

**RESOLUTION NO. 4452**

**A RESOLUTION APPROVING A PARK USE PERMIT BETWEEN THE CITY OF MILES CITY, MONTANA, AND MILES COMMUNITY COLLEGE FOR USE OF BENDER PARK FIELD #3.**

**WHEREAS**, the City of Miles City desires to allow Miles Community College the use of certain park property owned by the City, commonly known as Bender Park Field #3;

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

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

1. The Park Use Permit between the City of Miles City and Miles Community College, 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 permit on behalf of the City of Miles City and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING THIS 25<sup>th</sup> DAY OF JANUARY, 2022.**

*by Kathryn J. Wilcox*  
\_\_\_\_\_  
JOHN HOLLOWELL, Mayor

ATTEST:

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

***PARK USE PERMIT***

**THIS AGREEMENT**, made and entered into this 25th day of January, 2022, by and between CITY OF MILES CITY, MONTANA, a municipal corporation, of 17 South Eighth Street, Miles City, Montana, 59301, hereinafter called "City", and the

**MILES COMMUNITY COLLEGE** in *Miles City, Montana, 59301*, hereinafter called "*Permittee*".

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

2. **PERMIT TERM.** The term of this permit shall be for a five-year period commencing the 1<sup>st</sup> day of February 2022 and terminating the last day of November 2027. This permit shall be renewable at the mutual consent of both parties to the permit.

The annual permit term shall be for period of three (3) months starting the first week in September through the end of the last day in November together with a period of four (4) months starting the 1<sup>st</sup> day of February through the last day of May. The permit term shall commence at 12 o'clock noon on the 1<sup>st</sup> of September and shall terminate at midnight on the 30<sup>th</sup> of November for the first three months and shall commence at 12 o'clock noon on the 1<sup>st</sup> day of February and shall terminate at midnight on the 31<sup>st</sup> of May. Use schedules shall be reviewed and must be approved annually by the City prior to the commencement of the playing season.

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

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

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

Permittees.

City retains the right of access to the permitted premises at all times for any purpose, including, but not limited to, inspection as to Permittee's compliance with the terms of this permit, construction, repair, alteration, remodel, or removal of improvements, and such maintenance of existing improvements as the City may desire.

6. **POSSESSION.** The Permittee shall be entitled to possession of the permitted premises at the commencement of the term of this Permit, subject to the retained uses of the City and its Permittees, and Permittee shall immediately surrender possession upon termination of the term of this Permit, or upon earlier termination as otherwise provided for in this Permit.

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

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

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

All alterations, additions and improvements made by Permittee pursuant to this section shall belong to the City and shall remain with the permitted premises upon termination of this Permit, whether by expiration or default. Provided, however, that, so long as Permittee is not in default under the terms of this Permit, Permittee shall be permitted to remove business and trade fixtures upon termination of the Permit if such removal can be made without damage to the permitted premises. Such removal shall be made within fourteen (14) days of expiration of this Permit or the vacating of the permitted premises by Permittee,

whichever occurs first. Items not removed within such fourteen (14) day period shall become the property of the City at the expiration of such period without any offset or other compensation to Permittee. At the option of the City, the City may remove such property and store it at the risk and expense of the Permittee and sell such property for such removal and storage charges.

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

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

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

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

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

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

13. **INSURANCE.** Permittee, at Permittee's expense, shall, at all times during the term of this Permit, maintain in effect a policy of public liability insurance with policy limits of at least those set forth in Exhibit "F" attached hereto and made a part hereof. The City shall be named as an additional named insured on each such policy of insurance. Such policy of insurance shall be maintained with an insurance company licensed to do business in the State of Montana with an A.M. Best rating of at least "A". Permittee shall provide to the City at the commencement of the permit term satisfactory evidence of the existence of such policy of insurance and shall, during the term of this permit, upon reasonable request of the City, provide to the City evidence of the continued existence of such policy of insurance and the entire policy of insurance.

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

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

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

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

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

and to the Permittee at the following address:

Jerry Olson  
Athletic Director  
Miles Community College  
2715 Dickinson Street  
Miles City, Montana 59301

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

18. **INSPECTION; DISCLAIMER OF WARRANTIES.** Permittee has inspected the permitted premises and has made its independent investigation and evaluation of the suitability of the permitted premises for the uses by Permittee permitted hereunder and is not relying upon any warranties, representations, promises, or information by or from the City in this regard. The City does not warrant, represent, inform or promise that the premises permitted hereunder are suitable for the uses for which permission is granted under this permit or for any other uses of Permittee.

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

Permittee.

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

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

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

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

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

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

**CITY OF MILES CITY**

By: by Kathryn L Wilcox  
Mayor

**MILES COMMUNITY COLLEGE**

By: Jay Olson

Title Athletic Director

**EXHIBIT "A"**  
DESCRIPTION OF PERMITTED PREMISES

Bender Park Field #3

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**EXHIBIT "B"**  
PERMIT FEES

Cash Fees:

The sum of 0.00 Dollars 0.00 payable, in advance, upon the execution of this permit.

Other Consideration:

None

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**EXHIBIT "C"**  
PERMITTED USES OF PERMITTED PREMISES

During the term of the permit, Permittee shall use the permitted premises for the following uses: *Bender Park Field #3 for softball practice and games. All uses must be supervised by the respective coaching staff.*

Specific Reserved Uses of City or it's Permittees:

The City reserves the rights for maintenance activities associated with normal care of the facility.

Bender Park Fields are shared facilities. All groups must respect the rights of other groups and must cooperate when conflicts arise.

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**EXHIBIT "D"**  
SCHEDULE OF EVENTS

Attached hereto is Permittee's schedule of events during which it will utilize the permitted premises for the Permitted Uses. *(This shall include both practice and game schedules)*  
See attached activity schedule.

**(Note: Times and dates of unscheduled activities shall be approved by the parks foreman prior to the activity.)**

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**EXHIBIT "E"**

## UTILITIES

During the term of this Permit, Permittee shall pay the following utilities upon the permitted premises: *Electricity. Water and sewer are the responsibility of the City.*

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

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## EXHIBIT "F"

### REPAIR AND MAINTENANCE OBLIGATIONS OF PERMITTEE

Clean up after improvement projects. Responsible for sprinkler heads damaged by Permittee maintenance activities. Daily maintenance, cleaning and supplies, of restrooms facilities will occur during those times indicated on the attached schedule that the permittee shall be using the indicated facilities.

The permittee has the right to inspect the field prior to the annual permits term/s and note any prior deficiencies in maintenance to above items for which they hold responsibility and submit such a list to the City. The City can then inspect such items and agree with the list as not to hold the permittee responsible for listed items.

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## EXHIBIT "G"

### INSURANCE LIMITS

#### INSURANCE LIMITS

Each occurrence	\$2,000,000
Fire damage	\$ 300,000
Medical	\$ 5,000
Personal & Adv Injury	\$1,000,000
Products. Comp/Op/Agg	\$1,000,000

See attached insurance cover sheet.

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## EXHIBIT "H"

### SPECIAL PERMIT PROVISIONS

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

Permitted uses specifically excludes non-turf motorized vehicles.



NH 18-1(15)0  
UPN 8710000

MILES CITY – NORTH

**AMENDMENT # 2**

**CITY OF MILES CITY  
CONSTRUCTION & MAINTENANCE  
AGREEMENT**

This amendment is regarding the Construction & Maintenance Agreement for Federal Aid Project No. **NH 18-1(15)0**, also known as **Miles City – North (UPN 8710000)**. In accordance with the original Construction & Maintenance Agreement between the Montana Department of Transportation and the City of Miles City signed by the City of Miles City and executed with MDT's signature on March 6, 2020, and Amendment #1 subsequently executed on November 10, 2021, this document will serve as Amendment No. 2 to that agreement. The purpose of this amendment is to clarify the direct billing of the City's obligation amount.

The following changes are included in this amendment:

1. Rescind and replace Article IV, "4" and "14. Local Funding Obligation Estimate".

**ARTICLE IV. LOCAL FUNDING**

4. The City was awarded a \$2 million American Rescue Plan Act (ARPA) grant for their water and sewer project. The City will be billed in advance for its local funds, including indirect costs and materials test rate minus the \$2 million ARPA grant. The billing for the Project's construction (CN & CE phases) will be sent no fewer than sixty (60) days prior to the Project's anticipated advertisement for letting. The City will be billed monthly on actual expenditures incurred for the \$2 million ARPA contribution, which will not be billed prior to the letting. The \$2 million ARPA money will be used first as soon as construction expenses are incurred before applying their direct cash contributions.

14. Local Funding Obligation Estimate:

Water/Sewer/Storm Cost	\$3,500,000
Traffic Control (8%)	\$280,000
Mobilization (8%)	<u>\$280,000</u>
Subtotal	\$4,060,000
IDC (10.71% for FY 2023)	<u>\$434,826</u>
Total Local Funds Estimate =	\$4,494,826
ARPA Funding =	<u>-\$2,000,000</u>
Remaining Local Fund Estimate =	\$2,494,826

The total estimated cost to the City is \$4,494,826, which includes all construction costs associated with the water, sewer and storm drain for the portion of the project located within the City Limits, including 8% for Traffic Control, 8% for Mobilization and IDC. The total estimated amount the City will be billed up front is \$2,494,826. The above construction cost estimate is based on the preliminary estimate provided by the City's engineer and is subject to change up until the time of the bid letting without updating this agreement. Percentages for traffic control and mobilization will be applied at the rates listed. IDC will be updated to the current year's rate at the time of bid letting.

NH 18-1(15)0  
UPN 8710000

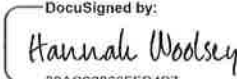
MILES CITY – NORTH  
C&M AGREEMENT – AMENDMENT #2

THE REMAINING TERMS AND PROVISIONS OF THE ORIGINAL AGREEMENT, INCLUDING ANY SUBSEQUENT AMENDMENTS, REMAIN IN FULL FORCE AND EFFECT AND ARE INCORPORATED FULLY HEREIN.

IN WITNESS WHEREOF, MDT’s authorized representative has hereunto signed on behalf of the State of Montana, and the City’s authorized representative on behalf of the City, has signed and affixed hereto the seal of the City.

**STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION**

By   
A5C4600DFD3C478... 8/23/2022  
Montana Department of Transportation Date

  
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Approved for Legal Content

  
4EE5688EF563494...  
Approved for Civil Rights

**CITY OF MILES CITY**

  
A0BBA03229B748F...  
Name John Hollowell  
Title Mayor

Attest:   
E867396A124C433...  
Name Mary Rowe  
Title City Clerk