

**RESOLUTION NO. 3638**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSULTANT SERVICES AGREEMENT WITH DOWL HKM FOR CONSTRUCTION ADMINISTRATION SERVICES RELATED TO SIDEWALK CONSTRUCTION FOR SAFE ROUTES TO SCHOOL PROGRAM.**


*WHEREAS*, the City of Miles City desires to construct certain sidewalks linking the Miles City Head Start to the existing sidewalks at the corner of North Montana Avenue and Lincoln Streets;

*AND WHEREAS* the Community Transportation Enhancement Program (CTEP) has selected DOWL HKM to provide construction administration services to the City of Miles City, Montana, and the City wishes to contract with DOWL HKM to provide such services;


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

1. The Consultant Services Agreement, between DOWL HKM and the City of Miles City, attached hereto as Exhibit "A", and incorporated herein, is hereby approved and adopted by this Council subject to final written approval of the City Attorney.
2. The Mayor of the City of Miles City, upon written approval of the City Attorney, is hereby empowered and authorized to execute said Construction 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 Construction 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 24<sup>th</sup> DAY OF SEPTEMBER, 2013.**

  
C.A. Grenz, Mayor

ATTEST:

  
Lorrie Pearce, City Clerk

## **CONSULTANT SERVICES AGREEMENT**

This Agreement is made and entered into this 24th day of September 2013, by and between City of Miles City, from now on referred to as the Local Entity, and DOWL HKM, from now on referred to as the Consultant, whose principal office is located at 222 North 32<sup>nd</sup> Street, Suite 700, Billings, Montana 59101.

The Montana Department of Transportation, herein referred to as MDT, has approved the proposed Local Entity's enhancement project funded under Montana's Federal-aid Community Transportation Enhancement Program (CTEP).

The Local Entity desires to employ the Consultant to furnish certain specific services of an engineering nature. The Consultant agrees to provide such services in accordance with the conditions provided and to carry out all the duties and obligations imposed by the Agreement.

The Consultant agrees to provide the Local Entity with project development and design for Federal-aid Project Number SRTS 8099(10), Garfield Sch Walks – Miles City, Uniform Project Number 7982000.

This project will involve designing approximately 1-mile of six-foot wide sidewalk linking the Miles City Head Start to existing sidewalks at the corner of North Montana Avenue and Lincoln Street.

The Consultant may obtain copies of all manuals, guidelines and other MDT documents from the CTEP Section. Consultant may be charged for copies of documents.

### **Article I – Scope of Work**

#### **SECTION 1 – STANDARD OF CARE**

The Consultant's performance on all services, obligations and responsibilities under this Agreement will be in a manner that is consistent with that degree of care and skill ordinarily exercised by members of the engineering profession currently practicing under similar circumstances at the same time and locality.

#### **SECTION 2 – GENERAL**

The Consultant, in performance of all work called for under this Agreement, will furnish all services for Miles City Safe Routes to School Sidewalk Construction called for in the specific project scope outlined in Section 4 of this Article. The Consultant will assist the Local Entity in the advertisement and award of the construction contract.

#### **SECTION 3 – PROJECT DEVELOPMENT AND DESIGN**

The Consultant will develop the project; conduct all necessary surveys, evaluations, environmental research, documentation and analyses; perform designs and prepare project manuals for the project.

Project development will be in accordance with the *MDT CTEP Manual*. The Consultant's work will be performed in accordance with the most current version of the following documents, as applicable:

- *MDT CTEP Manual,*
- *Appendix CTEP Manual of CSA,*
- *MDT Road Design Manual,*
- *MDT Structure Manual,*
- *MDT Hydraulics Manual,*
- *MDT Survey Manual,*
- *MDT Right-of-Way Operations Manual,*
- *MDT Traffic Engineering Manual,*

- *MDT Construction Administration Manual,*
- *MDT Environmental Manual,*
- *AASHTO Standard Specifications for Highway Bridges,*
- *MDT Detailed Drawings,*
- *MDT Project Development Procedures,*
- *MDT Standard Specifications for Road and Bridge Construction,*
- *MDT Consultant Services Manual,*
- *Manual on Uniform Traffic Control Devices (MUTCD),*
- *American Society for Testing and Materials (ASTM),*
- *Montana Materials Manual of Test Procedures,*
- *MDT CADD Standards Manual,*
- *Approach Standards for Montana Highways,*
- *MDT Public Involvement Handbook,*
- *AASHTO Guide for the Development of Bicycle Facilities,*
- *AASHTO Guide Specification for Design of Pedestrian Bridges, and*
- *Montana Public Works Standard Specifications.*

#### **SECTION 4 – SPECIFIC PROJECT SCOPE**

See Exhibit 'E'

#### **SECTION 5 – REPORTS**

- A. The Consultant will prepare the minutes for all meetings involved with the project and provide a copy of each to the Local Entity.
- B. The Consultant will identify and justify all exceptions to design standards (see Art. I, Sec. 3) that are found to be necessary during the design of the Project. The justification must include economic analysis. The Consultant will submit a Design Exception Request to the Local Entity for approval by MDT.

#### **SECTION 6 – OBLIGATIONS OF THE LOCAL ENTITY TO THE CONSULTANT**

In addition to the obligations of the Local Entity to the Consultant listed elsewhere in this agreement, the Local Entity will:

- A. Cooperate with the Consultant in making necessary arrangements with public officials as the Consultant may need to contact for advice, counsel and information.
- B. Provide timely approvals of the Consultant's formal submittals in writing in all instances. If verbal approvals are given in the interest of progressing the work, they must be confirmed in writing by the Local Entity at the earliest possible time.
- C. The Local Entity will provide the Consultant with any information needed by the Consultant for rendering the services required under this Agreement. If materials prepared by the Local Entity or its consultants are incomplete or erroneous, the Local Entity will compensate the Consultant for any work required to correct them. Information generated by sources other than the Local Entity, MDT or their consultants may be used by the Consultant, but the Local Entity and MDT assumes no liability for its accuracy or completeness.
- D. Furnish copies of the Local Entity's existing as-built construction and right-and-way plans (as available).

- E. The Local Entity will not reuse, make or permit to be made any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The Local Entity will make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.
- F. Give prompt written notice to the Consultant of any development that affects the scope or time of performance of the Consultant's services, or any defect or nonconformance in the Consultant's services or in the work of any subconsultant.

#### **SECTION 7 – CONFERENCES, PROGRESS REPORTS AND LIAISON**

- A. Conferences will be held as necessary between representatives of the Local Entity and the Consultant to review and discuss progress and any matters pertinent to any phase of work. Additional compensation will not be made for those conferences.
- B. The Consultant will be responsible to and will report to Dawn Colton, City of Miles City, for payment, submission of information, etc. All submittals will be made through Doug Enderson, P.E., PTOE, who will be the Consultant's liaison.
- C. Requests for visits to the site or at the office of the Consultant may be made by the Local Entity, representatives of the MDT, Federal Highway Administration or the Consultant in conjunction with any other party or parties for the purpose of review or inspection of the work.
- D. The Consultant will furnish to the Local Entity a brief narrative progress report on the first day of each month showing the status of the work on the Project. The report will cover all phases of work accomplished during the period of the report and show the percentage of work completed for each phase of the Project. Mention should be made of any matters that may have adversely affected the progress of the work.
- E. The Consultant, upon Local Entity's direction, will confer with public agencies, including planning authorities, giving consideration to suggestions and plans of these agencies.
- F. The Consultant will submit to the Local Entity the professional history, classification and salary of each person to be assigned to the Project. The Local Entity will reserve the right to approve all personnel and will so inform the Consultant of approval in writing.

#### **SECTION 8 – PERSONNEL**

The Consultant must employ a registered Professional Engineer or Architect in the State of Montana.

#### **SECTION 9 – ENDORSEMENTS**

The Consultant will furnish professional stamps, statements or other suitable means to signify responsible endorsement of work.

## **Article II – Time of Beginning and Completion**

### **SECTION 1 – PROJECT COMPLETION TIME**

- A. The Consultant agrees to start work on the professional services outlined in Article I of this Consultant Services Agreement within 10 days after receipt of written notice to proceed from the Local Entity.
- B. The mutually agreed to Project Schedule, Exhibit E, is made a part of this Agreement. Except as provided below, the Consultant must meet all deadlines and scheduled submittal dates. The Consultant will make reasonable efforts to improve on the schedule.
- C. Except as provided below, all work as specified in Article I of this Agreement must be completed by December 31, 2014.
- D. If during the Project development, the Consultant becomes aware of circumstances that have or may have an adverse affect on the scheduled completion of any or all phases of the Project, or that the Consultant will be unable to meet any schedule deadlines or submittal dates, the consultant will immediately notify the Local Entity in writing. The Local Entity and the Consultant will together take the steps necessary to maintain the Project on schedule. The Project completion schedule will be adjusted only if necessary.
- E. The Consultant is not responsible for delays caused by factors beyond the Consultant's control, including delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Local Entity to furnish timely information or approve or disapprove of the Consultant's services or work product promptly or delays caused by faulty performance by the Local Entity.
- F. The Consultant submits the final contract plans package to the Local Entity and MDT for review. The Consultant will make any revisions to the plans that are required as a result of this review.
- G. Any alteration in the time schedule under Article II, Section 1C, shall be subject to the provisions of Article II, Section 2A.

### **SECTION 2 – CHANGES**

- A. If additional work is requested by the Local Entity or delays beyond the control of the Consultant prevent completion of the services to be performed under this Agreement in the time specified, the Local Entity will grant an equitable adjustment of the Agreement amount and/or time for performance for all affected phases of the work. The Consultant shall provide a written request for an adjustment within 10 days from the date the Consultant receives notice of the reasons for the requested adjustment.

## **ARTICLE III – Payment**

### **SECTION 1 – PAYMENT FOR SERVICES**

This Agreement will be administered on a cost plus fixed fee basis. The salaries, overhead rate, salary additive rate and other compensatory rates, as included in the Consultant's cost proposal, Exhibit B, will remain fixed for the duration of this Agreement. However, the Consultant may make written request to the Local Entity to make revisions to the above rates. The Local Entity may approve revisions if they are reasonable and justified.

## SECTION 2 – DEFINITIONS

### A. Payroll Costs

1. Payroll costs shall be defined as the actual salaries and payroll items of all personnel working on the Project. The Local Entity agrees to pay actual payroll items including Social Security, Unemployment Compensation, excise and payroll taxes, employees' compensation insurance, sick leave, vacation, holiday pay and employees' retirement, employee medical and disability insurance, in addition to actual salaries. The Local Entity agrees to reimburse the Consultant for overtime at the rate of one and one-half (1½) times the hourly rate paid each employee. Requests for authorization of overtime will require prior written approval of the Local Entity.
2. Overtime is all hours worked in excess of 40 hours per week.
3. The hourly rate for salaried employees shall be determined from their annual salary divided by 2080 hours.

### B. General Administrative Overhead

General administrative overhead of the Consultant is applicable to the payroll costs described in Paragraph A "Payroll Costs". Overhead may include, but not be limited to, the following: administrative, clerical and unallocated labor; employee bonuses and incentive awards; general travel expenses; depreciation; dues and subscriptions; computer and equipment expense; equipment rental; freight; general business insurance; employee travel accident and life insurance; legal and accounting; office, drafting room and laboratory supplies; professional society fees; recruiting; rent; building and equipment repairs and maintenance; taxes and licenses; telephone and telegraph (except toll charges specifically related to each individual project); general travel and employee relocation; utilities and janitorial services and office miscellaneous expense. Specifically excluded are bad debts and interest on borrowed capital.

### C. Out-of-Pocket and Subcontract Costs

1. Subcontractor charges directly related to the Project will be reimbursed at cost. All subcontract costs require approval of the Local Entity.

### D. Payment of Services

Payment will be made on the basis of and in accordance with the following schedules:

1. The Consultant will be reimbursed for the actual payroll costs as set forth in Article III, Section 2, Paragraph A, for the time employees are directly used on work necessary to fulfill the terms of this Agreement. To this amount will be added the general administrative overhead costs as set forth in Article III, Section 2, Paragraph B.
2. The Consultant will be reimbursed for actual out-of-pocket expenses and subcontract costs as specified in Article III, Section 2, Paragraph C.
3. The Consultant will be paid a fixed fee (profit) not to exceed \$6,469 dollars.
4. The total payment to the Consultant (including payroll costs, out-of-pocket expenses, subcontract costs and fixed fee) for the work covered under this Agreement will not exceed \$65,585 dollars.
5. All costs related to this project are to be in conformance with 48 CFR 31, *Contract Cost Principles and Procedures*.

**E. Partial and Final Payments**

Partial payments of the foregoing will be made at monthly intervals as the work progresses, based upon certified invoices received, compatible with current practices and acceptable to the Local Entity. Payments on the fixed fee will be based on the estimated percentage of completion of work. Every request for payment must include one original and 1 copy of the certified invoice, along with 1 copy of the progress report.

When the Consultant completes the work in accordance with the terms of the Agreement, the Local Entity's liaison will certify the completion and recommend final acceptance. The Local Entity will notify the Consultant that acceptance has been made.

The Local Entity reserves the right to withhold payment of the Consultant's final payment until any and all just claims filed with the Local Entity against the Agreement have been settled. Accomplishment of an affidavit on the final claim by the Consultant will constitute full Acceptance by the Consultant of the total amount shown as the entire amount due the Consultant under the agreement.

**F. Consultant's Proposal and Cost Estimate**

The attached Consultant's Proposal and Cost Estimate, Exhibits D & E, is made a part of this Agreement. If this document conflicts with the Agreement, the Agreement will govern.

**SECTION 3 – INSPECTION AND AUDIT**

All books, papers, records, payrolls, vouchers and invoices relating to costs and expenditures incurred as to the performance of the services specified in Article I by the Consultant or any of its subcontractors will be made available to the Local Entity, MDT, the Legislative Auditor and Legislative Fiscal Analyst, the Federal Highway Administration or their authorized representatives, for audit and review, at the Consultant's respective offices, at all reasonable times during the Agreement period and for 3 years from the date of final MDT payment.

**SECTION 4 – TYPE OF CONTRACT**

The Consultant agrees that this is a Consultant Services Agreement and that they are an independent contractor and not an employee of the Local Entity or MDT. It is further understood by the Consultant that no deductions from the payments under this Agreement for Federal or State income tax, FICA (social security), retirement or other reasons will be withheld by the Local Entity or MDT.

**Article IV – Miscellaneous Provisions**

**SECTION 1 – TERMINATION OR ABANDONMENT**

The Local Entity may terminate this Agreement at any time with 15 days written notice to the Consultant, for any of the following:

- If it is in the best public interest to abandon, reduce or change the Project covered by this Agreement. If the Local Entity believes this is appropriate, this Consultant Agreement will be terminated.
- Adverse weather, flood, earthquake, etc., or any other condition beyond the control of the Local Entity and/or Consultant, which may adversely affect the work to be performed, this Agreement may be terminated by the Local Entity.
- A change in the scope, character or complexity of all or any part of the work under this Agreement, the Local Entity may decide that it is in the best public interest to terminate this Agreement.

- If services of the Consultant prove unsatisfactory or because of the failure of the Consultant to perform its work with due diligence or to complete the required services or any part of it within the time limits specified, this Agreement may be terminated.

In these cases, the Consultant will be paid the reasonable value of services rendered up to the time of termination. The reasonable value of services will be based on the method of payment as defined in the Agreement. The approved percentage of completion will be determined by mutual agreement between the Local Entity and the Consultant.

## **SECTION 2 – GENERAL COMPLIANCE WITH LAWS**

- A. The Consultant will observe and comply with existing laws, ordinances and regulations.
- B. The Consultant agrees to indemnify and hold harmless the Local Entity, State and MDT, their officials, agents and employees, while acting within the scope of their duties, from and against all claims, demands and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Consultant's negligent acts, errors or omissions arising out of services performed or in any way resulting from a negligent act, error or omission of the Consultant and/or its agents, employees, subcontractors or representatives under this Agreement.
- C. The Local Entity agrees to indemnify and hold harmless the Consultant from and against all claims, demands and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Local Entity's negligent acts, errors or omissions arising out of services performed or in any way resulting from a negligent act, error or omission of the Local Entity and/or its agents or employees under this Agreement.
- D. The Local Entity will furnish copies of the existing as-built construction and right-of-way plans (as available).
- E. The Local Entity will not reuse, make or permit any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The Local Entity will make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.

## **SECTION 3 – OWNERSHIP OF DOCUMENTS**

On completion of services or termination of this Agreement, all drawings, map originals, survey notes, field books, calculations, reports and all data used will become the property of the Local Entity. Following their acceptance of these documents, the Consultant will be indemnified, defended and held harmless only for any changes or revisions to the plans and related documents that the Consultant prepares under this Agreement that are made without Consultant's knowledge and written consent.

## **SECTION 4 – SUBCONTRACTING, ASSIGNMENT OR TRANSFER**

The subcontracting, assignment or transfer of any part of this Agreement, except as shown in the Consultant's proposal, is prohibited unless prior written approval is obtained from the Local Entity. Subcontracts that exceed \$10,000 in cost will contain all required provisions of the prime agreement.

## **SECTION 5 – CHANGES OF WORK**

If, during the term of the Agreement, additional services are required, other than those services specified above, or major changes in the work become necessary or desirable, the Local Entity may make written request to the Consultant to perform these services or make changes. If the Consultant is of the opinion that any work requested beyond the scope of this Agreement and constitutes extra work, the Consultant



will promptly notify the Local Entity in writing prior to performing work. If the Local Entity agrees that this work does constitute extra work, the Consultant will be reimbursed on a mutually agreed basis, and additional time for completion of the Agreement shall be given. Before work is undertaken, the Consultant and the Local Entity will, by mutual written agreement, determine the scope of the work and the cost thereof.

Compensation will be determined before the operations begin and as soon as circumstances permit. If a mutual agreement is not reached in negotiations for an increase in work, the Local Entity will use other methods to accomplish the work.

## **SECTION 6 – MEETINGS AND PRESENTATIONS**

The Consultant and its subcontractors, when directed by the Local Entity, will attend and make appropriate presentations at meetings conducted for the purpose of discussing with the public or local, State and Federal officials the effect and objectives of the proposed project or other matters pertaining to the Project.

The Consultant will prepare exhibits and visual aids necessary to clarify the proposed project to the participants of the meetings.

## **SECTION 7 – ACCURACY OF WORK**

The Consultant will make necessary revisions or corrections resulting from errors and omissions on the part of the Consultant without additional compensation (see Art.I, Sec.1).

If any errors are made by the Consultant in any phase of its work under this Agreement that may require additional field or office work, the Consultant will be promptly notified in writing and will be required to perform additional work as necessary to correct these errors without undue delay and without additional cost to the Local Entity. Acceptance of its work will not relieve the Consultant of the responsibility for subsequent correction of any errors and the clarification of any known ambiguities.

Construction problems or conflicts arising as a Local Entity of design or plan errors or omissions will be considered the Consultant's responsibility. The Local Entity will be responsible for any unreasonable interpretation it makes of the Consultant's design, drawings and plans. The Consultant will be notified of all errors and omissions and will meet with Local Entity representatives to assist in determining corrective action at no cost to the Local Entity. If design errors are found to be a cause of the construction problem or conflict, the Consultant will have the opportunity to be involved in discussions to determine the desired corrective action. Following discussions between the Local Entity and the Consultant, the Local Entity will provide the Consultant with its written demand letter for the total costs of the corrective action.

The Consultant agrees to provide proof of errors and omissions insurance coverage not less than \$1,000,000 (one million dollars) for the entire period of the Project for which consultant services are required under this Agreement.

## **SECTION 8 – VENUE**

In the event of litigation, venue shall be the 16th Judicial District in and for the County of Custer, State of Montana, and the Agreement shall be interpreted according to the laws of Montana.

## **SECTION 9 – NONDISCRIMINATION**

Reference is made to Exhibit C, which by this reference is hereby made a part of this Agreement.

## **SECTION 10 – CERTIFICATION**

The parties to this Agreement have each executed a certification. The certification of the Consultant, labeled Exhibit A, is attached and by this reference made a part of this Agreement. The certification of the Local Entity, labeled Exhibit B, is attached and by this reference made a part of this Agreement.

#### **SECTION 11 – DBE GOAL**

The Consultant will make all reasonable efforts to use MDT's currently certified DBE firms for applicable subcontracting services that are necessary. The Appendix CTEP Manual of CSA contains instructions for accessing the current Internet listing of MDT's certified DBE firms. Contact the MDT Compliance Section, should subcontracting opportunities arise.

Each invoice submitted in accordance with Article III, Section 2E, must state the established DBE goal for the project and the current and cumulative amounts expended to date towards that goal.

#### **SECTION 12 – WORKER'S COMPENSATION COVERAGE**

The Consultant agrees to provide proof that he has a policy for Worker's Compensation Insurance or proof that they have elected to be exempt from coverage and this election has been approved by the Department of Labor and Industry. The Consultant agrees to maintain Worker's Compensation Coverage or be self-insured for the entire period of this Agreement.

#### **SECTION 13 – CONSULTANT'S PLANS RESPONSIBILITY**

The Consultant will be responsible for the quality of the final plans package (see Art. I, Sec. 1), as the Local Entity will not make a detailed check of the plans. The Consultant will stamp and sign the title sheet of the final contract plans package. The Consultant's name will be shown on all plan sheets of the Project. If Specialty Plans are involved (e.g., Bridge Plans, Sewer/Water Plans prepared for a city and included into the Local Entity's plan package), the Consultant will stamp and sign each page of the plans. The final plans package will be assembled and shall take on the form of a Project Manual and drawings as defined in the *CTEP Manual*.

#### **SECTION 14 – ENTIRE AGREEMENT AND MODIFICATIONS**

This Agreement, including referenced or attached documents, is the entire agreement of the parties. Any modification requires a written amendment signed by authorized representatives of both parties.

#### **SECTION 15 – THIRD PARTY BENEFICIARIES**

This Agreement is not intended to create anyone as a third party beneficiary or to authorize anyone not a party to the Agreement to maintain an action for damages pursuant to the terms or provisions of this Agreement.

#### **SECTION 16 – CONFIDENTIALITY OF INFORMATION**

The Consultant understands that the information contained in this Agreement will be part of the public bidding process, and that it must remain confidential between the Consultant and the Local Entity until the Project has been awarded. Failure by the Consultant or its employees to keep that information confidential is considered a breach of this Agreement, and may require the Local Entity to have another consultant rework the product of this Agreement, potentially delaying the Project and costing the Local Entity additional funds. Such an act by the Consultant will be a violation of Art. IV, Sec. 2, and subject all persons or parties involved to possible debarment under ARM Sec. 18.d.101 et seq.

In witness, the parties have sealed this Agreement by their signatures.

## Dawn Colton

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**From:** Enderson, Douglas  
**Sent:** Monday, September 30, 2013 4:37 PM  
**To:** Dawn Colton  
**Subject:** RE: SRTS contract

Dawn –

The contract came in the mail today!! It has been signed and returned to you. We didn't fill out Federal Employer's ID number because MDT does not want it on contracts anymore. Since this was a CTEP contract and MDT/CTEP has our ID number on file, we left it blank at their request.

Let me know if you have questions or concerns.

Thanks – Doug

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**From:** Dawn Colton [mailto:dawncolton@milescity-mt.org]  
**Sent:** Monday, September 30, 2013 11:42 AM  
**To:** Enderson, Douglas  
**Subject:** RE: SRTS contract

The contract was mailed Friday – hope you will see it today!

Dawn Colton

*City of Miles City*  
*Community Services and Planning*  
*P - 406-234-3493 F - 406-234-6392*  
*E - [dawncolton@milescity-mt.org](mailto:dawncolton@milescity-mt.org)*

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**From:** Enderson, Douglas [mailto:denderson@dowlhkm.com]  
**Sent:** Wednesday, September 25, 2013 8:31 AM  
**To:** Dawn Colton  
**Subject:** RE: SRTS contract

That's great news! Thanks, Dawn! I'll notify our team and we'll be ready when the signed contracts come through.

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**From:** Dawn Colton [mailto:dawncolton@milescity-mt.org]  
**Sent:** Wednesday, September 25, 2013 8:13 AM  
**To:** Enderson, Douglas  
**Subject:** RE: SRTS contract

The contract was approved last night! I'll request a Notice to Proceed from CTEP and get signed copies back to you.

Dawn Colton

*City of Miles City*  
*Community Services and Planning*  
*P - 406-234-3493 F - 406-234-6392*  
*E - [dawncolton@milescity-mt.org](mailto:dawncolton@milescity-mt.org)*

**Approved for the Consultant**

By: JOHN A. SHOFF, V.P.

By/Date: John A. Shoff 9-30-13

By/Date: \_\_\_\_\_

**Federal Employer's ID Number**

Attest By/Date: \_\_\_\_\_

**Approved for the Local Entity**

By: C.A. Gung

By/Date: 9/25/13

Attest By/Date: 9-25-13 Anne Kane

**Approved for Legal Content**

By/Date: [Signature] 9/26/13  
Local Entity Legal Services

## EXHIBIT "A"

### CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of DOWL HKM, whose address is 222 North 32<sup>nd</sup> Street, Suite 700, Billings, Montana 59101 and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:
  - a. has employed or retained for commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
  - b. has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
  - c. has paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; with no exceptions.
2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:
  - a. is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any Federal agency or any agency of any State government;
  - b. has, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - c. is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2.b of this certification; or
  - d. has had one or more public transactions terminated for cause or default within a three-year period preceding this Agreement.
3. That to the best of my knowledge and belief:
  - a. no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement; and
  - b. if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a

Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the City of Miles City, State of Montana, Department of Transportation and the Federal Highway Administration, in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

9/25/13  
Date

C.A. Gung  
Signature

## EXHIBIT "B"

### CERTIFICATE OF THE LOCAL ENTITY

I hereby certify that I am the Mayor of the City of Miles City of the State of Montana, and that the above consulting firm, or his representatives, has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- a. employ or retain, or agree to employ or retain, any firm or person, or
- b. pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished the Montana Department of Transportation and Federal Highway Administration in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

9/25  
Date

C. A. King  
Chief Executive's Signature

## EXHIBIT "C"

### NOTICE TO CONSULTANTS

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

#### A. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

1. Compliance with Regulations: The Consultant shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even though only State funding is here involved.
2. Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination.
4. Information and Reports: Consultant will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Local Entity, MDT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Entity, MDT or the FHWA as requested, setting forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Local Entity or MDT may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - a. withholding payments to the Consultant under the Agreement until the Consultant complies, and/or
  - b. cancellation, termination or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions: Consultant will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant will take such action with respect to any subcontract or procurement as the Local Entity, MDT or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant is sued or is threatened with litigation by a subconsultant or supplier as a result of such direction, the Consultant may request the Local Entity to enter into the litigation to protect the interests of the Local Entity or State, and, in addition, the Consultant or the Local Entity may



request the United States to enter into such litigation to protect the interests of the United States.

**B. COMPLIANCE WITH MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, Consultant agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

1. Consultant will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
2. Consultant will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Consultant will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Consultant. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Consultant."
3. All video recordings produced and created under the Agreement will be closed-captioned.

**D. COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR 26.**

Each Agreement the Local Entity signs with a Consultant (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant 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."

**EXHIBIT "D"**  
**CTEP CONSULTANT COST ESTIMATE**

PROJECT: Miles City SRTS

DATE: 9/20/13

## PRELIMINARY ENGINEERING COST ESTIMATE

	Tasks	Total Hours	Senior Proj. Mgr.	Project Manager	Project Engineer	Planner	Lab Technician	CADD Technician	Survey/Drill Crew	Clerc.
1	PROJECT MANAGEMENT									
	Project Development and Management	8		8						
	SUBTOTAL (HOURS)	8		8						
2	DATA COLLECTION									
	Request Plans & Documents	2		2						
	Site Visit & Minutes	11		10						1
	Utility Coordination	6		1	4					1
	SUBTOTAL (HOURS)	19		13	4					2
3	FIELD SURVEY & MAPPING									
	Search property corners	16			1				15	
	Topo survey	36			1				35	
	Mapping	22		2			20			
	SUBTOTAL (HOURS)	74		2	2		20		60	
4	PRELIMINARY ENGINEERING & SUBMITTALS									
	Preliminary Line & Grade	28		12				18		
	Drainage Evaluation	20		20						
	Plan Development									
	Cover	1					1			
	Notes / Control / Legend	3		1			2			
	Key Map	4		1			3			
	P&P Sheets (8)	24		8			16			
	Typicals & Intersection Details	10		4			6			
	Misc. Details	6		2			4			
	Project Manual	28		28						
	Opinion of Cost / Bid Form	15		15			2			
	SUBTOTAL (HOURS)	139		89			50			
5	SUBMITTALS									
	Preliminary Line & Grade	9		2			5		2	
	Final PS&E	9		2			5		2	
	Environmental Cat. Ex	5		4					1	
	SUBTOTAL (HOURS)	23		8			10		5	
6	CONSTRUCTION BIDDING SERVICES									
	Advertisement	4		2	2					
	Distribution	12		2	2				8	
	Prebid Meeting	11		8	2				1	
	Questions & Clarifications	10		8					2	
	Bid Opening / Award Rec.	6		2	3				1	
	Award / Contracts	5		4					1	
	SUBTOTAL (HOURS)	48		26	9				13	

## COST SUMMARY

	Hours	Rate	Extension
Senior Project Manager		58.00	
Project Manager	146	40.00	5,840.00
Project Engineer	15	32.00	480.00
Planner		32.00	
Lab Technician		22.00	
CADD Technician	80	28.00	2,240.00
Survey Crew	50	60.00	3,000.00
Clerical	20	22.00	440.00
TOTAL HOURS	311		
GENERAL OVERHEAD @	17%		
		LABOR SUBTOTAL	\$12,000.00
		OVERHEAD SUBTOTAL	\$20,616.00
		TOTAL LABOR/OVERHEAD	\$32,616.00

## DIRECT NONLABOR

Miscellaneous (telephone, postage, misc. equipment rental, maps, photos, survey)			250.00
Mileage	Miles	1200 Per Mile	0.555
Per Diem	Days	10 Per Day	56
		TOTAL DIRECT NONLABOR	\$1,476.00

## RECAPITULATION

Total Labor/ Overhead	32,616.00
Total Direct NonLabor	1,476.00
Profit (12%)	3,914.00
TOTAL ESTIMATED COST	\$38,006.00

PROJECT: Miles City SRTS										DATE: 9/20/13	
CONSTRUCTION ENGINEERING COST ESTIMATE											
	Tasks	Total Hours	Senior Proj. Mgr.	Project Manager	Project Engineer	Planner	Lab Technician	CADD Technician	Survey/Drill Crew	Clerc.	
1	CONSTRUCTION STAKING & ADMINISTRATION										
	Preconstruction Meeting	12		2	8					2	
	Submittal Review	14		2	8					4	
	Construction Staking	56		2				4	50		
	Site Visits	20		2	16					2	
	Acceptance Testing	102		2			100				
	Substantial Completion Inspection	11		8	2					1	
	Final Inspection	5			4					1	
	Project Closeout	12		2	4			4		2	
	SUBTOTAL (HOURS)	232		20	42		100	8	50	12	
COST SUMMARY											
			Hours		Rate					Extension	
	Senior Project Manager				58.00						
	Project Manager		20		40.00					800.00	
	Project Engineer		42		32.00					1,344.00	
	Planner				32.00						
	Lab Technician		100		22.00					2,200.00	
	CADD Technician		8		28.00					224.00	
	Survey Crew		50		60.00					3,000.00	
	Clerical		12		22.00					264.00	
	TOTAL HOURS		232								
	GENERAL OVERHEAD @	17%									
					LABOR SUBTOTAL					\$7,832.00	
					OVERHEAD SUBTOTAL					\$13,456.00	
					TOTAL LABOR/OVERHEAD					\$21,288.00	
DIRECT NONLABOR											
	Miscellaneous (telephone, postage, misc. equipment rental, maps, photos, survey)									250.00	
	Mileage		Miles	1600	Per Mile		0.555			888.00	
	Per Diem		Days	4	Per Day		56			224.00	
										TOTAL DIRECT NONLABOR	
										\$1,362.00	
OUTSIDE SERVICES AND SUBCONTRACTS											
	Lab Testing									2,374.00	
										TOTAL OUTSIDE SERVICES AND SUBCONTRACTS	
										\$2,374.00	
RECAPITULATION											
	Total Labor/ Overhead									21,288.00	
	Total Direct NonLabor									1,362.00	
	Total Outside Services & Subcontracts									2,374.00	
	Profit (12%)									2,555.00	
										TOTAL ESTIMATED COST	
										\$27,579.00	

## **EXHIBIT "E"**

### **SCOPE OF WORK AND SCHEDULE**

#### **Task 1: Project Management**

Project Management for this work will mostly consist of correspondence and coordination with the City of Miles City, and the coordination of internal workloads to meet the schedule and scope of this project.

#### **Task 2: Data Collection**

DOWL HKM will perform one (1) site visit with the City and other interested parties to gain further understanding what the community's goals and needs are with the project.

DOWL HKM will request from the City the following information if available:

- Plats for the lots adjacent to the right-of-way in which the new sidewalk will be constructed.
- Applicable Zoning / City Ordinances
- Utility plans (e.g. sewer, storm & water)
- Storm Drain Master Plan
- Community Transportation Plan

DOWL HKM will coordinate with private utility companies for the location, type, and size of their utilities within the project corridor. This information will be determined through utility-provided atlas mapping and via Montana One Call.

#### **Task 3: Field Survey & Mapping**

DOWL HKM will survey and map the entire right-of-way width for each of the segments as described above. It is assumed that sufficient number of property corners on the right-of-way line along the sidewalk side will be locatable to reestablish the property lines from the plats. All drainage features including topography will be surveyed with the full right-of-way width and detailed point information will be collected in that portion of the right-of-way where the sidewalk is to be constructed (i.e. trees, shrubs, hydrants, utility poles, junction boxes, mailboxes, etc.). The survey will locate utility positions from surface features and as marked or indicated by the respective owners. The survey will also include a minimum of 50 feet of coverage for intersecting streets beyond the right-of-way on the sidewalk side only.

#### **Task 4: Preliminary Engineering and Submittals**

DOWL HKM will provide preliminary line and grade layout of the sidewalk based on existing conditions and the typical sections as identified in the Peaks to Plains Evaluation. This work will be submitted to the City and to CTEP for review and comment before moving forward with the preparation of plans and the project manual for bidding. This submittal will also include a preliminary opinion of construction cost to identify budget concerns. Prior to advertising, a final review set will be submitted to the City and to CTEP for review and permission to advertise.

The proposed improvements are assumed to meet the requirements for a Group (c) Categorical Exclusion. DOWL HKM will provide guidance to the City, who will prepare the documents they need to submit to CTEP.

A low-level drainage evaluation based on survey contours to determine potential flooding caused by the installation of sidewalk will be performed. A memorandum will be developed to document the analysis and determine potential flooding mitigation measures.

Drainage mitigation for this project is anticipated to be minor and within CTEP funding allowance and will be designed as part of the construction documents for this project. Mitigation measures recommended in the evaluation memorandum will be discussed with City of Miles City staff before creating design plans. If mitigation measures are above and beyond what CTEP funds will cover, then the City of Miles City and DOWL HKM will discuss how best to proceed.

#### **Task 5: Construction Bidding Services**

DOWL HKM will perform the following for bidding services for the project:

- Prepare the Advertisement to Bid, make arrangements with local newspaper to run the ad and document the publication dates in our files. The City will be billed directly by the paper for these publications or reimburse DOWL HKM directly as the case may be.
- Produce bid documents, maintain a plan holders list and distribute bid documents and addenda to those on the plan holders list.
- Schedule and conduct a prebid meeting at a City Facility and distribute meeting minutes documenting the discussion.
- Answer questions and issue clarification of the contract documents as necessary.
- Conduct a bid opening at the designated City Facility, prepare a tabulation of bids and recommend award of the contract.

Upon receiving concurrence of the award recommendation from CTEP and the City of Miles City, DOWL HKM will issue a Notice of Award to the successful contractor and the City will provide the contract for the contractor to execute and resubmit along with bonds and insurance.

#### **Task 6: Construction Staking & Administration**

DOWL HKM services are based upon a 30 to 45 calendar day construction contract. Assuming the contractor can place and finish 400 to 500 lineal feet of 6 foot wide sidewalk each day, 10 working days is assumed (14 calendar days) to complete the majority of this work. DOWL HKM obligations under this phase of the project will include:

- Conducting a preconstruction meeting
- Reviewing contractor submittals including pay requests
- Construction Staking – Construction staking will consist of providing offset hubs at 25-foot spacing, Points of Curvature & Points of Tangents at intersection locations for the contractor to use throughout the project. Our approach assumes staking 800 to 1000 feet per day. We allow five days to complete this task.
- Construction Administration – 12 hours per week for 6 weeks for site visits and documentation. Site visits will be conducted by the DOWL HKM Miles City staff.
- Acceptance testing of the subgrade, crushed base course and Portland Cement Concrete. Sampling and testing will be performed or collected by DOWL HKM Miles City Office staff. Base course and Portland Cement Concrete samples and cylinders will have to be transported to the DOWL HKM Materials Lab in Billings for testing. This scope of services assumes DOWL HKM will transport all samples and cylinders from Miles City to Billings. However, other arrangements can be accommodated if City of Miles City staff is available to transport. If anyone other than DOWL HKM staff transports samples, standard protocols will be established to ensure the integrity of the samples.
  - Acceptance testing of the subgrade will be per MPWSS 02230, Part 1.3. In-place density shall be at least 95% and one test will be performed every 1,000 square feet. Acceptance testing of the subgrade also includes reviewing moisture density curves from the contractor.

- Acceptance testing of the crushed base course will be per MPWSS 02235, Part 1.3. In-place density shall be at least 95% and one test will be performed every 1,000 square feet. Acceptance testing of the crushed base course also includes reviewing moisture density curves, gradations, LA abrasion test results, Liquid Limits, Plastic Limits and Plasticity Indexes of the base course from the contractor.
- Acceptance testing of the Portland cement concrete will be per MPWSS 02515. Air, slump, 7-day and 28-day compressive strength tests will be conducted every 50 cubic yards. Acceptance testing of the Portland cement concrete also includes reviewing the mix design submitted by the contractor.
- Conducting Substantial Completion and Final Inspections
- Processing the documentation for closeout of the project and issuing a Certificate of Completion to CTEP.

**EXHIBIT "F"**  
**CERTIFICATION OF INDIRECT COSTS**

Firm Name: DOWL HKM

Indirect Cost Rate: 171.8%

Fiscal Period Covered: 4/1/13 to 3/31/14

I, the undersigned, certify that I have reviewed the proposal to establish the indirect cost rate(s) for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principals of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rate(s) have been disclosed. I agree to immediately notify MDT of any changes that may affect the indirect cost rate(s).

Signature:

Name of Certifying Official:

Title (must be V.P., CFO, or higher):

Date of Certification: 3/20/13