

RESOLUTION NO. 3967

A RESOLUTION APPROVING “AN AGREEMENT BETWEEN THE MONTANA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MILES CITY FOR INSTALLATION AND MAINTENANCE OF A CORS STATION.”

WHEREAS, the City of Miles City has is working with the Montana Department of Transportation (MDT) to facilitate the installation of a Continually Operating Reference Station on airport property owned by the City of Miles City;

AND WHEREAS, the responsibilities of MDT and the City pertaining to said project are set forth in the attached Agreement;

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

1. The “Agreement Between the Montana Department of Transportation and the City of Miles City for Installation and Maintenance of a CORS Station,” attached hereto as Exhibit “A”, and made a part hereof, 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 Agreement on behalf of the City of Miles City, and bind the City of Miles City thereto.
3. The Mayor is hereby authorized to execute such further documents as may be necessary to carry out the terms of said Agreement.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING THIS 9th DAY OF AUGUST, 2016.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

**AN AGREEMENT BETWEEN THE
MONTANA DEPARTMENT OF TRANSPORTATION
AND THE CITY OF MILES CITY
FOR INSTALLATION AND MAINTENANCE OF A CORS STATION**

AGREEMENT

WHEREAS, the Montana Department of Transportation (Department), at the request of Miles City (City), will facilitate the installation of a Continuously Operating Reference Station (CORS) on Airport property in Miles City, hereinafter called the Project, and

WHEREAS, the installation of the CORS site will be a benefit to both the City and the Department,

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET FORTH HEREIN, MILES CITY ACTING THROUGH ITS CITY COUNCIL AND THE DEPARTMENT AGREE TO THE FOLLOWING SPECIFIC DUTIES AND RESPONSIBILITIES:

CITY:

1. The City is responsible for the purchase and the installation of all equipment and supplies to establish a CORS to National Geodetic Survey (NGS) specifications.
2. The city is responsible for obtaining all permits required for the installation.
3. The city is responsible for locating any utilities for construction.
4. At its own expense, the City agrees that it shall maintain or cause to be maintained the Project as installed.
5. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of State employees or its Contractors the City, agrees to protect, indemnify, hold harmless and defend the State and the Department from any claim, damage or loss arising from, due to, or allegedly due to, the failure of the installation, operation or maintenance of the Project.
6. The City of Miles City will provide the Department with a data stream from the CORS station for as long as the City hosts the CORS station. The Department reserves the right to use the data from the stream in any and all ways it sees fit without further compensation to the City.
7. The City will agree to comply with all appropriate Department IT security requirements.

8. For itself and its employees and assignees, the City further agrees that it will comply with all the following requirements:

See the attached MDT Nondiscrimination and Disability Accommodation Notice.

9. The City of Miles City shall continuously maintain operation of the CORS station as an approved NGS CORS site for a minimum of 5 years, including all costs associated with internet connection, power connection, all repairs that may or may not be covered under the equipment warranty, and any costs associated with the chosen site location.
10. Should the City of Miles City decide to decommission the CORS site within this 5 year period, the entire site shall be “gifted” to the Department, including all hardware, software, easements, etc. as required to continue operation of the site as an NGS approved CORS site.
11. For the five year period the Department shall be named as successor on any and all agreements required to maintain and operate the CORS site.
12. MDT shall have the right to inspect the CORS site at any time during its operation with a minimum 24 hour notice.


DEPARTMENT:

1. The Department will, at the approval of the Tribal Coalition, donate a Trimble NetR9 Receiver and Antenna for the installation of this CORS site from the Antenna and Receiver combinations provided by the Tribal Coalition to the Department.
2. The Department shall consider the 5 year time period commencing upon signing by all parties of this document.
3. The Department will provide assistance to Miles City to establish the CORS site including initial 72 hour NGS required observations, and assist with the installation of Antenna and Receiver.
4. The Department shall facilitate the collection, 30 day required archival, and submission of data to NGS.
5. If a Receiver and Antenna combination is available to be gifted to Miles City, the set shall retain all warranties as provided to the Department.

IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES
THAT:

1. In the event of litigation over this Agreement or its form, the venue will only be in the First Judicial District, Lewis and Clark County, Montana.
2. The Department shall bear no responsibility for the data, or data products derived from this site.
3. This agreement shall remain in force as long as both parties agree that it is in the best interest to do so. If either party desires to terminate this agreement, or amend or revise portions of the agreement, there shall be a minimum 90 days written notice provided by either party. In the event the agreement is terminated the City shall have 30 days to gift the CORS equipment hardware, software, easements etc. to continue operation of the CORS site.
4. The Department shall not be responsible for lack of data or data products.

Approved by the City Council of Miles City on 9th day of August. 2016.


(Mayor)

ATTEST:

By _____
(City Clerk)

Executed by the Department's authorized representative this ____ day of _____, 2016.

By _____
Director, Montana Department of Transportation

APPROVED FOR LEGAL CONTENT

MDT Legal Counsel

**MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free of discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination on the grounds of race, color, national origin, sex, age, physical or mental disability, parental/marital status, pregnancy, religion/creed/culture, political belief, genetic material, veteran status, or social origin/ancestry (hereafter "protected classes"). by its employees or anyone with whom MDT chooses to do business.

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of race, color, national origin, sex, age, pregnancy, parental/marital status, disability (physical or mental), religion, creed, political ideas, or genetic material.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 200d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.