

RESOLUTION NO. 3650

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A MONTANA RENEWABLE RESOURCE PROJECT PLANNING GRANT AGREEMENT WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION.

WHEREAS, the City has applied for a grant from the Montana Renewable Resource Project, administered by the Department of Natural Resources and Conservation (DNRC), to assist in paying for a feasibility study and flood mitigation alternatives;

AND WHEREAS a grant in the amount of \$5,000.00 has been awarded to the City of Miles City, and an agreement has been provided to the City by DNRC in order to accept said grant.

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

1. The City hereby accepts the \$5,000.00 grant from DNRC, and the Mayor of the City of Miles City is hereby empowered and authorized enter into the Montana Renewable Resource Project Planning Grant Agreement, attached hereto as Exhibit "A," on behalf of the City of Miles City and bind the City of Miles City thereto; and

2. 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 award 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 26TH DAY OF NOVEMBER, 2013.

C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

Exhibit "A"

**Project Planning Grant Agreement
Conservation and Resource Development Division
Montana Department of Natural Resources and Conservation**

Project Sponsor: City of Miles City

Project Name: Feasibility Study for Flood Mitigation Alternatives

Agreement Number: RPG-14-0340

Declarations

- Section 1. Purpose
- Section 2. Term
- Section 3. DNRC's Role
- Section 4. Project Scope
- Section 5. Project Budget
- Section 6. Availability of Grant Funds
- Section 7. Grant Disbursements
- Section 8. Reports
- Section 9. Records and Audits
- Section 10. Project Monitoring and Access for Inspection and Monitoring
- Section 11. Employment Status and Workers' Compensation
- Section 12. Equal Employment
- Section 13. Indemnity and Liability
- Section 14. Compliance with Applicable Laws
- Section 15. Copyright - Government Right to Use
- Section 16. Failure to Comply
- Section 17. Assignment and Amendment
- Section 18. Montana Law and Venue Section

FOR DNRC USE ONLY

Maximum amount under this Agreement: \$ 5,000

Approved

Agreement No. RPG-14-0340

Source of Funds

Amendment No.

Natural Resource Projects Account

Division OK DNR

Accounting Entity Name

Fund

C.S.D. JS

Natural Resource Projects Account

02577

Legal CSW

Sub-Class

ORG

Percent

54016

3414101

100%

Appropriation Authority: 63rd Legislature/2013 H.B. 6

Workers Comp: N/A Attached Exempt Will be forwarded

MONTANA RENEWABLE RESOURCE
PROJECT PLANNING GRANT AGREEMENT

THIS GRANT, approved, appropriated, and awarded by the Montana Legislature and administered by the Montana Department of Natural Resources and Conservation (DNRC) is consistent with the policies, procedures and objectives of the Montana Renewable Resource Grant and Loan Program (MCA Title 85, Chapter 1, Part 6) for the enhancement of Montana's renewable natural resources. This grant is accepted by the city of Miles City hereinafter referred to as the Project Sponsor and represented by Chris Grenz, Mayor, PO Box 910, Miles City, MT 59301, 406-874-8603 according to the following terms and conditions:

SECTION 1. PURPOSE. The purpose of this Agreement is to establish mutually agreeable terms and conditions, specifications, and requirements to grant funds to the Project Sponsor for a **feasibility study for flood mitigation alternatives.**

SECTION 2. TERM. The Project Sponsor shall have until **December 31, 2014**, to complete the project and work described in Section 4, Project Scope. DNRC may grant an extension for completion upon request and showing of good cause by the Project Sponsor. A request for extension submitted less than 45 days prior to the termination date may or may not be considered. The effective date of this Agreement is the date of last signing.

SECTION 3. DNRC's ROLE. DNRC is administering grant funds awarded by the legislature to ensure that the funds are used according to the intent of the legislature and the purposes, objectives, and procedures of the Renewable Resource Grant and Loan (RRGL) Program. Upon request from the Project Sponsor or its agent, DNRC will explain or clarify the terms and conditions of this Agreement and may provide limited technical assistance. DNRC will monitor project expenditures to assure payment eligibility. DNRC assumes no responsibility for the Project Sponsor's obligation to faithfully perform the tasks and activities necessary to implement and complete a project. The Project Sponsor shall contact DNRC's liaison **Pam Smith**, at **406-444-6839, PO Box 201601, Helena, MT 59620.** All requests, information, and assistance shall be submitted to DNRC liaison / designee.

SECTION 4. PROJECT SCOPE.

Subsection 4.1 Supporting Documents/attachments: RRGL Planning Grant Application, dated **June 2013.** The scope of work for this project is attached to this agreement as Attachment A and incorporated herein by this reference.

SECTION 5. PROJECT BUDGET. Grant funds are allocated as follows:

(1) Sources of Funds:	
DNRC Project Planning Grant	\$ 5,000
Project Sponsor	<u>\$182,000</u>
Total Project Cost	\$187,000
(2) Use of Funds:	
Contracted Professional Services	\$187,000
Total	\$187,000

SECTION 6. AVAILABILITY OF GRANT FUNDS. The Project Sponsor acknowledges and understands that grant funds become available through earnings from certain natural resource based taxes deposited in the natural resources projects state special revenue account. Renewable Resource Grant and Loan Program funds will be released to the extent they are available. Costs incurred prior to this Agreement are not eligible for reimbursement but may be counted as match funds upon written approval by DNRC.

SECTION 7. GRANT DISBURSEMENTS. The Project Sponsor shall submit claims for grant funds to DNRC. Receipts, vendor invoices, inspection certificates, and other documentation of costs incurred shall be submitted with the claims. DNRC will verify the claims and check them against the Reports required in Section 8 and the Budget provided in Section 5. DNRC will disburse grant funds to the Project Sponsor upon approval. Reimbursement of Project Sponsor expenditures will only be made for expenses included in the Budget provided in Section 5 and that are clearly and accurately supported by the Project Sponsor's records and that show the Project Sponsor has fully complied with Sections 11, 12 and 14.

A maximum of 50% of the total DNRC grant shall be available for payment within 30 days of receipt of an approved draft Report. It is not expected that the document will be complete; however, it must show clearly that all applicable items required in SECTION 4. PROJECT SCOPE are being addressed and that the consultant is proceeding toward the preparation of a complete and acceptable final product.

The balance of the grant funds shall be payable within 30 days of receipt by DNRC of an approved final Report. The final version shall be complete and shall address the terms as defined in SECTION 4. PROJECT SCOPE. Prior to final payment, the Project Sponsor must submit a financial statement showing the sources and uses of funds. Total payment for all purposes under this Agreement shall not exceed **\$5,000**.

SECTION 8. REPORTS. Quarterly progress reports for the periods ending each March, June, September, and December shall be submitted to DNRC during the term of the Agreement. Reports will provide status information for each project implementation objective. Status information will include, at a minimum, the percentage complete, costs incurred, funds remaining and projected completion date. The Project Sponsor shall report on total project costs including those funded by the Project Sponsor and other matching funds. Significant problems encountered shall be noted and necessary scope and/or time line modifications requested.

Quarterly reports must be submitted to DNRC within fifteen (15) calendar days following the close of the quarterly period. No claims for disbursements will be honored if the quarterly report has not been approved or if there is a delinquent report.

SECTION 9. RECORDS AND AUDITS. The Project Sponsor will maintain appropriate and adequate records showing complete entries of all receipts, disbursements, and other transactions relating to the project. DNRC, the Legislative Audit Division or the Legislative Fiscal Division may, at any reasonable time, audit all records, reports, and other documents that the Project Sponsor maintains under or in the course of this Agreement to ensure compliance with its terms and conditions.

SECTION 10. PROJECT MONITORING AND ACCESS FOR INSPECTION AND MONITORING. DNRC or its agents may monitor and inspect all phases and aspects of the Project Sponsor's performance to determine compliance with legal, technical and administrative requirements in this Agreement, including the adequacy of records

and accounts. DNRC may present specific areas of concern to the Project Sponsor providing the Project Sponsor the opportunity to better accomplish the goals and objectives of the conditions of this Agreement.

Because these grant funds are from public funds, public access to the project site and project records must be available. The Project Sponsor shall accommodate requests for public access to the site and records with due consideration for safety, private property rights, and convenience of everyone involved.

SECTION 11. EMPLOYMENT STATUS AND WORKER'S COMPENSATION. The project is for the benefit of the Project Sponsor. DNRC is not an owner or general contractor for the project, and DNRC does not control the work activities or work-site of the Project Sponsor or any contractors who might be engaged for completion of the project. The Project Sponsor is independent from and is not an employee, officer or agent of the State of Montana or DNRC. The Project Sponsor, its employees, and contractors are not covered by the Workers' Compensation laws applicable to DNRC as an employer. The Project Sponsor is responsible for making sure that its employees are covered by Workers' Compensation Insurance and that its contractors are in compliance with the coverage provisions of the Workers' Compensation Act. The Project Sponsor must acquire Workers' Compensation coverage or the appropriate exemption.

SECTION 12. EQUAL EMPLOYMENT. Any hiring of employees under this Agreement shall be on the basis of merit and qualifications, and there shall be no discrimination on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. "Qualifications" mean qualifications as are generally related to competent performance of the particular occupations task.

SECTION 13. INDEMNITY AND LIABILITY. The Project Sponsor shall defend, indemnify and hold harmless DNRC and the State of Montana and its agents from and against any and all claims, demands, or actions for damages to property or injury to persons or other damages to persons or entities arising out of or resulting from the performance of the work or services funded by this Agreement. This Agreement is not intended to relieve a liable party of financial or legal responsibility.

SECTION 14. COMPLIANCE WITH APPLICABLE LAWS. All work must be in accordance with all federal, state and local law, statutes, rules and ordinances.

14.1. It shall be the Project Sponsor's responsibility to obtain all permits, licenses or authorizations that may be required from government authorities prior to initiation of the project or required to be obtained by the time of completion of the project and to be eligible for reimbursement funds under this Agreement. Permits or authorizations may include but are not limited to, Beneficial Water Use Permits (85-2-302(1) MCA; Change in Appropriation Right Authorization (85-2-402(1)(a),MCA or other requirement under the Montana Water Use Act that may apply; 310 permitting requirements, or other permits or authorizations that may be required by state, local, or federal agencies prior to beginning work on the project or prior to completion of the project.

14.2. Procurement of labor, services, supplies, materials, and equipment shall be conducted according to applicable federal, state, and local statutes. The award of a grant or by grantee entering into this Agreement shall not be taken to imply that any required permits, or authorizations issued by DNRC or other state, federal or local agency will be approved.

SECTION 15. COPYRIGHT - GOVERNMENT RIGHT TO USE. Any graphic material developed under this Agreement may be copyrighted with the proviso that the State of Montana will have a royalty-free, nonexclusive, and irrevocable right to produce, publish or otherwise use, and authorize others to use the work for state government purposes.

SECTION 16. FAILURE TO COMPLY. If the Project Sponsor fails to comply with the terms and conditions of this Agreement, or reasonable directives or orders from DNRC, DNRC may terminate the Agreement and refuse disbursement of any additional funds under the Agreement. Such termination will become a consideration in any future application for grants from the Renewable Resource Grant and Loan Program.

SECTION 17. ASSIGNMENT AND AMENDMENT. This Agreement is not assignable. Amendment may be accomplished only by express written agreement of the parties. Amendments will be attached as an integral component of the Agreement.

SECTION 18. MONTANA LAW AND VENUE. Any action brought by any party to this Agreement that is based on enforcement or performance under this Agreement or interpretation of any term or condition of this Agreement, shall be governed by the laws of the State of Montana. Venue shall be in the First Judicial District, Lewis and Clark County, Montana. Pursuant to Section 85-1-605(6), MCA, Project Sponsor, *if a tribal government*, by executing this agreement, hereby waives any right it may have of tribal government immunity from suit on any issue specifically arising from the transaction of this Agreement and Project Sponsor waives any right to exhaust tribal remedies.

The Project Sponsor hereby accepts this Agreement according to the above terms and conditions.

By: _____ Date _____
Project Sponsor, Title

Federal Tax ID #

By: _____ Date _____
Department of Natural Resources and Conservation

ATTACHMENT A

Background: The existing levee was constructed by local efforts with portions of the levee built as a Works Progress Administration (WPA) project, circa 1940-1950. In the years since construction and ever more stringent governmental regulations, construction of a new levee has been proposed to residents on at least 3 occasions. Each time the proposal has been abandoned due to high project costs, lack of funding, and low public interest. The signing of the Biggert-Waters Flood Insurance Act prompted urgency in conducting this study. The possibility of insurance rates rising to unaffordable levels has alarmed owners with mortgaged properties in the floodplain, realtors and business owners.

Scope of Work: The project sponsor shall use the funds provided under this Agreement to pay for:

Feasibility Study costs up to the maximum amount under this Agreement:

1. Prepare and submit to DNRC or its designee a draft Feasibility Study to evaluate mitigation alternatives. A registered professional engineer licensed to practice in his or her area(s) of competence and expertise in the State of Montana shall prepare this report.
1. Prepare and submit to DNRC or its designee a final Feasibility Study that reflects any comments on the draft made by DNRC or its designee.

Schedule: The draft Feasibility Study will be submitted in September 2014. A final Feasibility Study will be submitted by December 2014.