  
Report ID: AP100

\* Over spent expenditure

Claim Line #	Check	Vendor #/Name/ Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134205	84163S	329 WATCHGUARD VIDEO	991.00					
1	ACCINV0030	04/07/21 Camera Mount Levers	991.00*		28941	1000 5 420160	214	101000
134206	84098S	326 LAY-RITE	17,732.55					
1	B10873	Refloor BLM Air Ops Bldg	17,732.55*		1252	5610 87 430300	230	101000
134207	84164S	378 BLACK MOUNTAIN SOFTWARE	525.00					
1	26740	04/19/21 Purchase Processing Interface	262.50		29569	5210 25 430510	220	101000
2	26740	04/19/21	262.50		29569	5310 29 430610	220	101000
134208	84165S	1571 MACS FRONTIERLAND	79.74					
1	639770	04/19/21 Solenoid Asy	39.87		29755	2510 107 430220	363	101000
2	639770	04/19/21	39.87		29755	2520 108 430220	363	101000
134209	84166S	3286 WPCI	29.75					
1	042721	Preemployment Drug Test	23.50			2510 107 430220	350	101000
2	042721		5.95			2520 108 430220	350	101000
3	042721		0.30			2540 109 430220	350	101000
134210	84167S	999999 SCOTT GRAY	83.00					
1	04/30/21	Rural Water Conference	16.60			2520 108 430220	370	101000
2	04/30/21		66.40			2510 107 430220	370	101000
134211	84168S	4267 BIGHORN VALLEY HEALTH CENTER,	238.00					
1	16493C1670	04/01/21 Immunizations New Employee	190.40			2510 107 430220	350	101000
2	16493C1670	04/01/21	47.60			2520 108 430220	350	101000
134212	84169S	4045 LAND SOLUTIONS, INC.	5,287.50					
1	LS042021	04/27/21 City View/ Askin	5,287.50		27633	1000 36 411020	350	101000
134216	84170S	1407 KLJ ENGINEERING LLC	33,522.64					
1	10151466	04/15/21 GIS Data Maintenance	1,234.40		29215	2850 105 420140	350	101000
2	10151822	04/26/21 Government Relations/ Progra	721.68		28019	1000 201 431200	350	101000
3	10151828	04/26/21 6.2 PH2 Const Admin	692.00		29756	2510 107 430236	350	101000
4	10151828	04/26/21	346.00		29756	5210 23 430550	350	101000
5	10151828	04/26/21	346.00*		29756	5310 31 430630	350	101000
6	10151893	Const Phase thru 04/17/21	30,182.56*		1255	5610 87 430300	937	101000
134217	84171S	999999 JIM HINMAN & CATHERINE STECHER	782.28					
1	04/29/21	Refund of overpaid water	782.28			5210 214010		101000

05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 16 of 17  
Report ID: AP100

\* Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134218	84172S	999999 BRANDIE FOLCK		45.88					
1		Water Deposit Refund		45.88			5210 214010		101000
134219	84173S	999999 JAMES WHITE		1.00					
1		Refund Water Deposit		1.00			5210 214010		101000
134220	84174S	999999 ABIGAIL RYMAN		97.94					
1		Water Deposit Refund		97.94			5210 214010		101000
134221	84175S	999999 SARAH SMALL		13.44					
1		Water Deposit Refund		13.44			5210 214010		101000
134222	84176S	999999 RON BUTLER		67.94					
1		Refund Water Deposit		67.94			5210 214010		101000
134223	84177S	999999 MATT RONNING		20.88					
1		Refund Water Deposit		20.88			5210 214010		101000
134224	84178S	999999 JOSEPH MCAURTHUR		150.00					
1		Refund Water Deposit		150.00			5210 214010		101000
134225	84179S	4104 BILLINGS CLINIC OCCUPATIONAL		4,845.00					
1	2021-0843	02/24/21 Exams		4,845.00		28988	1000 7 420460	350	101000
134226	84180S	4254 MC ELECTRIC, LLC		309.12					
1	3253	04/27/21 Sump Pump City Shop		123.65		29759	2510 107 430220	363	101000
2	3253	04/27/21		30.91		29759	2520 108 430220	363	101000
3	3253	04/27/21		77.28		29759	5210 23 430550	220	101000
4	3253	04/27/21		77.28		29759	5310 31 430630	220	101000
134227	84181S	4134 FICKLER OIL COMPANY, INC		1,189.32					
1	68089	04/14/21 PW All Departments		475.73		29456	2510 107 430220	231	101000
2	68089	04/14/21		118.93		29456	2520 108 430220	231	101000
3	68089	04/14/21		297.33		29456	5210 23 430550	231	101000
4	68089	04/14/21		297.33		29456	5310 31 430630	231	101000
134228	84182S	390 JERRYS REFRIGERATION SERV INC		160.00					
1	112015	04/29/21 20' X 54' Door Tin 24 Gauge		160.00		28945	1000 21 440600	220	101000



05/07/21  
11:39:06

CITY OF MILES CITY  
Claim Details  
For the Accounting Period: 4/21

Page: 17 of 17  
Report ID: AP100

\* Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
134229	84183S	4256 ARMSTRONG		3,000.00					
1	21-216752-	Project 20/21 Fee Estimate		3,000.00*		1256	5610 87 430300	937	101000
134230	84184S	902 ENERGY LABORATORIES INC		361.00					
1	385651	04/11/21 Flouride, Bactis		319.00		28843	5210 80 430540	352	101000
2	388857	04/11/21 Nitrates, Ammonia		42.00		28843	5310 33 430640	352	101000
134231	84185S	2871 THATCHER COMPANY OF MONTANA		6,389.96					
1	352506	04/27/21 Aluminum Sulfate		6,389.96		28845	5210 80 430540	222	101000
134232	84186S	4000 AG PARTNERS. LLC		468.75					
1	13592	04/20/21 Fertilizer		40.00		28848	5210 22 430530	220	101000
2	IB3696	04/26/21 Weed Spray		428.75		28848	5310 33 430640	220	101000
134233	84187S	999999 TOM SPEELMON		83.00					
1	05/04/21	Rural Water Conference		41.50		29574	5210 23 430550	380	101000
2	05/04/21			41.50		29574	5310 31 430630	380	101000
134234	84188S	999999 DAVE HARRIS		83.00					
1	05/04/21	Rural Water Conference		20.25		29574	5210 22 430530	380	101000
2	05/04/21			30.35		29574	5210 80 430540	380	101000
3	05/04/21			12.15		29574	5310 32 430690	380	101000
4	05/04/21			20.25		29574	5310 33 430640	380	101000
134236	84189S	4238 RONALD L. ASKIN DRILLING		2,500.00					
1	Agreement	Lease Dec 1- Nov 3		2,500.00		28991	1000 7 420460	220	101000
134237	84190S	4338 DIVERSIFIED INSPECTIONS ITL INC		1,513.00					
1	INDI36936	04/29/21 Safety Inspection Ladders/1		1,513.00			1000 7 420460	350	101000
134238	84191S	4210 MUGGLI CONTRACTING		41,033.47					
1	203044	05/05/21 Concrete Crushed		20,516.73		29764	4060 911 430233	940	101000
2	203044	05/05/21		10,258.37		29764	5210 23 430550	350	101000
3	203044	05/05/21		10,258.37*		29764	5310 31 430630	350	101000

# of Claims 110 Total: 365,055.67

Total Electronic Claims 75,733.38 Total Non-Electronic Claims 289322.29