

Town of West Yellowstone

Town Council Work Session

Tuesday, September 22, 2020

Town Hall, 440 Yellowstone Avenue

The Town Council work session/meeting will be conducted virtually using ZOOM. The public may participate by connecting to zoom.us on the internet or through the Zoom Cloud Meetings app on a mobile device. Meeting ID: 893 834 1297. The meeting will open at 4:45 PM. Members of the public are requested to ensure their audio is muted during the meeting and may make comments using the “Chat” function.

5:00 PM

Agenda

Public Comment Period/Council Comment

Water Contamination Incident (Possible Executive Session-Closed to the Public)

Discussion

Extension of Water & Sewer Connections to the Airport and Lagoon Lease

Discussion



Town of West Yellowstone Wastewater Treatment Lagoon Site Lease Agreement

1. PARTIES

This agreement, made and entered into this 19 day of January, 2016, by and between the State of Montana, Department of Transportation, Aeronautics Division ("Lessor" or "Department"), and the Town of West Yellowstone, acting by and through its duly qualified and elected Town Council ("Lessee").

2. PURPOSE OF LEASE

Lessee desires to lease ground at the Yellowstone Airport from Lessor for the purpose of the construction and operation of a wastewater treatment facility. Lessee agrees to use the leased area for the purposes of construction and operation of the wastewater treatment facility only.

3. PREMISES DESCRIPTION

The leased area consists of a particular lot of unimproved land, more particularly described by Attachment A, which, by reference, is incorporated in and made a part of this lease. The term "premises" refers to the real property as described by Attachment A and depicted in Attachment B, including any improvements located thereon during the term of this lease.

4. TERM OF LEASE

The term of the lease shall be for ten (10) years or until January 31, 2026. If, during the ten (10) year term, Lessee, its successors or assigns, should cease to use the property for a wastewater treatment facility, this lease shall be terminated according to the Termination paragraph below.

5. CONSIDERATION

Lessee shall pay to Lessor the total sums according to the following schedule for rental of the premises. The annual payment must be remitted by May 31st for the associated year annually.

<u>Year</u>	<u>Annual Fee</u>
2016	\$20,000
2017	\$25,000
2018	\$30,000
2019	\$35,000
2020	\$40,000
2021	\$40,600
2022	\$41,209
2023	\$41,827

2024	\$42,454
2025	\$43,090

Prior to the sixth year (2021), at Lessor's discretion, Lessor may review the rental rate provided in this lease to determine if the rate listed is near current fair market value (FMV). If Lessor chooses to re-evaluate the rental rate, Lessor shall notify Lessee in writing 180 days prior to January 31, 2021. Re-evaluation (if any) must be conducted using the following fair market value (FMV) formula:

- a. Lessor will hire a Certified General Appraiser of Lessor's choosing to complete an appraisal of the leased property, at its sole cost and expense, and provide the appraisal to Lessee;
- b. If Lessee accepts Lessor's appraisal, the appraisal sales amount will be used for determination of the hypothetical FMV sale price;
- c. If Lessee does not accept Lessor's appraisal, Lessee may hire a Certified General Appraiser to complete an appraisal of the leased property, at its sole cost and expense, and provide the appraisal to Lessor;
- d. The average of the two individual appraisal sales amounts will become the hypothetical FMV sales price;
- e. The base annual rental rate will be 10% of the hypothetical FMV sale price for the remaining years of the lease (2021-2025), which will be implemented on February 1, 2021 and will be increased by 1.5% annually. A new annual fee schedule table will be created and signed by both parties as a lease amendment; and
- f. If Lessee does not accept Lessor's appraisal, but fails to provide its own appraisal in a reasonable time, not to exceed six (6) months following Lessor's written notification. Lessor may terminate this Lease under the termination section of this lease.

If Lessor chooses not to exercise the reevaluation, the fee schedule will continue as described in the above table for years 6-10 (2021-2025).

6. REQUIRED MAINTENANCE

Lessee shall, throughout the term of this lease, at its own cost, and without any expense to Lessor, keep and maintain the premises, including all buildings and improvements of every kind, in good, sanitary, and neat order, condition and repair. Lessee shall restore and rehabilitate any improvements, in good, sanitary, and neat order, condition and repair. Lessee shall restore and rehabilitate any improvements which may be destroyed or damaged by fire, casualty, or any other repairs, replacements, or renewals of any kind, nature, or description whatsoever to the premises or any buildings or improvements.

7. LESSOR REQUIREMENTS

Lessor will operate and manage the airport facility in accordance with MDT Aeronautics Division standards and Federal Aviation Administration rules if applicable and make the airport available and open to the public for typical airport uses.

8. **SPECIFIC REQUIREMENTS AND ALLOWED AND PROHIBITED USES OF LEASED AREA**

A. Uses of Premises - Lessee must not use, or permit the premises, or any part thereof, to be used, for any purpose other than the purpose for which the premises are leased; and no use shall be made or permitted to be made of the premises, or acts done, which will cause a cancellation of any insurance policy covering any structure located on the premises.

Lessee must not sell any article, or permit to be kept, used, or sold, any article which may be prohibited by Lessee's fire insurance policies. Lessee shall, at its sole cost, comply with all requirements pertaining to the premises, of any insurance organization or company, necessary for the maintenance of insurance, covering any building and appurtenances at any time located on the premises.

This lease is given subject to all of the restrictions and covenants contained in the correction deed given by the United States of America to the State of Montana, dated August 12, 1968, insofar as applied to this treatment facility.

Lessee must comply with all State and Federal requirements regarding operation of public wastewater treatment facility. Lessee must comply with all State and Federal permitting requirements including proper approvals from Montana Department of Environmental Quality and other permits as applicable to a public wastewater treatment facility.

B. No Sharing or Sub-Lease Use - Lessee may not sublet the premises in whole or in part without Lessor's consent. Lessee shall not assign or transfer this lease or any interest herein, without the prior written consent of Lessor, and any consent to an assignment shall not be deemed to be a consent to any subsequent assignment. Any such assignments without such consent shall be void, and shall at the option of Lessor, terminate this lease.

C. Utilities - Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the premises throughout the term of this lease, and all other costs and expenses in connection with the use, operation, and maintenance of the premises and all Lessee's activities. Lessor shall have no responsibility of any kind for any utility payment.

D. Lessor's Right of Entry - Lessee shall permit Lessor and Lessor's agents and employees to enter into and upon the premises at all reasonable times for the inspection of leased premises to ensure compliance with the terms of this lease.

E. Taxes and Assessments - Lessee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, ordinary or extraordinary, of every name, nature and kind whatsoever which are from time to time assessed, charged or levied against the premises.

- F. Liens** - Lessee shall keep all of the premises and all buildings and other improvements free and clear of any and all mechanics', materialmen's, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Lessee.
- G. Encumbrance of Lessee's Leasehold Interest** - Lessee may encumber by mortgage or deed of trust, or other proper instrument, its leasehold interest and estate in the premises, together with all of Lessee's building and improvements, as security for any indebtedness. The execution of any instrument, or the foreclosure or sale under an instrument, either by judicial proceedings, or conveyance by Lessee to the holder of such indebtedness, or the exercising of any right, power, or privilege reserved in any mortgage or deed of trust, shall not be held as a violation of any of the terms or conditions of this lease. No such encumbrance, foreclosure, conveyance, or exercise of right shall relieve Lessee from its liability under this lease.
- H. Protected Surfaces** - No structure, building, or dike may be constructed upon the premises which would protrude into the protected surfaces as defined by Federal Aviation Regulations Part 77.
- I. Underground Storage Tank** - No construction or installation of any underground fuel storage tank dispensing system located on leased property will be allowed.
- J. Public Works Activities** – The Lessee is permitted to conduct other public works activities that may not be in direct support of the operation of the sewer lagoon. These incidental public works activities are subject to determination of approval by the Lessor. Any activities that the Lessee wishes to conduct on the leased parcel other than those in direct support of the sewer lagoon activities must be requested in writing to the Lessor. The Lessor then will either grant or deny the activity requested at the Lessor's sole discretion and will do so in writing.

- Other currently approved public works activities:
 - Storage of non-hazardous infrastructure and maintenance materials.
 - Storage of Town owned equipment.

The Lessor has sole discretion over what other approved activities may be conducted other than those in direct support of the sewer lagoon operation. At any time the Lessor determines an unapproved activity is being conducted on the leased parcel, the Lessor will notify the Lessee in writing and the Lessor will have the opportunity to cure this breach as described in Section 14.

9. WILDLIFE MANAGEMENT

Lessee shall record daily wildlife activity observations on the "Daily Wildlife Management Log" provided by Lessor in the Yellowstone Airport Wildlife Hazard Management Plan (WHMP).

This activity report will be submitted by Lessee to Lessor on a monthly basis for the months May through November annually.

Lessee shall cease operation of the wastewater treatment facility if wildlife, in particular waterfowl, are shown to be attracted to the wastewater facility, cannot be controlled by Lessee, and are determined by Lessor to be a hazard to aircraft operations. Any and all related costs associated with wildlife control and mitigation due to the operation of the wastewater treatment facility will be the sole responsibility of Lessee.

10. ENVIRONMENTAL HAZARDS

In the event that soils or other materials are found on the leased site that are "Hazardous or Deleterious Substances" as defined by the Montana Comprehensive Environmental Cleanup and Responsibility Act, §75-10-701 et. seq., MCA ("CERCRA"), "Hazardous Substances: as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9600, et. seq. ("CERCLA"), "Hazardous Waste" as defined by the Montana Hazardous Waste and Underground Storage Tank Act, §75-10-401, et. seq. MCA, or the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq., or which require special remediation or disposal pursuant to any other applicable law, Lessee shall excavate, handle and dispose of such soils or other materials only in compliance with such statutes and regulations. In the event that the Lessee leaves any of the above-described materials on the property, the Lessor may, at its option, have the wastes properly disposed of at the cost of storage, transport and disposal. All Hazardous Materials must be appropriately labeled and stored.

In the event that a hazardous material spill occurs on the property, it is the responsibility of the Lessee to have the spill cleaned up according to State and Federal Laws and Regulations. In the event that drains or floor sumps are contaminated, it will be the responsibility of the Lessee to clean up those systems. Lessor is aware that there are significant penalties for improperly disposing of wastes or submitting false information, including the possibility of fine and imprisonment for knowing violations.

Lessee agrees to indemnify and hold harmless the State of Montana, Department of Transportation, Aeronautics Division, from any and all actions, claims, demands, liabilities, losses, damages, expenses, clean-up costs, or judgments (including attorney's fees), and damage to property or for loss of use of property, or for any other cause, which may be imposed, or that the Lessor may sustain, as a result of Lessee's impact on any hazardous or deleterious waste, as defined in section §75-10-701, MCA, or any solid wastes, which are located on the land being leased.

During the period of this lease agreement if the Lessee wishes to utilize any fill materials to modify the leased parcel the Lessee may do so. These fill materials must be of clean natural material. No concrete, metal, plastic, asphalt, etc... will be permitted to be utilized for fill material. All clean natural fill materials utilized must be in compliance with all State and Federal environmental laws.

11. AIRPORT RULES AND MINIMUM STANDARDS

- A. Airport Rules and Regulations** - Lessee shall comply with any and all applicable rules and regulations set forth by the MDT Aeronautics Division and the Federal Aviation Administration in accordance with airport operations.
- B. Airport Minimum Standards** - Lessee shall comply with any existing or future airport minimum standards set forth by the MDT Aeronautics Division. Minimum Standards are not incorporated as part of this Lease, however, they carry the full weight and effect as all other conditions in regards to this lease. Non-compliance by the Lessee of any Airport Minimum Standards while operating on the airport is grounds for termination of this lease.

12. LOCAL, STATE AND FEDERAL LAWS AND INSPECTION OF PROPERTY AND RECORDS

Lessee represents and warrants Lessee is in compliance with all applicable Local, State and Federal laws and regulations in the execution of this lease. Lessee agrees to provide the Departments of Transportation or Administration, the Legislative Auditor, the Legislative Fiscal Analyst, or their authorized agents' access to any records concerning this lease. Lessee agrees to create and retain all records supporting this lease for a period of three years after either the completion date of this lease or the conclusion of any claim, litigation or exception relating to this lease taken by the State of Montana or a third party.

Lessor shall have the right, through its agents or agents of another appropriate agency, for reasonable ingress and egress to inspect the premises, buildings and grounds to ascertain Lessee is adhering to the terms of this lease.

13. TERMINATION

Lessor may, by written notice to Lessee, terminate this lease at any time without cause, or if the location is needed for any Department project or aviation-related purposes. Lessor must give notice of termination without cause to Lessee at least 90 days prior to the effective date of termination. Termination for any reason shall not entitle Lessee to any refund for rentals paid or exemption from the payment of any rents, penalties, or other compensation due under the terms of the lease.

The Lessor, at its sole discretion, may terminate or reduce the scope of this lease if available funding is reduced for any reason (Mont. Code Ann. §18-1-401).

14. BREACH OF LEASE AND OPPORTUNITY TO CURE

Lessor shall have the authority to terminate the lease for breach of any term of the lease.

- A. Opportunity to Cure** - If Lessee fails to perform any of the terms of this lease, the Lessor may give written notice to perform. If the nonperformance continues to 10

days after service of the notice, the Lessor may give notice to terminate this lease, and 20 days after service of the notice, the lease will terminate.

B. Opportunity to Cure Breach of Rent - Any rental payment received by Lessor after the deadline for rental payments as described in this lease shall be assessed a penalty in the amount of five (5%) percent of the entire annual rental that was due. Partial payments will not be accepted. Lessor may, in its sole discretion and without any obligation, remind Lessee of any rental payment lateness or insufficiency.

Lessee shall not be liable to Lessor for any amount which would have been payable in the future had this lease not been terminated under this section. Lessee shall be liable to the Lessor only for the amount owed to the Lessor up to the date of termination, or date Lessee vacates the premises under a land use license described in this lease.

15. RELINQUISHMENT

Lessee may request the right to surrender and relinquish the lease in whole or in part, by writing to the Lessor at least 30 days prior to the termination of any rental year. Lessor may grant or deny the request and may condition the right to surrender and relinquish upon the payment to Lessor reasonable damages caused by the surrender, which may include removing improvements and restoring the land to its original condition.

16. LAND USE LICENSE – REMOVAL OF PERSONAL PROPERTY

After any notice of termination is issued by Lessor, Lessee may secure a land use license, not to exceed three (3) years in duration, to remove improvements and restore the site to its original condition. The land use license payment is due when issued, and shall be calculated at the same annual lease rate at the time of termination. No refunds shall be given to the Lessee for the term of the land use license or any portion of the license.

Lessee shall have the right to remove personal property and personal equipment from the property within the land use license period after the termination of this lease or termination of any extension or renewal of this lease. In the event of lease termination, Lessee shall return the leased area to its original condition, including filling with native soils, grading and removal of all constructed features.

The moveable improvements must be removed during the land use license period, or they become the property of the State, unless Lessor for good cause grants additional time for removal. Lessor shall charge the former Lessee for the period of time under that land use license that the improvements remain on the land after termination of the lease.

17. INSURANCE

Lessee shall maintain for the duration of the lease, at its cost and expense, insurance against claims for injuries or accidents to persons or damages to property which may arise from or be in connection with the performance of the work, negligent use or occupancy of the leased premises.

- A. **Primary Insurance** - The Lessee's insurance coverage shall be primary insurance as respect to the Lessor, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
- B. **Coverage** - The Lessee shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Lessee or its officers, agents, representatives, assigns, clients, or sublessees.
- C. **Additional Insureds** - The State of Montana, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Lessee, including the insured's general supervision of the Lessee; products and completed operations; premises owned, leased, occupied, or used.
- D. **Change in Coverage** - Lessee must notify the Lessor immediately of any material change in insurance coverage such as changes in limits, coverages, change in status of policy, etc. The Lessor reserves the right to require complete copies of insurance policies at all times.
- E. **Lessee's Property** - The Lessee shall be responsible for acquiring whatever insurance the Lessee deems necessary to safeguard the Lessee's interest in the Lessee's real and personal property stored on the airport and, in this regard, expressly covenants and agrees to assert no claim against Lessor as a result of loss or damage to any real or personal property stored on the airport belonging to Lessee resulting from actions of any third party. The Lessee hereby covenants and agrees to take whatever steps the Lessee sees fit to take in protecting the Lessee's person and property from loss or damage as the result of vandalism, malicious mischief, theft, or kindred losses, and, in this regard, agrees to assert no such claim against the Lessor for these losses.
- F. **Criminal Activity** - All losses suffered by the Lessee resulting from the criminal activity of others shall be reported to the police or sheriff's department having jurisdiction. The Lessor assumes no responsibility for such losses.

18. WORKERS' COMPENSATION INSURANCE

Lessee is required to comply with the provisions of the Montana Workers' Compensation Act while performing work in the State of Montana in accordance with Mont. Code Ann. §§39-71-401, 39-71-405, and 39-71-417. Neither Lessee nor its employees are employees of the Lessor. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by the Aeronautics Division, Montana Department of Transportation P.O. Box 200507, Helena, MT 59620-0507 within 10 working days of the execution of this lease. This insurance/exemption must be valid for the entire term of the lease. All renewal documents must be sent to the Lessor upon expiration of previous documents.

19. HOLD HARMLESS AND INDEMNIFICATION

Lessee agrees to indemnify and hold harmless the State of Montana, Department of Transportation, Aeronautics Division, and its officials, employees and other staff from and loss, liability or expense (including costs and attorney's fees) for injury to or death to any person, or loss or destruction of any property caused by Lessee's negligent use or occupancy of the leased premises.

20. VENUE AND CHOICE OF LAW

The laws of Montana govern this Lease. The parties agree that any litigation concerning this lease must be brought in the First Judicial District in and for the County of Lewis & Clark, State of Montana and each party shall pay its own costs and attorney's fees.

21. ASSIGNMENT, TRANSFER OR SUBLEASE

Lessee may not assign, transfer, or sublease this lease or any area controlled by this lease without the prior written consent of the Lessor

22. NOTICE

Any notice or demand required or permitted to be given under this lease must be in writing. Written notice shall be deemed given when hand delivered, or when mailed by first class mail, postage prepaid, to the addresses specified in this section. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given to such party as above provided.

Lessor's representative for purposes under this lease is Debbie Alke, Administrator of the MDT Aeronautics Division, or her designated representative or replacement, P.O. Box 200507 Helena, MT 59620-0507, telephone (406) 444-2506.

Lessee's representative for purposes of this lease is Town of West Yellowstone, PO Box 1570 West Yellowstone, MT 59758.

23. SUCCESSORS IN INTEREST

The covenants and conditions of this lease shall, subject to the provisions as to assignment, transfer and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of the parties.

24. DEBARMENT

Lessee certifies, by execution of this lease, that neither it nor its principals are presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from participation in this lease by any governmental department or agency. If the Lessee cannot certify this statement, attach a written explanation for review by the State.

25. SEVERABILITY CLAUSE

If any provision of this lease is held to be illegal or void, the validity of the remaining items shall not be affected. This document contains the entire agreement of both parties. Any alteration or modification to this lease requires a written amendment signed by both parties.

IN WITNESS WHEREOF, the State of Montana and the Lessee have caused this lease to be executed pursuant to the authority granted to the signatories below.

TOWN OF WEST YELLOWSTONE

Jerry D. Johnson
Lessee Signature

Jan 19 2016
Date

Printed Name: Jerry D. Johnson
Title: Mayor

MONTANA DEPARTMENT OF TRANSPORTATION, AERONAUTICS DIVISION

Jeff Kadlec
Jeff Kadlec, Yellowstone Airport Manager
MDT Aeronautics Division

19 JAN 16
Date

Debbie Alke
Debbie Alke, Administrator
MDT Aeronautics Division

1-22-16
Date

APPROVED FOR LEGAL CONTENT:

Carol Shell Morris

Attachment "A"

City of West Yellowstone Lease Parcel

A parcel of land located in the SE ¼ of Section 29, and in the SW ¼ of Section 28, Township 13 South, Range 5 East, Principal Meridian Montana, Gallatin County, Montana, more particularly described as follows:

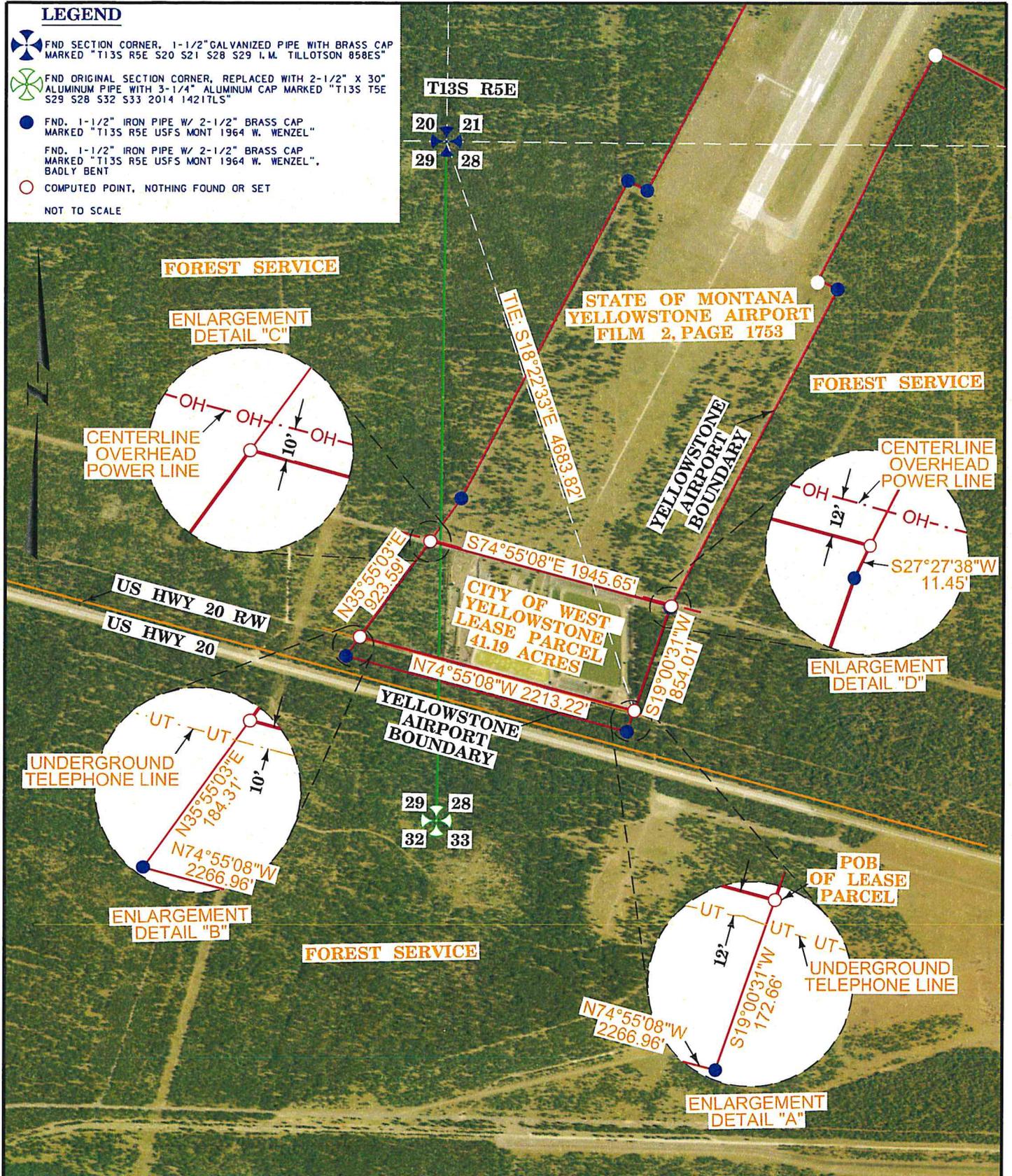
Commencing at the corner common to Sections 20, 21, 29 and 28 of Township 13 South, Range 5 East, thence South 18°22'33" East a distance of 4683.82 feet to a point on the east boundary line of the Yellowstone Airport as described in Film 2, Page 1753 of Deeds, said point being the True Point of Beginning; thence, departing said east boundary line of the Yellowstone Airport parallel with the south boundary line of the Yellowstone Airport, North 74°55'08" West a distance of 2213.22 feet to the west boundary line of the Yellowstone Airport as described in Film 2, Page 1753 of Deeds; thence, along said west boundary line of the Yellowstone Airport, North 35°55'03" East a distance of 923.59 feet; thence, departing said west boundary line of the Yellowstone Airport parallel with the south boundary line of the Yellowstone Airport, South 74°55'08" East a distance of 1945.65 feet to the east boundary line of the Yellowstone Airport as described in Film 2, Page 1753 of Deeds; thence, along said east boundary line of the Yellowstone Airport, South 27°27'38" West a distance of 11.45 feet; thence continuing along said east boundary line of the Yellowstone Airport, South 19°00'31" West a distance of 854.01 feet to the Point of Beginning.

The above described parcel of land lies in Gallatin County, Montana, and contains 41.19 acres, more or less.

ATTACHMENT "B"

LEGEND

-  FND SECTION CORNER, 1-1/2" GALVANIZED PIPE WITH BRASS CAP MARKED "T13S R5E S20 S21 S28 S29 I.M. TILLOTSON 058ES"
-  FND ORIGINAL SECTION CORNER, REPLACED WITH 2-1/2" X 30" ALUMINUM PIPE WITH 3-1/4" ALUMINUM CAP MARKED "T13S T5E S29 S28 S32 S33 2014 14217LS"
-  FND, 1-1/2" IRON PIPE W/ 2-1/2" BRASS CAP MARKED "T13S R5E USFS MONT 1964 W. WENZEL"
-  FND, 1-1/2" IRON PIPE W/ 2-1/2" BRASS CAP MARKED "T13S R5E USFS MONT 1964 W. WENZEL", BADLY BENT
-  COMPUTED POINT, NOTHING FOUND OR SET
-  NOT TO SCALE



BEARINGS AND DISTANCES SHOWN HEREON ARE RELATIVE TO THE MONTANA STATE PLANE COORDINATE SYSTEM, ZONE 2500, AND BASED UPON THE NORTH AMERICAN DATUM OF 1983, ADJUSTMENT 2011 (NAD83-2011). GROUND DISTANCES ARE SHOWN. CSF=0.99983382.

PAGE	1
OF	1

ATTACHMENT "B"

LEGEND

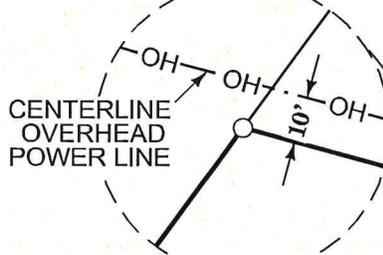
-  FND SECTION CORNER, 1-1/2" GALVANIZED PIPE WITH BRASS CAP MARKED "T13S R5E S20 S21 S28 S29 L.M. TILLOTSON 858ES"
 -  FND ORIGINAL SECTION CORNER, REPLACED WITH 2-1/2" X 30" ALUMINUM PIPE WITH 3-1/4" ALUMINUM CAP MARKED "T13S T5E S29 S28 S32 S33 2014 14217LS"
 -  FND, 1-1/2" IRON PIPE W/ 2-1/2" BRASS CAP MARKED "T13S R5E USFS MONT 1964 W. WENZEL"
 -  FND, 1-1/2" IRON PIPE W/ 2-1/2" BRASS CAP MARKED "T13S R5E USFS MONT 1964 W. WENZEL", BADLY BENT
 -  COMPUTED POINT, NOTHING FOUND OR SET
- NOT TO SCALE

T13S R5E

20 21
29 28

FOREST SERVICE

ENLARGEMENT
DETAIL "C"



STATE OF MONTANA
YELLOWSTONE AIRPORT
FILM 2, PAGE 1753

FOREST SERVICE

YELLOWSTONE
AIRPORT
BOUNDARY

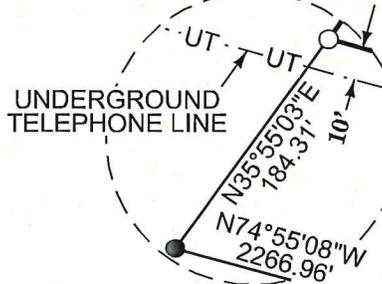
CENTERLINE
OVERHEAD
POWER LINE



ENLARGEMENT
DETAIL "D"

US HWY 20 RW
US HWY 20

N35°55'03"E
923.59'
S74°55'08"E 1945.65'
CITY OF WEST
YELLOWSTONE
LEASE PARCEL
41.19 ACRES
N74°55'08"W 2213.22'



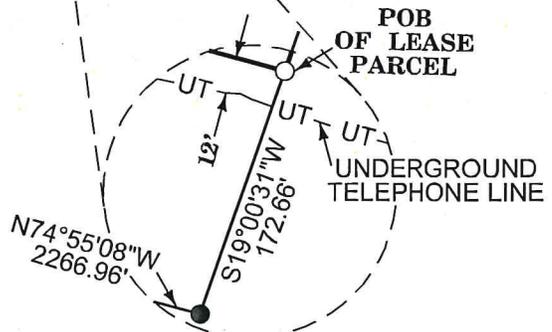
ENLARGEMENT
DETAIL "B"

YELLOWSTONE
AIRPORT
BOUNDARY

29 28
32 33

FOREST SERVICE

POB
OF LEASE
PARCEL



ENLARGEMENT
DETAIL "A"

**Montana Department of Transportation
Aeronautics Division
Yellowstone Airport
Use Agreement**

1. PARTIES

This agreement is made and entered into this 19 day of January, by State of Montana, Department of Transportation, Aeronautics Division ("Department" or "MDT"), and the Town of West Yellowstone, acting by and through its duly qualified and elected Town Council ("Town").

2. PURPOSE

MDT gives permission to Town to use the Yellowstone Airport property described in this Agreement for a firing range for training and individual practice in the use of firearms. The Town is willing to assume control of the range and be responsible for its maintenance.

3. PREMISES DESCRIPTION

MDT hereby allows Town to use that certain real property located within the Yellowstone Airport boundaries ("Range"), which is more particularly described in "Attachment A" and depicted in "Attachment B" included hereto this agreement.

4. USE OF PROPERTY

The Range is a firing range for the use of Law Enforcement Officer (LEO) fire arms training only. The Town is solely responsible and liable for the safe operation of the Range. The Town will ensure proper preventative measures are taken to prevent inadvertent entry of projectiles outside of the Town's premises described above. Furthermore the Town will ensure proper preventative measures are taken to ensure no projectiles enter, cross the Airfield Operations Area (AOA) or anywhere whatsoever on the airport property that is not part of the premises described above. The Town will also ensure proper preventive measures are taken that no projectiles will interfere with aircraft activity or the flying public.

MDT agrees that Town has the exclusive right to use the Range and has authority and control over all uses of the Range. MDT agrees that during the term of this agreement it will not allow or permit any other person or entity any right of use, possession or control over the Range. The Town will prohibit access to the Range by persons or entities not expressly authorized by the Town to use the Range. Town may construct or erect fixtures or improvements upon the Range that enhance the usage or safety of the Range. MDT has access rights to the premise at all

reasonable times. Reasonable notice will be given by MDT to the Town anytime MDT needs to access the premise.

5. EFFECTIVE DATE AND DURATION

The term of this agreement is ten (10) years, commencing February 1, 2016 and terminating January 31, 2026. 90 days prior to the end of the term of this use agreement the Town may request a renewal in writing.

6. TERMINATION

This agreement may be terminated prior to the end of its 10 year term by either party upon giving six (6) months written notice to the other. During said 6 month period, Town will remove any improvements or fixtures it has placed upon the Range and it must restore the Range to the original condition it was in prior to the placement of the improvements or fixtures so removed.

7. CONDITIONS OF USE

Town is solely responsible for the operation and maintenance of the Range subject to the following conditions:

A. Town will monitor and control the use of the Range. Town will use the Range in a careful and prudent manner.

B. Town will not allow any use of the Range that creates any additional danger or hazard to aviation or other airport property beyond that presently existing. Town must ensure no projectile lands on or travels above the AOA or elsewhere on airport property.

D. Town must notify Airport Manager or designee by telephone call to the main airport number before any use of the range is made during daylight hours. Airport Manager may deny use for any day or time of day if airport conditions warrant.

C. Town will keep the Range clean and orderly. Town will remove or mitigate hazardous conditions that exist upon the Range.

D. Any improvements or fixtures erected or constructed upon the Range will be made at the expense of the Town. Airport is not financially responsible for improvements or fixtures constructed upon the Range by the Town. Any such improvements or fixtures remaining on the Range will be removed upon termination of this agreement.

E. Town will not alter or modify the present layout of the Range without written permission of the MDT. The Town can request permission to alter or modify the Range in writing.

F. Town will establish rules and policies concerning the use of the Range. Town will allow other law enforcement agencies who agree to abide by said rules and policies to use the Range.

G. Town may not use or permit the Range to be used for any purpose in violation of any law or regulation.

8. HAZARDOUS MATERIALS

The Town acknowledges responsibility that the Range soil is currently contaminated with lead fragments from bullets and spent bullet casings from their fire arms training activity. By this agreement, the Town does not acquire any ownership interest in the soil at the Range and is obligated to clean up and remove any of the current contaminants within the Range and in the soil. Upon termination the Town will reclaim the soil to its original native condition prior to any bullet casings litter as also outlined in Section 6 of this agreement.

9. INDEMNIFICATION

Town agrees to indemnify and hold harmless the State of Montana, Department of Transportation, Aeronautics Division, and its officials, employees and other staff from any loss, liability or expense (including costs and attorney's fees) for injury to or death to any person, or loss or destruction of property caused by Town's use or occupancy of the Range.

10. NON-ASSIGNMENT

Town may not assign or otherwise transfer its rights under this agreement without the express written consent of MDT.

11. NON-CONVEYANCE

This agreement is personal to the Town, limited to use of the premises as set forth herein, and does not convey to Town any right, title or interest in the MDT's real property.

12. COMPLIANCE WITH LAWS

Town agrees to comply with the Montana Human Rights Act, the federal Civil Rights Act of 1964, the federal Age Discrimination Act of 1975, the federal Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and other laws prohibiting discrimination on the basis of race, creed, religion, gender, marital status, color, physical or mental disability, or national origin.

13. DEFAULT

If either party fails to comply with any condition of this agreement, at the time or in the manner provided for, the other party may, at its option, terminate this agreement. The non-defaulting

party shall be released from all obligations if the default is not cured within thirty (30) days after written notice is sent to the defaulting party setting forth the items to be cured. Further, non-defaulting party may bring suit for damages, specific performance and any other remedy provided by law. These remedies are cumulative and not exclusive. The use of one remedy does not preclude use of the others.

14. NOTICE

Any notices required to be given pursuant to this agreement shall be in writing and sent to the respective representative of each party as follows:

MDT Aeronautics Division
Division Administrator
PO Box 200507
Helena, MT 59620-0507

Town of West Yellowstone
PO Box 1570
West Yellowstone, MT 59758

Notice is deemed delivered on the date of mailing.

IN WITNESS WHEREOF, the State of Montana and the Town of West Yellowstone have caused this Use Agreement to be executed pursuant to the authority granted to the signatories below.

TOWN OF WEST YELLOWSTONE

Jerry D Johnson Jan 19, 2016

Signature Date

Printed Name: Jerry D. Johnson

Title: Mayor

MONTANA DEPARTMENT OF TRANSPORTATION, AERONAUTICS DIVISION

[Signature] 19 JAN 16

Jeff Kadlec, Yellowstone Airport Manager Date

MDT Aeronautics Division

Debbie Alke 1-22-16

Debbie Alke, Administrator Date

MDT Aeronautics Division

APPROVED FOR LEGAL CONTENT:

Carol Shell Morris

Attachment "A"

City of West Yellowstone Lease Parcel

A parcel of land located in the SE ¼ of Section 29, and in the SW ¼ of Section 28, Township 13 South, Range 5 East, Principal Meridian Montana, Gallatin County, Montana, more particularly described as follows:

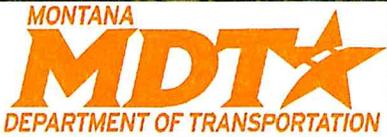
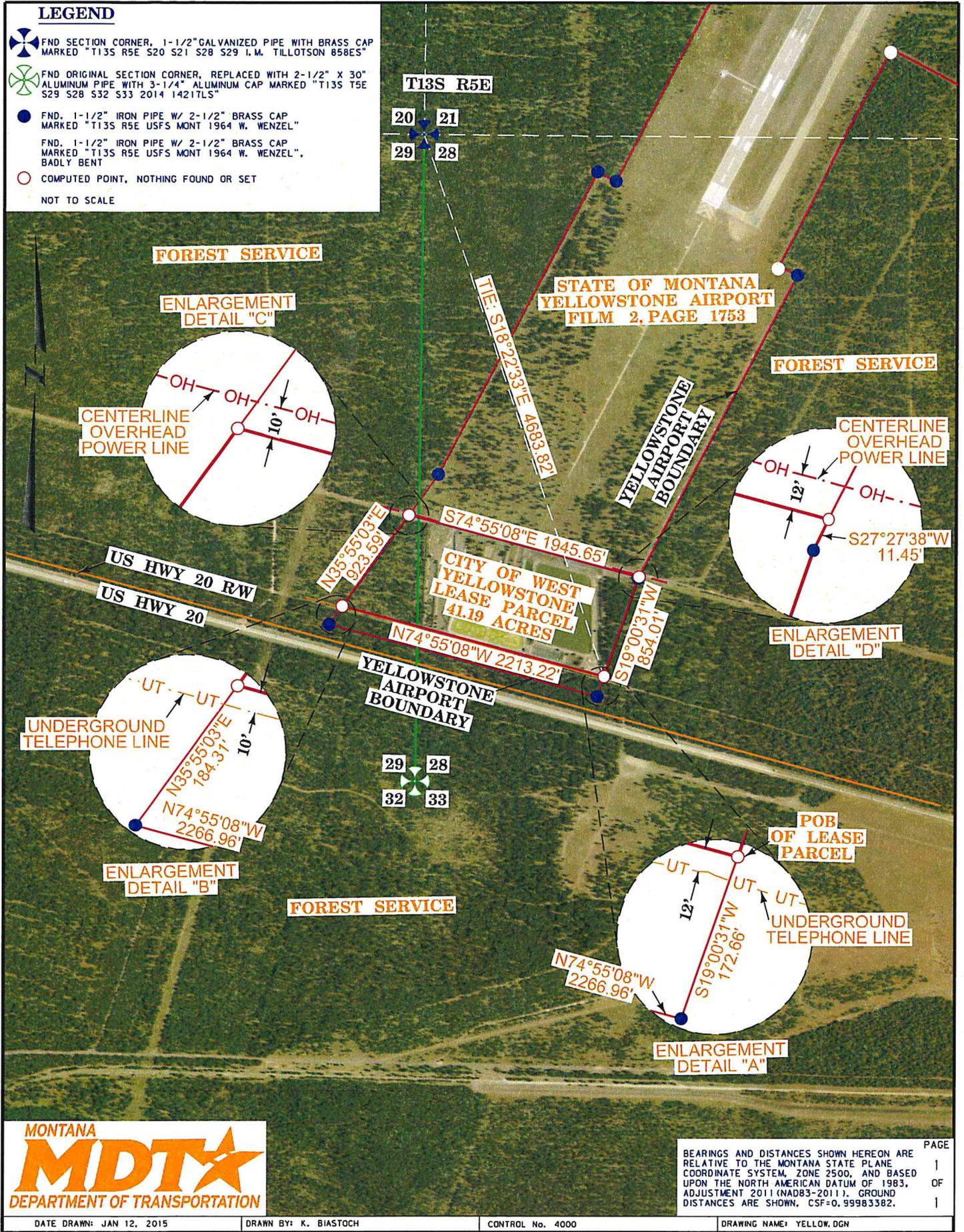
Commencing at the corner common to Sections 20, 21, 29 and 28 of Township 13 South, Range 5 East, thence South 18°22'33" East a distance of 4683.82 feet to a point on the east boundary line of the Yellowstone Airport as described in Film 2, Page 1753 of Deeds, said point being the True Point of Beginning; thence, departing said east boundary line of the Yellowstone Airport parallel with the south boundary line of the Yellowstone Airport, North 74°55'08" West a distance of 2213.22 feet to the west boundary line of the Yellowstone Airport as described in Film 2, Page 1753 of Deeds; thence, along said west boundary line of the Yellowstone Airport, North 35°55'03" East a distance of 923.59 feet; thence, departing said west boundary line of the Yellowstone Airport parallel with the south boundary line of the Yellowstone Airport, South 74°55'08" East a distance of 1945.65 feet to the east boundary line of the Yellowstone Airport as described in Film 2, Page 1753 of Deeds; thence, along said east boundary line of the Yellowstone Airport, South 27°27'38" West a distance of 11.45 feet; thence continuing along said east boundary line of the Yellowstone Airport, South 19°00'31" West a distance of 854.01 feet to the Point of Beginning.

The above described parcel of land lies in Gallatin County, Montana, and contains 41.19 acres, more or less.

ATTACHMENT "B"

LEGEND

-  FND SECTION CORNER, 1-1/2" GALVANIZED PIPE WITH BRASS CAP MARKED "T13S R5E S20 S21 S28 S29 I.M. TILLOTSON 058ES"
-  FND ORIGINAL SECTION CORNER, REPLACED WITH 2-1/2" X 30" ALUMINUM PIPE WITH 3-1/4" ALUMINUM CAP MARKED "T13S T5E S29 S28 S32 S33 2014 1421TLS"
-  FND. 1-1/2" IRON PIPE W/ 2-1/2" BRASS CAP MARKED "T13S R5E USFS MONT 1964 W. WENZEL"
-  FND. 1-1/2" IRON PIPE W/ 2-1/2" BRASS CAP MARKED "T13S R5E USFS MONT 1964 W. WENZEL", BADLY BENT
-  COMPUTED POINT, NOTHING FOUND OR SET
-  NOT TO SCALE

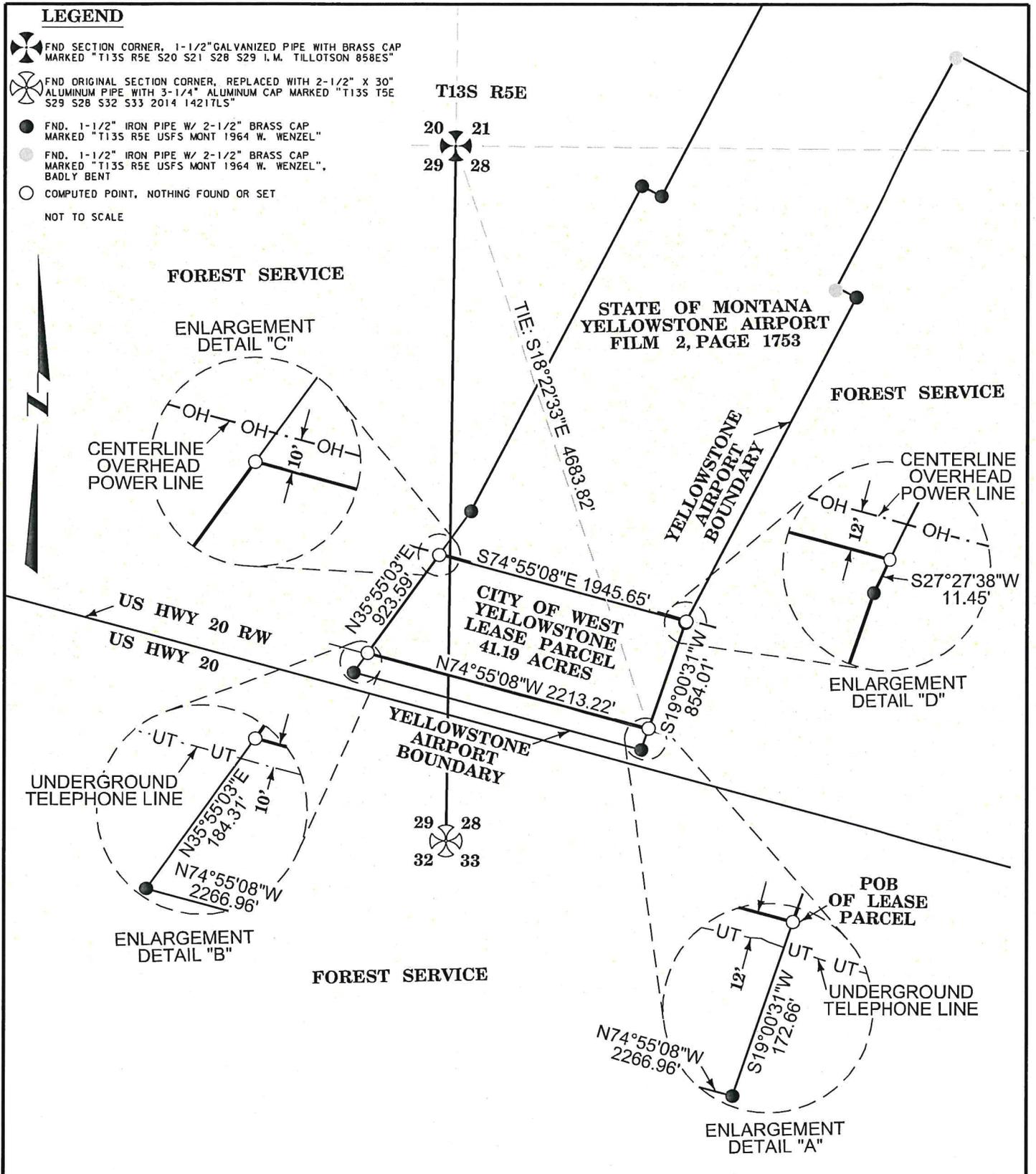


BEARINGS AND DISTANCES SHOWN HEREON ARE RELATIVE TO THE MONTANA STATE PLANE COORDINATE SYSTEM, ZONE 2500, AND BASED UPON THE NORTH AMERICAN DATUM OF 1983, ADJUSTMENT 2011 (NAD83-2011). GROUND DISTANCES ARE SHOWN. CSF=0.99983382.

ATTACHMENT "B"

LEGEND

-  FND SECTION CORNER, 1-1/2" GALVANIZED PIPE WITH BRASS CAP MARKED "T13S R5E S20 S21 S28 S29 I.M. TILLOTSON 858ES"
 -  FND ORIGINAL SECTION CORNER, REPLACED WITH 2-1/2" X 30" ALUMINUM PIPE WITH 3-1/4" ALUMINUM CAP MARKED "T13S T5E S29 S28 S32 S33 2014 1421TLS"
 -  FND, 1-1/2" IRON PIPE W/ 2-1/2" BRASS CAP MARKED "T13S R5E USFS MONT 1964 W. WENZEL"
 -  FND, 1-1/2" IRON PIPE W/ 2-1/2" BRASS CAP MARKED "T13S R5E USFS MONT 1964 W. WENZEL", BADLY BENT
 -  COMPUTED POINT, NOTHING FOUND OR SET
- NOT TO SCALE



BEARINGS AND DISTANCES SHOWN HEREON ARE RELATIVE TO THE MONTANA STATE PLANE COORDINATE SYSTEM, ZONE 2500, AND BASED UPON THE NORTH AMERICAN DATUM OF 1983, ADJUSTMENT 2011 (NAD83-2011). GROUND DISTANCES ARE SHOWN. CSF=0.99983382.

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