

Project Agreement

This Project Agreement is made by and between the **City of Billings** organized under the laws of the state of Montana and **GeoComm Inc.**, a Minnesota corporation with its principal offices at 601 West St. Germain Street, St. Cloud, MN, 56301.

In this agreement the party who is contracting to receive the professional services shall be referred to as “the Customer” and the party who will be providing the services shall be referred to as “GeoComm.”

GeoComm has an established background in communications engineering, geographic information systems development, cartography, software development, and professional project management and is willing to provide those services to the Customer based on this background.

The Customer desires to have services provided by GeoComm. Therefore, the parties agree as follows:

Section 1 - Description of Service

Beginning upon contract signing GeoComm will provide the following goods and services (collectively the Services): Refer to the itemized Exhibits herein and made part of this agreement:

- Radio Implementation Plan

Section 2 - Payment

The Customer will pay a fee to GeoComm of **\$37,840.00** for services as described in this agreement and provided under this agreement by GeoComm. The Customer agrees to pay GeoComm on the following schedule:

\$ 7,568.00	Invoiced net 45 upon contract signing
\$ 7,568.00	Invoiced net 45 beginning the first of the month following contract signing and continuing for three months
\$ 7,568.00	Invoiced net 45 upon completion of project

Section 3 - Late Payment Fee

All invoices issued under this contract shall be submitted to the Customer net 45 days. A 1.5% service charge shall be assessed to all invoices not paid within 45 calendar days from date of invoice.

Section 4 - Expense Reimbursement

GeoComm shall pay all “out-of-pocket” expenses and shall not be entitled to reimbursement from the Customer except by mutual prior agreement.

Section 5 - Performance of Services

GeoComm will work as many hours as is necessary to fulfill its obligations under this agreement. GeoComm will provide an acceptance form within five days of submission of a contracted deliverable. The customer will, within 10 days of receipt of the form, either (a) provide GeoComm with its written acceptance of the completed deliverable, or (b) identify to GeoComm in writing, the failure to comply

with the specifications, listing any errors and omissions in reasonable detail. If the client fails to notify GeoComm of any failures within the applicable acceptance period, the deliverable is deemed accepted. Upon GeoComm's receipt of written notice of rejection GeoComm shall have 10 business days, or such other time as the customer and GeoComm may agree is reasonable, to correct all such failures and resubmit the acceptance form.

Section 6 - Standards of Work

GeoComm agrees that the performance of work described in this Agreement and pursuant to this Agreement shall be done in a professional manner and shall conform to employ the care and skill ordinarily used by members of GeoComm's profession.

Section 7 - Statement of Work

The Customer shall, in addition to responsibilities described elsewhere in this Agreement, perform the following coincident with the performance of this Agreement:

- Designate a Project Coordinator and reserve the right to change this appointment

Section 8 - Changes in the Work

The Customer may, at any time by written order, make changes within the general scope of the work including but not limited to, revisions of, additions to, or subtractions from, and or portions of the work.

If any change order causes an increase or decrease in the cost of or time required for the performance of any part of the work under this Agreement, an adjustment based on the exhibits, shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly.

Section 9 - Excusable Delays

GeoComm shall not be responsible for delays or lack of performance resulting from action or inaction beyond the reasonable control of the company and/or its employees and agents. Such delays may cause an impact on the schedules included in this agreement. Any delays beyond GeoComm's control, or any services required that fall outside of the scope of services contained herein may result in additional charges. Additionally, significant project delays of more than 90 days may result in the client incurring a maintenance fee of \$500 per month plus any additional work that GeoComm may be required to perform as a result of the delay. GeoComm's consulting rates for such work is \$125 per hour plus actual expenses.

Section 10 - Taxes

The Customer as a taxing authority may be excluded from paying Federal, State, or Local excises, sales, lease, gross income, service, rental, use, property, occupation, or similar taxes. If GeoComm is required to pay taxes of the Customer, the Customer shall pay to GeoComm the amount of such taxes no later than thirty (30) days after receipt of an invoice.

Section 11 - Limitation of Liability

Except for personal injury or death, the Customer's total liability under this contract, including but not limited to breach of contract, negligence, warranty, strict liability in tort, or otherwise is limited to the difference between the market price at the time and place for tender of the goods and the unpaid sales price less expenses saved in consequence of the breach by GeoComm. In no event shall the Customer be liable for GeoComm's incidental or consequential damages to the full extent such may be disclaimed by law.

Section 12 - Disclaimer of Patent License

Nothing contained in this Agreement shall be deemed to grant, either directly or by implication, estoppels or otherwise, any license under any patents or patent applications of GeoComm. Except, the Customer shall have the normal non-exclusive royalty-free license to use that is implied or otherwise arises by operation of law in the sale of a product.

Section 13 - Termination

Either party, upon thirty (30) days written notice to the other party, may terminate this Agreement for violation of the material terms of this Agreement and failure to cure any deficiency within a reasonable time after notice thereof. In the event of termination by the Customer, GeoComm shall be able to retain and receive payment for all services completed up to the date of termination. In the event of termination by GeoComm, the Customer shall receive a full refund of the contract amount.

Section 14 - Relationship of Parties

The parties understand that GeoComm is an independent contractor and not an employee of the Customer. The Customer will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit for the benefit of GeoComm as a function of this agreement.

Section 15 - Disclosure

GeoComm is required to disclose any outside activities or interests, including ownership or participation in the development of prior inventions, that conflict or may conflict with the best interests of the Customer. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to any activity that GeoComm may be involved with or on behalf of the Customer.

Section 16 - Employees

GeoComm's employees and agents, if any, who perform services for the Customer under this Agreement shall also be bound by the provisions of this agreement.

Section 17 - Injuries

GeoComm acknowledges its obligation to obtain appropriate insurance coverage for the benefit of GeoComm and its employees. GeoComm waives any rights to recover damages from the Customer for any injuries that GeoComm and/or its employees may sustain while performing services under this agreement and that are in any way a result of the negligence of GeoComm or its employees or agents.

Section 18 - Indemnification

GeoComm shall indemnify and hold harmless the Customer against and from all liability, claims, damages, and costs including attorney's fees of every kind and nature and attributable to bodily injury, sickness, disease or death, or to damage or destruction of property resulting from or in any manner arising out of or in connection with the project and the performance of the work under the contract.

Section 19 - Insurance

GeoComm shall obtain liability insurance for both personal injury and property damage. Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty days prior notice thereof to the Customer.

Minimum limits for GeoComm liability insurance shall be in the amount of \$1,000,000.00 for any number of claims arising out of a single occurrence under a single limit or combined limit or excess umbrella general liability insurance policy. GeoComm shall additionally obtain Worker's Compensation Insurance extending coverage to all its employees.

Section 20 - Data Confidentiality

GeoComm agrees to review, examine, inspect, or obtain Customer data only for the purposes described in this agreement and to at all times hold such information confidential. The obligation to protect the confidentiality of confidential information disclosed to the other party shall extend for a period of five (5) years following disclosure and shall survive early termination of this Agreement.

Section 21 - Records Retention and Availability

GeoComm agrees that the Customer, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of GeoComm and involve transactions relating to this Agreement.

GeoComm agrees to maintain these records for a period of three (3) years from the date of termination of this Agreement.

Section 22 – Nondiscrimination

During the performance of this contract, GeoComm agrees as follows:

- a) GeoComm shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. GeoComm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting the provisions of this nondiscrimination clause.
- b) GeoComm, in all solicitations or advertisements for employees placed by or on behalf of GeoComm, shall state that such contractor is an equal opportunity employer.
- c) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- d) GeoComm shall include the provisions of the foregoing paragraphs of this section in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Section 23 - Drug-Free Workplace to be maintained by the Contractor

During the performance of this contract, GeoComm agrees as follows:

- a) GeoComm shall provide a drug-free workplace for all of their employees. GeoComm agrees to post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specify the actions that will be taken against employees for violations of this prohibition.
- b) GeoComm, in all solicitations or advertisements for employees placed by or on behalf of GeoComm, shall state that such contractor maintains a drug-free workplace.
- c) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

GeoComm shall include the provisions of the foregoing paragraphs of this section in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Section 24 - Assignment

GeoComm's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the Customer.

Section 25 - Notices

All notices required or permitted under this agreement shall be in writing and shall be deemed delivered in person or deposited in the United States mail, postage prepaid, addressed as follows.

City of Billings

Anne Kindness, Communications Center Manager
2305 9th Ave. North, Billings, MT 59101
Phone (406) 657-8444 E-mail KindnessA@ci.billings.mt.us

GeoComm

Todd Pieper, Assistant Consulting Services Manager
601 West St. Germain Street, St. Cloud, MN 56301
Phone (320) 240-0040 Fax (320) 240-2389 E-mail tpieper@geo-comm.com

Either party may change such address from time to time by providing written notice to the other in the manner set forth above.

Section 26 - Entire Agreement

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This agreement supersedes any prior written or oral agreements between the parties.

Section 27 - Amendment

This Agreement may not be modified or amended unless the amendment is made in writing and is signed by both parties.

Section 28 - Severability

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this agreement is invalid or unenforceable, but that by limiting such provision it becomes valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

Section 29 - Waiver of Contractual Right

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party’s right to subsequently enforce and compel strict compliance with every provision of this Agreement.

Section 30 - Laws to be Observed

GeoComm shall keep fully informed of all Federal and state laws, all regulations pertaining to the Occupational and Safety Hazards Act (OSHA), all local laws, ordinances and regulations, and all orders and decrees of bodies and tribunals having any jurisdiction or authority, which in any manner affect the conduct of work.

Section 31 - Applicable Law

If there is any dispute concerning this agreement, the laws of the State of Montana shall apply. Proper venue and jurisdiction for all lawsuits, claims, disputes, and other matters in questions between the parties to this agreement or any breach thereof shall be in the state of Montana.

For City of Billings

By: _____
Signature/Title

Date: _____

For GeoComm

By: _____
Janet Grones/Treasurer

Date: _____

In 2009 the City of Billings contracted with GeoComm to study the current radio system and provide recommendations for future radio communications systems. The City of Billings Radio Assessment was completed in July 2009 and four options for radio system replacement were presented.

The City of Billings wishes to further explore the option that has been defined as follows:

Replace the existing 800 MHz system with VHF equipment that is part of the Interoperability Montana project, coordinated with other agencies, and operated as a digital, simulcast, trunked system.

This project will require GeoComm to further research this option and provide specific information that will enable the City of Billings to prepare a Request for Proposal (RFP) for a new radio system. It is expected that the system standards and interface/integration requirements are configured in such a way that allows multiple vendors/manufacturers to meet the requirements of RFP.

The final work product will, where applicable, draw from data gathered in the City of Billings Radio Assessment and include the following components.

Technical Requirements

A. System Design

The most cost effective plan for future communications requires the City of Billings to participate as a partner in the Interoperability Montana (IM) project. However, because on-going costs associated with IM have not been fully identified, the City believes that they would be best served with an independent radio system that is capable of a full interface/integration with the IM system. Therefore, the City's system must be engineered to be compatible with IM system functions and features.

Key factors:

1. The number of end-user radios
2. The number of talk groups required to satisfy daily operations and interoperability
3. The number of VHF channels required for daily operations and interoperability
4. Tower sites needed
5. System infrastructure equipment plans
6. Tower site connectivity
7. Narrowband capability
8. Wideband capability
9. Paging
10. Encryption
11. Future of mobile data

B. Coverage

The City of Billings Radio Assessment identifies the coverage of the proposed VHF system and provides propagation analysis and mapping as based on a proposed fourth tower site. It has been determined that a fourth radio tower is required to achieve a level of coverage commiserate with the growth plans of the City of Billings. However, the location of the fourth site that was previously

identified by the City cannot be used for that purpose and a new location must be identified. Additionally, satisfactory in-building penetration is a requirement of any new system.

Key factors:

1. Location of the proposed fourth radio tower
2. Connectivity to identified IM system infrastructure
3. Estimated cost of securing and developing a new tower site
4. Revised propagation mapping

C. Contingency Planning

Any new system must be engineered to allow continued communications in the event of component, console, or connectivity failure. Typical contingency requirements for a digital, simulcast, trunked system which interfaced/integrated into a larger system should be outlined.

D. PSAP Consoles

Information pertinent to the configuration and functionality of PSAP consoles with respect to efficient daily operations as well as interoperability requirements must be provided.

E. Recording

Considerations related to recording the radio traffic associated with daily and interoperable communications should be addressed. The City of Billings currently employs a Stencil 10-4 recording system with a 40 channel capacity.

F. Training

City of Billings system users are familiar with trunked, simulcast operations, however, participation in the IM project and the associated interoperability functions will undoubtedly require user end training. What are the typical training requirements under such conditions?

G. Interoperability

The ability to conduct seamless communications both internally and externally will be a critical function of any new City of Billings radio system. Defining system requirements that will enable fully functioning interoperability will require discussion with IM technical personnel and consultation with the local Big Sky 11 consortium.

Key factors:

1. Internal interoperability (City fire, police, airport, etc.)
2. External interoperability
 - a. City/county agency communications
 - b. City/state agency communications
 - c. City/federal agency communications
 - d. Region-wide communications
3. Meeting or exceeding mid-line SAFECOM recommendations

H. Standards

The new radio system should comply with any nationally recognized technology standards associated with digital, simulcast, trunked systems. Additionally, it is recognized that additional standards may be applicable for participation in the IM project. Said standards shall be identified for eventual inclusion in the RFP for the new radio system.

I. System Integration

A description of methods and means to achieve integration between the City of Billings radio system and the IM system shall be described. Further, any considerations related to subscriber unit programming should be described.

Costs and Funding

A. Itemized Cost

Estimated expenses related a proposed VHF digital, simulcast, trunked radio system were included in the City of Billings Radio Assessment. It is expected that those projected costs may vary slightly as facts related to the specifics of system integration and design are defined. Changes in these costs shall be presented and will include the projected expenses of acquiring a fourth radio site as outlined in Technical Requirements, section B.

B. Funding

All known funding opportunities and their requirements will be detailed.

C. Contracts

The City of Billings desires a listing of all contracts and local agreements that will be required for both participation in the IM project and qualification for funding resources.

Project Schedule

A proposed timeline of all events and activities to related to radio system replacement - from vetting and selecting a manufacturer to actualizing integration with the IM project will be included.

Deliverable Deadlines

GeoComm proposes to meet the following deliverable deadlines. These deadlines are for reference purposes only and may be modified during negotiations with the City of Billings, MT. The timelines are dependent upon the actual contract signing date. The project dates shown below assume contract signing by February 1, 2010.

Deliverable	Due Date
Contract Signing	February 1, 2010
On-site Project Meeting	February 15, 2010
Site visit- Site Capability, Agency Meetings	March 8, 2010
Draft Internal Specifications Document	March 29, 2010
Draft External System Documentation	March 29, 2010
Site Visit- Draft Document review, Administrative Discussion	April 5, 2010
Final Specifications Report	April 19, 2010
Final Presentation	May 7, 2010
Project Completion	May 14, 2010

Note: Regular Status Reports will be provided during the project.