



CITY OF MILES CITY

AGENDA

Special Council Meeting
City Council Chambers
and online at zoom.us (ID- 4062343462 Passcode- 59301)

December 28, 2023
6:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

1. REQUEST OF CITIZENS & PUBLIC COMMENT

2. NEW BUSINESS

- A. APPROVE SELECTION OF JGA ARCHITECTS ENGINEERTS PLANNERS, PC. AS ARCHITECT FOR THE FIRE DEPARTMENT CONSTRUCTION PROJECT.**
- B. ACCEPT LIST OF ELIGIBLE PROJECTS FOR HOUSE BILL 355 GRANT PROCESS.**
- C. RESOLUTION NO. 4545 - A RESOLUTION APPROVING A TELEHEALTH SERVICES AGREEMENT BETWEEN MILES CITY FIRE AND RESCUE AND AVEL eCARE MEDICAL GROUP P.C.**
- D. RESOLUTION NO. 4546 - A RESOLUTION APPROVING A TELEHEALTH SERVICES AGREEMENT BETWEEN THE MILES CITY POLICE DEPARTMENT AND AVEL eCARE MEDICAL GROUP P.C.**

3. 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



Miles City Fire Rescue

City of Miles City

www.milescityfirerescue.com



2800 Main Street
Miles City, MT 59301

Telephone (406) 234-2235
Fax (406) 874-8666

November 20, 2023

To: Mayor Hollowell
Regarding: Building Committee Architect Recommendation

Greetings,

The building committee met on Wednesday, the 15th of November, and considered all three architects currently on retainer using the packets provided by the engineering department. The committee considered familiarity of the project, experience with fire stations, and past work in making their decision and then decided unanimously, by vote, to recommend JGA.

Sincerely,

Branden Stevens
Fire Chief

HB 355

AN ACT CREATING THE STATE-LOCAL INFRASTRUCTURE PARTNERSHIP ACT OF 2023; PROVIDING FOR GRANTS TO ELIGIBLE ENTITIES FOR INFRASTRUCTURE PROJECTS; SETTING UP A GRANT PROCESS; REQUIRING A PERCENTAGE OF MATCHING FUNDS; PROVIDING FOR OVERSIGHT; ADDRESSING COST OVERRUNS AND MISAPPROPRIATION OF FUNDS; SETTING GRANT LIMITS; PROVIDING AN APPROPRIATION; PROVIDING FOR ALLOCATIONS TO CITIES AND TOWNS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Section 4. Eligible use of funds -- eligible entities. (1) Except as provided in subsection (2), funds allocated in [section 11] may be used only by eligible entities to maintain or repair existing local government infrastructure, including drinking water systems, wastewater treatment systems, fire suppression systems if independent of the drinking water systems, streets, roads, bridges, landfills, street lights, airports, and public grounds and buildings.

(2) Funds allocated in [section 11] may be used to expand existing water and wastewater treatment plants that are being operated at 90% of design capacity or greater.

(3) Entities eligible for grants under [this act] include incorporated cities and towns.

Potential Project for HB355 Funding

Miles City F&R

1. Demo of the old portion of the fire station
2. Move of the fire training center to water plant area
3. Enhance fire training facility at water plant to include the move and bring the other buildings to current standards - foundation, slab, water - sewer - hydrant etc.

PW

- \$15,000 for wages for the Pool budget for the month of June 2024.
- \$200,000 for Florence Stacy Fountain.
- \$500,000 for lift station and sewer line for Hilleman Complex.
- \$200,000 for MD #204 for ADA corners.
- \$200,000 for MD #204 for curbing replacement.

City Hall

- \$55,000 for ADA Compliant Ramp and Sewer Line at City Hall
- \$20,000 software/hardware updates to telephone/website/internet

PD

Concrete/Asphalt Parking lot	\$100,000
Paint Building	\$27,000
Repair Garages and Impound	\$74,000
Windows	\$5500
Evidence Room Fence	\$5500

Public Utilities:

- Painting WTP plant.
- Repaint and reline Southgate Water Tank
- Replace Tongue River force main
- Inspect / clean / repaint interior of Riverside Park tank
- Replace backup generator at WWTP
- Retrofit Boutelle Lift Station

Miles City Public Library Repair and Maintenance Needs

In order of priority of need and common sense process of repair:

1. Roof membrane and drains: roof membrane no longer fits the roof, exposing the roof and putting the building at risk of catastrophic water damage; drain on northeast facade corner of building has been temporarily rerouted to mitigate the annual flooding of the office inside the building (flood water also spreads into the main library annually) but Manning Roofing (who performed the mitigation) has informed us that it is only a temporary fix.
2. Soffitting: Repair damaged exterior soffit (Main, S. 10th, and garden) and replace or disconnect. Incidental soffit repair would be needed with a new drain system.
3. Fasten or delete roof returns in addition.
4. Secure all wood trim along original roof line, including sealing or painting. Repair and refinish all wooden exterior window trim.
5. Replace all fluorescent light fixtures with efficient LEDs.
6. Carpet: main floor carpet is water-damaged and in disrepair from years of use; the snags and tears and subsequent repairs present a trip and fall hazard; the office referenced under Number 1 has water-damaged carpet.
7. Water damage: plaster walls on the second floor of the original building have water damage that has resulted in flaking plaster and interior wall damage; the ceiling in the main library has water damage; the ceiling in the office referenced in Section 2 has water damage.
8. Peeling paint: the paint on the second floor of the original building is peeling due to age and water damage.
9. New window treatments as they are old and do not work effectively

RESOLUTION NO. 4545

A RESOLUTION APPROVING A TELEHEALTH SERVICES AGREEMENT BETWEEN MILES CITY FIRE AND RESCUE AND AVEL eCARE MEDICAL GROUP P.C.

WHEREAS, the City of Miles City's Fire and Rescue department desires to engage Avel eCare Medical Group, P.C., for remote behavioral healthcare services;

AND WHEREAS, the parties have reduced their agreement to writing, subject to the approval of the City Council;

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

1. The "Telehealth Services Agreement" attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by the Council;

2. The City of Miles City's Fire Chief (or Interim Fire chief) is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and to bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 28TH DAY OF DECEMBER, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk

TELEHEALTH SERVICES AGREEMENT
(Miles City Fire and Rescue in Miles City, MT – Crisis Care Services)

THIS TELEHEALTH SERVICES AGREEMENT (this “Agreement”) is dated the 10th day of November 2023 (the “Effective Date”) by and between Avel eCare Medical Group, P.C., a South Dakota professional corporation, located at 4500 N. Lewis Ave, Sioux Falls, SD 57104 (“Avel”) and MILES CITY FIRE AND RESCUE, located at 2800 Main Street, Miles City, MT (“Department”). Avel and Department are each sometimes referred to as a “Party” and together as the “Parties.” Capitalized terms used throughout unless otherwise defined will have meanings provided in Appendix I attached hereto.

A. Avel, through its employees, contracts with other providers, and affiliate health care facilities, provides remote telemedicine and telehealth services across multiple disciplines, including behavioral health and related services.

B. Department desires to access remote behavioral health professional resources provided by Avel to support officers who are responding to emergency situations involving individuals experiencing behavioral health crisis and to facilitate mental health assessments in place to avoid unnecessary transfers to an emergency room (“Services”).

C. The Parties desire to enter into this Agreement for the purposes described herein.

NOW THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
TERM

Section 1.1 Term. This Agreement begins on the Effective Date and will continue for one (1) year (“Initial Term”), provided upon mutual written agreement, the Parties may elect to extend this Agreement in additional one (1) year increments (each, a “Renewal Term”, and together with the Initial Term, the “Term”).

ARTICLE II
AVEL CRISIS CARE SERVICES

Section 2.1 Crisis Care Services. Avel will make available to Department’s first responders access to remote mental health assessment services in emergency situations (as determined by Department’s first responders) furnished by qualified personnel (e.g. registered nurse, master level social worker, etc.). Avel’s personnel will commence services within thirty (30) minutes after receiving a first responder’s request. Department acknowledges mental health assessments take an average of thirty (30) minutes to complete, though actual assessment times may vary based on circumstances. When appropriate, Avel’s personnel may make recommendations to the first responders, and if requested, assist with de-escalation of an individual in crisis, provided final determinations are under all circumstances the responsibility of the first responder.

Section 2.2 Procedure for Crisis Care Services. Avel reserves all rights to determine the appropriate personnel and procedures associated with requesting and utilizing Services, provided, Avel will give Department reasonable advance notice of any material changes to procedures. After Department returns a signed Agreement, the Parties will begin working collaboratively to ensure Department personnel utilizing Services are adequately trained on the appropriate procedures associated with requesting and utilizing Services. From time to time, Avel may provide training materials and other aids to facilitate proper utilization of the Services.

Section 2.3 Inability to Provide Services. Department acknowledges circumstances may prevent Avel from performing the Services described herein, including without limitation, circumstances where an individual (a) requires immediate medical attention; (b) is too impaired by alcohol, prescription medication, or illicit drugs or is otherwise unable to comprehend a safety plan; (c) is too violent or disorderly as determined by the first responder; (d) is overdosing; or (e) is physically located in an emergency department.

Section 2.4 Hours of Availability. Services will be available to Department twenty-four hours per day, seven days a week.

ARTICLE III DEPARTMENT REPRESENTATIONS

Section 3.1 Department Requirements for Services. Department represents and warrants that throughout the Term Department will:

- a) Assign a primary point of contact with whom Avel may contact to obtain feedback through the utilization of surveys, interviews, and other methods of gathering information used for the development of telehealth services.
- b) Abide by local, state, and federal rules, regulations and laws of state associated with the Services described in this Agreement.
- c) Provide to Avel policies and procedures applicable to Services, and thereafter, provide timely and complete communication of any updates to Department policies and procedures.
- d) Collaborate with Avel IT and any third-party platform provider to the extent necessary to facilitate the utilization of the Services.

ARTICLE IV FEES/THIRD PARTY FUNDING

Section 4.1 Health Center Funding. Services furnished to Department are paid for by Eastern MT Community Mental Health Center ("Health Center") during the Initial Term. Following any discontinuance or unavailability of Health Center funding, the Parties will negotiate in good faith compensation and other terms associated with the Services.

ARTICLE V EQUIPMENT AND CONNECTIVITY

Section 5.1 Equipment and Connectivity Testing. Avel shall procure and configure all Equipment required to furnish Services ("Equipment"). Avel may also provide IT engineering support for ongoing hardware and software troubleshooting through the Term. Avel will retain all right, title, and interest in and to all Equipment furnished to Department. Upon the termination or expiration of this Agreement, Department will return Equipment in good working order within sixty (60) days at Department's expense.

Section 5.2 Connectivity. Equipment utilizes an Avel-furnished cellular connection for Services. Department will be responsible to work to resolve any cellular connection deficiencies impeding or otherwise preventing the effective utilization of the Services. Avel and Department will participate in connectivity and audio/video Equipment testing at intervals determined to be necessary by Avel.

Section 5.3 Department IT Responsibilities. Throughout the Term, Department agrees to promptly notify Avel IT prior to any Department information systems or security systems upgrades or modifications, and any modifications to maintenance schedules.

ARTICLE VI MARKETING AND INTELLECTUAL PROPERTY

Section 6.1 Consent to Inclusion on Avel Marketing Materials. While this Agreement is in effect, Department agrees and consents to the inclusion of its name and location in Avel eCARE[®] Department listings and service area maps. Department also agrees and consents to the use of Department's names in advertising Avel CARE[®] services with Avel so long as all such advertising is approved by Department, as applicable, in writing and in advance.

Section 6.2 Intellectual Property. All Intellectual Property and any improvements to Avel's Services or tools utilized in the provision of Services which are created and developed, even if not ultimately marketed, shall remain the sole property of Avel. Department disclaims any right to make ownership claims to any Intellectual Property and agrees to take all reasonable steps to ensure Avel maintains all ownership right, title and interest, in, to, and under such Intellectual Property rights, and further, shall execute or cause to be executed assignments and all other instruments and documents to the extent Avel determines to be reasonably necessary or appropriate to maintain Avel's ownership rights.

ARTICLE VII INSURANCE AND INDEMNITY

Section 7.1 Minimum Insurance Requirements. Each Party shall maintain at its sole cost and expense the following insurance with required limits being minimum limits and which limits may not adequately insure the exposure. Such insurance may be maintained through commercial insurance contracts, a plan of self-insurance approved by the governing body of the Party maintaining such self-insurance, participation in a state specific patient compensation fund or professional excess liability fund or a combination of any of the above. Evidence of required coverage shall be provided upon receipt of a written request:

- 7.1.1 General liability in the amount of One Million Dollars (\$1,000,000) per occurrence; and
- 7.1.2 Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate.
- 7.1.3 Applicable state statutory limits for workers compensation.
- 7.1.4 Without limiting any of the obligations or liabilities of Department, Department shall carry and maintain, at its own expense including any applicable deductibles or retentions, as long as respective, applicable statutes of limitation or repose are in effect relating to the specific purposes of this Agreement, Network Security insurance with limits of not less than Two Million Dollars (\$2,000,000) for each occurrence and an annual aggregate of Two Million Dollars (\$2,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage shall provide twelve months of "credit watch" coverage for individuals whose protected health information has been inappropriately accessed.

In the event either Party procures a "claims-made" policy to meet the insurance requirements herein, such Party agrees following the termination of the Agreement, to purchase an indefinite extended reporting endorsement of the "Tail" or to provide continuing coverage as required in the Agreement.

For purposes of this Agreement, the Parties agree that their respective employees are not employees of the other Party and are not eligible for workers' compensation coverage carried by the other Party. Each Party agrees to provide for its employees necessary workers' compensation protection, as required by law.

Section 7.2 Mutual Indemnification. Avel agrees to hold harmless and indemnify Department, and its respective officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of the negligence, misconduct, error or omission of any officer, agent or employee of Avel. To the extent allowed under applicable law, Department agrees to hold harmless and indemnify Avel, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of the negligence, misconduct, error or omission of any officer, agent or employee of Department.

ARTICLE VIII TERMINATION

Section 8.1 “For Cause” Termination. This Agreement may be terminated by either Party based upon the occurrence of any of the following: (i) a material breach of any term or condition of this Agreement, or any related Agreement, provided the breaching Party shall be provided written notice describing the breach with a reasonable detail and thereafter be granted thirty (30) days from the receipt of such notice to remedy the material breach; (ii) Department’s failure to pay when due any amount owing to Avel which amount remains unpaid five (5) days following any due date; (iii) the insolvency, receivership, or bankruptcy of either Party, (iv) the dissolution, liquidation, or substantial cessation of business of either Party, or (v) as otherwise provided in of this Agreement.

Section 8.2 Termination Due to Lack of Health Center Funding. The parties acknowledge Services described herein are funded by Health Center, and Departments continued receipt of such services will be subject to continued availability of such funding. If during the Term, the Health Center funding is unavailable, Department will have a 90-day option to terminate this Services Agreement by providing notice to Avel of its desire to discontinue services, provided (i) Department will remain liable to pay all amounts owed through the date of termination and (ii) provides Avel with no less than thirty (30) days written notice prior to the termination date.

ARTICLE IX GENERAL PROVISIONS

Section 9.1 Compliance. The Parties agree to maintain compliance with applicable state and federal laws, ordinances and regulations.

Section 9.2 Participation in Government Programs. The Parties represent and warrant that their respective officers, directors and employees (a) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 USC § 1320a-7b(f) (the “Federal Healthcare Programs”); (b) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (c) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in a Party being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during this Agreement and the Party shall immediately notify the other Party of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give a Party the right to terminate this Agreement immediately for cause.

Section 9.3 Confidentiality. All data and information and know-how, in whatever form transmitted, including, but not limited to, information concerning a Party’s past, present and future business affairs, business plans, operations or systems, the terms of this Agreement, pricing information, personal information of any employee or any person evaluated using the Services, and all operation manuals and procedures applicable to the provision of the services (“Confidential Information”), furnished from one Party (“Disclosing Party”) to the other Party (“Receiving Party”) shall be regarded as confidential, and shall remain the sole property of the Party initially providing the information, and shall be held in confidence and safekeeping for the sole use of the Parties under the terms of this Agreement. Confidential Information as used herein will expressly include any information the Disclosing Party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential. The Receiving Party agrees to treat all Confidential Information with the same degree of care, and will make no use of such Confidential Information during the existence of this Agreement except pursuant to the receipt or delivery of services.

The Receiving Party shall have no obligation to maintain the confidentiality of information that: (i) it received rightfully from another party without restrictions on disclosure prior to its receipt from the Disclosing Party; (ii) the Disclosing Party has disclosed to an unaffiliated third party without any obligation to maintain such information in confidence; or (iii) is independently developed by the Receiving Party. Except as otherwise

provided, the Receiving Party shall not disclose, disseminate, distribute or use any of the Disclosing Party's Confidential Information to any third party without the Disclosing Party's prior written permission. The Parties agree that a breach of the terms of this subsection would result in irreparable injury to the Disclosing Party for which a remedy in damages would be inadequate. The Parties agree that in the event of such breach or threatened breach the Disclosing Party shall be entitled to seek an injunction to prevent or attempt to mitigate the breach or threatened breach, in addition to remedies otherwise available for such specific performance or injunctive relief, that the Disclosing Party has an adequate remedy at law.

Section 9.4 Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned by either Party without the prior written consent of the other Party, except that this Agreement may be assigned by Avel to the survivor in any merger or other business combination, or to the purchaser of substantially all of the assets of Avel, or to an entity controlling, controlled by, or under common control with Avel.

Section 9.5 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Avel: Avel eCARE
4500 North Lewis Avenue
Sioux Falls, SD 57104
ATTN: CEO

With copy to: Avel eCARE
4500 North Lewis Avenue
Sioux Falls, SD 57104
ATTN: Contracting Department

Department: Miles City Fire and Rescue
2800 Main Street, Miles City, MT
ATTN: Sarah Lewin, Battalion Chief/EMS Officer, NRP

Either Party may change its address for notices under this Agreement by giving written notice of such change to the other Party.

Section 9.6 Governing Law. This Agreement and the rights and obligations to the Parties hereunder shall be construed and governed by the laws of the State of South Dakota and venue of any proceedings arising hereunder shall be in said state.

Section 9.7 Integration of Terms. This Agreement together with all ancillary agreements constitutes the entire agreement between the Parties and supersedes any prior agreement or understanding between the Parties with respect to its subject matter. This Agreement may not be modified or amended except by a writing executed by both Parties.

Section 9.8 No Waiver. No waiver of breach or any failure of Avel to exercise any option, right, or privilege in accordance with the terms of this Agreement or any Avel act on any occasion or occasions shall be construed to be a waiver of the same or any other option, right, or privilege on any other occasion.

Section 9.9 Medicare Access. In accordance with 42 U.S.C. § 1395x(v)(I)(i) & (ii), until the expiration of four (4) years after the furnishing of services under this Agreement, the Parties shall make available, upon written request by the Secretary, U.S. Department of Health and Human Services or upon request by the U.S. Comptroller General, or any of their duly authorized representatives, the contracts, books, documents and records that are necessary to certify the nature and extent of costs of any agreement between the Parties.

In the event of a request for access under the cited provisions, the Parties agree to notify each other immediately and to consult with each other regarding what response will be made to the request.

In the event that a Party fails to comply with the terms and provisions of this agreement relating to the retention and production of documents, that Party agrees to indemnify and make whole the other Party for any third-party reimbursement it may lose as the result of the refusal of that Party or its subcontractor to maintain or produce documents in accordance with the provisions herein.

The provisions relating to the retention and production of documents set forth herein is included because of the possible application of Section 1861(v)(1)(I) of the Social Security Act to such agreements or contracts between the Parties, and if this Section should be found to be inapplicable, then these clauses shall be deemed to be inoperative and without force and effect.

Section 9.10 Independent Contractor. Avel and Department agree that the Services to be rendered by Avel (or its designees) under the terms of this Agreement are the services of an independent contractor and nothing under this Agreement is intended nor shall be construed to create between Department and Avel an employer/employee relationship, a joint venture relationship, or a lease or landlord/tenant relationship, or to allow Department to exercise control or direction over the manner or method by which Avel provides Services that are the subject matter of this Agreement, provided that such Services are rendered in a professional and competent manner in keeping with the policies and directives of Department. Avel understands that Department will not pay or withhold on behalf of Avel any sums for federal or state income tax, any other federal or state tax, unemployment insurance, social security or any other withholding pursuant to any law or requirement and that all such payments and withholdings are the sole responsibility of Avel. In the event a claim, demand, or action is brought against Department for such taxes, premiums or other withholdings, Avel agrees to indemnify and hold harmless Department for such claim and any related expenses (including attorney's fees).

NOW, THEREFORE, the Parties agree to be bound to the above terms and conditions by signing below.

AVEL eCARE MEDICAL GROUP, P.C.

MILES CITY FIRE AND RESCUE

By: Avel eCare LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

APPENDIX I
Definitions

Except where clearly indicated otherwise by the context of any particular Section herein, capitalized terms used in this Agreement have the following meanings:

“IT” means information technology and includes related services necessary to support connectivity and other technical components necessary for the delivery of Services.

“Intellectual Property” means all proprietary rights of every kind and nature however denominated, throughout the world, including but not limited to rights in and to patents of any type or nature and patentable inventions; copyrights, industrial designs, and other works of authorship, whether or not registered, proprietary methods, processes, and procedures, confidential information, trade secrets, know how, and database rights; trademarks, trade names, service marks, service names, brands, trade dress, domain names, and logos, whether or not registered.

“Services” will have the meaning provided in the preamble and further described in Article II, subject to all limitations in the Agreement.

“Renewal Term” will have the meaning provided in Article I.

“Telehealth” means the utilization of two-way audio and video technology to provide healthcare services where an Avel professional is in a different location than the individual who is undergoing an assessment or the fire and rescue office that is receiving other Services.

“Term” will have the meaning provided in Article I and will be inclusive of any Renewal Term(s).

RESOLUTION NO. 4546

A RESOLUTION APPROVING A TELEHEALTH SERVICES AGREEMENT BETWEEN THE MILES CITY POLICE DEPARTMENT AND AVEL eCARE MEDICAL GROUP P.C.

WHEREAS, the City of Miles City’s police department desires to engage Avel eCare Medical Group, P.C., for remote behavioral healthcare services;

AND WHEREAS, the parties have reduced their agreement to writing, subject to the approval of the City Council;

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

1. The “Telehealth Services Agreement” attached hereto as Exhibit “A”, and made a part hereof, is hereby approved and adopted by the Council;
2. The City of Miles City’s Police Chief is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and to bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 28TH DAY OF DECEMBER, 2023.

John Hollowell, Mayor

ATTEST:

Mary Rowe, City Clerk

TELEHEALTH SERVICES AGREEMENT
(Miles City Police Department in Miles City, MT – Crisis Care Services)

THIS TELEHEALTH SERVICES AGREEMENT (this “Agreement”) is dated the 10th day of November 2023 (the “Effective Date”) by and between Avel eCare Medical Group, P.C., a South Dakota professional corporation, located at 4500 N. Lewis Ave, Sioux Falls, SD 57104 (“Avel”) and MILES CITY POLICE DEPARTMENT, located at 210 S Winchester Ave, Miles City, MT 59301 (“Department”). Avel and Department are each sometimes referred to as a “Party” and together as the “Parties.” Capitalized terms used throughout unless otherwise defined will have meanings provided in Appendix I attached hereto.

A. Avel, through its employees, contracts with other providers, and affiliate health care facilities, provides remote telemedicine and telehealth services across multiple disciplines, including behavioral health and related services.

B. Department desires to access remote behavioral health professional resources provided by Avel to support officers who are responding to emergency situations involving individuals experiencing behavioral health crisis and to facilitate mental health assessments in place to avoid unnecessary transfers to an emergency room (“Services”).

C. The Parties desire to enter into this Agreement for the purposes described herein.

NOW THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
TERM

Section 1.1 Term. This Agreement begins on the Effective Date and will continue for one (1) year (“Initial Term”), provided upon mutual written agreement, the Parties may elect to extend this Agreement in additional one (1) year increments (each, a “Renewal Term”, and together with the Initial Term, the “Term”).

ARTICLE II
AVEL CRISIS CARE SERVICES

Section 2.1 Crisis Care Services. Avel will make available to Department’s law enforcement officers access to remote mental health assessment services in emergency situations (as determined by Department’s law enforcement officers) furnished by qualified personnel (e.g. registered nurse, master level social worker, etc.). Avel’s personnel will commence services within thirty (30) minutes after receiving a law enforcement officer’s request. Department acknowledges mental health assessments take an average of thirty (30) minutes to complete, though actual assessment times may vary based on circumstances. When appropriate, Avel’s personnel may make recommendations to the law enforcement officer, and if requested, assist with de-escalation of an individual in crisis, provided final determinations are under all circumstances the responsibility of the law enforcement officer.

Section 2.2 Procedure for Crisis Care Services. Avel reserves all rights to determine the appropriate personnel and procedures associated with requesting and utilizing Services, provided, Avel will give Department reasonable advance notice of any material changes to procedures. After Department returns a signed Agreement, the Parties will begin working collaboratively to ensure Department personnel utilizing Services are adequately trained on the appropriate procedures associated with requesting and utilizing Services. From time to time, Avel may provide training materials and other aids to facilitate proper utilization of the Services.

Section 2.3 Inability to Provide Services. Department acknowledges circumstances may prevent Avel from performing the Services described herein, including without limitation, circumstances where an individual (a) requires immediate medical attention; (b) is too impaired by alcohol, prescription medication, or illicit drugs or is otherwise unable to comprehend a safety plan; (c) is too violent or disorderly as determined by the law enforcement officer; (d) is overdosing; or (e) is physically located in an emergency department.

Section 2.4 Hours of Availability. Services will be available to Department twenty-four hours per day, seven days a week.

ARTICLE III DEPARTMENT REPRESENTATIONS

Section 3.1 Department Requirements for Services. Department represents and warrants that throughout the Term Department will:

- a) Assign a primary point of contact with whom Avel may contact to obtain feedback through the utilization of surveys, interviews, and other methods of gathering information used for the development of telehealth services.
- b) Abide by local, state, and federal rules, regulations and laws of state associated with the Services described in this Agreement.
- c) Provide to Avel policies and procedures applicable to Services, and thereafter, provide timely and complete communication of any updates to Department policies and procedures.
- d) Collaborate with Avel IT and any third-party platform provider to the extent necessary to facilitate the utilization of the Services.

ARTICLE IV FEES/THIRD PARTY FUNDING

Section 4.1 Health Center Funding. Services furnished to Department are paid for by Eastern MT Community Mental Health Center ("Health Center") during the Initial Term. Following any discontinuance or unavailability of Health Center funding, the Parties will negotiate in good faith compensation and other terms associated with the Services.

ARTICLE V EQUIPMENT AND CONNECTIVITY

Section 5.1 Equipment and Connectivity Testing. Avel shall procure and configure all Equipment required to furnish Services ("Equipment"). Avel may also provide IT engineering support for ongoing hardware and software troubleshooting through the Term. Avel will retain all right, title, and interest in and to all Equipment furnished to Department. Upon the termination or expiration of this Agreement, Department will return Equipment in good working order within sixty (60) days at Department's expense.

Section 5.2 Connectivity. Equipment utilizes an Avel-furnished cellular connection for Services. Department will be responsible to work to resolve any cellular connection deficiencies impeding or otherwise preventing the effective utilization of the Services. Avel and Department will participate in connectivity and audio/video Equipment testing at intervals determined to be necessary by Avel.

Section 5.3 Department IT Responsibilities. Throughout the Term, Department agrees to promptly notify Avel IT prior to any Department information systems or security systems upgrades or modifications, and any modifications to maintenance schedules.

ARTICLE VI MARKETING AND INTELLECTUAL PROPERTY

Section 6.1 Consent to Inclusion on Avel Marketing Materials. While this Agreement is in effect, Department agrees and consents to the inclusion of its name and location in Avel eCARE® Department listings and service area maps. Department also agrees and consents to the use of Department's names in advertising Avel CARE® services with Avel so long as all such advertising is approved by Department, as applicable, in writing and in advance.

Section 6.2 Intellectual Property. All Intellectual Property and any improvements to Avel's Services or tools utilized in the provision of Services which are created and developed, even if not ultimately marketed, shall remain the sole property of Avel. Department disclaims any right to make ownership claims to any Intellectual Property and agrees to take all reasonable steps to ensure Avel maintains all ownership right, title and interest, in, to, and under such Intellectual Property rights, and further, shall execute or cause to be executed assignments and all other instruments and documents to the extent Avel determines to be reasonably necessary or appropriate to maintain Avel's ownership rights.

ARTICLE VII INSURANCE AND INDEMNITY

Section 7.1 Minimum Insurance Requirements. Each Party shall maintain at its sole cost and expense the following insurance with required limits being minimum limits and which limits may not adequately insure the exposure. Such insurance may be maintained through commercial insurance contracts, a plan of self-insurance approved by the governing body of the Party maintaining such self-insurance, participation in a state specific patient compensation fund or professional excess liability fund or a combination of any of the above. Evidence of required coverage shall be provided upon receipt of a written request:

- 7.1.1 General liability in the amount of One Million Dollars (\$1,000,000) per occurrence; and
- 7.1.2 Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate.
- 7.1.3 Applicable state statutory limits for workers compensation.
- 7.1.4 Without limiting any of the obligations or liabilities of Department, Department shall carry and maintain, at its own expense including any applicable deductibles or retentions, as long as respective, applicable statutes of limitation or repose are in effect relating to the specific purposes of this Agreement, Network Security insurance with limits of not less than Two Million Dollars (\$2,000,000) for each occurrence and an annual aggregate of Two Million Dollars (\$2,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage shall provide twelve months of "credit watch" coverage for individuals whose protected health information has been inappropriately accessed.

In the event either Party procures a "claims-made" policy to meet the insurance requirements herein, such Party agrees, following the termination of the Agreement, to purchase an indefinite extended reporting endorsement "Tail" or to provide continuing coverage as required in the Agreement.

For purposes of this Agreement, the Parties agree that their respective employees are not employees of the other Party and are not eligible for workers' compensation coverage carried by the other Party. Each Party agrees to provide for its employees necessary workers' compensation protection, as required by law.

Section 7.2 Mutual Indemnification. Avel agrees to hold harmless and indemnify Department, and its respective officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of the negligence, misconduct, error or omission of any officer, agent or employee of Avel. To the extent allowed under applicable law, Department agrees to hold harmless and indemnify Avel, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of the negligence, misconduct, error or omission of any officer, agent or employee of Department.

ARTICLE VIII TERMINATION

Section 8.1 "For Cause" Termination. This Agreement may be terminated by either Party based upon the occurrence of any of the following: (i) a material breach of any term or condition of this Agreement, or any related Agreement, provided the breaching Party shall be provided written notice describing the breach with a reasonable detail and thereafter be granted thirty (30) days from the receipt of such notice to remedy the material breach; (ii) Department's failure to pay when due any amount owing to Avel which amount remains unpaid five (5) days following any due date; (iii) the insolvency, receivership, or bankruptcy of either Party, (iv) the dissolution, liquidation, or substantial cessation of business of either Party, or (v) as otherwise provided in of this Agreement.

Section 8.2 Termination Due to Lack of Health Center Funding. The parties acknowledge Services described herein are funded by Health Center, and Departments continued receipt of such services will be subject to continued availability of such funding. If during the Term, the Health Center funding is unavailable, Department will have a 90-day option to terminate this Services Agreement by providing notice to Avel of its desire to discontinue services, provided (i) Department will remain liable to pay all amounts owed through the date of termination and (ii) provides Avel with no less than thirty (30) days written notice prior to the termination date.

ARTICLE IX GENERAL PROVISIONS

Section 9.1 Compliance. The Parties agree to maintain compliance with applicable state and federal laws, ordinances and regulations.

Section 9.2 Participation in Government Programs. The Parties represent and warrant that their respective officers, directors and employees (a) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 USC § 1320a-7b(f) (the "Federal Healthcare Programs"); (b) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (c) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in a Party being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during this Agreement and the Party shall immediately notify the other Party of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give a Party the right to terminate this Agreement immediately for cause.

Section 9.3 Confidentiality. All data and information and know-how, in whatever form transmitted, including, but not limited to, information concerning a Party's past, present and future business affairs, business plans, operations or systems, the terms of this Agreement, pricing information, personal information of any employee or any person evaluated using the Services, and all operation manuals and procedures applicable to the provision of the services ("Confidential Information"), furnished from one Party ("Disclosing Party") to the other Party ("Receiving Party") shall be regarded as confidential, and shall remain the sole property of the Party initially providing the information, and shall be held in confidence and safekeeping for the sole use of the Parties under the terms of this Agreement. Confidential Information as used herein will expressly include any information the Disclosing Party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential. The Receiving Party agrees to treat all Confidential Information with the same degree of care, and will make no use of such Confidential Information during the existence of this Agreement except pursuant to the receipt or delivery of services.

The Receiving Party shall have no obligation to maintain the confidentiality of information that: (i) it received rightfully from another party without restrictions on disclosure prior to its receipt from the Disclosing Party; (ii) the Disclosing Party has disclosed to an unaffiliated third party without any obligation to maintain such information in confidence; or (iii) is independently developed by the Receiving Party. Except as otherwise

provided, the Receiving Party shall not disclose, disseminate, distribute or use any of the Disclosing Party's Confidential Information to any third party without the Disclosing Party's prior written permission. The Parties agree that a breach of the terms of this subsection would result in irreparable injury to the Disclosing Party for which a remedy in damages would be inadequate. The Parties agree that in the event of such breach or threatened breach the Disclosing Party shall be entitled to seek an injunction to prevent or attempt to mitigate the breach or threatened breach, in addition to remedies otherwise available for such specific performance or injunctive relief, that the Disclosing Party has an adequate remedy at law.

Section 9.4 Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned by either Party without the prior written consent of the other Party, except that this Agreement may be assigned by Avel to the survivor in any merger or other business combination, or to the purchaser of substantially all of the assets of Avel, or to an entity controlling, controlled by, or under common control with Avel.

Section 9.5 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Avel: Avel eCARE
4500 North Lewis Avenue
Sioux Falls, SD 57104
ATTN: CEO

With copy to: Avel eCARE
4500 North Lewis Avenue
Sioux Falls, SD 57104
ATTN: Contracting Department

Department: Miles City Police Department
210 S Winchester Ave
Miles City, MT 59301
ATTN: Chief of Police Doug Colombik

Either Party may change its address for notices under this Agreement by giving written notice of such change to the other Party.

Section 9.6 Governing Law. This Agreement and the rights and obligations to the Parties hereunder shall be construed and governed by the laws of the State of South Dakota and venue of any proceedings arising hereunder shall be in said state.

Section 9.7 Integration of Terms. This Agreement together with all ancillary agreements constitutes the entire agreement between the Parties and supersedes any prior agreement or understanding between the Parties with respect to its subject matter. This Agreement may not be modified or amended except by a writing executed by both Parties.

Section 9.8 No Waiver. No waiver of breach or any failure of Avel to exercise any option, right, or privilege in accordance with the terms of this Agreement or any Avel act on any occasion or occasions shall be construed to be a waiver of the same or any other option, right, or privilege on any other occasion.

Section 9.9 Medicare Access. In accordance with 42 U.S.C. § 1395x(v)(I)(i) & (ii), until the expiration of four (4) years after the furnishing of services under this Agreement, the Parties shall make available, upon written request by the Secretary, U.S. Department of Health and Human Services or upon request by the U.S. Comptroller General, or any of their duly authorized representatives, the contracts, books, documents and records that are necessary to certify the nature and extent of costs of any agreement between the Parties.

In the event of a request for access under the cited provisions, the Parties agree to notify each other immediately and to consult with each other regarding what response will be made to the request.

In the event that a Party fails to comply with the terms and provisions of this agreement relating to the retention and production of documents, that Party agrees to indemnify and make whole the other Party for any third-party reimbursement it may lose as the result of the refusal of that Party or its subcontractor to maintain or produce documents in accordance with the provisions herein.

The provisions relating to the retention and production of documents set forth herein is included because of the possible application of Section 1861(v)(1)(I) of the Social Security Act to such agreements or contracts between the Parties, and if this Section should be found to be inapplicable, then these clauses shall be deemed to be inoperative and without force and effect.

Section 9.10 Independent Contractor. Avel and Department agree that the Services to be rendered by Avel (or its designees) under the terms of this Agreement are the services of an independent contractor and nothing under this Agreement is intended nor shall be construed to create between Department and Avel an employer/employee relationship, a joint venture relationship, or a lease or landlord/tenant relationship, or to allow Department to exercise control or direction over the manner or method by which Avel provides Services that are the subject matter of this Agreement, provided that such Services are rendered in a professional and competent manner in keeping with the policies and directives of Department. Avel understands that Department will not pay or withhold on behalf of Avel any sums for federal or state income tax, any other federal or state tax, unemployment insurance, social security or any other withholding pursuant to any law or requirement and that all such payments and withholdings are the sole responsibility of Avel. In the event a claim, demand, or action is brought against Department for such taxes, premiums or other withholdings, Avel agrees to indemnify and hold harmless Department for such claim and any related expenses (including attorney's fees).

NOW, THEREFORE, the Parties agree to be bound to the above terms and conditions by signing below.

AVEL eCARE MEDICAL GROUP, P.C.

MILES CITY POLICE DEPARTMENT

By: Avel eCare LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

APPENDIX I
Definitions

Except where clearly indicated otherwise by the context of any particular Section herein, capitalized terms used in this Agreement have the following meanings:

“IT” means information technology and includes related services necessary to support connectivity and other technical components necessary for the delivery of Services.

“Intellectual Property” means all proprietary rights of every kind and nature however denominated, throughout the world, including but not limited to rights in and to patents of any type or nature and patentable inventions; copyrights, industrial designs, and other works of authorship, whether or not registered, proprietary methods, processes, and procedures, confidential information, trade secrets, know how, and database rights; trademarks, trade names, service marks, service names, brands, trade dress, domain names, and logos, whether or not registered.

“Services” will have the meaning provided in the preamble and further described in Article II, subject to all limitations in the Agreement.

“Renewal Term” will have the meaning provided in Article I.

“Telehealth” means the utilization of two-way audio and video technology to provide healthcare services where an Avel professional is in a different location than the individual who is undergoing an assessment or the law enforcement office that is receiving other Services.

“Term” will have the meaning provided in Article I and will be inclusive of any Renewal Term(s).