

**RESOLUTION NO. 3190**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA, APPROVING A UTILITIES EASEMENT WITHIN PROPERTY COMMONLY KNOWN AS THE "PONY EXPRESS".**

WHEREAS, the City of Red Lodge is building restroom and warming hut facilities adjacent to Lions Park and utilities for this project require the extension of water and sewer lines, and the closest, most available existing lines in an easement the City previously negotiated with the Hawkeye Center and Red Lodge Ales properties; and

WHEREAS, the City of Red Lodge also wants to support the Carbon County Arts Guild's need for better utility connections for their building and facilities, which could be done by the extension of lines utilizing this proposed easement; and

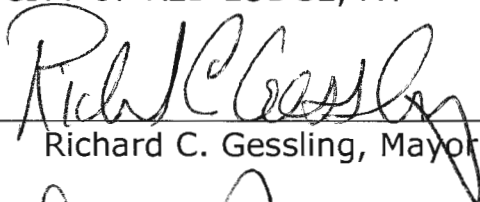
WHEREAS, the City Council for the City of Red Lodge is advised and understands this easement was negotiated with the option-holder; the owner of the Pony Express property has yet to agree to this easement.

NOW THEREFORE, BE IT RESOLVED:

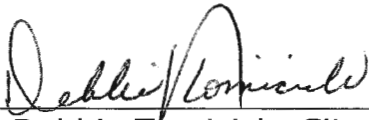
1. The City Council resolves to acquire a utilities easement substantially in the form attached hereto and made a part hereof, which extends the existing utility corridor, allows completion of the restroom project for Lions Park, and eventual extension of services to the Carbon County Arts Guild.
2. The City Council resolves and directs the mayor to finalize an agreement for a utilities easement concerning the Pony Express property, and to take such administrative action as he deems prudent to carry out the intent of this Resolution.

PASSED and APPROVED by the Red Lodge City Council this 9<sup>th</sup> day of August 2005.

FOR THE CITY OF RED LODGE, MT

  
Richard C. Gessling, Mayor

Attest:

  
Debbie Tomicich, City Clerk

**HERNDON, SWEENEY & HALVERSON, P.C.**  
ATTORNEYS AND COUNSELORS AT LAW  
CREEKSIDE SUITE 301  
1001 SOUTH 24TH STREET WEST  
BILLINGS, MONTANA 59102-6487

DONALD R. HERNDON  
e-mail: dherndon@bshlaw.net

KEVIN C. SWEENEY  
e-mail: kevin@bshlaw.net

REPLY TO:  
P.O. BOX 80270  
BILLINGS, MONTANA 59108-0270  
(406) 652-1010  
FACSIMILE: (406) 652-8102

August 2, 2005

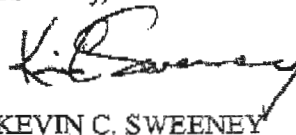
VIA FACSIMILE - 446-3936  
Rod Proffitt  
City of Red Lodge

Re: Ron Wolfe - First Citizens Bank Utility Easement Agreement  
My File No. 22253

Dear Mr. Proffitt:

Pursuant to your letter of July 11, 2005, and your letter of July 20, 2005, please find attached a revised Utility Easement Agreement, which I believe addresses all of your concerns. I have discussed this revised document with Ron Wolfe, and he believes that it sets forth the intention of the parties. Please review and advise if this document is acceptable.

Sincerely,



Handwritten signature of Kevin C. Sweeney in black ink.

KEVIN C. SWEENEY

KCS:jas  
Attachment

Return recorded Easement to:  
Kevin C. Sweeney  
P.O. Box 80270  
Billings, MT 59108-0270

### UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between **First Citizens Bank** ("Grantor"), whose address is 2812 First Avenue North, Billings, MT 59101, record owner of Lot D-3, C.O.S. 1396 AM, lying in the **City of Red Lodge**, located in the NE1/4 of Section 27, T7S, R20E, P.M.M., Carbon County, MT ("Grantor's Property"), and the City of Red Lodge, Montana, a self-governing Chartered municipal corporation under the laws of Montana, having an address of P.O. Box 9, Red Lodge, MT 59068 ("City").

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The purpose of this Agreement is to provide for constructing, operating, maintaining and accessing water and sewer utility pipes, conduit and lines under the following-described real property:

**Subject Property:** A strip of land, ten feet (10') wide and extending from the existing utility easement for Tract D-2B southwesterly beginning at the northwest corner of Grantor's Property along the western property line 272.5' to the southwest corner of Grantor's Property, all as depicted on the attached Exhibit A, which is made a part of this Agreement (the "Subject Property").

Now, therefore, the parties agree as follows:

1. **Ownership.** Grantor warrants it is the sole owner in fee simple of the Subject Property, and has the power and authority to grant this easement.
2. **Grant.** Grantor hereby grants to City a perpetual easement for the purpose of constructing, operating, maintaining and accessing water and sewer utility pipes, conduits and lines on the Subject Property, all of which shall be installed underground, except for shut-off valves and other above ground utility apparatus necessary to use or monitor the underground pipes, conduits and lines on the Subject Property, but which will not interfere with use of the Subject Property as an alley.

- 3. Use. The City agrees its use of the Subject Property is not intended to interfere with Grantor's use and enjoyment of the Subject Property, nor impose any costs on Grantor. City agrees to indemnify and hold Grantor harmless from any cost or expense, damages, or claims associated with its use of this easement. The City further agrees, confirms and otherwise concedes this easement represents the full extent of setback requirements to build on Grantor's property. As such, the City shall allow construction of buildings or other improvements by Grantor to the easterly edge of the easement line of the Subject Property, in accordance with applicable governmental construction regulations.
- 4. Consideration. The parties state and affirm one to the other that the consideration given and exchanged for this Easement is both valuable and sufficient. Grantor shall receive a waiver of impact fees, if any, for one (1) water and one (1) sewer connection as consideration for this Easement, and shall not incur any expense in City's obligation to connect one (1) water and one (1) sewer line to the mains constructed in the Subject Property.
- 5. Connections. City is solely responsible for any water and sewer connections, including the costs therefore, associated with laying new water and sewer lines in this easement. City agrees not to disconnect any existing water and sewer lines without prior notice to Grantor and then only at such time as the City is prepared to make a connection to the new line so as not to interfere with or disrupt service to Grantor's property. After Grantor has been connected to a new water or sewer line, all regular monthly service charges shall apply.
- 6. Disconnections. City shall not disconnect Grantor's present water and sewer lines until it connects Grantor to City's new water and sewer lines constructed in the Subject Property. City shall cap the old lines, but shall not be responsible for removal of the same.
- 7. Benefit. This Agreement is entered into by and between the Grantor and City, and is made for the benefit of Grantor and City, and their respective successors in interest and assigns, and does not create rights or responsibilities in third parties other than the successors and assigns of the respective parties.

IN WITNESS WHEREOF, Grantor and City have executed this Agreement.

Dated \_\_\_\_\_, 2005.

Grantor: **First Citizens Bank**

By: \_\_\_\_\_

Name:

Title:

City: **City of Red Lodge**

By: \_\_\_\_\_  
Richard C. Gessling, Mayor

State of Montana            )  
                                      : ss.  
County of Yellowstone     )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
2005 \_\_\_\_\_ for First Citizens Bank (Grantor).

(SEAL)

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Printed Name  
Notary Public for State of Montana  
My commission expires: \_\_\_\_\_

State of Montana            )  
                                      : ss.  
County of Carbon         )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
2005 by Richard C. Gessling, signing in the capacity of Mayor of the City of Red Lodge,  
Montana.

(SEAL)

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Printed Name  
Notary Public for State of Montana  
My commission expires: \_\_\_\_\_

KCSjas22253.007 (Word)

