

RESOLUTION NO. 3558

A RESOLUTION APPROVING AN AGREEMENT WITH THE STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) FOR THE CITY OF MILES CITY TO REVIEW CERTAIN WATER SUPPLY, WASTEWATER, SOLID WASTE AND STORMWATER SYSTEMS IN SUBDIVISIONS AND PROVIDING FOR REIMBURSEMENT TO THE CITY FOR SUCH SERVICES.

WHEREAS, the Montana Department of Environmental Quality (DEQ) has proposed to the City of Miles City that the City conduct certain water supply, wastewater, solid waste, and stormwater systems in subdivisions pursuant to 76-4-104 MCA;

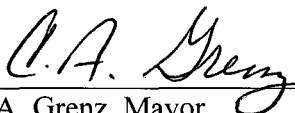
AND WHEREAS, DEQ has proposed to the City of Miles City a contract for such services under those terms, conditions, and compensation set forth in the contract (DEQ Contract #513016) attached hereto as Exhibit "A" and made a part hereof;

AND WHEREAS, upon review of such contract, the City Council finds that the terms, conditions, and compensation of the agreement are acceptable to the City of Miles City;

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

It does hereby authorize and approve the terms and conditions of the contract (DEQ Contract #513016), attached hereto as Exhibit "A" and made a part hereof, and hereby authorizes the Mayor of the City of Miles City to execute and bind the City of Miles City to the terms and conditions of such contract and to carry out its terms.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 13TH DAY OF NOVEMBER, 2012.


C.A. Grenz, Mayor

ATTEST:


Rebecca Stanton, City Clerk

CONTRACTORS COPY

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana **The Department of Environmental Quality**, (hereinafter referred to as DEQ), and **Miles City**, (hereinafter referred to as the "City"). This Contract is entered into for the purpose of delegating to the City, pursuant to Section 76-4-104, MCA, the authority to review certain water supply, wastewater, solid waste and stormwater systems in subdivisions. The City will review subdivision applications for completeness and to determine whether certain systems, which are identified in 4.1.3.4 and Attachment A comply with the Sanitation in Subdivisions Act, the Montana Water Quality Act, and applicable administrative rules and Circulars. The purpose of this Agreement is also to provide reimbursement to the City for performing site evaluations and related services for subdivisions, pursuant to ARM 17.36.804(3). The parties specifically agree it is not their intent that any provision of this Agreement is a cessation or waiver of any of the counties regulatory authority, including that set forth in Section 50-2-116 MCA. The parties, in consideration of mutual covenants and stipulations described below, hereby agree as follows:

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1. Contract Term. This Contract shall take effect on **September 1, 2012** and terminate on **June 30, 2013**, unless terminated earlier in accordance with the terms of this Contract.

1.2. Contract Renewal. This Contract may, upon mutual agreement between the parties and according to the terms of the existing Contract, be renewed in 1 year intervals, or another interval that is advantageous to DEQ. This Contract may not exceed any time limits imposed by statute.

3. COST/PRICE ADJUSTMENTS

3.1. Cost Adjustments by change in ARM 17.36.804. City will be reimbursed at rates established in ARM 17.36.804.

4. SERVICES AND/OR SUPPLIES

4.1. City agrees to:

4.1.1. Initial Receipt of Application and General Requirements. **City shall date stamp at least the first page of the application so DEQ can accurately enter the application into its database for tracking purposes. City shall send a copy of the first two pages of the application along with fees to DEQ. City shall check for waivers or deviations and forward these to DEQ within 5 working days.**

DEQ shall email the City an EQ number. All information received from the applicant must be date stamped by the City for tracking purposes. City shall notify DEQ by email when City denies and receives additional information. City shall send to DEQ electronic versions of all denial letters and approvals.

4.1.2. Completeness Review. City shall review all subdivision applications for completeness using forms approved by DEQ. If a subdivision application is incomplete, City shall submit a denial letter to the applicant. The letter must contain the results of the City's review and must specify any deficiencies in the application with references to sections of applicable rules and design standards. If the application is incomplete the City shall submit a denial letter to the applicant and send DEQ both an electronic & a hard copy of the denial letter.

4.1.3. Compliance Review. For complete applications, City shall perform a

detailed review of the water supply, wastewater, stormwater, and solid waste systems identified in Attachment A of this Agreement. The purpose of the detailed review shall be for the City to determine whether the systems proposed in the application comply with Sections 76-4-101 et seq., MCA ("Sanitation in Subdivisions Act"), Sections 75-5-101 et seq., MCA ("Montana Water Quality Act"), Sections 17.36.101 through 17.36.805 and Sections 17.30, subchapters 5 and 7 of the Administrative Rules of Montana ("ARM"), and the applicable Circulars promulgated pursuant to the Acts.

4.1.3.1. City review of wastewater systems must include review for compliance with the nondegradation requirements of the Water Quality Act and the state nondegradation rules.

4.1.3.2. City may not perform compliance review of water supply, wastewater, stormwater, or solid waste systems other than those identified in Section 4.1.3.4 and Attachment A of this Agreement.

4.1.3.3. City shall review the environmental assessment information provided by the applicant and shall be available to consult with DEQ regarding the completeness and accuracy of such information.

4.1.3.4. City shall perform compliance review, pursuant to Section 4.1.5 only for the systems indicated in **Attachment A**. City review authority under this Agreement does not extend to public systems whether required to be submitted by a Professional Engineer or not.

4.1.4. Time for Review. Within **45 days** of its receipt of a subdivision application, City shall either:

4.1.4.1. determine that the application is incomplete and issue a notice to the applicant; or

4.1.4.2. submit to DEQ the City's completed and signed review of the application, with all materials required by this Section.

4.1.4.3. If the subdivision includes public systems, any system not reviewable by City, or any system the City chooses not to review, City shall send the appropriate materials to DEQ for review within 5 days of receipt by City.

4.1.5. Contents of City Submittals to DEQ. City shall submit to DEQ the following materials regarding applications for subdivisions:

4.1.5.1. A completed application form signed by the owner and any information attached to the form;

4.1.5.2. Copies of all correspondence and other documents regarding the proposed subdivision. The documentation must provide adequate evidence that the plans and specifications for the proposed subdivision are in compliance with all applicable state laws, rules and Circulars;

4.1.5.3. The review fee and the subdivision review fee calculation form;

4.1.5.4. A completed and signed subdivision review checklist, in a form approved by DEQ, together with calculations, notes, and any other relevant information that provides adequate evidence that City has reviewed the application to ensure compliance with appropriate design standards;

4.1.5.5. A completed and signed nonsignificance determination checklist and all supporting documentation;

4.1.5.6. A certification, in a form approved by DEQ, stating that, based upon City's review of the application under applicable state laws, rules, and Circulars, the identified systems either do or do not comply with the applicable state requirements; and

4.1.5.7. If City recommends approval of a subdivision application, a completed and signed certificate of subdivision approval.

4.1.5.8. A copy of the water well sample sheet with the GWIC identification number written on it should be placed in the front of the file so DEQ can enter

water quality data and then forward it to GWIC.

4.1.6. Waivers and Deviations. If, for any water supply, wastewater, stormwater, or solid waste systems proposed in an application regardless of whether the system is designated for City review in Attachment A, the plans and specifications for the proposed subdivision would require a waiver from the DEQ subdivision rules or a deviation from the requirements of the DEQ Circulars, City shall notify the applicant of the required fee(s) and, upon receipt of those fees, prepare or have the applicant prepare a waiver/deviation request in a format approved by DEQ, together with a justification for the waiver/deviation from the applicant and City's recommendation.

4.1.6.1. City shall submit the waiver/deviation request to DEQ within 20 days of the City's receipt of the request and appropriate fees. DEQ shall respond to the waiver/deviation request within 20 days of DEQ's receipt of the request.

4.1.6.2. City may not recommend approval of a subdivision application until all necessary waiver/deviation requests have been approved by DEQ.

4.1.7. DEQ Consultation. Upon request of the City, DEQ agrees to provide consultation to City regarding the subject matter of this agreement.

4.1.8. Site Evaluations. City shall perform site evaluations and related services for subdivisions, pursuant to ARM 17.36.804(3), as mutually agreed by City and DEQ.

4.1.9. As-Built Lot Layout Review. City may perform the review of minor changes to a certificate of subdivision approval made through an "As-Built" lot layout document. Unless otherwise provided by DEQ rules, only the following changes may be made through the "as-built" procedure:

4.1.9.1. Relocations of water or wastewater systems provided that the changes comply with Title 76, chapter 4, part 1, MCA; Title 17, chapter 36, ARM; and all related rules and regulations, for example,

- 1) moving the location of a well or cistern within the lot boundaries provided the new location meets separation distances and will not adversely change the quality, quantity and dependability of the water supply,
- 2) moving the location of the wastewater treatment system within the lot boundaries provided the new location meets separation distances and site evaluation criteria, and the wastewater system is sufficient in terms of capacity and dependability.

4.1.9.2. Changes to water or wastewater systems that do not significantly affect the approval statement of the subdivision, for example:

- 1) replacing distribution piping with gravelless chambers or vice versa in accordance with Circular DEQ-4,
- 2) replacing a standard trench system with a pressure-dosed system that is designed according to Circular DEQ-4 and reviewed by the certified reviewer,
- 3) replacing a previously approved system with a similar system designed in accordance with the current version of Circular DEQ-4,
- 4) replacing components in a previously approved system with similar components that meet criteria in Circular DEQ-4, and
- 5) adding a water or wastewater treatment system that provides greater treatment than the approved system provided the approved system is installed and used as a redundant system and the new treatment system does not interfere with the operation of the approved system,
- 6) installing any Level 2 system in place of any other Level 2 system through the as-built process as long as no other facilities are changing,

7) approving changes to sizes of approved systems unless there is a limitation on the ground that can not be overcome. If the Certificate of Subdivision Approval is for a 3 bedroom home the City may issue a permit for a larger home unless there are limitation caused by the soils, slope etc.

4.1.9.3. The “as-built” lot layout document must be submitted to the Department and filed with the Clerk and Recorder within 30 days of approval.

4.2. DEQ oversight of the City’s review of subdivision applications shall be limited to the following:

4.2.1. DEQ shall determine, by reviewing the City review checklist or by other means, whether the City has conducted a completeness review of the application and whether the City has completed compliance review of all systems designated in Section 4.1.3.4 and Attachment A. If DEQ determines that the City has not conducted a completeness review or has not reviewed all designated systems, DEQ may either return the application to the City for further review or may itself complete the review. If the City fails to conduct any part of the review required under this Agreement within the **45-day** review period for the application, DEQ shall withhold the portion of the fee applicable to that portion of the review.

4.2.2. DEQ may, during the **55-day** review period, check the accuracy of the City’s review of subdivision applications, for purposes of determining City’s compliance with the reviewer qualification and performance standards set out in Section 5. DEQ accuracy checks shall be limited to 10% of the applications submitted to DEQ by City, except that DEQ may also review an application upon the City’s request, or when DEQ has reason to question the City’s determination for a particular submittal. If DEQ identifies possible errors or discrepancies in the City’s review of a specific application, DEQ shall consult with the City’s reviewer. If, after consultation with the City, DEQ does not agree with the City’s determination regarding an application’s compliance with applicable state laws, rules and Circulars, DEQ may, prior to the expiration of the review period for the application, modify the City determination regarding the state requirements.

4.2.3. In addition to or instead of checking City’s review of applications during the review period, DEQ may conduct an annual audit of a representative sample of applications reviewed by City, for purposes of determining City’s compliance with the reviewer qualification and performance standards set out in Section 5.

5. KEY PERSONNEL; REVIEWER QUALIFICATIONS AND PERFORMANCE STANDARDS

5.1. City review of subdivisions under this Agreement may be performed only by **Michael Rinaldi RS** or by another person approved by DEQ. In the event a DEQ-approved reviewer becomes unavailable to work under this Agreement, City shall immediately notify DEQ of the fact and shall name a proposed substitute, along with justification in sufficient detail to allow DEQ to evaluate the ability of the substitute. City may not use a substitute until DEQ has approved the substitute in writing, which approval shall be deemed a part of this Agreement.

5.2. Minimum qualifications. City reviewers must meet the qualifications set out in ARM 17.36.116, to include:

5.2.1. Registered sanitarian or registered professional engineer;

5.2.2. Pass, with a score of at least 90%, the current written exam administered by the DEQ; and

5.2.3. Minimum of 1 year’s experience performing subdivision review as provided in ARM 17.36.116(2)(b).

5.3. Training. DEQ may require City reviewers to comply with training and examination requirements as necessary to ensure that reviewers are qualified to accurately review the systems identified in Attachment A.

5.4. Performance standards. City's review of subdivision applications must demonstrate a consistent and accurate level of performance in evaluating whether systems identified in Attachment A comply with applicable state laws, rules and Circulars. City must also ensure that documentation in applications is complete, accurate, and adequately demonstrates that the application complies with applicable state laws, rules and Circulars.

5.5. Remedies. If the City fails to meet the performance standards set out in Section 5.4 above, DEQ may, after consultation with City, issue a written determination that the City reviewer is not qualified to review subdivisions under this Agreement. If disqualification of the reviewer results in the City lacking a qualified person to review subdivisions, then the DEQ may terminate this Agreement pursuant to Section 15.

6. CONSIDERATION/PAYMENT

6.1. In consideration of services rendered pursuant to the Contract, DEQ agrees to reimburse City, on a quarterly basis, the fees set out in the most current version of ARM 17.36.804 for the subdivisions that City reviews, and for site evaluations and related services. DEQ will not reimburse City for any component of a review not performed by City.

7. ACCESS AND RETENTION OF RECORDS

7.1. Access to Records. The City agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Montana Code Annotated § 18-1-118.)

7.2. Retention Period. The City agrees to create and retain records supporting the services performed by the City listed in section 4.1 for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation or exception relating to this Contract taken by the State of Montana or a third party.

8. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The City may not assign, transfer or subcontract any portion of this Contract without the express written consent of DEQ. The City shall be responsible to DEQ for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the City. No contractual relationships exist between any subcontractor and DEQ.

9. HOLD HARMLESS/INDEMNIFICATION & INSURANCE COVERAGE

Each party agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees, to the full extent required by law, and agrees to indemnify and hold the other party harmless from any such liability.

Each party agrees to maintain reasonable coverage for such liabilities, either through commercial insurance or a reasonable self-insurance mechanism, and the nature of such insurance coverage or self-insurance mechanism will be reasonably provided to the other party upon request.

10. REQUIRED INSURANCE

10.1. General Requirements. The City shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the City, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

10.2. Specific Requirements for Commercial General Liability.

The City shall purchase and maintain coverage for bodily injury, personal injury, and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the City or its officers, agents, representatives, assigns or subcontractors.

10.3. Certificate of Insurance/Endorsements.

A certificate of insurance from an insurer with a Best's rating of no less than A-, indicating compliance with the required coverages, was received by the Department of Environmental Quality prior to execution of this Contract. The City must notify DEQ immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. DEQ reserves the right to require complete copies of insurance policies at all times.

11. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither the City nor its employees are employees of DEQ. City and any subcontractor must comply with the provisions of the Montana Workers' Compensation Act while performing work for DEQ in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent City's exemption, or documentation of corporate officer status. This insurance or exemption must be valid for the entire term of the Contract. If the insurance or exemption used as proof of compliance expires during the term of this Contract or a renewal, City shall immediately send proof of current insurance/exemption.

12. COMPLIANCE WITH LAWS

The City and any subcontractor must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the City subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the City agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

13. CONFLICT OF INTEREST

For the purposes of the Montana Code of Ethics, City and each of its employees and subcontractors is a "public employee" for the purposes of this Contract. As such, City and each of its employees and subcontractors is subject to the requirements of Title 2, Chapter 2, MCA, regarding conflicts of interest, including but not limited to sections 2-2-104, 2-2-105, 2-2-121, and 2-2-201, MCA.

If DEQ discovers that an employee of City is in violation of this Section, DEQ may, after consulting with City, terminate this Contract or take other appropriate measures to address the conflict and City shall reimburse DEQ for any services DEQ requires be performed by another City that duplicate the services performed by the employee who violated this Section.

14. DISCLOSURE

City agrees to notify DEQ of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). In the event that a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

City certifies that it has identified all current employees and proposed subcontractor's employees that will perform work under this Contract and that have worked for the State of Montana in the last two

years prior to the effective date of this Contract. City further certifies that, pursuant to §2-2-105(3), MCA, no former employee of DEQ, the State of Montana or local government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee's public employment. Pursuant to §2-2-201, MCA, a former employee of state or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former public employee was "directly involved", as defined in §2-2-201, MCA, during employment. City further certifies it shall identify any new employees hired during this Contract that will perform work under this Contract and that have worked for the State of Montana in the last two years prior to the effective date of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

15. CONTRACT TERMINATION

15.1. Termination for Cause with Notice to Cure Requirement. DEQ may terminate this Contract for failure of the City to perform any of the services, duties, or conditions contained in this Contract after giving the City written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

15.2. Reduction of Funding. The City understands and agrees that DEQ, as a state agency, is dependent upon state appropriations for its funding; and that actions by the Montana Legislature may preclude funding this Contract through the completion date stated in Section 2. Should such a contingency occur, the parties agree that DEQ may set a new completion date, depending upon the funding remaining available for services rendered and expenses incurred to 5:00 pm of the revised completion date.

16. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of DEQ shall be through a single point of contact designated as DEQ's liaison. City shall designate a liaison that will provide the single point of contact for management and coordination of City's work. All work performed pursuant to this Contract shall be coordinated between DEQ's liaison and the City's liaison.

Barbara Kingery PE will be the liaison for DEQ.

Permitting & Compliance Division

PO Box 200901

Helena MT 59620-0901

Telephone: 406-444-5368

Fax:406-444-1923

E-mail: BKingery@mt.gov

Michael Rinaldi RS will be the liaison for the City.

PO Box 743, Lewistown MT 59457

Cell Phone: 406-366-1424 - E-mail: tmbwod@gmail.com

DEQ's liaison and City's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

17. INTERPRETATION OF LAW, REGULATIONS AND CHOICE OF VENUE

17.1. Interpretations of state laws and regulations relating to subdivision review are the sole responsibility of DEQ. City laws and regulations pertaining to subdivision review will be interpreted solely by City. This Agreement is governed by the laws of Montana.

17.2. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in and for the City of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

18. SCOPE, AMENDMENT AND INTERPRETATION

18.1. **Contract.** This Contract consists of 8 numbered pages and an Attachment A.

18.2. **Entire Contract.** These documents contain the entire Contract of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

19. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

Miles City

10/17/12
DATE

BY: Chris Grenz
Chris Grenz, Mayor
City of Miles City
PO Box 910
Miles City, MT 59301-0910
Federal Employer's ID No.: 81-6001292

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

10/03/12
DATE

BY: Vicki J. Woodrow
VICKI J. WOODROW, Contracts Officer

Financial Services
Metcalf Building, Room 003
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Legal Content:

9/21/12
DATE

BY: James Madden
James Madden, DEQ Attorney

ATTACHMENT A

Water supply systems

- Individual, and shared wells, cisterns
- Multiple user wells, cisterns
- Connections to existing public systems

Wastewater Systems

- Standard absorption trench systems
- Sand-lined absorption trench systems
- Gravelless absorption trench systems
- At-grade absorption trench systems
- Pressure distribution systems
- Sand mound systems
- Intermittent sand filter systems
- Level II Systems
- Evapotranspiration and evapotranspiration absorption systems
- Connections to existing public systems

Stormwater

- Nonengineered stormwater systems

Solid Waste

- Off-site disposal

As-builts

- As-built lot layouts modifications