

**AGENDA**  
**CITY COUNCIL MEETING**  
**CITY OF SHELBY**  
February 20, 2018  
7:30 P.M.

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**ROLL CALL OF MEMBERS**

**PLEDGE OF ALLEGIENCE**

**KLJ Call-In, Andy Evensen**

**APPROVAL OF MINUTES**

- Regular Council Meeting, 02/05/18 (pg 6-10)

**APPEARANCE REQUESTS**

- Agenda Items
  - Brian Lee, NMR LLC
  - Ron Buck, SVFD
- Non Agenda Items

**COMMITTEE REPORTS**

- Law Enforcement Report
- City-County Planning Board, 01/29/18 (pgs. 11-28)

**CITY ATTORNEY**

- Ordinance No. 832 – Council Meeting Time (1<sup>st</sup> rdg) (pg 29)
- Resolution No. 1972 – Self-Contained Breathing Apparatus (pg 30-31)
- MOU Water Line (Border Patrol to Airport) (pg 32-33)
- Industrial Park Ground Lease with NMR, LLC (pg 34-39)
- 2/7/18 Meeting with Devon Water, Inc (pg 40-46)

**CITY FINANCE OFFICER**

- City Judge's Report, January 2018 (pgs. 47-60)
- Bank Account Report (pg. 61), Budget Year to Date (pg. 62), Vendor Summary (pgs. 63-64), Enterprise Funds (pg. 65-68), Statement of Expenditures (pgs. 69-93), Revenues (pgs. 94-103), Budget Variance (pg. 104), Cash Flow Report (pg. 105), Investments Report (pg. 106), Project Budgets (pg. 107), January 2018
- City of Shelby Delinquent Taxes, 1/31/18 (pg. 108)

**CITY SUPERINTENDENT**

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**COMMITTEE DEVELOPMENT DIRECTOR**

- Program Income Plan (pgs. 109-110)

**OTHER MATTERS**

- Capital Improvements Plan pg 1-28 – Water System Discussion (pgs. 111-139)
- Email Correspondence (pgs. 140-144)
- Devon Water (pg. 145)
- Fuel Tax Allocation (pg. 146)
- MT Water Court Update (pgs. 147-151)

- Northern Transit Interlocal (pgs. 152-154)
- Shelby Rail Safety Improvement Project/FRA (pgs. 155-158)
- Hume Growth Solutions, Inc match (pg. 159)
- Hot Plant Revenue & Repairs (pgs. 160-167)
- Melissa Lewis Contract (pgs. 168-173)

ADJOURN

## CITY OF SHELBY MEETING SCHEDULE

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### February 20, 2018 (Due to President's Day Holiday)

7:30 p.m. Regular City Council Meeting

### February 26, 2018

6:30 p.m. Park & Recreation Meeting  
(Mayor, Superintendent, Rec Director,  
Aikins, Clark, Kimmet)

### March 5, 2018

7:00 p.m. Audit Committee  
(Mayor, Finance Officer, Clark, Tustian,  
Moritz)

7:30 p.m. Regular City Council Meeting

### March 12, 2018

7:30 p.m. City-County Planning Board  
(Mayor, Deputy City Clerk, City Planner,  
Casey, Clark)

## CITY COUNCIL PACKET LISTING

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### A. Agenda

### B. Agenda Items

1. Minutes of Regular Council Meeting, 2/05/18
2. Minutes of City-County Planning Board Meeting, 1/29/18
3. Ordinance No. 832 re: Council Meeting Time (1<sup>st</sup> rdg)
4. Resolution No. 1972 re: Self-Contained Breathing Apparatus
5. MOU Water Line (Border Patrol to Airport)
6. Industrial Park Ground Lease with NMR, LLC
7. 2/7/18 Meeting with Devon Water, Inc
8. City Judge's Report, January 2018
9. Bank Account Report, January 2018
10. Budget Year to Date, January 2018
11. Vendor Summary, January 2018
12. Enterprise Funds Report, January 2018
13. Statement of Expenditures, January 2018
14. Statement of Revenues, January 2018
15. Budget Variance, January 2018
16. Cash Flow Report, January 2018
17. Investments Report, January 2018
18. Project Budgets, January 2018
19. City of Shelby Delinquent Taxes, 1/31/18
20. City of Shelby Program Income Plan
21. City of Shelby Capital Improvements Plan pgs 1-28
22. 2/6/18 Emails from Gary McDermott re: Galena St medians
23. Devon Water-City of Shelby Engineering Cost Estimate
24. 2018 HB 473 City Fuel Tax Allocations
25. 2/7/18 Email from Abigail St Lawrence re: Montana Water Court Case No. 41P-191 & Information on Case 41P-247
26. 11/14/17 Northern Transit Interlocal Minutes & Information
27. Minutes of KLJ Shelby Rail Safety Improvement Project, 1/30/18
28. 12/20/16 Letter to Angela Belden Martinez, US Dept of Commerce re: Hemic Growth Solutions, Inc match
29. 2/9/18 Letter from Century Companies, Inc re: Hot Plant Revenue & Repairs
30. Melissa Lewis Contract

### C. Correspondence

1. 2/8/18 Letter to Area Nurseries re: Bid proposal

### D. Reports

- 1.

### E. Handouts

- 1.

## **Policy on Conduct and Manner of Addressing Council**

The public is invited to speak on any item after recognition by the presiding officer.

1. Public comments will be accepted only on items within the jurisdiction of the City of Shelby.
2. Comments shall be limited to 5 minutes per meeting, unless such time is extended by a majority vote of the Council members.
3. While the Council is in session, those in attendance must preserve order and decorum. No member of the public shall delay or interrupt the Council proceedings; disturb any member who may be speaking; or refuse to obey the orders of the Council or its presiding officer.
4. Prepared statements are welcome and should be given to the Finance Officer prior to a Council meeting. Prepared statements that are also read, however, shall be deemed unduly repetitious. All prepared statements for public hearings shall become part of the hearing record.
5. All remarks shall be addressed to the Council as a body and not to any member of the Council or Staff.
6. Public members recognized by the presiding officer, shall:
  - a. Stand, if able
  - b. For the record, give his/her name and address
  - c. If applicable, give the person, firm or organization he/she represents
  - d. Limit comments to the matter of fact
  - e. Address the Council as a body and not to any individual member of the Council or City Staff
  - f. Ask no questions of individuals who are Council members, staff or other public members, except through the presiding officer
  - g. Limit comments to a maximum of 5 minutes, unless such time is extended by a majority vote of Council members.

The Council thanks public members for respectfully and courteously providing constructive and valuable information.

MINUTES OF REGULAR COUNCIL MEETING OF THE SHELBY CITY COUNCIL  
HELD IN COUNCIL CHAMBERS  
February 5, 2018

Mayor McDermott called the meeting to order at 7:30 p.m.  
Present were: Debra Clark, Lyle Kimmet, Chip Miller, Luke Casey, Trent Tustian, Justin Aikins, and Bill Moritz, Council Members; Bill Hunt, City Attorney; Jade Goroski, Finance Officer; Lorette Carter, Community Development Director; Loren Skartved, City Superintendent; and Rob Tasker, Building Inspector. Absent and Excused: None

Other citizens present: Ron Buck, Todd Howell, Leslie Woldtvedt, Brian Lee, Teagan Tustian, Briana Tustian, Sandy Peers, Mike O'Brien, Gary Kiefer, Jim Yeagley, and Jennifer Van Heel.

PLEDGE OF ALLEGIANCE

OPEN PUBLIC HEARING GENERAL NEEDS ASSESSMENT

- Mayor McDermott opened the public hearing at 7:31 pm.

REGULAR MEETING MINUTES 1/16/2018

- MORITZ MADE A MOTION TO APPROVE THE 1/16/2018 MINUTES. SECONDED BY CASEY. VOTE AYES - CLARK, MORITZ, KIMMET, CASEY, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

APPEARANCE REQUESTS

- TEAGAN TUSTIAN - EAGLE SCOUT PROJECT  
Teagan presented his Eagle Scout Project to repair and refurbish the Horseshoe Pits.  
MORITZ MADE A MOTION TO APPROVE THE PLAN AND MATCH UP TO \$400 IN REPAIRS. SECONDED BY KIMMET. VOTE AYES - CLARK, MORITZ, KIMMET, CASEY, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

CLAIMS REPORT 1/31/2018

- MORITZ MADE A MOTION TO APPROVE THE 1/31/2018 CLAIMS REPORT. SECONDED BY CLARK. VOTE AYES - CLARK, MORITZ, KIMMET, CASEY, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

BUILDING INSPECTOR

- Rob Tasker reported he issued one new permit and there are eight open permits. Rob is working James Jones estate and

finished repairing the stairs at the Williamson Building to meet code.

#### COMMITTEE REPORTS

- Minutes of Safety Committee Meeting & Employee Quarterly Meeting 1/17/2018
- Minutes of Park & Recreation Meeting 1/29/2018

#### CLOSE PUBLIC HEARING GENERAL NEEDS ASSESSMENT

With no public comment Mayor McDermott closed the public hearing at 8:47pm. Mayor McDermott noted that over the next several meetings we will be reviewing the Capital Improvements Plan in detail.

#### CITY ATTORNEY

- INDUSTRIAL PARK GROUND LEASE  
CLARK MADE A MOTION TO APPROVE THE LEASE AS AMENDED. THE LEASEE WILL HAVE THE OPTION TO PURCHASE THE GROUND AT \$30,000/ACRE FOR THE FIRST 5 YEAR TERM AND THE REMAINING 5 YEAR TERMS AT MARKET VALUE THAT WILL BE TIED TO LIKE PROPERTY SALES IN THE INDUSTRIAL PARK. SECONDED BY MORITZ. VOTE AYES - CLARK, MORITZ, KIMMET, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE. ABSTAIN - CASEY.
- DRAFT MOU WATER LINE (BORDER PATROL TO AIRPORT)  
MORITZ MADE A MOTION TO APPROVE THE DRAFT AS PRESENTED. SECONDED BY TUSTIAN. VOTE AYES - CLARK, MORITZ, KIMMET, CASEY, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

#### CITY FINANCE OFFICER

- Payroll Expense by Department 1/2018

#### CITY SUPERINTENDENT

- Mower Purchase  
MORITZ MADE A MOTION APPROVING THE \$14,050 PURCHASE. SECONDED BY KIMMET. VOTE AYES - CLARK, MORITZ, KIMMET, CASEY, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.
- Sweeper Filter  
MORITZ MADE A MOTION APPROVING THE \$4993 PURCHASE. SECONDED BY TUSTIAN. VOTE AYES - CLARK, MORITZ, KIMMET,

CASEY, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE.  
ABSTAIN - NONE.

Loren Skartved reported the crew has been busy working on blade and servicing other equipment. The engineers finished their testing on well #13 and will test other wells. Loren had a meeting with Montana Rural Water representative working on a plan for "what if" scenarios and how to handle situations.

COMMUNITY DEVELOPMENT DIRECTOR

- Program Income Plan - will vote at next meeting
- The Council is presented with a final draft of the Program Income Plan for approval. Beginning in 1999, the city had several housing grant from Home Investment Partnership Program - HOME and CDBG for down payment assistance and housing rehab for low to moderate income people. The old programs required a repayment of the money loaned at zero interest when homeowners sold or moved out of their assisted home. This money is held within the city's accounts or sent back to the Department of Commerce as Program Income. I had reached out to the Department of Commerce HOME/CDBG program specialists on the recaptured monies. They asked us to draft a Program Income Plan in which the funds could be reinvested in the community. These program have strict eligible programs from which to use the funds. We no longer having a housing program as regulations made it not feasible, but there are many public facilities that need ADA improvements. With approval of the Program Income Plan, the city can then seek approval to work on our ADA accessibility priorities.
- Storm Water: Revisions were made and submitted to the CDBG application for Phase II work on the storm water project.
- FRA: KLJ coordinated a review of the project with BNSF/Amtrak, MDT, the City and FRA. The group discussed the logistics of the projects and alternative safety measures; entity needs and responsibilities; and time frame for approval or work. Following the meeting, Mayor McDermott, Jade and I met with KLJ engineers to review the safety measure alternatives for the Galena and Highway 2 crossings. KLJ is researching the potential of medians as an alternative to wayside horns and the estimated cost of quad gates.
- The Montana Accessible Playground Grant application was sent in early January.

- The Montana Fish Wildlife & Parks Recreational Trail grant for trail maintenance equipment and development of a picnic area was submitted. I want to thank Robyn Skillman, teacher at Shelby High School. She enlisted her students in writing letters of support which were very thoughtful. I included over 30 letters of support in the application.
- The Shelby Volunteer Fire Department has submitted an application for funding from the Department of Homeland Security Assistance to Firefighters Grant.
- We are still waiting on the Department of Commerce Planning Division which we applied for matching funding for the research and submission of our Main Street business corridor to the National Historic Register. We did receive Montana Main Street Program planning funding.
- The 3rd session of Leadership Toole County was January 16th. The area of discussion was financial, transportation, energy and agriculture. The final session of Leadership Toole County will be Tuesday, February 20th. Discussion will include medical and health services and recreation and tourism as well a final wrap up to the sessions and call to action.
- I continue work with Toole County on the Crime Victim Advocacy Program, completing progress and financial reporting. They are currently looking for 2 volunteers to assist the program director. She currently has nearly 50 active cases.
- I have visited with Barbara Stiffarm of Opportunities Link, the overseeing agency on the HiLine Arts Trail. They have asked us to continue the search for interactive signage for Champions Park. I continue my search.
- With the closing of the Family Services office, Sheriff Whitt, Commissioner Brandon, Pastor Chad Scarborough and myself will be meeting Tuesday, February 6th to discuss a resource directory to assist those in need.

#### OTHER MATTERS

- Carousel Rest Area of Shelby Grant
- Air Pack Bids  
AFTER DISCUSSION OF THE SAFETY MEASURES FOR BOTH BIDS MORITZ MADE A MOTION TO APPROVE THE MES BID FOR \$187,725. SECONDED BY TUSTIAN. VOTE AYES - CLARK, MORITZ, CASEY, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE. ABSTAIN - KIMMET.

- Regular council meeting time - City Attorney Hunt will draft a resolution of intent to change our normal council meeting time.
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- Northern Transit Interlocal  
MORITZ MADE A MOTION TO APPROVE THE CITY'S \$5,000 ANNUAL COMMITMENT. SECONDED BY KIMMET. VOTE AYES - CLARK, MORITZ, CASEY, TUSTIAN, AIKINS, KIMMET. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

ADJOURN

AT 9:55 P.M. CLARK MADE A MOTION TO ADJOURN THE MEETING. SECONDED BY KIMMET. VOTE AYES - CLARK, MORITZ, CASEY, KIMMET, TUSTIAN, AIKINS. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

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GARY MCDERMOTT, MAYOR

ATTEST:

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JADE GOROSKI, FINANCE OFFICER

# MINUTES OF THE CITY-COUNTY PLANNING BOARD

Held at Shelby City Hall

February 12, 2018

7:30 p.m.

Present were: Gary McDermott, mayor; Luke Casey and Debra Clark, council members; Guy Dubois and Gary Sulenes, planning board members; Tammy Pederson, secretary and Jim Yeagley, city planner.

## 1/08/2018 Minutes

**MOTION BY DUBOIS. SECONDED BY CLARK. BOARD UNANIMOUSLY APPROVED.**

### Shelby Rail Park Major Subdivision

The board reviewed the Staff Report for a subdivision review of property owned by the City of Shelby and NETA. The applicants are requesting subdivision review to subdivide 122.73 acres into 19 lots ranging from 2.35 acres to 34.15 acres in size. The existing land use is an industrial area.

Mayor McDermott reviewed an email from KLJ (attached hereto). The subdivision is subject to review by DEQ for its' water, wastewater and storm water infrastructure. The storm water regulations state that runoff from the site cannot discharge at a greater rate following development of the site than it does prior to development. There are two ways this detention could be achieved. Option 1 would require the owner of the lots to hire an engineer to design the storm water system and size of the detention pond which would use up some of the space on their property. Option 2 is not in the best interest of the integrity of the railroad embankment because the pond would have water standing immediately adjacent to the embankment which would not be good for the longevity of the embankment. So NETA would like to request a deviation to eliminate the storm water detention requirement for the subdivision. Since the City owns the property which would be impacted NETA also asked if the City would be willing to provide a letter stating it would accept the impact of the additional runoff on its' property.

The City of Shelby submitted a Public Water and Sewage System Deviation Request (attached hereto) to DEQ to obtain approval for two new projects, a new car wash facility and a railroad out facility. The DEQ approved the deviation request with the condition that no wastewater connections be authorized until the City has awarded the construction contract for the wastewater treatment plant upgrades.

THE BOARD RECOMMENDED APPROVAL OF THE SUBDIVISION REVIEW TO THE CITY COUNCIL WITH THE FOLLOWING CONDITIONS:

1. Address the issue of a dead end at the south end of Burlington Avenue as to whether it needs a cul-de-sac or turn around area for emergency personnel and general traffic.
2. Address the storm water infrastructure to insure that the expense is either on the property owner or negotiated with NETA at the time of sale, but not on the City or taxpayers.
3. The plat needs to reflect that the road name be changed from "Rail Park Road" to "Burlington Avenue".
4. Remove the certificate of final plat approval of the Toole County Commissioners off of the plat since the property is in the city limits. NETA will pay \$2,450 to cover the preliminary and final subdivision plat review fees.

MOTION BY DUBOIS. SECONDED BY CASEY. UNANIMOUSLY APPROVED.

Another public hearing will be held on this subdivision review at the next regular city council meeting Tuesday (due to holiday), February 20<sup>th</sup>, at 7:30 p.m. at City Hall.

MEETING ADJOURNED AT 8:30 P.M.

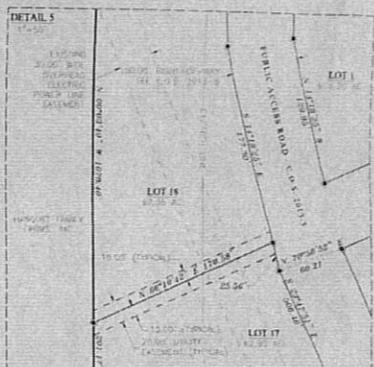
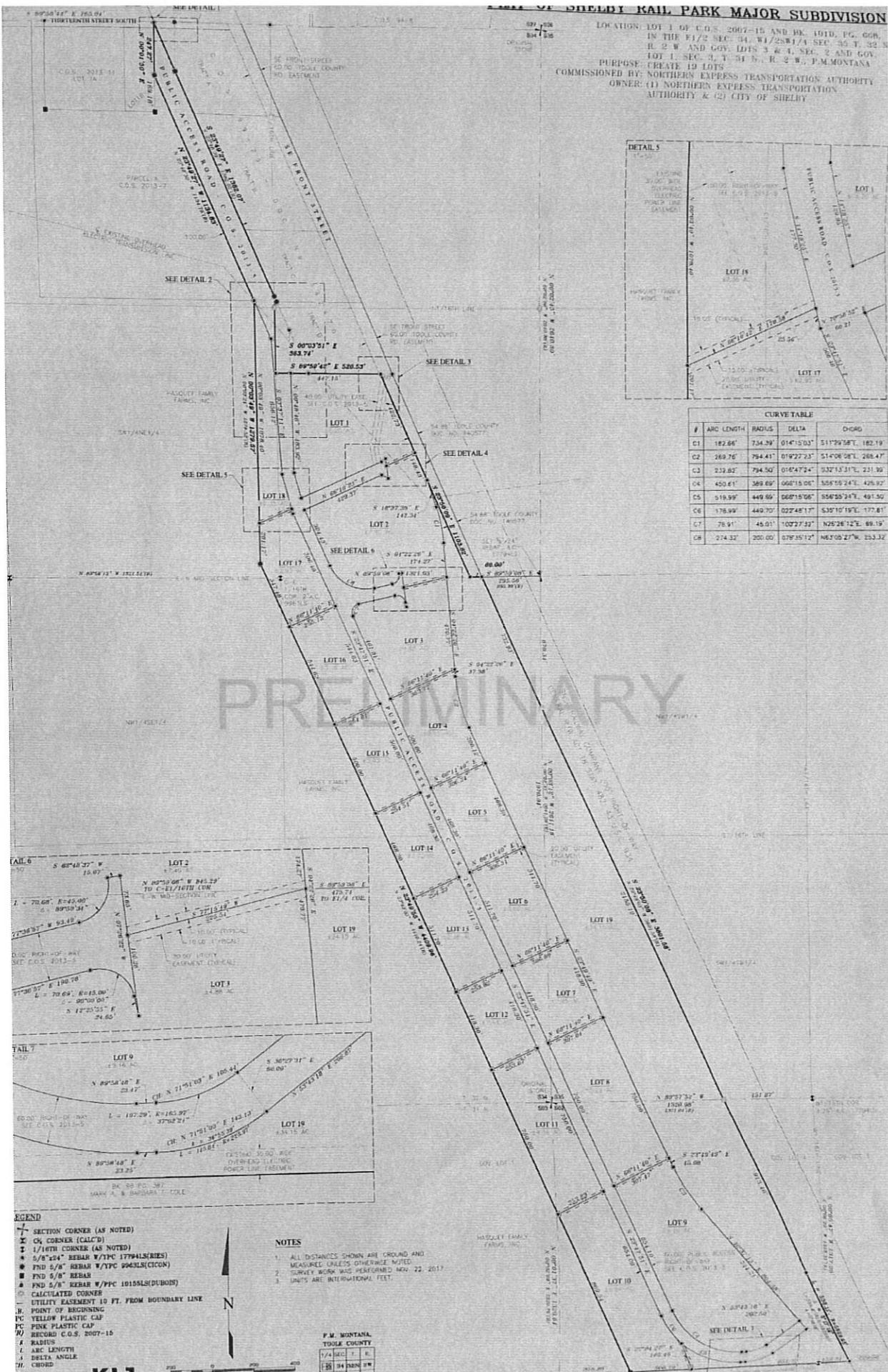
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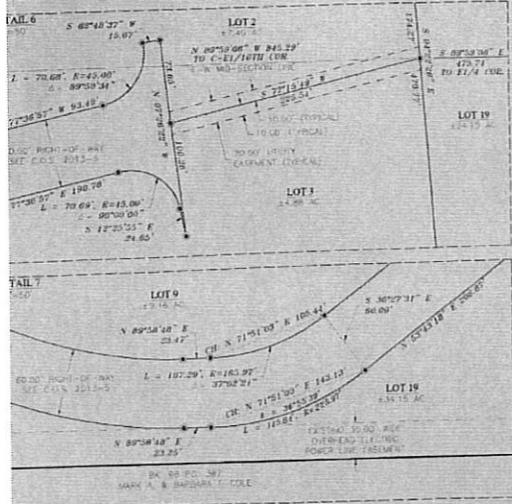
Tammy Pederson, Secretary

# SHELBY RAIL PARK MAJOR SUBDIVISION

LOCATION: LOT 1 OF C.O.S. 2007-15 AND BK. 101D, P.C. 606  
 IN THE E1/2 SEC. 34, W1/2SW1/4 SEC. 35 T. 32  
 R. 2 W. AND GOV. LOTS 3 & 4, SEC. 2 AND GOV.  
 LOT 1, SEC. 3, T. 31 N., R. 2 W., P.M. MONTANA  
 PURPOSE: CREATE 19 LOTS  
 COMMISSIONED BY: NORTHERN EXPRESS TRANSPORTATION AUTHORITY  
 OWNER: (1) NORTHERN EXPRESS TRANSPORTATION  
 AUTHORITY & (2) CITY OF SHELBY



#	ARC LENGTH	RADIUS	DELTA	CHORD
C1	182.86	734.39	01°15'03"	511'29"81, 182.19'
C2	269.76	794.41	01°27'23"	514'06"81, 268.47'
C3	232.82	794.50	01°47'24"	532'13"31, 231.30'
C4	450.61	389.69	06°15'08"	558'55"24, 425.92'
C5	519.99	449.69	06°15'06"	558'55"24, 491.50'
C6	178.99	449.70	02°24'17"	535'10"18, 177.81'
C7	78.91	45.01	10°27'37"	102'26"12, 88.19'
C8	274.37	200.00	07°35'12"	102'05"27, 253.32'



**LEGEND**

- SECTION CORNER (AS NOTED)
- CH CORNER (CALC)
- 1/4TH CORNER (AS NOTED)
- 5/8" x 5/8" REBAR W/TPC 17794LS(RIES)
- 5/8" x 5/8" REBAR W/TPC 0063LS(CIGON)
- 5/8" x 5/8" REBAR
- 5/8" x 5/8" REBAR W/PPC 1015LS(DUBOIS)
- CALCULATED CORNER
- UTILITY EASEMENT 10 FT. FROM BOUNDARY LINE
- POINT OF BEGINNING
- PC YELLOW PLASTIC CAP
- PT PINK PLASTIC CAP
- RECORD C.O.S. 2007-15
- RADIUS
- ARC LENGTH
- DELTA ANGLE
- CHORD

**NOTES**

- ALL DISTANCES SHOWN ARE GROUND AND MEASURED UNLESS OTHERWISE NOTED.
- SURVEY WORK WAS PERFORMED NOV. 22, 2017.
- UNITS ARE INTERNATIONAL FEET.

P.M. MONTANA  
TOOLE COUNTY

PRELIMINARY

STAFF REPORT  
SHELBY RAIL PARK MAJOR SUBDIVISION  
February 12, 2018

GENERAL INFORMATION

APPLICANT(S): Northern Express Transportation Authority  
City of Shelby  
112 1<sup>st</sup> Street South  
Shelby, MT 59474-0567

OWNER(S): Same

REQUESTED ACTION: Subdivision review

PURPOSE: To create 19 lots

ZONING: None

LEGAL DESCRIPTION: Lot 1 of Certificate of Survey 2007-15;  
E1/2 Section 34; W1/2SW1/4 Section 35 Township  
32 North; Range 2 West; Gov't Lots 3 & 4 Section  
2; Gov't Lot 1 Section 3 Township 31 North Range  
2 West

EXISTING LAND USE: Industrial Park

PROPOSED LAND USE: Industrial Park

SURROUNDING  
LAND USES: North - Industrial  
South - Open Space (grazing)  
East - City of Shelby (sewage lagoons)  
West - Agriculture (grazing; crop land)

APPLICABLE REGULATIONS: Montana Subdivision and Platting Act, Title 76,  
Chapter 3 Montana Codes Annotated. Uniform  
Standards for Survey Monumentation, Certificates  
of Survey and Final Subdivision Plats, ARM  
24.183.1101, 1104, and 1107. The Shelby City-  
County Subdivision Regulations, General  
Procedures, Minor Subdivisions

ULTIMATE FACTS: The Shelby City-County Planning Board and the  
Shelby City Council shall consider the following  
factors in issuing recommendations and decisions:

1. Relevant evidence relating to the public health, safety, and welfare.
2. Findings of Fact that discuss and weigh the following primary review criteria:
  - A. Effect on Agriculture
  - B. Effect on Agricultural Water User Facilities
  - C. Effect on Local Services
  - D. Effect on the Natural Environment
  - E. Effect on Wildlife and Wildlife Habitat
  - F. Effect on the Public Health and Safety
3. Compliance with:
  - A. The survey requirements in Part 4, Chapter 3 of the Montana Subdivision and Platting Act.
  - B. The Shelby City-County Subdivision Regulations.
4. The provision of easements for the location and installation of necessary utilities.
5. The provision of legal and physical access to each parcel within the subdivision.

#### **FINDINGS OF FACT**

#### **PRIMARY REVIEW CRITERIA**

The applicants are requesting subdivision review to subdivide a 122.73-acre parcel into 19 lots ranging from 2.35-acres to 34.15-acres in size. The existing land use is an industrial park that includes the following:

- A main railroad spur, a secondary railroad spur offset by 120 feet and parallel to the mainline, a third rail spur to the north along the existing mainline and a fourth spur consisting of rail reconstruction and 15,000 linear feet of track.
- Spur No. 1 – Approximately 4,250 linear feet of rail. Approximately 2,360 linear feet of railroad spur. The mainline spur allows for the loading and unloading of a 68-car train without having to break it into segments.
- Spur No. 2 (Secondary Spur) – Approximately 4,960 linear feet of track.
- Spur No. 3 – Approximately 4,250 linear feet of track.
- Spur No. 4 – 1,200 linear feet of reconstructed existing rail spur.
- An additional 3,850 linear feet of rail and switch connections to the mainline.

## Effect on Agriculture

### Definition of Agriculture

"Agriculture" means:

- (a) all aspects of farming, including the cultivation and tillage of the soil;
- (b) (i) dairying; and  
(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities.
- (c) the raising of livestock, bees, fur-bearing animals, or poultry; and
- (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market

"Agricultural activity" means a condition or activity that provides an annual gross income of not less than \$1,500 or that occurs on land classified as agricultural or forest land for taxation purposes. The condition or activity must occur in connection with the commercial production of farm products and includes but is not limited to:

- (a) produce marketed at roadside stands or farm markets;
- (b) noise;
- (c) odors;
- (d) dust;
- (e) fumes;
- (f) operation of machinery and irrigation pumps;
- (g) movement of water for agricultural activities, including but not limited to use of existing county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities;
- (h) ground and aerial application of seed, fertilizers, conditioners, and plant protection products;
- (i) employment and use of labor;
- (j) roadway movement of equipment and livestock;
- (k) protection from damage from wildlife;
- (l) prevention of trespass;
- (m) construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses;
- (n) conversion from one agricultural activity to another, provided that the conversion does not adversely impact adjacent property owners;
- (o) timber harvesting, thinning, and timber regeneration;
- (p) burning and stubble and slash disposal; and
- (q) plant nursery and commercial greenhouse activities.

(2) "Commercial production of farm products" means the growing, raising, or marketing of plants or animals by the owner, owner's agent, or lessee of land that provides an annual gross income of not less than \$1,500 or that occurs on land that is classified as agricultural or forest land for taxation purposes. The term includes but is not limited to:

- (a) forages and sod crops;
- (b) dairy and dairy products;

- (c) poultry and poultry products;
- (d) livestock, including breeding, feeding, and grazing of livestock and recreational equine use;
- (e) fruits;
- (f) vegetables;
- (g) flowers;
- (h) seeds;
- (i) grasses;
- (j) trees, including commercial timber;
- (k) fresh water fish and fish products;
- (l) apiaries;
- (m) equine and other similar products; or
- (n) any other product that incorporates the use of food, feed, fiber, or fur.

The subdivision will not remove any agricultural or timber land. There should be no conflicts with nearby agricultural operations. The proposed subdivision will not interfere with any neighboring agricultural operations.

#### **Effect on Water User Facilities**

The proposed subdivision will not interfere with any irrigation system or present any interference with agricultural water user facilities or operations in the vicinity.

#### **Effect on Local Services**

Local services are any and all services or facilities that local government entities are authorized to provide.

The proposed subdivision will receive law enforcement services from the Toole County Sheriff's Department. Fire protection services will be provided by the South Toole County Volunteer Fire Department. Road maintenance will be provided by the city of Shelby. No extension of public roads will be required to serve the proposed subdivision and there should be a negligible impact on the cost of road maintenance.

There will be no adverse impacts on local services.

#### **Effect on the Natural Environment**

Natural environment means the physical and biological features of an area that may be altered by human activity including topography, soil, geology, vegetation, and surface and groundwater.

The vegetative communities found within the subdivision consist of native rangeland including the following plants: western wheatgrass (*Agropyron smithii*), needle-and-thread (*Stipa comata*), blue grama (*Bouteloua gracilis*), prairie junegrass (*Koeleria pyramidata*), green needlegrass (*Stipa viridula*), sedges (*Carex spp.*), sandberg bluegrass (*Poa secunda*), cudweed sagewort

(*Artemisia ludoviciana*), fringed sagewort (*Artemisia frigida*), dense clubmoss (*Selaginella densa*), silver sagebrush (*Artemisia cana*), and woods rose (*Rosa woodsii*).

These plant communities should not be adversely impacted by this subdivision.

#### **Effect on Wildlife Habitat and Wildlife Habitat**

Wildlife means, animals that are not domesticated.

Wildlife habitat means the sum of environmental conditions in a specific place that is occupied by a wildlife species or population.

The proposed subdivision is located in an area of significant wildlife habitat, however this subdivision is not expected to adversely impact wildlife habitat.

#### **Effect on Public Health and Safety**

Public health and safety refers to natural or man-made conditions that may pose a physical threat to either future residents or the general public.

The proposed subdivision does not appear to be subject to man-made hazards such as high voltage power lines, high-pressure gas lines or nearby industrial mining activity.

#### **WATER AND SANITATION INFORMATION**

There are no:

(A) flood plains;

(B) springs;

(D) irrigation ditches; or

(E) mixing zones within 100 feet outside of the exterior property line of the subdivision and on the proposed lots.

Wetland mitigation is currently being conducted in association with this subdivision. The wetland mitigation consists of the development of an approximately three acre wetland mitigation site at a location immediately southwest of the city of Shelby's existing sewage treatment lagoons. The western boundary of the mitigation site will follow the BNSF property line and tie into the natural topography of the surroundings. The mitigation site comprises an area of about 200 feet by 940 feet. The wetland mitigation site currently supports a small wetland. The wetland will be expanded by excavating the upland landscape and merging it with the existing wetland and associated natural drainage system. The wetland will include side slopes of approximately 3:1 and a varying bottom elevation to allow for various water depths.

**Description of the proposed subdivision's water supply systems**

The subdivision currently is served by public systems as defined in rules published by the department of environmental quality

**Description of the proposed subdivision's storm water system**

Storm water will be accommodated by the existing drainage system. As properties are developed, a storm drainage plan will have to be submitted and approved by the Montana Department of Environmental Quality.

**Description of the proposed subdivision's solid waste disposal systems**

Solid waste is provided by the city of Shelby landfill

**Description of the proposed subdivision's wastewater treatment systems**

Currently, the city of Shelby's waste water treatment system is at capacity. No wastewater connections are currently authorized by the Montana Department of Environmental Quality, until the city has awarded the construction for the waste water treatment plant upgrades.

**PUBLIC NOTICE AND PUBLIC HEARING INFORMATION**

Public hearing notices were published in the *Shelby Promoter* on January 25 and February 1, 2018. Letters were mailed to the adjacent landowners on January 31, 2018 in accordance with the Shelby City-County Subdivision Regulations.

**REQUIREMENTS OF THE MONTANA SUBDIVISION AND PLATTING ACT, UNIFORM STANDARDS FOR MONUMENTATION, AND LOCAL SUBDIVISION REGULATIONS**

The subdivision meets the requirements of the Montana Subdivision and Platting Act. The subdivider, Toole County and the city of Shelby have complied with the subdivision review and approval procedures set forth in the Shelby City-County Subdivision Regulations.

**PARK LAND REQUIREMENT**

No parkland or cash-in-lieu of parkland dedication is required for subdivision into parcels that are all nonresidential (76-3-621 (3) (b) M.C.A.)

**EASEMENTS FOR UTILITIES**

All required easements and the instruments of easement conveyance will be filed with the Toole County Clerk and Recorder with the final plat.

## **LEGAL AND PHYSICAL ACCESS**

Legal and physical access will be from Burlington Road, a city maintained road.

## **DECISION ALTERNATIVES:**

The alternative selected must consider the reasonableness of the subdivision, the relationship to existing conditions, circumstances, established land use goals, and must also consider the findings of fact.

1. Approve the request.
2. Approve the request with conditions:
  - A. the surveyor removes the certificate of final plat approval of the Toole Commissioners;
  - B. payment of \$2450 to cover the preliminary subdivision plat review fee and final plat review fee;
  - C. Change the road name from "Rail Park Road" to Burlington Road."
3. Deny the request.
4. Table the request for further study.

## Gary McDermott

---

**From:** Gary McDermott <garym@3rivers.net>  
**Sent:** Monday, February 12, 2018 5:09 PM  
**To:** 'Scott Pfahler'  
**Cc:** 'Lorette Carter'; 'Jade Goroski'; 'huntlaw@3rivers.net'  
**Subject:** RE: multimodal hub subdivision storm water

Scott: I am skeptical, until I fully understand the potential current liability to the City as well as future potential liability by way of government regulation or whatever. In any event, in my opinion, this has to be presented to the City-County planning committee and then on to City-Council for their review and approval. The City County planning board is meeting tonight at 7:30 to vote on the subdivision. I will take your email to the meeting tonight and discuss with the committee and Jim Yeagley. I wished we had known about this sooner.

Gary Mc Dermott

---

**From:** Scott Pfahler [<mailto:Scott.Pfahler@kljeng.com>]  
**Sent:** Monday, February 12, 2018 4:02 PM  
**To:** Gary McDermott  
**Cc:** 'Lorette Carter'; 'Jade Goroski'  
**Subject:** multimodal hub subdivision storm water

Hi, Gary.

As you know, KLJ is working on a 19-lot subdivision at the multimodal hub in Shelby. The subdivision is subject to review by the Montana DEQ for its' water, wastewater, and storm water infrastructure. The storm water regulations state that runoff from the site cannot discharge at a greater rate following development of the site than it does prior to development. In order to meet this requirement, runoff must be detained on-site via the construction of detention ponds somewhere on site. There are two ways in which this detention could be achieved:

1. The developer of each lot construct a storm water system with a detention pond and control discharge from the lot so that it does not exceed the pre-development flow rate.
2. Construct storm water detention ponds at the inlet of the culverts beneath the railroad which drain the site. Runoff which discharges from these culverts eventually enters one of several drainage structures beneath the railroad immediately to the east which are connected to a ditch/channel between the railroad and the wastewater lagoons (the ditch will be regraded as part of the storm water project this summer).

Option 1 would require the owner of the lots to hire an engineer to design the storm water system and size the detention pond which would use up some of the space on their property. The Port does not believe this is a good option because it would decrease the usable space of each lot and increase development cost for the developer of each lot which would ultimately detract from the property value.

Option 2 is not in the best interest of the integrity of the railroad embankment because the pond would have water standing immediately adjacent to the embankment which would not be good for the longevity of the embankment. Additionally, this option would cost the Port additional money for construction of the detention ponds and storm water control structures next to the drainage culverts.

So, the Port would like to request a deviation to eliminate the storm water detention requirement for the subdivision. The impact of this deviation is that additional runoff (from development of the site) would be conveyed through the railroad culverts and into the ditch between the lagoons and the railroad. The ditch eventually discharges into a wetland which was constructed as part of the original multimodal hub site construction. I have discussed this deviation with the MT DEQ and have been told that there is a good chance it would be accepted as long as there is

permission from the landowner who would be impacted by the increased runoff; and, the City of Shelby owns the property which would be impacted. Therefore, the DEQ said it would be advised that the City provide a letter stating that it would accept the impact of the additional runoff on its' property. Would the City be interested in allowing the additional runoff onto its' property?

This regulation is typically more important for urban developments which would result in increased runoff onto streets or storm drainage systems. The storm water which the DEQ requires to be detained is that which would be generated by the 2-year, 1-hour storm event. We have not calculated any flow rates, but the increased runoff is probably on the order of a couple cubic feet per second (cfs), at most.

Let me know if this is something the City would be interested in allowing, and I could help prepare a letter for including with the deviation request. Give me a call if you have any questions.

Thanks,

Scott Pfahler, PE, CFM



406-441-5789 Direct  
406-461-0839 Cell  
2969 Airport Road, Suite 1B  
Helena, MT 59601-1201  
[kljeng.com](http://kljeng.com)

ATTACHMENT A

OK-KLJ  
OK-SUP

DEVIATION NUMBER \_\_\_\_\_

DEQ2-1173

APPROVED  
Montana Department of  
Environmental Quality  
*Russell V. [Signature]*  
Reviewer Date



**PUBLIC WATER AND SEWAGE SYSTEM DEVIATION REQUEST  
FOR DEVIATIONS SUBMITTED BY A PROFESSIONAL ENGINEER**  
Sanitation in Subdivision and Public Water Supply Acts

Project Name: City of Shelby Sanitary Restriction Deviation DEQ or EQ Number (if known): 18-1715

Engineer Name: KLJ

- Circular:
- DEQ-1 Water Works
  - DEQ-2 Wastewater Facilities
  - ARM 17.36.
  - DEQ-3 Small Water Systems
  - DEQ-4 Subsurface Wastewater Treatment

RECEIVED  
JAN 30 2018

STANDARD OR RULE NUMBER: Chapter 90, Section 93.36

**EXISTING STANDARD/RULE LANGUAGE:**

The following tables summarize the criteria for facultative and aerated ponds. "Overall System Minimum Detention Time, days 180."

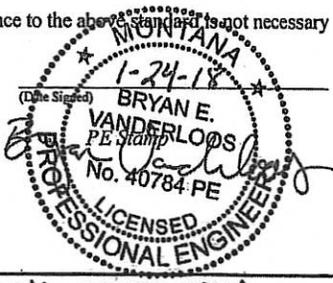
**PROPOSED STANDARD RULE LANGUAGE:**

The following tables summarize the criteria for facultative and aerated ponds. "Overall System Minimum Detention Time, days 122."

**JUSTIFICATION:** *attach additional information as necessary*  
See attached Memorandum.

In accordance with ARM 17.38.101 (4) (j), I certify that strict adherence to the above standard is not necessary to protect public health and the quality of state waters.

*Bryan Vanderloos*  
(Signature of Professional Engineer)



Montana P.E. Number 40784

**For Department Use Only:**  
**Review Engineer's Recommendation:**

APPROVAL IN CONDITION THAT NO ADDITIONAL WASTEWATER CONNECTIONS BE AUTHORIZED UNTIL THE CITY HAS AWARDED THE CONSTRUCTION CONTRACT FOR THE WWTP UPGRADES.

*JEREMY PELLINSKI*

# MEMORANDUM

**Date:** February 7, 2018  
**To:** Deviation Review Committee  
**From:** Jeremy Perlinski, PE *JAP*  
**Project:** Shelby Sanitation Restriction Deviation, EQ#18-1715  
**Subject:** Request for Deviation – DEQ-2, Section 93.36

**Current Circular Language:**

DEQ-2, Section 93.36 Pond Design Criteria (Table 93-1)

The overall, minimum detention time for facultative ponds shall be 180 days.

**Proposed Circular Language Change:**

The overall, minimum detention time for facultative ponds shall be 122 days.

**Justification for change:** See attached review comments for consultant's design memorandum and WWTP data from 2014-2017.

**Comments:** The Shelby WWTP is a facultative lagoon system that has routinely met its effluent limits for the past four years despite having a hydraulic retention time during that time that ranges from 129 to 149 days depending on influent flows. These values are significantly below the 180 days of HRT required by DEQ-2, Section 93.36 for facultative ponds. The exception to this good performance was the spring of 2017 where the facility had a few violations for BOD (concentration and percent removal) and E. coli. In recent years, the City has chosen to store wastewater in the lagoons during the winter months to minimize the possibility of violating their discharge permit. During the spring of 2017, the City had to begin discharging a month earlier than normal which could have resulted in the noted violations.

As described in the attached document, the City would like to obtain approval for two new projects that would discharge a little over 20,000 gpd to the wastewater system. While this additional flow would only reduce HRT by another 7 days from the current capacity, it may also cause the City to start discharging from the facility even sooner in the spring which could possibly lead to further effluent violations. The City has been working with the SRF program to fund an upgrade project that will increase capacity of the existing facultative ponds and install UV disinfection. The project is currently out to bid with a scheduled opening date of February 26, 2018. The City intends to award the contract at its Council meeting on March 19, 2018 and complete construction by the end of October 2019. Although approval of this deviation will lead to increased flows (and possible effluent violations) at the facultative lagoon, the City continues to make positive strides to upgrade their wastewater system in order to accommodate growth in the community.

The submitted information meets the requirements the Department outlined last summer regarding connection of new sewer services via the deviation process. A meeting was held with DEQ staff (Tim Davis, Kari Smith, Rachel Clark, Terry Campbell, Jeremy Perlinski) on February 6<sup>th</sup> to discuss this deviation request. It was decided that approval of this deviation would require a condition that the City award the construction contract for the WWTP upgrades prior to allowing these new connections to the wastewater system. Given that award should be made next month, this timeframe should not upset the anticipated timing of the two projects which are scheduled to start in the summer.

**Recommendation:** I recommend approval of the deviation with the condition that no ~~additional~~<sup>JAP</sup> wastewater connections be authorized until the City has awarded the construction contract for the WWTP upgrades.

**Clarification regarding MFE eligibility (requested by Rachel Clark):** Upon award of the contract, the City may file a Municipal Facilities Exclusion for the two connections described above if the projects meet the other eligibility requirements outlined in MCA 76-4-127. Certification provided under MCA 76-4-127 (2)(h) needs to state, "Adequate municipal facilities will be provided in accordance with the conditions of Deviation x-xxx."

**Shelby Sanitation Restriction Deviation**

**EQ# 18-1715**

**Owner: City of Shelby, MT**

**Engineer: KLJ**

**Review Comments**

1. Preliminary Engineering Report (PER) written in 2014 stated average day flows to the WWTP were approximately 332,400 gallons per day (gpd). PER quantified the overall capacity of the WWTP at 46,757,000 gallons which equates to roughly 140 hydraulic retention time (HRT) at current flows. Section 93.36 in DEQ-2 requires 180 days HRT for facultative lagoons. Current treatment capacity at 180 days HRT is approximately 259,800 gpd.
2. Influent flow measurement results for 2016 show annual average day flow of 314,659 gpd resulting in HRT of about 149 days. Wet weather flow in May and June of 2017 measured 362,540 gpd and 315,492 gpd, respectively. Calculated HRT for June 2017 would be 129 days. These flow rates were similar to submitted DMR data for that time period.
3. Performance of the existing WWTP has been steady over the past four years with some recent effluent violations in 2017 for BOD (concentration & percent removal) and E. coli. See attached summary of influent and effluent DMR data from 2014 thru 2017.
4. The City has been working with SRF to fund an upgrade to the WWTP to increase lagoon capacity and add UV disinfection. A new secondary cell will be added (33,262,000 gal) which will bring total system volume to a little over 80 million gallons and will allow the City to treat an average flow of 444,550 gpd at an HRT of 180 days. The City expects to bid the lagoon upgrade project in February 2018 and complete construction in October 2019.
5. There are two new projects that have been proposed to the City which would require connection to the existing wastewater collection system. One is a new car wash facility that is anticipated to discharge roughly 20,000 gpd to the system. There is likely very little load associated with this discharge, but may require some level of pre-treatment to limit the amount of sediment, oil and other constituents from entering the sewer system. The other project is a rail load out facility that serves 10 employees and would only contribute about 130 gpd of residential strength wastewater. The engineer estimates the maximum day flow to the WWTP (assuming June 2017 base flow) would be about 382,700 gpd with the addition of these new connections which would reduce the HRT in the lagoon to 122 days. Both projects are anticipated to begin construction in summer 2018 and be completed in the fall.

Shelby WWTF  
Summarized DMR Data  
2014 - 2017

2014 Month	INFLUENT			EFFLUENT					
	Flow (mgd)	BOD5 (mg/L)	TSS (mg/L)	Flow (mgd)	BOD5 (mg/L)	BOD5 % Removal	TSS (mg/L)	TSS % Removal	E. Coli (cfu/100 mL)
Jan	NA	NA	NA	No Discharge					
Feb	NA	210	176	No Discharge					
Mar	NA	270	176	No Discharge					
Apr	NA	220	788	No Discharge					
May	0.479	360	753	0.305	2.7	99.3%	15.9	97.9%	1.0
Jun	0.421	520	820	0.371	5.6	98.9%	10.7	98.7%	2.5
Jul	0.361	180	286	0.120	23.5	86.9%	2.0	99.3%	4.9
Aug	0.272	210	328	0.147	5.7	97.3%	0.1	100.0%	10.7
Sep	0.294	320	417	0.088	4.6	98.6%	0.9	99.8%	7.6
Oct	0.418	200	528	0.139	4.3	97.9%	0.1	100.0%	1.8
Nov	0.471	210	170	0.141	5.1	97.6%	1.1	99.4%	2.4
Dec	0.300	190	238	No Discharge					
Min	0.272	180	170	0.088	2.7	86.9%	0.1	97.9%	1.0
Max	0.479	520	820	0.371	23.5	99.3%	15.9	100.0%	10.7
Avg	0.377	263	425	0.187	7.4	96.6%	4.4	99.3%	4.4

2015 Month	INFLUENT			EFFLUENT					
	Flow (mgd)	BOD5 (mg/L)	TSS (mg/L)	Flow (mgd)	BOD5 (mg/L)	BOD5 % Removal	TSS (mg/L)	TSS % Removal	E. Coli (cfu/100 mL)
Jan	0.271	370	560	No Discharge					
Feb	0.275	460	672	No Discharge					
Mar	0.296	200	236	No Discharge					
Apr	0.303	350	1200	No Discharge					
May	0.361	310	414	0.413	13.8	95.5%	13.8	96.7%	4.5
Jun	0.383	260	400	0.583	4.3	98.3%	4.8	98.8%	4.4
Jul	0.502	160	202	0.167	3.9	97.6%	3.4	98.3%	1.4
Aug	0.305	210	285	0.117	5.9	97.2%	0.1	100.0%	5.6
Sep	0.466	120	98	0.313	3.6	97.0%	1.4	98.6%	2.9
Oct	0.261	210	354	0.518	1.8	99.1%	0.9	99.7%	2.4
Nov	0.268	170	233	0.600	5.9	96.5%	4.0	98.3%	122.5
Dec	0.281	230	404	No Discharge					
Min	0.261	120	98	0.117	1.8	95.5%	0.1	96.7%	1.4
Max	0.502	460	1200	0.600	13.8	99.1%	13.8	100.0%	122.5
Avg	0.331	254	422	0.387	5.6	97.3%	4.1	98.6%	20.5

2016 Month	INFLUENT			EFFLUENT					
	Flow (mgd)	BOD5 (mg/L)	TSS (mg/L)	Flow (mgd)	BOD5 (mg/L)	BOD5 % Removal	TSS (mg/L)	TSS % Removal	E. Coli (cfu/100 mL)
Jan	0.262	160	207	No Discharge					
Feb	0.280	190	756	No Discharge					
Mar	0.279	2000	598	No Discharge					
Apr	0.305	120	335	No Discharge					
May	0.356	660	1520	0.650	1.3	99.8%	1.3	99.9%	1.0
Jun	0.307	270	754	0.500	1.3	99.5%	1.3	99.8%	1.0
Jul	0.331	790	2270	0.395	8.7	98.9%	2.1	99.9%	6.4
Aug	0.314	150	249	0.330	1.3	99.1%	1.6	99.4%	3.6
Sep	0.296	86	106	0.289	5.3	93.8%	2.3	97.8%	1.3
Oct	0.322	170	220	0.364	10.8	93.6%	0.8	99.6%	3.3
Nov	0.336	180	359	0.175	14.6	91.9%	0.1	100.0%	3.4
Dec	0.300	210	320	No Discharge					
Min	0.252	86	106	0.175	1.3	91.9%	0.1	97.8%	1.0
Max	0.356	2000	2270	0.650	14.6	99.8%	2.3	100.0%	6.4
Avg	0.307	416	641	0.386	6.2	96.7%	1.4	99.5%	2.9

2017 Month	INFLUENT			EFFLUENT					
	Flow (mgd)	BOD5 (mg/L)	TSS (mg/L)	Flow (mgd)	BOD5 <sup>1</sup> (mg/L)	BOD5 % Removal	TSS (mg/L)	TSS % Removal	E. Coli <sup>2</sup> (cfu/100 mL)
Jan	0.290	120	156	No Discharge					
Feb	0.329	180	224	No Discharge					
Mar	0.348	180	376	No Discharge					
Apr	0.363	94	148	0.648	21.7	76.9%	5.0	96.6%	217.7
May	0.362	87	210	0.438	25.2	71.0%	25.2	88.0%	2.4
Jun	0.325	220	426	0.465	31.6	85.6%	13.5	96.8%	4.0
Jul	0.306	190	410	0.500	26.0	86.3%	7.3	98.2%	11.3
Aug	0.279	270	812	0.538	2.7	99.0%	0.1	100.0%	31.0
Sep	0.289	140	421	0.209	8.2	94.1%	0.9	99.8%	3.8
Oct	0.288	160	287	0.525	4.7	97.1%	2.6	99.1%	7.5
Nov	0.294	260	366	No Discharge					
Dec	0.297	180	201	No Discharge					
Min	0.279	87	148	0.209	2.7	71.0%	0.1	88.0%	2.4
Max	0.363	270	812	0.648	31.6	99.0%	25.2	100.0%	217.7
Avg	0.314	173	338	0.475	17.2	87.2%	7.8	96.9%	39.7

1. Two reported exceedances of the 7-day average value ranging from 18-33% over the limit

2. One reported exceedance of the daily max value at 106%

**ORDINANCE NO. 832**

**AN ORDINANCE AMENDING TITLE 1- ADMINISTRATION, CHAPTER 6  
MAYOR AND CITY COUNCIL PROVISIONS, SECTION 1, RULES OF  
PROCEDURES, TO AMEND THE TIME OF REGULAR COUNCIL MEETINGS**

WHEREAS, the City Council wishes to amend the time of regular council meeting to six thirty o'clock (6:30) P.M. in the council chambers of city hall, or at such other time and place as designated by the council.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SHELBY, MONTANA that Title 1, Chapter 6, Section 1, Subsection C(1), of the Shelby Municipal Code [1-6-1(C)(1) S.M.C.] shall be amended as follows and in full force and effect in the City of Shelby, Montana.

1-6-1(C)(1) MEETINGS:

Regular meetings of the council shall be held on the first and third Mondays of each month at six thirty o'clock (6:30) P.M. in the council chambers of city hall, or at such other time and place as designated by the council.

Should the regular meeting day be a recognized holiday the council shall, with proper notice, set an alternate day for the meeting, typically the day after the holiday.

FIRST, passed and approved by the Council of the City of Shelby, Montana this 20<sup>th</sup> day of February, 2018.

\_\_\_\_\_  
Gary McDermott, Mayor

Attest:

\_\_\_\_\_  
Jade Goroski, Finance Officer

*FINALLY, passed and approved by the Council of the City of Shelby, Montana this 5<sup>th</sup> day of March, 2018*

\_\_\_\_\_  
Gary McDermott, Mayor

Attest:

\_\_\_\_\_  
Jade Goroski, Finance Officer

RESOLUTION NO. 1972

A RESOLUTION COMMITTING THE CITY OF SHELBY TO PAYMENTS  
OF NO MORE THAN \$22,030.00 PER YEAR FOR FIVE YEARS TO ASSIST THE  
SHELBY VOLUNTEER FIRE DEPARTMENT TO PURCHASE NEW  
SELF-CONTAINED BREATHING APPARATUS

WHEREAS, the City Council of the City of Shelby, Montana ("City Council") is committed to ensuring the safety of its volunteer firefighters who serve in the Shelby Volunteer Fire Department ("SVFD"); and

WHEREAS, the self-contained breathing apparatus ("SCBA") the SVFD currently have reached the end of their life expectancy, are obsolete, unsafe, and need to be replaced; and

WHEREAS, the SVFD requested that the City of Shelby assist it financially to purchase new SCBA and related equipment;

WHEREAS, the City Council resolved on December 18, 2017 to commit to assist the SVFD to purchase new SCBA and related equipment in the amount of \$22,030.00 per year for five years (\$110,150.00 total); and

WHEREAS, the SVFD requested bids from SCBA suppliers; and

WHEREAS, the SVFD reviewed the submitted bids and recommended to the City Council at its regular council meeting on February 5, 2018 that it approve Municipal Emergency Services ("MES") as the lowest responsible bid in the amount of \$187,725.00; and

WHEREAS, the City Council did approve and accept, at said regular council meeting, MES' bid to provide the required SCBA and related equipment as set forth and itemized in its bid for the total amount of \$187,725.00; and

WHEREAS, the City Council understands that the SVFD has already received a grant from Town Pump for \$20,000.00 towards the purchase of the SCBA and related equipment; and

WHEREAS, the City Council understands that Toole County, Montana will commit to \$12,000.00 immediately and \$12,000 per year for five (5) years (\$72,000.00 total) towards the purchase of the SCBA and related equipment; and

WHEREAS, the SVFD intends to obtain a loan from the First State Bank of Shelby in order to immediately purchase the SCBA and related equipment; and

WHEREAS, the SVFD requested that the City of Shelby commit to paying the difference between the cost of the First State Bank of Shelby loan and the Town Pump grant and Toole County commitment; and

WHEREAS, the SVFD will repay the loan plus interest and other costs over five (5) years with the Town Pump grant, monies from Toole County, and the City of Shelby; and

WHEREAS, the SVFD additionally has applied for a grant from the Federal Emergency Management Agency ("FEMA") for the purchase of SCBA and related equipment; and

WHEREAS, the FEMA grant may be applied retroactively to purchases of SCBA and related equipment already made;

WHEREAS, if approved, the FEMA grant will pay for ninety-five (95%) of the purchase of the SCBA and related equipment; and

WHEREAS, if the FEMA grant is approved, the SVFD will pay the remaining five percent (5%) match with the Town Pump grant and use any remaining Town Pump grant to purchase additional SCBA air bottles; and

WHEREAS, the SVFD will not learn whether FEMA approves the grant before sometime between April and November, 2018; and

WHEREAS, MES will deliver the SCBA and related equipment approximately eight (8) weeks from the date the SVFD orders it; and

WHEREAS, if FEMA approves its grant, the SVFD will use the FEMA grant money to immediately repay the remaining balance of the First State Bank loan and reimburse the City of Shelby for any payments towards the loan it may have made.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHELBY, MONTANA;

1. That Shelby accept liability in the amount not to exceed \$22,030.00 per year and commit to paying said amount per year for no more than five (5) years towards the purchase of twenty-five (25) SCBA units and related equipment as set forth and itemized in MES' bid; and
2. That, if the SVFD is unable to secure the additional required funding from Toole County, in a form acceptable to the lender, within ninety (90) days of this Resolution, then this Resolution shall expire and the funds will no longer be committed; and
3. That, if FEMA approves its grant, then the SVFD will repay the First State Bank of Shelby loan in its entirety and Shelby's remaining for financial liability shall expire,

PASSED AND ADOPTED by the city council of the City of Shelby, Montana, this 20th day of February, 2018.

\_\_\_\_\_  
GARY McDERMOTT, MAYOR

ATTEST:

\_\_\_\_\_  
JADE GOROSKI, FINANCE OFFICER

**MEMORANDUM OF UNDERSTANDING  
REGARDING TOOLE COUNTY / CITY OF SHELBY AIRPORT WATER LINE**

This Memorandum of Understanding (MOU) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2018 by and between the City of Shelby, Montana, a municipal corporation organized under the laws of the State of Montana ("Shelby"), and Toole County, a political subdivision of the State of Montana ("Toole County"),

**RECITALS**

WHEREAS, Toole County desires to install a waterline from the Shelby water tower located near the Border Patrol station to the airport ("Airport Waterline");

WHEREAS, Shelby desires to replace an existing waterline from a point located near the Lewis & Clark RV Park to the water tower located near the Border Patrol station ("Water Tower Waterline");

WHEREAS, Shelby has equipment used to install waterlines as well as personnel with training and experience installing waterlines;

WHEREAS, Toole County has a trackhoe excavator and an operator for the trackhoe excavator;

WHEREAS, Toole County is contemplating installing a diesel-engine-powered water booster station on the Airport Waterline;

WHEREAS, Toole County and Shelby will benefit mutually by combining their resources to complete the Airport Waterline and Water Tower Waterline.

THEREFORE, Toole County and Shelby agree as follows:

1. The County shall:
  - A. Provide the necessary engineering for the Airport Waterline;
  - B. Provide the pipe and other materials for the Airport Waterline;
  - C. Provide any booster station for the Airport Waterline;
  - D. Provide the use of its trackhoe excavator and operator to assist Shelby with the Water Tower Waterline project;
  - E. Make any repairs, replacement, and maintenance to the Airport Waterline for a period of one (1) year after completion of the Airport Waterline;
  - F. Regularly pressure test the Airport Waterline to test for leaks and other defects for one (1) year after completion of the Airport Waterline;
  - G. Maintain the booster station, if installed, including replenishing diesel fuel for as long as it shall exist;

H. Ensure that the Airport Waterline meets all applicable federal and State of Montana laws and regulations;

I. Pay for the use of water at applicable water usage rates.

2. The City shall:

A. As needed, provide the County the use of Shelby equipment, equipment operators, and other personnel to assist the County to install the Airport Waterline;

B. Provide engineering and materials for the Water Tower Waterline;

C. Ensure that the Airport Waterline meets all applicable federal and State of Montana laws and regulations;

D. Deliver potable water to the Airport Waterline;

E. Make any repairs, replacement, and maintenance to the Water Tower Waterline;

F. Make any repairs, replacement, and maintenance to the Airport Waterline after Toole County's one (1) year period of responsibility, as described above, expires;

G. Take and submit any water samples from points along the Water Tower Waterline and Airport Waterline as required by appropriate government agencies.

IT IS FURTHER UNDERSTOOD by Toole County and Shelby that Shelby shall own the Airport Waterline as part of its infrastructure.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

Signatures

Who is responsible for future waterline maintenance / breaks, etc.?

Will this line require regular DEQ testing?

Return to:  
Hunt Law Firm, PLLC  
PO Box 569  
Shelby MT 59474

## **GROUND LEASE**

THIS GROUND LEASE (this "Lease"), effective at Shelby, Toole County, Montana, on February \_\_\_\_\_, 2018, entered into by and between the **CITY OF SHELBY**, a municipal corporation ("Lessor") and **NORTHERN MONTANA RENTALS, LLC**, a Montana limited liability company, 158 Main Street, P.O. Box 790, Shelby, Montana ("Lessee").

### WITNESSETH:

The Lessor and the Lessee, for and in consideration of the obligations and covenants hereinafter mentioned, agree as follows:

**1. LESSOR'S DEMISE.** Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by Lessee of the rents hereinafter set forth and in consideration of the prompt performance continuously by Lessee of each and every one of the covenants and agreements hereinafter contained, to be kept and performed by Lessee, the performance of each and every one of the covenants and agreements of which is to be declared an integral part of the consideration to be furnished by Lessee, Lessor does lease, let, and demise to Lessee and Lessee does hereby lease of and from Lessor, the following described premises (hereinafter "Premises") situated in Toole County, Montana:

**Shelby Industrial Park, Tract 6**  
**Tract 6 of the Shelby Industrial Park according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Toole County, Montana, SUBJECT, HOWEVER to all prior reservations, exceptions, easements, conveyances, and rights-of-way appearing either visually or of record.**

**2. INITIAL LEASE TERM.** The initial term of this Lease shall be for a period of FIVE (5) YEARS commencing on \_\_\_\_\_, 2018, and ending on \_\_\_\_\_, 2023, both dates inclusive unless sooner terminated as hereinafter provided.

**3. AUTOMATIC RENEWAL.** Unless Lessee provides Lessor with notice not less than 60 days prior to the end of the initial term or any renewal term, this Lease shall automatically renew for three additional terms of FIVE (5) years each, provided that Lessee is not in default under this Lease beyond the expiration of any applicable cure period. Any such renewal shall be upon the same terms and conditions as set forth in this Lease.

**4. RENT.** The rent for the first five (5) year term is One Thousand Eleven and 68/100 Dollars (\$1,011.68) per year (the "Rent"), payable in advance, said sum representing the figure of \$0.025 per square foot per year of leased premises. The Rent shall automatically be increased by two percent (2%) per annum.

**5. OPTION TO PURCHASE.** During the first five (5) year term of the Lease, Lessee shall have the option to purchase the Premises for \$27,870. During any renewal term of this Lease, Lessee shall have the option to purchase the Premises at its appraised value or an amount mutually acceptable to Lessor and Lessee. Any appraiser retained to appraise the Premises for purposes of this Paragraph 5 shall be mutually acceptable to Lessor and Lessee and the costs of appraising the Premises shall be borne by Lessor and Lessee equally.

**6. REAL ESTATE TAXES.** Lessee shall pay, before the incurrence of any fine, penalty or interest, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, water and sewer rents, and other governmental charges, general and/or special, ordinary and extraordinary, unforeseen, of any kind and nature, whatsoever, which at any time during the term of the Lease may be assessed, levied, confirmed, imposed upon, or grown and become due and payable out of or in respect of, or become a lien on, the Premises, or any improvements thereon, or any part thereof or any appurtenance thereof.

**7. NO LIEN.** Lessee shall not have the power to subject the interest of Lessor in the Premises to any mechanic's or material men's liens or lien or any kind, without Lessor's prior written consent except as provided in Paragraph 9 of this Agreement.

**8. RELEASE OF LIEN.** Except as provided in Paragraph 9 of this Agreement, Lessee covenants and agrees with Lessor that Lessee will not permit or suffer to be filed or claimed against the interest of Lessor in the Premises during the continuance of this Lease, any lien or claim of any kind and if such lien be claimed or filed, it shall be the duty of Lessee, within thirty (30) days after Lessor shall have been given written notice of such a claim having been filed among the public records of Toole County, Montana, or within thirty (30) days after Lessor shall have been given written notice of such claim and shall have transmitted a written notice of the receipt of such claim unto Lessee (whichever thirty (30) day period expires earlier) to cause the Premises to be released from such claim, either by payment or by the posting of bond or by the payment unto the Court of the amount necessary to relieve and release the Premises from such claim, or in any other manner which, as a matter of law, will result within such period of thirty (30) days, in releasing Lessor and the title of Lessor from such claim; and Lessee covenants and agrees, within such period of thirty (30) days, so as to cause the Premises and Lessor's interest therein to be released of the legal effect of such claim.

**9. RIGHT TO MORTGAGE.** Notwithstanding anything to the contrary contained herein, Lessee may, in its sole and absolute discretion, mortgage its interest in the buildings and improvements located on the Premises for purposes of securing loans.

**10. INDEMNIFICATION BY LESSEE.** Lessee covenants and agrees with Lessor that during the entire term of the Lease and any renewal term, Lessee will indemnify and save harmless Lessor against any and all claims, debts, demands, or obligation which may be made against Lessor or against Lessor's title in the Premises, arising by reason of, or in connection with, any alleged act or admission of Lessee or any person claiming under, by, or through Lessee; and if it becomes necessary for Lessor to defend any action seeking to impose any such liability, Lessee will pay Lessor all costs of court and attorney's fees incurred by Lessor in effecting such defense in addition to any other sums which Lessor may be called upon to pay by reason of the entry of a judgment against Lessor in the litigation in which such claim is asserted.

**11. INSURANCE.** From the time of the execution of this Lease Lessee will cause to be written a policy or policies of insurance in the form generally known as a Public Liability and/or owners' landlord and tenant policies, insuring Lessor against any and all claims and demands by any person or persons whomsoever for injuries received in connection with the operation and maintenance of the Premises, improvements, and buildings located on the Premises or for any other risk insured against by such policies, each class of which policies shall have been written within limits or not less than Five Hundred Thousand Dollars (\$500,000.00) damages incurred or claimed by an individual or individuals for bodily injury, or otherwise, plus One Hundred Thousand Dollars (\$100,000.00) damages to property. The original or duplicate original of each of such policy or policies shall be delivered by Lessee to Lessor promptly upon the writing of such policies, together with adequate evidence of the fact that the premiums are paid.

**12. INSURANCE PREMIUMS.** Lessee covenants and agrees with Lessor that Lessee will pay premiums for all of the insurance policies which Lessee is obligated to carry under the terms of this Lease, and will deliver to Lessor evidence of such payment before the payment of any such premiums become in default, and Lessee will cause renewals of expiring policies to be written and the policies or copies thereof, as the Lease may require, to be delivered to Lessor at least ten (10) days before the expiration of such expiring policies.

**13. ASSIGNMENT.** Other than as authorized under Paragraph 9 above, Lessee may not assign or transfer its rights under this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

**14. DEFAULT.** In the case at any time a default shall be made by Lessee in the payment of any of the Rent for upon the day such rent becomes due and payable, or in the case of default in relation to liens, as hereinabove provided for, or if Lessee shall fail to pay any of the taxes or assessments thereof, during the lease term for nonpayment of any tax or assessment, or in case Lessee shall fail to keep insured any building, buildings or improvements which may at any time hereafter be upon the Premises, as herein provided for, or if the Lessee shall fail to perform any of the covenants of this Lease by it to be kept and performed, and if such default shall continue for a period of sixty (60) days after receipt of written notice, specifying in general terms the nature of

such default and a demand that the Lessee cure such default within said sixty (60) days from the time of receipt of such notice by Lessee, then, in any of such events, it shall be lawful for the Lessor, upon election, to declare the lease term ended and to reenter upon the Premises and the building or buildings and improvements then situated thereon, or the Lessor may have such other remedy as the law and this instrument may afford; and the Lessee covenants and agrees that upon the termination of the lease term, at such election of the Lessor, or in any other way, the Lessee will surrender and deliver up the Premises peaceably to the Lessor, or the agent or attorney of the Lessor, immediately upon the termination of the lease term; and if the Lessee, its agent, attorney, tenants shall hold the Premises, or any part thereof, one day after the same shall be surrendered, according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Premises under the statutes and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.

**15. DUTY TO REPAIR.** Lessee shall keep in good state of repair and in first class condition any and all buildings, furnishing, fixtures, and equipment which are brought or constructed or placed upon the Premises by the Lessee, nor will Lessee suffer or permit any waste, or neglect of any building or other property to be committed, and that Lessee will repair, replace, and renovate such property as often as it may be necessary in order to keep the building(s) and other property which is the subject matter of this Lease in first class repair and condition. Additionally, Lessee specifically agrees to keep the Premises free and clear of all weeds and other waste material or rubbish at all times.

**16. TERMINATION.** Upon termination of this Lease, Lessee will peaceably and quietly deliver possession of the Premises to Lessor. Upon termination of this Lease Lessee shall have a period of sixty (60) days to remove all improvements, including the building or buildings constructed thereon, and, additionally, any furnishings, fixtures, and equipment which Lessee may have brought placed or constructed upon the Premises.

**17. COVENANT OF QUIET ENJOYMENT.** Lessor covenants and agrees with Lessee that so long as Lessee keeps and performs all the covenants and conditions by Lessee to be kept and performed, Lessee shall have quiet and undisturbed and continued possession of the Premises, free from any claims against Lessor and all persons claiming under, by, or through Lessor. Lessee, upon paying the Rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the terms of this Lease without hindrance or molestation by Lessor.

**18. FORCE MAJEURE.** In the event that Lessor or Lessee shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive government laws or regulations, riots, insurrection, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such delay shall be extended for a period equivalent to the period of such delay.

**19. CONSTRUCTION PLANS.** Any future buildings or improvements constructed upon the Premises shall be first approved by the body known as the Industrial Park Committee. All maps, plats, charts and blueprints relative to said construction shall be submitted to said Industrial Park Committee for its approval. No construction shall be commenced without Lessee first obtaining said approval from the aforementioned Industrial Park Committee. The Industrial Park Committee shall not unreasonably deny Lessee's request to construct additional buildings or improvements. The decision of the Industrial Park Committee shall be based upon its sound discretion and Industrial Park Zoning regulations. Plans for a building or buildings to be constructed upon the Premises shall comply and be in full accordance with the applicable laws, building codes, health codes, safety codes, zoning ordinances and all applicable statutes, rules and regulations and/or ordinances passed by the federal, state and local authorities.

**20. IMPROVEMENTS ON THE PREMISES.** Lessee covenants and agrees that all improvements on the Premises must be constructed and paid for wholly at the expense of Lessee.

**21. TIME AND PARTIES BOUND.** The time of payments and performance shall be of the essence of this Lease and all the terms, covenants and agreements herein contained shall extend and be obligatory upon the heirs, executors, administrators, personal representatives, successors, nominees and assigns of the respective parties hereto.

**22. COSTS OF SUITS.** The Parties covenant and agree that if, at any time, a Party to this Agreement is required to enforce the terms of this Lease, the prevailing party shall have the right to collect from the other party its reasonable costs, necessary disbursements, and attorneys' fees incurred.

**23. GOVERNING LAW.** All of the rights and remedies of the respective parties shall be governed by the provisions of this instrument and by the law of the State of Montana.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

LESSOR

CITY OF SHELBY, MONTANA,  
a municipal corporation

By: \_\_\_\_\_  
Gary McDermott, Mayor

ATTEST:

Jade Goroski, City Finance Officer

LESSEE

NORTHERN MONTANA RENTALS,  
LLC

By: \_\_\_\_\_  
Curtis B. Stene, Member

By: \_\_\_\_\_  
Brian D. Lee, Member

**Notes of meeting of Devon Water, Inc. and City of Shelby  
2/7/18, 10:30am Shelby City Hall.**

Present were Roy Benjamin, President of Devon Water, Inc., Shelby Mayor Gary McDermott, Councilperson Deb Clark, Shelby Finance Officer Jade Goroski, Shelby Community Development Director Lorette Carter, Shelby City Superintendent Loren Skartved, and Shelby Attorney Bill Hunt.

Attached- Water Purchase Contract

Discussion for approximately 90 minutes focused on the Water Purchase Contract dated June 23, 2014 between Devon Water, Inc. (DWI) and Shelby.

- There still is no water hooked up to DWI
- The hookup to Humic Growth Solutions (HGS) has been a factor
- DWI, Shelby, and MTDOT entered into an MOU May 2016
  - DOT required MOU before DWI could get easements along HWY2
  - City acquired easements from DWI in Oct / Nov, 2017
- DWI's position is that it has time and costs into engineering and material. And no water is hooked up. It feels that pursuant to the contract that:
  - The City should
    - Deliver water to a point just east of corral;
    - Install a booster station at delivery point;
    - Reimburse DWI approximately \$63K;
  - DWI should
    - Establish the hookup
    - Consider installing the ability to add chlorine to the line (which is not part of the original contract, but recommended by Loren)
    - Install the meter.
- The City expressed no position other than this is an issue that the Council needs to start discussions

370164

241  
INDEXED

### WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 23 day of June, 2014, between the CITY OF SHELBY, MONTANA, 112 1<sup>st</sup> St S, Shelby, MT 59474, hereinafter referred to as the "Seller", and the DEVON WATER INC., 145 South Devon Road, Shelby MT 59474, hereinafter referred to as the "Purchaser".

#### WITNESSETH:

WHEREAS, the Purchaser is organized and established under the provisions of the Montana Code Annotated, for the purpose of constructing and operating a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser and to accomplish this purpose, the Purchaser will require a supply of treated water, and

WHEREAS, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by the said Purchaser as shown in the plans of the system to be file in the office of the Purchaser, and

WHEREAS, the Shelby City Council enacted on the 21<sup>st</sup> day of April, 2014, by the Seller, the sale of water to the Purchaser in accordance with the provisions of the said minutes was approved, and the execution of this contract carrying out the said minutes by the mayor, and attested by the city finance officer, was duly authorized, and

WHEREAS, by resolution of the Board of Directors of the Purchaser, enacted on the 23 day of JUNE, 2014, the purchase of water from the Seller in accordance with the terms set forth in the said resolution was approved, and the execution of this contract by the President, and attested by the Secretary and Manager, was duly authorized;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth,

#### A. The Seller Agrees:

1. To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the State of Montana in such quantity as may be required by the Purchaser not to exceed 3,720,000 gallons per month, at a rate not to exceed 120,000 gallons per day.
2. That water will be furnished at a reasonably constant pressure calculated at 92PSI at the point of hookup from an existing eight (8) inch main supply at a point as described in Exhibit "A" attached hereto. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.

STATE OF MONTANA TOOLE COUNTY  
 370164  
 DOC #:  
 MISC PAGE: 241  
 RECORDED: 06/23/2014 3:13 BOOK: 96  
 CLERK AND RECORDER BY: *Treva Nelson*  
 DEVON WATER INC 145 SOUTH DEVON ROAD, SHELBY MT 59474  
 FEE: \$52.00

3. To operate and maintain, at its own expense at point of delivery, the necessary 4 inch metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the Purchaser and to calibrate such metering equipment whenever requested by the Purchaser but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the six (6) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless Seller and Purchaser shall agree upon a different amount. The metering equipment shall be read on the 15<sup>th</sup> day of each month. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings.
4. To furnish the Purchaser at the above address, at the end of each month, an itemized statement of the amount of water furnished during the preceding month.

**B. The Purchaser Agrees:**

1. To pay the Seller, not later than the 20<sup>th</sup> day of each month, for water delivered in accordance with the following schedule of rates:
  - a. 0 – 79,240 gallons per month are @ \$181.10, which amount shall also be the minimum rate per month.
  - b. Usage over 79,240 gallons per month are @ 1.23 per 1,000 gallons.
2. The Purchaser, including the necessary 4-inch meter equipment, including meter house or pit, will pay all initial connection and metering costs. All costs related to any required water quality testing related specifically to the Devon Water Inc. system by any state or federal agency will be paid by the Purchaser, via the following means: Purchaser shall maintain adequate City approved sampling taps at locations deemed appropriate by the Department of Environmental Quality or other authority with supreme jurisdiction. Seller shall conduct and facilitate water quality testing and monitoring as stated above, and Purchaser shall reimburse Seller such costs as may be incurred from said testing and monitoring in conjunction with the monthly metered service bill.
3. The Purchaser agrees to pay the City of Shelby \$7,000.00 to reimburse the City for its costs incurred in completing and receiving a change of use application with DNRC to allow the delivery of City of Shelby municipal water to be delivered to customers of Devon Water Inc.
4. That the Seller has the right to review and approve the plan sheets and specifications of the boost station and initial 10,000 linear feet of transmission line, (Described in Section D) as well as connecting points pertaining to same, prior to construction of the project.

**C. It is further mutually agreed between the Seller and the Purchaser as follows:**

**TERM OF CONTRACT**

1. That this contract shall extend for a term of 40 years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser and, thereafter, may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and Purchaser.

**DELIVERY OF WATER**

2. That 10 days prior to the estimated date of completion of construction of the Purchaser's water supply distribution system, the Purchaser will notify the Seller, in writing, the date for the initial delivery of water.

**MODIFICATION OF CONTRACT**

3. That the provisions of this contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification at the end of every one (1) year period. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder and shall coincide in timing and amounts with rate increases or decreases that the seller requires of users inside its corporate city limits. Other provisions of this contract may be modified or altered by mutual agreement. Purchaser shall be given 60 days notice before rates are increased.

**REGULATORY AGENCIES**

4. That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this state and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

**SUCCESSOR TO THE PURCHASER**

5. That in the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Purchaser hereunder.

**METERING EQUIPMENT AND WATER MAINS IN CITY**

6. The metering equipment referred to in Section A, Paragraph 3 of this agreement shall be furnished and installed by Purchaser at Purchaser's own expense. After the installation, the metering equipment will then belong to the Seller and at that time the provisions of Paragraph 3 shall become effective.

It is also agreed that the Purchaser may serve customers in the following described service area:

Montana Principal Meridian	
Range	Townships
1W	30N, 31N, and 32N
1E	30N, 31N, and 32N
2E	30N, 31N, and 32N
3E	30N, 31N, and 32N

Any and all additional service areas requested in addition to the service area listed above must be made in writing to the City of Shelby and are subject to the action and the written approval of the Shelby City Council if the additional services would cause over 3,720,000 gallons per month or over 120,000 gallons per day to be delivered to the water system. No services may be provided within the corporate city limits of Shelby.

#### FAILURE TO DELIVER

7. Seller shall use reasonable diligence and care to provide a regular and uninterrupted supply of water to purchaser, and to avoid shortage or interruption of delivery thereof. Seller shall not be liable for any failure, interruption, or shortage of water, or any loss or damage resulting therefrom, occasioned in whole or in part by any cause beyond the reasonable control of Seller.

#### DISCONTINUANCE OF SERVICE

8. For the purpose of this agreement, interruptible water is defined as all water of the Seller, over and above that which, the Seller's judgment, shall be required by it for the normal use of water users who are, at the date of this contract, customers or water users of the City of Shelby, and also all present and future residents of the City of Shelby. Whenever Seller shall, in its sole judgment, determine that it will not have or does not then have sufficient water or adequate transmission or distribution water main capacity for the health or safety of all of its customers or water users who are located within the city limits of the City of Shelby and also for supplying the requirements of its interruptible water customers (including Purchaser herein) Seller shall have the right to either (a) to shut off the supply of interruptible water hereunder with notice to Purchaser, or (b) to notify Purchaser by telephone to shut off and discontinue forthwith the use of interruptible water hereunder until such time as Seller shall hereafter notify Purchaser that it may resume the use thereof. If Purchaser shall fail to shut off or discontinue use of such water immediately upon receipt of notice, or if, after shut-off either by Seller or Purchaser, Purchaser shall resume use of water before Seller shall authorize same, Seller shall have the right, at its option, to cancel this agreement on 30 days written notice to Purchaser. Seller shall not be liable for damages as a result of any such shut-off. When the shortage of water is not so great or water main capacity is not so small as to require shut-off at the same time by all customers subject to shut-off for the reasons herein authorized, then Seller will, in its sole discretion, distribute the remaining available interruptible water in as equitable a manner as circumstances will permit. This paragraph applies to short-term emergencies only not to exceed a 48-hour time period.

In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.

#### **D. Special Hookup Considerations, mutually agreed between Seller and Purchaser:**

Definitions: "City" or "City of Shelby" = "Seller" previously used in this agreement.  
"Devon" = Devon Water, Inc., "Purchaser" previously used.

1. Per proposal from TDH Engineering presented and approved at the April 15, 2013 City of Shelby Council meeting, the measures in this section are agreed upon to facilitate initial connection of Devon as well as improve service to certain City of

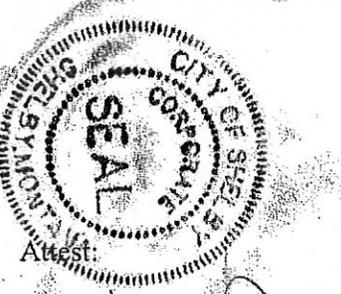
Shelby water customers east of town in what is commonly known as the "Homesteader Development" or "Kalbfleisch Subdivision."

2. Devon shall install a package plant boost station at a location shown in Exhibit "A" attached hereto (Description is within the following parcel: T32N, R2W, NW4, S35) system shall be completely operable except for the following: the City of Shelby shall be responsible to install and initiate any SCADA or other telemetry systems to be desired by the City.
3. The City shall furnish water to this point of connection. Subsequently, a 10,000 linear foot, 4" transmission line will be installed starting at the booster station and continue east from Shelby to a point just east of the present Clayton Davis property, (T 31N, R 2W, NE2NW4NE4 S 1.). This line will serve the "Kalbfleisch Subdivision" users by connecting to their existing main at a point determined to be adequate to serve all such Shelby and Devon consumers with boosted pressure. It is understood that licensed contractors will be retained for this work and the work will be overseen by Devon's engineers to the satisfaction of the DEQ and City of Shelby authorities.
4. It is understood that Devon will facilitate easements pertaining to this segment in the name of City of Shelby.
5. Upon completion of this segment, the City of Shelby agrees to purchase said booster station and segment of line at an amount equal to Devon Water's cost of installing such equipment, as confirmed by contractor's, engineer's, and supplier's invoices. Copies of appropriate documentation verifying actual costs shall be furnished to City of Shelby, upon which the City agrees to settle the amount within 30 days. Per council approved proposal, it is estimated that this total cost will be approximately \$225,200.
6. It is understood that City of Shelby will be the owner/operator of this boost station and segment of main line, and that upon completion and commission of the project, Devon's status will return to and be only that of a wholesale water purchaser, pursuant to the terms established earlier in this agreement. It is further understood that the Operation, Maintenance, and Replacement costs of the boost station shall be equitably shared between Devon and the City, with respect to relative usage by Devon and City consumers. A meeting between representatives of Devon and City of Shelby shall be held every January to discuss and establish these costs for the next fiscal year. The costs will be billed to Devon in the regular monthly service statement.
7. The City of Shelby authorizes the Mayor of the City of Shelby and/or the City of Shelby City Superintendent to make minor oral agreements with Devon during the course of construction to work out small details that may arise as the process continues. Devon authorizes its board of Directors and/or manager for the same purpose.
8. Upon completion of the project, City of Shelby agrees to permit Devon to charge the new system with water for a period of 10 days to flush, test, and inspect the boost station and subsequent systems, at cost of the City's lowest billable rate. Shelby and Devon personnel will be working together with engineers and vendors at that time to

facilitate leak detection and proper pump operation. After the initial 10 day period, regular rate schedules will apply, as designated in Section B(1).

9. The Mayor shall issue Devon a letter addressed to whom it may concern, stating the City's commitment to purchase the boost plant and 10,000' of installed line for the aforementioned estimated cost, for the purpose of Devon obtaining the interim financing from a private source for the project.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in 3 counterparts, each of which shall constitute an original.



Attest:

Teri Ruff  
Teri Ruff, City Finance Officer

"Seller"  
CITY OF SHELBY, MONTANA

Larry J. Bønderud  
Larry J. Bønderud, Mayor

"Purchaser"  
DEVON WATER INC.

Joseph P. Frethiem  
Joseph P. Frethiem, President

Attest:

Cecil Benjamin  
Cecil Benjamin, Secretary - Devon Water, Inc.

Roy M. Benjamin  
Roy M. Benjamin, Manager - Devon Water, Inc.

Date: 1/31/2018

Time: 04:24 PM

Page 1 of 1

**Shelby City Court**  
Cases by Filing Date  
City  
All Case Types  
From 1/1/2018 to 1/31/2018  
All Judges

User: BALEXANDER

**Judge: Rapkoch, Peter**

Case	Filed	Entered	Party	Status
CR-865-2018-0000001	1/24/2018	1/24/2018	West, Michael James Jr, Defendant	Pending
CR-865-2018-0000002	1/30/2018	1/30/2018	Burchard, Justin, Defendant	Pending
TK-865-2018-0000001	1/5/2018	1/5/2018	Potter, Richard Dean, Defendant	Pending
TK-865-2018-0000002	1/19/2018	1/19/2018	Pedersen, Rebecca Dawn, Defendant	Pending
TK-865-2018-0000003	1/19/2018	1/19/2018	Eklund, Catherine Larsen, Defendant	Closed
TK-865-2018-0000004	1/19/2018	1/19/2018	Whitney, Bonnie, Defendant	Closed
TK-865-2018-0000005	1/19/2018	1/19/2018	Snyder, Catherine Zon, Defendant	Closed
TK-865-2018-0000006	1/22/2018	1/22/2018	Wood, Robin Gaylene, Defendant	Closed
TK-865-2018-0000007	1/22/2018	1/22/2018	Harris, Heather Ann, Defendant	Disposed
TK-865-2018-0000008	1/22/2018	1/22/2018	Lequin, Joseph John, Defendant	Disposed
TK-865-2018-0000009	1/23/2018	1/23/2018	Moench, Merica Ann, Defendant	Disposed
TK-865-2018-0000010	1/25/2018	1/25/2018	Gorder, Michael Vernon, Defendant	Closed
TK-865-2018-0000011	1/29/2018	1/29/2018	Hanway, Cassie Lynn, Defendant	Pending
TK-865-2018-0000012	1/29/2018	1/29/2018	Hanway, Cassie Lynn, Defendant	Closed
TK-865-2018-0000013	1/29/2018	1/29/2018	Jarvis, Nicol Edith, Defendant	Closed
TK-865-2018-0000014	1/31/2018	1/31/2018	Alborano, Jennifer Lyn, Defendant	Pending

**Total cases for Rapkoch, Peter : 16**

**Total cases for report: 16**









Shelby City Court

Receipts by Date

City

All Case Types

From 1/1/2018 to 1/31/2018

All Judges

1/15/2018

Receipt	Time		Bond Conversion	Transfer	Cash	Check	Cashiers Check	Money Order	Credit Card	Debit Card	E-Payment	Direct Deposit
5119	03:05 PM	Criminal Payment	.00	.00	.00	.00	.00	.00	.00	.00	119.00	.00
		Payor: Daniels, Makenna Jo									E-Payment transaction no.: 1216289063	
		TK-865-2017-0000091										
		Daniels, Makenna Jo		45-5-624(3) [1]								
		100.00										
		8.00										
		1.00										
		10.00										
		<b>119.00</b>										

Daily totals:	<b>119.00</b>	.00	.00	.00	.00	.00	.00	.00	.00	.00	119.00	.00
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Miscellaneous: .00  
 Fine/fee: 119.00  
 Cash bond: .00  
 Bond forfeiture: .00  
 Bond percent fee: .00  
 Bond conversion: .00















