

RESOLUTION NO. 4051

A RESOLUTION APPROVING AN ENGAGEMENT LETTER WITH JACKSON MURDO & GRANT, P.C., FOR CERTAIN LEGAL SERVICES RELATED TO THE CUSTER COUNTY MILES CITY FLOOD PROTECTION PROJECT.

WHEREAS, the City of Miles City and Custer County require certain legal services, including bond counsel to assist in project funding, related to the Custer County Miles City Flood Protection Project, and wish to engage Jackson Murdo & Grant, P.C. to provide such services.

AND WHEREAS, the an Engagement Letter for Legal Services has been presented to the City by Jackson Murdo & Grant, P.C. for consideration and approval, and the Council finds it in the best interest of the City to approve the same;

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

1. The “Proposed Engagement Letter for Legal Services for Flood Control Project – Miles City Area” between the City, Custer County, and Jackson Murdo & Grant, P.C., for services related to the Custer County Miles City Flood Protection Project, as set forth in Exhibit “A”, attached hereto 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 Letter on behalf of the City of Miles City, 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, AT A REGULAR MEETING THIS 9th DAY OF MAY, 2017.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

JACKSON MURDO & GRANT, P.C.

Attorneys

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May 16, 2017

Custer County, Montana
City of Miles City, Montana
CCMC Steering Committee

Re: Proposed Engagement Letter for Legal Services for Flood Control Project – Miles City Area

Ladies and Gentlemen:

We have been involved in several conference calls with City and County officials and Steering Committee (the “Committee”) for the initial stages of the Section 205 USACE study for the proposed flood control project (the “Project”). By letter dated October 18, 2016, the Committee indicated that our firm had been selected to assist with the Project. This letter outlines the scope of work that our firm expects to provide to assist with the Project during the study and the eventual creation of the flood control district and advice on funding for the construction, in part, through issuance of bonds and for the eventual maintenance of the Project.

Because of the long lead time with this Project, the possible court action and elections required to create a Flood Control District and the need for significant bond counsel involvement in the study phase (to come up with recommended options for funding) we agree to an hourly fee arrangement for our initial legal services, with a cap on that fee for each fiscal year.

From the date of approval of this agreement (anticipated by early May, 2017) to the end of the 2016-2017 fiscal year, we anticipate our charges will not exceed \$10,000, which will include an in person meeting in Miles City with the Committee and City and/or County staff scheduled for May 25, 2017 at 1:30. By the end of the 2016-2017 fiscal year we anticipate providing to the Committee an analysis and recommendation for the best option for a flood district formation and for funding the City and County share of construction and maintenance costs.

For the fiscal year 2017-2018, we anticipate our charges will not exceed \$15,000, which will include one on-site meeting with the Committee and City and/or County staff. The work anticipated by us during that fiscal year will be coordination with the Committee on the Section 205 USACE study and, if necessary to complete USACE study requirements, the commencement of creation of the District.

At this time, we are uncertain about quoting a maximum price for work after June 30, 2018. We prefer to negotiate further work and price after that date when there will be more

information available as to the work needed. If because of unique circumstances of timing, work needs to be done which will exceed the maximum for a fiscal year, our firm will notify you and request a modification for that fiscal year.

The final phase of work would be for traditional bond counsel work on the project. The fees for that bond counsel work would need to be quoted at the end of the study phase. It is too early to tell how much work would be necessary for the bond issuance. We would estimate that bond counsel services would range from \$30,000 to \$70,000.

Billing Procedures and Hourly Rates

This portion of this letter is to describe our basic billing procedures and current fee structure for the work described above. For our work on the above matter, we shall charge our usual hourly rates. Currently, those rates for attorneys in our firm range from \$165 to \$300 per hour. My hourly rate is currently \$225 and will not change during the term of this agreement. Work performed by legal assistants is currently charged at between \$100 and \$130 per hour, depending on the experience of the legal assistant. In addition, we will charge you for all out-of-pocket expenses which we may incur in connection with our performance of such services. Such out-of-pocket expenses will generally include, but are not limited to, travel expenses (mileage at the federal rate), photocopying (currently 5 cents per page), courier and overnight mail charges, secretarial overtime, litigation expenses such as filing fees or publications fees, expert witness fees, and related expenses.

Each month you will receive a statement from us, containing two parts. The first part will set forth our hours and fees for services rendered. Examples of the kinds of work that may be covered on this portion of the statement might include analysis and drafting of legal documents; legal research; office and telephone conferences with you, other attorneys or consultants working on this matter; and review of correspondence and other relevant documents. The second portion of the statement will include an itemized list of the out-of-pocket expenditures such as those described above. Statements for services will be sent to you monthly, covering services and expenses rendered through the end of the previous month. Such monthly bills are payable within ten days of receipt. Amounts not paid within 90 days of original invoice will be charged interest at the rate of 10% per annum.

We will send our bills to the City of Miles City and anticipate that the City will then pay 70% and Custer County will pay 30% as described in the Letter Agreement between them dated December 27, 2016.

Communication

Our firm has the capacity to communicate with clients via electronic mail (e-mail). We will be happy to communicate with you by e-mail. However, because of the possible deletion of incoming e-mail by our "Spam" monitoring software, we request that if any e-mail

communication is critical, you should contact us by telephone to alert us of the impending delivery of the e-mail.

Potential Conflicts

We represent various financial institutions and businesses with which you may have contractual arrangements. If a conflict should arise between you and one of our other clients, Montana Rules of Professional Conduct require that unless we obtain written consent from both parties, we are unable to represent either party. If this occurs, we will contact you immediately to discuss possible options.

Right to Terminate Services

You have the right to terminate our services at any time by notifying us in writing. We reserve the same right, but will only do so if: (a) you refuse to cooperate with us; (b) you do not pay our monthly statements in a timely manner; (c) continued representation of you would violate the rules of professional responsibility; or (d) we are unable to adequately perform the work for you because of distance or staff unavailability.

Ultimate Destruction of File

We would also like you to be aware that after we have concluded this matter, we will close your file and keep the record on our premises for a 10-year period. After 10 years, we will destroy the file. It is our policy to forward any original documents (for example, deeds to real property, titles to motor vehicles, etc.) to you at the time we receive them, and they are not kept in our files. Therefore, there should be no danger of the destruction of original documents.

If everything in this letter is agreeable to you, please sign in the place marked below for your signature and return one signed copy to me.

We appreciate the opportunity to work with you on this matter.

Very truly yours,

JACKSON, MURDO & GRANT, P.C.



Robert M. Murdo

We have read the foregoing letter and acknowledge that it accurately states the terms pursuant to which we have agreed to employ Jackson, Murdo & Grant, P.C. as our attorneys in connection with the matters described therein.

ACCEPTED AND APPROVED

Custer County, Montana

By: Kevin Young
Its: Commission Chair

City of Miles City, Montana

By: [Signature] 5-16-17
Its: MAYOR