

RESOLUTION NO. 3179

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA, FORMALIZING APPROVAL OF ENGINEERING AGREEMENTS WITH HKM ENGINEERING.

WHEREAS, the City Council for the City of Red Lodge previously approved HKM Engineering for projects based on their responses to Requests for Proposals issued by the City; and

WHEREAS, the City of Red Lodge has negotiated for and has concluded formal agreements with HKM Engineering; and

WHEREAS, the City Council for the City of Red Lodge is advised and understands these formal agreements are in keeping with the requirements of grant monies awarded the City for these projects and are in the best interests of the City for the health, safety and welfare of residents and visitors alike.

NOW THEREFORE, BE IT RESOLVED:

1. The City Council resolves the following listed contracts (A. & B are combined into a single contract attached) obligate the City for payment, and that as such must be approved pursuant to M.C.A. 7-7-4101:

A. Mapping Infrastructure;	\$14,000.00
B. City Water Well #2;	\$27,000.00

C. Ratify Remington Ranch Water Well Evaluation Study;	<u>\$ 1,500.00</u>
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Total:	\$42,500.00
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2. The City Council resolves to direct the mayor to enter into the aforementioned contracts on behalf of the City and to take such administrative action as he deems prudent to budget for these obligations under these contracts and take such other and further action to implement and carry out these contracts in accordance with the intent of this Resolution.

PASSED and APPROVED by the Red Lodge City Council this 24th day of May, 2005.

FOR THE CITY OF RED LODGE, MT

By: Richard C. Gessling
Richard C. Gessling, Mayor

Attest: Debbie Tomicich
Debbie Tomicich, City Clerk



Agreement No. : _____

STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT between _____ City of Red Lodge Montana _____ (CITY) and **HKM Engineering Inc., 222 N. 32nd Suite 700 (HKM)** shall be effective as of the date of last signature below. CITY and HKM agree that HKM will perform the following services that are part of the CONTRACT identified above.

SCOPE OF SERVICES: See EXHIBIT A - Scope Of Work

COMPENSATION by CITY to HKM: See EXHIBIT B - Method Of Payment

The following attachments are hereby made a part of this AGREEMENT: PROVISIONS (2 pages), EXHIBIT A (Scope Of Work), EXHIBIT B (Method of Payment)

Services covered by this AGREEMENT will be performed in accordance with the attached PROVISIONS and any Exhibits, Attachments, and/or Schedules. This AGREEMENT supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

In witness whereof, persons authorized to commit resources of the company have executed this AGREEMENT.

Accepted for **CITY**

By _____

Title _____

Date _____

Accepted for **HKM Engineering Inc.**

By _____

Title President

Date May 24, 2005

Federal ID No.: 81-0306480

PROVISIONS

SECTION 1 - SERVICES OF HKM

A. Authorization to Proceed

Execution of this AGREEMENT by CITY will be authorization for HKM to proceed with the Work, unless otherwise provided for in this AGREEMENT.

B. Basic Services

HKM shall provide for CITY the services as described in this AGREEMENT within the periods stipulated herein. Services will be paid for by CITY as indicated herein.

C. Changes/Additional Services

The CITY may at any time during the term of this AGREEMENT make changes within the general scope of the AGREEMENT. If such change increases the cost of, or time for, performing the services hereunder, an equitable adjustment shall be made in the payment to HKM and/or the time for performance. Additional services will be paid for by CITY as indicated herein.

D. Schedule

HKM's services and compensation under this AGREEMENT have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion. Unless specific periods of time are specified in this AGREEMENT, HKM's obligation to render services hereunder will be for a period that may reasonably be required for the completion of said services.

SECTION 2 - TERMS OF PAYMENT

A. Invoicing

HKM will submit invoices to CITY for services rendered and reimbursable expenses incurred not more than once each month. Invoices will be prepared in accordance with HKM's standard invoicing practices. Such invoices will represent the value of the completed Scope of Services and will be in accordance with the terms for payment in the AGREEMENT.

B. Progress Payments

Invoices are due and payable within 30 days of receipt. If CITY fails to make payment due HKM for services and expenses within 30 days after receipt of invoice, the amounts due will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said 30th day. In addition HKM may, after giving seven days written notice to CITY, suspend services under this AGREEMENT until HKM has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

SECTION 3 - CITY'S RESPONSIBILITIES

A. Furnish Data

CITY shall provide all criteria and full information as to CITY's requirements for the PROJECT and furnish all available information pertinent to the PROJECT, including reports and data relative to previous designs or investigations at or adjacent to the site. CITY shall provide such legal, independent cost estimating and insurance counseling services as may be required for the PROJECT.

B. Representative

CITY will designate a person to act with authority on CITY's behalf in respect of all aspects of the PROJECT.

C. Timely Review

CITY will examine HKM's studies, reports, drawings and other project-related work products and render decisions required in a timely manner.

D. Identity of Other Consultants

CITY will advise HKM of the identity of other independent professionals or consultants participating in the design or construction administration of the PROJECT and the scope of their services.

E. Prompt Notice

CITY will give prompt written notice to HKM whenever CITY observes or other wise becomes aware of hazardous environmental conditions or of any development that affects the scope or timing of HKM's Scope of Services or any defect in the Services of HKM or the work of any Contractor.

F. Site Access

CITY will arrange for safe access to and make all provisions for HKM and HKM subconsultants to enter upon public or private property as required for HKM to perform services under this AGREEMENT.

SECTION 4 - OBLIGATIONS OF HKM

A. Independent Contractor

HKM is an independent contractor and will maintain complete control of and responsibility for its employees and subcontractors. HKM shall also be solely responsible for the means and methods for carrying out the Scope of Services and for the safety of its employees.

B. Performance

The standard of care applicable to HKM's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services under similar circumstances, at the same time and in the same locality as HKM's services are performed. HKM will be responsible for the technical accuracy of its services and documents resulting therefrom. HKM will correct deficiencies not meeting this standard without additional compensation except to the extent such deficiencies are directly attributable to CITY furnished information. HKM makes no other warranties, express or implied under this agreement.

C. Indemnification

1. To the fullest extent permitted by law, HKM agrees to indemnify and hold harmless CITY, CITY's officers, directors, partners, and employees from and against any and all claims, costs, losses and damage (including, but not limited to, attorney's fees and litigation or arbitration costs) caused solely by the negligent acts or omissions of HKM or HKM's officers, directors, partners, employees or subconsultants in performing the services under this agreement.

2. To the fullest extent permitted by law, CITY agrees to indemnify and hold harmless, HKM, HKM's officers, directors, partners, employees or subconsultants, from and against any and all claims, costs, losses and damage, (including, but not limited to, attorney's fees and litigation or arbitration costs) caused solely by the negligent acts, or omissions of CITY, CITY's officers, directors, partners, employees in performing the services under this agreement.
3. To the fullest extent permitted by law, HKM's total liability to CITY and anyone claiming by, through or under CITY for any claim, cost, loss or damages caused in part by the negligence of HKM and in part by CITY or any other negligent entity or individual, shall not exceed the percentage share that HKM's negligence bears to the total of all other negligent entities and individuals.

D. Publicity

HKM will not disclose the nature of its Scope of Services on the Project, or engage in any publicity or public media disclosures with respect to this project without the prior written consent of CITY.

SECTION 5 - GENERAL LEGAL PROVISIONS

A. Reuse of Documents

All documents are instruments of service in respect to this PROJECT, and HKM shall retain ownership and property interest therein whether or not the PROJECT is completed. CITY may make and retain copies for information and reference in connection with the use and occupancy of the PROJECT. Any reuse without written verification of HKM will be CITY's sole risk.

Copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by the HKM. Files in electronic media format are furnished for convenience.

Because data stored in electronic media format can deteriorate or be modified, inadvertently or otherwise, without authorization of HKM, the party receiving the electronic files agrees to perform acceptance tests or procedures within 60 days, after which the receiving party shall have deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by HKM. HKM will not be responsible to maintain documents stored in electronic media format after acceptance by CITY.

HKM makes no representations as to long term compatibility, usability, or readability of documents resulting from use of software application packages, operating system, or computer hardware differing from those used by HKM at the beginning of this PROJECT.

B. Termination

1. CITY may terminate this AGREEMENT for convenience. In such event, HKM will be entitled to compensation for Services performed up to the date of termination. HKM will not be entitled to compensation or profit on Services not performed.

2. The obligation to provide further services under this AGREEMENT may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, and defaulting party does not commence correction of such nonperformance within five days of written notice and diligently completes the correction thereafter.
3. If no notice of termination is given, relationships and obligations created by this AGREEMENT, except indemnification obligations, will be terminated upon completion of all applicable requirements of this AGREEMENT.

C. Severability and Survival

If any of the provisions contained in this AGREEMENT are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Indemnities and express representations shall survive termination of this AGREEMENT for any cause.

D. Montana Law and Venue

The parties agree that any action at law, suit in equity, or judicial proceeding for the enforcement of this AGREEMENT or any provision thereof shall be instituted only in the courts of the STATE OF MONTANA, and it is mutually agreed that this AGREEMENT shall be governed by the laws of the STATE OF MONTANA, both as to interpretation and performance.

E. No Third Party Beneficiaries

This AGREEMENT gives no rights or benefits to anyone other than the HKM and CITY and has no third party beneficiaries.

F. Limits of Agreement

This instrument contains the entire AGREEMENT between the parties, and no statement, promise or inducements made by either party or agents of either party, which are not contained in the written AGREEMENT shall be valid or binding. This AGREEMENT supersedes all prior written or oral understandings. This AGREEMENT may not be enlarged, modified or altered except by a duly executed written instrument.

G. Consequential Damages

Neither Party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

Appendix A Scope of Services

1. Prepare Base Map of City Utilities

This work will update the existing water, sewer, and storm drainage utilities mapping for the City. Additional utilities, such as buried electric, gas lines, phone lines, fiber optic cables, cable TV will also be included on the mapping to the extent information can be obtained from the various utility companies. Manholes and water valves will be surveyed with GPS to provide coordinate information on the utilities.

The mapping provided will consist of a large 24-inch by 36-inch master map (scale 1"=500') showing the entire City and a series of 11-inch by 17-inch maps (scale 1"= 200') that have greater detail). Mapping will be done in AutoCAD and the electronic file will be turned over to the City.

2. Prepare Design Drawings and Specifications For Well #2 at the Water Treatment Plant.

This work will consist of preparing design drawings and specifications for well number 2, which will be located at the water treatment plant. The work will be done in two phases as follows.

Phase 1 DRILL, COMPLETE, & TEST WELL

- Prepare draft specifications for the drilling, completion, development and testing of the well to MDEQ and City for Review
- Coordinate up dating and revision of existing Red Lodge Source Water Delineation Report being performed for the well by personnel of the Source Water Protection Program, Planning Prevention and Assistance Division of MDEQ to satisfy review requirements of the Public Water Supply and Subdivision, Permitting and Compliance Division of MDEQ
- Respond to and prepare final specifications for the well to MDEQ with required MDEQ information
- Prepare bid package for the City's direct contracting with a Montana Licensed Water Well Contractor/Driller for the drilling, completion and development of the well
- Perform limited field observation of the drilling, completion and testing of the well as directed by the City
- Prepare and submit drilling, completion, and testing report for the well to MDEQ

Phase 2 CONNECTION TO DISTRIBUTION SYSTEM

- Draft Plans and Specifications. Specifications will include well pump, controls, appurtenances, pitless unit and connection to WTP.
- Submit documents to MDEQ for approval
- Prepare final bid documents

- Provide on site inspection as needed to verify construction meets the specification requirements.

3. Remington Ranch Well Evaluation

This work consists of assisting the City as directed, in evaluating the Remington Ranch well for future use as a Public Water Supply well to serve the City of Red Lodge.

4 Miscellaneous Projects at Water Treatment Plant

Work will consist of providing engineering services for several small projects at the water treatment plant that are associated with the EPA grant. Defined scopes and budgets will be determined as specific projects are identified.

EXHIBIT B
COMPENSATION TO ENGINEER

A. CITY shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, 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 for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

2. ENGINEER's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit B as Appendices 1 and 2.

3. The estimated compensation for the ENGINEER's services under Exhibit A are estimated as follows:

Base Mapping	\$14,000.00
Well Work Phase 1	\$19,000.00
Well Work Phase 2	\$ 8,000.00
Remington Well Evaluation	\$ 1,500.00
Miscellaneous WTP work	\$ To be negotiated when scope is known.

4. ENGINEER's estimate of the amounts that will become payable for Basic Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to ENGINEER under the Agreement. ENGINEER will not exceed the amounts listed above without the City's written approval.

5. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (in November 2005) to reflect equitable changes in the compensation payable to ENGINEER.

This is **Appendix 1** to **EXHIBIT B**, consisting of 1 page, referred to in and part of the Agreement between **CITY** and **ENGINEER** for **Professional Services** dated _____.

Initial:
CITY _____
ENGINEER _____

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

TRAVEL & MILEAGE

Per diem (per man-day MT/ WY/ID)	\$33.00	Day**
Lodging (MT/WY/ID)	Cost	Night
Vehicle Usage: Autos	\$0.415	Mile
Pickups & Suburbans	\$0.50	Mile
TOTAL:		

****Per diem will be billed after six (6) hours in field when more than 50 miles from office as follows:**

\$7.50 for every full quarter-day (6 hours) or portion of a quarter-day greater than 3 hours.

For the day of departure, the day begins at time of departure.

For the day of return, the day ends when employee arrives at authorized point of destination (office, home, etc.)

EQUIPMENT, MATERIALS & SUPPLIES

Interface Probe	\$27.50	Day
PID/LEL/O2 Meter	\$55.00	Day
Peristaltic Pump	\$27.50	Day
Disposable Bailer	\$7.80	Each
Grunfos Pump	\$27.50	Day
Environmental Sample Fee	\$11.00	Sample
Disposable Tubing	\$1.10	Foot
Subcontractors	Cost + 10%	
Laboratory Analysis	Cost + 7%	
Other/Miscellaneous	Cost + 7%	

Rodney B. Proffitt

From: "Rodney B. Proffitt" <RLadmin@vcn.com>
To: "Armstrong, Ray" <rarmstrong@hkminc.com>
Sent: Friday, May 20, 2005 10:33 AM
Subject: Re: Contracts

Ray:

For B> The figure I saw in your contract was for \$33,500, but the resolution calls for \$27,000?

For C> Is the Remington Ranch Well Study something you just did in conjunction with the Grandview application(s) or is this something you will be doing in FY 06?

For D> The figure I have for the EPA grant is \$613,636.00 including our contribution.

Rod

----- Original Message -----

From: Armstrong, Ray
To: Rod Proffit (rladmin@vcn.com)
Sent: Friday, May 20, 2005 8:49 AM
Subject: Contracts

Rod:

The two files attached include a mark-up of the resolution and the short form contract for the mapping, well 2 work, and the evaluation of the Remington Ranch well.

<<Council-res-6 (2).doc>> <<well&mapping.doc>>

I do not have the budget completed yet for the CIP, fee analysis, etc. I would like to talk with you some more regarding the scope for the various tasks.

I will be in Red Lodge today to delivery some other documents. If you will be in this afternoon I would like to stop in for a few minutes.

Ray Armstrong, P.E.
HKM Engineering Inc.
222 North 32nd Street, Suite 700
Billings MT. 59101
406-656-6399