

Contract for Professional Architectural and Engineering Services

Project W.O. 11-10 – 25th Street Pedestrian Bridge – Billings Federal Aid No. STPE 1099(71), MDT CN 7546

In consideration of the mutual promises herein, City of Billings and Morrison Maierle, Inc. agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 8 pages (Basic Services of Contractor);

Appendix B consisting of 1 page (Methods and Times of Payment);

Appendix C consisting of 1 page (Additional Services of Contractor);

Appendix D consisting of 1 page (Schedule of Professional Fees);

Appendix E consisting of 1 page (Project Schedule);

Appendix F consisting of 1 page (Certificate(s) of Insurance); and

Appendix G CTEP Requirements consisting of 5 pages

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Morrison Maierle, Inc.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.

- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings on mylars and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2013.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to

terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
 - 1. Workers' compensation and employer's liability coverage as required by Montana law.

2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 3. Commercial automobile liability -- \$1,500,000 per accident.
 4. Professional liability in the amount of \$1,500,000 per claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: Debi Meling, PE
City of Billings
Public Works - Engineering
2224 Montana Avenue
Billings, Montana 59101 FAX: (406) 237-6291

Contractor: Carl Anderson
Morrison Maierle, Inc.
315 North 25th Street Suite 102
Billings, Montana 59101 FAX: (406) 671-3255

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 - 2. Strikes or Work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;

- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Contractor: Carl Anderson
Vice President

Billings: City Council or Authorized Designee

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the District Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Contractor

City Council or Designee

Date: _____

Name: _____

Title: _____

Date: _____

ATTEST:

IRS Tax ID # _____

City Clerk

APPROVED AS TO FORM:

Date: _____

By _____

BRENT BROOKS, City Attorney

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this ____ day of _____, 2011, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: _____

Note: Final contract documents will require the Contractor's signature to be notarized.

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.

- J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.
- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Stephanie Seymanski working under the Principal-in-Charge, Carl Anderson.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Chris Hertz, PE, Staff Engineer.

Section 3. Scope of Work.

The Engineer shall perform the work outlined within this agreement that includes the completion of design, bidding, and construction phase services for the 25th Street Pedestrian Bridge Project. The project consists of a pedestrian bridge over the MRL railroad tracks at 25th Street utilizing an existing truss located in Joliet, Montana. The truss will be utilized as the main span of the structure and approach ramps and stairways will be designed to allow ADA compliant pedestrian and bicycle access. The scope assumes the existing truss will be structurally sufficient and will be placed at 90 degrees to the railroad tracks on abutment towers. Ramps will be ADA compliant; have typical decking materials; and have no specialized aesthetic elements or treatments. Aesthetic element shapes and lines will be incorporated into the design where cost effective. It is anticipated that the ramps will not have curvilinear features.

The scope of services has been prepared based on the following assumptions:

- Total financing of approximately \$800,000 is available for the completion of this project.
- Primary project stakeholders include the City of Billings, Montana Department of Transportation's Community Transportation Enhancement Program (CTEP), Montana Rail Link (MRL), the Billings Depot, the Montana State Historic Preservation Office (SHPO), and the Old Town Historic District.
- Aesthetic features are simple elements and lines that enhance the project without adding significant design or construction costs.
- The truss is structurally sound and will not require significant structural rehabilitation beyond minor joint repair and redecking.
- MRL will accept a lateral clearance of 108 feet in total and the truss will not require lengthening.
- The truss will not be painted.
- It is anticipated that a coated chain-link fence complying with railroad requirements will be used.

- The bridge rehabilitation elements and new bridge elements will be load rated for pedestrian light maintenance vehicles per the AASHTO LRFD Guide Specification for Design of Pedestrian Bridges 2nd Edition and AASHTO LRFD Guide Manual for Condition Evaluation and Load and Resistance Factor Rating (LRFR) of Highway Bridges, 2005 or AASHTO Manual for Condition Evaluation of Bridges, Second Edition.
- Vertical clearance above the railroad will be 23'-4" to the lowest bridge element.
- Minimum vertical clearance on the pedestrian structure will be 8'-0" in compliance for pedestrian and bicycle traffic. Assume no equestrian use.
- Ultrasonic (UT) testing will only be performed on the pins on the existing truss. No other non-destructive and destructive testing of the existing truss members and connections is included.
- No specialized inspections are anticipated or included in this scope; however, if it becomes evident that additional inspections are necessary, the Engineer will notify the Owner in writing and the additional inspections will be conducted only upon Owner's approval through a contract amendment.

Completion of said design shall include the following tasks:

A. Concept Study

1. Site Survey. Engineer will provide a topographic survey as follows:

- a. Compile existing survey and utility information from previous projects.
- b. Provide control survey in accordance with standard engineering practices.
- c. Control points for construction layout by the contractor will be set and documented.
- d. Provide minimal survey using locally available or established control. The survey will be localized for use in the new bridge section design. Utility locates will be called in prior to the topographic survey. No phase II utility locates or research is included.
- e. Survey limits extend from Montana Avenue to Minnesota Avenue and will include the Depot parking lot on the north and the MRL gravel parking lot on the south. The survey will extend approximately 10 feet into the Montana and Minnesota right-of-ways and will be bounded on the east and west by the extent of the parking lots. Detail ground survey within the active tracks will be limited to top of rail shots. Survey on MRL property will require a temporary access permit.
- f. It is assumed that boundary or right-of-way surveys will not be required. Preparation of one easement exhibit for the MRL easement agreement as addressed in paragraph B.2. as follows will be provided. All other right-of-way acquisitions will be handled by the City.

2. Bridge Concept Study. The Engineer will provide a concept study as follows:

- a. Perform truss inspection. The intent of the inspection is to identify any cracking of the steel members, areas of significant corrosion, and to check the primary bridge members. Members will be visually checked for nicks, gouges, and tears

due to impact and deterioration. Members will be checked for repair welds, plug welded holes, and for fatigue cracks at welded locations. UT testing of the existing truss pins is included. Additional UT inspection due to unacceptable findings after the initial inspection is not included.

- b. Perform truss analysis and load rating. The analysis will include a brief memo (2 to 3 pages) describing the load rating of the structure, inspection results, any structural elements that need repair, and discussion on rehabilitation. Load rating calculations will be included as an appendix to the memo.
- c. Prepare bridge moving special provision. The City of Billings will perform the solicitation and coordinate permits, bidding, and the relocation of the truss with the move contractor.
- d. Evaluate ramp layouts, railing options and deck material types. Ramp layouts and mechanical layouts (assume 8 layouts considered) will be evaluated for their estimated cost, parking impacts, and aesthetics. No design exceptions are anticipated. Therefore, no options requiring design exceptions will be evaluated.
- e. Conduct concept review meeting with City of Billings and stakeholders and prepare minutes. A presentation will be prepared for the meeting which will include:
 - a. Summary of load rating.
 - b. Summary of existing bridge inspection and existing truss rehabilitation and repair options.
 - c. Rough outlines of plan area of 8 ramp options.
 - d. Rough elevation sketches of the most suitable ramp systems and bridge layout options (2 or 3 layout sketches).
 - e. Discussion of the benefits and challenges of each system.
 - f. Preliminary cost estimates for 2 or 3 of the most suitable bridge/ramp options.
 - g. Examples of rail and deck systems and costs associated with each system.
 - h. Document chosen bridge system.

B. Preliminary Engineering Services. Preliminary design will focus on advancing chosen bridge and trail design.

1. Preliminary Bridge Design. The Engineer will provide preliminary bridge design services including:
 - a. Preliminary design of preferred bridge layout and ramp option.
 - b. Refined cost estimate for preferred option.
 - c. Bridge and ramp general layout sheets.
 - d. Teleconference with the City to receive comments on layout prior to public/stakeholder meeting.
2. Coordination with MRL. Engineer will provide MRL coordination on the location and clearances of the structure. One on-site meeting with MRL is expected during coordination after bridge general layout is submitted. All agreements will be handled by the City. Three agreements with the railroad are anticipated including a

design review agreement, a construction activities agreement, and an easement agreement. The Engineer will prepare an easement exhibit and legal description for the easement agreement. Otherwise, no other efforts are included for preparation of these agreements.

3. Geotechnical. A geotechnical investigation will be performed to report the subsurface conditions at the bridge locations. Foundation design for the structure will be based on the geotechnical investigation report. Field work will consist of drilling two borings to a minimum of 5 feet into bedrock. It is expected that bedrock will be encountered at a depth of 30 to 40 feet. One boring will be located in the MRL gravel parking lot at the south abutment location. The second boring will be drilled in the Depot parking lot. The boring in the MRL parking lot will require an environmental access permit, temporary occupancy permit, and railroad insurance. The geotechnical field and laboratory work will culminate with appropriate geotechnical recommendations as summarized below:

- a. Soil, bedrock, and groundwater conditions
- b. Site and subgrade preparation
- c. Recommended foundation type(s) and design parameters
- d. Estimated settlement of foundations
- e. Seismic classification
- f. General earthwork and drainage recommendations

4. Hold one public/stakeholder information meeting to address preferred system elements. The Engineer will provide an agenda, sign-up, and comment forms; prepare displays; provide a brief presentation; prepare meeting minutes; and respond to questions. Follow up documentation of this meeting will not be provided. No effort is included for renderings or detailed trail drawings. General layouts developed Preliminary Bridge Design (see paragraph B.1 above) will be used as graphics.

C. Design Engineering Services. After the City and stakeholder comments have been received on the preliminary layout, design will be advanced. This design development phase will include:

1. Bridge Design. The Engineer will provide draft bridge design and specifications including the following:

- a. Truss rehabilitation design and detailing.
- b. Abutment tower, ramp, foundations, and railing design and detailing. Abutment tower and stairs will not be covered and will be a simple steel structure, without additional aesthetic detailing.
- c. Prepare draft plans and specifications with CTEP provisions incorporated into the bid package.

2. Trail Design/Landscaping/Aesthetics. The engineer will provide:

- a. Design of tie-in to existing pedestrian facilities on South 25th Street.

- b. Design of minimal lighting/electrical on and around the structure.
- c. Coordination with architect on landscaping and aesthetics. Architectural tasks shall include the following:
 - i. Preparing design options for the stairs/ramps and support towers to meet both ADA accessibility requirements and City of Billings bike path requirements.
 - ii. Preparing design options for stairs/open cage elevators and support towers instead of ramps and researching elevator options and costs.
 - iii. Preparing design suggestions for railings/ramp supports/support towers, etc.
 - iv. Preparing site plan options for access to bridge towers from Montana Avenue and Minnesota Avenue.
 - v. Participating in meetings with stakeholders, public officials, and others as required and as necessary.
 - vi. Providing any accepted design options to Engineer in AutoCAD format for incorporation into the construction documents.

3. Environmental Documentation. The Engineer will:

- a. Prepare a MDT Categorical Exclusion Group (d) Action Letter for this project including all necessary backup data. All environmental documentation will be in accordance with current CTEP guidelines and procedures. Copies of the draft document will be submitted to MDT CTEP Section for review, approval, and forwarding to FHWA for processing and final approval.
 - b. Submit informational letters to applicable resource agencies for comment.
 - c. Section 106 Compliance will be required for this project and will follow the MDT CTEP Historical Preservation Process (4.1.5.10.2 MDT CTEP manual) as follows:
 - i. Establish the Area of Potential Affects (APE) in consultation with CTEP.
 - ii. Review any existing information to determine if historic properties or archaeological sites exist within the APE. CTEP will provide a copy of the initial records search.
 - iii. Identify, evaluate historical significance, and gather sufficient information to assist SHPO in evaluating eligibility of the 25th Street Pedestrian Bridge for the National Register of Historic Places (NRHP).
 - iv. Assess any “effects” in coordination with MDT and SHPO.
 - d. The following tasks are excluded from this environmental scope of services:
 - i. Historical/cultural field surveying. It is assumed that MDT will prepare a historic resource survey and report for processing through SHPO.
 - ii. Wetland field delineation and associated reports and permitting.
 - iii. Major design changes due to environmental document review.
 - iv. Environmental permitting.
4. Attend design review meeting with the City of Billings and CTEP to review draft plans and specifications. Provide an agenda, reports, discussion item, and meeting minutes.

5. CTEP Coordination. Engineer will coordinate specific design aspects of the project with City of Billings and the MDT CTEP Engineer.

D. Final Engineering Services. The engineer will provide:

1. Final plans and specifications revisions. The final plan package will include the project specifications and plan sheets incorporating comments received from the City of Billings and CTEP after the draft design package submittal and design review meeting is complete.
2. Engineer will provide final design services as follows:
 - a. Stamp and sign all plans and specifications with seal of Professional Engineer in charge.
 - b. Compute final project construction quantities and prepare an engineer's opinion of probable construction cost. Submit to City of Billings and CTEP.
 - c. Provide electronic set of final plans in pdf format.

E. Construction Services

1. Bidding Services

- a. Prepare and supply project specifications and bidding documents necessary for bidding and construction. The City of Billings will advertise the project. The Engineer will prepare text for publication, preparing and issuing addenda, responding to contractor questions as necessary, and provide plan and project manual production and distribution.
- b. Schedule and hold pre-bid meeting. Conduct a pre-bid field review with contractors as necessary.
- c. Attend the bid opening, analyze bids, submit bid tabulation, make a construction contract award recommendation, and prepare the notice of award upon notification from the City of Billings and CTEP concurrence.

2. Construction Meetings

- a. Conduct a pre-construction conference and prepare minutes.
- b. Conduct progress meetings (assume four meetings scheduled on a bi-monthly basis).

3. Construction staking. No effort is included for construction staking. Staking to be performed by contractor. Engineer shall provide electronic staking data to contractor as required.

4. Construction Observation and Testing.

- a. Review testing results and documentation. Quality control testing of materials (including concrete testing, material certification and testing, steel certification and welding inspections, pile driving analysis, etc.) will be completed by an independent inspector hired by contractor.
- b. Provide coordination of quality assurance testing in accordance with the Owner's minimum testing requirements. Quality assurance testing shall be

conducted by Owner's selected testing firm. Cost for testing is not included in this scope of services. Owner will directly reimburse testing firm for quality assurance tests.

- c. Provide review of construction to check the contractor's work for compliance with the drawings, specifications, and other applicable documents, codes, or standards. Due to the nature of the project, review of work shall be made on a part-time basis while work is in progress. The amount of resident project representative (RPR) time to complete this task is 16 hours per week for a projected 6-week construction period. Two inspections by Engineer's Helena bridge personnel during construction for critical bridge elements is included. Each review shall be documented in permanent reproducible form and kept in consecutive order with the project file. Copies of the review reports shall be furnished to the City of Billings as requested during construction. Engineer will notify the City of Billings immediately of contract problems or deviation from approved plans.

5. Submittal Review and Document Preparation.

- a. Prepare and provide six (6) copies of contract bidding documents to Contractor. Review contract documents and submit to City of Billings for signature.
- b. Check shop drawings, samples, equipment, concrete mix design, aggregate, and other data submitted by the Contractor for compliance with drawings and specifications.
- c. Prepare monthly and final pay estimates (three assumed) for construction and prepare contract administration forms on a monthly basis. These will be submitted in City of Billings approved format.
- d. Perform on-site EEO/wage rate inspections and collect contractor certified payrolls in accordance with Owner's policy.
- e. Issue notice to the contractor to suspend work in whole or in part when, at the recommendation of the Engineer, it is the opinion of the City of Billings that work is not being performed or cannot be performed in accordance with the contract documents and specifications.
- f. Prepare and recommend work change directives and change orders when necessary due to conditions encountered during construction and which do not require additional engineering design or inspection. The Engineer is not authorized to order additional work without the approval of City of Billings Task Director. Any work resulting in contract overages will be processed by approved changes orders using City of Billings standard forms.

6. Final Services

- a. Schedule and make substantial completion inspection with City of Billings and certify to City of Billings all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
- b. Prepare record drawings (as-builts) and furnish City of Billings with two (2) full-size sets of record drawings and one (1) electronic set in pdf format.
- c. Schedule and make an inspection with City of Billings prior to the expiration of the construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to City of Billings and contractor and continue until acceptable.

Appendix B

Methods and Times of Payment

Section 4. Payments for Basic Services.

Billings shall authorize payment to the Engineer for services performed under Appendix A of this Agreement. Partial payment shall be due the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer.

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct ten percent (10%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered per Appendix A, the Engineer shall be paid based upon actual time accrued on a cost plus 15% fixed fee basis, up to the maximum amount listed below. The actual cost shall be calculated as follows: the direct raw labor cost multiplied by 2.6702 (direct labor plus 58.35% times direct labor for fringes plus 108.67% times (direct labor + fringes) for overhead), plus a 15% fixed fee. Maximum fees for the following phases are as follows:

i. Design	\$131,500.00
ii. Construction Administration	\$25,500.00

Materials and other direct expenses are included in the above phase and total fee amounts.

- B. Final payment shall be the above stated basic fee less all previous payments.

Section 5. Materials and Other Direct Costs.

Materials and other direct costs will be invoiced at current rates, with no handling fee. Included as direct costs are the following:

- A. Approved Employee Meals, Lodging, Transportation
- B. Premium Delivery Service (UPS, Federal Express, etc.)
- C. Toll Communication Services (Telephone, Fax, etc.)
- D. Supplies

E. Premiums for Special Insurance, Performance Bonds, etc.

F. Other Out-of-Pocket Expenses

G. Consultants

The cost of Professional Liability Insurance coverage is included in the overhead rate listed in Section 1 of this appendix.

Section 6. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

Section 7. Corrections.

Costs of Billings work that is required for corrections to the Engineer's work which requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

Appendix C

Additional Services of Engineer

Extra Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

Appendix D

Schedule of Professional Fees

Not used.

Appendix E

Project Schedule

Based on a notice to proceed by Billings date no later than October 17th, 2011, the completion date for the Engineer's work through final design shall be:

1. Bridge Concept Study / Concept Review Meeting – November 30, 2011
2. Preliminary Bridge Design Submittal – within four weeks of Concept Review Meeting assuming one week for recommendation concurrence and three weeks for preliminary bridge layout development - December 30, 2011
3. MRL Coordination and Approval of Preliminary Bridge Layout – assumed three railroad review / approval – January 16, 2011
4. Public/Stakeholder Information Meeting – within three weeks of MRL Approval – February 8, 2012
5. Geotechnical Investigation – concurrent with Public/ Stakeholder Information Meeting and start of Design
6. Design Submittal – April 13, 2012
7. Design Review Meeting – within two weeks of Design Submittal – April 27, 2012
8. Final Design – May 25, 2012

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F

Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

Appendix G

Certificate of Consultant, Certificate of City of Billings, and Notice to Consultants

Exhibit A – CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of Morrison Maierle, Inc., whose address is 315 N. 25th Street Suite 102, Billings, Mt 59101 and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:
 - a. has employed or retained for commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
 - b. has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
 - c. has paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; with no exceptions.

2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:
 - a. is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any Federal agency or any agency of any State government;
 - b. has, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - c. is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2.b of this certification; or
 - d. has had one or more public transactions terminated for cause or default within a three-year period preceding this Agreement.

3. That to the best of my knowledge and belief:
 - a. no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement; and

- b. if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the City of Billings, State of Montana, Department of Transportation and the Federal Highway Administration, in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

Exhibit B – CERTIFICATE OF THE CITY OF BILLINGS

I hereby certify that I am the Public Works Director of the City of Billings, and that the above consulting firm, or his representatives, has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- a. employ or retain, or agree to employ or retain, any firm or person, or
- b. pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished the Montana Department of Transportation and Federal Highway Administration in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

City of Billings Public Works Director

EXHIBIT “C” NOTICE TO CONSULTANTS

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the “Consultant”), agrees as follows:

A. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

1. Compliance with Regulations: The Consultant shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even though only State funding is here involved.
2. Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subconsultant or supplier shall be notified by the Consultant of the Consultant’s obligations under this Agreement and the Regulations relative to nondiscrimination.
4. Information and Reports: Consultant will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Local Entity, MDT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Entity, MDT or the FHWA as requested, setting forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Consultant’s noncompliance with the nondiscrimination provisions of this Agreement, Local Entity or MDT may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - a. withholding payments to the Consultant under the Agreement until the Consultant complies, and/or
 - b. cancellation, termination or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions: Consultant will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant will take such action with respect to any subcontract or procurement as the Local Entity, MDT or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant is sued or is threatened with litigation by a subconsultant or supplier as a result of such direction, the Consultant may request the Local Entity to enter into the litigation to protect the interests of the Local Entity or State, and, in addition, the Consultant or the Local Entity may request the United States to enter into such litigation to protect the interests of the United States.

B. COMPLIANCE WITH MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, 49-3-207, MCA

In accordance with Section 49-3-207, MCA, Consultant agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

1. Consultant will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
2. Consultant will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Consultant will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Consultant. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Consultant."
3. All video recordings produced and created under the Agreement will be closed-captioned.

D. COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR 26.

Each Agreement the Local Entity signs with a Consultant (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant 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."