

RESOLUTION NO. 3753

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A STANDARD AGREEMENT FOR PROFESSIONAL SERVICES WITH DOWL HKM FOR SERVICES RELATED TO A MILES CITY WATER & SEWER CAPACITY STUDY

WHEREAS, the City of Miles City has approved the completion of a Water & Sewer Capacity Study, and pursuant to a Request for Qualifications and review of Statements of Qualifications, has selected DOWL HKM to provide services relating to the same;

AND WHEREAS the City of Miles City wishes to reduce the scope of such services to writing, to clarify the obligations of the parties;

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


1. The Standard Agreement for Professional Services, between DOWL HKM and the City of Miles City, attached hereto as Exhibit "A", and incorporated herein, is hereby approved and adopted.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said 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 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 14TH DAY OF OCTOBER, 2014.



C.A. Grenz, Mayor

ATTEST:



Lorrie Pearce, City Clerk



STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of October 1, 2014 between City of Miles City, P.O. Drawer 910, Miles City, MT 59301 (Client) and DOWL HKM, 713, Pleasant Street, Miles City (DOWL HKM). Client and DOWL HKM agree that DOWL HKM will perform the professional services identified in Exhibit A associated with:

Miles City Water & Sewer System Capacity Study

Representatives: CLIENT: Allen Kelm, Utilities Director

DOWL HKM: Dayton Alsaker

SCOPE OF SERVICES:

See EXHIBIT A – SCOPE OF SERVICES

COMPENSATION by CLIENT to DOWL HKM:

Reimbursement shall be on a ***Time & Material basis***, (with a not-to-exceed total of \$100,000.00). DOWL HKM shall invoice no more often than monthly for services performed in the previous month in accordance with the unit rates set forth in EXHIBIT B. To be consistent with services actually rendered, DOWL HKM may alter the distribution of compensation between individual phases/tasks of the work noted herein but, shall not exceed the total estimated compensation without CLIENT’S prior approval.

The following are hereby made a part of this AGREEMENT by attachment:

- Terms and Conditions** (3 pages)
- Exhibit A - Scope of Services**
- Exhibit B – Rate Schedule**

Services covered by this Agreement will be performed in accordance with the attached Terms and Conditions and any Exhibits, Attachments, and/or Special Conditions. This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

IN WITNESS WHEREOF, persons authorized to commit the resources of the Parties have executed this Agreement as follows:

Accepted for Client:

By: X C.A. Green
 Title: Mayor
 Date: 10-16-14

Accepted for DOWL HKM:

By: Dayton Alsaker
 Title: Region Mgr
 Date: 9-17-14
 Tax ID No or SSN: 92-0166301



DOWL HKM STANDARD CONTRACT TERMS AND CONDITIONS

SECTION 1 - SERVICES OF DOWL HKM

A. Basic Services

DOWL HKM shall provide Client the services as described in this Agreement within the periods stipulated herein. Services will be paid for by Client as indicated herein.

B. Schedule

DOWL HKM's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time are specified in this Agreement, DOWL HKM's obligation to render services hereunder will be for a period that may reasonably be required for the completion of said services.

C. Authorization to Proceed

Execution of this Agreement by Client will be authorization for DOWL HKM to proceed with the Work as scheduled, unless otherwise provided for in this Agreement.

D. Delay

If in this Agreement, specific periods of time for rendering services are set forth, or specific dates by which services are to be completed, are provided, and if such periods of time or dates are changed through no fault of DOWL HKM, the rates and amounts of compensation and time for completions provided herein shall be subject to equitable adjustment

E. Changes/Additional Services

The Scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by the Client. For some projects the scope may not be fully definable during the initial stages and/or the Client may at any time during the term of this Agreement make changes within the general scope of the Agreement. If such facts discovered as the Project progresses, or changes that are requested by the Client, change the cost of, or time for, performing the services hereunder, DOWL HKM will promptly provide Client with an amendment to this Agreement to recognize such changes.

SECTION 2 - TERMS OF PAYMENT

A. Invoicing

DOWL HKM will submit invoices to Client for services rendered and reimbursable expenses incurred each month. Invoices will be prepared in accordance with DOWL HKM's standard invoicing practices. Such invoices will represent the value of the completed Work and will be in accordance with the terms for payment in this Agreement.

B. Progress Payments

Invoices are due and payable within 30 calendar days of the date of the invoice. If Client fails to pay undisputed invoices when due, the amounts due will be increased at the rate of 1.0% per month from said 30th day. In addition DOWL HKM may at any time, without waiving any other claim against the Client, and without thereby incurring any liability to the Client, suspend or terminate performing work hereunder in accordance with Section 5.C of this Agreement. Payments will be credited first to interest and then to principal. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

SECTION 3 - OBLIGATIONS OF CLIENT

A. Furnish Data

Client shall provide all criteria and full information as to Client's requirements for the Project and furnish all available information pertinent to the Project, including reports and data relative to previous designs or investigations at or adjacent to the site. Client shall provide such legal, independent cost estimating, and insurance counseling services as may be required for the Project.

B. Representative

Client will designate a person to act with authority on Client's behalf in respect of all aspects of the Project.

C. Timely Review

Client will examine DOWL HKM's studies, reports, drawings and other project-related work products and render decisions required in a timely manner.

D. Prompt Notice

Client will give prompt written notice to DOWL HKM whenever Client observes or otherwise becomes aware of hazardous environmental conditions or of any development that affects the scope or timing of DOWL HKM's Scope of Services or any defect in the Services of DOWL HKM or the work of any Contractor.

E. Site Access

Client will arrange for safe access to and make provisions for DOWL HKM and DOWL HKM's subconsultants to enter upon public or private property as required for DOWL HKM to perform the Services under this Agreement.

SECTION 4 - OBLIGATIONS OF DOWL HKM

A. Independent Contractor

DOWL HKM is an independent contractor and will maintain complete control of and responsibility for its employees, subcontractors and subconsultants. DOWL HKM shall also be solely responsible for the means and methods for carrying out the Scope of Services and for the safety of its employees.

B. Performance

DOWL HKM will perform its Services using that degree of care and skill ordinarily exercised under the same conditions by Design Professionals practicing in the same field at the same time in the same or similar locality. Professional services are not subject to, and DOWL HKM cannot provide any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranty or guarantee contained in any purchase order, requisition or notices to proceed issued by the Client are specifically objected to.

C. Technical Accuracy

Owner shall not be responsible for discovering deficiencies in the technical accuracy of DOWL HKM's work. DOWL HKM shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in the Client furnished information.



D. Publicity

DOWL HKM will not disclose the nature of its Scope of Services on the Project, or engage in any publicity or public media disclosures with respect to this project without the prior written consent of Client.

E. Insurance

DOWL HKM will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation and Employer's Liability in amounts in accordance with statutory requirements, and DOWL HKM's business requirements. Certificates evidencing such coverage will be provided to Client upon request.

F. Compliance with Laws

DOWL HKM will use reasonable care to comply with applicable laws in effect at the time the Services are performed hereunder, which to the best of its knowledge information and belief, apply to its obligations under this Agreement.

G. No responsibility for Site Safety

Construction contractors shall be solely responsible for the supervision, directions and control of their work; means, methods, techniques, sequences and procedures of construction; safety precautions and programs and compliance with applicable laws and regulations.

H. No responsibility for Contractor Performance

DOWL HKM shall not be responsible for the quality of any Contractor's work, or for any Contractor's failure to furnish or perform its work in accordance with the contract documents.

I. Equal Opportunity Employment

DOWL HKM is committed to the principles of equal opportunity and affirmative action in employment and procurement. DOWL HKM does not discriminate against applicants, employees, or suppliers on the basis of factors protected by federal or applicable state laws.

SECTION 5 - GENERAL CONSIDERATIONS

A. Reuse of Documents

1. All documents are instruments of service in respect to this Project, and DOWL HKM shall retain an ownership and property interest therein (including the right of reuse at the discretion of DOWL HKM) whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the Project. Such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification of DOWL HKM will be at Client's sole risk. Client shall indemnify and hold harmless DOWL HKM and DOWL HKM's Consultants from all claims, damages, losses, and expenses, including attorney fees arising out of or resulting therefore.
2. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by DOWL HKM. Files in electronic media format are furnished for convenience.
3. Because data stored in electronic media format can deteriorate or be modified, inadvertently or otherwise, without authorization of DOWL HKM, the party receiving the electronic files agrees to perform acceptance tests or procedures within 60 days, after which the receiving party shall have deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will

be corrected by DOWL HKM. DOWL HKM will not be responsible to maintain documents stored in electronic media format after acceptance by Client.

4. DOWL HKM makes no representations as to long term compatibility, usability, or readability of documents resulting from use of software application packages, operating system, or computer hardware differing from those used by DOWL HKM at the beginning of this Project.

B. Indemnification

1. DOWL HKM agrees to indemnify and hold harmless Client from and against any liability, damages and costs, (including reimbursement of reasonable attorney's fees and costs of defense) arising out of the death or bodily injury to any person or the destruction or damage to any property, arising during the performance of professional services under this Agreement, to the extent caused by the negligent acts, errors, and omissions of DOWL HKM or anyone for whom DOWL HKM is legally responsible. DOWL HKM's defense obligations under this indemnity paragraph means only the reimbursement of reasonable defense costs to the proportionate extent of the engineer's actual liability obligation hereunder.
2. Client agrees to indemnify and hold harmless DOWL HKM from any liability, damages and costs, (including reasonable attorney's fees and costs of defense) to the extent caused by the negligent acts, errors, and omissions of the Client, Clients contractors, consultants, and anyone for whom Client is legally responsible.
3. DOWL HKM's total liability to Client and anyone claiming by, through or under Client for any claim, cost, loss or damage caused in part by the negligence of DOWL HKM and in part by Client or any other negligent entity or individual, including any potential defense obligations shall not exceed the percentage share that DOWL HKM's actual negligence bears to the total of all other negligent entities and individuals

C. Termination / Suspension

1. Client may terminate this Agreement for convenience. In such event, DOWL HKM will be entitled to compensation for Services performed up to the date of termination, including profit related thereto, plus any expenses of termination.
2. The obligation to provide further Services under this Agreement may be suspended by either party upon 7 days written notice or terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof (including Client's obligation to make payments required hereunder) through no fault of the suspending or terminating party, and defaulting party does not commence correction of such nonperformance within five (5) days of written notice and diligently completes the correction thereafter.

D. Consequential Damages / Limitation of Liability

To the fullest extent permitted by law, DOWL HKM and Client waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and agree that DOWL HKM'S total liability to Client under this Agreement shall be limited to \$100,000.



E. Limits of Agreement

This instrument contains the entire Agreement between the parties, and no statement, promise or inducements made by either party that are not contained in this written Agreement shall be valid or binding. This Agreement upon execution by both parties hereto, can only be amended by written instrument signed by both parties.

F. Severability and Survival

The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity of unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

G. Waiver

No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

H. Choice of Law and Venue

The parties agree that any action at law or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Montana, and it is mutually agreed that this Agreement shall be governed by the laws of the State of Montana, both as to interpretation and performance.

I. Material Adverse Effect

This Agreement may be amended if an event, change or effect creates a material adverse effect upon the operation of DOWL HKM. Such material adverse effect may be created by, or be the effects of Acts of God (including fire, flood, earthquake, storm, or other natural disaster), war (whether declared or not declared), terrorist activities, labor dispute,

strike, lockout or interruption or failure of electricity or telephone service which materially impairs DOWL HKM's ability to operate business in accordance with the provisions of this Agreement.

J. No Third Party Beneficiaries

Nothing contained in this Agreement nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Client's contractors, in any.

K. Successor, Assigns, and Beneficiaries

Neither Client nor DOWL HKM may assign, sublet, or transfer any rights under or interest (including but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except as mandated or restricted by law. No assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

L. Prevailing Party Litigation Costs

In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

M. Statutes of Limitation

To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

N. Authority

The person signing this Agreement warrants that they have the authority to sign as, or on behalf of, the party for whom they are signing.

Exhibit A to Standard Agreement for Professional Services Scope of Services

Task 100 Meetings with City Staff

During the course of the study, several meetings will be held with City staff to gather information and present preliminary results. In the initial meeting, we will discuss problem areas the City staff is aware of such as water lines with high breakage rates, sewers that plug or back-up (or have other issues), areas where high infiltration and inflow is suspected, any water line valves or hydrants that are problems, and lift station pumps that are at capacity or have plugging problems.

It is anticipated that monthly meetings will be held with City staff to give progress updates and discuss the methods and information needed to calibrate water and sewer models. Flow monitoring locations for the sewer meter and the locations for hydrant flow testing will be reviewed. After the initial computer runs, preliminary results will be reviewed with City staff to determine if the model results match their “real world” knowledge of the systems.

Task 200 Update Mapping

In this task, the water and sewer system mapping will be reviewed with the City to ensure the City’s and District’s water and sewer systems are accurately represented. The City and District maps will be combined to provide complete system maps for both the water system and sewer system.

Once the AutoCAD mapping is verified, it will be converted into GIS mapping. The database associated with the GIS mapping will include:

- Pipeline lengths, diameters, and material (when known)
- Manhole sizes and invert elevations
- Age of pipe if the installation date is known
- Location and date of past pipe breaks and repairs based on information provided by the City and District

The sewer system model is highly dependent on accurate manhole invert elevations. Limited surveying may be required to resolve discrepancies in the AutoCad files. If required, up to three day of survey will be provided to obtain spot elevations of selected manholes on the main trunk lines to resolve adverse slope conditions in the model.

Task 300 Inventory of System Components

This task consists of documenting information relative to the lift stations, water booster station, and tanks, in addition to the water and sewer lines. Each facility will be visited and tables prepared to list the characteristics of the facility. City staff will be consulted regarding high maintenance areas and areas with a high pipe breakage. Per the Request for Proposals, a detailed assessment of the water and wastewater plants, lift stations conditions, and capacity will not be conducted but information will be obtained from City records, our records, discussion with City staff, and site visits to the stations and plants.

Task 400 Develop Water and Sewer Models

Once the piping configurations are imported into the water and sewer models, water demands and wastewater flows will be loaded into the model database. Water demands will be allocated based on the water meter readings. The water system model will be calibrated with hydrant flow tests. DOWL HKM has the proper equipment and experience to conduct hydrant flow meter testing with assistance from city operators. Dry weather wastewater flows from contributing areas will be loaded based on winter water usage. Infiltration and inflow to the sewer system will be allocated to the sewer model based on the results of flow monitoring. For future development areas, flows will be allocated based on the area zoning and current flow data for the various zone classifications.

Calibration of the wastewater collection system model is accomplished through flow metering at various locations in the collection system and matching the flows observed at the wastewater plant. It is important to collect monitoring data during both dry and wet weather conditions. It is also important to monitor at several locations simultaneously during wet weather conditions in order to capture the areas with high inflow from rain or snowmelt events. It is anticipated two meters will be installed for 1-2 months during the winter to establish dry weather conditions and 4 meters for a two month period during the spring and summer to capture high flow events. It is anticipated that during the dry weather monitoring, each meter will be left in place for 4-5 days and then moved to a new location. During the wet weather monitoring period the meters will remain in place until a high I/I event occurs or until a decision is made to relocate the meters. It is anticipated that the initial installations will be made in the dry weather monitoring period and in the wet weather period. It is anticipated that DOWL HKM will work with City staff in the meter installation procedures and City staff will relocated the meters as needed.

The sewer monitoring and water system hydrant testing will initially be focused along Haynes Avenue, Southgate Meadows and the Gordon Street Trunk Line.

Task 500 Prioritization and Cost Estimates for Improvements

The model results will be used to determine areas of the water and sewer systems that do not have the required capacity at current and future conditions. Cost estimates will be prepared for improvements to the systems and then they will be prioritized based on discussions with City staff, immediate needs to correct existing deficiencies, and improvements needed to meet future development needs.

Task 600 Report Preparation

The report will be organized to provide an executive summary of recommended improvements base on short-term and long-term needs. Estimated capital costs for each of the recommended improvements will be provided. After the executive summary, the report will be organized to show the expected areas of development and the water demands and sewer flow associated with the future developments. Historical and current water usage and wastewater flows will be listed along with projections for incremental growth rates in 5-10 year increments.

The calibration of the water system model will be documented showing the results of hydrant flow tests and how the tests correspond to model results. Maps will be included in the report showing areas of pressures in the system during various demand scenarios. The detailed model run results will be included as appendices.

For the wastewater model, the report will contain a map showing the capacity of the main sewers in terms the ratio of modeled depth versus full flow depth. This allows a quick determination of lines that are flowing near full. The report will show the results for dry weather, wet weather, and storm flow conditions.

Project deliverables include:

1. GIS maps of the water and sewer systems.
2. WaterCAD model of the water system.
3. SewerCAD model o the key interceptors.
4. An analysis of the work done under this study and a CIP for both shorter term improvements and longer term improvements.
5. The approximate cost of these improvements.
6. A report summarizing all of the work under this study, including the capacity analysis, capacity limitations and recommendations.
7. Appendices of data gathered, information provided from other sources, summaries of discussions, etc.

EXHIBIT B - FEE SCHEDULE
Personnel Billing Rates

Senior Manager	\$195.00
Engineer VI	\$155.00
Engineer V	\$145.00
Engineer IV	\$120.00
Engineer III	\$105.00
Engineer II	\$85.00
Engineer I	\$80.00
Engineering Technician IV	\$105.00
Engineering Technician III	\$85.00
Engineering Technician II	\$75.00
Engineering Technician I	\$55.00
Laboratory Manager	\$90.00
Laboratory Technician*	\$60.00
Inspector	\$90.00
Survey Manager	\$130.00
Professional Land Surveyor	\$105.00
Project Surveyor	\$85.00
Crew Chief	\$75.00
Survey Technician	\$160.00
2 Person Survey Crew	\$150.00
Administrative Assistant	\$55.00

Equipment, Materials, & Supplies

	DAY	WEEK	MONTH
2 GPS Receivers (Survey Quality)	\$425.00	\$1,600.00	\$4,320.00
Single/Each Additional Receiver	\$250.00	\$800.00	\$2,700.00

Travel, Mileage, & Miscellaneous

Per diem will be billed after 6 hours in the field and when more than 50 miles from the office at ¼ rate for every 6 hours or portion of a quarter day greater than 3 hours. For the day of departure, the day begins at time of departure. For the day of return, the day ends when employee arrives at authorized point of destination (office, home, etc.).

Per diem (per person, per day Wyoming)	=	\$51.00/day
Lodging	=	cost per night
Airfare	=	cost
Vehicle Usage – Automobiles	=	0..55/mile
Vehicle Usage – Pickups, Suburban	=	0..55/mile

Notes

1. DOWL HKM's Professional Fee Services Fee Schedule is subject to adjustment each year (May 1st) or at the end of a contract period, whichever is appropriate. Should adjustments be anticipated or required, such adjustments will not affect existing contracts without prior agreement between Customer and DOWL HKM.
2. Costs included in overhead rates for reasonable requests. Requests beyond those considered reasonable by the project manager billed at Cost + Agreed Upon Mark-up.
3. Specialized computer software or hardware necessary for a unique application for will be billed at a negotiated rate or unit cost.