

RESOLUTION NO. 4266

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A MONTANA DEPARTMENT OF ADMINISTRATION 9-1-1 GRANT PROGRAM CONTRACT FOR UPDATES AND IMPROVEMENTS OF 9-1-1 CAD AND RMS SYSTEMS.

WHEREAS, the Montana Department of Administration has awarded the City a 9-1-1 Grant in the amount of \$371,790.00 for upgrades to 9-1-1- CAD and RMS systems;

AND WHEREAS, a contract has been provided to the City for acceptance of said grant;

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

1. The "Montana Department of Administration 9-1-1 Grant Program Contract #MT9-1-1 Grant-2019-017," 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 Contract on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 23RD DAY OF JULY, 2019.


John Hollowell, Mayor

ATTEST:


Lorrie Pearce, City Clerk

**MONTANA DEPARTMENT OF ADMINISTRATION
9-1-1 GRANT PROGRAM
CONTRACT # MT9-1-1 GRANT-2019-017**

This agreement ("Contract") is entered by City of Miles City, Custer County, Montana ("Grantee") and the Montana Department of Administration ("Department").

The Grantee and the Department hereby agree to the following terms:

Section 1. PURPOSE

The purpose of this Contract is to provide funding to the Grantee for 9-1-1 system activities approved by the Department under the 9-1-1 Grant Program ("Program") as authorized by HB 61, passed by the 65th Legislature and as signed into law by Governor Bullock on May 9, 2017 (Chapter 367, Laws 2017).

Section 2. AUTHORITY

This Contract is issued under authority of Title 10, Chapter 4 of the Montana Code Annotated ("MCA") and Title 2, Chapter 13 of the Administrative Rules of Montana ("ARM"), and the terms of Chapter 353, Laws 2017.

Section 3. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for Program assistance, including any written modifications or reports resulting from the review of the application by the Department (collectively "Project"), is specifically incorporated into this Contract by this reference and the representations made therein are binding upon the Grantee.

Section 4. ACCEPTANCE OF PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable local, state, and federal laws as well as all applicable regulations, ordinances, and resolutions now in effect or as may be amended during the term of this Contract. Grantee will comply with all administrative directives and procedures that may be established or amended by the Department for the Program.
- (b) The Grantee agrees that all contracts and subcontracts entered for the completion of the activities described in Section 6 will require such contractors, subcontractors, and subrecipient entities to also comply with all requirements placed on the Grantee in paragraph (a) of this Section.
- (c) The Grantee agrees to repay to the Department any funds advanced under this Contract that the Grantee, its contractors, subcontractors, or subrecipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract, the

statutes, and regulations governing the Program or any applicable local, state, or federal requirements.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

- (a) This Contract shall take effect upon execution by the parties and will terminate on September 30, 2021 or upon approval of Grantee's Project completion report by the Department, whichever is earlier, unless otherwise terminated in accordance with this Contract.
- (b) All authorized expenses to be reimbursed must be incurred by the Grantee between July 1, 2018 and June 30, 2021. All requests for reimbursement must be submitted to the Department within ninety (90) days after June 30, 2021.
- (c) The Department may grant an extension to this Contract upon request by the Grantee if the Department determines, in its sole discretion, that the Grantee has demonstrated progress toward completion of the Project, has engaged in a good faith effort to comply with the duties, terms, and conditions of this Contract, and that the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control. A written request for an extension must be submitted at least ninety (90) days prior to September 30, 2021.

Section 6. SCOPE OF WORK

The Grantee will complete the Project and administer this Contract, including any amendments, approved by the Department. The Grantee will use Program funds for the following major components of the project: **update and improve 9-1-1 CAD and RMS systems, includes software, data transfer services and digital voice logger.**

Section 7. BUDGET

- (a) The total amount to be awarded to the Grantee under this Contract shall not exceed **\$371,790.00**.
- (b) Any authorized funds not expended under this grant by the later date referenced in Section 5(b) or otherwise accounted for in accordance with the provisions of this Section will revert to the Department and will be used to finance other Program projects.

Section 8. ACCESS TO AND RETENTION OF RECORDS

- (a) The Grantee agrees to create and maintain records supporting the services covered by this Contract, including but not limited to, financial records, supporting documents, and such other records as are required by law or other authority, for

a period of five (5) years after either the termination date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Grantee's offices in Miles City, Montana.

- (b) The Grantee shall provide the Department, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance.

Section 9. LIAISONS

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

For the Department:
Rhonda Sullivan
Program Manager, DOA/SITSD
1400 8th Avenue
P.O. Box 200113
Helena, MT 59620-0113
406-444-2420
rsullivan@mt.gov

For the Grantee:
Lynn Anderson
Miles City, Custer Cty.
1010 Main St.
Miles City, MT 59301
406-874-3363
landerson@milescity-mt.org

Section 10. METHOD OF REIMBURSEMENT

- (a) The Department will use the funds in the 9-1-1 grant account established pursuant to section 10-4-304(2)(b), MCA, to fund 9-1-1 system awards to Grantees that have received a notice of award letter from the Department. Grantee acknowledges that its access to Program funds is subject to their availability.
- (b) The Department agrees that, if and when the funds described in paragraph (a) of this Section are available, the Department will authorize the Grantee to request reimbursement from funding awarded for the Project.
- (c) The Department agrees to reimburse the Grantee for eligible Project costs incurred on or after July 1, 2018 upon the successful completion of activities set forth in Section 6. All reimbursements must be supported by adequate documentation provided by the Grantee and require Department approval of the Grantee's request for reimbursement. In requesting reimbursement, the Grantee will follow the instructions supplied by the Department.

- (d) The Department will not reimburse the Grantee for any costs incurred prior to July 1, 2018, any ineligible expenses as set forth in 10-4-306(2) MCA, or any expenses not adequately supported by the Grantee's records.
- (e) As set forth in Section 17, if the Grantee fails to or is unable to comply with any of the terms and conditions of this Contract any costs incurred will be the Grantee's sole responsibility.
- (f) The Grantee understands and acknowledges that the Department will report to the Legislature and Legislative Interim Committees on the status of all Program projects. If the Department determines that the Grantee has failed to commence its project in a timely manner or complete its Project by the date prescribed in this Contract, the Department may recommend to the Legislature that the Contract be terminated and any remaining Project funds will revert to the Department and may be used, at the Department's discretion, to fund other Program grants.
- (g) The Department is allowed thirty (30) days to process a request for reimbursement once adequate supporting documentation has been received by the Department. The Grantee shall provide banking information before or at the time of Contract execution in order to facilitate electronic funds transfer payments.
- (h) The Department may reduce the Grantee's amount of Program funds provided by this Contract if actual Project expenses are lower than projected by the Grantee.
- (i) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract or has breached the terms of this Contract, the Department may withhold reimbursement to the Grantee until such time as the Department and the Grantee agree on a plan to remedy the deficiency.
- (j) Requests for reimbursement for contracted or subcontracted services must include appropriate documentation demonstrating compliance with contract requirements.
- (k) The Grantee may not use monies provided through this Contract as payment for Project costs that are reimbursed from other sources.

Section 11. REPORTING REQUIREMENTS

- (a) **Project Progress Reports:** During the term of this Contract the Grantee will submit Project progress reports as described in ARM 2.13.410 to the Department in conjunction with each request for reimbursement. The Department, at its sole discretion, may decline to honor any request for reimbursement if the required project progress report has not been submitted to or approved by the Department.

- (b) Project Completion Report: Upon completion of the Project the Grantee will submit a final Project completion report for Department approval. Upon approval of the Project completion report the Department will issue a notice of Project close-out.

Section 12. PROJECT MONITORING

The Department or any of its authorized agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with Section 6 of this Contract, the proper use of funds, and other technical and administrative requirements of this Contract, including the adequacy of the Grantee's records and accounts. The Department may advise the Grantee of any specific areas of concern and provide the Grantee opportunity to propose corrective actions acceptable to the Department.

Section 13. NOTICE

All notices required under the provisions of this Contract must be in writing and delivered to the parties' liaisons identified herein by first class mail, electronic mail, facsimile, or personal service. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing.

Section 14. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract. If the number is not provided, the Department is not obligated to pay the invoice.

Section 15. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

- (a) The Grantee may subcontract any portion of this Contract to accomplish the completion of the Project. However, Grantee accepts responsibility for the adherence to the terms of this Contract by such contractors, subcontractors, or subrecipient entities and by any public or private agents or agencies to which it delegates authority to carry out any portion(s) of this Contract. The Grantee may not otherwise assign or transfer any portion of this Contract without the express written consent of the Department.
- (b) The Grantee's assignment, transfer, or subcontract of this Contract or any portion thereof neither makes the Department a party to that agreement nor creates any right, claim, or interest in favor of any party to that agreement against the Department. No contractual relationships exist between any subcontractor, assignee, or transferee and the Department.
- (c) The Grantee must immediately notify the Department of any litigation concerning any assignment, transfer, or subcontract of this Contract or any portion thereof.

Section 16. CONTRACT AMENDMENT

This Contract may not be enlarged, modified, or altered without a written agreement signed by all parties to the Contract.

Section 17. TERMINATION OF CONTRACT

This Contract may only be terminated in whole or in part as follows:

- (a) **Termination Due to Loss or Reduction of Funding:** The Department, at its sole discretion, may terminate or reduce the scope of this Contract if any funding sources are eliminated or reduced for any reason. If a termination or modification is required, the Department may, if sufficient Program funds are available, compensate the Grantee for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Department will notify the Grantee of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, provide the Grantee with a modified Project budget. This paragraph provides Grantee's sole remedies for any event described in this paragraph, and the Department shall not be liable to Grantee or any contractor, subcontractor, or subrecipient for any other payments or damages arising from termination under this paragraph, including but not limited to general, special, or consequential damages such as lost profits or revenues.
- (b) **Termination for Cause with Notice to Cure Requirement:** The Department may terminate this Contract for failure of the Grantee, its contractors, subcontractors, or subrecipient entities to comply with any applicable statute or rule or for any failure to perform or comply with any of the services, duties, terms, or conditions contained in this Contract after giving the Grantee written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.
- (c) **Effect of Termination:** In the event of termination described in paragraph (b) of this section, any costs incurred will be the responsibility of the Grantee. However, at its sole discretion, the Department may approve requests by the Grantee for reimbursement of eligible expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control.

Section 18. COMPLIANCE WITH APPLICABLE LAWS

- (a) The Grantee, in performance of work under the Contract, must fully comply with all applicable federal, state, or local laws, rules and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and the Patient Protection and Affordable Care Act ("ACA"). Any subletting or subcontracting by the Grantee subjects subcontractors to the same requirements.
- (b) In accordance with Section 49-3-207, MCA and Executive Order No. 04-2016, the Grantee agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, sex, pregnancy, childbirth or medical conditions related to childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status.
- (c) The ACA requires a Grantee, if Grantee is an applicable large employer under the ACA, to provide healthcare coverage for its employees, who provide services for the State and work for thirty (30) or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions of the ACA under Section 4980H, and otherwise satisfy the requirements of the ACA Section 4980 H if provided by the State.
- (d) The Department does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

Section 19. ACCOUNTING, COST PRINCIPLES, AND AUDITING

- (a) The Grantee, in accordance with Sections 2-7-503, MCA and other authorities, must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles ("GAAP").
- (b) The Department, any other legally authorized governmental entity, or their authorized agents may, at any time during or after the term of this Contract, conduct in accordance with Sections 2-7-503, 5-13-304, and 18-1-118, MCA and other authorities, audits for the purposes of ensuring the appropriate

administration, expenditure of monies, and delivery of services provided through this Contract.

Section 20. AVOIDANCE OF CONFLICT OF INTEREST

- (a) The Grantee will comply with Sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, as applicable, and any other applicable local, state, or federal law regarding the avoidance of conflict of interest.
- (b) The Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.
- (c) The Grantee shall promptly refer to the Department any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

Section 21. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Grantees are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with Sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Grantee nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and renewal documents must be sent to the Department within thirty (30) days of Contract execution.

Section 22. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by the Grantee or any of its contractors or subcontractors in furtherance of this Contract are the property of the Grantee and the Department. Both Grantee and the Department have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish, authorize others to use, and to otherwise use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of both the Department and the Grantee.

Section 23. INSURANCE

- (a) General Requirements: Grantee must maintain and assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, liability insurance against claims for injuries to persons or damages to property, including contractual liability, that may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance must cover such claims as may be caused by any negligent act or omission. The State, its officers, officials, employees, and volunteers must be covered as additional insureds for all claims arising out of the use of grant proceeds provided by the State of Montana.
- (b) General Liability Insurance: At its sole cost and expense, Grantee must purchase occurrence coverage with minimum combined single limits of \$1 million per occurrence and \$2 million aggregate per year, or as established by statutory tort limits of \$750,000 per claim and \$1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.
- (c) Professional Liability Insurance: Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year. *Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are filed after the cancellation or expiration date of the policy.*
- (d) Property Insurance: At its sole cost and expense, Grantee must maintain property and hazard insurance, including course of construction coverage and earthquake insurance, for loss or damage to any building and related improvements and contents therein on a replacement cost basis throughout the term of the Contract. *Note: earthquake insurance is required when working in areas where the shaking level is above 10g.*
(Ref: <http://rmtd.mt.gov/Portals/62/aboutus/publications/files/NEHRP.pdf>).
- (e) General Provisions: Grantee's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Grantee's insurance and shall not contribute with it. All insurance coverage must be with a carrier licensed to do business in the State of Montana and with a Best's rating of at least A-, or by a public entity self-insured program either individually or

on a pool basis as provided by Title 2, MCA. All certificates and endorsements must be received by the Department prior to beginning any activity provided for under the Contract. Grantee must notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of Grantee's insurance policy, including endorsements, at any time.

Section 24. HOLD HARMLESS AND INDEMNIFICATION

The Grantee agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Grantee's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, omissions of services, or in any way resulting from the acts or omissions of the Grantee and/or its agents, employees, representatives, assigns, or subcontractors under this Contract.

Section 25. DEFAULT

Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract as set forth herein or as otherwise legally available, including but not limited to damages and specific performance.

Section 26. DEBARMENT

The Grantee certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency.

Section 27. FORCE MAJEURE

Neither party will be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, bombs, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

Section 28. SEPARABILITY

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal, and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

Section 29. ARBITRATION

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

Section 30. NO WAIVER OF BREACH

No failure by the Department to enforce any provisions hereof after any event of breach will be deemed a waiver of its rights regarding that event, or any subsequent event. No express failure of any event of breach will be deemed a waiver of any provision hereof. No such failure or waiver will be deemed a waiver of the right of the Department to enforce each and all the provisions hereof upon any further or other breach on the part of the Grantee.

Section 31. JURISDICTION AND VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in Lewis and Clark County, State of Montana and each party must pay its own costs and attorney fees.

Section 32. INTEGRATION

The Contract contains the entire agreement between the parties. No statements, promises, or inducements of any kind made by either party or the agents of either party, not contained herein or included as provided in section 3 or in a properly executed amendment hereto are valid or binding.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties hereto have caused this Contract to be executed.


STATE OF MONTANA
Department of Administration
PO Box 200113
125 N. Roberts St., Mitchell Bldg.
Helena, MT 59620-0113

PRINTED:

Authorized Name: JOHN HOLLANDER
Title: MAYOR
Address: 17 S. 8th
City, MT & Zip: MILES CITY, MT 58301

Federal ID #81-6001292

BY: horrre Pearce / City Clerk
(Name/Title)


(Signature)

DATE: 7-23-19

BY: John Housen / Mayor
(Name/Title)


(Signature)

DATE: 7-23-19

Approved as to Legal Content:

Don Harris, Legal Counsel (Date)

Chief Financial Officer Approval:

April Grady, Chief Financial Officer (Date)
State Information Technology Services Division

Chief Information Officer Approval:

Tim Bottenfield - Chief Information Officer (Date)
Department of Administration

COPY

BY: John Lewis John Lewis
(Name/Title)

DocuSigned by:
John Lewis
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DATE: 8/9/2019

BY: Rex Phipps, Chairman
(Name/Title)

Rex Phipps
(Signature)

DATE: 07/24/2019

Approved as to Legal Content:

DocuSigned by:
Don Harris 8/9/2019
Don Harris, Legal Counsel (Date)

Chief Financial Officer Approval:

DocuSigned by:
April Grady 8/9/2019
April Grady, Chief Financial Officer (Date)
State Information Technology Services Division

Chief Information Officer Approval:

DocuSigned by:
Tim Bottenfield 8/9/2019
Tim Bottenfield - Chief Information Officer (Date)
Department of Administration