

AGENDA
CITY COUNCIL MEETING
CITY OF SHELBY
December 17, 2018
6:30 P.M.

ROLL CALL OF MEMBERS

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

- Regular Council Meeting, 12/03/18 (pgs 5-7)

APPEARANCE REQUESTS

- Agenda Items
- Non-Agenda Items

COMMITTEE REPORTS

CITY ATTORNEY

- South Line (Marias River Component) OMR (pgs 8-15)
- 13th Street OMR (pgs 16-23)
- Habets MOU (pgs 24-25)
- Ordinance No. 835 re: Amending Title 8, Chapter 1, Volunteer Fire Department (1st rdg) (pg 26)
- Shelby Chamber of Commerce Lease (pgs 27-32)
- NCMRWA/City of Shelby Funding Agreement (pgs 33-36)

CITY FINANCE OFFICER

- City Judge's Report, November 2018 (pgs 37-55)
- Bank Account Report (pg 56), Budget Year to Date (pg 57), Vendor Summary (pgs 58-59), Enterprise Funds (pgs 60-63), Statement of Expenditures (pgs 64-88), Revenues (pgs 89-98), Cash Flow Report (pg 99), Project Budgets (pg 100), November 2018
- City of Shelby Delinquent Taxes, 11/30/18 (pg 101)

CITY SUPERINTENDENT

- Superintendent's Report, 12/17/18 (pgs 102)
- Landfill Charges (pgs 103-129)

COMMUNITY DEVELOPMENT DIRECTOR

-

OTHER MATTERS

- KLJ Task Order #7 (pgs 130-135)
- KLJ for Preservation Plan Approval (pgs 136-150)
- HiLine Redi-Mix MOU

ADJOURN

CITY OF SHELBY MEETING SCHEDULE

December 17, 2018

6:30 p.m. **Regular City Council Meeting**

December 31, 2018 - CANCELLED

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

January 9, 2018 - Wednesday

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

6:30 p.m. **Regular City Council Meeting**

January 22, 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, 12/03/18
2. South Line (Marias River Component) OMR
3. 13th Street OMR
4. Habets MOU
5. Ordinance No. 835 re: Amending Title 8, Chapter 1, Volunteer Fire Department (1st rdg)
6. Shelby Chamber of Commerce Lease
7. NCMRWA/City of Shelby Funding Agreement
8. City Judge's Report, November 2018
9. Bank Account Report, November 2018
10. Budget Year to Date, November 2018
11. Vendor Summary, November 2018
12. Enterprise Funds, November 2018
13. Statement of Expenditures, November 2018
14. Statement of Revenues, November 2018
15. Cash Flow Report, November 2018
16. Project Budgets, 11/30/18
17. City of Shelby Delinquent Taxes, 11/30/18
18. Superintendent's Report, 12/17/18
19. Landfill Charges
20. KLJ Task Order #7
21. KLJ Preservation Plan

C. Correspondence

1. 11/28/18 NCMRWA Letter to Chippewa Cree Construction Corporation re: Federal Funding Considerations
2. 11/29/18 Letter to David Irvin, Northern Transit Interlocal re: Shelby Appointee - Northern Transit Interlocal Board
3. 12/3/18 MT DEQ Public Notice re: Update to Integrated Waste Management Plan for 2018
4. 12/6/18 Summary of Port of Northern Montana Board Meeting
5. Letter to Jeanette Blize, Program Specialist, MT Dept of Commerce re: Shelby Phase II Storm Water Drainage Improvement Project
6. NLC Service Line Warranty Program Highlights & Summary
7. City of Shelby 2019 Calendar

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
December 3, 2018

Mayor McDermott called the meeting to order at 6:30 p.m.
Present were: Debra Clark, Lyle Kimmet, Trent Tustian, Aaron Heaton, Luke Casey, 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: Jim Yeagley, Jennifer Van Heel, Mike O'Brien, Ryan Larson, Chance Barker, Ron Kinyon, Andrew McFarland, Kevin Fields, Michelle Russell and Steven Prescott.

PLEDGE OF ALLEGIANCE

REGULAR MEETING MINUTES 10/15/2018

- KIMMET MADE A MOTION TO APPROVE THE 10/15/2018 MINUTES. SECONDED BY CASEY. VOTE AYES - CLARK, TUSTIAN MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

APPEARANCE REQUESTS

- Agenda Items - NONE
- Non-Agenda - Undersheriff Larson introduced the new deputies and jailors.

CLAIMS REPORT 10/31/2018

- MORITZ MADE A MOTION TO APPROVE THE 10/31/2018 CLAIMS REPORT. SECONDED BY TUSTIAN. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

BUILDING INSPECTOR

- Rob Tasker reported he issued 5 new permits and there are 8 open permits.

COMMITTEE REPORTS

- Minutes of Quarterly Safety Meeting, 10/17/2018
- Minutes of Park & Rec Meeting, 10/29/2018

CITY ATTORNEY

- South Industrial Park Road Lease
CASEY MADE A MOTION TO APPROVE THE LEASE WITH NOTED CHANGES. SECONDED BY TUSTIAN. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

CITY FINANCE OFFICER

- Payroll Expense by Department 10/2018
- City Hall Server
MORITZ MADE A MOTION TO APPROVE THE \$7,546 PURCHASE. SECONDED BY CLARK. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

CITY SUPERINTENDENT

Loren provided a report as part of the packet and a street maintenance plan for the next two fiscal years.

- Dumpster Purchase
TUSTIAN MADE A MOTION TO APPROVE THE \$18,144.70 PURCHASE FOR DUMPSTERS. SECONDED BY KIMMET. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.
- Sewer Lift Improvements
CASEY MADE A MOTION TO APPROVE THE ADDITIONAL \$37,650 NEEDED TO COMPLETE THE SEWER LIFT IMPROVEMENTS PROJECT. SECONDED TUSTIAN. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.
- Garbage Truck Tires
MORITZ MADE A MOTION TO APPROVE THE \$4,490 PURCHASE. SECONDED BY CASEY. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

COMMUNITY DEVELOPMENT DIRECTOR

- Urban Forestry Development Grant
MORITZ MADE A MOTION TO APPROVE THE APPLICATION. SECONDED BY TUSTIAN. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.
- Recreational Trails Program Application

OTHER MATTERS

- CDBG Stormwater Phase 2 - \$67,500 match
No action taken and will revisit once we have numbers on change order #3 for Phase 1 of the project.
- Civic Center Manager
MORITZ MADE A MOTION TO APPROVE THE ADVERTISEMENT FOR THE PART TIME POSITION WITH A 6 MONTH PROBATIONARY PERIOD. SECONDED BY CLARK. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.
- Storm Water Change Order #3
- Old Middle School Boiler & Controls
CASEY MADE A MOTION TO APPROVE LISTING THE BOILER AND CONTROLS FOR SALE. SECONDED BY TUSTIAN. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.
- Community Service Project - Brogan McAllister, Book Kiosk
KIMMET MADE A MOTION TO APPROVE THE KIOSK IN CITY PARK. BROGAN WILL MAINTAIN THE KIOSK AND PASS THE DUTIES ON TO AN INCOMING FRESHMAN WHEN SHE GRADUATES. SECONDED BY TUSTIAN. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.
- Chamber Coupon Book
CASEY MADE A MOTION TO APPROVE THE FREE 1 DAY PASS TO THE CIVIC CENTER. SECONDED BY CLARK. VOTE AYES - CLARK, TUSTIAN, MORITZ, CASEY, KIMMET, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

ADJOURN

- AT 9:25 P.M. TUSTIAN MADE A MOTION TO ADJOURN THE MEETING. SECONDED BY KIMMET. VOTE AYES - CLARK, MORITZ, CASEY, KIMMET, TUSTIAN, HEATON. NOES - NONE. ABSENT - NONE. ABSTAIN - NONE.

GARY MCDERMOTT, MAYOR

ATTEST:

JADE GOROSKI, FINANCE OFFICER

**AGREEMENT FOR THE
OPERATION and MAINTENANCE OF THE
MARIAS RIVER COMPONENT (Segment W4-B1) OF THE
NORTH CENTRAL MONTANA REGIONAL WATER SYSTEM**

**between
THE CITY of SHELBY
and
THE NORTH CENTRAL MONTANA REGIONAL WATER AUTHORITY**

THIS AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE MARIAS RIVER COMPONENT OF THE NORTH CENTRAL MONTANA REGIONAL WATER SYSTEM, is made this ____ day of _____, 2018, by and between the City of Shelby and the North Central Montana Regional Water Authority, a not-for-profit entity existing under and by virtue of the laws of the State of Montana with its principal place of business in Havre, Montana.

RECITALS

A. The Rocky Boy's / North Central Montana Regional Water System Act of 2002 (Public Law 107-331) (the "Act") recognizes the need to ensure a safe and adequate rural, municipal and industrial water supply for the residents of the Rocky Boy's Reservation in the State of Montana and to assist the citizens residing in Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, but outside the Reservation, in developing safe and adequate rural, municipal and industrial water supplies.

B. The Parties to this Agreement enter into this Agreement to address matters related to the operation and maintenance of the Marias River Component of the Non-Core System.

NOW, THEREFORE, in consideration of the premises and mutual desires of the Parties, it is agreed as follows:

1. Definitions. When used in this Agreement, the following terms shall have the following meanings:

1.1 **Act** shall mean the Rocky Boy's/North Central Montana Regional Water System Act of 2002, Public Law 107-331.

1.2 **Agreement** shall mean and include the introductory paragraph, the Recitals and all Articles of this Agreement, and all attachments to or incorporated by reference into this Agreement

1.3 **Authority** shall mean the North Central Montana Regional Water Authority.

1.4 **Marias River Component also referred to as Segment W4-B1** shall mean that portion of the North Central Montana Regional Water System owned by the Authority and depicted in **Exhibit "A"** (attached) which transports drinking water more particularly described as the connection to the existing Shelby sixteen inch (16") supply line at the 20"X16" cross approximately fifty (50) feet north of the Shelby treatment building and all pipe and appurtenances conveying water from that point to an end point approximately five (5) miles

south to a point east of Interstate 15 approximately 3,250 feet south of the Toole/Pondera county line adjacent to the old Shelby Road on the east side.

- 1.5 **Non-Core System** shall be as defined in section 905(c) of the Act
 - 1.6 **Shelby** shall mean the City of Shelby.
 - 1.7 **O&M** shall mean the operation and maintenance of the Marias River Component of the Non-Core System.
2. **Term.** This Agreement shall be effective on the date of execution and shall remain in effect until termination upon the mutual agreement of the Parties.
 3. **Shelby's Obligations.** Shelby shall be responsible for the O&M of the Marias River Component. To keep O&M costs for the Marias River Component within reasonable limits, Shelby shall comply with the following obligations:
 - 3.1 deliver water from the Marias River Component to any water taps approved by the Authority;
 - 3.2 operate the Marias River Component at all times in compliance with applicable Local, State, and Federal statutes, laws and regulations, and in the event of a conflict or inconsistency within or between such statutes and regulations, the more stringent requirements shall govern and be applied;
 - 3.3 deliver a 14 day rolling average of 30,000 gallons of water per day through the Marias River Component to keep the water within the Federal Environmental Protection Agency's recommended water age of 14 days;
 - 3.4 utilize an appropriately licensed or certified operator;
 - 3.5 develop and submit to the Authority an operations and maintenance regimen and perform routine and scheduled operation and maintenance functions in accordance with any O&M manuals developed for the Marias River Component and any manufacturers' recommendations, purchase and handle required chemicals, provide notification pursuant to Section 9 to the Authority of unscheduled or emergency operation and maintenance functions or activities, coordinate repairs or maintenance on an as needed basis and submit receipts for payment by the Authority;
 - 3.6 prepare and implement monthly and annual O&M budgets for the Marias River Component;
 - 3.7 keep and maintain O&M logs, books, and records of the Marias River Component;
 - 3.8 implement O&M provisions contained in the water conservation plan set forth in the Final Engineering Report (FER) for the North Central Montana Regional Water System;
 - 3.9 provide for independent annual financial and operating audits of Shelby's books, records, financial condition, inventory, operations, and compliance with

cost containment measures,

- 3.10 establish and maintain accounts, books and records pertaining to the administration of the terms and conditions of this Agreement and the O&M of the Marias River Component, which books and records shall be maintained at Shelby's offices;
- 3.11 allow for the inspection, during normal business hours and upon reasonable prior notice, by the Authority of all books and records related to the Marias River Component;
- 3.12 with Authority's written consent and authorization install connections to the Authority's property. Prior to and during the installation of any connection, Shelby shall comply with the Authority's "Tapping Requirements" set forth attached as **Exhibit B**.
- 3.13 Shelby shall maintain for its employees and require all its subcontractors or agents to have in place workers compensation insurance. Proof of such coverage will be provided to the Authority upon request.
- 3.14 Shelby shall procure and maintain during the term of this agreement general liability insurance or coverage including automobile coverage to cover its activities under this Agreement. The limits of such insurance shall be at a minimum \$750,000 per claim and \$1.5 million per occurrence. Shelby shall have the Authority named as an additional insured or covered party on such policy.
- 3.15 One Call. Shelby will act as Authority's agent for purposes of locating and marking the location of pipelines and other underground facilities of the Marias River Component.

4. Authority's Obligations:

- 4.1 Authority is the owner of the pipes, pumps, and related equipment that comprises the Marias River Component, to which it grants pursuant to this Agreement the right to Shelby to operate and maintain.
- 4.2 Except as provided for in Sections 3.11 and 4.3, Authority grants, pursuant to this Agreement, to Shelby as its agent the right to enter onto any easement or other property interest held by the Authority within the Marias River Component for purposes of carrying out the purpose of this Agreement.
- 4.3 Authority is solely responsible for authorizing any and all connections to the Authority's pipes, equipment, and facilities.
- 4.4 Authority may respond to situations that it considers an emergency. In such situations the Authority will notify Shelby of the emergency and the Authority's response. If necessary, the Authority may suspend Shelby's obligations under this Agreement during the emergency. Authority will require any contractor(s) or subcontractors hired to respond to situations considered an emergency to

have workers compensation coverage.

4.5 Authority shall procure and maintain a property insurance policy to cover pipes, pumps, and other equipment and property owned by it that is the subject of this Agreement.

5. Water Quality Testing. Regular testing for water quality shall be performed by Shelby as prescribed by the State of Montana per 17.38.210 of the Administrative Rules of Montana and copies of all testing results and reports shall be made available to the Authority upon request. Water quality shall meet the most stringent applicable regulatory standards and compliance with such standards shall be, unless otherwise required by Federal or State regulation, determined at the point(s) of interconnection between Shelby and the Marias River Component or other systems. Nothing herein shall relieve Shelby of complying with any testing or sampling required by a State or Federal entity for Shelby's system.

6. Payment for Services and Materials. Shelby shall, at no cost or expense to the Authority, perform water quality testing and monitoring of the Marias River Component. In consideration Shelby shall control and maintain the ability for individual user taps or connections to be installed. The City of Shelby shall invoice the Authority its obligations pertaining to repairs for the Marias River Component. Shelby shall not bill or charge for any O&M work done on its own pipes, equipment and facilities to the Authority. Except in the cases of an emergency, repair costs will require the prior written approval of the Authority. Failure to obtain such approval may result in those costs not be paid by the Authority. For those approved costs Shelby shall invoice the Authority on a time and materials basis in accordance with an agreed upon hourly rate schedule and proof of expenses via submittal of receipts for services.

8. Force Majeure. If any party is prevented in whole or in part from performing its obligations under this Agreement by unforeseeable causes beyond its reasonable control and without its fault or negligence ("Affected Party"), then the Affected Party shall be excused from whatever performance is affected by such force majeure condition, but only to the extent the performance is actually affected and provided that the Affected Party provides written notice to the other parties of the force majeure condition(s) within five (5) calendar days from the onset of such force majeure condition. Failure of the Affected Party to provide timely notice shall constitute a waiver of the force majeure condition and claim by the Affected Party.

9. Notices. Any notice, demand, or request authorized or required by this agreement shall be deemed to have been given, when mailed, postage prepaid, faxed or delivered to:

9.1 The Authority: North Central Montana Regional Water Authority
PO Box 2456
Havre, Montana 59501

with copies to: Steven T. Wade
Browning, Kaleczyc, Berry & Hoven, P.C.

P.O. Box 1697
Helena, Montana 59602

9.2 Shelby : Mayor
City of Shelby
112 1st Street South
Shelby, Montana 59474

with copies to:

City Attorney

The designation of the addressee or the address may be changed by giving notice in the same manner as provided in this article for notices.

10. Dispute Resolution. The following dispute resolution process shall apply to all provisions of this Agreement. The Parties commit themselves to working in a harmonious manner to successfully achieve the objectives set forth in this agreement. When disagreements arise between the parties, they will be resolved according to the following procedures:
- 10.1 There shall first be an attempt to resolve disagreements among the parties through informal discussions among representatives of the parties.
- 10.2 If the disagreement cannot be resolved through informal discussion among these parties, the parties shall agree upon a mediator and submit the dispute to mediation. If the parties cannot agree upon a mediator, each party will nominate a mediator. The two mediators nominated will then select a separate mediator who will establish the mediation process and format.
11. Governing Law; Jurisdiction. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the State of Montana.
12. Assignment Limited. The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or interest therein, shall be valid until approved in writing by each of the Parties.
13. Amendment. This Agreement may be amended, modified, supplemented, or superseded only by mutual agreement of all Parties hereto exhibited by a written instrument duly signed by all Parties hereto.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one and the same instrument.

15. Execution Copies. The Parties shall execute duplicate original documents, one of each original shall be provided to each Party hereto.

16. Indemnification. Shelby agrees to indemnify and defend Authority for any claim or liability arising out of the operation and maintenance of the Marias River Component.

17. Termination. This Agreement may be terminated by either party by giving 60 days written notice to the other party. The Authority may immediately terminate this Agreement by providing Shelby with such notice in writing if in the opinion of the Authority such termination is necessary to protect the Authority's system or prevent or respond to an emergency situation related to the quality of the drinking water being provided by the Authority.

City of Shelby

**North Central Montana
Regional Water Authority**

Printed Name: _____
 Title: _____
 Date: _____

Printed Name: _____
 Title: _____
 Date: _____

181213 DRAFT

EXHIBIT A
Marias River Component
(Map/Description)

181213 DRAFT

EXHIBIT B
Tapping/Connection Requirements

1. Prior to making any connection to the Authority's pipelines or facilities, written application and payment of the costs of connection must be made in advance to the Authority.
2. Connection Fees/Costs: Subject to the following, connection fees shall be as determined by the Authority, and at a minimum:
 - 2.1 Shelby shall be responsible for all costs associated with a connection to the Authority's property, except for those connections that are greater than 2 inches in diameter and expressly planned for by the Authority.
 - 2.2 Authority shall be responsible for the costs associated with installing connections that are greater than 2 inches in diameter and are expressly planned for in advance by the Authority.
 - 2.3 When an application has been granted, Authority, at the applicant's expense, will tap the Authority's pipe and furnish all necessary materials and labor furnished in connection with the tapping of the pipe. All such expenses for connecting and laying and maintaining the service pipes from the Authority's pipe to the edge of the Authority's easement shall be the responsibility of the applicant. In addition, the responsibility for the laying and maintenance of the service pipes from the edge of Authority's easement is the responsibility of the applicant.
3. The service pipe must be laid at a standard depth designated by the Authority to prevent freezing. Any curb stop must be set on or near the property line identifying the edge of Authority's easement.
4. Supervision by Authority: The Authority or its designated agent will supervise the connection to Authority's pipelines or facilities.
5. The type, size, design and material of service lines shall be approved in advance by the Authority.
6. Records: A record shall be kept, in a place provided by the Authority, of a map showing, type, size, and location of the connection, together with supporting data and date of completion.
7. Authority shall not be responsible for service pipes and fixtures. All owners at their own expense must keep service pipes from Authority's pipe and all their apparatus in good working order and properly protected from frost or other dangers. No claim shall be made against the Authority on account of the breaking of any service pipes or apparatus, or for accidental failure in the supply of water.

**AGREEMENT FOR THE
OPERATION and MAINTENANCE OF THE
16-INCH PIPELINE OF THE
NORTH CENTRAL MONTANA REGIONAL WATER SYSTEM**

**between
THE CITY of SHELBY
and**

THE NORTH CENTRAL MONTANA REGIONAL WATER AUTHORITY

THIS AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE 16-INCH PIPELINE OF THE NORTH CENTRAL MONTANA REGIONAL WATER SYSTEM, is made this ____ day of _____, 2018, by and between the City of Shelby and the North Central Montana Regional Water Authority, a not-for-profit entity existing under and by virtue of the laws of the State of Montana with its principal place of business in Havre, Montana.

RECITALS

- A. The Rocky Boy's / North Central Montana Regional Water System Act of 2002 (Public Law 107-331) (the "Act") recognizes the need to ensure a safe and adequate rural, municipal and industrial water supply for the residents of the Rocky Boy's Reservation in the State of Montana and to assist the citizens residing in Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, but outside the Reservation, in developing safe and adequate rural, municipal and industrial water supplies.
- B. The Parties to this Agreement enter into this Agreement to address matters related to the operation and maintenance of the Pipeline of the Non-Core System.
- NOW, THEREFORE, in consideration of the premises and mutual desires of the Parties, it is agreed as follows:
1. **Definitions.** When used in this Agreement, the following terms shall have the following meanings:
- 1.1 **Act** shall mean the Rocky Boy's/North Central Montana Regional Water System Act of 2002, Public Law 107-331.
 - 1.2 **Agreement** shall mean and include the introductory paragraph, the Recitals and all Articles of this Agreement, and all attachments to or incorporated by reference into this Agreement
 - 1.3 **Authority** shall mean the North Central Montana Regional Water Authority.
 - 1.4 16 inch water pipeline with a length of approximately 8,000 feet located as shown on Exhibit A, attached to this Agreement, along with that certain pipeline's appurtenances and improvements identified in Schedule A, attached to this Agreement, collectively hereinafter called "**Pipeline**".
 - 1.5 **Non-Core System** shall be as defined in section 905(c) of the Act
 - 1.6 **Shelby** shall mean the City of Shelby.
 - 1.7 **O&M** shall mean the operation and maintenance of the Pipeline.

2. **Term.** This Agreement shall be effective on the date of execution and shall remain in effect until termination upon the mutual agreement of the Parties.

3. **Shelby's Obligations.** Shelby shall be responsible for the O&M of the Pipeline as depicted in Exhibit A. To properly maintain the 16 Inch Pipeline and keep O&M costs within reasonable limits, Shelby shall comply with the following obligations:
 - 3.1 deliver water from the 16 Inch Pipeline to any water taps approved by the Authority;
 - 3.2 operate the 16 Inch Pipeline at all times in compliance with applicable Local, State, and Federal statutes, laws and regulations, and in the event of a conflict or inconsistency within or between such statutes and regulations, the more stringent requirements shall govern and be applied;
 - 3.3 utilize an appropriately licensed or certified operator;
 - 3.4 develop and submit to the Authority an operations and maintenance regimen and perform routine and scheduled operation and maintenance functions in accordance with any O&M manuals developed for the Pipeline and any manufacturers' recommendations, purchase and handle required chemicals, provide notification pursuant to Section 8 to the Authority of unscheduled or emergency operation and maintenance functions or activities, coordinate repairs or maintenance on an as needed basis and submit receipts for payment by the Authority;
 - 3.5 prepare and implement monthly and annual O&M budgets for the Pipeline;
 - 3.6 keep and maintain O&M logs, books, and records of the Pipeline;
 - 3.7 implement O&M provisions contained in the water conservation plan set forth in the Final Engineering Report (FER) for the North Central Montana Regional Water System;
 - 3.8 provide for independent annual financial and operating audits of Shelby's books, records, financial condition, inventory, operations, and compliance with cost containment measures,
 - 3.9 establish and maintain accounts, books and records pertaining to the administration of the terms and conditions of this Agreement and the O&M of the Pipeline, which books and records shall be maintained at Shelby's offices;
 - 3.10 allow for the inspection, during normal business hours and upon reasonable prior notice, by the Authority of all books and records related to the Pipeline;
 - 3.11 with Authority's written consent and authorization install connections to the Authority's property. Prior to and during the installation of any connection, Shelby shall comply with the Authority's "Tapping Requirements" set forth attached as **Exhibit B**. Such consent shall not be unreasonably withheld, especially for connections to Shelby customers.

- 3.12 Shelby shall maintain for its employees and require all its subcontractors or agents to have in place workers compensation insurance. Proof of such coverage will be provided to the Authority upon request.
- 3.13 Shelby shall procure and maintain during the term of this agreement general liability insurance or coverage including automobile coverage to cover its activities under this Agreement. The limits of such insurance shall be at a minimum \$750,000 per claim and \$1.5 million per occurrence. Shelby shall have the Authority named as an additional insured or covered party on such policy.
- 3.14 One Call. Shelby will act as Authority's agent for purposes of locating and marking the location of pipelines and other underground facilities of the Pipeline.

4. **Authority's Obligations:**

- 4.1 Authority is the owner of the pipes, pumps, and related equipment that comprises the Pipeline, to which it grants pursuant to this Agreement the right to Shelby to operate and maintain.
- 4.2 Except as provided for in Sections 3.11 and 4.3, Authority grants, pursuant to this Agreement, to Shelby as its agent the right to enter onto any easement or other property interest held by the Authority within the Pipeline for purposes of carrying out the purpose of this Agreement.
- 4.3 Authority is solely responsible for authorizing any and all connections to the Authority's pipes, equipment, and facilities.
- 4.4 Subject to Section 6, below, allow Shelby to deliver water to Shelby customers when in use of the 16 Inch Pipeline.
- 4.5 Authority may respond to situations that it considers an emergency. In such situations the Authority will notify Shelby of the emergency and the Authority's response. If necessary, the Authority may suspend Shelby's obligations under this Agreement during the emergency. Authority will require any contractor(s) or subcontractors hired to respond to situations considered an emergency to have workers compensation coverage.
- 4.6 Authority shall procure and maintain a property insurance policy to cover pipes, pumps, and other equipment and property owned by it that is the subject of this Agreement.

5. **Water Quality Testing.** Regular testing for water quality shall be performed by Shelby as prescribed by the State of Montana per 17.38.210 of the Administrative Rules of Montana and copies of all testing results and reports shall be made available to the Authority upon request. Water quality shall meet the most stringent applicable regulatory standards and compliance with such standards shall be, unless otherwise required by

Federal or State regulation, determined at the point(s) of interconnection between Shelby and the Pipeline or other systems. Nothing herein shall relieve Shelby of complying with any testing or sampling required by a State or Federal entity for Shelby's system.

6. **Payment for Services and Materials.**

6.1 ~~Shelby shall, at no cost or expense to the Authority, perform water quality testing and monitoring of the Pipeline. In consideration Shelby shall control and maintain the ability for individual user taps or connections to be installed. Shelby shall not bill or charge for any O&M work done on its own pipes, equipment and facilities to the Authority.~~

6.16.2 ~~Shelby shall, at no cost or expense to the Authority, perform water quality testing and monitoring of the Pipeline.~~

6.32 The City of Shelby shall invoice the Authority its obligations pertaining to repairs for the Pipeline. Repair costs shall be apportioned between Shelby and the Authority based on actual usage of the pipeline. An annual accounting of repair costs will be done in May with costs allocated between Shelby and the Authority based on the actual line usage from the previous 12 months.

6.43 Except in the cases of an emergency, repair costs will require the prior written approval of the Authority. Failure to obtain such approval may result in those costs not be paid by the Authority. For those approved costs Shelby shall invoice the Authority on a time and materials basis in accordance with an agreed upon hourly rate schedule and proof of expenses via submittal of receipts for services.

7. **Force Majeure.** If any party is prevented in whole or in part from performing its obligations under this Agreement by unforeseeable causes beyond its reasonable control and without its fault or negligence ("Affected Party"), then the Affected Party shall be excused from whatever performance is affected by such force majeure condition, but only to the extent the performance is actually affected and provided that the Affected Party provides written notice to the other parties of the force majeure condition(s) within five (5) calendar days from the onset of such force majeure condition. Failure of the Affected Party to provide timely notice shall constitute a waiver of the force majeure condition and claim by the Affected Party.

8. **Notices.** Any notice, demand, or request authorized or required by this agreement shall be deemed to have been given, when mailed, postage prepaid, faxed or delivered to:

8.1 The Authority: North Central Montana Regional Water Authority
PO Box 2456
Havre, Montana 59501

with copies to: Steven T. Wade
Browning, Kaleczyc, Berry & Hoven, P.C.

Commented [SW1]: Should there at least be some language in here about engineering standard or requirements to be met, and/or cap number of taps if they would impact future end of pipe or Authority users?

P.O. Box 1697
Helena, Montana 59602

Formatted: Spanish (Spain)

8.2 Shelby : Mayor
City of Shelby
112 1st Street South
Shelby, Montana 59474

with copies to:
City Attorney

The designation of the addressee or the address may be changed by giving notice in the same manner as provided in this article for notices.

9. **Dispute Resolution.** The following dispute resolution process shall apply to all provisions of this Agreement. The Parties commit themselves to working in a harmonious manner to successfully achieve the objectives set forth in this agreement. When disagreements arise between the parties, they will be resolved according to the following procedures:
- 9.1 There shall first be an attempt to resolve disagreements among the parties through informal discussions among representatives of the parties.
- 9.2 If the disagreement cannot be resolved through informal discussion among these parties, the parties shall agree upon a mediator and submit the dispute to mediation. If the parties cannot agree upon a mediator, each party will nominate a mediator. The two mediators nominated will then select a separate mediator who will establish the mediation process and format.
10. **Governing Law; Jurisdiction.** This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the State of Montana.
11. **Assignment Limited.** The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or interest therein, shall be valid until approved in writing by each of the Parties.
12. **Amendment.** This Agreement may be amended, modified, supplemented, or superseded only by mutual agreement of all Parties hereto exhibited by a written instrument duly signed by all Parties hereto.

13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one and the same instrument.

14. **Execution Copies.** The Parties shall execute duplicate original documents, one of each original shall be provided to each Party hereto.

15. **Indemnification.** Shelby agrees to indemnify and defend Authority for any claim or liability arising out of the operation and maintenance of the Pipeline.

16. **Termination.** This Agreement may be terminated by either party by giving 60 days written notice to the other party. The Authority may immediately terminate this Agreement by providing Shelby with such notice in writing if in the opinion of the Authority such termination is necessary to protect the Authority's system or prevent or respond to an emergency situation related to the quality of the drinking water being provided by the Authority.

City of Shelby

**North Central Montana
Regional Water Authority**

Printed Name: _____
 Title: _____
 Date: _____

Printed Name: _____
 Title: _____
 Date: _____

EXHIBIT A
Pipeline
(Map/Description)

DRAFT

EXHIBIT B
Tapping/Connection Requirements

1. Prior to making any connection to the Authority's pipelines or facilities, written application and payment of the costs of connection must be made in advance to the Authority.
2. Connection Fees/Costs: Subject to the following, connection fees shall be as determined by the Authority, and at a minimum:
 - 2.1 Shelby shall be responsible for all costs associated with a connection to the Authority's property, except for those connections that are greater than 2 inches in diameter and expressly planned for by the Authority.
 - 2.2 Authority shall be responsible for the costs associated with installing connections that are greater than 2 inches in diameter and are expressly planned for in advance by the Authority.
 - 2.3 When an application has been granted, Authority, at the applicant's expense, will tap the Authority's pipe and furnish all necessary materials and labor furnished in connection with the tapping of the pipe. All such expenses for connecting and laying and maintaining the service pipes from the Authority's pipe to the edge of the Authority's easement shall be the responsibility of the applicant. In addition, the responsibility for the laying and maintenance of the service pipes from the edge of Authority's easement is the responsibility of the applicant.
3. The service pipe must be laid at a standard depth designated by the Authority to prevent freezing. Any curb stop must be set on or near the property line identifying the edge of Authority's easement.
4. Supervision by Authority: The Authority or its designated agent will supervise the connection to Authority's pipelines or facilities.
5. The type, size, design and material of service lines shall be approved in advance by the Authority.
6. Records: A record shall be kept, in a place provided by the Authority, of a map showing, type, size, and location of the connection, together with supporting data and date of completion.
7. Authority shall not be responsible for service pipes and fixtures. All owners at their own expense must keep service pipes from Authority's pipe and all their apparatus in good working order and properly protected from frost or other dangers. No claim shall be made against the Authority on account of the breaking of any service pipes or apparatus, or for accidental failure in the supply of water.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Agreement") dated December ____, 2018, entered into by and between **THE CITY OF SHELBY** ("Shelby"), and **ERNEST HABETS, SHIRLEY HABETS, & JEFF HABETS** ("the Habets"). The Parties may be referred to hereafter individually as a "Party" and collectively as the "Parties".

Recitals

WHEREAS, the North Central Montana Regional Water Authority (NCMRWA) owns a certain potable water pipeline which transports water from Shelby's well fields south roughly along Interstate 15 and will ultimately connect to the City of Conrad ("Pipeline"); and

WHEREAS, NCMRWA is a wholesale supplier of water and, therefore, unable to provide water to retail customers such as the Habets; and

WHEREAS, NCMRWA has no water to provide at this time to even its wholesale customers; and

WHEREAS, Shelby provides potable water to be used from its well fields and is permitted to sell water to retail customers connected to Pipeline; and

WHEREAS, NCMRWA charges Shelby an annual O&M for the use of Pipeline which, at the time of execution of this MOU, is \$4,000; and

WHEREAS, NCMRWA's system engineers calculate that a minimum of 30,000 gallons of water per day must flow through Pipeline per day to meet the federal Environmental Protection Agency's recommended maximum water age of 14 days; and

WHEREAS, the number of retail customers connected to Pipeline and their volume of use is far less than 30,000 gallons per day; and

WHEREAS, Habets desire to be connected as a retail customer to Pipeline; and

WHEREAS, Habets will not use and cannot afford 30,000 gallons per day.

Now therefore, the Parties hereby agree that the recitals above are true and correct, and accurately describe the purposes and intentions of the parties to agree as follows:

- 1) Shelby will allow Habets to connect to Pipeline as a retail customer; and
- 2) Habets shall pay Shelby \$4,000 annually or the O&M fee that NCMRWA charges Shelby, whichever is greater. Said annual payment shall be made in 12 monthly installments.
- 3) Habets shall pay for all costs associated with connecting to the Pipeline including the water use meter, meter pit, and all connection / tapping requirements. The connection / tapping will be consistent with City specifications. The meter will be compatible with Shelby's electronic

meter reading system. Habets shall be responsible for all maintenance, repairs, and replacement of the meter. However, Habets shall inform Shelby prior to any maintenance, repair, or replacement of the meter, water line from Pipeline to meter, or connections.

- 4) Shelby will transport 1,000,000 gallons of potable water per month through Pipeline; and
- 5) Habets may draw up to 1,000,000 gallons per month without incurring charges additional to the annual charge specified in Paragraph 2 of this MOU.
- 6) Any water usage greater than 1,000,000 gallons per month will be charged to Habets at Shelby's retail water rate for the size of the meter in use.
- 7) This MOU automatically terminates when Pipeline is connected to the City of Conrad or adequate water usage is attained through additional metered users.
- 8) This MOU is subject to review 5 years from the date of execution.
- 9) This Agreement shall be governed by and construed in accordance with Montana law.

FOR CITY OF SHELBY

By: _____
Gary McDermott, Mayor

FOR HABETS

By: _____
Ernest Habets

By: _____
Shirley Habets

By: _____
Jeff Habets

ORDINANCE NO. 835

AN ORDINANCE AMENDING TITLE 8, CHAPTER 1,
VOLUNTEER FIRE DEPARTMENT,
OF THE SHELBY MUNICIPAL CODE

BE OT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHELBY, MONTANA:

THAT only the following sections below in Title 8, Chapter 1, as found in the Shelby Municipal Code, are amended to read as follows:

VOLUNTEER FIRE DEPARTMENT

8-1-2: COMPOSITION; OFFICERS:

B. Elections:

3. Qualifications of Additional Officers: The assistant chief, fire captain and lieutenants shall be technically qualified by training and a minimum of 5 years' experience; shall have the ability to command firefighters; and be able bodied citizens residing within the city, preferable property owners whose business activities are normally within the city of Shelby.

4. Time Of Election: The annual election of the chief and other officers shall be held on the first regular meeting in the month of December.

8-1-4: MEMBERSHIP:

5. All members must make fifty percent of all meetings and forty percent of all fires annually or said member will be brought before the officers for department status.

6. New applicants will have a background check; any applicant found to have a felony charge or conviction will not be considered for appointment.

7. Newly appointed members to the department must serve a probationary period of twelve months, complete a 30 hour basic firefighting course, carry a current first aid/CPR card, and pass a six month test on all apparatus before being fully approved as a regular firefighter in good standing.

READ AND PROVISIONALLY ADOPTED BY THE CITY COUNCIL OF THE CITY OF SHELBY, SHELBY, MONTANA ON THE FIRST READING ON THE 17TH DAY OF DECEMBER, 2018 AND FINALLY READ AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SHELBY, MOTNANA ON THE 9TH DAY OF JANUARY, 2019.

GARY MCDERMOTT, MAYOR

ATTEST:

JADE GOROSKI, FINANCE OFFICER

LEASE OF BUSINESS PROPERTY

THIS LEASE made and entered into on the 1st day of January, 2019, by and between the **CITY OF SHELBY** whose address is 112 1st St S, Shelby, Montana 59474, hereinafter collectively referred to as LESSOR and the **SHELBY CHAMBER OF COMMERCE**, whose address is 100 Montana Avenue, Shelby, Montana 59474, hereinafter referred to as LESSEE.

WITNESSETH:

In consideration of their mutual covenants hereinafter contained, the parties agree as follows:

1. **Demise, Use & Description of Premises:** LESSOR hereby demises, leases and lets unto LESSEE, and LESSEE hires from LESSOR, that certain business premises with all improvements thereon more particularly described as the top floor of the Historic City Hall located at 100 Montana Avenue, Shelby, Montana.

2. **Term:** The term of this lease shall be for five (5) years commencing the 1st day of January, 2019, and concluding on the 31st day of December, 2024.

3. **Rentals:** LESSEE shall pay to LESSOR as rent for the demised premises the sum of \$250.00 per month during the term of this lease. LESSEE shall not be required to pay to LESSOR a deposit.

Each monthly rental shall be paid in advance of the month commencing with the beginning of this lease and on the same day of each month thereafter, provided, however, that monthly rental payments shall not be considered delinquent so long as they are received by the agent of the LESSOR by the 5th day of each month.

4. **Purpose & Restrictions on Use:** LESSEE shall use the demised premises as a business premises and shall in no event conduct any activity that is unlawful, ultra hazardous or that would increase the premiums for any fire, casualty or liability insurance carried by LESSOR.

5. **Carpets:** LESSEE shall be responsible for having all carpets therein professionally cleaned before surrendering the demised at the expiration of this lease.

6. **Utilities and Taxes:** All utilities with respect to the demised premises, including, without limitation, all gas, water, sewer, garbage, and electricity service shall be contracted for and pay by LESSOR. All utilities with respect to the demised premises, including, without limitation, television and telephone service shall be contracted for and paid by LESSEE in its own name and LESSEE does hereby agree to indemnify and hold harmless LESSOR from any default or delinquency in the payment of these utilities.

LESSOR shall pay all real property taxes, charges and assessments levied on the demised premises. LESSEE shall pay all personal property taxes, charges and assessments on any contents, furniture or fixtures located in the demised premises and owned by them.

7. **Indemnification:** LESSEE agrees to indemnify and hold harmless the LESSOR from any and all claims, suits, judgments or liabilities for any property damage, personal injury or death, including costs, expenses and attorney's fees which may arise from or out of LESSEE'S occupation of the demised premises or from any act or omission by them, their agents, employees, successors, assigns, licensees and invitees.

LESSEE shall carry on all of its personal property, furniture and fixtures located in the demised premises, adequate insurance as selected and determined by it, against fire, and the hazards covered by the standard extended coverage endorsement, including vandalism, malicious mischief and theft in an insurance company or companies licensed to do business in the State of Montana, and will hold harmless LESSOR from any and all claims for property damage for any reason to LESSEE'S personal property, furniture and fixtures.

LESSOR agrees to keep the improvements on the demised premises, or such as shall hereafter be erected thereon, along with the personal property, furniture and fixtures owned by the LESSOR, insured against fire, windstorm and other customary casualties in a reputable insurance company licensed to do business in the State of Montana.

8. **Repairs, Alterations & Modifications:** LESSOR agrees to keep the outside of the improvements located on the demised premises, including the foundation and structural supports, structural walls and structural portions of the floors in good repair during the term of this lease. LESSOR shall be responsible for the maintenance and repair of the roof, heating and ventilating equipment, wiring, water heaters and exterior paint, and shall perform repairs and maintenance to the water, sewer, gas and electrical lines up to the outlets therefore in the demised premises, provided, however, that if LESSEE causes damage to any of the above-described items, LESSEE shall pay all repairs of same at its expense.

LESSEE agrees to repair all damage to the demised premises caused by its use and upon surrendering the demised premises, personal property furniture and fixtures, agrees to leave same in as good a condition and repair as they were when it took possession, allowance being made for ordinary wear and tear and damages by Acts of God or resulting from acts of LESSOR it agents or employees. LESSEE shall care for and use in a conservative manner the demised premises and the improvements thereon and the appliances leased hereunder.

All repairs made at the expense of LESSEE shall be at least equal in quality to the original work. LESSOR shall not be in default for failure to make repairs or perform maintenance unless such failure persist for thirty (30) days after written notice of and the need for such repairs and maintenance is given and LESSOR fails within such thirty (30) day period to commence such necessary repairs and to complete the same with due diligence thereafter.

LESSEE shall not make any alterations, additions or improvements to the demised premises without the written consent of LESSOR.

LESSEE shall at no time suffer any mechanic's lien, construction lien or other lien or encumbrances to attach to the demised premises that may be superior to LESSOR'S title and should any such lien or encumbrance attach to the demised premises, same, at the option of LESSOR, may be paid by them for the benefit of LESSEE and any such amount so paid by LESSOR for the benefit of LESSEE shall bear interest at the rate of 10% per annum from and after the date of payment.

9. **Destruction or Damage to the Demised Premises:** In the event of damage to the demised premises by fire, windstorm or other insured casualty, and such damage is so extensive as to render the demised premises totally uninhabitable, and if LESSOR shall within thirty (30) days thereafter decide not to rebuild, this lease shall cease and terminate, and any rent shall be apportioned to the date of the damage. In all other cases where the leased premises are damaged by fire, windstorm or other insured casualty, LESSOR shall repair the damage with reasonable dispatch after written notice of such damage, and if such damage has rendered the premises uninhabitable in whole or in part, then the rent shall abate during those periods when the premises is uninhabitable. In determining what constitutes reasonable dispatch, consideration shall be given to delays caused by weather, adjustment of insurance and other causes beyond LESSOR'S control.

In no case shall LESSOR be liable to LESSEE for any costs, fees, damages, or consequential damages for property loss, personal injury or death resulting from fire, damage, casualty, the elements, or from termination of this lease.

10. **Reasonable Access:** LESSOR shall have reasonable access to the demised premises during business hours for the purpose of examining or inspecting the same, making the required alterations or repairs, or maintaining the demised premises in accordance with the terms of this agreement.

11. **Quiet and Peaceful Possession:** LESSOR covenants with LESSEE that upon LESSEE paying the rental herein provided and performing the covenants for which they are obligated herein, LESSEE shall quietly have, hold and peacefully enjoy the demised premises during the term hereof.

12. **Assignment and Subletting:** LESSEE shall not assign this lease or any portion thereof or sublet the demised premises or any portion thereof without the express written approval and consent of LESSOR.

13. **Notices:** All notices given by either party to this agreement shall be as follows: To LESSOR at 112 1st St S, Shelby, MT 59474; to LESSEE at 100 Montana Avenue, Shelby, MT 59474.

Such notices shall be by certified mail, postage prepaid, return receipt requested, and the time of giving such notice shall be the time that such notices are mailed as evidenced by the post office cancellation thereon. At the option of the party giving the notice, same may be served by personal service by the Sheriff's Department in the county in which the party receiving the said notice resides at the time same is served, and the time

of giving said notice shall, in that case, be evidenced by the return of the Sheriff as to the day and hour same was served.

14. **Default:** The following events shall be deemed to be events of default by LESSEE under this lease:

(a) The vacation or abandonment of the premises by LESSEE.

(b) If LESSEE shall fail to pay any installment of rent or to make any other payments required to be made by them hereunder, where such failure continues after the 5th business day of the month in which the rental installment was due.

(c) If LESSEE shall fail to comply with any term, provision or covenant of this lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to LESSEE, provided, however, that if by the nature of such default, same cannot reasonably be cured within such 30-day period, LESSEE shall not be deemed to be in default if it shall within such period commence to cure and thereafter diligently prosecute the same to completion.

(d) If LESSEE shall make an assignment for the benefit of creditors, or a trustee or receiver shall be appointed for LESSEE under the laws of any state wherein possession is not restored to LESSEE within thirty (30) days.

(e) If LESSEE shall file a petition under any subsection or chapter of the BANKRUPTCY CODE, as amended, or under such similar law or statute of the United States or any state thereof; or LESSEE shall be adjudged bankrupt or insolvent in proceedings filed against LESSEE hereunder.

(f) The attachment, execution or other judicial seizure of substantially all of LESSEE'S assets or LESSEE'S interest in this lease where such seizure is not discharge within thirty (30) days.

15. **Remedies:** Upon the occurrence of any event or default by LESSEE, LESSOR shall have the option to pursue any right or remedy available to them under the laws of the State of Montana and LESSOR shall have the right to enter the demised premises and take full and absolute possession of same, and to remove all persons and property from the demised premises without such re-entry working a forfeiture of the rents to be paid or the covenants to be performed by LESSEE hereunder for the full term of this lease or any renewal thereof.

In case of a suit by LESSOR or by LESSEE hereunder to enforce or interpret the provisions hereof, the party ultimately prevailing shall be awarded reasonable attorneys fees, costs and expenses of such suit.

16. **Examination of Premises:** LESSEE acknowledges that it has examined the

demised premises prior to execution of this lease and that the demised premises is in satisfactory condition and suitable for occupation and the uses intended. Further, LESSEE acknowledges that LESSOR has made no representations to them relating to the condition of the demised premises and personal property except as provided in this agreement. LESSOR is leasing the demised premises and personal property "AS IS" and "WHERE IS" and LESSEE accepts the demised premises and personal property in that condition.

17. **Waiver & Severability:** No waiver by LESSOR of any provision of this agreement shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by LESSEE of the same or any other provision. Each of the provisions of this agreement shall be severable, one from the other, and if any part or portion thereof shall be held invalid by any court of competent jurisdiction, the other part and portions hereof shall, nevertheless, for all purposes, remain in full force and effect.

18. **Time Is Of Essence:** Time is of the essence with respect to the performance of every provision of this agreement in which time of performance is a factor.

19. **Binding Upon Successors and Assigns:** All of the covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns.

20. **Early Termination:** Either party may terminate this lease for any reason prior to the time specified herein with a 90-day notice to the other party.

21. **Prior Agreement:** This agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof and there are no agreements or representations between the parties relating to the subject matter hereof other than those expressly contained herein. This agreement may not be modified orally and no attempt at modification or amendment shall be binding unless it is in writing and signed by the parties hereto.

22. **Headings:** Paragraph captions contained in this agreement are for convenience only and shall not be considered in the construction or interpretation of any provisions hereof.

23. **Gender and Tense:** For purposes of interpretation, in this lease the singular shall include the plural; the plural shall include the singular; the masculine shall include the feminine, the feminine shall include the masculine; and the neuter shall include the masculine and the feminine.

24. **Governing Law and Jurisdiction:** This lease shall be interpreted and enforced in accordance with the laws of the State of Montana, and the Ninth Judicial District Court of the State of Montana in and for the County of Toole shall have exclusive jurisdiction over the subject matter of this lease and personal jurisdiction over the parties hereto.

25. **Entire Agreement:** This lease shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding upon either party except to the extent incorporated in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this lease on the day and year first above written.

CITY OF SHELBY, Lessor

GARY MCDERMOTT, Mayor

CHAMBER OF COMMERCE, Lessee

Print Name: _____
Title: _____

AGREEMENT
Between The
NORTH CENTRAL MONTANA REGIONAL WATER AUTHORITY
And
CITY OF SHELBY
For The
TRANSFER OF FUNDS

RECITALS

Whereas, legislation authorizing the construction of the Rocky Boy's / North Central Montana Regional Water System (see Public Law Number 107-331) was signed into law in December 2002.

Whereas, the 65th Montana Legislature pursuant to House Bill 11 approved, appropriated and authorized the Montana Department of Natural Resources and Conservation to award and administer grants such as the those described herein.

Whereas, the State of Montana through its Department of Natural Resources and Conservation (hereinafter "DNRC") has agreed to grant up to One Hundred Fifty Thousand Dollars (\$150,000.00) for the purpose of City of Shelby well field improvements. The grant as administered by DNRC has been awarded to the Authority for purposes of the Authority conveying the grant monies to the City of Shelby.

Now therefore, the Authority and the City of Shelby agree that the Authority will utilize the Funds to reimburse the City for funds expended within the allowable amount for the purpose set forth herein.

1. DEFINITIONS. The following definitions apply to this Agreement:

"Contract" shall mean the Regional Water System Program Contract (Contract No. RW-19-058 entered into between the Authority and DNRC on December __, 2018, which grants funds to the Authority for the development of the North Central Montana Regional Water System.

"Funds" shall mean the funds available (\$150,000) for engineering services purposes pursuant to the Regional Water System Program Contract (Contract No. RW-19-058).

"Project" shall mean the well field improvements as identified in the scope of work for Contract No. RW-19-058.

2. PURPOSE. The purpose of this Agreement is to establish mutually agreeable terms and conditions, specifications, and requirements to govern the reimbursement of the City for qualified expenditures as provided both herein and in Contract No. RW-19-058, the terms and conditions of which are hereby incorporated into this Agreement.

3. TERM. The Authority and City shall have until June 30, 2020, to complete the project described in Section 4, Project Scope. The Authority may grant an extension for completion upon request and showing of good cause by the City. Any extension is contingent on the Authority receiving a corresponding extension from DNRC pursuant to Contract No. RW-19-058. The Authority is obligated to request extensions forty-five (45) days prior to the termination date if an extension is to be considered by DNRC, accordingly the City must request an extension in writing from the Authority seventy five (75) days prior to the termination of this Agreement.

Commented [JH1]: This may change to be consistent with the grant agreement

4. PROJECT SCOPE. The project scope is the preliminary engineering for the following well field improvements:

- Water Treatment Improvements consisting of replacing an aging UV reactor, installing a new UVT analyzer and updating the chlorination system.
- Well Rehabilitation/Replacement consisting of replacing existing nonproducing Wells #2 and #6 with new wells and Wells #1 and #4 will be evaluated for repair or replacement.
- Wellfield Pump Houses and Collection System improvements consisting of providing a foundation, piping, meters, and electrical requirements for installation of pre-built pump houses for wells 9-12. This scope also includes new piping that will serve as a collection system to connect wells 4 and 9-12 to the wellfield transmission main. Wells 9-12 will also receive upsized internal piping to reduce the head on the pumps and they will be evaluated for larger pumps.
- Shelby Heights Booster Station SCADA improvements consisting of replacing the existing SCADA system with MicroCOMM to make the controls compatible with the rest of the wellfield.

Commented [JH2]: This is a general description of the scope of work. Once we receive a copy of the grant agreement we will want to make sure this is consistent with the language in the grant agreement.

The City shall use the Funds exclusively for this scope.

Plans and specifications for this project shall be prepared by a registered professional engineer licensed to practice in his or her areas of competence in the State of Montana. Plans and specifications shall be submitted to the State of Montana Department of Environmental Quality (hereinafter "DEQ") for review and approval prior to construction.

5. PROJECT BUDGET. Funds are allocated as follows:

Engineering Services	up to \$150,000
Total:	up to \$150,000

The Funds may only be used for Engineering Services and may not be used for other financial or administrative purposes.

6. AVAILABILITY OF FUNDS. The City acknowledges that the Funds become available to the Authority from DNRC through the quarterly earnings from the State Coal Severance Tax Trust. Treasure State Endowment Program Regional Water System Program funds will be released by the Authority to the extent they are available as provided for herein. Costs incurred prior to January 1, 2018 may not be eligible for reimbursement.

7. DISBURSEMENTS. Prior to receiving any reimbursement, the City shall:

Submit documented claims for reimbursement Funds to the Authority. Such claims shall consist of receipts, vendor invoices, inspection certificates and other documentation of costs incurred. Funds shall be provided to the City for reimbursement of claims provided Funds have been approved by and made available to the Authority from DNRC. In the event DNRC does not approve or release Funds, the Authority shall have no liability or obligation for the release of Funds to the City.

Reimbursements will only be made for expenses included in the Budget provided for in Section 5, above, that are clearly and accurately supported by the City's records. The City hereby acknowledges that ten percent (10%) of the Funds may be withheld by DNRC from being released to the Authority until all tasks in Section 4 and Final Report required by Section 8 are completed and approved by DNRC. Accordingly, the City acknowledges that the amount reimbursed by the Authority may be decreased by any amount withheld by DNRC. Total reimbursement for all purposes under this Agreement shall not exceed \$150,000.

8. REPORTS. Quarterly progress reports shall be submitted to the Authority for submittal to DNRC by April 1st, July 1st, October 1st, and December 15th during the term of the Contract. Reports will provide status information on all activities of the City during the previous six (6) months. Status information will include, at a minimum, costs incurred, funds remaining and a budget of expenditures for the next three (3) months. Significant problems encountered shall be noted. Upon request of the Authority the City shall submit to the Authority audit reports of financial activities for the requested time frame, to be performed by a certified public accountant.

9. RECORDS AND AUDITS. The City will maintain appropriate and adequate records showing complete entries of all receipts, disbursements, and other transactions relating to its work. The Authority, DNRC, the Legislative Audit Division or the Legislative Fiscal Division may, at any reasonable time, audit all records, reports, and other documents that the City maintains under or in the course of the Contract to ensure compliance with its terms and conditions. Because the funding provided pursuant to the Contract is from public funds, public access to Project records must be available. The City shall accommodate requests for public access to records with due consideration for the convenience of everyone involved.

10. PROJECT MONITORING AND ACCESS FOR INSPECTION AND MONITORING. DNRC or its agents may monitor and inspect all phases and aspects of the Authority's performance to determine compliance with Section 4, Project Scope, and

other technical and administrative requirements in the Contract, including the adequacy of records and accounts. DNRC may present specific areas of concern to the Authority, providing the Authority the opportunity to better accomplish the goals and objectives of the grant and conditions of the Contract. Because this grant is from public funds, public access to the project site and project records must be available. The Authority and City shall accommodate requests for public access to the site and records with due consideration for safety, private property rights, and convenience of everyone involved.

11. REIMBURSEMENT. Acceptance of this agreement creates a legal responsibility on the part of the City to use the Funds and property provided in accordance with the terms and conditions of the Contract and this Agreement. If the City has State funds unencumbered or un-obligated at the end of the Agreement, they must be returned to the Authority for return to DNRC; and if the funds are used improperly, the Authority and DNRC each has the right to try to recover these funds.

Payment will be made by reimbursement as follows:

(1) Reimbursement—Reimbursement shall be the method of payment.

12. COMPLIANCE WITH APPLICABLE LAWS. All work must be in accordance with all federal, state and local laws, statutes, rules and ordinances. It shall be the City's responsibility to obtain all permits, licenses or authorizations that might be required from government authorities for completion of the Project. Procurement of labor, services, supplies, materials and equipment shall be conducted according to applicable federal, state and local statutes.

15. MONTANA LAW AND VENUE. Any action or judicial proceeding for enforcement of the terms of this Agreement shall be instituted only in the courts of the State of Montana and shall be governed by the laws of Montana. Venue shall be in the Twelfth Judicial District, Choteau, Hill, and Liberty Counties, Montana.

Larry Bonderud
North Central Montana Regional Water Authority

Date

Gary McDermott
Mayor, City of Shelby

Date

Date: 11/30/2018

Time: 04:23 PM

Page 1 of 1

Shelby City Court

Cases by Filing Date

City

All Case Types

From 11/1/2018 to 11/30/2018

All Judges

User: BALEXANDER

Judge: Rapkoch, Peter

Case	Filed	Entered	Party	Status
TK-865-2018-0000151	11/2/2018	11/2/2018	Fyall, Fred Ross, Defendant	Pending
TK-865-2018-0000152	11/2/2018	11/2/2018	Love, Robert Charles JR, Defendant	Pending
TK-865-2018-0000153	11/8/2018	11/8/2018	Robocker, Matthew Cory Glen, Defendant	Closed
TK-865-2018-0000154	11/14/2018	11/14/2018	Malmend, Travis Page, Defendant	Closed
TK-865-2018-0000155	11/15/2018	11/15/2018	Moberly, Ethan Tanar, Defendant	Disposed
TK-865-2018-0000156	11/15/2018	11/15/2018	Reevis, Narsis Michael, Defendant	Pending
TK-865-2018-0000157	11/15/2018	11/15/2018	Moore, Weston Reece, Defendant	Pending
TK-865-2018-0000158	11/16/2018	11/16/2018	Verduga, Eshaid Fernando Marquez, Defendant	Disposed
TK-865-2018-0000159	11/19/2018	11/19/2018	Mccubins, Chase Allen, Defendant	Closed
TK-865-2018-0000160	11/26/2018	11/26/2018	Moench, Richard Allen, Defendant	Pending
TK-865-2018-0000161	11/26/2018	11/26/2018	Schuetter, Shantell, Defendant	Pending
TK-865-2018-0000162	11/27/2018	11/27/2018	Dasinger, Bridger Austin, Defendant	Pending
TK-865-2018-0000163	11/27/2018	11/27/2018	Evans, Jody Troy, Defendant	Closed
TK-865-2018-0000164	11/29/2018	11/29/2018	Jackson, Zachary Scott, Defendant	Pending
TK-865-2018-0000165	11/30/2018	11/30/2018	Gopher, Tamara Brittany, Defendant	Pending

Total cases for Rapkoch, Peter : 15

Total cases for report: 15

Shelby City Court
Receipts by Date
City
All Case Types
From 11/1/2018 to 11/30/2018

All Judges

11/5/2018

Receipt	Time		Bond Conversion	Transfer	Cash	Check	Cashiers Check	Money Order	Credit Card	Debit Card	E-Payment	Direct Deposit
5465	11:36 AM	Criminal Payment Payor: Heinert, Steven Roy	.00	.00	57.00	.00	.00	.00	.00	.00	.00	.00
		TK-865-2018-0000097 Heinert, Steven Roy		61-5-212(1)(a)(i) [1]								
		22.00 Fine										
		15.00 Misdemeanor Surcharge										
		10.00 Technology Surcharge										
		10.00 Law Enforcement Academy										
		57.00										
5466	01:43 PM	Criminal Payment Payor: Iverson, Warren Carl	.00	.00	.00	335.00	.00	.00	.00	.00	.00	.00
		TK-865-2018-0000105 Iverson, Warren Carl		61-8-301(1)(a) [1st]								
		300.00 Fine										
		15.00 Misdemeanor Surcharge										
		10.00 Technology Surcharge										
		10.00 Law Enforcement Academy										
		335.00										
												Check Number: 7408

Shelby City Court
 Receipts by Date
 City
 All Case Types
 From 11/1/2018 to 11/30/2018

All Judges

11/28/2018

Receipt	Time		Bond Conversion	Transfer	Cash	Check	Cashiers Check	Money Order	Credit Card	Debit Card	E-Payment	Direct Deposit
5482	09:32 AM	Criminal Payment	.00	.00	.00	200.00	.00	.00	.00	.00	.00	.00
		Payor: Marquez, Verduga Eshaid										
		TK-865-2018-0000158										
		Verduga, Eshaid Fernando I61-3-312										
		50.00 Fine										
		15.00 Misdemeanor Surcharge										
		10.00 Law Enforcement Academy										
		75.00										
		Verduga, Eshaid Fernando I61-6-301(4) [1st]										
		70.00 Fine										
		15.00 Misdemeanor Surcharge										
		10.00 Technology Surcharge										
		10.00 Law Enforcement Academy										
		105.00										
		Verduga, Eshaid Fernando I61-13-103										
		20.00 Fine										
		20.00										

Operating With Expired Registration - Failure to Reregister

Check Number: 1123

Operating Without Liability Insurance In Effect - 1st Offense

Check Number: 1123

Seatbelt Violation

Check Number: 1123

