

## **Flood Control Committee**

### **January 16, 2013**

The **Flood Control Committee** met Wednesday, January 16, 2013, at 6:00 p.m. in the City Hall Conference Room. Present were Committee Members John Hollowell, Jerry Partridge, Susanne Galbraith, and Dwayne Andrews. Also present were Floodplain Administrator Sam Malenovsky, Public Utilities Director Al Kelm, Representative from KLJ, Carl Jackson, Mayor C.A. Grenz and Recorder HR/Payroll Officer Billie Burkhalter.

#### **1. Elect Committee Chairperson**

Committee Member Hollowell opened the floor for nominations for Chairperson of the Flood Control Committee. Committee Member Andrews nominated John Hollowell. Hearing no further nominations,

*\*\* Committee Member Andrews moved to name John Hollowell as Chairperson of the Flood Control Committee, seconded by Committee Member Partridge, and, motion passed unanimously, 3-0, with Committee Member Hollowell abstaining.*

#### **2. Discussion on contract with Kadrmas, Lee & Jackson, Inc. (KLJ) on Flood Project**

Carl Jackson, KLJ, explained he had presented Administrator Malenovsky and Director Kelm with a draft of the Short Form of Agreement between Owner and Engineer for Professional Services for the Flood Project. The Committee was given a copy of this draft. Mr. Jackson stated he was there for the Committee to answer any questions and explain anything more in detail.

Committee Member Andrews questioned Section 8.01; KL&J Additions to the Short Form of Agreement, item "E" (page 4 of 6) on who would be considered the representative of the City. Mr. Jackson responded that Flood Plain Administrator Malenovsky would be the point of contact for the City.

Committee Member Andrews questioned Appendix 1 Miles City Flood Control Feasibility Study; Scope of Work Section II. Engineer Shall Perform or Provide: 100 Project Management, Coordination and Background Data Review "B" (page 1 of 7) concerning a total of 5 general coordination meetings. He asked if those meetings would include the workshop meetings, and if the workshop meetings would be public. Mr. Jackson stated the workshop meetings are not included in the general coordination meetings. He further explained that, typically, workshop meetings are not public because they are basically unscheduled meetings with a specific agenda.

Committee Member Andrews stated 200 Preliminary Alternative Screening "A" (page 3 of 7.) needed further clarification. Mr. Jackson was agreeable to make the "do nothing" "2-dimensional model" and "letter of map amendment (LOMA)" and "permanent levee or flood wall" more detailed.

Committee Member Andrews requested the word "may" be replaced with "shall" every time it appears in section 400 Screened Alternative Analyses "C" (page 5 of 7). Mr. Jackson was in agreement.

Committee Member Andrews expressed his appreciation that the contract has many town ward meetings and will have material on the City's web page. He stressed that the public needs to be informed as much as possible through this process. It was noted that the social media page was not included in the initial fee summary, but will be looked into.

Committee Member Galbraith questioned the Short Form Agreement, Section 7.01 General Considerations "F" (page 3 of 6). She asked that, if the City is paying for this Study why would KLJ own the copyright? Mr. Jackson stated in his industry this would be referred to as "intellectual property". He explained that if you hire 10 engineers you will probably get 10 different ways to do a project. KLJ's decision making process and how they get there includes a bunch of data that goes into their drawings, exhibits, and models and there is always some subjectivity in that. If the City decides to hire another engineering firm and use the information they have been provided by KLJ, they cannot hold KLJ liable, because it cannot be assumed there is only one way to do a project. Mr. Jackson stated that the City would retain the information received from KLJ. Committee Member Galbraith still had concerns with the language in the contract. Mr. Jackson stated he would send information to Administrator Malenovsky to further explain this section.

Administrator Malenovsky questioned what the costs would be if KLJ had to survey a section of the levy. Mr. Jackson stated that to send out a surveying crew for a full day would be approximately \$2,200.

Administrator Malenovsky asked what the costs would be if they happened to need more general meetings than five. Mr. Jackson explained that it depended on who would need to attend those meetings. If it was just him, it could be approximately \$1000 for a full day.

Administrator Malenovsky stated that Grant Writer Dawn Colton is actively looking into grants for the costs of this study.

Chairperson Hollowell stated the recommended changes will be forwarded to the City Attorney and then to Council for direction on how to proceed.

### **3. Requests of Citizens**

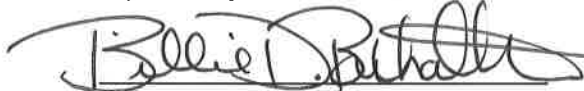
-none

#### 4. Adjournment

- \*\*** *Committee Member Galbraith moved to adjourn the meeting, seconded by Committee Member Andrews and passed unanimously, 4-0.*

There being no further business, the Committee adjourned at 6:50 p.m.

Respectfully Submitted,

  
Billie D. Burkhalter, Recorder

Flood Control Committee Chairperson

  
John Hollowell, Chairperson

## **FLOOD CONTROL MEETING AGENDA**

**DATE:** January 16, 2013 - Wednesday

**TIME:** 6:00 p.m.

**PLACE:** City Hall Conference Room

1. Elect Committee Chairperson
2. Discussion on contract with Kadrmas, Lee & Jackson, Inc. (KLJ) on Flood Project
3. Request of Citizens
4. Adjournment

Public comment on any public matter that is not on the agenda of this meeting can be presented under "Request of Citizens" provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings.

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between **City of Miles City, Montana** (“Owner”) whose address is 17 South 8<sup>th</sup> St., Miles City, MT 59301 and **Kadrmass, Lee & Jackson, Inc.**, (“Engineer”) whose address is 2611 Gabel Road, Billings, MT 59102. The Engineer agrees to provide the services described below to Owner for **Floodplain and Flood Control Engineering Services** (“Project”). The services Engineer shall provide, or cause to be provided, are further defined in attached Exhibit A – Engineer’s Services and are generally described as follows: **feasibility study to evaluate flood mitigation alternatives**. Owner shall provide, or cause to be provided, the payment for these services as set forth in attached Exhibit B – Payment for Services.

Owner and Engineer further agree as follows:

**1.01 Basic Agreement**

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 10.01.

**2.01 Payment Procedures**

- A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.
- B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal

**3.01 Additional Services**

- A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

- B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

#### 4.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
- b. By Engineer:
  - 1) Upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a provider of professional services; or
  - 2) Upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.
- B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

#### 5.01 Controlling Law

- A. This Agreement is to be governed by the law of the state in which the Project is located.

#### 6.01 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to

this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

#### 7.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its engineers may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.
- E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2007 Edition).
- F. All project documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
- G. To the fullest extent permitted by law, Owner and Engineer agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist engineers

or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 KL&J Additions to EJCDC E-520

- Andrews*
- Who represents City - who is responsible?*
- City - who is responsible?*
- City - who is responsible?*
- A. The Owner and Engineer each agree to assume its own liability for claims of any nature including all costs, expenses and reasonable attorney's fees, which may in any manner result from or arise out of this agreement. Neither the Owner nor the Engineer shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- B. The Owner shall not reuse or make any modification to the project documents without Engineer's prior written authorization. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer's officers, directors, employees and sub-engineers (collectively) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the project documents by the Owner or any person or entity that acquires or obtains the project documents from or through the Owner without Engineer's written authorization.
- C. In the event of a dispute arising out of or relating to the agreement or the services to be rendered hereunder, both parties hereby agree to (1) attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party, (2) if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by both parties, and (3) if the dispute or any issues remain unresolved after the first two steps, either party may seek to have the dispute resolved by a court of competent jurisdiction.
- D. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor the Engineer, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Owner and the Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- E. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents. Each Party may change its designated individual(s) at any time by written notice to the other Party.

9.01 Total Agreement

- A. This Agreement (together with any expressly incorporated exhibits and appendices), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.



#### 10.01 Payment and Schedules

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
  - 1. In accordance with Exhibit B – Payment of Services.
- B. The Engineer's compensation is conditioned on the time to complete the services by December 31, 2013. Should the time to complete services be extended beyond this period, total compensation to Engineer may be appropriately adjusted. Engineer is authorized to begin rendering services as of the Effective Date.

DRAFT for City Review  
January 15, 2013

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Miles City

ENGINEER: Kadrmas, Lee & Jackson, Inc.

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(printed or typed name)

By: \_\_\_\_\_  
(printed or typed name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

Witnessed  
By: \_\_\_\_\_  
(signature)

Witnessed By: \_\_\_\_\_  
(signature)

Witnessed  
By: \_\_\_\_\_  
(printed or typed name)

Witnessed By: \_\_\_\_\_  
(printed or typed name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

PO Box 910

PO Box 80303

Miles City, MT 59301

Billings, MT 59108-0303

Designated Representative:

Designated Representative:

Attn: Samantha Malenovsky, CFM

Attn: Carl Jackson, PE

Title: Floodplain Administrator

Title: Project Manager

Phone Number: 406-234-3493

Phone Number: 406-245-5499

Facsimile Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-Mail Address: smalenovsky@milescity-mt.org

E-Mail Address: carl.jackson@kljeng.com

This is **EXHIBIT A**, consisting of three (3) pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

## **Engineer's Services**

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The Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### **A1.01 Study and Report Phase**

##### **A. Engineer shall:**

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer.
4. Identify and evaluate four (4) alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report (Report) which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, potential funding options where available, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables: refer to Appendix 1 attached to this Exhibit A hereby incorporated as part of the Agreement.
7. Furnish ten (10) review copies of the Report and any other deliverables to Owner and review it with Owner.

8. Revise the Report and any other deliverables within sixty (60) days after receipt of Owner's comments, as appropriate, and furnish ten (10) copies of the revised Report and any other deliverables to the Owner after receipt of Owner's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been approved by Owner.

A1.02 *Preliminary Design Phase – Not included and would be a future contract amendment*

A1.03 *Final Design Phase – Not included and would be a future contract amendment*

A1.04 *Bidding or Negotiating Phase – Not included and would be a future contract amendment*

A1.05 *Construction Phase – Not included and would be a future contract amendment*

A1.06 *Post-Construction Phase – Not included and would be a future contract amendment*

## **PART 2 – ADDITIONAL SERVICES**

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.

- as item
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
  6. Providing renderings or models for Owner's use, beyond what is required to prepare for public meetings or complete the feasibility study Report.
  7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
  8. Furnishing services of Consultants for other than Basic Services.
  9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
  10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
  11. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
  12. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
  13. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

*A2.02 Additional Services Not Requiring Owner's Written Authorization*

- A. Not included and would be a future contract amendment

**Miles City Flood Control Feasibility Study  
Scope of Work**

B. Orientation for each public meeting will be conducted at the preceding City/KLJ workshop held in Miles City. Subsequent public meeting preparation and coordination will be completed by conference calls. Materials will be reviewed and the meeting plan will be discussed to identify meeting protocol, format and team roles. A code of conduct and talking points document will be established for interacting with the public and media.

C. For each meeting, provide a content development and production schedule that includes planning, outreach (media release, advertisement, invitation mailing, web publishing, social media promotion, logistical planning, etc.), presentation materials, meeting documentation, and wrap-up activities.

D. ~~Provide content material for the existing City web page upon request.~~  
Development of a project-specific website or social media page is not included, but can be provided as an Additional Service.

E. Provide the City electronic copies of invitation postcards to allow mailing two weeks prior to events. Contact mailing lists will be developed by the City that includes:

1. Local residents and landowners
2. Local businesses
3. Local faith-based organizations
4. Elected officials
5. Local governmental officials
6. Nongovernmental organizations
7. Neighborhood or homeowners associations
8. Community gathering places (schools, libraries, community centers)

F. Work with the City to develop a media plan that identifies media outlets, contact information, deadlines, format/specifications, and cost.

G. For each meeting, design and produce tools used in support of meetings, which includes handouts, presentations, maps, comment forms, sign-in sheets and take home materials. Provide a summary of public comments and other information following each meeting.

H. Task 300 Key Understandings

1. Public meetings are anticipated to be neighborhood or individual ward meetings. A total of eight ward meetings (two per ward) are planned. It is understood that public meeting objective and format may evolve.
2. Engineer will have 3-4 people attend each public meeting.

**Miles City Flood Control Feasibility Study  
Scope of Work**

**I. PURPOSE**

The purpose of this effort is to conduct an objective feasibility study of flood mitigation alternatives in Miles City, MT (City) - generally defined as the right overbank of the Tongue River from the golf course north to confluence of the Tongue River and the Yellowstone River, the left overbank of the Tongue River from the Old Milwaukee Railroad Bridge to confluence of the Tongue River and the Yellowstone River and the right bank of the Yellowstone River from the water plant on the west side of town to extent of the city limits to the east.

In January 2007, The United States Army Corps of Engineers (USACE) developed a Flood Insurance Study (FIS) for the Yellowstone River and Tongue River at Miles City under the guidelines of the Federal Emergency Management Agency (FEMA). Using the USACE's FIS as a starting point, this effort will evaluate the feasibility of various flood mitigation techniques and the overall impact each technique would have on the residents in Miles City. Work will include reviewing and discussing alternatives with City staff, Flood Control Committee Members, and other stakeholders; evaluating alternatives; and providing a final report (Report) of recommendations that would provide the most viable alternative(s) to eliminate flood risks, threats to loss of life, and associated problems with the floodplain in Miles City. The alternatives would be developed consistent with USACE guidance and would meet FEMA criteria for acceptable protection from a 100 year flood.

**II. ENGINEER SHALL PERFORM OR PROVIDE:****100 PROJECT MANAGEMENT, COORDINATION AND BACKGROUND DATA REVIEW**

- Handwritten notes on left margin: "Andrews", "5 min", "meeting", "needed", "include", "2409116", "Karl", "include"*
- Watermark: "DRAFT for City Review January 15, 2013"*
- A. Conduct general project management tasks. Develop project initiation forms including the development of a project management plan, monthly invoicing, monthly progress reports, project close out activities and other project administration activities. Prepare materials for and facilitate a kickoff meeting with the City.
  - B. Conduct staff coordination meetings and attend Flood Control Committee meetings to discuss Project tasks and present findings. Including the kickoff meeting, a total of five general coordination meetings are planned.
  - C. Periodic conference calls with the City staff will be conducted to provide updates and coordinate project activities. A total of ten conference calls are planned.
  - D. Collect and review existing data from the City and other identified sources:
    - 1. 2007 FIS study prepared by the USACE
    - 2. Tongue and Yellowstone regulatory floodplain model data
    - 3. GIS shape files

**Miles City Flood Control Feasibility Study  
Scope of Work**

4. Aerial mapping
  5. Topographic mapping/DEM data
  6. Available geotechnical/geologic data for the project area
  7. Parcel data and assessed property values
  8. Project area demographic information
  9. Past correspondence/meeting transcripts
  10. AutoCAD drawings provided by the City
  11. Perform limited soil borings to obtain existing embankment information or assess feasibility of alternatives. A maximum of two geotechnical drilling crew day trips are included.
- E. Use topographic mapping, AutoCAD drawings and GIS data to create base mapping of the project area.
- F. Conduct a site reconnaissance of the study area. Site photographs will be taken. Identify probable impact areas. Catalog photographs and summarize data collected during the site reconnaissance.
- G. Prepare and distribute a solicitation of views letter to agencies having jurisdiction over the project. Request written verification of agency desired involvement and technical requirements during various project phases. Coordinate and facilitate one conference call with Montana Department of Natural Resources and Conservation (DNRC) and City representatives to review applicable floodplain and floodway considerations at the onset.
- H. Task 100 Key Understandings
1. Meetings above will be held in Miles City
  2. New field data collection efforts (topographic survey, legal/boundary surveys, subsurface investigation, utility survey, etc.) are not included except geotechnical investigation shown above. These efforts would be necessary for a future design project.
  3. Services related to environmental investigations or permitting and professional property appraisals are not included.
- I. Task 100 Deliverables
1. Monthly invoices and progress reports
  2. Meeting agenda and meeting minutes
  3. Base mapping



## Miles City Flood Control Feasibility Study Scope of Work

### 200 PRELIMINARY ALTERNATIVE SCREENING

A. Investigate the following four alternatives: "do nothing," 2-dimensional model, letter of map amendment (LOMA) and a permanent levee or floodwall.

1. The levee alternative will consider three location options: existing floodway boundary, and potential future truck route.

B. Evaluate alternatives at a conceptual level to allow a qualitative comparison. The primary screening criteria for this effort will be based on fatal flaws, general feasibility, and ability to meet project goals.

C. Facilitate a working meeting (Workshop 1) to discuss screened alternatives. Prepare a draft summary of the screening results and submit prior to Workshop 1. Prepare tools and information used in support of the workshop including an agenda, presentation, and maps. Potential refinements will be identified and discussed during the workshop. Conduct a public meeting orientation. Provide written summary following Workshop 1 including meeting minutes, decisions summary and action items.

D. Task 200 Key Understandings

1. The primary objective of this task is to ensure that City staff, Flood Control Committee members, and consultant team agree to alternatives that will be presented to the public and a public meetings strategy.
2. KLJ will print all workshop materials.
3. Workshop 1 will be held in Miles City.
4. The City will secure the workshop location and distribute local invitations.

E. Task 200 Deliverables

1. Initial alternative criteria list
2. Draft and final Workshop 1 materials
3. Draft and final Workshop 1 summary
4. Draft and final alternative screening results

### 300 PUBLIC ENGAGEMENT

A. Facilitate a program of public meetings and information dissemination. Public meetings are anticipated in two stages. Timing of the meetings, which will be determined during the kickoff meeting, will likely be following the preliminary screening process and again to report final recommendations.

**Miles City Flood Control Feasibility Study  
Scope of Work**

3. The City will be responsible for all logistical activities which include securing the meeting location.
4. The City will print, pay for postage and distribute all mailings and pay for media releases and advertisements.
5. Preparing and analyzing a formal public survey(s) is not included beyond summarizing comments received at the meetings.
6. Engineer will print and distribute meeting minutes.

I. Task 300 Deliverables

1. Electronic documents of outreach materials and public meeting tools.
2. Draft and final media plan, meeting tools, and other public meeting documentation.

**400 SCREENED ALTERNATIVE ANALYSES**

- Andrews*
- DRAFT for City Review January 15, 2013*
- A. Conduct further evaluation of the screened alternatives (maximum of four alternatives assumed in scope and the development) resulting from Task 200.
  - B. Prior to proceeding, conduct an initial agency coordination conference call with DNRC, USACE and FEMA to review the project objectives, technical and public involvement processes and requirements for alternatives acceptable to USACE and FEMA.
  - C. Refine screened alternative concepts to allow further evaluation. Alternatives will be compared to screening criteria developed in conjunction with the City and considering input from Public Meeting 1.

1. Quantitative assessments will still be conceptual in nature and based on existing data obtainable via public domain or through the City. Additional data collection is not included. Quantitative assessments may include elements such as:

- Keep*
- a. Existing infrastructure impacts
  - b. Utility impacts
  - c. Hydraulic impacts and potential incremental impacts of changes in water surface or flow velocity
  - d. ROW constraints and requirements
  - e. Costs
- Shall*

2. Qualitative assessments will be completed with conceptual-level accuracy and may include elements such as:
    - a. Technical feasibility
- Shall*

**Miles City Flood Control Feasibility Study  
Scope of Work**

- b. Level of flood protection provided
  - c. Residential financial impacts
  - d. Floodplain and flood insurance rate impacts with regard to the current flood insurance rate map
  - e. Residence ingress and egress
  - f. Coordination/impacts with adjacent infrastructure projects
  - g. Potential funding sources
- D. Develop cost estimates with contingencies for each screened alternative on a per parcel breakdown. Create a simple metric for comparing cost/benefit for each alternative. The cost/benefit analysis will be sufficient to accomplish the feasibility study objectives; however, Engineer would only complete a detailed cost/benefit analysis to the level that may ultimately be required by a FEMA-funded project if deemed necessary, and upon request as an Additional Service.
- E. Develop an alternative screening matrix in concert with City staff.
- F. Facilitate a working meeting (Workshop 2) to report on final screening results. Prepare a draft summary of the screening matrix and submit prior to Workshop 2. Prepare tools and information used in support of the workshop including an agenda, presentation, and maps. Discuss screened alternative evaluation and results. Conduct a public meeting orientation. Provide written summary following Workshop 2 including meeting minutes, decisions summary and action items.
- G. Task 400 Key Understandings
- 1. Preliminary hydraulic profile and flooding depth information will be provided by KLJ for each alternative.
  - 2. KLJ will print all workshop materials.
  - 3. Workshop 2 will be held in Miles City.
  - 4. The City will secure the workshop location and distribute local invitations.
  - 5. Task 400 does not include completing a 2-dimensional model or other detailed data collection, analyses or design. The project intent is to evaluate possible alternatives to develop a recommendation for future detailed engineering-related efforts required.
- H. Task 400 Deliverables
- 1. Draft and final Workshop 2 materials
  - 2. Draft and final Workshop 2 summary
  - 3. Draft and final alternative screening matrix

**Miles City Flood Control Feasibility Study  
Scope of Work**

**500 FINAL REPORT DOCUMENTATION**

- A. Prepare the final project Report to include: alternative screening evaluation and results process, screened alternative evaluation and results process, public meeting and public involvement summaries, summary of recommended alternative and supporting technical appendices.
- B. Submit the Report in draft format for City review and comment. Revise the report as necessary and provide a final Report in hard copy and electronic (PDF) format.

**III. STUDY AND REPORT PHASE FEE SUMMARY**

Phase 100 Tasks	\$54,200
Phase 200 Tasks	\$14,900
Phase 300 Tasks	\$61,800
Phase 400 Tasks	\$39,200
Phase 500 Tasks	\$14,000
Total	\$184,100

This is **EXHIBIT B**, consisting of three (3) pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates Not to Exceed**

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The Agreement is supplemented to include the following agreement of the parties:

**B1.01 Compensation for Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant charges, if any.
2. Engineer's Reimbursable Expenses Schedule will be made available upon request.
3. The total compensation for services under Paragraph B1.01 is estimated to be \$184,100.00 based on the following estimated distribution of compensation:
  - a. Study and Report Phase \$ 184,100.00
  - b. Preliminary Design Phase \$ (not included)
  - c. Final Design Phase \$ (not included)
  - d. Bidding or Negotiating Phase \$ (not included)
  - e. Construction Phase \$ (not included)
  - f. Post-Construction Phase \$ (not included)
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also B1.03.C.2 below.
5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph B1.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultant charges.
6. The amounts billed for Engineer's services under Paragraph B1.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

**B1.02 Compensation for Reimbursable Expenses**

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit B.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.00.

**B1.03 Other Provisions Concerning Payment**

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
  - 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET AS-1:**  
**Additional Services – Standard Hourly Rates**

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The Agreement is supplemented to include the following agreement of the parties:

**B1.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment**

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph B1.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit B.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.00.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment For Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

## **Samantha Malenovsky**

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**From:** Carl Jackson  
**Sent:** Wednesday, February 13, 2013 11:41 AM  
**To:** Malenovsky, Samantha (smalenovsky@milescity-mt.org)  
**Subject:** Flood Control Project - Ownership of Documents & Instruments of Service

Sam,

During the January 16th Flood Control Committee meeting, Council Member Galbraith asked for clarification about Paragraph 7.01.F on page 3 of the agreement (EJCDC E-520). Here is a more detailed explanation.

We'll provide Miles City all of the finished products and can do that in different formats, such as paper or electronic. There are some cases when an electronic data transfer (such as CADD drawing) requires a signed release/indemnification first; the signed form protects KLJ from improper re-use or modification of that data, which would be out of our control once provided. In the end, however, we will provide all finished products.

Instruments of service, on the other hand, pertain to what we consider intellectual property. Examples include professional judgment documentation, individual design calculations, KLJ standard (proprietary) templates, survey notes and sketches, and other background data used to create the finished product. It's worth noting that although Paragraph 7.01.F states that we retain the right to ownership, that doesn't necessarily mean we won't provide background data when appropriate; its intent is to mutually acknowledge who "owns" the instruments of service and intellectual property.

Hopefully this helps, and please call any time to discuss in greater detail. The contract language could be adjusted if there are still concerns.

Take care,

Carl Jackson, PE



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