

CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

**“THE MAGIC CITY – A VIBRANT, WELCOMING PLACE WHERE
PEOPLE FLOURISH AND BUSINESS THRIVES.”**

SPECIAL SESSION AGENDA

COUNCIL CHAMBERS

January 3, 2011

5:30 P.M.

CALL TO ORDER – Mayor Hanel

PLEDGE OF ALLEGIANCE – Mayor Hanel

INVOCATION – Councilmember Clark

ROLL CALL

ADMINISTRATOR REPORTS - TINA VOLEK

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 2, and 3. Speaker sign-in required. (Comments offered here are limited to one (1) minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the podium.)

SPECIAL AGENDA:

- 1. Approval of Resolution** declaring an emergency to stabilize or remove sandstone boulders from public and private property and **award** a contract for removing and stabilizing the sandstone boulders at 1313 Granite and Shady Lane to Accurate Concrete Cutting, Inc. for \$189,225. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
- 2. Approval of Resolution** appointing a 5-member ad hoc committee to make a recommendation to the Council on the appropriateness and placement of a 30" x 40" painting of Sacrifice Cliff donated by Mike McFadden. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
- 3. Approval** of Council sub-committee's recommendation for appointment of Municipal Court Judge. (Action: approval or disapproval of Council sub-committee's recommendation.)

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments limited to three (3) minutes per speaker. Please sign up on the clipboard located at the podium.*)

COUNCIL INITIATIVES

ADJOURN

Additional information on any of these items is available in the City Clerk's Office.

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify Cari Martin, City Clerk, at 657-8210.

Special Session

Date: 01/03/2011

TITLE: Resolution Declaring Emergency to Stabilize or Remove Sandstone Boulders from Public and Private Property

PRESENTED BY: Mike Whitaker,
Parks/Rec/Public Lands

Department: Parks/Rec/Public Lands

Information

PROBLEM/ISSUE STATEMENT

On October 9, 2010, a large sandstone rock block detached from the cliff above 1313 Granite Ave., broke into pieces rolled down the slope and several large boulders severely damaged the house at this address. A rock block on the cliff at this location and another rock block north of Shady Lane appear to be unstable and could detach and tumble down the slope. The staff recommends that the City Council adopt a resolution declaring an emergency. Passage requires $\frac{3}{4}$ of the Councilmembers to vote for the resolution. The emergency declaration allows the Council to award a contract to one of the three firms that staff has worked with to obtain their cost proposals and methods for stabilizing or removing the boulders at these two locations. Staff recommends that the Council approve a contract with Accurate Concrete Cutting, Inc. for this stabilization and removal project.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the resolution and award the recommended contract. This provides the quickest method to remove or stabilize the boulders so that they do not damage additional property or injure a resident.
- Disapprove the resolution and direct staff to use a different method to secure bids for the work. The staff would hire a qualified consultant to write plans and specifications for the work, advertise for bids and submit the lowest responsive bid to Council for contract approval. This process will take at least 60 days, delaying a remedy until March, 2011, or later.
- Disapprove the resolution and direct staff to not intervene at one or either location. Staff has assumed that it has a responsibility to mitigate the negative impacts at these locations because most of the Rimrocks are within undeveloped city parks and because the falling boulders may threaten public safety. The Council could reasonably take the position that the falling boulders are a natural occurrence, the City does not have an obligation to remedy what has occurred naturally and similar events will continue to occur, even with human intervention.

FINANCIAL IMPACT

Cost estimates to complete stabilization and/or removal at both locations range from \$189,225 to \$1,131,200. The only available funding source is the General Fund.

BACKGROUND

On October 9, 2010, a large slab of the sandstone cliff above 1313 Granite Ave. detached from the cliff face and tumbled down the slope. Several large boulders hit and severely damaged the house at this address. The largest boulder penetrated the north side of the house and has since continued moving slowly down the slope, damaging additional sections of the structure. Several smaller stones separated from the large one and hit the structure or settled on the slope north of the house. There is another large section of partially detached stone that remains on the cliff above the property. The owners of 1313 Granite filed a claim with the City and subsequently filed a lawsuit, but it has not been served on the City. MMIA assigned Moulton Bellingham as defense counsel. The claim states that the City may be responsible for the property damage because the rock slab originated on City parkland and rolled across City property and onto the claimant's property before striking the house.

In January of 2010, the bottom of a large rock block failed, detaching from the cliff and breaking apart above Shady Lane. No structures were damaged from the large rock boulders which rolled down the talus slope. The property owners below the failure contacted the City immediately after the failure. City staff investigated and found a large portion of the rock block still partially attached to the cliff face. A consulting engineer has advised that both large, partially detached stones will eventually fall and may cause property damage or injuries. Predicting when they will fall is impossible but the Shady Lane boulder is the more imminent threat.

The PRPL Department spent months attempting to convince local, regional and national companies to assess removing the Shady Lane boulder and submitting a price estimate, but was mostly unsuccessful. Companies that perform this type of work were unwilling to commit to mobilizing to Billings for what they viewed as a minor project. Local construction companies were unwilling to submit a price quote because of the potential risk of damaging private property and because the work is unfamiliar to them. After the October 9 rock fall, PRPL was able to secure two price quotes from out of state companies and one from a Billings company to mitigate the potential hazards at Granite and Shady Lane. The quotes range in price from \$189,225 to \$1,131,200. The wide variance is due to different methods, tools and equipment that each firm plans to use.

The structure at 1313 Granite is heavily damaged and due to the large boulders in and around the property, it is unstable, unsecured and could damage other property or persons. Unfortunately, the property owner's insurer has not agreed to coverage, which would be one way to pay for removing the structure and boulder from the property. Under Billings Municipal Code section 18-300, the City notified the property owner that a nuisance exists on the property and ordered him to abate the nuisance within 10 days. The Legal Department later extended that deadline for an additional 30 days, or until 5:00 p.m., January 3, 2011. The nuisance declaration allows the City to enter the property to abate the nuisance and to charge the property owner for the cost. If the City is going to mitigate the potential hazards, it should stabilize or remove the large boulder from inside the house, which may require that the house be demolished and removed from the property; stabilize and/or remove smaller unstable boulders that are on the slope between the house and the cliff, and; detach a remaining large rock block that adjoined one that fell, but which remains on the cliff face. The contractors plan to control the boulder's rate of fall and/or the direction to reduce the potential for damage to private property.

The City staff believes the Council has at least three options, which are described in the “Alternatives” section of this report. Staff recommends the emergency declaration because it allows the City to avoid the competitive bidding process. Staff is convinced, based upon its experience over the past year, that competitive bidding will not attract additional bidders or yield a better price. In fact, it could produce higher prices since each of the three companies who submitted price quotes are now aware of the others’ plans and prices. In order to solicit bids, the City would expend additional funds for a consultant to prepare plans and specifications and the process would be much slower than the recommended action.

RECOMMENDATION

Staff recommends that Council approve the Resolution declaring an emergency and award a contract for removing and stabilizing the sandstone boulders at 1313 Granite and Shady Lane to Accurate Concrete Cutting, Inc. for \$189,225.

APPROVED BY CITY ADMINISTRATOR

Attachments

Resolution

Accurate Concrete

COP Construction

HI-TECH Rockfall Construction

RESOLUTION NO. 11-_____

**A RESOLUTION DECLARING AN EMERGENCY
AND WAIVING THE REQUIREMENT FOR COMPETITIVE BIDS
AS CONTAINED IN 7-5-4302 AND 7-5-4303 MCA**

WHEREAS, on October 9, 2010, a large boulder detached from the sandstone cliffs, commonly known as the Rimrocks, on the north side of the Yellowstone River Valley in Billings, Montana, it rolled down the talus slope and severely damaged a structure located at 1313 Granite Ave., and

WHEREAS, the large boulder that damaged the structure continues to move down the slope inside the structure and could dislodge and cause damage to additional public or private property, and

WHEREAS, several smaller boulders are perched on the steep slope above the structure and if dislodged, could cause additional damage to the structure or other public or private property, and

WHEREAS, another large boulder that is detached from the Rimrock face at this location may dislodge and tumble down the slope at any time and if allowed to do so, could damage the structure or other public or private property, and

WHEREAS, there is a large sandstone boulder detached from the Rimrock face, located north of Shady Lane in Billings, Montana, which may dislodge at any time and could tumble down the talus slope and damage public or private property that is downhill from the Rimrocks, and

WHEREAS, these boulders should be stabilized or removed from the structure, the slopes and the Rimrock face in order to prevent unplanned and uncontrolled rolling or tumbling down the slopes, thereby protecting lives, property and public safety and

WHEREAS, Section 7-5-4302 MCA requires cities to advertise for competitive bids and to award the bid to the lowest responsive bidder for construction, maintenance or repairs over \$50,000 in value, and

WHEREAS, competitive bidding requires detailed plans and specifications, advertising for bids and awarding a contract to the low bidder; a process that would delay stabilizing and/or removing the sandstone boulders from the identified property locations until March, 2011, or later, and

WHEREAS, Section 7-5-4303 MCA allows cities to waive the competitive bidding requirements if three-fourths (3/4) of the members present at the meeting of the City Council declare an emergency.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, as follows:

1. EMERGENCY DELCARED. The large sandstone boulder that detached from the Rimrocks on October 9, 2010 and damaged 1313 Granite Ave., smaller boulders that are perched on the slope above the property and large, detached boulders at this location and north of Shady Lane are declared public nuisances and the need to remove and/or stabilize them as soon as possible is declared to be an emergency due to the unanticipated damage at 1313 Granite, the large boulder's continued movement and that any of the other identified boulders could fall at any time and damage additional public or private property.
2. COMPETITIVE BIDDING WAIVED. Due to the declared emergency, the City Council waives the competitive bidding requirement for removing or stabilizing the sandstone boulders at the identified locations, as permitted by 7-5-4303 MCA.

APPROVED by at least three-fourths (3/4) of the members present at the meeting of the City Council of the City of Billings, Montana, on the 3rd day of January, 2011.

CITY OF BILLINGS

Thomas W. Hanel, MAYOR

ATTEST:

Cari Martin, CITY CLERK



P.O. BOX 5798 VANCOUVER, WA. 98668
 (503) 285-6731 (360) 694-8564 (800) 736-8564
 FAX (503) 285-6907
 WA. CONTR. LICENSE # ACCURCC153M2 OR. CONTR. LICENSE # 48520

TO: City Of Billings
390 North 23rd Street
Billings MT 59101

PERSON REQUESTING BID Jon G. Thompson e-mail thompsonj@ci.billings.mt.us	
PHONE 406-657-8373	FAX: 406-247-8641
DATE QUOTED 11/18/2010	QUOTED BY Vern Balkowitsch Sr.

INSIDE WORK	YES <input type="checkbox"/> NO <input type="checkbox"/>	PLASTIC	YES <input type="checkbox"/> NO <input type="checkbox"/>
OVERTIME	<input type="checkbox"/> <input type="checkbox"/>	EXT RA MAN	<input type="checkbox"/> <input type="checkbox"/>
VACUUM	<input type="checkbox"/> <input type="checkbox"/>	SCAFFOLDING	<input type="checkbox"/> <input type="checkbox"/>
WATER _____ FT		POWER _____ FT	
TRK TO WORK _____ FT		HT OF WORK _____ FT	

QUOTATION JOB ORDER

JOB NAME Rock Removal Project Above Shady Lane	
JOB LOCATION City Parks & Rec Land	
ADDRESS Over Billings Mt off Hwy #3	
CITY Billings MT	CROSS STREET

DATE	DAY	TIME
P.O. NO.	JOB NO.	
SEE ON JOB	JOB PHONE	
ORDERED BY	ACC JOB NUMBER	

ESTIMATED HOURS REQUIRED TO:

WALL SAW _____ HR CORE DRILL _____ HR
 SLAB SAW _____ HR OTHER _____ HR

SPECIAL EQUIPMENT:

QUANTITY	DESCRIPTION	UNIT	PRICE
#1	To Supply Labor & Equipment to Remove from Cliff: Shady Lane area: 30' x 40' x 10' section of rock cliff		
#1	Cactus Park area: 25' x 40' x 10 section of rock cliff Prior to rock removal, ACC will remove rock from house at Cactus Park area. Remove rocks from back of & leave onsite of Shady Lane area, build a rock barrier at the bottom of the cliff and drop the rocks back. ACC to scale cliff prior to and after removal. 5 man crew 10 hour days 1 week at Shady Lane & 2 weeks at Cactus Park area. Total Price For Project: _____		\$189,225.00
Price based on: 1. Road closed, & Evacuation of residents by others. 2. ACC to protect windows from flying rock debris. 3. Priced based on 1 move in - Continuous work. 4. Work area to be cordoned off from spectators min. 1000'. 5. ACC Safety tape top of cliff. 6. ACC will remove as much rock as possible from private property back to park land. Thank you, <i>Vern Balkowitsch Sr.</i> Vern Balkowitsch Sr.			
STANDBY CHARGED AT \$95.00 PER MAN PER HOUR			
PRICES SUBJECT TO CHANGE IF CONDITIONS ON JOB VARY FROM THIS QUOTATION WE ASSUME NO RESPONSIBILITY FOR LAYOUT			



CONCRETE CUTTING, INC.

(503) 285-6731 (360) 694-8564

Fax (503) 285-6907 / Toll (800) 736-8564
6816 NE 40th Ave. / PO Box 5798, Vancouver, WA 98668

**City Of Billings
Rock Removal Project**

Procedure to be used for rock removal:

First Area: Shady Lane

We are going to set up and scale the face of the rock. After this we are planning on bring in a 315-C 40,000lb track hoe from the north side of the cliff off highway 3. This machine will be equipped with a bucket on a 5000lb jack hammer. If at this time we feel the scaling of the rock requires us to (for safety reasons) tie the top of the rock back to the cliff. This will be done by installing 30,000lb pick plates to the top of the boulder and back to the top of the cliff approximately 10' to 30' on top of the cliff, or to good rock. These pick plates are bolted to the face by 4 - 1" holes x 12" long Lag bolts HILTI Brand KB3 1" x 12" after the plates are fastened. There will be 9/16" - 3/4" cable attached from one plate to the other. While this operation is being done the 315 Track Hoe will be in place with a bucket on it approximately 10 to 15 feet below the top of the boulder pushing against the piece to be sure it doesn't move.

Once the rock is secured a plywood safety wall will be installed over the windows of the homes closest to the bottom of the hill. Then will bring in a 161 Mini Hoe with a 15,000lb Winch on it. This will dead man at the bottom of the cliff. We will then tie to the boulder at the bottom of the cliff and pull them down the hill to make a rock wall for protection and stop any rock that may roll. This will be achieved by using the same winch used above to tie off the rock. We will secure the winch to the loose rock on the hill and pull the rock down to the designated area.

Once this is completed the entire area will be evacuated the road will be shut down and the bottom of the rock area corded off 1000'. The crew will go to the top of the cliff remove the cable and plates put jack hammer on the track hoe and come over top of top of cliff approximately 15 to 20' down and break rock, into pieces and be left on site. After the rock is removed we will rescale the rock face and clean off any loose rock, remove plates, cables, track hoe, plywood on homes and this will complete the first area.

Second Area: Cactus Park

We will be using the same 315-C track hoe as on the Shady Lane area which will be transported by a low boy semi truck and trailer. A 240 ton hydraulic crane will be used to lift the 315-C track hoe and the 161 mini hoe to the flat area, north side of damage house. This will be our lay down area. After this done the crane will need to be removed. The proper authorities will be notified prior to the crane being transported on any public road way as the crane takes up the entire road way and street closures are necessary.

At this time the rock face will be scaled and cleared of any loose rock and debris. After this the rock will be evaluated. Again we may put pick plate on this rock to hold it in place while the ground work is in progress. The work area on the top cannot be accessed by any equipment all work must be done by hand. After the rock is secured and the cliff has been scaled the rock on the back side of the at 1313 will be removed to the lay down area or the north side of the house. This will give us access to the back of the house for equipment. We will remove the rock from the house. There will be accumulation by using rock splitter and a break to rock into section put winch plates on then pick out of the house by track hoe. After the rock is removed we will remove as much loose rock as possible from behind the house.

We will close the road evacuated all the residents of the affected houses. Go to the top of the cliff remove the cables and pull over the loose boulders. Hydraulic rams may be used to push boulders over. After they have been dropped the cliff will be scaled all plated removed from top. The road reopened and whatever rock that came down be removed back to park property or lay down area.

Crane will be brought back in equipment removed off of north side of house track hoe removed off site, crane remove off site and street reopened.

Equipment List

315-C Track Hoe Bob Cat

5,000 Hydraulic Breaker

15,000lb Hydraulic Winch

30,000lb Winch Plates

1" holes x 12" deep lag bolts

9/16 - 3/4 cables

14,000lb 161 mini track hoe & breaker

Rock Splitter (385 ton) HC-12

Cable tie Backs

Air Horns

2 Way Radios

ZX-IDS PETZL Self Breaking Descenders

ZX-NAVAKO-BOD Full Body Harness

ZX-R1161-200 PETZL Safety Rope

ZX-R1000 PETZL Safety Rope, Secondary

2535 Trailer Mounted Power Unit (3000 PSI - 35 GPM)

Misc hand tools to perform the job



November 24, 2010

Mr. Jon Thompson, Parks Superintendent
City of Billings
Parks, Recreation & Public Lands
390 North 23rd St.
Billings, MT 59101

RE: Proposal - Rock Removal Project Above 1313 Granite

Mr. Thompson:

COP Construction LLC is pleased to be considered for your "Rock Removal Project Above 1313 Granite". We have arrived at a work plan based on information from our numerous meetings with you and Dan Nebel with Terracon, and we offer our services as outlined in the attached Proposal Attachment A. Our Scope of Work generally follows the preliminary draft of the "Rock Removal Project Above 1313 Granite" that has been provided to date. The one big exception would be the manufacture and use of a wire rope netting that will act basically as a wet blanket taking energy out of the rock release and at the same time acting to contain the rock fragments as they break and tumble down the slope of the Rims. The netting is not figured to hold the weight of the rock. The size of the netting is based on the judgment input of you, Terracon and COP and is figured at 100 feet wide by 200 feet long. As simple as we can put it, this is anyone's best estimate to being failsafe. Most of the work is planned to be self performed. However, we will subcontract the services of Precision Drilling and Blasting for assistance in drilling anchoring holes. We are also leaving open options for subcontracting a licensed rock scaling company if the need arises.

Conditions and exclusions to our Proposal are provided in Attachment B.

We recognize this project to be potentially subject to legal challenges. Accordingly, we have included required indemnification language in Attachment C. This will have to be included in our Agreement. All other language and requirements of the draft agreement are acceptable.



Page 2

Mr. Jon Thompson, Parks Superintendent

City of Billings

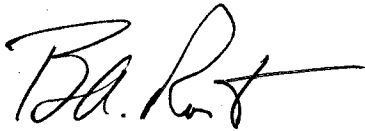
Proposal - Rock Removal Project Above 1313 Granite

11/24/10

Our proposal is good for 30 days, after which we reserve the right to review changes in cost. We appreciate this opportunity and look forward to finalizing our Agreement for this project.

Sincerely,

COP Construction LLC

A handwritten signature in black ink, appearing to read "B.A. Rost", with a long horizontal flourish extending to the right.

Bruce A. Rost

Sr. Project Manager

Attachments: A - Proposal
B - Conditions and Exclusions
C - Indemnification

cc: Dan Nebel, Terracon Consultants, Inc.
Rich King, COP Construction LLC

Attachment A to Proposal for Granite Drive Rock Fall



COP Construction LLC

P.O. Box 20913
 Billings, MT 59104
 Contact: Bruce Rost
 Phone: 406-656-4632
 Fax: 406-655-9286

Quote To: City of Billings
 390 North 23rd Street
 Billings, MT 59101

Job Name: Granite Drive Rock Fall
Date of Plans:

Phone:
Fax:

Revision Date:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	MOBILIZATION/DEMOBILIZATION	1.00	LS	15,000.00	15,000.00
20	GENERAL REQUIREMENTS	1.00	LS	98,000.00	98,000.00
30	CONSTRUCT DOWNSLOPE RETENTION SYSTEM	1.00	LS	80,000.00	80,000.00
40	DEMOLISH & REMOVE EXISTING BUILDING	1.00	LS	20,000.00	20,000.00
50	REMOVE EXISTING BOULDERS IN BUILDING FOOTPRINT	1.00	LS	32,000.00	32,000.00
60	FURNISH, INSTALL & REMOVE ROCK NETTING	1.00	LS	275,000.00	275,000.00
70	REMOVE PERCHED ROCK FORMATION	1.00	LS	10,000.00	10,000.00
75	HAND SCALING OF ROCK FACE (AS DIRECTED)	24.00	CH	400.00	9,600.00
80	STABILIZE FALLEN ROCKS (AS DIRECTED)	24.00	CH	250.00	6,000.00
GRAND TOTAL					\$545,600.00

Attachment B

Conditions and Exclusions Rock Removal Project Above 1313 Granite

Conditions and Exclusions:

- City to provide all engineering, ground monitoring through Terracon.
- City to permit temporary closure of the upper end of the Granite Street Loop for duration of the construction activity.
- City to procure temporary permits from MDOT for the use of a portion of the HWY 3 ROW for construction activity.
- City to obtain all permits that may be required. SWPPP barriers are not currently included in the pricing.
- COP will provide traffic control devices and maintenance for both Granite and HWY 3.
- City to obtain permission to access private property.
- City to conduct testing to eliminate exposure of hazardous materials (ie. Asbestos).
- COP will pay all landfill fees unless negotiated otherwise.
- We understand that the City desires work to begin immediately following negotiation of a contract. Work is figured to begin in this winter period. Daylight hours in winter are limited. That and for safety concerns our pricing is based on a 5 day 8 hour week basis. We estimate project duration to be up to 10 weeks.
- COP has figured to use ¾ inch wire rope for the netting, spaced on a grid of 12 inch centers. COP will remove all netting following the work excepting material that is covered by stones and not feasibly recoverable.
- COP has covered the cost of miscellaneous tree removal.
- COP has excluded a bond, and if desired please add 2%.
- COP has included the 1% GRT.
- COP has included the insurance coverage requested.
- Costs are based on current pricing of shelf materials (wire rope and clips). Cost savings in the range of \$40,000.00 to \$45,000.00 could be realized if **a**) we are unable to acquire shelf quantities needed and **b**) if delayed material delivery for mid February is acceptable. These materials are currently priced as foreign made products.
- COP is agreeing to be a “partner” in the City’s effort to do what is necessary to protect the public. It is understood that participation by the Owner and Terracon is encouraged and a part of the plan. Minor revisions to the work may develop. Cost changes will only develop when there is a material change in scope. Some activities of the Proposal are variable and will be conducted at the hourly rate noted.
- Upon negotiation of a mutually agreeable contract, work will begin immediately to procure all materials needed for the construction of the wire rope netting. Some issues relating to the availability of these materials may arise to which the City will be kept current. In the event that failure of the rock above 1313 Granite occur premature to the preparation and placement of the netting, it is understood that COP will be made whole for all costs incurred to that date. This would include costs for materials orders that cannot be reversed, subcontract efforts, and our internal costs.

Attachment C

Indemnification

Rock Removal Project Above 1313 Granite

Indemnification: The parties recognize and agree that rocks to be moved pursuant to this contract are in such a condition that they could be dislodged or otherwise fall at any moment, potentially causing damage to persons or property, regardless of the extent of care exercised by the City of Billings and/or COP to act safely to move the rocks. It is this very condition of the rocks which requires the City to take action to move the rocks to eliminate and/or minimize this potential danger. In light of the foregoing, the City of Billings hereby agrees to defend, indemnify, and hold COP, its employees, agents and surety harmless from and against any and all claims, liability, and costs of any kind, including attorneys fees and costs, allegedly relating to personal injury or death or property damage caused in whole or in part by efforts to move the rocks, except however for any liability, damages, losses, or costs caused solely by the negligence, recklessness, or intentional misconduct of COP unrelated to and uninfluenced by the natural propensity of the rocks to be dislodged or fall on their own.



November 24, 2010

Mr. Jon Thompson, Parks Superintendent
City of Billings
Parks, Recreation & Public Lands
390 North 23rd St.
Billings, MT 59101

RE: Proposal - Rock Removal Project Above Shady Lane

Mr. Thompson:

COP Construction LLC is pleased to be considered for your "Rock Removal Project Above Shady Lane". We have arrived at a work plan based on information from our numerous meetings with you and Dan Nebel with Terracon, and we offer our services as outlined in the attached Proposal Attachment A. Our Scope of Work generally follows the preliminary draft of the "Rock Removal Project Above Shady Lane Agreement" that has been provided to date. The one big exception would be the manufacture and use of a wire rope netting that will act basically as a wet blanket taking energy out of the rock release and at the same time acting to contain the rock fragments as they break and tumble down the slope of the Rims. The netting is not figured to hold the weight of the rock. The size of the netting is based on the judgment input of you, Terracon and COP and is figured at 165 feet wide by 200 feet long. As simple as we can put it, this is anyone's best estimate to being failsafe. Most of the work is planned to be self performed. However, we will subcontract the services of Precision Drilling and Blasting for assistance in drilling anchoring holes. We are also leaving open options for subcontracting a licensed rock scaling company if the need arises.

Conditions and exclusions to our Proposal are provided in Attachment B.

We recognize this project to be potentially subject to legal challenges. Accordingly, we have included required indemnification language in Attachment C. This will have to be included in our Agreement. All other language and requirements of the draft agreement are acceptable.



Page 2

Mr. Jon Thompson, Parks Superintendent

City of Billings

Proposal - Rock Removal Project Above Shady Lane

11/24/10

Our proposal is good for 30 days, after which we reserve the right to review changes in cost. We appreciate this opportunity and look forward to finalizing our Agreement for this project.

Sincerely,

COP Construction LLC

A handwritten signature in black ink, appearing to read "B.A. Rost". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bruce A. Rost

Sr. Project Manager

Attachments: A - Proposal
B - Conditions and Exclusions
C - Indemnification

cc: Dan Nebel, Terracon Consultants, Inc.

Rich King, COP Construction LLC

Attachment A to Proposal for Shady Lane Rock Fall



COP Construction LLC

P.O. Box 20913
 Billings, MT 59104
 Contact: Bruce Rost
 Phone: 406-656-4632
 Fax: 406-655-9286

Quote To: City of Billings
 390 North 23rd Street
 Billings, MT 59101

Job Name: Shady Lane Rock Fall
Date of Plans:

Phone:
Fax:

Revision Date:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	MOBILIZATION/DEMobilIZATION	1.00	LS	15,000.00	15,000.00
20	GENERAL REQUIREMENTS	1.00	LS	98,000.00	98,000.00
30	FURNISH & INSTALL TEMPORARY WINDOW COVERS	1.00	LS	6,000.00	6,000.00
40	FURNISH & INSTALL TEMPORARY FENCING	1.00	LS	5,000.00	5,000.00
50	FURNISH, INSTALL & REMOVE ROCK NETTING	1.00	LS	435,000.00	435,000.00
60	REMOVE PERCHED ROCK FORMATION	1.00	LS	10,000.00	10,000.00
65	HAND SCALING OF ROCK FACE (AS DIRECTED)	24.00	CH	400.00	9,600.00
70	STABILIZE FALLEN ROCKS (AS DIRECTED)	24.00	CH	250.00	6,000.00
GRAND TOTAL					\$584,600.00

Attachment B

Conditions and Exclusions Rock Removal Project Above Shady Lane

Conditions and Exclusions:

- City to provide all engineering, ground monitoring through Terracon.
- City to permit temporary closure of the upper end of the Shady Lane for duration of the construction activity.
- City to procure temporary permits from MDOT for the use of a portion of the HWY 3 ROW for construction activity.
- City to obtain all permits that may be required. SWPPP barriers are not currently included in the pricing.
- COP will provide traffic control devices and maintenance for both Shady Lane and HWY 3.
- City to obtain permission to access private property.
- Repair of building structure damages are not included and would be added cost if needed.
- We understand that the City desires work to begin immediately following negotiation of a contract. Work is figured to begin in this winter period. Daylight hours in winter are limited. That and for safety concerns our pricing is based on a 5 day 8 hour week basis. We estimate project duration to be up to 8 weeks.
- COP has figured to use ¾ inch wire rope for the netting, spaced on a grid of 12 inch centers. COP will remove all netting following the work excepting material that is covered by stones and not feasibly recoverable.
- COP has excluded a bond, and if desired please add 2%.
- COP has included the 1% GRT.
- COP has included the insurance coverage requested.
- Costs are based on current pricing of shelf materials (wire rope and clips). Cost savings in the range of \$70,000.00 to \$80,000.00 could be realized if **a)** we are unable to acquire shelf quantities needed and **b)** if delayed material delivery for mid February is acceptable. These materials are currently priced as foreign made products.
- COP is agreeing to be a “partner” in the City’s effort to do what is necessary to protect the public. It is understood that participation by the Owner and Terracon is encouraged and a part of the plan. Minor revisions to the work may develop. Cost changes will only develop when there is a material change in scope. Some activities of the Proposal are variable and will be conducted at the hourly rate noted.
- Upon negotiation of a mutually agreeable contract, work will begin immediately to procure all materials needed for the construction of the wire rope netting. Some issues relating to the availability of these materials may arise to which the City will be kept current. In the event that failure of the rock above Shady Lane occur premature to the preparation and placement of the netting, it is understood that COP will be made whole for all costs incurred to that date. This would include costs for materials orders that cannot be reversed, subcontract efforts, and our internal costs.

Attachment C

Indemnification

Rock Removal Project Above Shady Lane

Indemnification: The parties recognize and agree that rocks to be moved pursuant to this contract are in such a condition that they could be dislodged or otherwise fall at any moment, potentially causing damage to persons or property, regardless of the extent of care exercised by the City of Billings and/or COP to act safely to move the rocks. It is this very condition of the rocks which requires the City to take action to move the rocks to eliminate and/or minimize this potential danger. In light of the foregoing, the City of Billings hereby agrees to defend, indemnify, and hold COP, its employees, agents and surety harmless from and against any and all claims, liability, and costs of any kind, including attorneys fees and costs, allegedly relating to personal injury or death or property damage caused in whole or in part by efforts to move the rocks, except however for any liability, damages, losses, or costs caused solely by the negligence, recklessness, or intentional misconduct of COP unrelated to and uninfluenced by the natural propensity of the rocks to be dislodged or fall on their own.

Thompson, Jon

From: Chris Ingram [chris@hi-techrockfallconstruction.com]
Sent: Monday, November 29, 2010 8:23 AM
To: Thompson, Jon
Cc: jim@hi-techrockfallconstruction.com
Subject: [POSSIBLE SPAM] Shady Lane and Granite Drive
Attachments: image001.jpg

Importance: Low

Jon,

I have some rough numbers for you to take to your meeting. The Shady Lane situation would be approx \$302,300.00. This includes install and remove temp rock barrier, strapping of the rock prior to removal to control fall and removal of such after rock removed, window protection on 4 existing houses install and remove, removal of the large block itself, final scaling after large block is removed and any breaking, stabilizing or adjust necessary for final stabilization of rocks already fallen. I expect this to take approx 3 weeks.

Granite Drive would be approx \$425,000.00. This would include strapping the rock prior to removal, removal of strapping after block is removed, Protective measures, removal of large block, breaking, stabilizing or adjusting rocks that have already fallen on slope, stabilizing under house so large block does not move, Removal of large rock in house, removal of 2 other large blocks near house, complete demo of house and disposal of debris. I would expect this work ot take 4 weeks.

These numbers should be within 15% to 20% either way. Until I work with Dan at Terracon to determine what exactly is required for strapping and stabilization we can not come up with a final number. Hope this helps with you meeting.

Thanks

Chris G. Ingram
President
HI-TECH Rockfall Construction, Inc.
P.O. Box 674
Forest Grove, OR 97116
(503) 357-6508
(503) 357-7323 Fax

Rims Rockfall

The ring net and cable restraint system proposed by HI-TECH Rockfall Construction to implement the rock block removal is a conceptual “pre-design” based on their experience with similar projects per discussions with Mr. Chris Ingram. Their current design concept for rock removal is generally as follows with the use of the ring net system:

- Shady Lane Site – the cables would be cinched to the rock and the ring nets shackled to the cables to provide controlled restraint as the rock is toppled using air pillows to initiate the release; the cables would be designed to progressively release as the block position changes.
- Granite Drive – the cables would be cinched to the rock and the ring nets shackled to the cables to provide a rockfall barrier as the rock is progressively broken into manageable blocks and removed, ideally from above, or possibly by systematic toppling of blocks following removal/rollback of portions of the ring net panels.

These efforts will require an engineered design which is not included in HI-TECH’s current proposal. This design would necessitate evaluating a number of fall positions for the rock blocks to determine restraint requirements of nets and cables. The evaluation would need to include both static support and dynamic cases as the blocks move from position to position, or experience some assumed free fall slippage built-in as a design precaution. The engineer and contractor would need to closely interact during both the design and construction phases of the project. However, at this point, although the concept appears desirable from a precautionary standpoint with respect to worker and property safety, the technical feasibility of such a restraint system can only be validated by thorough engineering analysis.

Special Session

Date: 01/03/2011

TITLE: Resolution for the Appointment of a Public Art Ad Hoc Committee

PRESENTED BY: Tina Volek,
City Hall Administration

Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

Local artist Mike McFadden wishes to donate a painting of Sacrifice Cliff called "Magic" to the City of Billings. His only condition is that the 30-by-40-inch painting be publicly displayed.

Resolution 04-18101 requires that all public art gifted to the City have a transfer of ownership through an agreement approved by the City Council. It also requires that the Council appoint a 5-member ad hoc committee to make recommendations to the Council on the appropriateness and placement of public art. The ad hoc committee is to consist of two members appointed by the Mayor who are skilled and/or trained in art evaluation; a member of the Parks, Recreation and Cemetery Board appointed by that Board; and two representatives interested in the project who are neither the artist nor the donor.

A list of potential committee members will be provided to the Council in its Dec. 30th packet.

ALTERNATIVES ANALYZED

The Council may:

- Appoint the committee, leading to a process that may result in acceptance of the contribution;
- Decline to appoint the committee.

FINANCIAL IMPACT

Mr. McFadden asks no payment for the painting, but does intend to produce about 30 prints for sale by him.

RECOMMENDATION

Staff recommends that the Council appoint the 5-member ad hoc committee to make a recommendation to the Council on the appropriateness and placement of Mr. McFadden's proposed donation.

APPROVED BY CITY ADMINISTRATOR

Attachments

Resolution Placeholder

Resolution appointing the 5-member ad-hoc committee will be added to the agenda on Thursday, Dec. 30th.

Special Session

Date: 01/03/2011

TITLE: Municipal Judge Appointment

PRESENTED BY: Tina Volek,
City Hall Administration

Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

Municipal Court Judge Mary Jane Knisely was elected to the District Court and will assume her new job on Jan. 3, leaving a vacancy that must be filled by the City Council until the next City election. The advertised deadline for applications was Dec. 10, 2010, and four individuals applied. The Council at its Nov. 22 business session appointed a subcommittee consisting of the Mayor and Council Members Angela Cimmino, Dick Clark, Denis Pitman and Vince Ruegamer to interview applicants and make a recommendation to the City Council for action at its meeting on Dec. 20. The subcommittee recommended Colette Davies, the part-time Municipal Court Judge. At the Dec. 20 meeting, one Council member was absent and another recused himself from voting because of a family friendship with the applicant recommended by the subcommittee. The Council could not achieve a 6-member majority needed to approve any applicant, and voted to defer the matter to a special meeting on Jan. 3, 2011.

ALTERNATIVES ANALYZED

The Council may:

- Accept the recommendation of the Council subcommittee and appoint Collette Davies, the current part-time Municipal Court Judge, to an approximately 1-year term until the next City election;
- Appoint another candidate, which will require that individual to request a temporary certificate and waiver of training for a new judge from the Supreme Court of Montana Courts of Limited Jurisdiction. Until the waiver is granted, a Justice or District Court Judge will need to handle Municipal Court first appearances in addition to their own schedules, since first appearances must be held within 48 hours of an arrest by State law; or
- Delay the appointment further. This also will require finding a Justice or District Court judge to handle municipal first appearances in addition to their own schedules to ensure first appearances within 48 hours of arrest.

FINANCIAL IMPACT

The salary and benefits for the Municipal Judge are covered in the departmental budget.

RECOMMENDATION

It is recommended that the Council appoint the candidate recommended by the Council subcommittee.

APPROVED BY CITY ADMINISTRATOR
