

**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/upsizes 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.

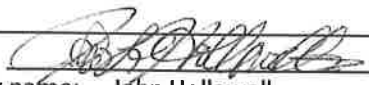
*Definitions*

- 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

By:   
Print name: John Hollowell  
Title: Mayor  
Date Signed: 4-22-20

Engineer: Interstate Engineering, Inc.

By:   
Print name: Brent Moore, AICP  
Title: Western Regional Vice President  
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:

PO Box 910  
Miles City, MT 59301-0910  
406.234.3462

Address for Engineer's receipt of notices:

PO Box 648  
Sidney, MT 59270-0648  
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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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 1/2" 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 per 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.