



# CITY OF MILES CITY AGENDA

*Regular Council Meeting  
City Council Chambers*

*April 28, 2020  
6:00 p.m.*

During the COVID-19 emergency, City of Miles City-City Council will be meeting by remote means. To attend the meetings by mobile phone, please log on to zoom.us and download the Zoom app from its “Download Center”. The meeting information will be posted on the City of Miles City’s website at [milescity-mt.org](http://milescity-mt.org). If you would like to receive a personal invite, please email your email address to the City Clerk at the address below. Documents for the meetings can be accessed by calling 874-8602 or emailing [cityclerk@milescity-mt.org](mailto:cityclerk@milescity-mt.org) with the request.

## CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. **APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**

A. Regular City Council Meeting	04/14/2020
B. Finance Committee Meeting	04/09/2020
C. Human Resource Committee	04/21/2020
D. Finance Committee Meeting	04/21/2020

2. **SCHEDULE MEETINGS**

3. **REQUEST OF CITIZENS & PUBLIC COMMENT**

4. **APPOINTMENTS**

5. **PROCLAMATIONS**

6. **STAFF REPORTS**

7. **CITY COUNCIL COMMENTS**

8. **MAYOR COMMENTS**

9. **COMMITTEE RECOMMENDATIONS**

Human Resource- Retro pay of \$2.00 back to February 1, 2019 for the Historic Preservation officer/Urban Renewal Administrator. \$1.00 paid back from the Historic Preservation fund, and the other \$1.00 from the Urban Renewal Administrator.

10. **BID OPENINGS**

**BID AWARDS**

Darling Addition Phase III- Diamond J

11. **PUBLIC HEARINGS**

- A. **ORDINANCE NO. 1339- An Ordinance Extending the Duration of Business Improvement District 101, Providing For a Board of Trustees and Executive Director and the Terms Thereof, Providing for the Funding of the District, Providing for the Duration of Such Extension of the District, and providing an Effective Date Therefore**

12. **UNFINISHED BUSINESS**

- A. **ORDINANCE NO. 1339- (*Second Reading*) An Ordinance Extending the Duration of Business Improvement District 101, Providing For a Board of Trustees and Executive Director and the Terms Thereof, Providing for the Funding of the District, Providing for the Duration of Such Extension of the District, and providing an Effective Date Therefore**

13. **NEW BUSINESS**

- A. **ORDINANCE NO. 1340- (*First Reading*) An Ordinance Amending Section 1-8 of the Code of Ordinances of Miles City, Montana, Revising the Legal Description of the Corporate Limits of the City of Miles City**
- B. **RESOLUTION NO. 4321- A Resolution Authorizing the City of Miles City to Enter Into a Short Form of Agreement Between Owner and Engineer for Professional Services With Interstate Engineering, Inc. Related to the Miles City Industrial and Commercial Water/Sewer Project**
- C. **RESOLUTION NO. 4322- A Resolution Authorizing the City of Miles City to Enter Into Agreement Articles and Obligating Agreement With the Montana Disaster and Emergency Services Program for a Police Body Camera Grant**
- D. **RESOLUTION NO. 4323- A Resolution Authorizing the City of Miles City to Enter Into a Montana Department of Commerce “Delivering Local Assistance” program Contract for Replacement of Water and Sewer Lines, Valves, and Hydrants**

14. **ADJOURNMENT**

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

# Minutes

**REGULAR COUNCIL MEETING April 14, 2020  
6:00 p.m.**

**CALL TO ORDER**

The Regular Council meeting was held Tuesday, April 14, 2020, by remote means at Zoom.us. Mayor John Hollowell called the meeting to order. Council Members present were Brant Kassner, Dwayne Andrews, Ken Gardner, John Uden, Rick Huber, Austin Lott, Kathy Wilcox and Curtis Reese.

Also present were City Attorney Dan Rice, Public Works Director Scott Gray, Police Chief Doug Colombik, Acting Fire Chief Ed Kanduch, Planner in Training Ally Capps, Flood Plain Administrator/Auto Cad/Assistant PWPV Samantha Malenovsky, Public Utilities Director Tom Speelmon, Incident Commander Branden Stevens, City Clerk Lorrie Pearce and Deputy City Clerk/Minute Recorder Mary Rowe.

**PLEDGE OF ALLEGIANCE**

Mayor Hollowell led the Council in the Pledge of Allegiance.

**APPROVAL OF COUNCIL & COMMITTEE MINUTES**

**City Council Minutes: 3/10/2020**

\*\* *Councilperson Uden moved to approve the minutes of the Regular Council Meeting of March 10, 2020, subject to any changes, and seconded by Councilperson Andrews. The motion passed by unanimous consent, 8-0.*

**SCHEDULED MEETINGS**

*The following meetings will be held in the City Hall Conference Room:*  
Human Resources Committee April 21<sup>st</sup> @ 4:15 p.m.

**REQUEST OF CITIZENS & PUBLIC COMMENT**

None

**APPOINTMENTS**

None

**PROCLAMATIONS**

None

**STAFF REPORTS**

Director Gray gave an update on the Darling Addition. He is expecting Western Municipal to finish Phase II in the next two weeks. Bids are being opened tonight for Phase III, which is expected to begin next month.

Planner in Training Capps gave an update on the EDA grant. She stated there are two requirements; 1) It is only used for economic development. 2) The project lies within the opportunity zone. She said between Director Gray, Director Speelmon, and herself they are trying for ten million dollars in funding and will use it for improvements in the business district, industrial site, lift station, and Montana Street, which include water/sewer upgrades. The City is currently utilizing 2/3 or 98% of its capacity right now, upgrading these lines would increase overall capacity helping the City grow in the future.

Acting Fire Chief Kanduch gave an update on the Fire Department. He stated the following.

- 78 less calls this year than last year at this time.
- A couple staffing issues, one due to Covid-19 Incident Command Center (ICS) needing a commander.
- Tender 23 out of service- Applied for a grant.
- Engine 8 electrical issues were completed.
- Ambulance 20 is the designated "Covid-19 response vehicle"
- They are still doing training and the new website is almost complete.
- This year they had 95 transfer requests to date.

Incident Commander Stevens gave a brief description of who makes up the Unified Health Command (UHC) and what they are doing during Covid-19. He expressed appreciation for the opportunity and responsibility of being the Incident Commander and stated that he is taking it very seriously. He is proud of the work that everyone has done and is doing to keep our community safe. The UHC started preparing in early February. They identified and gathered what the emergency responders (Police, Fire, etc.) needed to complete their jobs. He stated they have four main directives.

1. Minimize the spread of Covid-19 by following the Governor's orders.
2. Support the wellness of community essential workers.
3. Minimize mis-information.
4. Identify cases and Isolate the sick.

Incident Commander Stevens said there are currently no confirmed cases here. There were sixty-one people tested and six results were still pending. He stated that Custer County is using the nasal swab tests and they are sent out daily at 2:00pm. They have requested fifteen-minute tests. There is a strategic plan in place to isolate the sick and investigate the source of illness. He stated that they also have an action plan in place for a County-wide virus spread as well. The projected peak of the virus is April 21<sup>st</sup>, 2020. The UHC is staying in constant contact with emergency services for this region.

## **CITY COUNCIL COMMENTS**

None

## MAYOR COMMENTS

None

## COMMITTEE RECOMMENDATIONS

Finance- Approve to pursue a full scope and fee for a PER for the Yellowstone River portion of the levee project and corresponding EDA grant application with a City match commitment not to exceed \$50,000 each year for the next 2-years

*\*\* Councilperson Wilcox moved to approve the recommendation read by Mayor Hollowell and seconded by Councilperson Lott.*

Councilperson Lott expressed personal concern about the match fund availability, but also stated that this is a great opportunity for the City. He believes it is a step in the right direction towards permanently fixing the dike. He then pointed out the urgency of applying for the grant, because the regional balance is being given out so fast that there may be nothing left by the time Council approval is given.

Councilperson Andrews pointed out that every year there is a budget process that allows directors to budget for anticipated grant match funds. He stated that we do not have the money and that is the bottom line. He thinks this application request should be tabled until budget time.

Councilperson Reese suggested applying for a lessor amount to minimize the amount of the match commitment.

Administrator Malenovsky explained that the \$50,000.00 was a maximum commitment amount and was a ballpark figure. She requested that the Council give her an amount that they feel comfortable with for a maximum amount and she will work with the engineer to not exceed it. She also explained that the Army Corps of Engineers does not require a 205 match this year, so expenses are less than anticipated. She questioned whether the intercap loan could be used to fund the match and requested that City Clerk Pearce look into it. She closed by reiterating the urgency of moving forward with the application process, as funding may not be available if tabled.

*\*\* Councilperson Andrews moved to amend the motion to include a condition that research will be done to acquire match funds outside of the general fund and seconded by Councilperson Uden. On roll call vote, the motion passed, 7-1, with Councilperson Huber voting no.*

## BID OPENINGS

### Darling Addition Phase III

Four bids were received, they are as follows:

COP Construction	\$4,054,368
KLE Construction	\$3,186,600
Diamond J Construction	\$2,883,964

Western Municipal            \$3,911,897

\*\*        *Councilperson Uden moved to refer to Finance Committee for review and seconded by Councilperson Gardner. Motion passed unanimously, 8-0.*

**BID AWARDS**

None

**PUBLIC HEARINGS**

- A.        **ORDINANCE NO. 1339- An Ordinance Extending the Duration of Business Improvement District 101, Providing For a Board of Trustees and Executive Director and the Terms Thereof, Providing for the Funding of the District, Providing for the Duration of Such Extension of the District, and providing an Effective Date Therefore**

Mayor Hollowell called for comments for proponents three times, then opponents three times and, hearing none, the hearing was closed.

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

- A.        **ORDINANCE NO. 1339- (First Reading) An Ordinance Extending the Duration of Business Improvement District 101, Providing For a Board of Trustees and Executive Director and the Terms Thereof, Providing for the Funding of the District, Providing for the Duration of Such Extension of the District, and providing an Effective Date Therefore**

\*\*        *Councilperson Reese moved to approve the Ordinance read by title only and seconded by Councilperson Gardner. On roll call vote, the motion passed, 8-0.*

Mayor Hollowell referred the Ordinance to Finance Committee to review.

- B.        **RESOLUTION NO. 4317- A Resolution of the City of Miles City Temporarily Delegating Authority to the Mayor to Approve and Authorize Contracts and Agreements on Behalf of the City, so Long as the Same are Budgeted, Compliant with the City's Purchasing Policy, and Fall Within the Normal Course of Business, and Providing for Public Posting of Agreements Executed Under this Resolution**

\*\*        *Councilperson Gardner moved to approve the Resolution and seconded by Councilperson Kassner.*

Mayor Hollowell clarified that he would inform the Council of any requests before making any decisions.

Councilperson Lott inquired as to how the decision could be revoked if need be. Mayor Hollowell responded that there would be a Resolution to appeal at a Council meeting, which satisfied Councilperson Lott's question.

**\*\* On roll call vote, the motion passed, 8-0. Resolution No. 4317 passed**

**C. RESOLUTION NO. 4318- A Resolution Authorizing the City of Miles City to Enter into An Amendment to Task Order (No.4) With Kadrmas, Lee & Jackson, Inc. Related to the Darling Addition Street and Utilities Rehabilitation Project**

**\*\* Councilperson Uden moved to approve the Resolution, read by title only and seconded by Councilperson Lott. On roll call vote, the motion passed, 8-0. Resolution No. 4318 passed**

**D. RESOLUTION NO. 4319- A Resolution Establishing Meeting Protocol During the COVID19 Emergency Period**

**\*\* Councilperson Wilcox moved to approve the Resolution, read by title only and seconded by Councilperson Andrews. On roll call vote, the motion passed, 8-0. Resolution No. 4319 passed**

**E. RESOLUTION NO. 4320- A Resolution Approving a Fixed Account Amendment to Group Flexible Purchase Payment Deferred Variable Annuity Contract**

**\*\* Councilperson Kassner moved to approve the Resolution, read by title only and seconded by Councilperson Huber. On roll call vote, the motion passed, 8-0. Resolution No. 4320 passed**

**F. Approval on Writing off \$1303.00 for Ambulance**

**\*\* Councilperson Andrews moved to approve the write-offs and seconded by Councilperson Reese. Motion passed unanimously, 8-0.**

**G. Approval of March Claims**

**\*\* Councilperson Lott moved to approve the March claims and seconded by Councilperson Wilcox.**

There were a few questions addressed regarding cost of supplies and services.



\* *Motion passed unanimously 8-0.*

**ADJOURNMENT**

\*\* *Councilperson Kassner moved to adjourn the meeting, seconded by Councilperson Huber and passed unanimously, 8-0.*

The meeting was adjourned at 7:52p.m.

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**John Hollowell, Mayor**

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**Mary Rowe, Deputy City Clerk**

## **Finance Committee Meeting April 9, 2020**

The Finance Committee met Thursday, April 9, 2020 at 6:00 p.m. by remote means (Zoom). Present were Committee Members Austin Lott, John Uden, Brant Kassner and Curtis Reese.

Also present were: Public Works Director Scott Gray, Public Utilities Director Tom Speelmon, Planner in Training Ally Capps, Animal Control Officer Mark Winkley, Acting Fire Chief Eddy Kanduch, Police Chief Doug Colombik, Floodplain Administrator Samantha Malenovsky, Councilperson Rick Huber, Councilperson Ken Gardner and City Clerk/Recorder Lorrie Pearce.

Chairperson Lott called the meeting to order.

### **1. Request of Citizens and Public Comment:**

### **2. Discussion and Recommendation on KLJ Task Order:**

Director Gray and Speelmon explained to the Committee that the task order is for the next phase of the Darling project. The cost will be paid from various funds, and they felt there was enough money in the funds to cover the cost for this fiscal year.

*\*\* Committee Member Uden moved to recommend to Council to approve the task order, seconded by Committee Member Kassner. The motion **passed** unanimously, 4-0*

### **3. Discuss and recommendation on approving adjusted ambulance amount on write offs and sent to collection**

*\*\* Committee Member Kassner moved to recommend to Council approval of the adjustments, seconded by Committee Member Reese. The motion **passed** unanimously, 4-0*

### **4. Discuss and recommendation on proceeding with the \$750,000 EDA grant for the flood project. City to provide 2 percent match (\$150,000) in Fiscal year 2021**

Administrator Malenovsky explained that the title of discussion was not correct. The grant is for \$400,000 and it would cover the preliminary engineering report (PER) needed for the Yellowstone levy. The Army Corps has decided that the City would need to match a maximum of \$50,000 a year for the next two years (100,000). KLJ will work with the City on their cost since it is something that has never been done, which means there is not a lot of information completed on the issue.

She added there is about \$250,000 that has not been spent yet on the Section 204, that includes in kind matches.

Chairperson Lott felt that 2D mapping is not the direction that the City wants to go. He felt moving to a permanent solution would be best and that would be to proceed with the PER.

*\*\* Committee Member Uden moved to recommend to Council to move forward with the grant and funding of the match, seconded by Committee Member Lott. The motion **passed** unanimously, 3-1, with Committee Member Kassner voting no*

**5. Discussion and Recommendation on writing off \$1,303.00 from Ambulance Fund**

*\*\* Committee Member Kassner moved to recommend to Council approval to write off \$1,303.00, seconded by Committee Member Reese. The motion **passed** unanimously, 4-0*

**6. Discuss and Recommendation on Animal Shelter veterinary fees**

The discussion in whole was a \$1,400.00 charge on one feline. Officer Winkley felt that the City is getting a big discount from East Main and felt that East Main works with the City very well. He did not know that the invoice was so high, and thought that East Main was going to take some off the total because Dr. Lunde had decided to take in the feline. He will talk to her tomorrow to get it straightened out. He reported that animal control had taken in 177 animals last year. All of them went back to their owners except for 66, which were taken by other people.

The committee discussed putting a limit on the cost to save an animal, and if the City should go to other veterinarians for a quote.

*\*\* Committee Member Lott moved to get more information and postpone discussion at a future meeting, seconded by Committee Member Reese. The motion **passed** unanimously, 4-0*

**7. Discussion and Recommendation on Anticipated Budget Shortfalls Due to COVID-19**

Items that were discussed are:

- Sick leave and Overtime. A grant was applied for assistance
- Park Fees- At least two big events have been cancelled
- Oasis- Too early to decide if the City will open the Oasis this year. It is looked at on a weekly basis, the Parks Department will start filling it up next week
- Gas Tax- Will probably be short because no one is driving long distances
- Property Taxes- Could be short if everyone does not pay them
- Fines- Will be short because officers are not writing as many fines as usual
- Animal Control Revenue- Will be short because officer is not responding to all calls
- BHS revenue- Will not receive because of cancellation

**8. Adjournment**

*\*\* Committee Member Kassner moved to adjourn the meeting, seconded by Committee Member Reese and **passed unanimously***

The meeting was adjourned at 7:30 p.m.

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**Austin Lott, Committee Chairperson**

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**Lorrie Pearce, Recorder**

**Human Resources Committee**  
**April 21, 2020**

The **Human Resources Committee** met Tuesday, April 21, 2020, at 4:15 p.m. in the Conference Room at City Hall via Zoom conferencing. Present were Committee Members Kathy Wilcox, Dwayne Andrews, R. Curtis Reese and Rick Huber. Also present were: Mayor John Hollowell, PW Director Scott Gray, PU Director Tom Speelmon, City Planner Ally Capps, City Building Inspector Dennis Hirsch, Police Chief Doug Colombik and Human Resources Officer/Recorder Linda Wilkins.

Committee Member Kathy Wilcox called the meeting to order.

1. Requests of Citizens

None

2. Committee Member Comments

None

3. Review, Revise and Approve/Recommend Job Descriptions

A. Building Inspector contractor conversion to City Employee

The committee discussed the advantages and disadvantages of converting this position from a contracted position to that of an employee. Discipline, cost of insurance coverage, training qualifications of an inspector, wages and benefits cost were discussed. It was decided to revisit this at the next meeting when adequate information and a job description be put together for review.

*\*\*Chairperson Wilcox moved to postpone discussion until the next meeting, seconded by Committee Member Andrews. The passed unanimously 4-0.*

B. Civil Engineer

This will be reviewed along with the Building Inspector job description at the next meeting.

*\*\*Committee Member Andrews moved to postpone, seconded by Committee Member Huber. The motion passed unanimously 4-0.*

C. Police Captain

Chief Colombik reviewed the changes with the committee.

*\*\*Committee Member Andrews moved to approve the Police Captain job description as revised, seconded by Committee Member Huber. The motion passed on roll call vote 4-0.*

D. Police Detective/Lieutenant

Chief Colombik reviewed the changes with the committee.

*\*\*Committee Member Andrews moved to approve the Police Captain job description as revised, seconded by Committee Member Huber. The motion passed on roll call vote 4-0.*

4. Review and Recommendations concerning wage requests:

- A. Historic Preservation Officer/Urban Renewal Administrator  
Mayor Hollowell explained that City Planner Capps has been performing the duties of the Historic Preservation Officer and the Urban Renewal Officer and thought it was appropriate to add \$1/hour per additional duty to her wages, this would be a total of \$2/hour. Planner Capps explained she has been performing these duties since February 15, 2019 and has been handling these additional duties well and if funds were not expended from the HPO grant there was a possibility of losing the grant and having to pay back grant monies. Mayor Hollowell explained that this would not put a strain on the general fund as these positions are funded by a grant and the TIF district dollars.

*\*\*Committee Member Andrews moved to approve the increase of \$2/hour to the Planner's wages \$1 for each additional duty effective February 15, 2019 to City Council, seconded by Committee Member Reese. The motion passed on roll call vote 4-0.*

5. Other

None

6. Next Meeting: Thursday, May 7, 2020 4:15 p.m.

7. Adjournment

*\*\*Committee Member Huber moved to adjourn, seconded by Committee Member Andrews. The motion passed unanimously 4-0.*

The meeting was adjourned at 5:20 p.m.

Respectfully submitted,

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Chairperson Kathy Wilcox

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Recorder Linda Wilkins

## **Finance Committee Meeting April 21, 2020**

The Finance Committee met Tuesday, April 21, 2020 at 6:30 p.m. by remote means (Zoom). Present were Committee Members Austin Lott, Brant Kassner and Curtis Reese. Committee Member John Uden was excused.

Also present were: Public Works Director Scott Gray, Public Utilities Director Tom Speelmon, Acting Fire Chief Eddy Kanduch, Mayor John Hollowell, COVID-19 Incident Commander Branden Stevens and City Clerk/Recorder Lorrie Pearce.

Chairperson Lott called the meeting to order.

### **1. Request of Citizens and Public Comment:**

Commander Stevens updated the committee with the following:

- Because of the COVID 19, the fire and ambulance funds will be overspent. The ambulance fund is showing an increase in revenue which should help cover some of the expenses. He felt that the contractual allowance is one of the expenditures items that he has no control over, because it is an expense that writes off charges that were not collected.
- Fire Department has applied for a rural fire grant that has a ten percent match. The grant is approximately \$5,600, so the match would be around \$560 and will be in next years budget. He explained that the Safer grant that was discussed at the last finance meeting, which is to hire additional employees, is a match of 75% for the first 2 years and 35% for the third year.
- The Insurance Service Organization (ISO) will be evaluating Miles City on June 2<sup>nd</sup>. He is hoping that the City can go from a 4 to a 3 because of the Fire Chief on day shifts and training center. The problem is the City has a water tender that does not fulfill the pump capacity. The department has applied for a used water tender, but he has not heard anything on it.

Chairperson Lott said that the County may have a water tender that the City could use. Commander Stevens said he would look into it.

### **2. Review and Recommendation on Darling Addition Phase III Bids Received**

The bids ranged from 2,882,964.10 to \$4,054,368, with Diamond J Construction coming in as the lowest bid. KLJ had worked with Diamond J on a similar size project and felt confident that they were qualified and recommended them for the project.

*\*\* Committee Member Kassner moved to recommend to Council to approve the bid received*

*from Diamond J Construction, seconded by Committee Member Lott. The motion passed unanimously.*

**2. Review and Recommendation to Mayor on approval for a Task Order from Interstate Engineering (Preliminary Engineering Report) PER**

The first step for the PER is to expand the sewer system and install water service in the Industrial Park, install the main pipe under the Tongue River, replace nine blocks of sewer main on the North side of Miles City and replace approximately 16 blocks of the main sewer interceptor main that runs down Montana Avenue and Main Street to the Montana lift station. The cost of \$40,000 is based off the grant requirements, which could change once they have solid guidelines.

*\*\* Committee Member Kassner moved to recommend to the Mayor to approve the task order, seconded by Committee Member Lott. The motion passed unanimously.*

**3. Review and Recommendation on Ordinance No. 1339- An Ordinance Extending the Duration of Business Improvement District 101, Providing For a Board of Trustees and Executive Director and the Terms Thereof, Providing for the Funding of the District, Providing for the Duration of Such Extension of the District, and Providing an Effective Date Therefore**

The Ordinance is to renew the District for another ten years. There are 5 hotels owners involved in the district and the City has received a letter of approval for the district that was signed by all of them. The City is the money holder for the tax collected and is paid to the Chamber of Commerce monthly.

*\*\* Committee Member Kassner moved to recommend to Council to approve the Ordinance, seconded by Committee Member Lott. The motion passed unanimously.*

**5. Approve Purchasing a Hanger Door for the Airport at an amount of \$51,338**

The purchase needed to go to the finance committee for approval since it is over \$50,000. The purchase amount is in their budget.

*\*\* Committee Member Kassner moved to approve the purchase, seconded by Committee Member Lott. The motion passed unanimously.*

**6. Discuss FY21 Budget Calendar**

The committee as a whole agreed with the budget calendar.

**7. Discuss MMIA rates for FY2021**

Clerk Pearce reported that she had received MMIA's Final Rates for FY21 and they

are as follows:

- Workers' Compensation had an overall decrease of 5.53 percent
- Liability had a 1.9 percent decrease from last year's rate
- Property had a 3.73 percent increase for auto physical damage and 13.96 percent increase for Contractor Equipment and Real and Personal Property from last year's rate

## **8. Adjournment**

*\*\* Committee Member Kassner moved to adjourn the meeting, seconded by Committee Member Lott and passed unanimously*

The meeting was adjourned at 7:15 p.m.

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**Austin Lott, Committee Chairperson**

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**Lorrie Pearce, Recorder**



# Bid Award



April 17, 2020

Scott Gray, Public Works Director  
City of Miles City  
PO Box 910  
Miles City, MT 58301

Re: Darling Addition Street and Utilities Rehabilitation - Phase 3 Recommendation of Award

Dear Scott:

Bids for the Darling Addition Street and Utilities Rehabilitation, Phase 3 were received on April 14, 2020. Four bids were opened and read aloud at the City Council video conference. Bid amounts ranged from \$2,883,964.10 to \$4,054,368.00. KLJ's opinion of probable construction cost was \$3,068,078.40.

The low bidder is Diamond J Construction. KLJ previously worked with Diamond J on a similar size airport project in Baker and we are confident that they are qualified for this project. We recommend the contract be awarded to Diamond J for Schedules 1, 2, 3a, 3b, 4a & 4b combined for the total bid amount of \$2,883,964.10.

In addition, we recommend that the City Council resolution be written to include an additional 10% change order contingency budget and grant Mayor Hollowell authority to approve up to 10% of additional construction costs, after review of such change order(s) and recommendation by City staff. This is to avoid potential delay claims, should something be encountered during construction that requires a quick decision prior to the following City Council meeting.

Enclosed is the Notice of Award for the City's approval. Upon receipt of the signed form, we will work with Diamond J to route final Contracts for the City's signature. We have also attached a copy of the certified tabulation of bids received for your records. If you have any questions or concerns, please contact Travis Copper or me at (406) 245-5499.

Sincerely,

**KLJ**

A handwritten signature in cursive script, appearing to read 'Matthew Smith'.

Matthew Smith P.E.  
Project Manager

Enclosure(s): Notice of Award, Tabulation of Bids  
Project #: 2416112

cc: Travis Copper, Tom Speelmon, Sam Malenovsky (sent via email)

# Notice of Award

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

Project: Darling Addition Street and Utilities Rehabilitation – Phase 3

Owner: City of Miles City

Owner's Contract No.: n/a

Contract: Total Combined Bid of Schedules 1, 2, 3A, 3B, 4A & 4B

Engineer's Project No.: 2416112

Bidder: Diamond J Construction, LLC

Bidder's Address: PO Box 520, 2612 Tractor Ave.

Miles City, MT 59301

You are notified that your Bid dated April 14, 2020 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Darling Addition Street and Utilities Rehabilitation – Phase 3.

The Contract Price of your Contract is Two Million, Eight Hundred and Eighty-three Thousand, Nine Hundred, Sixty-four and 10/100 Dollars (\$2,883,964.10).

3 copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

(tbd) sets of Drawings will be delivered separately for otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen (15) days of the date you receive this Notice of Award.

1. Deliver to the Engineer three (3) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract Security [Bonds] as specified in the Instructions to Bidders (Article 20) and General Conditions (Paragraph 5.01).
3. Other conditions precedent: (none)

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

City of Miles City

Owner

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

Authorized Signature

\_\_\_\_\_  
Title

Copy to Engineer

Public Hearing  
&  
Unfinished Business

**ORDINANCE NO. 1339**

**AN ORDINANCE EXTENDING THE DURATION OF BUSINESS IMPROVEMENT DISTRICT 101, PROVIDING FOR A BOARD OF TRUSTEES AND EXECUTIVE DIRECTOR AND THE TERMS THEREOF, PROVIDING FOR THE FUNDING OF THE DISTRICT, PROVIDING FOR THE DURATION OF SUCH EXTENSION OF THE DISTRICT, AND PROVIDING AN EFFECTIVE DATE THEREFORE.**

WHEREAS, on April 27, 2020, the City of Miles City created Tourism Business Improvement District No. 101 ("TBID 101") with the passage of Ordinance 1202, which became effective 30 days from said date of passage of Ordinance 1202, for a 10 year term; and

WHEREAS, on March 4, 2020, the City of Miles City received a petition to extend the duration of TBID 101 for an additional 10 year period; and

WHEREAS, on March 10, 2020, the City Council passed a Resolution of Intention to extend the duration of TBID 101; and

WHEREAS, on April 14, 2020, the City Council held a public hearing on said Resolution of Intention to extend the duration of TBID for an additional 10 year period, and no protests were received either in writing or during said hearing; and

WHEREAS, Montana Code Annotated Section 7-12-1141 allows for the extension of a tourism business improvement district for additional 10 year terms upon receipt of a petition signed by the owners of more than 60% of the area of the property owners within the district requesting the same, passage of a resolution of intention to extend the duration of the district, public hearing, and consideration of protests; and

WHEREAS, notice of the passage of such resolution of intention was mailed to all property owners within such proposed district, and published as provided by Montana Code Annotated Section 7-12-1112; and

WHEREAS, the protest period provided for by Montana Code Annotated Section 7-12-1113 has fully expired and no written protests to the creation of such district were delivered to the City of Miles City; and

WHEREAS, the City Council of the City of Miles City has determined that it is in the best interest of the property owners within such district for said TBID to be extended for an additional 10 year term;

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

**Section 1.** The duration of Tourism Business Improvement District No. 101 is hereby extended for a period of 10 years from the effective date of this ordinance.

**Section 2.** The boundaries of said district shall be as follows:

Tract A of Certificate of Survey No. 102097 in the SW1/4SW1/4 of Section 2, Township 7 North, Range 47 East (commonly known as Miles City Hotel & Suites);

Tract 1 of Certificate of Survey 57595 in the NE1/4 of Section 3, Township 7 North, Range 47 East, less highway (Commonly known as Miles City Hotel);

Certificate of Survey No. 14268 in Gulf Oil Corp. Tract, less Certificates of Survey No. 76277, 80623, and 106735 (Commonly Known as Econo Lodge);

A parcel of land in tract 1 of Edwards Tract in Lot 4, Section 2, Township 7 north, Range 47 East MPM more particularly described as: Beginning at a point on the section line, said point being South 0° 12' West a distance of 535.6 feet from the section corner common to Sections 34, 35, 3 and 2; thence South 89° 48 minutes East a distance of 394.95 feet more or less to the north right of the way line of the Interstate Highway; thence North 58° 25' East a distance of 167.28 feet; Thence North 0° 12' East a distance of 166.89 feet; thence North 89° 48' West a distance of 337.15 feet; thence South 0° 12' West a distance of 200 feet; thence North 89° 48' West a distance of 200 feet; thence South 0° 12' West a distance of 55 feet to the point of beginning (Commonly known as Oyo Hotels);

Lots 1 through 10 in Block 1, Doeden Addition to the City of Miles City (Commonly known as Best Western);

A tract of land located in the SW1/4NW1/4, NW1/4SW1/4, of Section 2, Township 7 North, Range 47 East, being more particularly described as follows: Commencing at the W1/4 of said Section 2, the true point of beginning; thence North 0 degrees 11 minutes 35 seconds East a distance of 22.30 feet to a point; thence South 89 degrees 26 minutes 26 seconds East a distance of 441.37 feet to a point; thence South 0 degrees 02 minutes 00 seconds West a distance of 278.25 feet to a point; thence North 89 degrees 58 minutes 00 seconds East a distance of 260.00 feet to the true point of beginning, according to the plat and survey thereof

filed for record as Document No. 49207 in Envelope No. 134 of the plat cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana. LESS That portion thereof deeded to the State of Montana, for the benefit and use of its Department of Transportation (Commonly known as Super 8);

Lot 5A of the Cremer Minor Subdivision according to Certificate of Survey No. 91759 filed in envelope 285 of the plat cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana (Commonly known as Sleep Inn & Suites).

Such District encompasses all properties within the City of Miles City with the same identified purpose of providing overnight stays at lodging facilities that are subject to the Montana Lodging Facilities Use Tax. If any properties within the City of Miles City, including any areas subsequently annexed to the City of Miles City, are properties providing overnight stays at lodging facilities that are subject to the Montana Lodging Facility Use Tax, they shall automatically become a part of this District, the boundaries of the District shall be amended to include such properties, and such property shall be liable for all assessments in the District for the duration of the District.

**Section 3.** The District shall be governed by a Board of Trustees consisting of five (5) owners of property within the District. The Board of Trustees presently in place for the TBID shall remain in place, subject to the staggered terms established by Ordinance 1202, in Sections 3 and 4 of said Ordinance.

**Section 4.** The presiding officer of the Board of Trustees shall be elected from the membership of the Board of Trustees by majority vote of the Trustees.

**Section 5.** The Board of Trustees shall have those powers set forth in Montana Code Annotated Section 7-12-1131, including any amendments thereto.

**Section 6.** So long as a nonprofit convention and visitors bureau, as defined by Montana code Annotated Section 15-65-101 is operating within the City of Miles City, the executive director of such nonprofit convention and visitors bureau shall be the executive director of the TBID.

**Section 7.** On or before June 1 of each year, the Board of Trustees shall submit to the City Council a work plan and budget for the ensuing fiscal year, for review and approval by the City Council. So long as a nonprofit convention and visitors bureau, as defined by Montana code Annotated Section 15-65-101 is operating within the City of Miles City, the Board of Trustees shall consult with such convention and visitors bureau in developing a work plan and budget for the ensuing fiscal year.

**Section 8.** The City Council shall not approve the annual budget or work plan of the District unless the annual budget and work plan provide for liability insurance coverage insuring the District, the Board of Trustees, and the City of Miles City against legal liability for personal injury and property damage in an amount determined sufficient by the City Council.

**Section 9.** At the same time as the Board of Trustees submits the annual budget and work plan to the City Council, the Board shall also recommend to the City Council a method of levying an assessment on the property within the District that will best ensure that the assessment on each lot or parcel is equitable to the benefits to be received.

**Section 10.** The City Council shall annually assess the entire cost of the District against the entire District using a method that best ensures that the assessment on each lot or parcel is equitable to the benefits to be received. In determining the method of assessment, the City Council shall consider the recommendations of the Board. The City Council shall levy the assessment using one of, or a combination of, the methods set forth in Montana Code Annotated Section 7-12-1133.

**Section 11.** An obligation or debt of any nature of the District is not an obligation or debt of the City of Miles City and in no event is a debt or obligation of the District payable out of any funds or property of the City of Miles City. The debts and obligations of the District are payable solely from the funds and properties of the District.

**Section 12.** The duration of this extension of Tourism Business Improvement District No. 101 shall be for a period of ten (10) years from and after the effective date of this Ordinance, unless the duration of the District is again subsequently extended pursuant to Montana Code Annotated Section 7-12-1141.

**Section 13.** This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 14<sup>th</sup> day of April 2020.

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John Hollowell, Mayor

ATTEST:

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Lorrie Pearce, City Clerk

**FINALLY PASSED AND ADOPTED** this 28<sup>th</sup> day of April, 2020.

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John Hollowell, Mayor

ATTEST:

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Lorrie Pearce, City Clerk



# New Business

**ORDINANCE NO. 1340**

**AN ORDINANCE AMENDING SECTION 1-8 OF THE CODE OF ORDINANCES OF MILES CITY, MONTANA, REVISING THE LEGAL DESCRIPTION OF THE CORPORATE LIMITS OF THE CITY OF MILES CITY.**

**BE IT ORDAINED**, by the City Council of the City of Miles City, Montana, as follows:

**Section 1.** Section 1-8 shall be replaced with the following provision:

**Sec. 1-8. - Boundaries of city described.**

The corporate limits of the City of Miles City, Montana, are hereby defined, described and established by the following real property legal description:

A parcel of land lying in Sections 2, 3, & 4, Township 7 North, Range 47 East and Sections 21, 27, 28, 29, 32, 33, 34, & 35, Township 08 North, Range 47 East, P.M.M., Custer County, Montana more particularly described as follows:

Beginning at the section corner common to said Sections 21, 22, 27 & 28, T07N, R47E said point being the POINT OF BEGINNING;

thence S00°06'49"E, along the section line between said Sections 27 & 28 a distance of 825.36 feet;

thence N89°53'58"E, a distance of 1,318.37 feet;

thence south, a distance of 424.42 feet;

thence S29°39'55"W, a distance of 75.35 feet;

thence S08°42'38"W, a distance of 335.05 feet;

thence S17°23'50"W, a distance of 196.00 feet;

thence S46°14'24"W, a distance of 452.28 feet;

thence S78°11'46"W, a distance of 462.89 feet;

thence S71°59'02"W, a distance of 373.28 feet;

thence S00°19'49"E, along the easterly right of way of Montana Avenue, a distance of 275.64 feet,

thence N89°58'36"E, along the east-west mid-section line, a distance of 1,288.01 feet to the intersection of Riverside Street & North Lake Avenue;

thence N00°02'01"E, along the centerline of North lake Avenue, a distance of 1,339.68 feet to a point on the centerline of the old Tongue River bed;

thence northeasterly N28d18'45"E, following the meandering south bank of the slough to the Section Line 27 (approximately the centerline of Taft Street);

thence N89°56'59"E, a distance of 306.20 feet;

thence S00°03'01"E, along the centerline of North Merriam Avenue, a distance of 646.08 feet;

thence N89°42'40"E, along the centerline of Rivenes Street, a distance of 649.37 feet;

thence S00°02'41"E, along the centerline of Daly Avenue, a distance of 330.61 feet;

thence N89°55'23"E, along the centerline of Jackson Street, a distance of 330.44 feet;

thence S00°05'01"E, along the centerline of Kadzie Avenue, a distance of 1,262.34 feet;

thence S65°10'37"W, a distance of 766.84 feet;

thence South, a distance of 605.15 feet to the north line of Tract A of the Alberts Subdivision;

thence N61°36'37"E along the north line of Tract A of the Albert Subdivision, distance of 432.41 feet;  
thence S56°09'44"E, along the east line of Tract A of the Albert Subdivision, a distance of 292.60 feet;  
thence S13°24'51"W, a distance of 852.98 feet;  
thence N89°56'59"E, along the south line of Alta Tracts, a distance of 622.35 feet;  
thence S00°03'01"E, a distance of 659.00 feet;  
thence N89°49'18"E, a distance of 307.61 feet;  
thence south along the centerline of Sewell Avenue, a distance of 659.29 feet to the intersection of  
Sewell Avenue & Leighton Boulevard;  
thence S00°02'59"E, along the centerline of Sewell Avenue, a distance of 405.45 feet;  
thence N89°42'51"E, a distance of 867.39 feet;  
thence S00°16'24"E, along the east right of way of Legion Street, a distance of 340.83 feet;  
thence N89°49'03"E, along the north line of the Green Star subdivision, a distance of 415.93 feet;  
thence S00°09'35"E, along the west right of way line of North Haynes Avenue, a distance of 433.82  
feet;  
thence S44°47'12"W, a distance of 21.27 feet;  
thence S89°45'02"W, along the north right of way line of Main Street, a distance of 268.71 feet;  
thence S00°13'01"E, a distance of 384.33 feet;  
thence N89°55'51"E, along the Section line common to said Sections 34 & 35, a distance of 317.75  
feet;  
thence S00°04'11"E, along the Section line common to said Sections 34 & 35, a distance of 395.86  
feet;  
thence east along the north line of Mallet Subdivision, a distance of 656.24 feet;  
thence S00°07'33"E, along the east line of Mallet Subdivision, a distance of 658.58 feet;  
thence S89°51'08"E, along the north line of Meadows Subdivision, a distance of 656.48 feet;  
thence S00°12'00"E, along the east line of Meadows Subdivision, a distance of 1,328.09 feet;  
thence S89°36'31"W, along the south side of Comstock Avenue, a distance of 899.85 feet;  
thence S00°23'25"E, a distance of 248.70 feet;  
thence S89°36'32"W, a distance of 77.22 feet;  
thence N00°23'24"W, a distance of 31.47 feet;  
thence S89°36'24"W, a distance of 56.17 feet;  
thence S00°07'23"E, a distance of 237.10 feet;  
thence S77°11'05"E, along the north right of way line of Love Street, a distance of 1,059.99 feet;  
thence S00°11'36"E, a distance of 408.44 feet;  
thence S48°57'07"E, a distance of 749.06 feet;  
thence south, a distance of 1,040.14 feet;  
thence N89°21'52"E, along the 1/16th line, a distance of 200.00 feet to the northwest corner of Lot  
18, Block 16, Southgate Meadows Subdivision;  
thence N89°19'33"E, along the 1/16th line, a distance of 554.36 feet;  
thence S89°48'58"E, along the 1/16th line, a distance of 493.58 feet;  
thence S29°54'34"W, along the east boundary of the Southgate Meadow Subdivision, a distance of  
231.64 feet;  
thence Southwesterly along the arc a distance of 253.52 feet to a point of reverse curve to the right  
having a radius of 204.40 feet and a central angle of 71°03'52";  
thence Westerly along the arc, a distance of 208.74 feet to a point of reverse curve to the left having a  
radius of 192.27 feet and a central angle of 62°12'14";  
thence S38°43'02"W, along the east boundary of the Southgate Meadows Subdivision, a distance of  
87.65 feet;

thence S51°05'41"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 69.89 feet;  
thence N74°57'07"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 180.17 feet;  
thence S47°03'01"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 124.52 feet;  
thence S03°53'39"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 80.17 feet;  
thence S70°02'45"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 63.82 feet;  
thence southerly along the arc, through a central angle of 31°38'21", a distance of 31.53 feet;  
thence S79°58'57"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 53.81 feet;  
thence S03°53'30"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 157.64 feet;  
thence N86°12'16"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 453.75 feet;  
thence S51°12'50"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 39.51 feet;  
thence S42°54'56"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 110.68 feet;  
thence S21°28'45"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 127.54 feet;  
thence S01°04'24"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 122.24 feet;  
thence S20°26'58"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 95.01 feet;  
thence S35°18'26"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 79.29 feet;  
thence S38°48'59"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 235.18 feet;  
thence S25°07'39"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 149.95 feet;  
thence S89°59'50"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 179.93 feet;  
thence S65°02'54"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 174.88 feet;  
thence N53°27'39"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 157.44 feet;  
thence N69°57'26"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 179.45 feet;  
thence S40°29'27"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 202.46 feet;  
thence S00°38'41"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 206.73 feet;  
thence S28°08'21"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 127.57 feet;

thence N59°24'15"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 127.15 feet;  
thence N89°41'00"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 107.13 feet;  
thence S00°06'49"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 294.43 feet;  
thence S29°25'11"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 150.07 feet;  
thence S10°52'37"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 253.84 feet;  
thence S06°02'06"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 318.47 feet;  
thence S00°02'36"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 199.79 feet;  
thence S88°16'00"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 25.06 feet;  
thence S00°02'59"E, along the east boundary of the Southgate Meadows Subdivision, a distance of 120.06 feet;  
thence S12°24'57"W, along the east boundary of the Southgate Meadows Subdivision, a distance of 738.24 feet;  
thence S89°52'11"W, along the south line of said Section 2, a distance of 1,323.64 feet;  
thence S89°49'36"W, along the south line of said Section 2, a distance of 1,323.44 feet to the section corner common to Section 2, 3, 10 & 11;  
thence N00°00'15"E, along the section line common to said Sections 2 & 3, a distance of 555.19 feet;  
thence N89°56'17"W, along the south line of Horizon Equip Co Tract, a distance of 647.39 feet;  
thence N22°59'26"E, along the west line of Horizon Equip Co Tract, a distance of 273.92 feet;  
thence N53°29'49"E, along the north line of Horizon Equip Co Tract, a distance of 230.00 feet;  
thence N56°07'49"E, along the north line of Horizon Equip Co Tract, a distance of 280.12 feet;  
thence N60°42'49"E, along the north line of Horizon Equip Co Tract, a distance of 76.79 feet;  
thence N74°46'29"E, a distance of 58.03 feet;  
thence N00°00'15"E, along the east right of way of South Haynes Avenue, a distance of 162.95 feet;  
thence N89°47'26"E, along the north line of Horizon Park Subdivision, a distance of 1,324.61 feet;  
thence N00°01'22"W, along the west line of Southgate Meadows Subdivision, a distance of 1,346.64 feet;  
thence N00°01'34"W, a distance of 1,803.79 feet;  
thence S58°16'11"W, along the south easterly right of way line of I-94, a distance of 55.55 feet;  
thence N45°48'41"W, along the south easterly right of way line of I-94, a distance of 422.49 feet;  
thence S58°22'28"W, along the south easterly right of way line of I-94, a distance of 287.00 feet;  
thence S43°55'27"W, along the south easterly right of way line of I-94, a distance of 36.71 feet;  
thence S48°15'29"W, along the south easterly right of way line of I-94, a distance of 262.13 feet;  
thence S38°08'37"W, along the south easterly right of way line of I-94, a distance of 43.95 feet;  
thence S89°44'58"W, along the south easterly right of way line of I-94, a distance of 12.85 feet;  
thence S38°10'07"W, along the south easterly right of way line of I-94, a distance of 223.05 feet;  
thence S41°44'14"W, along the south easterly right of way line of I-94, a distance of 73.59 feet;  
thence S78°54'33"W, along the south easterly right of way line of I-94, a distance of 18.57 feet;  
thence S59°13'57"W, along the south easterly right of way line of I-94, a distance of 242.37 feet;  
thence S00°21'50"W, along the easterly right of way of South Haynes Avenue, a distance of 70.17 feet;

thence N89°41'25"E, along the south line of Steel Minor Subdivision, a distance of 320.28 feet;  
thence S00°11'21"W, a distance of 329.94 feet;  
thence S89°41'41"W, a distance of 300.05 feet;  
thence S00°09'35"W, along the easterly right of way of South Haynes Avenue, a distance of 641.55 feet;  
thence S13°43'34"E, along the easterly right of way of South Haynes Avenue, a distance of 82.27 feet;  
thence S00°02'29"W, along the easterly right of way of South Haynes Avenue, a distance of 216.80 feet;  
thence S89°29'32"E, a distance of 351.19 feet;  
thence S00°01'10"W, a distance of 278.56 feet;  
thence S89°58'59"W, a distance of 371.38 feet;  
thence N89°36'25"W, a distance of 136.73 feet;  
thence N01°16'10"W, along the westerly right of way of South Haynes Avenue, a distance of 269.41 feet;  
thence S89°59'14"W, a distance of 525.00 feet;  
thence N00°05'08"E, a distance of 550.40 feet;  
thence S65°48'39"W, a distance of 500.42 feet;  
thence N63°22'34"W, a distance of 313.21 feet;  
thence N35°36'08"W, a distance of 399.47 feet to a point on the northerly right of way line of I-94;  
thence N58°27'59"E, along the northerly right of way line of I-94, a distance of 368.96 feet;  
thence N52°27'36"E, along the northerly right of way line of I-94, a distance of 496.86 feet;  
thence S89°54'46"W, along the south line of Tract C of the Health Campus, a distance of 1,448.08 feet;  
thence S89°51'10"W, a distance of 314.26 feet to a 1/16th corner;  
thence S89°56'59"W, along the south line of the Country Club Estates Subdivision, a distance of 1,810.45 feet;  
thence N10°14'45"E, along the west line of the Country Club Estates Subdivision, a distance of 112.88 feet;  
thence N53°23'59"E, along the northwesterly line of the Country Club Estates Subdivision, a distance of 1,549.42 feet;  
thence N13°19'16"W, a distance of 383.81 feet;  
thence N81°01'54"W, along the north boundary line of the Town & Country Club, a distance of 2,054.73 feet;  
thence S74°18'39"W, along the north boundary line of the Town and Country Club, a distance of 580.53 feet;  
thence S45°54'52"W, a distance of 326.12 feet;  
thence S89°51'36"W, a distance of 337.05 feet;  
thence S41°31'58"W, a distance of 140.92 feet;  
thence S48°27'54"E, a distance of 20.72 feet;  
thence S64°30'48"E, a distance of 301.00 feet;  
thence S17°25'18"W, along the south line of the Milestown Estates Subdivision, a distance of 304.79 feet;  
thence S53°05'11"W, along the south line of the Milestown Estates Subdivision, a distance of 270.78 feet;  
thence S53°04'18"W, along the south line of the common area in the Milestown Estates Subdivision, a distance of 94.28 feet;  
thence S81°06'36"W, along the south line of the common area in the Milestown Estates Subdivision, a distance of 218.72 feet;

thence  $S68^{\circ}17'17''W$ , along the south line of the common area in the Milestown Estates Subdivision, a distance of 279.54 feet;  
thence  $S80^{\circ}13'03''W$ , along the south line of the common area in the Milestown Estates Subdivision, a distance of 116.86 feet;  
thence  $N89^{\circ}32'50''W$ , along the south line of the common area in the Milestown Estates Subdivision, a distance of 277.05 feet;  
thence  $N59^{\circ}39'30''W$ , along the south line of the common area in the Milestown Estates Subdivision, a distance of 191.05 feet;  
thence  $N37^{\circ}02'24''W$ , along the west line of the common area in the Milestown Estates Subdivision, a distance of 271.55 feet;  
thence  $N14^{\circ}32'45''E$ , along the west line of the common area in the Milestown Estates Subdivision, a distance of 237.15 feet;  
thence  $N34^{\circ}33'27''E$ , along the west line of the common area in the Milestown Estates Subdivision, a distance of 463.58 feet;  
thence  $N26^{\circ}38'28''W$ , along the west line of the common area in the Milestown Estates Subdivision, a distance of 241.81 feet;  
thence  $N47^{\circ}36'18''W$ , along the west line of the Milestown Estates Subdivision, a distance of 221.31 feet;  
thence  $N64^{\circ}40'48''W$ , to the low water mark on the east side of the Tongue River, a distance of 262.62 feet;  
thence  $N49^{\circ}56'35''W$ , along the low water mark on the right side of the Tongue River, a distance of 184.03 feet;  
thence  $N48^{\circ}32'09''W$ , along the low water mark on the right side of the Tongue River, a distance of 131.04 feet;  
thence  $N39^{\circ}50'35''W$ , along the low water mark on the right side of the Tongue River, a distance of 200.08 feet;  
thence  $N27^{\circ}48'49''W$ , along the low water mark on the right side of the Tongue River, a distance of 299.13 feet;  
thence  $N28^{\circ}35'13''W$ , along the low water mark on the right side of the Tongue River, a distance of 578.42 feet;  
thence  $N48^{\circ}39'21''W$ , a distance of 274.97 feet to the south end of Government Lot 3, Section 33, T. 7N., R47E;  
thence  $N36^{\circ}08'56''W$ , along the west line of said Government Lot 3, a distance of 929.10 feet to the northwest corner of said Government Lot 3;  
thence  $N63^{\circ}10'40''E$ , a distance of 340.14 feet to the low water mark on the right side of the Tongue River;  
thence  $N57^{\circ}03'34''W$ , along the low water mark on the right side of the Tongue River, a distance of 557.93 feet;  
thence  $N56^{\circ}36'25''W$ , along the low water mark on the right side of the Tongue River, a distance of 412.46 feet;  
thence  $N55^{\circ}40'28''W$ , along the low water mark on the right side of the Tongue River, a distance of 337.89 feet;  
thence  $N44^{\circ}27'43''W$ , along the low water mark on the right side of the Tongue River, a distance of 223.37 feet;  
thence  $N43^{\circ}04'10''W$ , along the low water mark on the right side of the Tongue River, a distance of 415.99 feet;  
thence  $N51^{\circ}30'35''E$ , a distance of 229.87 feet;

thence N05°00'00"E, a distance of 287.80 feet to the 1923 brass cap meander corner common to Section 32 & 33;

thence N00°02'56"W, a distance of 78.00 feet;

thence N39°49'17"E, a distance of 426.57 feet;

thence N46°56'23"E, a distance of 80.98 feet;

thence N49°50'52"E, a distance of 162.47 feet;

thence N53°08'35"E, a distance of 266.67 feet;

thence S00°26'07"E, a distance of 98.81 feet;

thence N55°41'00"E, a distance of 197.15 feet;

thence N41°30'00"E, a distance of 261.52 feet to a point on the section line common to Sections 28 & 33, T.7N., R.47E., said point bears S89°49'46"W, a distance of 46.39 feet from the brass cap meander corner common to Sections 28 & 33;

thence S89°49'46"W, along the section line common to Sections 28 & 33, a distance of 1,008.44 feet to the section corner common to Sections 28, 29, 32 & 34, T.7N., R.47E.;

thence S89°39'39"W, along the section line common to Sections 29 & 32, a distance of 270.00 feet;

thence N14°18'48"E, along the low water mark on the right side of the Yellowstone River, a distance of 284.60 feet;

thence N01°09'17"W, along the low water mark on the right side of the Yellowstone River, a distance of 72.24 feet;

thence N14°13'54"W, along the low water mark on the right side of the Yellowstone River, a distance of 278.27 feet;

thence N09°48'16"E, along the low water mark on the right side of the Yellowstone River, a distance of 426.79 feet;

thence N23°26'46"E, along the low water mark on the right side of the Yellowstone River, a distance of 337.74 feet;

thence N31°44'02"E, along the low water mark on the right side of the Yellowstone River, a distance of 440.62 feet;

thence N33°12'27"E, along the low water mark on the right side of the Yellowstone River, a distance of 222.36 feet;

thence N44°28'26"E, along the low water mark on the right side of the Yellowstone River, a distance of 187.79 feet;

thence N53°14'53"E, along the low water mark on the right side of the Yellowstone River, a distance of 171.00 feet;

thence N39°07'01"E, along the low water mark on the right side of the Yellowstone River, a distance of 892.90 feet;

thence N34°06'21"E, along the low water mark on the right side of the Yellowstone River, a distance of 309.57 feet;

thence N55°11'20"E, along the low water mark on the right side of the Yellowstone River, a distance of 1,619.38 feet;

thence S00°08'27"E, along the north-south mid-section line, a distance of 2,720.16 feet;

thence S27°50'03"E, a distance of 400.48 feet;

thence S41°48'43"E, along the centerline of the old Tongue River, a distance of 228.16 feet;

thence S58°31'46"E, along the centerline of the old Tongue River, a distance of 140.49 feet;

thence S80°54'00"E, along the centerline of the old Tongue River, a distance of 177.12 feet;

thence N78°18'22"E, along the centerline of the old Tongue River, a distance of 173.26 feet;

thence N58°38'06"E, along the centerline of the old Tongue River, a distance of 153.07 feet;

thence N45°42'23"E, along the centerline of the old Tongue River, a distance of 213.53 feet;

thence N36°56'40"E, along the centerline of the old Tongue River, a distance of 193.57 feet;



thence N23°28'49"E, along the centerline of the old Tongue River, a distance of 133.88 feet;  
thence N16°37'27"E, along the centerline of the old Tongue River, a distance of 97.67 feet;  
thence N00°53'01"W, along the centerline of the old Tongue River, a distance of 65.32 feet;  
thence N00°47'48"E, along the centerline of the old Tongue River, a distance of 123.40 feet;  
thence N05°59'17"W, along the centerline of the old Tongue River, a distance of 233.21 feet;  
thence N00°07'00"W, along the centerline of the old Tongue River, a distance of 98.92 feet;  
thence N10°50'07"E, along the centerline of the old Tongue River, a distance of 168.54 feet;  
thence N05°59'45"E, along the centerline of the old Tongue River, a distance of 353.37 feet;  
thence N16°30'05"E, along the centerline of the old Tongue River, a distance of 56.44 feet;  
thence N55°59'04"E, along the centerline of the old Tongue River, a distance of 296.01 feet;  
thence N75°51'33"E, along the centerline of the old Tongue River, a distance of 191.52 feet;  
thence N65°34'41"E, along the centerline of the old Tongue River, a distance of 113.42 feet;  
thence S89°54'56"E, along the north line of Baker Addition, a distance of 432.31 feet;  
thence N89°45'57"E, along the north line of Baker Addition, a distance of 279.85 feet, said point bears West, a distance of 39.55 feet from the quarter corner common to Sections 27 & 28;  
thence north along the west right of way of North Montana Avenue, a distance of 312.87 feet;  
thence N68°51'26"E, along the west right of way of North Montana Avenue, a distance of 14.71 feet;  
thence N00°00'45"W, along the west right of way of North Montana Avenue, a distance of 510.98 feet;  
thence N00°07'12"W, along the west right of way of North Montana Avenue, a distance of 533.02 feet;  
thence N00°40'31"W, along the west right of way of N. Montana Avenue, a distance of 202.89 feet;  
thence N00°35'18"W, along the west Right of way of N. Montana Avenue, a distance of 480.13 feet;  
thence west, a distance of 580.01 feet;  
thence north, a distance of 580.50 feet;  
thence S89°35'14"W, along the section line common to Sections 21 & 28, a distance of 176.79 feet;  
thence N61°06'48"E, along the low water mark on the right side of the Yellowstone River, a distance of 378.37 feet;  
thence N53°47'54"E, along the low water mark on the right side of the Yellowstone River, a distance of 563.54 feet;  
thence South along the section line common to Sections 21 & 22, a distance of 510.04 feet to the POINT OF BEGINNING.  
Containing 2,211.59 acres, more or less.

LESS

A parcel of land known as the Kosty property, Geocode: 14-1740-34-4-35-01-0000 all lying in the northeast quarter of the southeast quarter of Section 34, Township 8 North, Range 47 East, P.M.M. more particular described as follows:

Commencing at the Section corner common to Sections 2 & 3, T 07N., R 47E. and Sections 34 & 35, T 08N., R 47E.; thence N26°20'44"W., a distance of 1,484.12 feet to the POINT OF BEGINNING;  
thence S89°48'35"W, a distance of 657.36 feet;  
thence N00°10'47"W, a distance of 988.29 feet;  
thence S89°59'11"E, a distance of 357.47 feet;  
thence S89°58'51"E, a distance of 299.96 feet;  
thence S00°09'46"E, a distance of 329.09 feet;  
thence S00°10'56"E, a distance of 656.83 feet to the POINT OF BEGINNING.

Containing 14.89 acres, more or less.

LESS

A parcel of land known as the MDU substation, Geocode: 14-1740-34-1-25-02-0000 all lying in Section 34, Township 8 North, Range 47 East, P.M.M. more particularly described as follows:

Commencing at the Section corner common to Sections 26 & 27, T 08N., R 47E. and Sections 34 & 35, T 08N., R 47 E., thence S22°36'09"W, a distance of 1010.62 feet to the POINT OF BEGINNING;

thence West, a distance of 61.50 feet;

thence South, a distance of 75.00 feet;

thence East, a distance of 61.5 feet;

thence North, a distance of 75.00 feet

to the POINT OF BEGINNING.

Containing 0.106 acres, more or less

**Section 2.** This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 28<sup>th</sup> day of April, 2020.

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

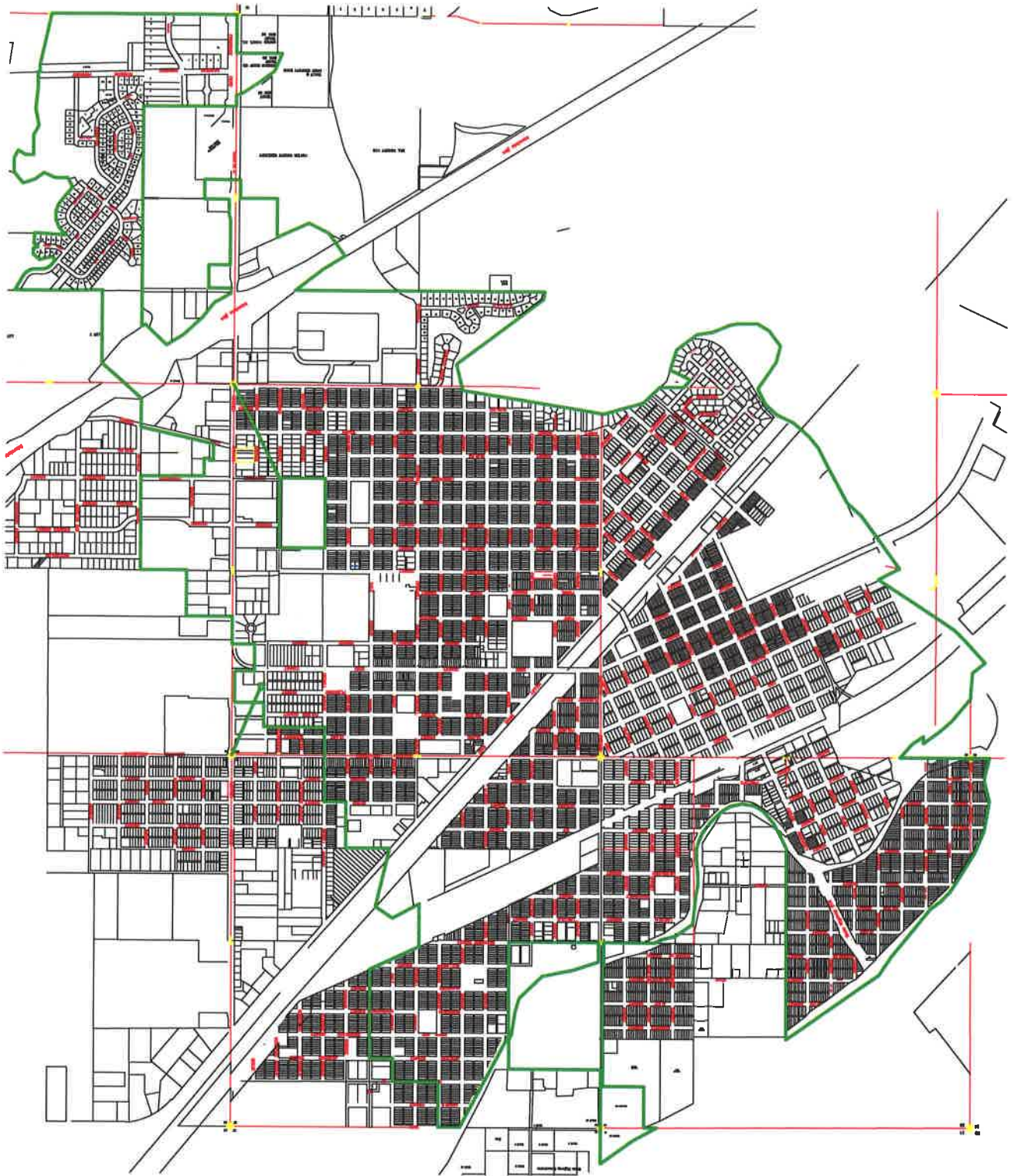
\_\_\_\_\_  
Lorrie Pearce, City Clerk

**FINALLY PASSED AND ADOPTED** this 12<sup>th</sup> day of May, 2020.

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

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



**RESOLUTION NO. 4321**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH INTERSTATE ENGINEERING, INC. RELATED TO THE MILES CITY INDUSTRIAL AND COMMERCIAL WATER/SEWER PROJECT.**

*WHEREAS*, The City of Miles City has retained the engineering services of Interstate Engineering, Inc. (Interstate), to provide engineering services related to the Miles City Industrial and Commercial Water/Sewer Project (PER);

*AND WHEREAS*, Interstate has provided the City with a written agreement setting forth the duties and responsibilities of the parties, entitled "Short Form of Agreement Between Owner and Engineer for Professional Services."

*NOW THEREFORE BE IT RESOLVED* by the City Council 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 document on behalf of the City of Miles City 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 28<sup>TH</sup> DAY OF APRIL, 2020.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

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

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

THIS IS AN AGREEMENT effective as of 4-22-2020 ("Effective Date") between City of Miles City, Montana ("Owner") and Interstate Engineering, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: City of Miles City Preliminary Engineering Report (PER) to meet EDA Requirements for the City of Miles City Industrial and Commercial Water/Sewer Project ("Project").

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

Professional Engineering Services to complete a Preliminary Engineering Report for the City of Miles City Industrial and Commercial Water/Sewer Project to meet requirements by the Federal Economic Development Administration.

The City of Miles City proposes to:

1. Expand the sewer system and install water service in the Industrial Park on the west end of Miles City.
2. Increase the capacity of a sewer lift station that services the industrial park area as well as the Custer County Fairgrounds
3. Install a larger force main under the Tongue River to accommodate increasing the lift station capacity.
4. Replace nine blocks of sewer main that serves the north side of downtown Miles City which serves an opportunity zone and TIF District
5. Replace/upsized approximately 16 blocks of the main sewer interceptor main that runs down Montana Avenue from Main Street to the Montana Sewer Lift Station (TRANSCO).

This Preliminary Engineering Report is limited to analyzing the above issues with the intent of applying for Design and Construction funding through the EDA.

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Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide or furnish 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 ("Additional Services").
- B. Engineer shall complete its Services within the following specific time period: **3 months from the Effective Date of this Agreement. Engineer understands PER will be submitted to EDA as early as June, so this will be a fast-tracked project.**

- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

#### 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 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) 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, and (2) 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, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

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

- A. Owner shall pay Engineer for Services 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, plus reimbursement of expenses incurred in connection with providing the Services and Engineer's consultants' charges, if any.
  - 2. Engineer's Standard Hourly Rates are attached as Appendix 1.
  - 3. The total compensation for Services and reimbursable expenses is estimated to be \$40,000.00.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

#### 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 are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.
  - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
  - d. 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. 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 and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

#### 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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 Constructor, other third-party 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 any services performed or furnished by Engineer. 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 Constructor'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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. 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 due and owing for all Services and Additional 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.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, 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 this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then 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 such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- 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.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

#### 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.

Definitions


- B. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner’s work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
  
- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

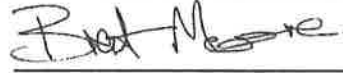
Attachments: Appendix 1, Engineer's Standard Hourly Rates

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

Owner: City of Miles City

Engineer: Interstate Engineering, Inc.

By: 

By: 

Print name: John Hollowell

Print name: Brent Moore, AICP

Title: Mayor

Title: Western Regional Vice President

Date Signed: 4-22-20

Date Signed: 4/9/2020

Engineer License or Firm's Certificate No. (if required):

PEL-EF-LIC-419

State of: Montana

Address for Owner’s receipt of notices:

Address for Engineer’s receipt of notices:

PO Box 910

PO Box 648

Miles City, MT 59301-0910

Sidney, MT 59270-0648

406.234.3462

406.433.5617

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_.

**Engineer's Standard Hourly Rates**

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**A. Standard Hourly Rates:**

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 2.01, 2.02, and 2.03, and are subject to annual review and adjustment.

**B. Schedule of Hourly Rates:**

ENGINEERS

ENG I	\$101.00 PER HOUR
ENG II	\$134.00 per hour
ENG III	\$170.00 per hour
ENG IV	\$193.00 per hour
ENG V	\$213.00 per hour
ENG VI	\$236.00 per hour
ENG VII	\$250.00 per hour

SURVEYORS

SURV I	\$97.00 per hour
SURV II	\$108.00 per hour
SURV III	\$123.00 per hour
SURV IV	\$158.00 per hour
SURV V	\$175.00 per hour
SURV VI	\$199.00 per hour
SURV VII	\$213.00 per hour
SURV VIII	\$223.00 per hour

PLANNERS

PLANNER I	\$80.00 per hour
PLANNER II	\$103.00 per hour
PLANNER III	\$135.00 per hour
PLANNER IV	\$162.00 per hour

TECHNICIANS

TECH I	\$68.00 per hour
TECH II	\$95.00 per hour
TECH III	\$116.00 per hour
TECH IV	\$135.00 per hour
TECH V	\$146.00 per hour
TECH VI	\$170.00 per hour
TECH VII	\$183.00 per hour

ADMINISTRATIVE

ADMIN I	\$73.00 per hour
ADMIN II	\$83.00 per hour

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Appendix 1, Standard Hourly Rates Schedule.

EJCDC® E-520, Short Form of Agreement Between Owner and Engineer for Professional Services.  
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and American Society of Civil Engineers. All rights reserved.

INFORMATION TECHNOLOGISTS

IT I \$135.00 per hour  
IT II \$185.00 per hour

EXPERT WITNESS

\$275.00 per hour

CHARGEABLE EXPENSES

Subsistence.....	Actual cost	8 ½" X 11" Prints per Page.....	\$0.15 – black & white, \$0.50 - color
Travel Vehicle.....	\$0.58 per mile	11" x 17" Prints per Page.....	\$0.25 – black & white, \$0.50 - color
Survey Vehicle.....	\$0.68 per mile	24" x 36" Prints per Page.....	\$9.00
Aircraft.....	Actual cost	Mylar.....	\$3.00 per ft <sup>2</sup>
Any But Ordinary First-Class Postage.....	Actual cost	ATV.....	\$75.00 per day
Subconsultant Services.....	Cost plus 10%	UTV.....	\$150.00 per day
Plat Certification.....	\$35.00	ATV / UTV with Tracks.....	\$125.00 / \$200.00
per day		Snowmobile.....	\$200.00 per day
Recordation per Monument.....	\$35.00		

Cost of surveying materials, filing fees, drafting materials and other materials required for the job.....Cost plus 25%  
Any and all sales and use tax, TERO or other special fees which apply to this contract.

**RESOLUTION NO. 4322**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AGREEMENT ARTICLES AND OBLIGATING AGREEMENT WITH THE MONTANA DISASTER AND EMERGENCY SERVICES PROGRAM FOR A POLICE BODY CAMERA GRANT.**

*WHEREAS*, The City of Miles City has received a \$30,394 grant from the Montana Disaster and Emergency Services (DES) grant program to be used for Police body cameras;

*AND WHEREAS*, DES has provided Agreement Articles and an Obligating Agreement for the City to review and approve, in order to receives said grant;

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

1. The “Agreement Articles” as well as the “Obligating Agreement,” 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 documents on behalf of the City of Miles City 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 28<sup>TH</sup> DAY OF APRIL, 2020.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

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



State Homeland Security Program (SHSP)

FFY 2017 Award Letter

John Hollowell  
City of Miles City  
17 S. 8<sup>th</sup> Street  
Miles City, MT 59301

Mayor Hollowell,

Congratulations on behalf of Montana Disaster and Emergency Services (MT DES), your application for financial assistance submitted under the 2017 Federal Fiscal Year (FFY) State Homeland Security Program, Miles City Police Department, Body Camera Project has been approved in the amount of \$30,394.50. Miles City Police Department is not required to match this award with any amount of non-Federal funds.

Before you request and receive any of the Federal funds awarded, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligating Document for Award (attached to this Award Letter)

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award. In order to establish acceptance of the award and its terms, please complete, sign and return the Obligating Document for Award to your MT DES Grant Coordinator.

For additional assistance, please contact your grant appropriate MT DES Grant Coordinator.

Thank you for your consideration,

A handwritten signature in cursive script, appearing to read "Delila Bruno".

Delila Bruno  
Administrator  
Montana Disaster and Emergency Services

CC: Lyne Anderson

April 1, 2020



**AGREEMENT ARTICLES**  
**State Homeland Security Program**

**SUB-RECIPIENT:**  
**PROGRAM:**  
**STATE GRANT NUMBER:**

Miles City Police Department  
State Homeland Security Program  
17HSMCPD

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#### **Article I - Reporting Subawards and Executive Compensation**

All sub-recipients are required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

#### **Article II - Procurement of Recovered Materials**

All sub-recipients must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

#### **Article III - Patents and Intellectual Property Rights**

Unless otherwise provided by law, sub-recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. section 200 et seq. All sub-recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

#### **Article IV - Notice of Funding Opportunity Requirements**

All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All sub-recipients must comply with all applicable requirements set forth in the program NOFO.

#### **Article V - Non-supplanting Requirement**

All sub-recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

#### **Article VI - Lobbying Prohibitions**

All sub-recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under an federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action concerning the award or renewal.

#### **Article VII - Whistleblower Protection Act**

All sub-recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. Section 2409, U.S.C. Section 4712, 10 U.S.C. Section 2324, 41 U.S.C. Sections 4304 and 4310.

#### **Article VIII - Use of DHS Seal, Logo and Flags**

All sub-recipients must obtain permission from DHS, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

#### **Article IX - USA Patriot Act of 2001**

All sub-recipients must comply with all applicable requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. sections 175-175c.

#### **Article X - Universal Identifier and System of Award Management (SAM)**

All sub-recipients are required to comply with all applicable requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference in the terms and conditions.

#### **Article XI - Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of the sub-recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

#### **Article XII - Rehabilitation Act of 1973**

All sub-recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, as amended, which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

#### **Article XIII - Trafficking Victims Protection Act of 2000**

All sub-recipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000, (TVPA) as amended by 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference in the award terms and conditions.

#### **Article XIV - Terrorist Financing**

All sub-recipients must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Sub-recipients are legally responsible to ensure compliance with the Order and laws.

#### **Article XV - SAFECOM**

All sub-recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

#### **Article XVI - Limited English Proficiency (Civil Rights Act of 1964, Title VI)**

All sub-recipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that sub-recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services.

#### **Article XVII - Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, all sub-recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. section 2225.

#### **Article XVIII - Fly America Act of 1974**

All sub-recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. section 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to Comptroller General Decision B-138942.

#### **Article XIX - Best Practices for Collection and Use of Personally Identifiable Information (PII)**

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All sub-recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Sub-recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template as useful resources respectively.

#### **Article XX - Americans with Disabilities Act of 1990**

All sub-recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits sub-recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. (42 U.S.C. sections 12101-12213).

#### **Article XXI - Age Discrimination Act of 1975**

All sub-recipients must comply with the requirements of the Age Discrimination Act of 1975 (Title 42 U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

#### **Article XXII - Activities Conducted Abroad**

All sub-recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

#### **Article XXIII - Acknowledgment of Federal Funding from DHS**

All sub-recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

#### **Article XXIV - Federal Leadership on Reducing Text Messaging while Driving**

All sub-recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

#### **Article XXV - Federal Debt Status**

All sub-recipients are required to be non-delinquent in their repayment of any federal debt. (See OMB Circular A-129.)

#### **Article XXVI - False Claims Act and Program Fraud Civil Remedies**

All sub-recipients must comply with the requirements of 31 U.S.C. section 3729 - 3733 which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. section 3801-3812 which details the administrative remedies for false claims and statements made.)

#### **Article XXVII - Energy Policy and Conservation Act**

All sub-recipients must comply with the requirements of 42 U.S.C. section 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

### **Article XXVIII - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX**

All sub-recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19

### **Article XXIX - Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude sub-recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

### **Article XXX - Drug-Free Workplace Regulations**

All sub-recipients must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. section 8101 et seq.), which requires all organizations receiving grants from any federal agency agree to maintain a drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 3001, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 8101-8107).

### **Article XXXI - Debarment and Suspension**

All sub-recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

### **Article XXXII - Copyright**

All sub-recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

### **Article XXXIII - Civil Rights Act of 1968**

All sub-recipients must comply with Title VIII of the Civil Rights Act of 1968, which prohibits sub-recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. section 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units-i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)-be designed and constructed with certain accessible features. (See 24 C.F.R. section 100.201.)

### **Article XXXIV - Civil Rights Act of 1964 - Title VI**

All sub-recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

### **Article XXXV - DHS Specific Acknowledgements and Assurances**

All recipients, sub-recipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.

4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

5. If, during the past three years, recipients have been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency (LEP)), sex, age, disability, religion, or familial status, recipients must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS FAO and the DHS Office of Civil Rights and Civil Liberties (CRCL) by e-mail at [crcl@hq.dhs.gov](mailto:crcl@hq.dhs.gov) or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Building 410, Mail Stop #0190 Washington, D.C. 20528.

6. In the event courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS FAO and the CRCL office by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

#### **Article XXXVI - Assurances, Administrative Requirements, Cost Principles, and Audit Requirements**

Sub-recipients must complete the OMB Standard Form 424B Assurances - Non-Construction Assurance. MT DES may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. MT DES financial assistance sub-recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at 2 C.F.R. Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

#### **Article XXXVII - National Environmental Policy Act**

All sub-recipients must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires sub-recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

#### **Article XXXVIII - Nondiscrimination in Matters Pertaining to Faith-Based Organizations**

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by FEMA or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. All sub-recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual programs.

#### **Article XXXIX - Acceptance of Post Award Changes**

In the event MT DES determines that changes are necessary to the sub-recipient award document after an award has been made, including changes to period of performance or terms and conditions, sub-recipients will be notified by MT DES of the changes in writing. Once notification has been made, any subsequent request for funds will indicate sub-recipient acceptance of the changes to the award.

#### **Article XL - Prior Approval for Modification of Approved Budget**

Before making any change to the MT DES approved budget for this award, you must request prior written approval from MT DES where required by 2 C.F.R. Section 200.308. For awards with an approved budget greater than \$150,000, you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from MT DES where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget MT DES last approved. You must report any deviations from your MT DES approved budget, regardless of whether the budget deviation requires prior written approval.

#### **Article XLI - Disposition of Equipment Acquired Under the Federal Award**

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from MT DES to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

#### **Article XLII - Buy American and Hire American**

All sub-recipients are required to comply with any applicable provisions of the Buy American Act (41 U.S.C. Sections 8301 - 8305), and any other applicable statutes, regulations, or rules that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States.

#### **Article XLIII - MT DES Specific Acknowledgements and Assurances**

All sub-recipients must acknowledge and agree to comply with applicable provisions governing MT DES access to records, accounts, documents, information, facilities, and staff.

1. Sub-recipients must cooperate with any compliance reviews or compliance investigations conducted by MT DES.
2. Sub-recipients must give MT DES access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by MT DES regulations and other applicable laws or program guidance.
3. Sub-recipients must submit timely, complete, and accurate reports to the appropriate MT DES officials and maintain appropriate backup documentation to support the reports.
4. Sub-recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. The State of Montana shall not be liable for any reimbursement amount greater than the award amount available to each county/Tribe.
6. Failure of the County/Tribe to accomplish SHSP objectives may result in the reduction or withholding of funds, or other action, as determined by MT DES.

The State of Montana has the right to seek judicial enforcement of these obligations.

#### **Article XLIV - Accruals**

As established within Montana Operations Manual Policy, accrual documentation is required of all sub-recipients by the Montana Department of Administration, State Financial Services Division, and must be submitted to MT DES no later than the second week of June, or as instructed by MT DES.

#### **Article XLV – Authorized Representative**

As evidenced by the signatures found in the Letter of Obligation, the Sub-Recipient Signatory Official agrees to appoint the Sub-Recipient Authorized Representative to act on behalf of Miles City Police Department. This individual shall be duly authorized with all necessary powers with regard to the administration and oversight of the 2017 State Homeland Security Program grant, EMW-2017-SS-00009. The Catalog of Federal Domestic Assistance (CFDA) number associated with this grant is 97.067.



**RESOLUTION NO. 4323**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A MONTANA DEPARTMENT OF COMMERCE “DELIVERING LOCAL ASSISTANCE” PROGRAM CONTRACT FOR REPLACEMENT OF WATER AND SEWER LINES, VALVES, AND HYDRANTS.**

*WHEREAS*, The City of Miles City has received a Montana Department of Commerce “Delivering Local Assistance” Program grant for replacement of water and sewer lines, valves, and hydrants;

*AND WHEREAS*, the State of Montana has provided a contract to the City of Miles City to be executed in acceptance of said grant, and grant conditions;

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

1. The “Montana Department of Commerce Delivering Local Assistance Program Contract # MT-DLA-CG-21-946,” 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 document on behalf of the City of Miles City 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 28TH DAY OF APRIL, 2020.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

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



## Exhibit A

**MONTANA DEPARTMENT OF COMMERCE  
DELIVERING LOCAL ASSISTANCE PROGRAM  
CONTRACT #MT-DLA-CG-21-946**

This agreement ("Contract") is entered into by the City of Miles City, Montana ("Grantee") and the Montana Department of Commerce ("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 infrastructure project activities approved by the Department under the Delivering Local Assistance Program ("DLA" or "Program") as authorized by HB 652, passed by the 66th Legislature and as signed into law by Governor Bullock on May 10, 2019 (Chapter 476, Laws 2019).

**Section 2. AUTHORITY**

This Contract is issued under authority of Title 8, Chapter 94, Subchapter 39 of the Administrative Rules of Montana ("ARM") and the terms of Chapter 476, Laws 2019.

**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, including the most current version of the *TSEP Project Administration Manual* and the *DLA Application and Guidelines*.
- (b) The Grantee agrees that all contracts and subcontracts entered into 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 that the Project will adhere to all applicable design standards required by the Department of Environmental Quality ("DEQ"), and Grantee shall obtain all applicable federal, state, and local permits required for the Project. If no

DEQ standards are applicable to the Project, the Grantee agrees that the Project will adhere to generally accepted industry standards, such as *Recommended Standards for Wastewater Facilities* or *Recommended Standards for Water Works*, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

- (d) 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.
- (e) The Grantee acknowledges and agrees that the funds granted to the Grantee under this Contract are from proceeds of bonds issued by the State of Montana. The Grantee agrees to execute and deliver such documents and provide such information as may be required or appropriate in connection with such bonds to ensure compliance by the State of Montana with state and federal law, rules, and regulations, including without limitation, the Internal Revenue Code of 1986, as amended (the "Code"), and the federal Treasury Regulations. The Grantee shall comply with any written instructions from the Department and/or bond counsel to the State of Montana regarding additional documentation needed to meet any requirements related to the issuance and disbursement of bond proceeds.
- (f) The Grantee shall comply with all environmental requirements and start-up conditions found in the *DLA Application and Guidelines*. The Grantee must complete the applicable environmental review and all start-up conditions before the Department will release Program funds. If the Grantee fails to comply with any environmental requirements or start-up conditions, any obligation to the Grantee under this Contract is extinguished.

## **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, 2023 or upon approval of Grantee's Project completion report by the Department, whichever is later, unless otherwise terminated in accordance with this Contract.
- (b) All authorized expenses to be reimbursed must be incurred by the Grantee between May 10, 2019 and June 30, 2023. All requests for reimbursement must be submitted to the Department within ninety (90) days after June 30, 2023.
- (c) The activities to be performed by the Grantee will be completed according to the implementation schedule set forth in Exhibit A. The Grantee may modify the implementation schedule set forth in Exhibit A only with prior written approval of

the Department.

- (d) 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 sixty (60) days prior to September 30, 2023.

## **Section 6. SCOPE OF WORK**

The Grantee will complete the Project and administer this Contract in compliance with the Project management plan, including any amendments, approved by the Department. The Grantee will use Program funds for the following major components of the Project:

- Replace water pipes with larger PVC piping
- Separate water and sewer lines to meet DEQ standards
- Install water valves and hydrants

## **Section 7. BUDGET**

- (a) The total amount to be awarded to the Grantee under this Contract shall not exceed \$750,000.
- (b) A copy of the preliminary Project budget is attached as Exhibit B and specifically incorporated herein by this reference. After construction bids are awarded or other major Project activity cost elements are determined, the Grantee shall provide the Department with a final Project budget that will, upon receipt and approval by the Department, supersede the preliminary budget in Exhibit B and thereby be incorporated as part of this Contract, binding upon the Grantee.
- (c) For cumulative budget adjustments of \$5,000 or less between line items of the Program portion of Exhibit B, Department approval of the request for reimbursement form shall constitute approval of the budget adjustment. Grantee shall describe the rationale for any budget adjustment and note the adjustment(s) in the request for reimbursement submitted to the Department. Budget adjustments in excess of \$5,000 between any line item of Exhibit B must be approved in advance by the Department.
- (d) 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.

**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:**  
**Matt Blank (or successor)**  
**Program Specialist, MDOC**  
**301 S. Park Ave.**  
**P.O. Box 200523**  
**Helena, MT 59620-0523**  
**406-841-2779**  
**Matt.Blank@mt.gov**

**For the Grantee:**  
**John Hollowell (or successor)**  
**City of Miles City**  
**17 S 8<sup>th</sup> St**  
**Miles City, MT, 59301**  
**406-234-3462**  
**mayor@milescity-mt.org**

**Section 10. METHOD OF REIMBURSEMENT**

- (a) The Department will use the funds appropriated in HB 652 to fund infrastructure project 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 the date identified in Section 5(b) 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. All requests for reimbursement must be for an amount equal to or greater than five thousand dollars (\$5,000) except for the final request for reimbursement and the Grantee must round down to the nearest whole dollar. Unless previously agreed to in writing by the Department, the Department will not reimburse Grantee for any costs related to the land acquisition, construction, construction inspection, or contingency line items in Exhibit B until Grantee demonstrates all applicable permits for the project have been obtained as required in Section 4(c). 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 the date identified in Section 5(b), any expenses not included in Exhibit B or an approved adjustment thereto, any ineligible expenses as set forth in the most current version of the *DLA Application and Guidelines*, 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 Department is allowed fifteen (15) working 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.
- (g) If the Grantee changes one of its sources of funding or the cost of the Project increases after the Grantee has obtained the firm commitment of non-Program funds, the Department may, at its discretion, suspend the distribution of Program funds until the Grantee obtains a firm commitment of funds for the full Project budget.
- (h) The Department must reduce the Grantee's amount of Program funds provided by this Contract if actual Project expenses are lower than projected by the Grantee in Exhibit B.
- (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 the *TSEP Project Administration Manual* 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 as described in the *TSEP Project Administration Manual* 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 either by first class mail or personal service.

**Section 14. REFERENCE TO CONTRACT**

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

**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.
- (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 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 due to the Grantee's, its contractors', subcontractors', or subrecipient entities' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, 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, and Section 504 of the Rehabilitation Act of 1973, the Patient Protection and Affordable Care Act ("ACA"), and Executive Order No. 12-2015, *Amending and Providing For Implementation of the Montana Sage Grouse Conservation Strategy*. 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.



**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: 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 in a properly executed amendment hereto are valid or binding.



Are you finished signing?

**FINISH**

This Contract is intended to be and will be construed to evidence a "grant" to the Grantee under the Code and Treasury Regulations of proceeds of bonds issued by the State of Montana. The parties agree that there is no expectation that any grant funds will be repaid or that any other payments will be made by the Grantee to the Department or the State of Montana in connection with this Contract and that the Grantee is not a related party to, or acting as an agent of, the Department or the State of Montana in connection with this Project or this Contract. The Grantee will apply all funds granted to it under this Contract to capital expenditures of the Project.

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

**CITY OF MILES CITY**

John Hollowell  
John Hollowell, Mayor

4/22/2020

Date

**ATTEST:**

Lorrie Pearce  
Lorrie Pearce, City Clerk

**APPROVED AS TO FORM:**

Dan Rice  
Dan Rice, City Attorney

**MONTANA DEPARTMENT OF COMMERCE:**

\_\_\_\_\_  
Tara Rice, Director

\_\_\_\_\_  
Date

**EXHIBIT A  
Implementation Schedule**

TASK	QUARTERS, 2019				QUARTERS, 2020			
	1st J F M	2nd A M J	3rd J A S	4th O N D	1st J F M	2nd A M J	3rd J A S	4th O N D
<b><u>PROJECT DESIGN</u></b>								
Commence Final Design				<b>X</b>	<b>X</b>			
Complete Project Design				<b>X</b>	<b>X</b>			
Submit Plans to DEQ					<b>X</b>			
Prepare Bid Documents					<b>X</b>			
Finalize Acquisition					<b>NA</b>			
<b><u>ADVERTISEMENT FOR CONST. BID</u></b>								
Review Contract Requirements					<b>X</b>			
Public Bid Advertisement					<b>X</b>	<b>X</b>		
Open Bids & Examine Proposals						<b>X</b>		
Request Contr. Debarment Review						<b>X</b>		
Select Contractor & Award Bid						<b>X</b>		
Conduct Pre-Const. Conference						<b>X</b>		
Issue Notice to Proceed to Contractor						<b>X</b>		
<b><u>PROJECT CONSTRUCTION</u></b>								
Begin Construction						<b>X</b>		
Monitor Engineer & Contractor						<b>X</b>	<b>X</b>	<b>X</b>
Conduct Labor Compliance Reviews						<b>X</b>	<b>X</b>	<b>X</b>
Hold Const. Progress Meetings						<b>X</b>	<b>X</b>	<b>X</b>
Final Inspection								<b>X</b>
<b><u>PROJECT CLOSE OUT</u></b>								
Submit Final Drawdown								<b>X</b>
Project Completion Report/Final Certification								<b>X</b>
Contract End Date								<b>2023</b>

EXHIBIT B

Budget

ADMINISTRATION	DLA	LOCAL	TOTAL
Professional Services	\$ -	\$20,000	\$20,000
Office Cost	\$ -	\$ -	\$0
Grant Administration	\$ -	\$ -	\$0
Legal Costs	\$ -	\$8,000	\$8,000
Audit Fees	\$ -	\$ -	\$0
Travel & Training	\$ -	\$ -	\$0
			\$0
			\$0
<b>TOTAL ADMINISTRATION</b>	<b>\$0</b>	<b>\$28,000</b>	<b>\$28,000</b>
<b>CONSTRUCTION RELATED ACTIVITIES</b>			
Preliminary Design	\$ -	\$ 10,000	\$ 10,000
Final Design	\$ -	\$ 104,000	\$ 104,000
Construction Inspection Eng.	\$ -	\$ 104,000	\$ 104,000
Construction	\$ 750,000	\$ 150,000	\$ 900,000
Contingency	\$ -	\$ 90,000	\$ 90,000
<b>TOTAL ACTIVITY</b>	<b>\$ 750,000</b>	<b>\$ 458,000</b>	<b>\$ 1,208,000</b>
<b>TOTAL PROJECT BUDGET</b>	<b>\$750,000</b>	<b>\$486,000</b>	<b>\$1,236,000</b>

CDD CONTRACT INFORMATION SHEET

**Division staff are required to complete the items in blue print.**

Date of Gov. Award Letter:	<u>2/14/2020</u>	Date Met StartUp Conditions:	<u>3/11/2020</u>
Contract Number:	<u>MT-DLA-CG-21-946</u>	Division:	<u>CDD</u>
Contractor's Name:	<u>City of Miles City</u>		
Additional Name:	<u>Tom Speelmon</u>		
Additional Email:	<u>tspeelmon@milescity-mt.org</u>		
Approved to Form Name:	<u>Dan Rice</u>		
Approved to Form Email:	<u>drice@milescity-mt.org</u>		
Contractor (Signee) Name:	<u>John Hollowell</u>		
Contractor's Email:	<u>mayor@milescity-mt.org</u>		
Contractor's Address:	<u>17 S 8th St</u>		
	<u>Miles City, MT 59301</u>	Vendor Number:	<u>23484</u>
Contractor's Address 2:			
Attest Name:	<u>Lorrie Pearce</u>		
Attest Email:	<u>cityclerk@milescity-mt.org</u>		
Duns Number:		Begin Date:	<u>Upon Execution</u>
(Federal Funds Required)		Upon Execution	
Amount:	<u>\$750,000</u>	End Date:	<u>9/30/2023</u>
Organization Number:	<u>607946</u>		
RFP Number (if applicable):			
Program Number:	<u>60</u>		

Liaison:	<u>Matt Blank</u>	Program Manager:	<u>BAnseth@mt.gov</u>
Liaison Email:	<u>Matt.Blank@mt.gov</u>	Operations Manager:	<u>A.C. Rothenbuecher</u>
Liaison Phone:	<u>406-841-2779</u>	Additional Email:	

Signatures:		Carbon Copies:	
Division Administrator	<u>Jennifer Olson</u> 4/9/2020	Liaison:	<input checked="" type="checkbox"/>
Fiscal Review	<u>Heidi Sampson</u> 4/10/2020	Director (> \$25K):	<input checked="" type="checkbox"/>
Legal Counsel	<u>Amy Barnes</u> 4/10/2020	Deputy Director (<\$25K):	<input type="checkbox"/>
Deputy Director	<u>Tara Rice</u> 4/14/2020	Perceptive Content	<input checked="" type="checkbox"/>
OBPP	<u>Amy Sassano</u> 4/14/2020		