

RESOLUTION NO. 3615

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSTRUCTION AGREEMENT WITH THE STATE OF MONTANA FOR CONSTRUCTION AND MAINTENANCE OF SIDEWALK, CURB AND GUTTER ALONG TATRO AND MILWAUKEE STREETS IN MILES CITY, MONTANA.

WHEREAS, the State of Montana has agreed to advertise for, bid, let and award a project to complete sidewalk, curb and gutter along portions Tatro and Milwaukee Streets in Miles City, Montana utilizing Federal CTEP funds;

AND WHEREAS the City Council of the City of Miles City deems this project to be in the best interest of the City;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The Agreement for Construction and Maintenance of Sidewalk and Curb and Gutter Using CTEP Funds, between the State of Montana and the City of Miles City, attached hereto as Exhibit "A", and incorporated herein by reference, is hereby approved and adopted by this Council subject to final written approval of the City Attorney.

2. The Mayor of the City of Miles City, upon written approval of the City Attorney, is hereby empowered and authorized to execute said Construction Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and

3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Construction Agreement and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 13th DAY OF AUGUST, 2013.



C.A. Grenz, Mayor

ATTEST:



Lorrie Pearce, City Clerk

Res 3615

AN AGREEMENT BETWEEN THE STATE OF MONTANA DEPARTMENT OF
TRANSPORTATION AND THE CITY OF MILES CITY
FOR CONSTRUCTION AND MAINTENANCE OF SIDEWALK AND CURB AND GUTTER
USING CTEP FUNDS
UNDER FEDERAL AID TITLED
TATRO STREET – MILES CITY
STPU-STPE 8014(3)
UPN 7077

The undersigned parties, the State of Montana through its Department of Transportation, hereinafter called the State, and the City of Miles City, hereinafter called the City, hereby agree and acknowledge the following terms of agreement: that for and in consideration of the covenants and promises set forth herein:

1. The State will design, advertise for bid and let and award a project to complete sidewalk along with curb and gutter. The project is Tatro Street and Milwaukee Street from where Tatro Street intersects MT 59 (P-18) east to where Milwaukee Street intersects North Montana Avenue (U-8004).
2. It is understood and agreed that the Federal Funds (CTEP) and City matching share will total \$416,300 for Construction (CN) and Construction Engineering (CE). The CTEP funds will be \$360,433 and required local match will be \$55,867.
3. The City will be billed in advance for its local funding of \$55,867 no more than sixty (60) days prior to the project bid opening. Although the anticipated expenses have been discussed with City representatives, the State will provide a detailed breakdown of all project costs with the billing.
4. If, after initial payment is made, bid opening or contract award by the State is delayed or postponed by 30 days or more, or canceled for any reason, the State agrees to refund the City's initial payment within 30 days upon the City's request.
5. The City will submit payment to the State within thirty (30) days of billing.
6. The contact for billing, accounting, and change order questions for the City shall be:

Scott Gray
17 South 8th Street
PO Box 910
Miles City, MT 59301
406-234-3493
sgray@milescity-mt.org

The contact person for the State shall be:

James Frank
Montana Department of Transportation
PO Box 890
Glendive, MT 59330-0890
345-8214

7. The parties understand that it is possible that the estimated cost of the project may be exceeded once the project is begun, and any cost increases, or unforeseen expenses for which the City is responsible for funding, will be borne by the City. If estimated cost is exceeded, the City can use additional CTEP funding (beyond \$360,433) for the project. The State's Project Manager will inform the City's point of contact beforehand, and as early as possible, of anything that appears will result in a cost increase, and will discuss the need for any possible additional costs with the City and will consider the City's comments and concerns for that additional cost. None of this will prevent, delay, or excuse the City from paying for any additional costs deemed necessary by State.

8. If payment is not made within that thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year, and continue to accrue until paid in full. If the City is billed for additional funds, MDT will not participate in any future funding agreement with the City until full payment, including interest, is received from the City.

9. Payments to this project will be coordinated through MDT's Administration Division (to be directed to the State's Accounts Receivable collections Technician and Accounting Systems Operations Supervisor). Payments to this project will be provided to the above State staff in the form of a check to be credited to this project.

10. The parties understand and agree that this agreement is subject to the requirements of Section 17-1-106, MCA, which requires the State to fully recover indirect costs (IDC) from the Federal share of costs and any other participating parties. The current IDC rate is 11.08%. The parties further understand and agree that as of October 1, 2009, the City's share of IDC will be paid by MDT per subsection (3). Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rate may change during the life of the project.

11. Upon completion of the project by the state and its contractor, the City agrees that upon completion of the project it will service, maintain, and pay the cost of operating the project described in this agreement. The City further agrees that it will defend, protect and indemnify the state for any claim or loss arising out of, due to or allegedly due to the failure of the City to maintain the project as completed; the State agrees that it will protect defend and indemnify the City for any claim or loss arising out of, due to or allegedly due to the design or construction of the project under the State's control.

12. Access and Retention of Records – The City agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with the Agreement.

The City agrees to create and retain records supporting this Agreement for a period of three years after the completion date of the Agreement or the conclusion of any claim, litigation or exception relating to the Agreement taken by the State of Montana or a third party.

13. Choice of Law and Venue – In the event of litigation concerning this Agreement, venue will only be in District Court of the First Judicial District of the State of Montana in and for the County of Lewis and Clark. This Agreement will be interpreted according to Montana law.

14. Agreement Modification – Any change to this Agreement will only be by written agreement between parties.

15. Severability and Integration – If any single part or parts of this Agreement are determined to be void, the remaining parts will remain valid and operative. This Agreement, as written, expresses the total, final and only agreement of the parties relevant to its subject matter. No provision, expressed or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communications shall be a provision of this Agreement unless specifically provided within the written terms herein.

16. Termination – The parties may mutually terminate this Agreement in writing at any time. MDT, at its sole discretion, may terminate or reduce the scope of this Agreement if available funding is reduced for any reason. MDT may terminate this Agreement in whole or in part at any time City fails to perform the Agreement as set forth.

IN WITNESS WHEREOF, the Department's authorized representative has signed on behalf of the State of Montana and the Mayor of the City has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

BY [Signature]
MT Dept. of Transportation

9/1, 2013

APPROVED FOR LEGAL CONTENT
AND CIVIL RIGHTS CONTENT

[Signature]
MDT Legal Counsel

APPROVED AS TO FORM

City Official

[Signature]
Miles City Attorney

[Signature]
Mayor

I, Horrie Pearce, Clerk of Miles City, certify that this agreement was regularly adopted by the City Commission at a meeting thereof held on the 13th day of Aug, 2013, and that the City authorized the Mayor to sign this amendment on its behalf.

[Official Seal]

[Signature]
City Clerk