

RESOLUTION NO. 4396

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT WITH THE MONTANA DEPARTMENT OF TRANSPORTATION FOR STREET SWEEPING FOR FISCAL YEAR 2021-2022.**

*WHEREAS*, pursuant to Section 60-2-204 MCA the City of Miles City has negotiated an agreement with the Montana Department of Transportation for the City of Miles City to provide street sweeping and flushing services upon specific sections of state highway within or abutting the City of Miles City, a copy of which is attached hereto as Exhibit "A";

*AND WHEREAS*, the City Council of the City of Miles City finds that it is in the best interest of the City of Miles City to enter into such agreement with the Montana Department of Transportation;

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

1. The Agreement for the provision of street sweeping and flushing service between the City of Miles City, Montana and the Montana Department of Transportation, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by the Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and to bind the City of Miles City thereto.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement and to 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, THIS 13<sup>TH</sup> DAY OF APRIL, 2021.**



ATTEST: Mary Rowe, City Clerk



John Hollowell, Mayor

**MDT NONDISCRIMINATION  
AND  
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,  
sex, sexual orientation, gender identity,  
age, disability, & Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital  
status, pregnancy, childbirth, or medical  
conditions related to pregnancy or childbirth,  
religion/ creed, social origin or condition,  
genetic information, sex, sexual orientation,  
gender identification or expression, national  
origin, ancestry, age, disability mental or  
physical, political or religious affiliations or  
ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

**(1) Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**(2) Non-discrimination:**

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
  - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
  - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
  - iii. Contact information for PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

- iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

**(3) Participation by Disadvantaged Business Enterprises (DBEs):**

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at [mdt.mt.gov/business/contracting/civil/dbe.shtml](http://mdt.mt.gov/business/contracting/civil/dbe.shtml)
- b. By signing this agreement, the PARTY assures that:

*The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

**(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

**(5) Information and Reports:** The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(6) Sanctions for Noncompliance:** In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

**(7) Pertinent Non-Discrimination Authorities:**

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

*Federal*

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination 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. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

*State*

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

**(8) Incorporation of Provisions:** The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

Montana Department of Transportation  
Miles City Maintenance Division  
217 North Fourth Street  
Miles City, Montana 59301

## Street Sweeping Agreement

This agreement is between the City of Miles City and the Montana Department of Transportation (MDT) for defining street sweeping and flushing responsibilities of the City and MDT in accordance with state law which allows MDT to enter into an agreement with local governments to provide maintenance of State routes with provision for full reimbursement. The term of this agreement shall be for one year beginning July 1, 2021.

**LIMITS OF AGREEMENT:** The listing of streets and intersections identified under items covered is a full and complete listing of areas covered by this agreement. Unless otherwise defined, that list includes all intersections along the route and intersecting streets for a distance of 15' or to the end of the curb radius return, whichever is greater, and shall include all of the street right of way. During the term of this Agreement, additional areas may be added by written Agreement of the parties.

**SCOPE OF AGREEMENT:** This agreement covers all activities ordinarily associated with street sweeping and flushing activities.

**ITEMS COVERED:** Payment to the City for this Agreement shall be for the following:

**STREET CLEANING ACTIVITIES:**

The City will flush the streets identified below once per week and sweep and clean the streets identified below once every other week, unless otherwise noted. This will begin July 1, 2021 through October 15, 2021 and begin again on April 15, 2022 through June 30, 2022, approximately six months.

- a. Main Street beginning at the westernmost end of the Tongue River bridges proceeding east to the intersection of Main Street and Haynes Avenue.
  - b. North Seventh Street beginning 15' south of the intersection of North Seventh Street and Main Street and proceeding North to the old Milwaukee Railroad tracks.
  - c. Haynes Avenue beginning at the intersection with East Main Street and proceeding south to the south side of the entrance to the Comfort Inn, south of the Broadus Interchange. \*The City of Miles City will sweep and flush every 3<sup>rd</sup> week of the month.
  - d. The Montana Department of Transportation will assist in sweeping activities when excessive sand or leaves have been deposited on the designated state routes.
- If additional sweeping or flushing is requested by the Montana Department of Transportation, and approved by the Maintenance Chief, the agreed rate will be \$55.00 per hour for sweeping and \$32.00 per hour for flushing.

**MONTANA PRODUCT PREFERENCE:** The City will provide Montana-made goods where those goods are comparable in price and quality to those required by this Agreement pursuant to Section 18-1-112(1), MCA.

**COSTS / PAYMENT:** The costs associated with this Agreement shall be \$1800.00 per month for a period of six months beginning July 1, 2021 and ending June 30, 2022. This will be a lump sum cost for the activity described, and shall be paid to the City on an annual basis.

The City shall submit billing and a narrative summary of the work done in the period of this Agreement on or before June 10, 2022. MDT agrees to make payment within 20 calendar days of receipt of the billing.

**RECORDS:** The labor, equipment and materials used on the streets covered in this Agreement shall be assigned a special budget category by the City. No record keeping shall be attempted to break contractual costs against individual streets that are covered in this Agreement. All City records concerning this project are open for review and/or audit by representatives of MDT or the Legislative Auditor at any reasonable time.

**TERMINATION:** This Agreement may be terminated upon thirty days written notice, delivered by certified mail, return receipt requested, by either party. Upon service of such notice, MDT is liable only for actual work completed as of the date of the notice.

**HOLD HARMLESS / INDEMNIFICATION:** MDT agrees to hold harmless and/or indemnify the City for damages resulting from the construction or design done by MDT of the streets and areas covered by this Agreement. This holds harmless / indemnification clause shall not cover damages, which are caused whether directly or indirectly by the work done by the City pursuant to this Agreement. The City agrees to defend, protect, indemnify and save harmless MDT and the State against and from all claims, liabilities, demands, causes of action, judgments, and losses claimed to be due to the City's performance of the activities of this Agreement.

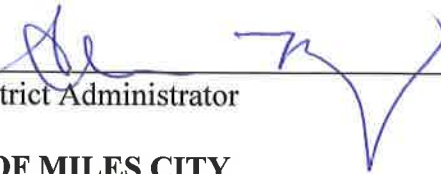
**CIVIL RIGHTS COMPLIANCE:** The City must comply with all applicable Federal and State laws including, but not limited to, prevailing wage laws and those laws referred to in the two-page NOTICE attached hereto, which is made a part of this Agreement by its reference.

**LAW AND VENUE:** The laws of Montana govern This Agreement. The parties agree that, in the event of any dispute concerning this Agreement, any litigation will be adjudicated utilizing the appropriate, established legal/judicial systems.

**ENTIRE AGREEMENT:** This document, with the attached Notice, contains the entire Agreement between the parties, and no statements, promises or inducements made by either party or its agents which in any way modifies, alters or changes the contents of the document is binding. Any subsequent modification must be done by a separate written document.

IN WITNESS THEREOF, the parties hereto caused this Agreement to be executed in duplicate by their duly authorized officers.


**STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION**

By:  Date 3/19/2021  
District Administrator

**CITY OF MILES CITY**

By:  Date 4-13-21

Title: MAYOR

Attest:   
City Clerk

Enclosures  
Notice Approved for Legal Content per the attached signature page of the original Agreement.