

RESOLUTION NO. 3707

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONTRACT FOR ATTORNEY SERVICES WITH W. G. GILBERT, III, P.C., A MONTANA PROFESSIONAL CORPORATION, FOR SPECIAL LEGAL SERVICES RELATED TO MONTANA WATER COURT CASE NO. 42C-184


WHEREAS, the City is a party to a Montana Water Court Case No. 42C-184 involving a challenge to certain water rights held by the City pertaining to Cook and Scanlan Lakes;

AND WHEREAS the City wishes to engage the legal services of W. G. Gilbert, III, P.C., to represent the City in such case;

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

1. The Contract for Attorney Services attached hereto as Exhibit "A," is hereby approved and adopted by this Council;
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Contract on behalf of the City of Miles City and bind the City of Miles City thereto; and

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22nd DAY OF JULY, 2014.


C. A. Grenz, Mayor

ATTEST:


Lorrie Pearce, City Clerk

CONTRACT FOR ATTORNEY SERVICES

1. AUTHORITY

This Contract is made by the City Council of the City of Miles City, Montana ("City Council" hereinafter) Resolution No. 3707

2. PARTIES

The parties to this Contract are W.G. Gilbert, III, P.C. (d/b/a Gilbert Law Office) ("Gilbert" hereinafter) and the City of Miles City, Montana ("City" hereinafter), by and through the City Council.

3. INDEPENDENT CONTRACTOR

This Contract is for the purpose of retaining Gilbert to perform legal services. Gilbert is an independent contractor, and, subject to the City Council's powers as described in 5g, below, not subject to the control or direction of the City as if Gilbert were a City employee. Gilbert is not subject to any of the payroll deductions that are taken from an employee's salary, nor is Gilbert entitled to any "employee benefit" from the City. Nothing in this Contract or any action of the parties is to be interpreted otherwise.

4. CASES OR MATTERS ASSIGNED

Gilbert shall act as the City's Special Counsel in Montana Water Court Case No. 42C-184 including any appeal or similar proceeding conducted in relation to Water Case 42C-184.

5. GILBERT'S OBLIGATIONS & CITY COUNCIL'S POWERS

- a. Settlement Offers: Gilbert shall communicate in writing any settlement offer received from the opposing party in the case or matter by sending it or providing the settlement offer to the City Attorney for the City of Miles City ("City Attorney" hereinafter) within seven days of the time when Gilbert receives the settlement offer.
- b. Matters within Gilbert's Professional Judgment: Gilbert shall have sole discretion and responsibility over, and exercise the professional judgment of its employed attorneys with regard to, the following:
 - (i) Requesting from the Court or an opposing party any deadline extensions or similar extensions concerning the timing or scheduling of case-related or matter-related events;
 - (ii) Drafting, filing, and serving any motions, briefs, writs, proposed findings of fact and conclusions of law, proposed orders, interrogatories, requests for production, requests for admission,

and any other documents related to the pre-trial or post-trial process;

(iii) Attempting the recovery of attorney's fees and costs from any opposing party or any opposing party's attorney(s);

(iv) Executing money or other judgments against any opposing party;

(v) Conducting any communications with opposing counsel;

(vi) Conducting any communications with other counsel hired or retained by the City for any case or matter;

(vii) Arguing and presenting factual and legal positions at any hearing, trial, mediation, arbitration, or similar proceedings;

(viii) Appealing, moving to amend, or similarly addressing any order, judgment, or similar decision by a court or other fact-finding body; and

(ix) Any other act or decision for which an attorney in a similar case or matter could be responsible.

c. Extensions of Time of Required Filing Dates: Gilbert shall have authority to stipulate to any deadline extensions or similar extensions concerning the timing or scheduling of case-related or matter-related events made by the opposing party or other parties in the case according to his professional judgment.

d. Copies of Documents Prepared by Gilbert: Gilbert shall provide or send copies of any motions, briefs, writs, proposed findings of fact and conclusions of law, proposed orders, interrogatories, requests for production or requests for admission prepared by Gilbert on or after the date of this Contract to the City Attorney within seven days after the time when such are filed with the Court or served upon the opposing party. Gilbert shall provide or send copies of any other documents to the City Attorney within seven days after receiving a written request from the City Attorney, or other authority designated by the City of Miles City.

e. Copies of Documents Prepared by Court or Other Fact-Finding Body: Gilbert shall provide or send copies of any orders, judgments, findings of fact and conclusions of law, or other documents prepared by a Court or other fact-finding body on or after the date of this Contract in relation to the case that he is representing the City before the Water Court to the City Attorney within seven days of receiving the same.

- f. Invoices: Gilbert shall provide or send the City a monthly invoice for services rendered on or before the 28th of each month by sending or providing the same to the City Clerk as identified in § 7a, below.
- g. City Council's Powers: Gilbert's discretion or responsibility with regard to any case or matter, or particular decisions therein, may be limited or revoked by a written resolution duly passed by a majority vote of the City Council at a meeting thereof.

6. CITY'S OBLIGATIONS

- a. Hourly Rate: The City shall pay Gilbert the following hourly rates:
 - (i) \$185.00 per hour for work performed by W.G. Gilbert, III;
 - (ii) \$155.00 per hour for work performed by other attorneys employed by Gilbert; and
 - (iii) \$45.00 per hour for work performed by paralegals employed by Gilbert.
 - (iv) Travel time will be billed at one-half the hourly rate if it occurs during regular office hours.
- b. Expenses: The City shall pay Gilbert for the following expenses and charges:
 - (1) Mileage at the rate described in Mont. Code Ann. § 2-18-503 (1)(3);
 - (2) Meals at actual cost, not to exceed \$25.00 per day;
 - (3) Lodging, if required, at actual cost;
 - (4) Other reasonable and necessary expenses required to provide representation to the City;
- c. Payments: The City shall pay any invoice submitted by Gilbert pursuant to § 5f, above, within thirty days of the date of the invoice, by sending or providing a check to Gilbert for the amount owing on the invoice to or at the address set forth in § 7c, below; total payment not to exceed \$5,000, without the prior written approval of the City Council.”
- d. Accurate Disclosure by City: City will fully and accurately disclose to Gilbert all facts and information that may be believed to be related to any matter in which Gilbert represents the City and to keep Gilbert apprised of any developments relating to issues, City program operations,

installations, and personnel and related to the legal services being performed.

- e. Cooperation of Officers and Employees: The City shall take such actions as are necessary to insure that its Officers and Employees cooperate to the fullest, and in a timely manner with Gilbert, in providing Gilbert information data obtaining signatures on documents and other actions that may be required by him to further the case on behalf of the City.

7. TRANSMITTAL OF INVOICES AND OTHER COMMUNICATIONS

- a. Invoices from Gilbert to City: Any invoices from Gilbert shall be sent by Gilbert via conventional mail to the following address to the individual identified therein:

City Clerk—City of Miles City
P.O. Box 910
Miles City, MT 59725

- b. Other Communications from Gilbert to City Attorney: Whenever any portion of this Contract obligates Gilbert to provide or send any document, communication, or notice to the City Attorney, the same shall be sent by Gilbert via conventional mail to the following address:

Dan Rice, Lucas and Tonn
City Attorney—City of Miles City
P.O. Box 728
513 Main Street
Miles City, MT 59301

- c. Invoice Payments: Any invoice payments made by the City pursuant to § 5b, above, shall be sent by the City via conventional mail to the following address :

W.G. Gilbert, III
W.G. Gilbert, III, P.C.
15 S. Idaho Street
P.O. Box 345
Dillon, MT 59725

- d. Time Computation: all invoices, invoice payments, documents, communications or notices shall be deemed to be sent when mailed to the City Attorney, City Clerk, or Gilbert as identified in § 7a-c, above.

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8. COMPLETION OF OBLIGATIONS

Whenever in the professional judgment of the attorneys employed by Gilbert all of Gilbert's obligations described in §§ 4 and 5, above, are completed regarding Case 42C-184, above, Gilbert shall provide or send to the City Attorney a written communication asserting that Gilbert believes its obligations regarding Case 42C-184 are completed. Gilbert's obligations shall be deemed complete upon the earlier of the following:

- (a) Gilbert's receipt or a written document from the City Attorney stating that Gilbert's obligations are complete; or
- (b) the passage of seven days from the date when the notice described in § 8, above, was provided or sent to the City Attorney and during which time Gilbert receives no written communication from the City Attorney stating that the City does not concur in Gilbert's assertion that its obligations are complete.

9. REFERRAL TO CITY ATTORNEY

Whenever in the professional judgment of the attorneys employed by Gilbert any part of the work in Case 42C-184 described above, should be referred to the City Attorney for the City of Miles City, Montana ("City Attorney" hereinafter), Gilbert shall provide or send the City Attorney with the file for the case or matter and a written communication stating that the case or matter should be referred to the City Attorney. Gilbert's obligations with regard to the case or matter shall be deemed complete immediately upon Gilbert providing or sending the City Attorney the file for the case or matter and a written communication stating that the case or matter should be referred to the City Attorney.

10. CUSTODY OF FILES

All paper and electronic files for the performance of the work in Case 42C-184, shall be kept by Gilbert in Gilbert's office at 15 South Idaho Street, Dillon, Montana 59725. Gilbert may keep duplicate electronic or paper copies of any materials in such files, and such duplicate copies shall be deemed to be Gilbert's exclusive property, regardless of whether the case or matter is completed pursuant to § 8, above, or referred to the City Attorney pursuant to § 9, above.

11. ENTIRE AGREEMENT

Each party acknowledges that this Contract is the entire, sole, and only agreement pertaining to the subject and things referred to herein and that there are no other independent, collateral or additional agreements or obligations to be performed or things to be done except as set out herein.

12. IMPLEMENTATION

Each party shall take all steps necessary and appropriate to implement and carry out the

terms of this Contract.

13. MODIFICATION

Any modification or waiver of any of the provisions of this Contract shall be effective only if made in a writing executed by each of the parties. The failure of either party to insist upon strict performance of any of the provisions of this Contract shall not be construed as a waiver of any subsequent default, regardless of whether such default is of the same or similar nature or otherwise.

14. SEVERABILITY

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

15. JURISDICTION AND VENUE

The Montana 5th Judicial District Court, Beaverhead County, shall have exclusive jurisdiction over this Contract and any claim or cause of action arising out of this Contract.

16. CITY'S PAYMENT OBLIGATION NOT WAIVED BY CERTAIN ACTS OF GILBERT OR COUNCIL

The following shall in no manner waive or vitiate the City's obligation to pay any amounts outstanding owing to Gilbert for work performed in relation to a case or matter:

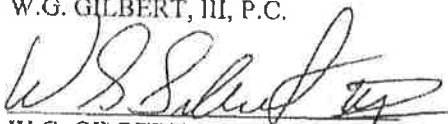
- a. Gilbert's referral of a case or matter to the City Attorney pursuant to § 9, above;
- b. Gilbert's completion of a case or matter pursuant to § 8, above; or
- c. The City Council's passage of a written resolution limiting or revoking Gilbert's discretion or responsibility pursuant to § 5g, above.

17. Either the City or Gilbert has the right to terminate the relationship between City and Gilbert by giving the other written notice no less than 14 days before the termination.

IT IS SO AGREED this 23rd day of July, 2014.

W.G. GILBERT, III, P.C.

By:



W.G. GILBERT, III

CITY OF MILES CITY, MONTANA

By: 
CHRIS GRENZ, MAYOR

ATTEST:


CLERK