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VIA EMAIL AND REGULAR MAIL

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RE: Release of Financial Assistance to Glacier County.

Dear Gary:

As you are aware, the Department of Administration (the "Department") has been withholding financial assistance from Glacier County for nearly two years, citing § 2-7-515(3) as authority. This statute provides as follows:

(3) Within 30 days of receipt of the corrective action plan, the department shall notify the entity of the acceptance or rejection of the corrective measures. If the department and the local government entity fail to agree on the corrective measures, a conference between the parties must be held within 30 days of the department's decision not to accept the local government entity's corrective measures. Failure to resolve significant findings or implement corrective measures must result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

The statute refers in turn to rules adopted by the Department. The referenced regulation is ARM 2.4.409.

After analysis of the statute and regulation, past correspondence, and County audits, Glacier County hereby requests that the Department cease withholding funds and release the County funds that have been withheld. The following describes our reasoning.

Factual and procedural background

By letter dated July 31, 2019, Michael Manion of the Department informed the County that it “has yet to make sufficient progress on some of the corrective measures” in the CAP for the FY 2015-2016 Audit, including especially monthly cash reconciliations. The letter also noted that the FY 2017-2018 Audit “once again included a substantial doubt of Glacier County’s ability to continue as a going concern and material weaknesses in internal controls.” It also referred to failure to resolve some “significant findings” from the 2015-2016 Audit which also were included in the 2017-2018 Audit. This letter explained that the Department would begin to withhold financial assistance if the County did not submit information described in the letter by August 31, 2019.

Mr. Manion next wrote the County on September 30, 2019, referring specifically to the 2017-2018 Audit and the County’s corrective action plan (“CAP”). This letter asked for information concerning implementation of some corrective measures and urged the County to “provide this information in a timely, complete, and accurate manner to avoid” withholding under § 2-7-515(3). The letter referred to material the County had provided on August 31 “providing additional information to address the FY 2015-2016 audit,” to which the Department “will respond in the near future with its analysis and conclusions.”

In a letter dated October 25, 2019, Mr. Manion referred to the County’s submission and wrote that, “while most of the information satisfies the request, important gaps remain, particularly regarding the bank cash reconciliations.” This letter confirmed that the Department would be “to withhold financial assistance as described in my July 31 letter,” effective “immediately,” and “will continue until reconciled bank statements, with no unknown variances and with all supporting documentation, beginning July 2018 and through the most current month, are submitted and reviewed.”

As you may know, County officials met with Department officials in July 2021 to discuss the County’s efforts to implement corrective measures from past audits. Later that month, County taxpayers filed a petition requesting leave to sue the County, alleging failure to resolve significant audit findings and implement corrective measures (the “Petition”). The taxpayers relied on the County’s Audits of 2015/2016, 2017/2018, and 2019. In its decision dated September 22, 2021, the Department ruled that the Petition was premature as regards the 2019 Audit, and commented on the status of the County’s progress on the 2015/2016 and 2017/18 Audits. The Department also commented on other matters, finding that § 2-7-524, MCA, does not limit its inquiry to material in official audits and that its decision “should be made based on the totality of the circumstances.” These comments also will be addressed in this letter.

Applicable statute and regulation

Section 2-7-515(3) requires the Department to withhold assistance for “[f]ailure to resolve significant findings or implement corrective measures.” ARM 2.4.409(5) provides that the Department “shall determine the significance of the findings based on the risks to the entity of a doubtful going concern, significantly distressed operations, or a failure to protect a substantial public interest.” Although the audits themselves define and use the terms “significant deficiencies” and “material weaknesses,” the statute and regulation contemplate that the Department, not the auditor, determines what constitutes a “significant finding.”

The only issue cited in Mr. Manion’s letters which fits the regulation’s definition of a “significant finding” is the going concern risk from the 2015-2016 Audit, repeated in the 2017-2018 Audit. The letters from Mr. Manion did not refer to the other categories of “significant findings” as defined in the regulation, which are “significantly distressed operations, or a failure to protect a substantial public interest.”

The “going concern” finding was not repeated in the 2019 Audit, as the Department’s decision on the 2021 Petition indicates: “In contrast with its auditor’s opinions in 2015/2016 and 2017/2018, the 2019 and 2020 auditors no longer concluded Glacier County’s management of its finances raised issues of doubtful going concern.”

Therefore, to the extent assistance was withheld because of a going concern risk, the only “significant finding” cited by the Department has been resolved.

If the term “significant finding” in the statute or regulation were held to mean a finding in an independent audit—rather than the factors cited in the regulation for a “significant finding”—ARM 2.4.409(6) provides that “[a]ny financial assistance withheld must be released to the local government entity once the department finds that the local government entity has initiated or taken corrective measures sufficient to provide for a probable resolution of the findings within a reasonable period.” In that case, the measures the County has taken, described below, would require the Department to release the funds.

The statute also requires the Department to withhold assistance because of “failure to ... implement corrective measures.” ARM 2.4.9(6) comes into play here, because of its reference to corrective measures. ARM 2.4.409(9) also applies. It provides that the “financial assistance withholding process may be suspended if the entity demonstrates good cause for the failure to ... implement corrective measures.” It provides that “[g]ood cause may be demonstrated with sufficient evidence of:

- (a) the entity’s good faith effort to implement corrective measures;
- (b) circumstances outside of the entity’s control; or
- (c) an inability to address a finding or findings because of the passage of time.”

We are now two audits past the ones on which the Department relied to withhold financial assistance in 2019. The County's 2019 Audit listed 20 findings, including five repeat findings from the 2017-2018 Audit that were not yet implemented. The 2020 Audit listed 8 total findings. Seven were repeat findings from 2019. The 2020 Audit findings are as follows (with "R" indicating a repeat finding from 2019):

2020-01 R Cash allocation between funds

2020-02 R Corrections of errors

2020-03 R Bank reconciliation

2020-04 R Inventory records

2020-05 R Accounts Payable

2020-06 R Grant Accounting

2020-07 Payroll policy violation

2020-08 R Exceeding budgetary authority to spend

The County has "initiated or taken corrective measures sufficient to provide for a probable resolution of the findings" within the meaning of ARM 2.4.9(6), and has made good faith efforts to implement the corrective measures from its Corrective Action Plan dated July 28 2021 within the meaning of ARM 2.4.9(9), as described below.

Please note that the Department has not notified the County "of the acceptance or rejection of the corrective measures" stated in the CAP, as required by § 2-7-515(3), MCA. For purposes of this letter, we will assume the Department accepted the corrective measures. In any case, the County's auditors and consultant have confirmed to the County that the findings from the 2020 Audit have been addressed.

Corrective measures/good faith efforts

20-1 Cash allocation between funds. The 2020 Audit found that "[t]he cash in the protested tax fund is \$191,133.83 less than the protested taxes receivable and an explanation was not given." The corresponding figure from the 2019 Audit was \$419,939. The auditors recommended that "[t]he County should continue its efforts to reconcile the protested taxes receivable and related cash balances." The County has restored this shortfall. Neither the County nor the auditors can pinpoint the source of this error, but it likely goes back a significant number of years.

The vast majority of the protested taxes relate to *Gottlob v. DesRosier*, Cause No. DV-17-19, Montana Ninth Judicial District Court, Glacier County (the "Tax Protest

Litigation”). The plaintiffs and putative class members paid a total of \$2,499,601 under protest between tax year 2015 and tax year 2020. For the first several years, the amount protested was far in excess of that allowed by law. In 2019, the Montana Supreme Court disapproved the taxpayers’ payment of all of their County taxes under protest:

Absent identification of the portion of the taxes they claim is unlawful, they have no right under the tax protest statutes to protest the entire amount of their tax payments and thereby compel the County to deposit all property tax revenue in a special protest fund under § 15-1-402(4)(a), MCA.

DesRosier v. Montana Ninth Jud. Dist. Ct., No. OP 18-0721, 2019 WL 852178, at *3 (Mont. Feb. 19, 2019). Judge Pinski later ordered that the taxpayers could protest the difference between their tax bill in 2012 and their tax bill in the current protest period. The County filed a motion in the Tax Protest Litigation to determine the correct amount for the protest fund. A number of events, including Judge Pinski’s resignation from the bench, delayed resolution of the motion, but it is now scheduled for hearing on December 16. In preparation for the hearing, the County performed an internal recalculation of the amount of taxes the taxpayers actually are entitled to protest, which comes to \$223,184. (These figures were confirmed by an outside accountant.)

20-2 Corrections of errors. The auditors noted that the County’s financial statements contained restatements of \$(678,136). They noted that the County identified all of the misstatements in prior financial statements and “corrected all misstatements.”

As the CAP indicated, the restatements were the result of a review conducted by the County’s independent consultant, which it hired to assist with accounting and compliance issues. The County has corrected the misstatements, as the 2020 Audit indicates. The County will continue to work with its consultant, and does not anticipate a repeat finding on this issue in future.

20-3 Bank reconciliations. The corresponding findings from the 2015/2016 and 2017/2018 Audits were the only findings Mr. Manion mentioned specifically in his letters. The County has been working diligently on this issue. Your records should reflect that the County now has completed and submitted monthly reconciliations, all without variances, and continues to do so on a monthly basis.

The 2020 Audit also demonstrates the County’s progress. The auditors state that “[t]he June 30, 2020 bank reconciliation was eventually completed and materially correct.” In August 2021, the County provided all of the outstanding reconciliations to the Department, with no variances. The Department accepted the reconciliations. The Department’s decision on the taxpayers’ 2021 Petition did not reflect either of these

facts, even though it was issued in September 2021, after the Department had received both the 2020 Audit and all reconciliations.

In this regard, we note that the Department in 2019 sent an individual to assist with reconciliations, but that process was not successful. The County then hired someone to assist with the process, with the successful results noted above. The County also notes that the reconciliations ultimately submitted in August 2021 had been delayed not because of the County's failure to provide them, but because the Department refused to accept a D.A. Davidson statement showing that a particular account had closed, requiring the County to take unnecessary steps to provide further proof of this fact.

The County also notes that there is no reason for it to enter into an agreement with the Department respecting reconciliations, as provided in the draft Summary of the Department's decision on the Petition, and the Technical Assistance Plan included with it. The Technical Assistance Plan will be addressed separately below.

20-4 Inventory records. The 2020 Audit recommended that the County "should maintain an inventory listing of items held by certain departments, such as the Roads Department," and that "[t]he inventory listing should be reconciled to the inventory amounts recorded in the trial balance on a monthly basis. The County now requires the Roads and Weeds departments to report material inventory amounts at the end of each fiscal year, and created a spreadsheet to identify inventory description, count/quantity, purchase value, date purchased, and date used. This inventory is updated on a monthly basis, with copies provided to the Glacier County Clerk and Recorder. The departments began conducting monthly observations of inventory in June 2021.

20-5 Accounts payable. This finding concerns a single invoice the County received from its auditors, which included amounts due for both June and July 2020, without specifying how much was for each month. The County had budgeted for payment of the auditors FY 2020. The combined June/July bill exceeded the amount budgeted. When the County paid the invoice in July, it resulted in the overpayment of the amount budgeted for the prior year. Going forward, the County is requiring that invoices from vendors for the first two months of a fiscal year specify the amount due for June. With respect to this finding, the County satisfies ARM 2.4.409(6) (sufficient corrective measures) and ARM 2.4.409(9)(a) (good faith effort) and (9)(b) (circumstances beyond the entity's control).

20-6 Grant accounting. This finding resulted from a one-time error. The County's consultant assisted with year-end closing procedures in the fiscal year ending June 30, 2020. After the County's financial statements were prepared, the County discovered that revenue recorded as received in July 2020 actually was received in June. The financial statement subsequently was corrected. The County is aware of the requirements of GASB 33—Accounting and Financial Reporting for Nonexchange

Transactions, cited in this finding. The County and consultant will review and adjust amounts recorded in future to ensure compliance with GASB 33.

20-7 Payroll policy violation. This finding also was the result of a one-time event, and was not a repeat finding. The County's policies and procedures handbook requires written authorization for a number of human resource actions, including wage hikes. A county commissioner authorized a wage increase for one employee without authorization. The commissioner has been informed of this error. The County's Human Resources department is reviewing wage rates periodically to ensure future compliance.

20-8 Expenditures exceeding budgetary authority

The expenditures described in the 2020 Audit totaled \$28,365 over budget for six funds. This issue resulted from the decision to adjust the 2020 budget to reflect payment of invoices in June that related to June services but originally were reported in 2021. The commissioners made resolutions to amend the budget for FY 2020, presented them at a public hearing, and approved them in compliance with § 7-6-4031 MCA. The same controls initiated with respect to finding 20-5 will address this issue in future.

PILT

In its decision on the taxpayers' 2021 Petition, the Department quoted from a March 15, 2021, letter from the Department and the Department of Revenue stating that "[t]he County continues to have an excess of \$4 million cash deficit in the PILT fund" and that, "as of the date of this decision, the Department has received no evidence from the County that the deficit has been addressed and the audit associated audit findings have been resolved."

In fact, in 2019 the County formulated a five-year plan to erase the cash deficit, and presented it to the Department. The Department approved the five-year plan.

The 2020 Audit also shows that the Department was mistaken, if not willfully misstating facts, when it wrote in September of 2021 that the County had not taken any steps to address the PILT deficit. The 2020 Audit shows that the actual deficit at the end of FY 2020 was \$3,127,160.10, not more than \$4 million. The Department had the 2020 Audit long before it wrote the September 2021 decision on the taxpayers' Petition. The County in fact repaid more in FY 2020 than projected: The projected ending FY 2020 balance was \$3,822,915, reflecting actual repayment of \$695,754.84 of the \$4.1 million that existed at the beginning—not end—of FY 2020. The County has paid an additional \$1.2 million in 2021, as reflected in its June 2021 cash report submitted with the June banking reconciliation. The County not only has produced evidence that the PILT deficit is being addressed, but also is exceeding its projected repayment schedule. The County projects that the deficit will be paid in full by June 2022.

The decision on the Petition addressed the PILT because of the Department's statement that all financial circumstances should be considered in connection with a request to sue a local government for noncompliance. The PILT deficit is not mentioned in the findings in the FY 2020 Audit. The County is addressing it in this letter to point out that the County has committed to restoring the PILT fund and very significant progress has been made. The PILT issue also is pertinent to the Technical Assistance Plan the Department sent to the County, discussed below.

Technical Assistance Plan ("TAP")

It is appropriate to discuss the TAP in connection with the progress the County has made and the Department's knowledge of this progress. The Department presented the TAP to the County in a document entitled "Summary of September 22, 2021 Department of Administration Decision Regarding Petition of Certain Glacier County Taxpayers." The summary thus reflects the Department's misstatements in the September letter, as discussed above, respecting the County's resolution of the reconciliations issue and its progress on the PILT issue. The summary exacerbates the problem by stating that "the focus is on reconciliation of cash."

Consequently, the TAP provides that the County "shall submit monthly cash reconciliations," as if the County were not now up to date on them. It also requires a cash report by fund "demonstrating that the PILT fund deficit is being addressed and repaid according to the county's long-term cashflow plan."

The County objects to the TAP to the extent it concerns issues that the County already has addressed. In connection with the PILT issue, the County has provided updated payment information and would agree to inform the Department whenever a payment is made, although this likely will not happen until the conclusion of each fiscal year. There is no need to require the County to provide reconciliations that it already is providing. The County would be pleased to discuss a TAP with the Department, provided that it actually reflects the current situation and addresses meaningful assistance. (The County notes that the technical assistance the Department provided on reconciliations in 2019, at the County's request, was not successful. The person provided did not appear to understand the subject matter, requiring the County to hire a consultant to work on the reconciliations.) The County questions whether such a plan is necessary, however, given that the findings in the 2020 Audit have been resolved as discussed above, thus also resolving the repeat findings from the 2015/16 and 2017/18 Audits that were the subject of the Department's decision on the Petition.

The County cannot overstate the effect of the Department's continuing misstatements about reconciliations and the PILT issue. One of the few remaining parties in the Tax Protest Litigation regularly attends meetings of the County Commissioners and

repeatedly complains that reconciliations have not been provided and that the County is not addressing the PILT deficit. These statements in turn are reflected in the local paper, the owner, editor, and report of which is one of the protesting taxpayers.

There are about 7000 property taxpayers in Glacier County. In 2015, when protests related to the Tax Protest Litigation began, 460 taxpayers—almost all of whom resided in Cut Bank—protested their taxes. For FY 2020, the corresponding number of taxpayers was 19. The Tax Protest Litigation has taken on a life of its own, completely at odds with the reality of the County’s current condition. The Department may have acknowledged in its summary that “[w]e believe there is evidence the county can provide to show they continue to materially be in a state of compliance,” but the Department continues to make statements—all of which are of public record—indicating that the problems persist. In this respect, the Department, perhaps unwittingly, is serving the interests of a small minority of disgruntled taxpayers at the expense of all County taxpayers.

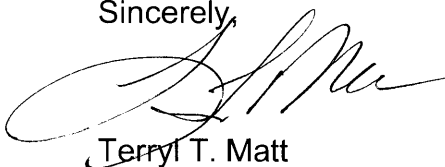
Conclusion

The County believes that it “has initiated or taken corrective measures sufficient to provide for a probable resolution of the [audit] findings within a reasonable period” under ARM 2.4.409(6) and has shown the requisite good faith to justify suspension of withholding under ARM 2.4.409(6). Although the PILT deficit is not mentioned in an audit finding, the County also is undertaking efforts to resolve that issue. The County therefore requests that the Department suspend the withholding of financial assistance and refund amounts previously withheld.

If the Department disagrees with the County’s conclusion, the County requests a detailed response respecting each audit finding addressed in this letter. If the County and the Department are not able to come to agreement as to a release of funds, the County sees no alternative but to file a complaint against the Department for failure to comply with its own regulations.

I look forward to the Department’s response.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Matt", with a stylized flourish extending from the end.

Terry T. Matt