

RESOLUTION NO. 3657

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSULTING SERVICES AGREEMENT WITH TETRA TECH, INC.

WHEREAS, the City has applied for and received a \$6,000.00 grant from the Montana Reclamation and Development Grants Program which requires that the City match \$600.00;

AND WHEREAS the City published a request for proposals for grant writing services to secure a grant with the U.S. Environmental Protection Agency's Brownfields Assessment, Revolving Loan Fund, and Cleanup Grant Competition;

AND WHEREAS Tetra Tech, Inc., a Montana corporation, has submitted a proposal for grant writing services, and the City wishes to enter into a Consulting Services Agreement with Tetra Tech, Inc., to provide the requested grant writing services;

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

1. The City hereby approves the Consulting services Agreement provided by Tetra Tech, Inc., attached hereto as Exhibit "A," with the addition of the following sentence at the end of Article 4, titled "Compensation": "Total compensation under this agreement shall not exceed \$6,600.00." The Mayor of the City of Miles City is hereby empowered and authorized enter into said agreement, as amended, on behalf of the City of Miles City and bind the City of Miles City thereto; and


2. 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 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 3RD DAY OF JANUARY, 2014.



C.A. Grenz, Mayor

ATTEST:



Lorrie Pearce, City Clerk



TETRA TECH

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made this 24th day of December 2013, by and between:

Tetra Tech, Inc.
2525 Palmer Street, Suite 2
Missoula, MT 59808
(406) 543-3045
(406) 543-3088 Fax
Attn: Natalie Morrow

(hereinafter referred to as the "Consultant") and:

City of Miles City, Montana
519 Main Street, Suite One
Miles City, Montana 301
(406) 232-1524
Attn: Connie Muggli

(hereinafter referred to as the "Client")

WHEREAS the Client requires that certain Technical Services (the "Services") be provided in connection with the project that is identified in the Consultant's Proposal (the "Project"); and

WHEREAS the Consultant possesses the necessary skills and experience to provide the required Services;

NOW THEREFORE the Client and the Consultant hereby agree as follows:

ARTICLE 1 CONTRACT DOCUMENTS

The Contract (and the Contract Documents) shall be deemed to include:

1. Agreement
2. General Terms and Conditions of the Consulting Services Agreement
3. Consultant's Proposal

The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all.

ARTICLE 2 SCOPE OF SERVICES

The Scope of Services under this Agreement shall be as set out in the Consultant's Proposal dated December 24, 2013 to EPA Brownfields Assessment Grant application, or as otherwise mutually agreed

to by the Consultant and the Client in writing. It is the intention of this Agreement that the Consultant furnish all labor, materials, equipment, supplies, services, facilities, and all other things necessary to provide the required Services, except those items specifically stated as being furnished by the Client.

ARTICLE 3 SCHEDULE

The Consultant shall commence work promptly upon receipt of authorization to proceed, and shall proceed diligently and continuously to provide the Services in accordance with the schedule set out in the Consultant's proposal or otherwise mutually agreed to by the Consultant and the Client.

If any of the Services described in Article 2 hereof shall have been performed prior to execution of this Agreement by all parties hereto, and at the direction of the Client, then in such event, this Agreement shall take effect as of the date such Services actually commenced, and Consultant shall be reimbursed for all such costs incurred at the direction of the Client.

ARTICLE 4 COMPENSATION

In consideration of the performance of the Services described herein and the fulfillment of all covenants and conditions applicable thereto, the Client hereby agrees to make payment to the Consultant for Services actually provided at the Consultant's rates set forth in the Consultant's proposal and in accordance with the General Terms and Conditions of the Consulting Services Agreement attached hereto. Total compensation under this agreement shall not exceed \$6,600.00.

IN WITNESS WHEREOF, the duly authorized officers or representatives of the following parties hereto have executed this Agreement as of the effective date first written above.

Tetra Tech, Inc.

By: 
Natalie J. Morrow

Title: Project Manager/Sr. Env. Geologist

Date: 1/9/14

Client: City of Miles City, Montana

By: 

Title: MAYOR

Date: 1/3/14

GENERAL TERMS AND CONDITIONS OF THE MASTER CONSULTING SERVICES AGREEMENT

The following provisions shall be incorporated into and be deemed to be a part of the Agreement between Tetra Tech, Inc. (the "Consultant") and City of Miles City (the "Client"), wherein the Consultant is required to provide professional consulting services to the Client.

GENERAL

1. STANDARD OF CARE

The Consultant will provide professional consulting services, as defined in the Scope of Work or otherwise mutually agreed to between the Consultant and the Client, and in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants performing comparable services under comparable circumstances at the time services are performed under this Agreement. No other representations are made to the Client, express or implied, and no warranty or guarantee not expressly stated herein is included or intended in this Agreement or in the Consultant's proposals, contracts, reports, opinions, designs or documents.

2. RELATIONSHIP OF THE PARTIES

A. If all or any part of the Scope of Work is to be performed in the general vicinity of an existing operating plant or facility owned or operated by the Client or in an area where dust, fumes, gas, noise, vibrations and other particulate or non-particulate matter is in the atmosphere where it raises a potential or possible health hazard or nuisance to employees working in the area, or to others working in the general vicinity of the work area, the Client shall notify the Consultant of such nuisance or health hazard and thereafter the Consultant and all subcontractors shall take reasonable measures to protect their employees against such possible nuisances or health hazards.

B. Consultant and its employees, agents, affiliates and subcontractors shall act solely as independent contractors in performing Services under this Agreement. Except as specifically provided in this Agreement Consultant shall have no right or authority to act for Client and will not enter into any contract or other agreement, or incur any debt, liability or obligation of any nature in the name of, or on behalf of, Client. Consultant, its employees, agents, affiliates and subcontractors shall not be considered agents or employees of Client. Reliance upon the Services provided under this Agreement is limited to Client and any third party reliance that may be available is contingent upon written agreement executed by Consultant and upon the full execution by the third party of a letter of understanding provided by Consultant. Client acknowledges that the Services provided under this Agreement shall in no way be construed, designed or intended to be relied upon as legal advice or interpretation.

3. CLIENT RESPONSIBILITIES

A. Client shall: (1) provide Consultant, in writing, all information relating to Client's requirements for the project; (2) correctly identify the location of subsurface structures, such as pipes, tanks, cables and utilities; (3) notify Consultant of any potential hazardous substances or other health and safety hazard or condition known to the Client existing on or near the project site; (4) give Consultant prompt written notice of any suspected deficiency in the Services; and (5) with reasonable promptness, provide required approvals and decisions.

B. The Client shall furnish right-of-entry and equipment access for the Consultant and its subcontractors to make borings, surveys and/or explorations. While the Consultant will operate with reasonable care so as not to damage property or improvements, cost of repairing any unavoidable damage shall not be the responsibility of the Consultant, unless otherwise stated herein. The Consultant shall not be liable for damage to or injury arising from damage to subterranean structures or infrastructure (pipes, tanks, cables, etc.) which are not called to the attention of the Consultant and

correctly shown on the plans furnished to the Consultant, in connection with Services provided under this Agreement.

4. The Client acknowledges that environmental, geologic, and geotechnical conditions can vary from those encountered at the times and locations where data are obtained by the Consultant. Because the available data are limited, the Client acknowledges that there is some level of uncertainty with respect to the interpretation of these environmental, geologic, and geotechnical conditions, despite the professional care and skill applied by the Consultant
5. The Client recognizes that a satisfactorily designed, installed, and maintained monitoring system may assist in the early detection of environmental changes, and if detrimental changes are detected, permit prompt development and implementation of mitigating or remedial measures. Unless it is specifically included in the Scope of Work under this Agreement, the Consultant will not perform such monitoring, and any such monitoring shall be the sole responsibility of the Client.

6. REUSE OF DOCUMENTS

A. The Client shall have the right to use the reports, reproductions thereof, drawings and specifications resulting from the Consultant's efforts under the Agreement (the "Materials") only for those purposes expressly contemplated in the Agreement. The Materials shall not be used by Client for other projects, for additions to the subject project, for any portions of the project following any termination of the Consultant, or for completion of the project by others (unless the Consultant is in material breach of this Agreement), except by agreement in writing.

B. In the event that the Client agrees to, permits or authorizes changes in the drawings, specifications, reports and documents prepared by the Consultant pursuant to this Agreement, which changes are not consented to in writing by the Consultant, the Client acknowledges that the changes and any effects arising there from are not and shall not be the responsibility of the Consultant and the Client agrees to release the Consultant from all liability arising from the use of such changed documents. The Client further agrees to defend, indemnify and hold harmless the Consultant, its affiliates and their respective directors, officers, employees, agents and subcontractors from and against all claims, demands, damages or costs arising from such unauthorized changes and their effects.

7. PRESERVATION OF SAMPLES

The Consultant shall not be obligated to preserve samples of soil, rock, or water obtained from the project site(s) for longer than thirty (30) days after the issuance of any document that includes, but is not limited to, the data obtained from those samples. The Client agrees to receive any such sample material for its sole, lawful storage, treatment, or disposal at any time after expiration of the 30-day term.

8. The Consultant shall act only as an advisor in all governmental relations.

9. INFORMATION PROVIDED BY OTHERS

The Consultant shall provide the required Services based upon information available at the time, including information provided by the Client and others upon which the Consultant shall reasonably be entitled to rely. The Consultant shall not be liable for any errors, omissions, or inaccuracies which result from the Consultant's reliance on such information provided by others, provided however that the Consultant shall be obliged to review such information for appropriateness, prior to its use, and shall promptly notify the Client of any apparent errors, omissions or inaccuracies.

10. COMPENSATION

- A.. The Consultant shall be compensated for all labor, material, equipment, subcontract and related charges (including all applicable taxes) incurred in connection with providing the required

professional consulting services, including such activities as investigations, research, design development, preparation of reports, drawings and specifications, and construction management or site inspections / construction oversight, as well as for word processing, graphics, report production, and other clerical activities associated with the Services.

- B. Time spent traveling, when in the interest of the project, will be charged to the Client at hourly rates. No more than eight (8) hours of travel time will be charged in any day.
- C. The estimated budget or maximum fee set forth in the Consultant's Proposal is for the Scope of Work described therein. Additional work due to changes in the Scope of Work requested by the Client, as well as additional work due to changed field conditions, shall constitute additional services for which additional compensation shall be paid in accordance with the Schedule of Charges.
- D. On each anniversary of this Agreement, the Schedule of Charges shall be subject to review and adjustment, as necessary to reflect annual increases in wages and operating expenses.

11. INVOICES AND TERMS OF PAYMENT

- A. Invoices for Services provided by the Consultant will be rendered monthly, and will be payable by the Client upon receipt. Such invoices will clearly delineate: the task(s) worked on; the respective quantities of each task completed or the time and expenses incurred; the applicable unit rate(s); the arithmetic extensions of the amounts invoiced; and such additional information as may be appropriate in support of the invoice. The Client hereby agrees that the periodic invoices rendered by the Consultant are correct, conclusive, and binding on the Client unless the Client notifies the Consultant in writing, within ten (10) days from the date of receipt of such invoices, of alleged inaccuracies, discrepancies, or errors.
- B. Should the Client fail to make payment on any invoice within thirty (30) days of the date of receipt of such invoice, a late payment charge of 1-1/2% per month, or a monthly charge not to exceed the maximum rate allowed by law, will be payable on any outstanding balance. Should the client fail to make payment on any invoice within sixty (60) days of the date of receipt of such invoice, the Consultant shall have the right to consider such default in payment a material breach of this Agreement and may, upon giving seven (7) days written notice, suspend any or all services in connection with the Project until all outstanding amounts are paid in full. Any attorneys' fees or other costs incurred in collecting any delinquent account shall be paid by the Client.
- C. If payment for services rendered is to be made to the Consultant by a third-party lender, on behalf of the Client, the Client agrees that the Consultant shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition of receiving payment for services.

12. LIMITATION OF LIABILITY

The Client agrees that the Consultant's liability to the Client, including that of Consultant's directors, officers, employees, agents and subcontractors, for all claims, suits, including, but not limited to, third party claims and suits, arbitrations or other proceedings arising from the performance of the Services under this Agreement, shall be limited to an aggregate of \$50,000 or the fee for services rendered, whichever is less, and shall in no case exceed the amount of the insurance coverage provided by the Consultant under this Agreement. The Consultant shall not be liable to the Client, Client's employees, consultants, contractors, subcontractors, agents, or any other third parties for special, incidental, consequential, or penal losses or damages (including but not limited to lost profits and/or loss of use of the project or site that is the subject of this Agreement) under any circumstances.

13. INDEMNIFICATION

- A. The Consultant shall indemnify, defend, and hold harmless the Client from and against all

liabilities, claims, penalties, fines, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which the Client hereafter may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, or any violation or alleged violation of governmental laws, regulations or orders to the extent that the Client proves such death, injury or damage was caused by (1) the negligence or willful misconduct of the Consultant, its directors, officers, employees, agents, or representatives in performance of this Agreement; or (2) the Consultant's breach of any term or provision of this Agreement; except to the extent such liabilities or losses are attributable to the negligence or willful misconduct of the Client.

B. The Client acknowledges that in seeking the professional services of the Consultant, the Client may be requesting the Consultant to undertake, for the Client's benefit, activities involving the presence or potential presence of hazardous, toxic or pollutive substances. The Client shall indemnify, defend, and hold harmless the Consultant and its directors, officers, employees, agents and subcontractors, from and against all liabilities, claims, penalties, fines, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable expert witness's and attorney's fees), which the Consultant hereafter may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, or any violation or alleged violation of governmental laws, regulations or orders as a result of or in connection with (1) any actual or potential environmental pollution or contamination, including, without limitation, any actual or threatened release of toxic or hazardous materials, or failure to detect or properly evaluate the presence of such substances; or (2) any action taken by the Consultant, its directors, officers, employees, agents, or representatives as Client's agent under the section entitled REPORTING AND DISPOSAL REQUIREMENTS.

C. In the event that a claim is made by one party or parties against the other party or parties, at law or otherwise, for any alleged error, omission, or other act arising out of the performance of professional services, or any breach of this Agreement, and the claiming party fails to prove such claim, then the claiming party shall pay any and all costs incurred by the defending party in defending itself against the claim, including, but not limited to, attorneys' fees, expert witness fees, and court costs. The claiming party agrees that such payment shall be made immediately following dismissal of the case or upon entry of final, non-appealable judgment.

14. INSURANCE

A. The Consultant will maintain, throughout the term of this Agreement, insurance of the kinds and having the limits of liability and coverages as set forth below:

1. Worker's Compensation-Coverage A Statutory
Employer's Liability-Coverage B \$1,000,000 each occurrence
2. Commercial General and Contractual Liability
Bodily Injury \$1,000,000 each occurrence
\$1,000,000 aggregate
Property Damage \$1,000,000 each occurrence
\$1,000,000 aggregate
3. Comprehensive Automobile Liability
Combined Single Limit \$1,000,000
4. Professional Liability \$2,000,000 each occurrence
\$2,000,000 aggregate

B. Upon request by the Client, the Consultant shall provide a Certificate of Insurance evidencing such coverages and shall not cancel, reduce, restrict or change in any way the insurance coverage provided, without giving at least thirty (30) days prior written notice to the Client.

15. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

The Consultant agrees not to disclose to third parties, without the Client's prior written permission, confidential or proprietary information or trade secrets provided to the Consultant or its employees, agents, or subcontractors, which have not been previously disclosed to the Consultant by outside third parties, or which are not in the public domain, except to the extent that such information is required by law or by the professional obligations of the Consultant to be disclosed. The Consultant will use its best efforts to safeguard from unauthorized disclosure to third parties any such information given to it. The Client agrees not to disclose to third parties confidential or proprietary information provided to it by the Consultant without prior written permission.

16. REPORTING AND DISPOSAL REQUIREMENTS

A. Nothing contained in this Agreement shall be construed or interpreted as requiring the Consultant to assume the status of an owner, operator, generator, transporter, storer, treater, disposer or person who arranges for disposal, as those terms, or any other terms, appear within any federal or state statute governing the treatment, storage and disposal of hazardous or toxic substances or wastes. The Client shall be solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies of the existence of any hazardous, toxic or dangerous materials located on or in the project site(s), or discovered during the performance of the Services under this Agreement.

B. The Client shall be solely responsible for making and paying for all necessary arrangements to lawfully store, treat, recycle, dispose of, or otherwise handle hazardous or toxic substances or wastes, including, but not limited to, used or unused samples, drill cuttings, or water from well development, sampling and/or testing left on the project site(s) by the Consultant. The Client agrees to be the signatory as generator for any manifests required for such materials. The Consultant may, in its sole discretion, agree to make such arrangements on behalf of the Client, as the Client's agent, however, no agreement by the Consultant to make such arrangements on behalf of the Client on any such occasion shall confer any responsibility or liability upon the Consultant or be construed to be an agreement to make such arrangements on any preceding or succeeding occasions.

17. TERMINATION

A. If either party to this Agreement should fail to comply with the requirements of the Agreement, the other party may notify the failing party in writing that it is in default of its contractual obligations and instruct it to immediately correct the fault. If the default is not immediately corrected, the notifying party may, without prejudice to any other right or remedy it may have, terminate the Agreement. This Agreement may also be terminated by the mutual written consent of both parties with 30 days prior written notice.

B. Upon termination of the Agreement, the Client shall immediately compensate the Consultant for work completed and Services rendered. In addition, an equitable adjustment shall be made to provide for termination costs arising from commitments which had become firm before termination, and for the winding up and protection of the work. If the Consultant is in default, the Client shall be entitled to deduct from the monies owing to the Consultant the amount of any incremental costs reasonably incurred in correcting the default, provided that such incremental costs are certified to the Consultant. There shall be no payment for loss of anticipated profits or consequential damages.

C. All provisions of the Agreement under the headings GENERAL, LIMITATION OF LIABILITY, INDEMNIFICATION and REPORTING AND DISPOSAL REQUIREMENTS shall survive the termination, suspension or completion of this Agreement.

18. UNFORSEEN CIRCUMSTANCES

If, during the performance of Services under this Agreement, any unforeseen conditions or occurrences, including without limitation unforeseen hazardous substances or waste, are encountered which, in Consultant's sole judgment, may significantly affect the Services, the risk involved in providing the Services, or the Scope of Services, Client will agree with Consultant to modify the Scope of Services and Consultant will provide an estimate of additional charges to include provision for the previously unforeseen circumstances. Such estimate, when executed by Client and Consultant will be a valid change order in accordance with the provisions of Section 10 of this Agreement. As an alternative, Consultant may terminate Services under this Agreement in writing effective on the date specified by Consultant, in which event Client shall pay Consultant for services performed to the date of termination, plus reasonable expenses of termination.

19. FORCE MAJEURE

Consultant shall not be liable to Client for any loss, liability, cost, damage or expense arising out of the delay or failure to render Services under this Agreement where such delay or failure arises by reason of legislative, administrative or government prohibition, fire, weather conditions, hostilities, civil disturbances, labor or industrial disputes, acts of God or any other event beyond the reasonable control of Consultant, in which event either party may terminate that portion of the Services under this Agreement not yet completed, and Consultant shall have no further liability to Client therefor. A change authorization extending the time to perform and stating an appropriate fee adjustment may be elected by mutual agreement of the parties hereto

20. ASSIGNMENT OF AGREEMENT

Neither the Client nor the Consultant shall assign any rights or obligations under this Agreement without the prior written consent of the other.

21. ENTIRE AGREEMENT

The written Agreement constitutes the entire Agreement between the Client and the Consultant. It supersedes all prior written or oral agreements, or contemporaneous communications with respect to the subject matter thereof, and has not been induced by any representation, statements, or agreements other than those herein expressed.

22. MODIFICATION OF AGREEMENT

The conditions of this Agreement may not be modified except by written agreement between the Consultant and the Client, and no amendment to this Agreement shall be binding on either party unless reduced to writing, and signed by an officer or duly authorized representative of the party sought to be bound thereby.