

Contract for Professional Architectural and Engineering Services

Project 09-20 Rimrock Road – Forsythia Blvd to Shiloh Road

In consideration of the mutual promises herein, City of Billings and DOWL HKM 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 10 pages (Basic Services of Engineer);

Appendix B consisting of 2 pages (Methods and Times of Payment);

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

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

Appendix E consisting of 1 pages (Project Schedule);

Appendix F consisting of 4 pages (Certificate(s) of Insurance); and

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 DOWL HKM.

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.

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, 2014.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than Three Hundred Eighteen Thousand Six Hundred Seventy Dollars (\$318,670.00) in accordance with this Section.
- B. Each month, 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.
- C. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- D. 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 subconsultants'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: Todd Cormier
DOWL HKM
222 North 32nd Street, Suite 700
Billings, MT 59101 FAX: (406) 656-6398

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 subconsultant 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 subconsultant 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 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: John A. Shoff, PE, PTOE _____
(Eastern Regional Manager, DOWL HKM)

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 subconsultant as a result of the Contractor's or any subconsultant'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 subconsultant'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 - DOWL HKM

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 _____, 2004, 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 Contractor

Section 1. Contractor's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Contractor'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 Contractor 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. Contractor'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 Contractor 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 Contractor. Reports will be submitted in a timely manner to permit prompt resolution of problems.

- J. Name a Task Director who shall be the liaison between Billings and the Contractor. For this project the Task Director designated for the Contractor is Todd Cormier, PE, PTOE, AVS working under the Principal-in-Charge, John Shoff, PE, PTOE.

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 Contractor and Billings. For this project, the Task Director designated is Chris Hertz, PE, Staff Engineer.

Section 3. Scope of Work.

The following tasks will be undertaken by DOWL HKM. Any item not specifically discussed or as otherwise noted are assumed to be a City of Billings (OWNER) responsibility or beyond the services listed in this scope. Any additional work requested by the OWNER can be supplied on a time and material basis or through addendum to this Scope of Services and the City of Billings Contract for Professional Services.

Task 100 – Project and Public Involvement

- 1) Project scoping meeting (field and office review) with OWNER
- 2) Investigate available information, documents, and studies
- 3) Coordination with the OWNER
- 4) Coordination and development of public involvement program
 - a. DOWL HKM will draft a News Release regarding the start of the project to be submitted to OWNER for distribution to media outlets and for posting on the OWNER's website.
 - b. DOWL HKM will develop an informational letter to be sent to all adjacent property owners within the limits of the corridor. This letter will serve as the initial public outreach for this project.
 - c. DOWL HKM will address questions and participate in individual meetings with landowners and City staff, as directed by the OWNER.
 - d. One (1) public informational meeting will occur near the end of the project but before final plans. DOWL HKM will draft a meeting announcement letter for all landowners adjacent to the project corridor, will set up meeting locations and times, monitor sign-in sheets, and will provide figures, meeting minutes, and electronic presentations, as necessary. It is expected that the OWNER will advertise all meeting announcements, will provide DOWL HKM with a mailing list of owners adjacent to the project corridor, and will moderate each meeting. Fees associated with advertisements, mailings, or securing meeting locations will be the responsibility of the OWNER.

- 5) Prepare monthly progress reports for the OWNER detailing the work completed that month, expected work to be accomplished in the coming period, and listing action items for both DOWL HKM and the OWNER.

***Submittal: Draft News Release
Landowner Informational Letter
Meeting Announcement
Monthly Progress Reports***

Task 110 – Preliminary Right-of-Way, Utilities, Survey and Control

- 1) The OWNER will provide all existing City right-of-way plans and as-built or record drawings applicable to this project. DOWL HKM will acquire any available Montana Department of Transportation record drawings that may be applicable.
- 2) DOWL HKM will acquire available plats and certificates of survey to develop property lines within the corridor. A retracement of public right-of-way is not included in this scope of services.
- 3) An ownership report listing current property ownership as based on current tax records or information provided by the OWNER. While right-of-way is not expected to be necessary for this project, the ownership report will serve as a framework for both the public outreach as well as the identification of right-of-way needs, if necessary.
- 4) Utility locates will be requested for the project corridor (using One-Call service) and surveyed from the roadway segment between Forsythia and Shiloh as part of a Phase I SUE. Information detailing City utilities, as available, will be provided by PUD and through atlas maps and through OWNER provided water and sewer service location forms. A Phase II SUE (soft digs) will not be conducted for this project. Should soft digs be determined to be necessary prior to the initial construction work, DOWL HKM will coordinate with the OWNER.
- 5) DOWL HKM will coordinate with PUD, gas, power, CATV, telephone, and fiber optic companies, as necessary, regarding the development of this project including preliminary planning of the roadway alignment and grade. Any non-responders will be identified to the OWNER.
- 6) DOWL HKM will ground survey the corridor using a combination of total station and GPS survey to create electronic design topography for the project, including found property pins. Ground survey will be provided from right-of-way to right-of-way and 150-ft up each side street. Survey outside of the right-of-way will be conducted at specific locations where connections to driveways may require additional topography. In these cases, right-of-entry letters will be transmitted to the subject property owner.
- 7) Provide coordinate listings of benchmarks and control stations as found in the field. DOWL HKM will not relocate or reset benchmarks, survey monuments, or property pins which could not be located in the field.

***Submittal: Ownership Report
Project Base Mapping***

Task 120 – Preliminary Geotechnical and Materials

- 1) Review available information regarding regional geology, soil survey, site setting and topography, including project coordination with City of Billings.
- 2) Conduct a site investigation including field exploration, borings, and laboratory testing for the project. Geotechnical information and reports submitted for adjacent road projects, subdivisions, or housing developments will be provided by the City. A detailed scope of the work is as follows:
 - a. 12 borings, to a depth of approximately 10-ft max. (approximately every 500 ft),
 - b. Review of geotechnical reports for adjacent projects,
 - c. Laboratory testing including Classification (gradation & Atterberg Limits), moisture content and CBR, and
 - d. Identify groundwater levels encountered at the time of field exploration.
- 3) A visual inventory of existing surfacing will be conducted for the project area to estimate what sections of roadway, if any, could be reused. Up to five (5) pavement cores will be collected to supplement this review.
- 4) DOWL HKM will use City supplied traffic data (ADT, vehicle classifications) to develop a preliminary surfacing design for approval by the City.
- 5) A draft preliminary geotechnical technical memo including a review of the existing data, surfacing evaluation, subsurface exploration, laboratory testing, and a preliminary surfacing design will be prepared for the City. The memo will also discuss the potential use of reclaimed asphalt as part of the roadway section. Two (2) copies of the memo will be issued to the City.

Submittal: Draft Preliminary Geotechnical Memo and Appendix

Task 130 – Environmental

- 1) DOWL HKM will drill up to two (2) 10-ft borings within the right-of-way and adjacent to the location of the existing gas station to test for underground contamination. The purpose of this will be to determine if contamination is present for the consideration of possible utility replacements adjacent to the site or as otherwise necessary for the project. The borings will not be developed as monitoring wells. A formal environmental document will not be developed.
- 2) All other environmental checklists for this project including determination of environmental concerns, permits, and agency coordination will be performed and coordinated by the OWNER, as necessary, for the completion of this project. Based on the scope of work and considering the location of the roadway within the urban limits, no environmental effort is anticipated.

Task 150 – Preliminary Traffic

- 1) The OWNER will provide all available traffic data for the corridor, including recently submitted traffic studies for adjacent development or improvement projects as well as the most recent ADT from the City of Billings traffic count program.
- 2) The OWNER has identified the need for a pedestrian crossing at 38th Street West. DOWL HKM will coordinate with the OWNER to determine the type of crossing to develop at this location. No new field data will be collected.
- 3) An operational analysis, level-of-service analysis, or signal warrant analysis for the corridor or the intersections within the project limits will not be developed for this project. The existing signal at Zimmerman Trail / Rimrock Road and the unsignalized intersection of 38th Street West / Rimrock Road have been recently reviewed by the OWNER who has determined that no further analysis is necessary.
- 4) An inventory of existing signing and pavement markings will be completed for the corridor within the project limits, and preliminary marking plans will be developed under Task 180.

Task 160 – Preliminary Utility Design

- 1) Coordinate with PUD for replacement of approximately 6100 LF of the north 12-in water main only, including hydrants, services, and side street connections to the right-of-way limits. DOWL HKM will coordinate with PUD for the appropriate design criteria. Hydraulic modeling, field flow metering, or other pipe sizing analyses are not included in this scope.
- 2) Sanitary sewer replacement within the project limits is not currently included in this scope, but can be addressed with the City should the need arise.
- 3) Acquire from City all available as-builts or record drawings, water service line records, and other information and studies as applicable. Incorporate available information into design drawings and specifications.
- 4) Design of water main alignment, and related improvements, to a 30% design level to be included in preliminary roadway plan submittal. Evaluate project segments for the feasibility of utilizing trenchless utility replacement methods, and design trenchless alternatives as applicable.
- 5) Prepare and submit a draft MDEQ memo summarizing project related design parameters, improvements, and impacts.
- 6) Geotechnical engineering including field sampling, laboratory testing and review of subsurface soils will be conducted to determine design alternatives, subgrade treatment, groundwater conditions, pipe material selections, and foundations for utility installations. This service is provided under Task 120 “Preliminary Geotechnical and Materials”.

Submittal: draft MDEQ memo

Task 170 – Preliminary Hydraulics

The City of Billings has requested a low-level hydraulic analysis for this project. It is the City's understanding that this area does not have flooding issues and recommends that only a road corridor inlet spacing analysis be performed. A hydraulic model of the project area will not be developed for this project. As such, the inlet analysis will only be based on meeting spread requirements for surface runoff and not from potential storm drain surcharging of the system. In addition, a flood hazard analysis will not be performed without a hydraulic model. DOWL HKM proposed to perform the following tasks:

- 1) Identify existing flooding issues along the project area. This will include interviewing the City of Billings Maintenance personnel to understand existing drainage patterns and problems.
- 2) Compile and review storm drainage reports and as-built drawings for the following City of Billings projects within the study area (for example; P-145, WO 89-06, WO 97-04, P-44, WO 04-20, or SID 1021).
- 3) Perform a site visit to inventory storm drainage existing facilities and verify facilities depicted on the atlas maps. Identify drainage patterns from the area to the north of Rimrock Road (visual inspection).
- 4) Evaluate existing drainage basins contributing to Rimrock Road. Identify drainage patterns to the project area. This analysis will be used to help identify key locations to minimize disturbances to the existing drainage facilities when considering the development the roadway alignment.
- 5) Use the rational method to determine inlet sizing and spacing to meet City of Billings spread requirements. Inlet locations will be located to avoid existing utilities, to the extent possible.
- 6) Develop preliminary plan and profile SD sheets for the preliminary roadway design package. Storm drain details including lateral profiles and structural details will be provided under Task 270.

Task 180 – Preliminary Roadway Design and Plan Review

- 1) Rimrock Road will be developed to a 3-lane section with curb and gutter throughout the project. The potential for future improvement to a 5-lane section will be considered when developing the project, but will not be detailed or designed.
- 2) Roadway lighting will be designed for this project. DOWL HKM with recommendations for spacing, height, and mast-arm length of roadway lighting for the corridor and include lighting in the preliminary roadway design. Design will be based on the recently completed Rimrock Road section from 17th Street to Forsythia.

- 3) On-street parking will not be included in the design of the roadway.
- 4) A multi-use path, sidewalk, and/or bike lanes will be designed along the roadway corridor. It is assumed that the typical section for the roadway will generally duplicate adjacent and recently completed sections of Rimrock Road. Due to physical constraints, the OWNER has determined that a multi-use trail from Zimmerman Trail to the east is likely impractical, and that only sidewalk should be considered.
- 5) DOWL HKM will develop a preliminary design package, including
 - a. Horizontal and vertical layout (plan and profile)
 - b. Typical section(s)
 - c. Preliminary pavement markings
 - d. Preliminary storm drainage alignment (See Task 170)
 - e. Intersection improvement (preliminary details only)
 - f. Preliminary landscaping plan (layout only)
 - g. Preliminary quantities and opinion of cost
- 6) Isolated locations along the project may require short runs of block retaining walls to facilitate the development of a full roadway section, multi-use path, and/or sidewalk, and will be defined within the project plans. Structural retaining walls are not anticipated for this project. If structural retaining walls are needed, DOWL HKM will identify the estimated limits for review by the OWNER, and can enter into a supplemental agreement with the OWNER for the engineering and design of the structural retaining walls.
- 7) Preliminary plans will be prepared for review by the OWNER with a preliminary opinion or construction costs prepared to assist the OWNER's evaluation of the project. The plans will include typical sections, right-of-way limits, roadway plan and profile, found utilities, probable limits of construction, preliminary traffic sheets (pavement marking only), cross sections, and storm drainage alignment.
- 8) DOWL HKM will conduct a plan review meeting with City staff to discuss the preliminary plan package, and will document comments for the OWNER's files.

***Submittal: Preliminary Alignment and Grade Plans
Opinion of Probable Construction Costs***

Task 220 – Final Geotechnical and Materials

- 1) Develop final surfacing design recommendations based on City of Billings supplied traffic data and DOWL HKM developed CBR test results, as well as selected typical section and roadway alignment. The final recommendations will take into account OWNER comments and design considerations developed in Activity 180.
- 2) A final geotechnical memo will be submitted to the City for their records and to be included in the final construction documents.

Submittal: Final Geotechnical Memo

Task 260 – Prefinal Utility Design

- 1) DOWL HKM will incorporate PUD and OWNER comments pertaining to the preliminary design package, and will prepare water main replacement plan and profile sheets to the prefinal design package.
- 2) Prepare project specifications, details, and special provisions for water main replacement work to be incorporated into the prefinal design package.
- 3) Coordination with private utilities (NWE, MDU, Qwest, Bresnan, AT&T) will be performed to include existing and proposed utilities in the plan set as provided by the utilities. DOWL HKM will not provide design or engineering for the relocation of private utilities.

Task 270 – Final Hydraulics

- 1) Complete final hydraulic design of the storm drainage system for storm drain inlet spacing and sizing.
- 2) Develop storm drain lateral detailed based on known and assumed utility locations. A Phase II SUE (soft digs) will not be conducted for this project, as the OWNER will direct the successful contractor to include this work as part of the initial construction work for the verification of utility locations. Should soft digs be determined to be necessary prior to the initial construction work, DOWL HKM will coordinate with the OWNER to address this work.
- 3) Assist in development of construction plans, details and specifications for the prefinal submittal.

Task 280 – Finalize Prefinal Design Activities and Review

- 1) DOWL HKM will incorporate OWNER comments pertaining to the preliminary design package.
- 2) Final intersection and turn lane geometrics will be developed and included in the prefinal plans package.
- 3) A demolition plan will be detailed, identifying removal items. The removal of trees will be acknowledged, however, the final determination of removal will be identified by City staff in the field prior to construction.
- 4) Lighting spacing based on LED fixtures, and the location of service pedestals and pull boxes will be identified and detailed.
- 5) No modifications are anticipated to the traffic signal at Zimmerman Trail and Rimrock Road. The intersection will be evaluated only for the identification of modifications that could be necessary to accommodate the reconstruction of Rimrock Road.
- 6) Coordinate with utilities regarding the updated plan package.

- 7) Develop construction plans for a prefinal design review package for the OWNER. Plans will include typical sections, detail sheets, plan and profile sheets, storm drain sheets and details, signing and pavement marking sheets, cross-section sheets, landscaping plan sheets, and an opinion of construction cost. Landscaping plan sheets will identify areas to be seeded, and do not include the design of an irrigation system.
- 8) Preliminary project specifications and special provisions will be based on the current edition of the Montana Public Works Standard Specifications (MPWSS) and as modified by the current City of Billings Standard Modifications. The MPWSS will be supplemented as needed by Special Provisions.
- 9) A prefinal plans package will be prepared for review by the OWNER.
- 10) Finalize prefinal Opinion of Probable Construction Cost.
- 11) Participate in City review for the prefinal submittal, reviewing detailed design of all critical components. Review comments will be documented and submitted to the OWNER for their files.

***Submittal: Prefinal Plans Package
Prefinal Project Specifications and Special Provisions
Opinion of Probable Construction Cost***

Task 340 – Final Design Package

- 1) Submittal of final plans incorporating pertinent prefinal comments.
- 2) Develop construction package including Specifications and Special Provisions.
- 3) Develop final engineers estimate for construction.
- 4) Attend review meeting with OWNER for 100% plan set.
- 5) Complete final construction documents package based on any final comments received during the final plan review including one (1) full size set of the plans, five (5) half size sets of the plans, and five (5) construction manuals (specifications and special provisions).
- 6) Coordinate with private utilities regarding final plan package and the schedule for bidding the project. Utility locations that can not be verified or utility companies that are non-responsive will be addressed in field by City of Billings staff during construction.
- 7) Submit copies of the project plans and specifications, a design report, and all other application requirements to the Montana Department of Environmental Quality (MDEQ) for approval. All review, permit, and licensing fees will be paid by the OWNER.
- 8) A construction traffic control plan is not anticipated to be necessary for this project phase of the project, and will be addressed by the successful contractor.
- 9) Bid advertisement text will be provided to the OWNER for publication by the OWNER.

Submittal: Final Construction Package
Final Opinion of Probable Construction Cost

Task 400 – Bidding and Preconstruction Services

- 1) This scope of work assumes that the City will advertise the project, answer contractor questions regarding the bid package, and conduct the pre-bid meeting and the bid opening with attendance by DOWL HKM.
- 2) DOWL HKM will distribute bid sets, maintain the plan-holders list, issue addenda and clarifications, and prepare a tabulation of bids following the opening.
- 3) DOWL HKM will attend the pre-bid meeting, will assist the City during the pre-bid meeting with questions related to the construction package, and will issue meeting minutes.
- 4) DOWL HKM will provide the OWNER an award recommendation based on a tabulation of received bids.
- 5) All other preconstruction and construction services, including construction staking or exploratory excavation are not included within this scope of work.

Task 500 – Record Drawings and Project Completion

- 1) Construction administration, contractor submittals, construction staking, observation, construction notes, and testing are not included within this scope of work. These services can be provided under a separate amendment.
- 2) DOWL HKM will prepare record drawings based on OWNER supplied construction notes and drawings upon the completion of the project.
- 3) DOWL HKM will accompany the OWNER on a substantial completion walk-through of the project.
- 4) DOWL HKM will accompany the OWNER on a 1-year walk-through of the project.

Compensation

Based on the scope of work tasks detailed herein, and the level of effort and staff necessary to complete the project within the timeframe specified by the OWNER, DOWL HKM proposes to perform the above referenced work for time and materials as follows:

Fee	\$ 302,270.00
Materials	\$ 5,800.00
Subconsultants	\$ 10,600.00
Total	\$ 318,670.00

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

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

Partial payment shall be made to the Contractor upon receipt of the Contractor's pay estimate, said estimate being proportioned to the work completed by the Contractor. Billings shall deduct **five percent (5%)** from each monthly pay estimate to be held until the completion of the final construction documents. The final payment shall be made only after acceptance of the final construction documents by Billings, and determination that the scope of work through the final construction documents and pre-bidding services have been satisfactorily completed.

- A. For services rendered per Appendix A, the Contractor shall be paid based upon actual time accrued on a cost plus 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 3.1 (direct labor plus 176.8% times direct labor for overhead), plus a 12% fixed fee. Maximum fees for the following phases are as follows:

- i. Design \$318,670.00

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 2. 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 3. 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 4. Corrections.

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

Appendix C

Additional Services of Contractor

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

- A. Field and laboratory testing of materials and reports beyond those specifically listed in Appendix A.
- 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 dated no later than December 1, 2011, the completion date for the Contractor's work through final design shall be based on the following milestones:

- A. Final Engineering Services (100% Design): February 1, 2013

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 Contractor is behind on this Contract due to no fault of Billings, then the Contractor hereby acknowledges the right of Billings to withhold future Contracts to the Contractor 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)