

RESOLUTION NO. 4372

A RESOLUTION APPROVING "SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES" WITH INTERSTATE ENGINEERING RELATED TO THE CITY OF MILES CITY NORTH 7TH STREET WATER MAIN REHABILITATION PROJECT.

WHEREAS, The City of Miles City desires to retain the engineering services of Interstate Engineering to provide engineering services related to the City of Miles City North 7th Street Water Main Rehabilitation Project;


AND WHEREAS, Interstate Engineering 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. "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 22ND DAY OF SEPTEMBER, 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 9-22-2020 ("Effective Date") between City of Miles City, Montana ("Owner") and Interstate Engineering, Inc. ("Engineer").

Whereas the Owner desires to replace and upsize eleven (11) blocks of water main, replace two (2) blocks of sanitary sewer main, and replace the storm sewer collection pipes from the catch basins to the storm sewer main within five (5) intersections along the project corridor prior to the scheduled MDT construction:

The Owner's Project, of which Engineer's services (Services) under this Agreement are a part, is generally identified as follows: City of Miles City North 7th Street Water Main Rehabilitation Project ("Project").

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

The Project corridor will begin at the intersection of Main Street and end at the intersection of Felton Street.

Engineer will provide design, construction administration, and construction observation services to complete a water main, sanitary sewer main, and storm sewer collection pipe replacement project for: 4,600 lineal feet of existing 4" CI water main; 2 blocks, approximately 600 lineal feet, of sanitary sewer main; and 5 street intersections of storm sewer collection pipe from the catch basins to the storm sewer main within the existing rights-of-way of North 7th Street, estimated at 950 lineal feet.

This project is intended to replace existing water, sanitary sewer, and storm sewer collection pipes within the North 7th Street rights-of-way in anticipation of the Montana Department of Transportation's (MDT) plan to reconstruct North 7th Street (State Hwy. 59) in 2024.

Below are the itemized tasks with an estimated fee to complete each task:

Task 1 – Topographic Survey/Mapping

Engineer will perform a topographic survey of the areas proposed for water, sanitary sewer, and storm sewer main replacement with services marked by the utility owner. Assuming favorable ground conditions, Engineer anticipates six (6) days of field survey employing a traffic control technician (total of 3 staff) will be required to map the location and elevation of the existing roadway centerline, driveways, fence lines, edge of surfacing, curb lines, pavement markings, sidewalks, and location of existing visible features such as building fronts, steps, signs, mailboxes, street trees, light poles, power poles, utility pedestals, fences and gates, traffic signal poles, street signs, traffic control signs, railroad crossings and signals, fire hydrants, (existing water, sanitary sewer, storm sewer, and water service curb stops shall be located by the City) within apparent public right-of-way and 25' outside of the apparent public right-of-way (if permission is granted by property owner) based on legal descriptions or plats provided by the Owner. Owner is responsible to obtain landowner permission for Engineer to enter property owner's property. If legal descriptions or plats are not available or adequate for survey

purposes, establishing rights-of-way can be accomplished as Additional Services. Major on-site structures identified for service by the Owner will also be mapped. Aerial imagery can be used to show location of incidental surface features outside of public right-of-way, if requested.

Engineer will request a One-Call locate for utilities. The accuracy of Engineer's survey is dependent upon the accuracy of the locates provided by the One-Call service. The budget excludes confined space entry and therefore manhole depths will be approximated using above ground means only. If the Owner wishes to have more accurate depths, Additional Services can be proposed. The Engineer will utilize the field survey and public domain aerial photography to develop engineering plans for the various improvements. A minimum of ten (10) control points (coordinates and elevation) will be set for use during construction.

Areas to be surveyed:

- North 7th Street – MT State HWY 59 (11 blocks)
 - Main Street to Felton Street

Survey will be performed within project rights-of-way and 25 feet beyond the cross street's projected rights-of-way. Topographic and location surveying for areas beyond what is listed above, though not included in this budget, can be provided on an hourly basis at your request per the attached fee schedule. Ground conditions, such as snow cover, can affect the ability to accurately perform the survey. It is recommended that the survey be performed when the ground is clear of all snow. The budgeted survey hours assume favorable (thawed) ground conditions. Should the survey need to be performed during unfavorable ground conditions, the additional time to perform such work can be estimated ahead of time and charged as Additional Services. The Owner shall acknowledge that the inaccuracies can lead to potential changed condition claims (change orders) during construction.

A base map will be prepared showing the existing topography with one-half foot (1/2') contour intervals and the surface features outlined above. The topographic data and base map will be used to complete Task 2.

Task 2 –Water, Sanitary Sewer, and Storm Sewer Replacement Design Drawings and Specifications

Engineer will prepare a design report, construction plans, and specifications for water, sanitary sewer, and storm sewer improvements in accordance with Montana Public Works Standard Specifications and Montana Department of Environmental Quality ("MT DEQ") Circulars DEQ-1, DEQ-2, and DEQ-8, respectively. The owner is responsible for all filing and review fees. Design elements shall include:

1. Water main, fire hydrants, and water services

- Water main extensions will be sized per the Owner's direction but not less than the size required by MT DEQ Circular DEQ-1. The Owner shall provide evidence (hydraulic modeling) that the new mains are of sufficient size to provide domestic and fire flow requirements. Hydraulic modeling of the City's water distribution system, or portions thereof, can be provided as Additional Services, fee to be negotiated.
- The two TRANSCO railroad crossings on Hwy 59 between River Street and Washington Street are previously approved by John Adamitis, Chief Engineer, TRANSCO, Chicago, IL per a May 11, 2020 email to Josie Stinson, Interstate Engineering. The railroad crossings will be accomplished via jack and bore installation.

2. Sanitary sewer main and sewer services
 - Sanitary sewer mains will be a minimum 8-inch diameter. Sanitary sewer services will be 4 inch or 6-inch diameter depending on Owner-provided anticipated flow generated by the end user.
3. Storm sewer collector piping from catch basins to storm sewer main
 - Storm sewer collector piping will be replaced with in-kind sizing of the existing collector piping.
4. Trench restoration
 - Trench backfilling will be designed in coordination with the Owner and/or MDT standards. A temporary asphaltic pavement section will be developed and coordinated with MDT for short term surface restoration. Curbs, gutters, approaches, sidewalks, etc. disturbed or removed to accommodate construction will be replaced in-kind. Design for new curbs, gutters, sidewalks, or street improvements, such as paving or reconstruction, is excluded under this task. Final pavement reconstruction and associated street improvements for North 7th Street (State Hwy. 59) will be designed by MDT (2024 Construction).
5. Establish Traffic Control Parameters
 - Traffic control is required for the construction of the proposed improvements. The traffic control plan will have to be reviewed and approved by the MDT. It is the Engineer's intent to specify a minimum level of traffic control that must be employed by the contractor and that the contractor is responsible to prepare and implement a full-scale traffic control plan for submission to the MDT for review and approval.
6. Establish Erosion and Sediment Control Parameters
 - A Storm Water Pollution Prevention Plan (SWPPP) is required for the construction of the proposed improvements. The SWPPP will have to be reviewed and approved by the MT DEQ. It is the Engineer's intent to specify a minimum level of erosion and sediment control devices to be employed by the contractor and that the contractor is responsible to prepare and implement a full-scale plan for submission to the MT DEQ for review and approval.
7. The Engineer will apply to the City of Miles City's Floodplain Manager for a Floodplain Development Permit or a Joint Application for Permit will be applied for to the applicable agencies on behalf of the Owner. Application fees are the responsibility of the Owner.
8. The Engineer will apply to the MDT for a utility permit for new or upgraded installations in the right-of-way.

The Engineer will utilize a geotechnical analysis to support project designs. The geotechnical investigation and final analysis will be provided by the MDT. Information gathered from the geotechnical analysis is limited to that found in the physical bore holes and conditions may vary during construction. The Owner recognizes that construction claims for changed conditions are a possibility. The Engineer understands that the geotechnical report and recommendations will be provided to the Engineer prior to the commencement of design.

It is Engineer's understanding that the project area is currently being evaluated for the possible presence of petroleum products or petroleum product residues in the soils within the project boundaries. The Engineer further understands that the findings of the evaluation will be provided to the Engineer prior to the commencement of design.

Engineer will submit the infrastructure improvements plans and specifications to the Owner, MT DEQ, and MDT for review and approval or concurrence.

The Engineer will prepare a set of specifications for the Project that will be used for the bidding and construction of the Project. The specifications will be prepared using the Construction Specifications Institute (CSI) Master Format, 2016 and Montana Public Works Standard Specifications, Sixth Edition, April 2010 as deemed appropriate by the Engineer. The Engineer will assist the Owner in obtaining MT DEQ approvals/permits necessary for the construction of the Project. An Environmental Impact Statement, Environmental Assessment, or Environmental Report, including wetlands determination, delineation, or obtaining a USACE 404 Permit are not included in this scope of work.

The Engineer will attend up to five (5) meetings with the Owner and the MDT to prior to design and during the design process to review plans and cost estimates, receive input, and answer questions regarding the Project. Engineer does not anticipate any meetings with other agencies will be required.

The Engineer will notify known utilities that may be affected by any potential conflicts by providing a set of plans for their review. Utility owner or the Owner, depending on franchise agreements, will be responsible for any relocation designs and construction of such. The Engineer will provide affected utility companies with preliminary and final engineering plans and specifications. Affected utilities are typically electric power, natural gas, telecommunications, cable television, and traffic signal wiring.

Task 3 – Bidding Phase/Contractor Review and Clearance

The Engineer will draft an Advertisement for Bids to be published by the Owner for the Improvements Project. The Engineer will provide the advertisement to the newspaper of record and obtain an affidavit of publication. The Owner is responsible for paying the fees associated with advertising in the publication.

The Engineer will schedule, in consultation with the Owner, and attend a pre-bid meeting for the Project.

The Engineer will answer Contractor, material supplier, and manufacturer questions and issue any addenda that may be necessary during the bidding period.

The Engineer will provide construction bidding and administration services during the bidding of the Project. Only one bid letting is expected. The Engineer's services exclude value engineering efforts. Bids will be received and opened by the Owner. The Engineer will evaluate all bids received and prepare a bid tabulation. The Engineer will make a recommendation for award of the construction contract to the lowest responsible, responsive bidder after the Engineer has consulted with the Owner to determine which schedules, if multiple schedules, of the Improvements Project to award based on funding availability. Awarding of schedule(s) will be at the sole discretion of the Owner.

- If the successful bidder or any of the proposed subcontractors, such as jack and bore subcontractor, is unknown to the Owner or Engineer, the Engineer can assist with a follow up questionnaire and more in-depth reference checks (documented) for the benefit of the Owner. This service, if requested, will be provided as Additional Services.

Upon approval by the Owner, the Engineer will prepare a Notice of Award and Contract Documents for review by the Owner's attorney for the Project upon the receipt of bonds and insurance from the Contractor. The Engineer will notify the Contractor of the schedules to be awarded and coordinate with the Contractor to secure documents needed for construction to proceed.

Task 4 – Construction Administration, Construction Observation, and Record Drawings

Engineer will provide one-time field staking for all improvements. Offset grade stakes or PK nails will be provided at frequencies and distances as determined by the Contractor. It is assumed staking will be required at 50' maximum intervals along the proposed alignment and for the location of new fittings and manholes. The Contractor is responsible to preserve all staking. The cost of re-staking will be the responsibility of the Contractor. Payment for this additional work shall be made by the Owner to the Engineer with a corresponding reduction in the Contractor's Periodic Pay Application(s). For estimation purposes, Engineer anticipated twenty (20) twelve (12)-hour days for construction staking. This estimate includes travel to and from the site from the Engineer's office.

The Engineer will provide a Resident Project Representative (RPR) for full-time construction observation. Construction observation will be performed to verify that the Project is generally proceeding on schedule and in overall accordance with the plans and specifications. Engineer has no control over construction progress or Contractor's inefficiencies.

The Contractor will be responsible for all permitting requirements required for removal, handling, and disposal of asbestos piping and lead services, as each are exposed. Engineer's duty is limited to general observations and will report to the Owner only those material departures from the schedule or deficiencies of which Engineer has actual knowledge, in fact. For estimation purposes, Engineer anticipated one hundred (100) working days of full-time construction observation. For the purposes of this proposal, a working day consists of ten (10) hours of on-site observation with an additional allowance for off-site time to compile and file the day's project records. Should the contractor elect to work more than ten (10) hours each work day (Monday through Friday) or work during a weekend or holiday, the cost for the RPR is the contractor's responsibility. Payment for this additional work shall be made to the Engineer by the Owner with a corresponding reduction in the Contractor's Periodic Pay Application(s). Currently, the estimated schedule for substantial completion of the project is one hundred forty (140) calendar days.

The Engineer will conduct weekly progress meetings with the Contractor and the Owner regarding project progress, necessary street closures, field staking, material testing requirements, field observations, and any other important topics as they relate to the Project. For estimation purposes, Engineer budgeted for twenty (20) weekly progress meetings.

The Project Engineer or Project Manager will attend Owner city council meetings as necessary to discuss project status and answer questions. For estimation purposes, four (4) council meetings are budgeted.

The Contractor will be responsible for Quality Control Testing in accordance with the Agreement throughout the Project. The Owner may ask the Engineer to arrange for Quality Assurance Testing. Any Quality Assurance Testing shall be paid for directly by the Owner.

The Engineer will maintain Project records including correspondence, schedules, submittals, request for information, payment requests, proposed contract modifications, change orders, photographs, test results, and meeting minutes. The Engineer will submit all documentation to the Owner upon request.

The Engineer will compile and distribute punch-list items upon completion of a site walk-through by representatives of the Owner, Contractor, and Engineer. The Engineer will follow up with the Contractor on the completion of the punch-list items and will assist the Owner with closeout activities including a final walk-through.

The Engineer will provide Record Drawings based on information provided throughout construction by the Engineer and Contractor. Additionally, the Engineer will survey above-ground appurtenances to supplement the Contractor-provided Record Drawings. Record Drawings will be submitted to the DEQ and the Owner as required by each respective agency. The Record Drawings will have been prepared, in part, based on information compiled and furnished by others. The Engineer will not be responsible for any errors or omissions which have been incorporated into the document as a result. For estimation purposes, Engineer anticipated two (2), twelve (12)-hour days to survey above-ground appurtenances. This estimate includes travel to and from the site from the Engineer's office.

Task 5 – Additional Services

Recognizing that time can be of the essence, the Owner and Engineer agree that a preapproved budget for additional services is beneficial to keep the project moving. Additional services that may be requested by the Owner shall be provided at the Engineer's hourly rate schedule in effect at the time of request. The additional services can be requested by the Owner's designated representative. An amount of \$20,000 has been budgeted for *Additional Services*. This budget may or may not be used.

The following items are specifically excluded from this Scope of Services:

1. A *Preliminary Engineering Report* conforming to the requirements of the Uniform Application for Montana Public Facility Projects, if required by the MT DEQ or funding agency, if any.
2. Hydraulic modeling of the City's water, sanitary sewer, and storm sewer systems.
3. Drainage studies and design.
4. Design of drainage structures, curbs, gutters, sidewalks, ramps or street improvements, such as paving, reconstruction, or widening.
5. Exploratory excavation of existing utilities.
6. Fees for necessary permits or regulatory agency review.
7. Fees for recording any necessary easements or rights-of-way. Should any right-of-way or easement surveys or documents be necessary, the Engineer reserves the right for additional budget for such.
8. Fees for the publishing of the advertisement for bid.
9. Rebidding or value engineering.
10. Traffic control plan.
11. Erosion & Sediment Control Plan.
12. Water Main Flushing and Disinfection Plan.
13. Additional field time due to extreme weather conditions and/or snow cover.
14. Landowner negotiations for rights-of way or easements.
15. Public outreach meetings and coordination with local businesses.
16. Drone aerial footage before, during, and/or after construction.
17. Funding coordination, administration, drawdowns, closeout, etc.
18. SHPO archeological-cultural resource survey.
19. Asbestos survey, sampling, and testing for existing concrete structures including manholes, curbs, and gutters.
20. Geotechnical exploration and preparation of a geotechnical report and recommendations prepared by a Montana licensed geotechnical engineering firm.
21. Research, exploration, and soil sampling for the possible presence of petroleum products and/or petroleum product residues.

22. Preparation, submittal, and monitoring of a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) as stated in the Stormwater General Permit or maintenance of the stormwater controls as required by the Montana Department of Environmental Quality.

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: ***Nine months after a signed contract is received by the Engineer and a Notice to Proceed is issued by the Owner (City)***. If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- 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 \$621,009.00 (six hundred twenty-one thousand nine and 00/100 dollars).

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. Engineer has budgeted \$20,000.00 for Additional Services. This amount is included in 2.02.3 above.

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 and the jurisdiction in which the Engineer's office is located (Billings, MT).
- 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.
- B. Owner has indicated that this agreement may be required to be modified as the scope of the Project is refined after the Agreement is executed by the Engineer and the Owner.

7.01 *Definitions*

- A. *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.
- B. *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, Montana

Engineer: Interstate Engineering, Inc.

By: [Signature]
Print name: John Hollowell
Title: MAYOR
Date Signed: 9-22-20

By: [Signature]
Print name: Lonni Fleck, PE/LSIT
Title: President
Date Signed: September 11, 2020

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

State of: Montana PEL-EF-LIC-419

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

PO Box 910
Miles City, MT 59301

1211 Grand Ave., Ste.6, PO Box 20953
Billings, MT 59104-0953



3/1/2020

SCHEDULE OF RATES

ATTACHMENT #1

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

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 ²
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
Recordation per Monument.....	\$35.00	Snowmobile.....	\$200.00 per day
Cost of surveying materials, filing fees, drafting materials and other materials required for the job.....			
Any and all sales and use tax, TERO or other special fees which apply to this contract.			

Professionals you need, people you trust.

P.O. Box 2035 • 1903 12th Avenue SW • Jamestown, ND 58402-2035 • P: 701-252-0234 • F: 701-252-0203 • www.interstateeng.com

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