

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. 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. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. 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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All 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. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) 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.
- I. 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 as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. 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 for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer 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. Engineer's standard hourly rates are attached as Attachment 1.

Attachments:

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

OWNER:

By: \_\_\_\_\_

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

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

Address for giving notices:

City of Miles City \_\_\_\_\_

P.O. Box 910 \_\_\_\_\_

Miles City, MT 59301 \_\_\_\_\_

(406) 234-3493 \_\_\_\_\_

ENGINEER:

By: \_\_\_\_\_

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

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

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_

State of: Montana \_\_\_\_\_

Address for giving notices:

Interstate Engineering, Inc. \_\_\_\_\_

P.O. Box 20953 \_\_\_\_\_

Billings, MT 59104-0953 \_\_\_\_\_

406-256-1920 \_\_\_\_\_



**RESOLUTION NO. 3847**

**A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH KADRMAS, LEE & JACKSON D/B/A KLJ, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Kadrmas, Lee & Jackson d/b/a KLJ for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Kadrmas, Lee & Jackson d/b/a KLJ has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional Services," attached hereto as Exhibit "A," and made a part hereof, is hereby approved and adopted by this council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said agreement on behalf of the City of Miles City, and bind the City of Miles City thereto.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

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

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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”)

and

\_\_\_\_\_ Kadrmas, Lee & Jackson (dba KLJ) \_\_\_\_\_ (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

\_\_\_\_\_ General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

\_\_\_\_\_ Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

## 2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then 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, 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. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance 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. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform 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, by Owner effective upon Engineer's receipt of written notice from Owner.



- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. 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. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. 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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All 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. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) 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.
- I. 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 as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. 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 for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer 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. Engineer's standard hourly rates are attached as Attachment 1.

Attachments:

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

OWNER:

By: \_\_\_\_\_

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

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

Address for giving notices:

City of Miles City \_\_\_\_\_

P.O. Box 910 \_\_\_\_\_

Miles City, MT 59301 \_\_\_\_\_

(406) 234-3493 \_\_\_\_\_

ENGINEER:

By: \_\_\_\_\_

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

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

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_

State of: Montana \_\_\_\_\_

Address for giving notices:

Kadmas, Lee & Jackson (dba KLJ) \_\_\_\_\_

2611 Gabel Road \_\_\_\_\_

Billings MT 59102-7329 \_\_\_\_\_

406-245-5499 \_\_\_\_\_



**RESOLUTION NO. 3848**

**A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH ROBERT PECCIA & ASSOCIATES, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Robert Peccia & Associates for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Robert Peccia & Associates has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional Services," attached hereto as Exhibit "A," and made a part hereof, is hereby approved and adopted by this council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said agreement on behalf of the City of Miles City, and bind the City of Miles City thereto.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

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

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

---

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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AMERICAN SOCIETY OF CIVIL ENGINEERS

---

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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”)

and

\_\_\_\_\_ Robert Peccia & Associates \_\_\_\_\_ (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

\_\_\_\_\_ General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

\_\_\_\_\_ Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.



## 2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then 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, 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. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance 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. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform 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, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. 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. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. 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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All 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. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) 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.
- I. 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 as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. 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 for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer 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. Engineer's standard hourly rates are attached as Attachment 1.

Attachments: \_\_\_\_\_

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

OWNER:

By: \_\_\_\_\_

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

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

Address for giving notices:

City of Miles City \_\_\_\_\_

P.O. Box 910 \_\_\_\_\_

Miles City, MT 59301 \_\_\_\_\_

(406) 234-3493 \_\_\_\_\_

ENGINEER:

By: \_\_\_\_\_

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

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

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_

State of: Montana \_\_\_\_\_

Address for giving notices:

Robert Peccia & Associates \_\_\_\_\_

P.O. Box 5653 \_\_\_\_\_

Helena MT 59604 \_\_\_\_\_

406-447-5000 \_\_\_\_\_



**RESOLUTION NO. 3849**

**A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH SANDERSON STEWART, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Sanderson Stewart for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Sanderson Stewart has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

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

1. The "Short Form of Agreement between Owner and Engineer for Professional Services," attached hereto as Exhibit "A," and made a part hereof, is hereby approved and adopted by this council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said agreement on behalf of the City of Miles City, and bind the City of Miles City thereto.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

---

C.A. Grenz, Mayor

ATTEST:

---

City Clerk

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

Prepared by

**EJCDC** 

**ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS



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”)

and

Sanderson Stewart (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

General Engineering Services for a period of 5 years from effective date.

Engineer's Services under this Agreement are generally identified as follows:

Scope of work to be identified at later date in task order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: To be determined by task order.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

## 2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then 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, 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. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance 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. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform 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, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. 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. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. 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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All 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. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) 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.
- I. 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 as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
  - 1. 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 for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  - 2. Engineer's Standard Hourly Rates are attached as Attachment 1.
  - 3. The total compensation for services and reimbursable expenses is estimated to be determined in scope of project task.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer 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. Engineer's standard hourly rates are attached as Attachment 1.

Attachments:

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

OWNER:

By: \_\_\_\_\_

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

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

Address for giving notices:

City of Miles City

P.O. Box 910

Miles City, MT 59301

(406) 234-3493

ENGINEER:

By: \_\_\_\_\_

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

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

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_

State of: Montana

Address for giving notices:

Sanderson Stewart

1300 N. Transtech Way

Billings MT 59102

406-656-5255



**RESOLUTION NO. 3850**

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2015-2016 TO INCREASE BUDGETED AMOUNTS IN THE TREASURER FUND 1000.

*WHEREAS*, the City of Miles City wishes to amend the budget for Fiscal Year 2015-2016 to account for budgeting in the Treasurer fund, for wage increase;

*AND WHEREAS*, such amendment of the final budget will result in an overall increase in appropriation authority within the General fund ,

*AND WHEREAS* the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

The appropriations for the Final Budget for Fiscal Year 2015-2016 shall be increased in the following amounts:

Treasurer Fund	
1000-009-410540-111	\$2,000- Wages

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2015-2016 on the 13<sup>th</sup> day of October, 2015, at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 22<sup>nd</sup> DAY OF SEPTEMBER, 2015.

\_\_\_\_\_  
C. A. GRENZ, Mayor

ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF



MILES CITY, MONTANA, THIS 13<sup>th</sup> DAY OF OCTOBER, 2015.

\_\_\_\_\_  
C. A. GRENZ, Mayor

ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

**RESOLUTION NO. 3851**

A RESOLUTION PURSUANT TO §7-6-4006 OF THE MONTANA CODE ANNOTATED, AUTHORIZING AMENDMENT OF FINAL BUDGET FOR FY 2015-2016 TO INCREASE BUDGETED AMOUNTS IN THE CITY HALL MAINTENANCE FUND 1000.

*WHEREAS*, the City of Miles City wishes to amend the budget for Fiscal Year 2015-2016 to account for budgeting in the Treasurer fund, for wage increase;

*AND WHEREAS*, such amendment of the final budget will result in an overall increase in appropriation authority within the General fund ,

*AND WHEREAS* the provisions of §7-6-4006 MCA require public hearing upon any budget amendment resulting in an overall increase in appropriation authority,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Miles City, Montana as follows:

The appropriations for the Final Budget for Fiscal Year 2015-2016 shall be increased in the following amounts:

Treasurer Fund	
1000-008-411230-360	\$12,000- Repair, Maintenance and Janitorial Services

BE IT FURTHER RESOLVED that a public hearing shall be held on the above proposed amendment to the Final Budget for Fiscal Year 2015-2016 on the 13<sup>th</sup> day of October, 2015, at 7:00 p.m. in the City Council Chambers at City Hall, Miles City, Montana. The City Clerk shall cause notice of such hearing to be published in the Miles City Star, in accordance with §7-1-4128 MCA, at least 2 times with at least 6 days separating each publication.

SAID RESOLUTION READ AND PUT UPON ITS FINAL PASSAGE THIS 22<sup>n<sup>d</sup></sup> DAY OF SEPTEMBER, 2015.

\_\_\_\_\_  
C. A. GRENZ, Mayor

ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY

CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF  
MILES CITY, MONTANA, THIS 13<sup>th</sup> DAY OF OCTOBER, 2015.

---

C. A. GRENZ, Mayor

ATTEST:

---

Lorrie Pearce, City Clerk

After Recording, Return To:  
City of Miles City, Montana  
P.O. Box 910  
Miles City, Montana 59301

### **RESOLUTION NO. 3852**

#### **A RESOLUTION GRANTING A REVOCABLE LICENSE TO CARLA DICKERSON, PATRICIA SAX, LAURA SAX, MARK SAX, AND GLENN SAX, FOR THE INSTALLATION OF A SEWER SERVICE LINE IN THE RIGHT OF WAY AREA AT THE INTERSECTION OF WELLS STREET AND NORTH FIFTH STREET.**

**WHEREAS**, the property owners of the real property commonly known as 1303 North 5<sup>th</sup>, Miles City, Montana, have requested permission to encroach upon City property to install a sewer line to serve said property; the owners of record making such request include Carla Dickerson, on behalf of herself, as well as Carla Dickerson in her capacity as attorney in fact real estate for Patricia Sax, Laura Sax, Mark Sax, and Glenn Sax, pursuant to certain powers of attorney which are recorded as Documents No. 163471-163474 with the Clerk and Recorder in and for Custer County, Montana. Said property is located within the Custer County, Montana, and is more particularly described as follows:

Lots 20-22 in Block 11 of the Milwaukee Park Addition to the City of Miles City, Montana, according to the plat and survey thereof on file in the office of the Clerk and Recorder of Custer County, Montana.

**AND WHEREAS**, the City Council finds that the granting of such revocable license for such encroachment, pursuant to certain terms and conditions, is advisable.

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

The City of Miles City, Montana, does hereby authorize and grant unto Carla Dickerson, Patricia Sax, Laura Sax, Mark Sax, and Glenn Sax (collectively, the “licensees”) and their successors and assigns, a revocable license to install and maintain, at their own expense, a sewer service line in the right of way area at the intersection of Wells Street and North Fifth Street, as depicted in the drawing attached hereto as Exhibit “A.” The final location of said lines shall be subject to review and final approval of the City of Miles City Engineering and Utilities

Department. Licensees shall follow any reclamation requirements of the Engineering and Utilities Department without delay, and at their own expense.

In the event this license is later terminated by the City of Miles City, the licensees shall, at their expense, remove and/or relocate said lines, and reclaim any disturbed areas, upon receiving ninety days advanced written notice from the City of Miles City.

This license shall run with the above described real property subject to the terms, conditions and right to terminate provided herein.

The City Clerk of the City of Miles City shall record this license on the chain of title of the above described real property. Great Falls Holdings LLC shall submit to the City Clerk the sum of \$21.00 to pay for the cost of recording.

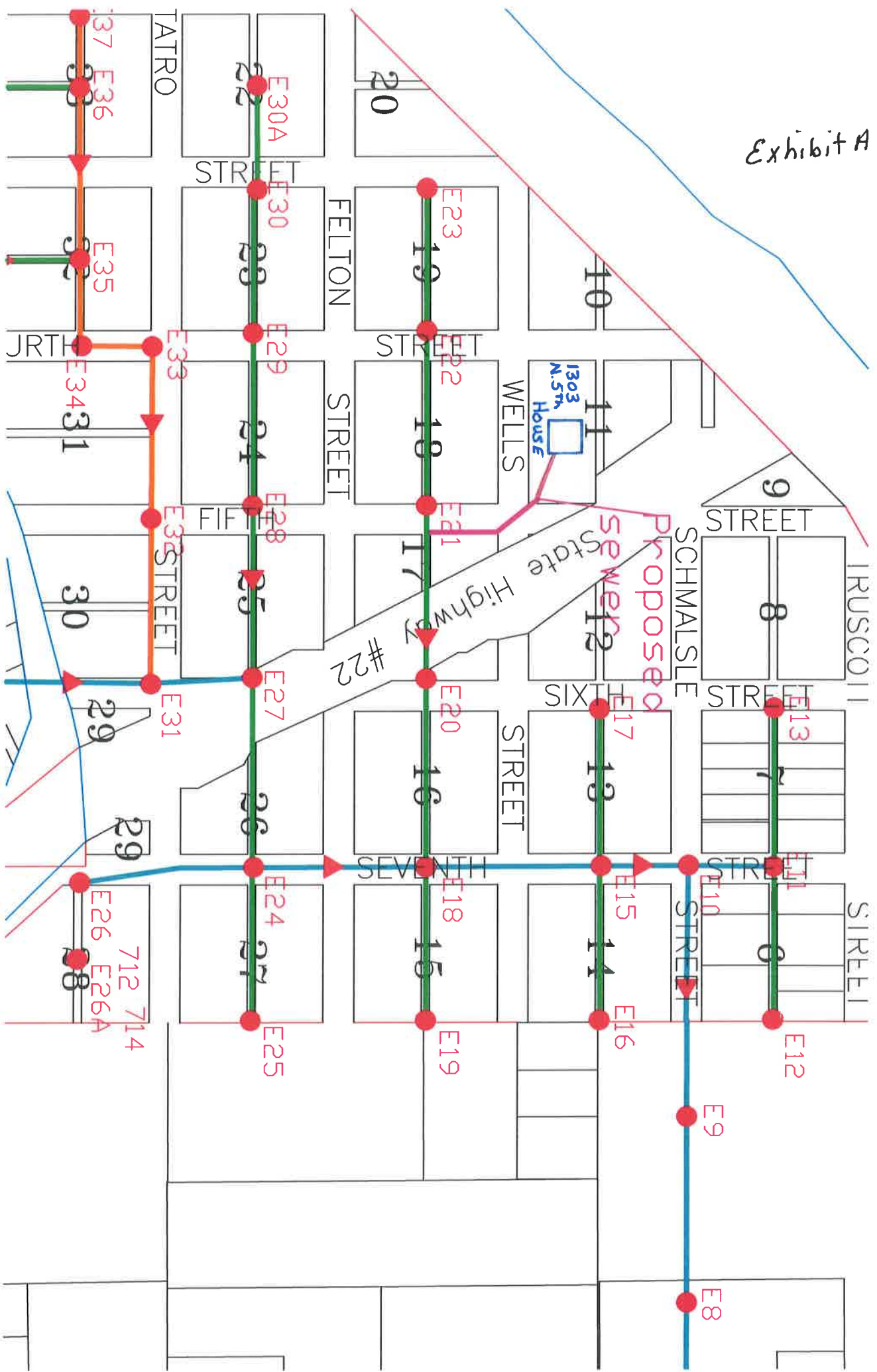
**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY  
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY,  
MONTANA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

\_\_\_\_\_  
Lorrie Pearce, City Clerk

Exhibit A



RESOLUTION NO. 3853

RESOLUTION RELATING TO \$59,703.00 FOR THE CITY OF MILES CITY SPECIAL IMPROVEMENT DISTRICT NO. 211 BOND; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR

BE IT RESOLVED by the City Council of the City of Miles City, Montana (the "City") as follows:

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.1. Creation of the District. By adopting the Resolution of Intention, this City Council (the "Council") declared its intention to create the following Special Improvement District No. 211:

The Special Improvement District No. 211 (the "District"), for the purpose of making local improvements (the "Improvements") for the special benefit of the District, in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42 (the "Act"). This Council by adopting the Resolution, did create the District and order the proposed Improvements in accordance with the Resolution of Intention.

1.2. Costs. The costs and expenses connected with and incidental to the formation of the District to the City, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contract and all other costs and expenses (hereafter, the "Projects") will be levied and assessed upon the assessable real property within the District on the basis described in the Resolution of Intention. This Council has jurisdiction and is required by law to levy and assess such amounts, to collect such special assessments and credit the same to the special improvement district fund created for the District, which fund is to be maintained on the official books and records of the City separate from all other funds, for the payment of principal and interest when due on the Bond herein authorized.

1.3. Board of Investments; INTERCAP Revolving Program. Pursuant to Montana Code Annotated, Section 2-15-1808 and Title 17, Chapter 5, Part 16, as amended, and in accordance with the Indenture of Trust, dated as of March 1, 1991 as amended and supplemented (the "Indenture"), between the Board of Investments of the State of Montana (the "Board of Investments") and U.S. Bank National Association (formerly known as First Trust Company of Montana National Association), as Trustee (with any successor trustee thereunder), (the "Trustee"), the Board of Investments has established its INTERCAP Revolving Program (the "INTERCAP Program") pursuant to which the Board of Investments will issue and remarket, from time to time, its Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) (the "Board Bonds"), for the purpose of making loans to local government units to finance or refinance the acquisition and installation of equipment, personal and real property improvements, to provide temporary financing of projects or for other authorized corporate purposes of a local government unit. All Board Bonds issued under the Indenture are secured equally and ratably thereunder and bear interest at a rate that is adjustable annually, effective for the period commencing on each March 1<sup>st</sup> and ending on the last day of the next succeeding February.

1.4. Sale and Issuance of Bond. For the purpose of financing the costs and expenses of making the Improvements, which are to be assessed against the property within the District as provided in the Resolution of Intention, this Council hereby authorizes the negotiated sale of a special improvement district bond in the principal amount of \$59,703.00 (the "Bond") to the Board of Investments, in accordance with the provisions of Montana Code Annotated, Section 7-12-4204(2), upon the further terms set forth in this Resolution. The Board will fund its purchase of the Bond from the proceeds of a series of Board Bonds or from loan payments made with respect to loans funded from such proceeds.

The Bond may bear a variable rate of interest and be sold at a private negotiated sale since the principal amount of the Bond does not exceed \$500,000.

1.5. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, in order to make the Bond a valid and binding special obligation in accordance with its terms and in accordance with the terms of this Resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

1.6. Use of Bond Proceeds. The proceeds of the Bond are hereby appropriated to the District Fund created by this Resolution and shall be deposited in the Revolving Fund in an amount equal to the initial Revolving Fund requirement and the balance of the proceeds shall be deposited in the District Fund created by this Resolution and applied to the costs of the Project. In addition, the County will pay the proceeds to a third party within five business days after the date they are advanced (except for proceeds to reimburse the County for previously paid expenditures, which are deemed allocated on the date advanced). Investment of proceeds by the County within the five business day period of disbursement to a third party (except for proceeds to reimburse the County for previously paid expenditures) should be in Non-AMT Obligations as that term is defined in the Board's tax certificates.

Section 2. The Bond.

2.1. Principal Installments, Maturities, Denominations, Date, Interest Rates. For the purpose of paying the costs and expenses incurred in construction of the Improvements, and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the sale described in Section 1.04, the City shall forthwith issue and deliver to the Board of Investments the Bond payable solely from the Special Improvement District Fund (the "District Fund") and denominated City of Miles City Special Improvement District, Bond No. 211 (the "Bond").

<u>District Name</u>	<u>District Number</u>	<u>Bond Number</u>
Special Improvement District	211	2638-01

The Bond shall be in the principal amount of \$59,703.00, shall be issued as a fully registered bond numbered 2638-01, shall be dated, as originally issued, and registered as of the date of delivery to the Board of Investments, and principal installments thereof shall mature on August 15, 2030 in the years and principal amounts set forth on attached schedule, and shall bear interest from the date of delivery of the Bond at the rate per annum equal to the Loan Rate (as hereinafter defined), as determined from time to time, for the periods hereinafter described.

Interest on the Bond shall be payable on each February 15<sup>th</sup> and August 15<sup>th</sup>, commencing February 15, 2016, to the owners of record thereof as such appear on the bond register on the date of payment, whether or not such day is a business day. The Bond shall represent all the principal installments of the issue.

For purposes of this Resolution, "Loan Rate" shall mean, for the period from the date of original registration of the Bond until February 15, 2016, the rate of one and twenty-five hundredths (1.25%) per annum, and, for each twelve-month or shorter period thereafter during the term of the Bond commencing on February 16<sup>th</sup> and concluding on February 15<sup>th</sup> in the next succeeding year, an annual interest rate specified by the Trustee and calculated as provided under the Indenture, which rate generally shall be equal to the sum of (i) the interest rate on the Board Bonds during such period (which interest rate may not exceed fifteen percent (15%) per annum) plus (ii) a rate, not to exceed one and one-half percent (1.50%) per annum, sufficient to produce the amount necessary to pay the City's share of Program Expenses (as hereinafter defined). For purposes of this Section 2.01, "Program Expenses" shall mean the expenses of the Program, including (without limitation) the fees and expenses of the Trustee and such other fees and expenses of the Program or of the Board of Investments relating thereto as shall be approved by the Board of Investments. Under the Indenture, the Trustee is to calculate and notify the City, within 20 days after each March 1<sup>st</sup>, of the interest rate on the Bond for the period commencing on the preceding February 16<sup>th</sup>.



2.2. Negotiability, Transfer and Registration. The Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the Board of Investments. While so registered, principal of and interest on the Bond shall be payable to the U.S. Bank National Association (formerly known as First Trust Company of Montana National Association), Corporate Trust Services, 60 Livingston Avenue, St. Paul, MN 55107 or such other place as may be designated by the Board of Investments in writing and delivered to the City. The Bond shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Bond shall be valid unless and until (1) the holder, or duly authorized attorney or legal representative, has executed the form of assignment appearing on the Bond, and (2) the City Treasurer of the City or any successor financial institution or trust company which this Council may appoint to so act as Bond Registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. All costs of such registration and transfer shall be paid by the City, except that the City may charge the holder for any tax, fee or other governmental charge imposed upon or with respect to the transfer of the Bond. The City shall be entitled to deem and treat the person in whose name the Bond is registered as the absolute owner of the Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the City's liability upon such Bond to the extent of the sum or sums so paid.

2.3. Execution and Delivery. The Bond shall be executed on behalf of the City by the manual signatures of the Mayor and the City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Bond. The Bond shall be sealed with the corporate seal of the City. In the event that any of the officers who shall have signed the Bond shall cease to be officers of the City before the Bond is issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Bond may be signed by an authorized official who did not hold such office on the date of adoption of this Resolution. The Bond shall be delivered to the Board of Investments, or its attorney or legal representative. The Bond shall be registered in the office of the City Clerk and the City Treasurer.

2.4. Prepayment, when Mandatory Redemption Required. The principal installments of the Bond are subject to mandatory redemption in order of registration on any interest payment date if, after paying all principal and interest then currently due on the Bond, there are monies available in or to the credit of the Special Improvement District No. 211 Fund of the City, either from the prepayment of assessments levied in the District or from surplus proceeds of the Bond not required to pay costs of the Improvements, for the redemption thereof, and in the manner provided for the redemption of the same. The principal installments of the Bond are subject to redemption at the option of the City from other sources of funds available therefor on any interest payment date. The redemption price is equal to the amount of the principal installment or installments of the Bond to be redeemed plus interest accrued thereon to the date of redemption, without premium. The date of redemption shall be fixed by the City Treasurer, who shall give notice by first class mail, postage prepaid, to the owner or owners of the Bond at their address shown on the bond register, of the numbers of the principal installments to be redeemed and the date on which payment will be made, which date shall not be less than ten days after the date of mailing of notice, on which date so fixed interest shall cease. On the date so fixed interest on the principal installments of the Bond so redeemed shall cease to accrue.

2.5. Form. The Bond shall be drawn in substantially the form set forth in Exhibit A hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

### Section 3. District Fund; Assessments.

3.1. District Fund. There is hereby created and established the District Fund designated as the "Special Improvement District Fund," which shall be maintained by the City Treasurer on the books and records of the City separate and apart from all other funds of the City. Within the District Fund there shall be maintained two separate accounts, designated as the "Principal Account" and "Interest Account," respectively.

3.2. Principal Account and Interest Account. Money in the Principal Account and the Interest Account shall be used only for payment of the principal of and interest on the Bond as such payments become due