

COMMITTEE OF THE WHOLE

JULY 7, 2025

6:00 PM

1. Discussion with Robert Peccia on the biosolids handling technical memorandum

Citizen Participation

The Lewistown City Commission welcomes you to its public meeting. The Commission appreciates your participation and values your input in our decision-making process. Your input and suggestions are important to the Commission as we discuss important issues affecting all of us in Lewistown.

We ask that you silence your cell phone before the meeting begins and please refrain from using your cell phone during the meeting. Thank you.

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

The Public is invited to speak on any issue under discussion by the Commission, after recognition by the presiding officer.

Public members who are recognized by the presiding officer shall:

- ***Stand***
- ***Give his/her name and address for the record***
- ***If applicable give the person, firm, or organization he/she represents***
- ***Address comments to the presiding officer and not to individual members or staff***
- ***Limit comments to the matter of fact listed on the agenda unless recognized in the 'Citizen Requests' portions***
- ***Keep comments brief to ensure adequate time for additional comment and commission business***
- ***Prepared statements are welcome and should be given to the Clerk of the Commission. Prepared statements that are also read, however, may be deemed unduly repetitious if they are lengthy. All prepared statements shall become part of the official record.***

In the event that there is a large number of people wanting to comment in a meeting or hearing, the presiding officer reserves the right to impose a time limit on comments to ensure adequate time for public comment and Commission business.

Impertinent or slanderous remarks towards city officials, staff or other members of the public, or other boisterous, disorderly or disruptive behavior during a Commission meeting are not permitted. Swearing, derogatory language, threats, personal attacks, heckling or similar behavior may be considered impertinent and/or disruptive. Any person exhibiting such behavior during the Commission meeting may be admonished to cease that behavior or risk being asked to vacate the Commission chambers. If such behavior continues after the admonishment, the presiding officer may request that person to vacate the Commission chambers, unless permission to remain is granted by vote of the Commission.

NOTICE FOR, AND AGENDA FOR, A REGULAR MEETING OF THE CITY COMMISSION, CITY OF LEWISTOWN, JULY 7, 2025 AT 7:00 P.M. AT THE CENTRAL MONTANA COMMUNITY CENTER LOCATED AT 307 W WATSON

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES – June 2, 2025 & June 16, 2025

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non agenda items

CONSENT AGENDA

Acknowledgment of the claims that have been paid from June 13, 2025 to June 30, 2025 for a total of \$599,380.48

***REGULAR AGENDA – Resolutions, Ordinances & Other Action Items:**

1. Public hearing to hear comments on a conditional use permit application from First Christian Church to operate a church and other place of worship including parish houses and Sunday school building in Residential (R-1) District.
2. Discussion and action on approving the conditional use permit application from First Christian Church to operate a church and other place of worship including parish houses and Sunday school buildings in Residential (R-1) District (**Action: approve, disapprove or amend the conditional use permit for First Christian Church**) City Manager Holly Phelps
3. Discussion and action on approving a railroad lease for Lewistown Livestock Inc. located in the area of Highway 191 (**Action: approve, disapprove or amend railroad lease**) City Manager Holly Phelps
4. Discussion and action on petition for annexation from HAPS Properties LLC to annex K&T Properties Subdivision #2, Lot 006, Less Tract 6 COS#823, S16, T15 N, R18 E to the City of Lewistown (**Action: approve, disapprove or amend petition for annexation**) City Manager Holly Phelps
5. Discussion and action on approving Resolution No. 4193 a resolution providing for the annexation by petition of property belonging to HAPS Properties LLC (**Action: approve, disapprove or amend Resolution No. 4193**) City Manager Holly Phelps
6. Discussion and action on approving an emergency services dispatch agreement between the City of Lewistown and Judith Basin County (**Action: approve, disapprove or amend emergency services dispatch agreement**) City Manager Holly Phelps

7. Discussion and action on approving the 2025 - 2027 Fire Department Bargaining agreement
(**Action: approve, disapprove or amend the 2025-2027 Fire Department Bargaining agreement**) City Manager Holly Phelps

CITIZENS' REQUESTS

COMMISSIONER'S MINUTE

ADJOURNMENT

* All citizens are invited to make comment on any agenda item prior to action being taken by the Commission

Discussion and action on an application for a Conditional Use Permit (24-05-CU) to locate and operate an youth group space at 207 12th Avenue South, in Lewistown.

Proposal:

The City of Lewistown is in receipt of an application to locate and operate a request by the First Christian Church to operate a youth group space in the property located at 207 12th Avenue South. The property is further described as Lewistown Evergreen Addition, S15, T15 N, R18 E, BLOCK 007, Lot 003 – 005.

The proposal will be to have a Church or other places of worship including parish houses and Sunday school buildings in Residential (R-1) District.

Public hearings will be held before the Zoning Commission on June 17, 2025, and before the City Commission on July 7, 2025. Both hearings are at the Council on Aging – Community Center at 307 W Watson Street.

Background:

The property previously has been used for the church parsonage and as a private residence.

Facts and Recommendation:

The Planning Department recommends conditionally approving of the Conditional Use Permit (CUP). This area is one block off of Main Street and is an area that has been identified for mixed use.

This property would be used for youth group on Wednesday evenings for approximately 25 kids.

Traffic and parking are not expected to be more than previous use at this location. These kids are already being served at the church and would simply walk over to this property.

Letters were sent to 42 properties in this area and as this time we have not received any public comments.

Conditions of approval to Ensure the Conditional Use will not adversely affect the public health, safety, or general welfare:

The building shall be inspected for fire and other safety reasons by the Lewistown Fire Marshal and Building Inspector. All identified safety needs shall be implemented prior to operating at this location.

Zoning Commission Recommendation:

The Zoning Commission unanimously recommends approval of the CUP application with the following conditions:

1. The building shall be inspected for fire and other safety reasons by the Lewistown Fire Marshal and Building Inspector. All identified safety needs shall be implemented prior to operating at this location.
2. Off-street parking for activities at this location will be in the existing church parking lot.

INDEFINITE TERM LEASE FOR LAND

THIS INDEFINITE TERM LEASE FOR LAND ("Lease") is made and entered into to be effective as of the 1st day of July, 2025 ("Effective Date"), by and between **the City of Lewistown, a municipal corporation** ("Lessor" or "City") and **Lewistown Livestock Inc.**, ("Lessee").

RECITALS

A. Lessor is a municipal corporation and owns or controls a transportation corridor ("Lessor's corridor") and various real properties associated therewith, including certain premises as described below which Lessee desires to lease from Lessor.

B. Lessor has agreed to lease to Lessee the Premises, subject to the terms, conditions and limitations provided herein.

AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

Section 1. Premises and Term.

A. Lessor leases to Lessee and Lessee leases from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property, situated in or near the City of Lewistown, County of Fergus, State of Montana, described as follows:

A map of the property which is being requested should be attached hereto as Exhibit 'A' and made a part hereof ("Premises").

B. Lessee leases the premises from Lessor beginning 1st day of July, 2025 ("Commencement Date"), and shall continue until terminated by either party as provided in this Section 1(B). This Lease may be terminated by either party, at any time, without cause, for convenience, by serving upon the other party written notice of termination at least one hundred and eighty (180) days in advance. Upon the expiration of the time specified in such notice, this Lease and all rights of lessee shall absolutely cease.

C. Upon termination, either (i) Lessor may retain from prepaid rent, as an additional charge for use of the Premises, a sum equal to three (3) months Base rent (as defined below), and any unearned portion of the annual Base rent, in excess of such retainage, paid in advance shall be refunded to Lessee or (ii) if Lessor has not been paid sufficient base rent to satisfy the above retainage, then Lessee shall pay Lessor a sufficient sum so that, together with sums already held by Lessor, Lessor shall hold a sum equal to three (3) months Base rent which Lessor shall retain as an additional charge for use of the premises, and such additional sum shall be paid by Lessee within thirty (30) days of termination of the Lease.

D. Each consecutive twelve-month period this Lease is in effect, beginning with the Effective Date of this Lease, is herein called a "Lease Year".

E. Lessee acknowledges that it is assuming all risks associated with Lessor's right to terminate this lease at any time as provided above, and (i) Lessor gives no assurance that Lessor will delay termination of this Lease for any length of time whatsoever, (ii) Lessee may expend money and effort during the term of this lease which may not ultimately be of any benefit to Lessee if Lessor terminates this Lease, but nonetheless, Lessor shall have the tight to terminate the Lease if Lessor

determines in its sole and absolute discretion that Lessor desires to terminate, and (iii) in no event shall Lessor be deemed to have any legal obligations to continue to lease the Premises for any length of time.

Section 2. Use and Compliance.

A. Lessee may use the Premises for the sole and exclusive purpose of **Lewistown Livestock Inc.** and for no other purpose without the prior written consent of Lessor. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Premises.

B. Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligation hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Laws" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over lessee, the Premises, this Lease, and/or Lessee's obligations under this lease, and shall include all Environmental Laws (as defined in Section 4(A)).

C. If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the premises, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

Section 3. Rent.

A. Lessee shall pay as rental for the premises, in advance, an amount equal to **Seven thousand nine hundred sixty one dollars and twenty cents** (\$ **7,961.20**) annually during the first five years of the lease, ("Base Rent"). Then beginning in year six the "Base Rent" shall increase 1.5% annually during the term of the lease. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this lease as provided herein. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve that assignor of any of its rights or obligations under this lease. All rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

Lewistown City Clerk
305 West Watson
Lewistown, MT 59457

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee pursuant to the notice provisions of Section 36 below. No rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor has actually posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee has failed or delayed in making any payment.

B. Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as

a condition of Lessor granting this Lease Lessee hereby waives any rights it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

C. Lessee shall pay the base Rent and all additional amounts due pursuant to Section 9 as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Lease.

D. If any Base Rent or any payment under Section 9 or any other payment due by Lessee hereunder is not paid within five (5) days after the date the same is due, Lessor may assess Lessee a late fee ("Late Fee") in an amount equal to 5% of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment. In addition to the Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by lessee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 ½%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

Section 4. Environmental.

A. Lessee shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental laws, on or about the Premises.

B. Lessee shall give Lessor immediate notice of any release of hazardous substances on or from the premises for any violation of Environmental Laws, or inspection or inquiry by governmental; authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. Lessee shall use its best efforts to promptly respond to any release on or from the Premises. Lessee also shall give Lessor immediate notice of all measures undertaken on behalf of lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor copies of all reports and/or data regarding any investigations or remediations of the Premises.

C. In the event the Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, at Lessee's sole risk and expense to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.

D. Lessee shall promptly report to Lessor in writing any conditions or activities upon the premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor shall not relieve lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee expects to use on the premises the following Hazardous Materials: NONE, and to store on the Premises the following hazardous Materials (as defined in Section 4(F) below): NONE; provided, however, that Lessee may only use and store the listed Hazardous materials in such amounts as are necessary and customary in Lessee's industry for the permitted uses hereunder ("Permitted Substances"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous materials not disclosed in this Section 4(E) is breach of this Lease.

F. For purposes of this Section 4, "Hazardous Materials" means all materials, chemicals, compounds or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

G. Lessor may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the premises through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance damage to the Premises has occurred during the Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by lessee prior to termination of this Lease.

Section 5. Access to Adjacent Property by Lessee.

If access to and from the Premises can be accomplished only through use of the Lessor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Lessor may impose by notice to Lessee. Lessor shall have the right to designate the location or route to be used. Lessee understands and agrees that all of the terms and obligations under this Lease applicable to Lessee shall also be applicable to Lessee with respect to Lessee's use of any property adjacent to the Premises which lessee may use just as though the property has been specifically described as part of the Premises, including, without limitation, the indemnity provisions of Section 13. Notwithstanding anything to the contrary herein, this Section 5 shall not grant Lessee any right to cross any of Lessor's corridor. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

Section 6. Access to Premises by Lessor.

A. Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Premises as allowed hereunder, (i) enter the Premises for inspection of the Premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, and operate city facilities, fences,

pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across or beneath the Premises, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the premises, or to prospective purchasers or mortgagees of the premises, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused.

B. For purposes stated in this Section 6, Lessor will at all times have keys with which to unlock all of the doors and gates on the Premises, and Lessee will not change or alter any lock thereon without Lessor's permission.

C. In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the premises by Lessor as described in this section 6 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

Section 7. Warranties.

LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interest of others. If the premises are subsequently found to be subject to prior claim, this lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this lease subject to that possibility and its effect on Lessee's rights and ownership of the Lease Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming the title to or any interest in the premises, Lessor shall not be Liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

Section 8. Premises Condition; Lessee Improvements.

A. Lessee represents that the Premises, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Commencement Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this Section 8 affects the commencement of the term of the Lease or the obligation of Lessee to pay rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Premises for any purpose other than as set forth in Section 2; (ii) Lessee has previously disclosed in

writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the term of the Lease. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this Section 8, and that Lessor is relying on these acknowledgements and agreements and would not have entered into this lease without such acknowledgements and agreements by Lessee.

B. If improvements are necessary for Lessee's use of the Premises, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the Premises which are necessary for lessee's use of the premises and are acceptable to Lessor in Lessor's sole discretion ("Lessee Improvements"). The construction and installation of any Lessee Improvements shall be subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor for approval as set forth below, such approval to be in Lessor's sole and absolute discretion. Within forty-five (45) days after the Commencement Date, Lessee shall submit detailed plans and specifications, and the identity of Lessee's proposed general contractor for the Lessee Improvements for Lessor's review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its sole and absolute discretion) by written notice delivered to Lessee within sixty (60) days after receipt of the same from Lessee. In the event of any disapproval, Lessor shall specify the reasons for such non-approval. If Lessor fails to deliver notice to Lessee of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's plans, specifications and proposed contractor shall be deemed disapproved. If Lessor specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this lease by written notice to Lessor. Upon approval of the plans and specifications by Lessor, Lessor and Lessee shall sign the same, and they shall be deemed a part thereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of Exhibit "B" attached to the Lease and all applicable terms and conditions of the Lease regarding alterations and improvements. Lessee shall not construct any other alteration or improvement to the Premises without Lessor's prior written consent. The Lessee Improvements constructed pursuant to the above provisions shall be owned by Lessee during the term of the Lease and removed from the Premises or surrendered to the Lessor pursuant to Section 20 below upon termination of this Lease.

Section 9. Taxes and Utilities.

A. In addition to Base Rent, Lessee shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the term of this Lease and may become due or levied against the Premises, against Lessee, against the business conducted on the Premises or against the Lessee Improvements placed thereon during the term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease provided; however, that Lessee shall only be responsible for the

payment of property taxes levied against the Premises to the extent such taxes are separately assessed by the applicable taxing authority as a result of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee any utility or other services. If this Lease is a transfer of an existing lease, Lessee must make arrangements with the present lessee for payment of any delinquent and current taxes, utilities, and other charges prior to taking possession. If such arrangements are not made, Lessee agrees to pay all such taxes, utilities, and other charges. If Lessor should make any payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

B. Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less during any Lease year, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00) during any Lease year then such excess shall be paid by Lessor, but the Base Rent herein shall be increased by an amount equal to twelve percent (12%) of such excess payable for each Lease Year such amounts are payable.

Section 10. Corridor Clearance.

A. Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Corridor on or about the Premises (nine and one-half (9 -½) feet on either side of the centerline of any of Lessor's Corridor which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Corridor on or about the premises ("Minimal Clearances"), or on or over any established trail; provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 10, the Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 10, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises clearly noting the existence of such clearance. Any such sign shall be painted with black and white reflective paint.

B. Lessor's operation over any Lessor's Corridor on or about the premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 10 or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to death of persons, that may result therefrom.

C. Lessee shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on Lessor's Corridor.

Section 11. Repairs; Maintenance, Weed control.

A. Lessee shall, at its sole expense, take good care of the Premises (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewal when necessary. Lessee shall keep and maintain any paved area, sidewalks, curbs, landscaping, and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish. Lessee shall be responsible, at his sole expense, for control of all noxious and nuisance weeds on the Premises. If Lessee fails to control such weeds Lessor, in addition to any other remedies provided for in this agreement, including

termination, may hire a certified contractor to control the same after ten days written notice provided by Lessor to Lessee. All costs thereof incurred by Lessor shall be billed to Lessee and Lessee agrees to pay the same, along with an administrative fee of \$100.00 within 30 days. Failure to make such payment shall be grounds for immediate termination of this Lease.

B. Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Premises.

C. Lessee shall not use the Premises for open storage of cars, vehicles, or machinery whether operational or not, building materials, rubbish, trash, or personal property. Excess grass and vegetation shall be controlled so as to minimize any fire hazard.

D. If Lessee's approved purpose, as set forth in Section 2, is for the grazing of livestock, Lessee will not suffer or permit any waste, damage or unlawful acts to be committed upon the Premises during the existence of this agreement Lessee shall observe good husband like grazing practices and shall not allow the land to be over-grazed. Lessor and its agents shall have the right to enter upon the premises for the purpose of inspecting the same. Lessee shall provide a grazing use plan, approved by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) commensurate with the number of aums available on this property. The Lessor, in its sole discretion may approve or disapprove this plan. Therefore, no grazing practice used shall exceed that plan. Lessee shall provide Lessor a use plan for the premises at the time of execution of this agreement and by April 1 of each year thereafter.

Section 12. Safety; Dangerous and Hazardous Conditions.

A. It is understood by Lessee that the Premises may be in dangerous proximity to Lessor's Corridor, and that persons and property, whether real or personal, on the Premises may be in danger of injury, death or destruction incident to Lessor's activities in the Lessor's Corridor, and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligation hereunder extends to and include all such risks.

B. It is further understood by Lessee that the Premises may be in proximity to City trails or other public roadways and corridors (the "Public Ways"), including Lessor's Corridor, and that persons using those trails, roadways and corridors may be in danger of injury or death due to operations on the Premises. Lessee shall take all necessary precautions including but not limited to barricading, fencing or otherwise erecting such structures or facilities as may be necessary to adequately protect those using these Public Ways. All such structures shall be approved by Lessor in writing in advance of construction. Lessee agrees to indemnify Lessor in accordance with this Lease for any injuries by Lessee, his agents, contractors, invitees or others on the Premises, to persons or property on the adjacent Public Ways.

Section 13. Indemnity.

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICER, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY,

“INDEMNITEES”) FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEY’S FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY “LIABILITIES”) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;

ii) Any rights or interests granted pursuant to this LEASE;

(iii) LESSEE’S OCCUPATION AND USE OF THE PREMISES;

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR

(v) ANY ACT OR OMISSION OF LESSEE OR LESSEE’S OFFICER, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE’S OBLIGATION TO INDEMNIFY THE INDEMNITIES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 13(A), LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT THE CITY IS AN “OWNER”, “OPERATOR” OR “ARRANGER”, WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THE LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A MUNICIPAL CORPORATION FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY

ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYER'S LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LESSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

D. Upon written notice from lessor, lessee agrees to assume the defense of any lawsuit or other proceeding brought against any indemnitee by any entity, relating to any matter covered by this lease for which lessee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorney's fees, investigator's fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 14. Equal Protection.

It is agreed that the provisions of Sections 10,12 and 13 are for the equal protection of other public entities permitted to use the Lessor's property, and such entities shall be deemed to be included as Indemnitees under Sections 10,12 and 13.

Section 15. Assignment and Sublease.

A. Lessee shall not (i) assign or otherwise transfer this lease or any interest herein, or (ii) sublet the premises or any part thereof, without, in each instance, obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. For purposes of this Section 15, in the event that there are aggregate transfers or other changes in the ownership interests of Lessee resulting in a change of more than 20% of the ownership interests as held on the date thereof, a transfer shall be deemed to have occurred hereunder. Any person or legal representative of lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

B. Any assignment, lease, sublease or transfer made pursuant to section 15(A) may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions, and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Lessee to be performed or observed.

Section 16. Liens.

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section 16 or any other Section of this Lease.

Section 17. Insurance.

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

A. All risks property insurance covering all of Lessee's property including property in the care, custody or control of Lessee. Coverage shall include the following:

Issued on a replacement cost basis.

Shall provide that in respect of the interest of Lessor the insurance shall not be invalidated by any action or inaction of lessee or any other person and shall insure the respective interests of Lessor as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee or any other person.

Include a standard loss payable endorsement naming Lessor as the loss payee as its interests may appear.

Include a waiver of subrogation in favor of Lessor.

B. Commercial general Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

Bodily Injury and Property Damage

Personal Injury and Advertising Injury

Fire legal liability

Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

The employee and workers compensation related exclusions on the above policy shall not apply with respect to claims related to city employees.

The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of the Premises.

Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

C. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

D. Workers Compensation and Employers Liability Insurance coverage for, but not limited to:

- Lessee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

E. If construction is to be performed on the Premises by Lessee, Lessee or lessee's contractor shall procure Liability insurance naming only the Lessor as the insured with coverage of at least \$750,000 for each claim and \$1,500,000 for each occurrence. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation expense Coverage Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Lessor prior to performing any work or services under this Lease.

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Lessee agrees to waive its right of recovery against City for all claims and suits against City. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against City for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against City for loss of its owned or leased property or property under lessee's care, custody, or control.

Lessee's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by City. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Worker's Compensation and if applicable, liability coverage, shall include a severability of interest endorsement and shall name City as an additional insured with respect to work performed under this Lease.

Lessee is not allowed to self-insure without the prior written consent of the City, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all City liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the premises, Lessee shall furnish to City an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify City in writing at least 30 days prior to any cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from City, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to City or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in Montana.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this lease. Allocated Loss expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, City may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be contracted by Lessee, Lessee shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming City as an additional; insured, and shall require that the contractor shall release, defend and indemnify railroad to the same extent and under the same terms and conditions as lessee is requires to release, defend and indemnify City herein.

Failure to provide evidence as required by this Section 17 shall entitle, but not require, City to terminate this lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by City shall not be limited by the amount of the required insurance coverage.

For purposes of this section 17, City shall mean "the City of Lewistown, a municipal corporation" and its, successors, assigns, employees and agents.

Section 18. Water Rights and Use of Wells.

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without prior written consent of Lessor.

Section 19. Default.

A. An "Event of Default" by Lessee shall have occurred hereunder if any of the following shall occur:

- (i) if Lessee violates any safety provision contained in this Lease;
- (ii) if Lessee fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;
- (iii) if a decree or order of a court having jurisdiction over the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;
- (iv) if the Premises is abandoned or vacated by Lessee.

B. If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, wither at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof, (iii) cure the default by making any such payment or performing any such obligation, as applicable, at Lessee's sole expense, without waiving or releasing Lessee from any obligation, or (iv) enter into and upon the premises or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Premises or any part thereof as the agent of Lessee and in such event, lessee shall immediately liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as rent for the premises for the period of reletting. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding to exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of the Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date to terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect the Lessor's ability to enforce any Section of this Lease. The remedies set forth in this Section 19 shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a Breach or default.

Section 20. Termination.

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the premises and shall remove any lessee Improvements, and restore the Premises to substantially the state and environmental condition in which it was prior to lessee's use ("Restoration Obligations"). If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, the Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Premises, and in such event Lessee shall, within (30) days after receipt of bill therefore, reimburse Lessor for cost incurred, (ii) upon written notice to lessee may take and hold any Lessee Improvements and personal property as its sole property, without payment or obligation to Lessee therefore, or (iii) specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Further, in the event Lessor has consented to Lessee Improvements remaining on the Premises following termination, Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor conveying such Lessee Improvements to Lessor.

Section 21. Survival of Obligations.

Notwithstanding any expiration or other termination of this lease, all of Lessee's indemnification obligations and any other obligation that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

Section 22. Holding Over.

If Lessee fails to surrender the Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee holdover will be subject to all provisions of this Lease.

Section 23. Multiple Party Lessee.

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein shall be the joint and several covenants and agreements of such parties.

Section 24. Damage or Destruction.

If at any time during the term of this lease, the Premises are damaged or destroyed by fire or other casualty, the Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the premises existed prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee Improvements, personal property, furniture, trade fixtures, or office equipment located on the premises and removable by Lessee under the provisions of this Lease.

Section 25. Representations.

Neither Lessor nor Lessor's agents have made any representations or promise with respect to the Premises except as herein expressly set forth.

Section 26. Signs.

No signs are to be placed on the premises without the prior written approval of Lessor of the size, design, and content thereof.

Section 27. Consents and Approvals.

Whenever in the Lease Lessor's consent or approval is required such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will lessee make, any claim, and lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval.

Section 28. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

Section 29. Public Record.

It is understood and agreed that this Lease shall not be placed of public record.

Section 30. Governing Law.

All questions concerning the interpretation or application of provisions of this lease shall be decided according to the laws of the state of Montana.

Section 31. No Waiver.

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 32. Binding Effect.

All provisions contained in the Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and lessee to the same extent as if each such successor and assign was named a party to this Lease.

Section 33. Force Majeure.

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

Section 34. Entire Agreement/Modification.

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreements held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

Section 36. Notices.

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified – return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice as above shall be effective upon its deposit into the custody of the U.S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 3(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

Lewistown Livestock Inc.
PO Box 1190
Lewistown, MT 59457

If to Lessor:

City of Lewistown
305 West Watson
Lewistown, MT 59457

Section 37. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed and original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counter part to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

Section 38. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this lease, to be the agent, partner, joint venturer or associate of the other party

hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all time during the term if this Lease, shall remain that of Lessor and Lessee.

Section 39. Severability.

If any clause or provision of this lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 40. Transferability; Release of Lessor.

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Lessor shall be released from any further obligations hereunder, and lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

Section 41. Tax Waiver.

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

Section 42. Attorney's Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

Executed by the parties to be effective as of the Effective Date above.

LESSOR

City of Lewistown

By: _____
Name: _____
Title: _____

LESSEE

By: _____
Name: _____
Title: _____

EXHIBIT

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (the "Agreement") supplements that certain Indefinite Term Lease for Land ("Lease") dated _____ by and between **the City of Lewistown** ("Lessor") and _____ ("Lessee"). In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms not defined herein shall have the meaning assigned to such terms in the Lease.

In the event Lessee uses one or more general contractors or subcontractors ("Contractor(s)") for any improvements, alterations, build out, finish out, or other similar work on the premises ("Work"), Lessee agrees to and accepts the following:

1. Prior to performing any Work, Lessee shall obtain Lessor's approval of each contractor and any Work to be performed by such Contractor shall be performed pursuant to a written contract between Lessee and the Contractor ("Work Contract") approved in advance by Lessor.
2. Prior to commencing any Work, Lessee shall submit for Lessor's review and approval Lessee's plans, specifications and/or drawings for such Work (collectively, "Plans") in accordance with the procedure set forth in the Lease.
3. All Work must be performed at Lessee's sole cost and expense and in accordance with the Plans which have previously been approved by Lessor.
4. Lessee shall cause its Contractors to meet all insurance and indemnification requirements required of Lessee under the Lease and shall obtain indemnification and insurance provisions from its Contractors in favor of Lessor and in the same form as set forth in the Lease.
5. Prior to the commencement of the Work, all required local building, fire, health and other departments must approve all Plans requiring approval by local building codes. In addition, the Work shall be performed, installed and/or constructed in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations, including without limitation, the American With Disabilities Act of 1990, 42 U.S.C.A. 12101 et seq.
6. Lessee shall be responsible for obtaining all municipal and other governmental licenses or permits for the Work with copies furnished to Lessor prior to commencement of any construction.
7. Lessee shall furnish Lessor, for Lessor's approval, a copy of its schedule of the Work. Lessee shall perform the Work in accordance with the schedule approved by Lessor, and any changes in such schedule must be approved by Lessor in writing in advance.
8. Notwithstanding the status of the completion of the Work, lessee's obligation for payment of Base Rent and other amounts due under the Lease shall commence on the Commencement Date provided in the Lease. Notwithstanding anything herein to the contrary, Lessor may, in Lessor's sole discretion, permit lessee and Lessee's Contractor's to enter the premises prior to the Commencement date in order to commence Work; provided, however, that Lessee agrees that such early entry or occupation of the Premises shall be governed by all of the terms and conditions of the Lease and this Agreement (including the insurance and indemnity requirements therein), as such terms and conditions are more specifically set forth in the Lease and this Agreement.
9. During construction, Lessor reserves the right to inspect the Work at any time upon reasonable notice to Lessee.

10. Lessee's Contractor's shall keep the premises reasonably clean at all times during the performance of the Work.

11. All Work must be performed in a good and workmanlike manner, free from defects in materials and workmanship.

12. If any materialman's, mechanic's, laborer's or any other liens for any work claimed to have been undertaken for lessee or at Lessee's request is filed against the Premises, Lessee shall indemnify, defend and hold harmless Lessor from any such liens filed during the term of the Lease and shall, at Lessee's own expense, cause all such liens to be removed within ten (10) days after written notice from Lessor to Lessee of the filing thereof.

13. Lessee must obtain Lessor's reasonable approval that the Work has been completed in substantial accordance with the approved plans and specification. Lessor shall receive copies of all Certificates of Occupancy and as-built drawings (electrical, mechanical, fire and architectural) prior to approving the Work.

14. All guarantees and warranties provided by lessee's Contractors shall be issued to lessee and, for Work which is or will at the termination of this lease be Lessor's property, also to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

LESSOR:

City of Lewistown

By:

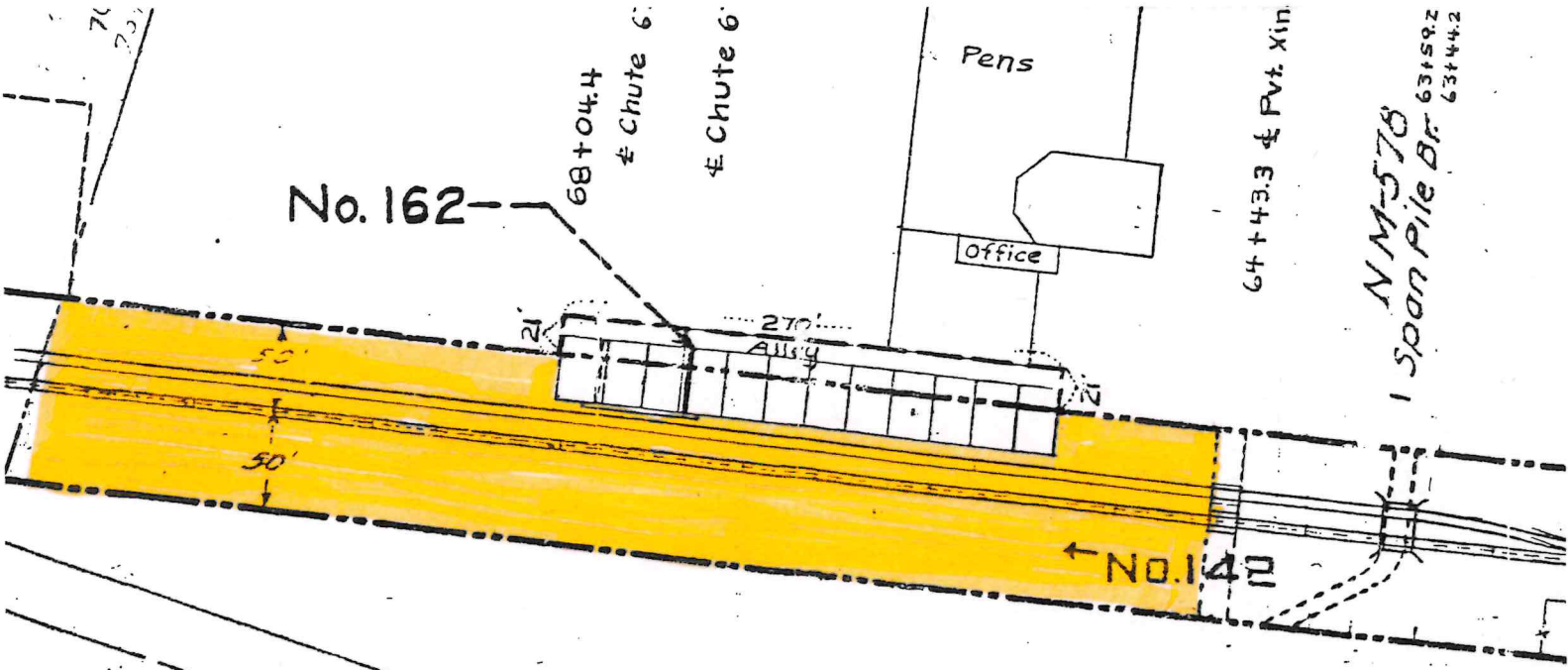
Title:

LESSEE:

By: _____

Name: _____

Title: _____



Lease Area

$$\begin{aligned}
 640' \times 100' &= 64,000 \\
 \text{less tract 1 COS 728} &= - 2,760 \\
 \hline
 61,240 \text{ ft}^2
 \end{aligned}$$



Resolution No. 4193

**A RESOLUTION PROVIDING FOR THE
ANNEXATION BY PETITION OF
PROPERTY BELONGING TO HAPS
PROPERTIES LLC**

WHEREAS, HAPS Properties LLC of Lewistown, Montana, as the owner of the below described property, has presented a Petition to the City of Lewistown requesting that such property located within Fergus County, Montana, be annexed to and incorporated into the City, to wit:

**K & T Properties Subdivision #2, Lot 6, Less Tract 6 of COS #823
Section 16, Township 15N, Range 18E**

WHEREAS, a copy of the Petition for Annexation is attached to this resolution and is incorporated by reference herein in its entirety.

WHEREAS, Part 46, Chapter 2, Title 7 of the Montana Code Annotated allows a city to annex property into its boundaries if it has received a written petition containing a description of the area requested to be annexed and signed by the owner of the real property in the area to be annexed.

WHEREAS, the Petition for Annexation recites that it is signed by the sole owner/authorized agent of the real property in the area to be annexed, and contains a description of the area requested to be annexed and therefore is properly before the Commission; and,

WHEREAS, the City Commission may approve or disapprove a petition for annexation submitted under the provisions of Montana law as stated herein, upon its merits.

NOW, THEREFORE, BE IT RESOLVED, that the following described property be and hereby is annexed to the City of Lewistown and that the boundaries of the city shall be extended to include such property;

**K & T Properties Subdivision #2, Lot 6, Less Tract 6 of COS #823
Section 16, Township 15N, Range 18E**

BE IT FURTHER RESOLVED, Zoning for of the above-described property shall be **C-1 General Commercial** determined by the developer as part of the subdivision process.

BE IT FURTHER RESOLVED that the City Clerk shall forthwith cause this resolution to be entered into the minutes of the City and that the Clerk certify under seal of the City a copy of such record which document shall be filed with Fergus County Clerk and Recorder's Office at which time annexation of the above described parcel shall be complete.

PASSED AND APPROVED this _____ day of _____ 2025.

Approved:

Chairperson, City Commission

ATTEST:

NIKKI BRUMMOND, City Clerk

**EMERGENCY SERVICES DISPATCH AGREEMENT
BETWEEN JUDITH BASIN COUNTY
AND THE CITY OF LEWISTOWN**

This Agreement is made this 4th day of June, 2025 by and between the City of Lewistown (hereafter, the "City") and Judith Basin County, jointly referred to hereafter as the "parties":

WHEREAS, the City owns, operates and maintains facilities, equipment and capabilities and maintains personnel necessary to provide 911 call answering services for law enforcement and emergency services operations to include E-911 services (the "services") and,

WHEREAS, the City desires to provide these services to Judith Basin County Law Enforcement and emergency services personnel.

WHEREAS, Judith Basin County desires to contract for the dispatch and emergency services capabilities available from the City for the benefit of the Judith Basin County area (the "service area").

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS
CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

I. SERVICES PROVIDED BY CITY: The City agrees to provide the following services:

A. **Basic Dispatch.** The City will provide the services necessary to provide E-911 call taking services & Basic Dispatch to the service area:

1. Operation of one (1) Public Service Answering Point (PSAP) for the entire service area.
2. 911 call taking, and call relaying
3. Rollover non-emergency call taking for law enforcement in the service area
4. Notification/ Emergency Paging of appropriate responding agencies as identified in the E911 system and assistance with multi-agency notification when requested
5. Radio and/or telephone dispatch of law enforcement, fire response, emergency medical services, disaster and emergency services and, search and rescue.

6. Creation and tracking of Calls for Service;
7. Assignment of Master Sequence Numbers for law enforcement; and,
8. Terminal administration for the Montana Criminal justice Information Network (CJIN) and the National crime Information Center (NCIC)

B. **Emergency 911 (E-911)****Emergency 911 (E911).** The City will provide the services necessary to provide E-911 services to the service are:

1. E-911 plan development and administration;
2. Assist with E911 database management;
3. Coordination with State 911 Office;
4. Assist with GPS/GIS mapping for emergency response; and,
5. Coordination with area telephone service providers.

C. **System Coordination.** The City will provide services necessary to facilitate system connectivity:

1. Installation of a radio link at the City Complex to allow for the transfer of voice and paging information; and,
2. Installation of additional Base Interface Module (BIM) cards at the City Complex to facilitate the use of console units and base radio systems.

D. **Equipment.** The city will provide all equipment necessary for on-site PSAP operation of the system as specified above unless otherwise accepted in this agreement.

E. **Budgeting.** The City will be responsible for the budgeting of personnel and non-911 expenses/revenues as well as the bookkeeping and management of the 911 Funds distributed by the State of Montana.

II. JUDITH BASIN AGREES TO:

A. **PROVIDE** Non-Emergency call taking services from 8-5PM, Monday through Friday (excluding holidays).

B. **PROVIDE** Assistance with E911 data collection and mapping.

C. **PROVIDE** Letters of Authorization for use of related frequencies,

repeaters, and infrastructure;

D. **PROVIDE** Designation of one representative from Judith Basin County to participate on the Central Montana 911 Center Board.

E. **PROVIDE** Telephone equipment and accessories necessary within its own facilities;

F. **ACKNOWLEDGE THAT** Repeaters, Mobile/vehicle radio units, pagers, and other necessary equipment and maintenance of the same for all personnel and vehicles within the County's jurisdiction are not the responsibility of the City or the Central Montana 911 Board; and

G. **TO PROVIDE** Access to facilities and equipment as necessary for the operation of the system.

III. OWNERSHIP OF EQUIPMENT: Any property located at facilities owned by either party, including upgrades of such equipment, shall remain in the ownership of the housing agency, including but not limited to radio equipment, phone equipment, repeaters, radio towers and antennas. However, any equipment which is relocated from the premises of one party to the premises of another party during the term of this Agreement shall be returned to the original location at the termination of this Agreement. In the event that the Agreement is terminated, any issues regarding ownership of equipment will be decided by the Central Montana 911 Board after taking comments from the Montana 911 Program personnel.

IV. PAYMENT/TERM: In exchange for the provision of services set forth in this Agreement, Judith Basin County agrees to authorize and facilitate the following payments:

- A. All 911 and E911 funds collected and distributed by the State of Montana on behalf of Judith Basin County will be deposited into the Central Montana 911 Fund held at the City of Lewistown.
- B. In conjunction of the E-911 Funds, Judith Basin County agrees to contribute additional funds to the E911 Services, as set by the 911 Board.
- C. Term. The term of this Agreement shall be for a period of Five years commencing January 1st, 2025, and ending January 1st, 2030.

V. TERMINATION:

A. Notice. Notwithstanding the term of this Agreement, either party may terminate this Agreement by giving the other party at least six (6) months written

notice of the termination and providing the specific date when services shall cease.

B. Payments. Any payments owing shall be prorated to the date of termination.

VI. DEFAULT: Time is of the essence of this Agreement. Should either party fail to abide by the terms and conditions contained herein, the non-defaulting party may consider such failure a default and provide written notice thereof. Such written notice shall specify the nature of the default, and the Party so notified shall have sixty (60) days in which to cure the specified default. In cases of non-payment, such period shall be forty-five (45) days. If the party in breach cures such default, this Agreement shall remain in full force and effect, otherwise the non-defaulting party may, without further notice, terminate this Agreement and the defaulting party shall have no further rights herein. The remedy of termination shall be in addition to any remedy allowable at law or equity.

VII. NOTICE:

- A. Any notice required to be given under this Agreement shall be served upon the City or Judith Basin County by either personal service or by registered or certified mail, sent directly to the City or Judith Basin County at the following addresses:

City of Lewistown:

Lewistown City Manager
305 W. Watson
Lewistown, MT 59457

Judith Basin County:

Chairman, Judith Basin County
Judith Basin County Courthouse
Stanford, MT 59479

B. Service by mail shall be complete, and the notice period for termination or default of this Agreement shall commence to run on the date the notice is deposited in any U.S. Post Office, addressed to the City or Judith Basin County. In the event of a change of address of either of the parties, the party whose address is changing shall notify the other party in the same manner as provided for notices herein.

VIII. EXECUTION OF DOCUMENTS: Upon request, the parties agree to immediately execute any and all documents which may be required to effect the terms of this Agreement.

IX. OTHER AGREEMENTS: The parties agree that this Agreement represents

the entire understanding of the parties and supercedes any other agreements. No other agreements, verbal or otherwise, are made. Any modifications to this Agreement shall be made in writing and properly acknowledged by all parties hereto.

X. BINDING ON SUCCESSORS: The terms and provisions herein shall be binding upon the assigns of the parties hereto.

XI. HOLD HARMLESS: Judith Basin County covenants and agrees to hold harmless and indemnify the City from any and all damages, suits or other litigation that might arise out of actions under this Agreement by Judith Basin County, its employees or agents. Similarly, the City covenants and agrees to hold harmless and indemnify Judith Basin County from any and all damages, suits or other litigation that might arise out of actions under this Agreement by the City, its employees or agents.

Dated this 4th day of June, 2025.

CITY OF LEWISTOWN

BY:

HOLLY PHELPS, CITY MANAGER

JUDITH BASIN COUNTY COMMISSIONERS

BY:

COMMISSIONERS:

Jane C. Moore
Don L. Hyman
Greg M. Bunch