

**AGENDA**  
**CITY COUNCIL MEETING**  
**CITY OF SHELBY**

June 18, 2018  
6:30 P.M.

**ROLL CALL OF MEMBERS**

**PLEDGE OF ALLEGIENCE**

**APPROVAL OF MINUTES**

- Regular Council Meeting, 06/04/18 (pgs. 5-8)

**APPEARANCE REQUESTS**

- Agenda Items
- Non-Agenda Items

**COMMITTEE REPORTS**

- Law Enforcement Report
- City-County Planning Board, 6/11/18 (pgs. 9-11)
  - Amended Subdivision Plat of Lots C-1 and C-2 of the Amended Subdivision Plat of Lot C – Motel 6 property (*Action Item*)

**CITY ATTORNEY**

- Resolution No. 1978 re: Pehan Land Sale (pg. 12)
- DWI Agreement (pgs. 13-24)

**CITY FINANCE OFFICER**

- City Judge's Report, May 2018 (pgs. 25-43)
- Bank Account Report (pg. 44), Budget Year to Date (pg. 45), Vendor Summary (pgs. 46-47), Enterprise Funds (pg. 48-51), Statement of Expenditures (pgs. 52-76), Revenues (pgs. 77-86), Budget Variance (pg. 87), Cash Flow Report (pg. 88), Project Budgets (pg. 89), May 2018
- City of Shelby Delinquent Taxes, 5/31/18 (pg. 90)

**CITY SUPERINTENDENT**

- Superintendent's Report, 6/18/18 (pg. 91)
- UV Maintenance Repairs (pg. 92)

**COMMUNITY DEVELOPMENT DIRECTOR**

- Community Kiosk
- Splash Park Play Equipment
- Climbing Wall for Pool

**OTHER MATTERS**

- Sheriff's Budget (pgs. 93-103)
- City Land Purchase – 532 Liberty Ave (pg. 104)
- NCMRWA Easement – Bogott (pgs. 105-106)

**ADJOURN**

## CITY OF SHELBY MEETING SCHEDULE

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### June 18, 2018

6:30 p.m. Regular City Council Meeting

### June 25, 2018

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

### July 2, 2018

6:00 p.m. Audit Committee  
(Mayor, Finance Officer, Clark, Tustian,  
Moritz)

6:30 p.m. Regular City Council Meeting

### July 9, 2018

6:30 p.m. City-County Planning Board  
(Mayor, Deputy City Clerk, City Planner,  
Casey, Clark)

## CITY COUNCIL PACKET LISTING

- A. Agenda
- B. Agenda Items
  - 1. Minutes of Regular Council Meeting, 6/04/18
  - 2. Minutes of City-County Planning Board Meeting, 6/11/18
  - 3. Resolution No. 1978 re: Pehan Land Sale
  - 4. Devon Water, Inc Water Agreement
  - 5. City Judge's Report, May 2018
  - 6. Bank Account Report, May 2018
  - 7. Budget Year to Date, May 2018
  - 8. Vendor Summary, May 2018
  - 9. Enterprise Funds Report, May 2018
  - 10. Statement of Expenditures, May 2018
  - 11. Statement of Revenues, May 2018
  - 12. Budget Variance, May 2018
  - 13. Cash Flow Report, May 2018
  - 14. Project Budgets, May 2018
  - 15. City of Shelby Delinquent Taxes, 5/31/18
  - 16. Superintendent's Report, 6/18/18
  - 17. 6/12/18 Quote from DC Frost Associates, Inc re: UV Maintenance Repairs
  - 18. Sheriff's Budget
  - 19. 5/1/18 Letter from Darryl VandeKop re: City Land Purchase at 532 Liberty Ave
  - 20. 6/18/18 Letter to Gary Bogott re: NCMRWA Easement
- C. Correspondence
  - 1. 6/7/18 Summary of the Port of Northern Montana Board Meeting
  - 2. 6/13/18 Letter to Three Buttes Auxiliary 2484 re: Thank you
- 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  
June 4, 2018

Mayor McDermott called the meeting to order at 6:30 p.m. Present were: Debra Clark, Lyle Kimmert, Luke Casey, Trent Tustian, Aaron Heaton, and Bill Moritz, Council Members; Bill Hunt, City Attorney; Jade Goroski, Finance Officer; Loren Skartved, City Superintendent; Lorette Carter, Community Development Director; and Rob Tasker, Building Inspector. Other citizens present: Roy Benjamin, Mike O'Neal, Jim Yeagley and Jennifer VanHeel.

PLEDGE OF ALLEGIANCE

REGULAR MEETING MINUTES 5/21/2018

- MORITZ MADE A MOTION TO APPROVE THE 5/21/2018 MINUTES. SECONDED BY CASEY. VOTE AYES - CLARK, MORITZ, CASEY, KIMMET, HEATON, TUSTIAN. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

APPEARANCE REQUESTS

- Agenda Items
- Non-Agenda Items

CLAIMS REPORT 5/31/2018

- CLARK MADE A MOTION TO APPROVE THE 5/31/2018 CLAIMS REPORT. SECONDED BY TUSTIAN. VOTE AYES - CLARK, MORITZ, CASEY, KIMMET, HEATON, TUSTIAN. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

BUILDING INSPECTOR

- Rob Tasker reported he issued 1 new permit and there are currently 8 open permits. He put up 22 mow notices the past week.

COMMITTEE REPORTS

- Minutes of Safety Committee Meeting 5/16/2018
- Minutes of Park & Recreation Meeting 5/29/2018

CITY ATTORNEY

- Resolution No. 1977 RE: 4<sup>th</sup> Cell Bond

MORITZ MADE A MOTION TO APPROVE RESOLUTION 1977. SECONDED BY TUSTIAN. VOTE AYES - CLARK, MORITZ, HEATON, KIMMET, TUSTIAN. NOES - NONE. ABSENT - NONE. ABSTAIN - CASEY.

CITY FINANCE OFFICER

- Payroll Expense by Department 5/2018
- Payroll Budget Prep
- City of Shelby Contract Work

CITY SUPERINTENDENT

Loren provided a report as part of the packet.

- Hot Mix Bid

TUSTIAN MADE A MOTION TO APPROVE \$347,478 UNITED MATERIALS BID. SECONDED BY MORITZ. SECONDED BY KIMMET. VOTE AYES - CLARK, MORITZ, HEATON, CASEY, KIMMET, TUSTIAN. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

COMMUNITY DEVELOPMENT DIRECTOR

- Officials from Montana FWP ~Land Water Conservation Fund will make a site visit to Shelby to consider our swimming pool gutter system replacement project.
- The start-up documentation for Phase II of the storm water project is ready for submission. Our engineers have suggested a late fall date to go to bid as contractors have a very busy summer construction season ahead.
- The four heritage signs at Champions Park are still in production. I have been in contact with HiLine Masonry on the monument sign. I have also visited with Kris Ingenthron, Marias River Electric. He has graciously agreed to work with the City to connect the electrical and see about a light for the joint parking lots.
- The Northern Transit Interlocal has been named Montana's Transit System of the Year. This is a great accomplishment for bus coordinator, David Irvin and the transit staff.
- I did send out a letter of request as part of a new fundraising campaign for play structures in the Shelby Swimming Pool. To date, we have received \$8,400.00 from a very generous benefactor to purchase the climbing wall. I have also received word of \$500 from the Best Western parent company for the pool as well. I will contact the Montana Public Health Department to confirm installation of the climbing wall.
- Raquel Robertson of Quell Designs has submitted 2 designs for the billboard project. The Parks & Rec Committee reviewed

them and offered suggestions which Raquel is incorporating. She plans to have revisions back to us by the end of this week.

- I am currently seeking bids for the rubber mulch which will be placed under the play structure at the Splash Park.

- The National Night Out Committee met May 29th. The event will take place Wednesday, August 1st on the front lawn of Shelby High School. There will be a live band, games, face painting, petting zoo, free meal, car seat checks and law enforcement agencies on hand to give demonstrations and information out.

- Gateway Community Services Advisory Board met last week. Mary Miller, area coordinator organized youth groups who completed a "Sticker Shock" campaign, in which they placed 1200 stickers on alcoholic beverages in Town Pump Food Store, Albertson's, Noon's and Main Street Convenience warning of underage drinking, the penalty of buying alcohol for minors and social hosting. A Sunburst group visited stores in North Toole County. She also sent letters home with graduating seniors encouraging parents to be diligent in their efforts to talk with their kids about underage drinking. Mary has also organized a parent support group to offer parenting tips and support which will meet monthly. Mary also conducts Responsible Alcohol Sales training to local alcohol retailers and bars. Mary's job is funded by a grant which is to expire in September. I sincerely hope Gateway will seek additional funding to keep Mary's program operating in Toole County.

- I did contact the golf course manager and board president of the upcoming Office of Tourism grant opportunity opening July 1. They are very interested in seeking funding for capital improvements for the course. I offered my help in writing the application.

- Humic Growth Solutions is seeking a second grant extension for their Big Sky Trust Fund Job Creation grant. I am waiting on their revised Hiring & Training Plan.

- The Facility Use Agreement was reviewed by the Parks & Rec Committee. The group discussed usage of the Civic Center by for-profit and non-profit groups and janitorial fees. The Parks & Rec Committee will review the agreement again at the June meeting.

#### OTHER MATTERS

- TSEP Extension Letter

CLARK MADE A MOTION TO APPROVE THE EXTENSION LETTER WITH THE UNDERSTANDING THAT DNRC WOULD PROVIDE THE MATCH FOR THE GRANT. SECONDED BY MORITZ. VOTE AYES - CLARK, MORITZ, HEATON, CASEY, KIMMET, TUSTIAN. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

- Pool Climbing Wall

CASEY MADE A MOTION TO APPROVE THE CLIMBING WALL PURCHASE WITH THE APPROVAL FROM THE STATE. SECONDED BY MORITZ. VOTE AYES - CLARK, MORITZ, HEATON, CASEY, KIMMET, TUSTIAN. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

- Fire Truck Offer

CASEY MADE A MOTION TO APPROVE THE SALE OF THE TRUCK FOR \$5,000 AND APPLY THE FUNDS TO THE AIR PACK LOAN. SECONDED BY HEATON. VOTE AYES - CLARK, MORITZ, HEATON, CASEY, KIMMET, TUSTIAN. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

- Border Protection Services Use of Old Middle School

MORITZ MADE A MOTION TO APPROVE THE USE CONTINGENT UPON THE STATE FIRE MARSHAL SIGNING OFF. SECONDED BY CASEY. VOTE AYES - CLARK, MORITZ, HEATON, CASEY, KIMMET, TUSTIAN. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

- Facility Use Agreement

- DWI Agreement

ADJOURN

AT 9:20 P.M. KIMMET MADE A MOTION TO ADJOURN THE MEETING. SECONDED BY CASEY. VOTE AYES - CLARK, MORITZ, HEATON, KIMMET, CASEY, TUSTIAN. 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

June 11, 2018

6:30 p.m.

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

## Minutes

The board reviewed the minutes from the last meeting.

## Growth Policy

City Planner Yeagley handed out Chapter VII Community Facilities for board review.

## Amended Subdivision Plat of Lots C-1 and C-2 of the Amended Subdivision Plat of Lot C - Motel 6 property

The purpose of this division of land is to amend an amended amended subdivision to create an additional lot. The first amended plat created two lots and the now this seconded amended plat creates three lots.

**UPON MOTION BY LONGCAKE AND SECOND BY SULENES THE BOARD UNANIMOUSLY APPROVED A RECOMMEND TO CITY COUNCIL TO APPROVE THIS SECOND AMENDED SUBDIVISION PLAT AS PRESENTED.**

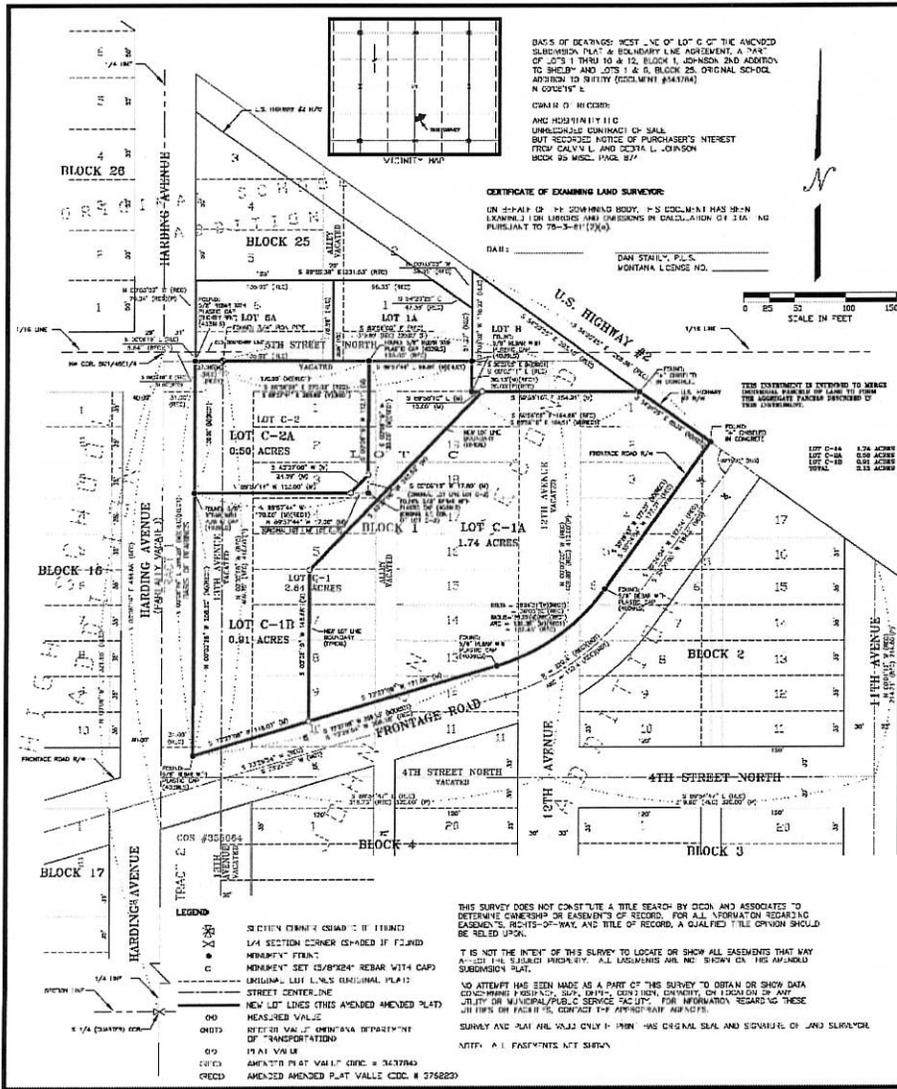
**MEETING ADJOURNED AT 7:10 P.M.**

Reported by:

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Tammy Pederson, Secretary





**AMENDED SUBDIVISION PLAT OF LOTS C-1 AND C-2 OF THE AMENDED SUBDIVISION PLAT OF LOT C OF THE AMENDED SUBDIVISION PLAT & BOUNDARY LINE AGREEMENT OF LOTS 1 THRU 10 & 12 THRU 20, BLOCK 1, JOHNSON 2ND ADDITION TO SHELBY LOTS 1 THRU 7, BLOCK 2, JOHNSON 2ND ADDITION TO SHELBY SW 1/4 SEC 14, T22N, R22W, P.M.M. TOLLE COUNTY, MONTANA AT THE REQUEST OF RISHI CHAMPANERIA**

**PURPOSE OF SURVEY:**  
TO MAKE LOTS C-1 AND C-2 OF THE AMENDED SUBDIVISION OF LOT C OF THE AMENDED SUBDIVISION AND BOUNDARY LINE AGREEMENT OF LOTS 1 THROUGH 10 AND 12 THROUGH 20, BLOCK 1, JOHNSON 2ND ADDITION TO SHELBY, LOTS 1 THROUGH 7, BLOCK 2, JOHNSON 2ND ADDITION TO SHELBY (CREATING ONE ADDITIONAL LOT), T22N, R22W, AMENDED AMENDED SUBDIVISION LOTS (1) TO BE REPRESENTED BY THE CORRECT SURVEY REF AND SHAP, (2) TO DEFINE BY EXTENSION THE CORRECT BOUNDARY AND SHAP OF THE LOTS, (3) TO VERIFY BY LOCATING POINTS RELEVANT TO THE PROPER LOCATION OF THE LOTS.

**LEGAL DESCRIPTION:**  
LOTS C-1 AND C-2, AMENDED SUBDIVISION PLAT OF LOT C OF THE AMENDED SUBDIVISION AND BOUNDARY LINE AGREEMENT OF LOTS 1 THROUGH 10 AND 12 THROUGH 20, BLOCK 1, JOHNSON 2ND ADDITION TO SHELBY, LOTS 1 THROUGH 7, BLOCK 2, JOHNSON 2ND ADDITION TO SHELBY (CREATING ONE ADDITIONAL LOT), T22N, R22W, AMENDED AMENDED SUBDIVISION LOTS (1) TO BE REPRESENTED BY THE CORRECT SURVEY REF AND SHAP, (2) TO DEFINE BY EXTENSION THE CORRECT BOUNDARY AND SHAP OF THE LOTS, (3) TO VERIFY BY LOCATING POINTS RELEVANT TO THE PROPER LOCATION OF THE LOTS.

**CERTIFICATE OF PLANNING BOARD:**  
I, THE UNDERSIGNED, CHAIRMAN OF THE SHELBY CITY-COUNTY PLANNING BOARD, DO HEREBY CERTIFY THAT THIS AMENDED AMENDED SUBDIVISION HAS BEEN SUBMITTED FOR EXAMINATION AND HAS BEEN REVIEWED AND APPROVED.

**CERTIFICATE OF COUNTY TREASURER:**  
I HEREBY CERTIFY THAT THE REAL PROPERTY TAXES LEVIED AND ASSESSED ON THE DESCRIBED LAND ARE PAID.

**CERTIFICATE OF FILING BY CLERK AND RECORDER:**  
I, CLERK AND RECORDER, DO HEREBY CERTIFY THAT THIS AMENDED AMENDED SUBDIVISION PLAT WAS FILED IN THE PUBLIC RECORDS OF TOLLE COUNTY, MONTANA, ON THIS DAY OF 2018 AT 10:00 O'CLOCK P.M.

**CERTIFICATE OF PROPERTY OWNERS:**  
WE, THE UNDERSIGNED PROPERTY OWNERS, HEREBY CERTIFY THAT THE PURPOSE OF THIS DIVISION OF LAND IS TO AMEND AN AMENDED AMENDED SUBDIVISION (CREATING ONE ADDITIONAL LOT) AND THAT WE ARE IN COMPLIANCE WITH ALL CONDITIONS IMPOSED IN THE AMENDING OF THIS AMENDED SUBDIVISION AS SPECIFIED IN SECTION 78-3-506, M.C.A.

**CERTIFICATE OF SURVEY:**  
ON THE BASIS OF MY KNOWLEDGE, INFORMATION, AND BELIEF, I CERTIFY THAT AS A RESULT OF A SURVEY MADE ON THE GROUND TO THE NORMAL STANDARDS OF CARE OF PROFESSIONAL LAND SURVEYORS PRACTICING IN THE STATE OF MONTANA, I FIND THAT THE PREVIOUS DESCRIBED AND MARKED AS SHOWN ON THE SUBDIVISION PLAT IS IN COMPLIANCE WITH THE SUBDIVISION AND PLATTING ACT (SEC. 78-3-101 THRU 78-3-111, M.C.A.) AND THE REGULATIONS THEREUNDER.

**CERTIFICATE OF PLANNING BOARD:**  
I, THE UNDERSIGNED, CHAIRMAN OF THE SHELBY CITY-COUNTY PLANNING BOARD, DO HEREBY CERTIFY THAT THIS AMENDED AMENDED SUBDIVISION HAS BEEN SUBMITTED FOR EXAMINATION AND HAS BEEN REVIEWED AND APPROVED.

**CERTIFICATE OF COUNTY TREASURER:**  
I HEREBY CERTIFY THAT THE REAL PROPERTY TAXES LEVIED AND ASSESSED ON THE DESCRIBED LAND ARE PAID.

**CERTIFICATE OF FILING BY CLERK AND RECORDER:**  
I, CLERK AND RECORDER, DO HEREBY CERTIFY THAT THIS AMENDED AMENDED SUBDIVISION PLAT WAS FILED IN THE PUBLIC RECORDS OF TOLLE COUNTY, MONTANA, ON THIS DAY OF 2018 AT 10:00 O'CLOCK P.M.

AMENDED SUBDIVISION PLAT OF LOTS C-1 AND C-2 OF THE AMENDED SUBDIVISION PLAT OF LOT C OF THE AMENDED SUBDIVISION PLAT & BOUNDARY LINE AGREEMENT OF LOTS 1 THRU 10 & 12 THRU 20, BLOCK 1, JOHNSON 2ND ADDITION TO SHELBY LOTS 1 THRU 7, BLOCK 2, JOHNSON 2ND ADDITION TO SHELBY, SW 1/4 SEC 14, T22N, R22W, P.M.M. TOLLE COUNTY, MONTANA	228 28 28 30
FILED FOR	2018 JAN 10
FILED BY	CLERK AND RECORDER
FILED AT	TOLLE COUNTY, MONTANA
FILED IN	BOOK 541
FILED ON	PAGE 1 OF 1

**CICON AND ASSOCIATES**  
BOX 541  
CHESTER, MONTANA 59522

RESOLUTION NO. 1978

A RESOLUTION OF INTENT TO SELL CERTAIN CITY OF SHELBY  
PROPERTY TO JOSPEH P. PEHAN

WHEREAS, the City of Shelby, Montana owns certain real property owned by the City of Shelby, Montana and located within Toole County, Montana, to wit:

Sullivans First Addition (Shelby), S27, T32 N, R02 W, Block 026, Lot 001, SE'LY 40' LTS 1-3 according to the official 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.

Commonly known as: 115 E. Dawson Ave, Shelby, Montana.

WHEREAS, the real property is vacant and unused by the City of Shelby; and

WHEREAS, Joseph P. Pehan, offered to purchase the above-described real property for \$2,000.00 cash;

WHEREAS, the City of Shelby agrees to sell to Joseph P. Pehan the above-described real property for the sum of \$2000.00 plus the cost of the title commitment (approximately \$188.00) and recording fee (approximately \$7.00);

WHEREAS, the City of Shelby agrees to pay the remaining costs of document preparation and closing (approximately \$200.00).

WHEREAS, pursuant to Section 7-8-4201(2), Mont. Code Ann (2017), the City Council may sell, dispose of, donate, or lease the above-described property by resolution passed by two-thirds vote of all members of the Council;

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

1. it authorizes the duly elected Mayor of the City of Shelby to enter into a Buy-Sell Agreement with Joseph P. Pehan under the aforementioned terms; and,
2. it authorizes the duly appointed Finance Officer of the City of Shelby to convey the City's interest in the above-described real property to Joseph P. Pehan.

PASSED UNANIMOUSLY, WITH ALL MEMBERS PRESENT AND VOTING, BY THE CITY COUNCIL OF THE CITY OF SHELBY, AND APPROVED BY THE MAYOR THIS 18<sup>th</sup> DAY OF JUNE, 2018.

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

ATTEST:

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

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

## **FIRST AMENDMENT TO WATER PURCHASE CONTRACT**

This First Amendment to Water Purchase Contract (this "First Amendment") entered into on the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF SHELBY, MONTANA, 112 1<sup>st</sup> South, Shelby, MT 59474 ("SELLER") and the DEVON WATER, INC., a Montana corporation, 145 South Devon Road, Shelby MT 59474, ("PURCHASER").

### **Recitals**

Seller and Purchaser are parties to that certain Water Purchase Contract dated June 23, 2014 and recorded as Document #370164, Book 96 Misc., Page 241, on June 23, 2014 ("Contract"); and

Seller and Purchaser desire to amend the Contract on the terms and conditions set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt acknowledged, and pursuant to Paragraph C.3 of the Contract and the laws of the State of Montana, SELLER and PURCHASER agree to amend the Contract as follows:

#### A. BOOSTER STATION AND REIMBURSEMENTS

1. Paragraphs B.4, D.2, and D.5 of the Contract are hereby stricken and of no further force and effect. For point of clarity, the parties acknowledge and agree that PURCHASER shall not be required to install a boost station and SELLER shall not be required to purchase the boost station from PURCHASER as previously required by Paragraphs B.4, D.2, and D.5 of the Contract.

2. Paragraph D.6 of the Contract is amended and restated as follows:

PURCHASER understands and agrees that it is one of SELLER's customers that will benefit from the boost station that SELLER will install. As part of the cost of that benefit, the Parties agree that the Operation, Maintenance, and Replacement costs of the boost station shall be equitably shared between PURCHASER and SELLER, with respect to relative usage by PURCHASER and SELLER's other customers. A meeting between the representatives of SELLER and PURCHASER shall be held every January to discuss and establish these costs for the next fiscal year. SELLER will bill PURCHASER each month as part of the regular monthly service statement.

3. Paragraph B.3. of the Contract is hereby stricken and of no further force and effect. For point of clarity, the parties acknowledge and agree that PURCHASER shall have no obligation to reimburse Seller for the expenses incurred by SELLER in filing a change of use application with the Montana Department of Natural Resources and Conservation as it relates to PURCHASER.

4. SELLER shall pay to PURCHASER \$30,000.00 on or before the first business day after July 2, 2018. The forgoing payment is intended to reimburse PURCAHSEER for engineering expenses it incurred in designing a portion of PURCHASER'S water distribution system (the "System").

5. SELLER grants to PURCHASER a water credit of \$19,000.00 (the "Credit") which shall be applied towards PURCHASER'S future water purchases from SELLER. In the event PURCHASER should cease to operate the System prior to the entire Credit being used up, PURCHASER forfeits any remaining balance.

#### B. PUBLIC NOTICE REQUIREMENTS UNDER THE NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. In the event there is need for the SELLER to issue a public notice regarding the potable water supply, the SELLER will issue public notice to PURCHASER at its property address. PURCHASER will be responsible for notification of the users of the System. PURCHASER will be responsible for notifying the Montana Department of Environmental Quality (DEQ) that the public notice was delivered as required by local state or federal regulations. The SELLER will not be responsible for delivery of public notice to the individual users of the System under any circumstance.

2. The SELLER will issue a single annual Consumer Confidence Report to PURCHASER at PURCHASER's property address. PURCHASER will be responsible to copy and distribute, as required, the annual Consumer Confidence Report to its users. PURCHASER

is responsible for notifying the Department of Environmental Quality (DEQ) that the annual Consumer Confidence Report was provided to their users as required by local state or federal regulations.

4. Nothing in Contract or this First Amendment will obligate the SELLER to modify the operation or maintenance of the SELLER's water treatment or water distribution system except as otherwise provided in this First Amendment.

C. CHLORINATION.

1. PURCHASER, at its sole cost and expense, shall purchase a chlorination port and related equipment suitable to chlorinate the water purchased by PURCHASER from SELLER (the "Chlorination Port") and construct an appropriate structure to house the Chlorination Port (collectively "Chlorination System"). Prior to purchasing the Chlorination System and constructing it PURCHASER shall obtain SELLER's approval of the Chlorination System and SELLER shall not unreasonably or untimely withhold such approval. PURCHASER shall also install the Chlorination System at the Point of Connection ("POC") as identified as Station No. 67.5 on Exhibit A attached hereto.

2. During the term of the Contract SELLER shall be the exclusive operator of the Chlorination System and shall operate, maintain and repair it in strict accordance with all applicable laws, rules, regulations, and subject to terms and conditions set forth herein.

3. Within 30 days from receipt of any invoice, PURCHASER shall reimburse SELLER for any costs and expenses incurred by SELLER in the operation, maintenance, and repair of the Chlorination System including material and labor. Before incurring any costs and expenses related to the operation, maintenance, and repair of the Chlorination System in excess of \$500, SELLER shall first provide notice in person or telephonically of the cost and expense to be incurred and PURCHASER shall have 48 hours from receipt of such notice to object to such cost or expense. If no objection is received by SELLER, then SELLER may proceed with the cost and expense. If an objection is received by SELLER, the parties shall attempt in good faith to resolve the objection.

D. Paragraph C.3 of the Contract is amended and restated as follows:

The provisions of this Contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification pursuant to Montana law applicable to municipal utility rate increases. 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 customers inside its corporate City limits. PURCHASER shall be given notice as required by law before any increase in rates. Other provisions of this Contract may be modified or altered by mutual agreement.

E. CONNECTIONS WEST OF POC. The parties acknowledge and agree that all customer taps to the waterline prior to the POC shall be SELLER's exclusive customers and PURCHASER shall not have any responsibility for such customers. For point of clarity, such taps include, but are not limited to, customer waterlines that run in an easterly direction to properties located east of the POC.

F. MEMORANDUM OF UNDERSTANDING BETWEEN SELLER, PURCHASER, AND MONTANA DEPARTMENT OF TRANSPORTATION, MAY 2016. The Parties to this Amendment agree that the Memorandum of Understanding between SELLER and PURCHASER and the Montana Department of Transportation dated May, 2016 is unaffected by this Amendment and shall continue in full force and effect.

G. MISCELLANEOUS

1. Nothing in the Contract or First Amendment will relieve either Party from any duty required by local, state or federal rules or regulations including PURCHASER's obligation under 17.38.210 A.R.M.

2. This First Amendment applies to and binds the heirs, successors, executors and assigns of the parties to the Amendment.

3. Seller may unilaterally amend the Contract and this First Amendment to ensure that they both comply with all applicable state or federal rules or regulations governing Seller by giving notice to Purchaser as provided for herein. Notwithstanding the foregoing, any such amendment shall only take effect at the specified time after the effective date of the notice. If Purchaser is unwilling for the Contract and this First Amendment to continue as amended, it may terminate the Contract by giving notice to Seller no later than 30 days following Purchaser's receipt of the notice as described in this First Amendment.

4. Except as set forth in this First Amendment, the Contract is hereby ratified and confirmed. In the event of a conflict between the terms and conditions of this First Amendment and the terms and conditions of the Contract, the terms of this Amendment will prevail.

5. The persons executing this First Amendment on behalf of the parties represent and warrant that they have the legal authority to enter into this First Amendment on behalf of SELLER and PURCHASER.

6. Unless otherwise stated, all notices, requests, consents, claims, demands, waivers, and other communications called for under this First Amendment must be in writing and are considered given:

- when delivered by hand (with written confirmation of receipt);
- when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);

- on the date sent by facsimile or email as a PDF document (with confirmation of transmission) if sent during recipient's normal business hours, and on the next business day if sent after recipient's normal business hours; or
- on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

7. The written notice must be sent to the respective parties at the party's last known address or at the address a party has specified in a notice given in accordance with this Section. Notice to the parties must be addressed to the addresses set forth in Page 1 above.

8. Unless otherwise specifically provided in this First Amendment or by the context in which used, the word shall and will are used to impose a duty, to command, to direct, or to require. Terms such as may, is authorized to, is permitted to, is allowed to, has the right to, or any variation or other words of discretion are used to allow, to permit, or to provide the discretion to choose what should be done in a particular situation, without any other requirement. Unless the decision of another party is expressly required by this First Amendment, words of permission give the decision-maker the sole and absolute discretion to make the decision required in the context.

9. The headings of Sections and Subsections used within this First Amendment are included solely for the reader's convenience and reference. They have no significance in the interpretation or construction of this First Amendment.

10. The word days, without further qualification, means calendar days and business days means any day other than a Saturday, Sunday, or a day on which national banks are allowed by the Federal Reserve to be closed.

11. No provision of this First Amendment may be amended or modified except by a written instrument signed by all parties to this First Amendment.

12. This First Amendment may be signed in any number of counterparts, each of which will be deemed an original. Any person may rely on a copy of this First Amendment that any party to this First Amendment certifies to be a true copy to the same effect as if it were an original.

13. Any party's failure to insist upon strict performance of any provision or obligation of this First Amendment—despite the length of time the failure continues—is not a waiver of that party's right to demand strict compliance in the future. An express or implied consent to or waiver of any breach or default in the performance of any obligations under this First Amendment is not a consent to or waiver of any other breach or default in the performance of the same or of any other obligation.

14. The invalidity or unenforceability of any provision of this First Amendment does not affect the validity or enforceability of any other provision of this First Amendment. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this First Amendment are to be construed as if the invalid provision had never been included in this

First Amendment. Upon a determination that any provision is invalid, illegal, or unenforceable, the parties to this First Amendment shall negotiate in good faith to modify this First Amendment to give effect to the original intent of the parties as closely as possible in a mutually acceptable manner so that the transactions contemplated by this First Amendment can be consummated as originally contemplated to the greatest extent possible.

15. If any party to this First Amendment institutes any legal cause of action against another party arising out of or relating to this First Amendment or the Contract, the prevailing party will be entitled to the costs incurred in conducting the cause of action, including reasonable attorneys' fees and expenses and court costs.

IN WITNESS WHEREOF the parties have each caused this First Amendment to be executed and delivered by a duly authorized representative as of the date first above written.

THE CITY OF SHELBY, MONTANA "SELLER"

By: \_\_\_\_\_  
GARY McDERMOTT, Mayor

Attest:

\_\_\_\_\_  
JADE GOROSKI, Finance Officer

DEVON WATER, INC. "PURCHASER"

By: \_\_\_\_\_  
JOSEPH P. FRETHERM, President

By: \_\_\_\_\_  
ROY BENJAMIN, Manager

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.

SERIAL OF DOCUMENT: 370164  
 RECORDED: 06/23/2014 3:13 BOOK: 96 MISC. PAGE: 241  
 TREV NELSON, CLERK AND RECORDER BY: *Trev 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.

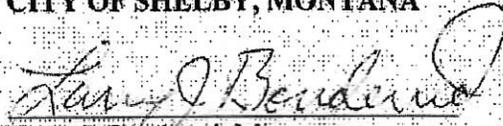
IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in 3 counterparts, each of which shall constitute an original.



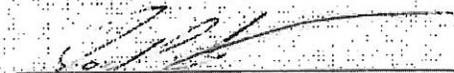
Attest:

  
\_\_\_\_\_  
Teri Ruff, City Finance Officer

"Seller"  
CITY OF SHELBY, MONTANA

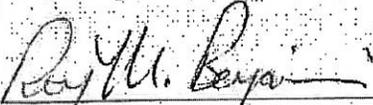
  
\_\_\_\_\_  
Larry J. Bonderud, Mayor

"Purchaser"  
DEVON WATER INC.

  
\_\_\_\_\_  
Joseph P. Fréthien, President

Attest:

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

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