

**Contract for Professional Engineering Services
For
Rose Park Pool Improvements**

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

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 4 pages (Basic Services of Contractor);

Appendix B consisting of 1 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 pages (Certificate(s) of Insurance); and

**PART I
SPECIAL PROVISIONS**

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the Park Planner for the Parks, Recreation and Public Lands Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means **Interstate Engineering, Inc.**

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.

- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings 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.
 - a. Drawings shall be provided on mylar and in digital format in PDF and Auto CAD.DWG file format. All files must be readable by the CITY; any files not readable or corrupted shall be resubmitted. Compressed Files are not acceptable. Drawings using separate reference files, X-ref, shall be bound into one file prior to submission.
 - b. Word processing files in Microsoft Word.doc format. Files must be readable by the City.

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 June 3, 2013.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

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

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

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

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
 - 1. Workers' compensation and employer's liability coverage as required by Montana law.
 - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 - 3. Commercial automobile liability -- \$1,500,000 per accident.
 - 4. Professional liability in the amount of \$1,500,000 per claim.

- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: Mark Jarvis
City of Billings
PRPL Department
390 North 23rd Street
Billings, Montana 59101 FAX: (406) 247-8641

Contractor: Brian Milne, PE
Interstate Engineering, Inc.
1211 Grand Avenue, Suite 6
Billings, MT 59104 FAX (406) 256-9178

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

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

Section 13. Financial Management System.

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

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;

- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

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

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Contractor: Brian Milne, PE
(President)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

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

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

Contractor

City Council or Designee

Date: _____

Name: _____

Title: _____

Date: _____

ATTEST:

IRS Tax ID # _____

City Clerk

APPROVED AS TO FORM:

Date: _____

By _____

BRENT BROOKS, City Attorney

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this ____ day of _____, 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 Contracting 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. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Contractor's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.
- K. Name a Task Director who shall be the liaison between Billings and the Contractor. For this project the Task Director designated for the Contractor is **Bill Enright, PE** working under the Principal-in-Charge, **Brian Milne, PE**.

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 Mark Jarvis.

Section 3. Scope of Work.

A. GENERAL:

The proposed project is to evaluate options to make improvements at Rose Park Pool including replacing the Tower Water Slide structure. The alternates to be considered are a multi-flume structure that may discharge into the existing plunge pool, discharge into a self-contained runoff trough, or a combination thereof. The height of the tower structure will be evaluated as to ride enhancement, plunge pool capabilities and budget constraints.

The modifications to the existing plunge pool features such as fountain sprays, valve control, access modification and potential theme slides for the very young pool patrons will be evaluated and presented to the Parks Department Staff for consideration.

The existing water slide pump system is intended to be reused for the new slide with the necessary connection modifications made based on the selected slide water flow requirements.

The options for demolition of the existing slide and tower, the removal and replacement of the perimeter fencing, and the removal and replacement of the existing irrigation system will be evaluated and presented to the Parks Department Staff for consideration.

A bid package to secure construction bids will be developed based on the procurement procedures for the City of Billings and will include a base bid section that will cover the items common to and required of the potential slide configurations with alternate bid items covering various slide manufacturers and other aquatic features. Following the bid opening the bids received will be evaluated and recommendations made to the Parks Department Staff for evaluation.

After a construction contract is finalized, construction administration will be provided including shop drawing review, periodic onsite visits, progress pay estimate review and recommendation, and provide project close-out documents.

B. The following is a summary of tasks to be provided:

1. TASK 1 – SITE EVALUATION, ALTERNATE REVIEW, PARK BOARD / PUBLIC INTERACTION, AND FINAL PROJECT SCOPE DEVELOPMENT

The work items with this task will be to provide conceptual layouts of various slide configurations, tower heights, plunge pool requirements, existing plunge pool features modifications, and related cost estimates to the Parks Department Staff. A preliminary selection of 2 or 3 concepts will be done by the Parks Department Staff and a presentation will be made to the Park Board on October 10, 2012. Based on input from the Park Board and City Staff, a conceptual plan containing 2 alternates will be developed and an informational display will be provided by us that will include the conceptual layouts, photographs of similar existing slides/attractions, and estimated costs. This information will be in a format to allow uploading to the City of Billings' website to allow for public review and comment. The final public input meeting will be at the November 14, 2012 Park Board meeting. After that meeting the preferred concept will be selected and the project will move into the next task of design.

2. TASK 2 – DESIGN DOCUMENT STAGE

Once the preferred concept is selected the design phase will begin, that will include developing the following:

- A) Demolition Plans including:
 - a. Slide removal
 - b. Fence removal
 - c. Irrigation system removal
 - d. Existing plunge pool modifications
- B) Slide pump and piping modification plan
- C) Site development plans including:
 - a. New concrete foundation layout
 - b. New concrete deck or access pads
 - c. New fencing and patron access layout
 - d. Electrical bonding plan for new slides
- D) Existing plunge pool / zero depth modification plans including:
 - a. Any wall or deck modifications
 - b. Access point modifications
 - c. Existing valve modifications in the spray feature vault
- E) Tower slide and other aquatic feature design parameter preparation
- F) Technical specification preparation
- G) Submission of plans to the Department of Public Health and Human Services and the Yellowstone County Sanitarian's office for review, comment, and approval. Any fee associated with the review and

approval process is to be paid for directly by the Parks Department and is not included in the consultant fee.

3. TASK 3 – BID DOCUMENT AND PROCUREMENT

This task will involve the preparation of the call for bids, assembling the technical and procurement documents, answering contractor questions during advertising period, issuing any addenda that may be required, review the bids submitted, prepare bid tabulation, and make a recommendation to the Parks Department Staff for contract award.

4. TASK 4 – CONSTRUCTION PHASE

This task will involve the contract administration after the award of the construction contract and will include the following:

- a. Shop drawing review
- b. Contract administration
- c. Periodic site visits
- d. Pay estimate review and approval
- e. Final project walk-thru and issuance of substantial completion
- f. Provide 1-year warranty compliance review

Appendix B

Methods and Times of Payment

Section 4. 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 ten percent (10%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

A. For services rendered prior to and during construction, Appendix A, the Contractor shall be paid a total of **\$30,600.00** as follows:

| | | |
|------|---|---------------------------|
| i. | TASK 1 – SITE EVALUATION, ALTERNATE REVIEW, PARK BOARD / PUBLIC INTERACTION, AND FINAL PROJECT SCOPE DEVELOPMENT | \$6,500.00 |
| ii. | TASK 2 – DESIGN DOCUMENT STAGE | \$14,200.00 |
| iii. | TASK 3 – BID DOCUMENT AND PROCUREMENT | \$3,900.00 |
| iv. | TASK 4 – CONSTRUCTION PHASE (COMPLETED ON AN HOURLY BASIS WITH A NOT TO EXCEED AMOUNT) (*This amount cannot be increased unless both parties agree that a change is warranted). | <u>\$6,000.00*</u> |
| | TOTAL | \$30,600.00 |

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

Section 5. 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 6. 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 Engineer

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

- A. 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

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

Section 1. Professional Services.

See Attachment #1

Section 9. Materials and Other Direct Costs.

Materials and other direct costs will be invoiced at current rates, plus a ten percent (10%) 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 hourly rates of personnel.

ATTACHMENT #1

SCHEDULE OF RATES

| | | | | |
|----|---|---------------------------|-------------------|-------|
| 1. | <u>Engineers</u> | | | |
| | (A) Staff Engineer | \$101.00 | per hour | |
| | (B) Project Engineer | \$121.00 | per hour | |
| | (C) Senior Project Engineer | \$166.00 | per hour | |
| | (D) Senior Traffic Engineer | \$186.00 | per hour | |
| | (E) Principal Engineer | \$221.00 | per hour | |
| 2. | <u>Surveyors</u> | | | |
| | (A) Senior Land Surveyor | \$134.00 | per hour | |
| | (B) Land Surveyor | \$116.00 | per hour | |
| | (C) GPS Surveyor | \$155.00 | per hour | |
| | (D) Party Chief | \$96.00 | per hour | |
| | (E) Field Assistant | \$63.00 | per hour | |
| 3. | <u>Technicians</u> | | | |
| | (A) Senior Technician | \$126.00 | per hour | |
| | (B) Project Technician | \$106.00 | per hour | |
| | (C) Technician | \$91.00 | per hour | |
| | (D) Field Assistant | \$63.00 | per hour | |
| 4. | <u>Draftspersons - Clerical – Computer</u> | | | |
| | (A) Senior Draftsperson | \$98.00 | per hour | |
| | (B) Draftsperson | \$91.00 | per hour | |
| | (C) Computer Specialist | \$126.00 | per hour | |
| | (D) Administrative Assistant | \$63.00 | per hour | |
| 5. | <u>Chargeable Expenses</u> | | | |
| | (A) Subsistence at actual cost | | | |
| | (B) Travel Vehicle | \$.60 | per mile | |
| | Survey Vehicle | \$.70 | per mile | |
| | Aircraft | | Actual Cost | |
| | (C) Any but ordinary first – class postage at actual cost. | | | |
| | (D) Cost of surveying materials, filing fee, drafting materials and other materials required for the job at actual cost plus 25%. | | | |
| | (E) Recordation Per Monument | \$35.00 | per monument | |
| | (F) Plat Certification | \$35.00 | per certification | |
| | (G) Printing | | | |
| | 1. 8½" x 11" | \$0.15 | per page | B & W |
| | | \$0.50 | per page | Color |
| | 2. 11" x 17" | \$0.25 | per page | B & W |
| | | \$0.50 | per page | Color |
| | 3. 24" x 36" | \$9.00 | per sheet | |
| | 4. Mylar | (\$3.00 ft ²) | | |
| | (H) Equipment Rental Rates | | | |
| | 1. ATV | \$75.00 | per day | |
| | 2. UTV | \$150.00 | per day | |
| | 3. UTV with Tracks / Snowmobile | \$200.00 | per day | |
| | (I) Subconsultant Services at Actual Cost Plus 10% | | | |
| | (J) Any and all sales and use tax, TERO or other special fees, which apply to this contract. | | | |

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Appendix E

Project Schedule

- A. Based on contract approval by Billings City Council, a notice to proceed by Billings dated on or about **September 25, 2012** will be issued. The completion date for the Contractor's work through Construction Phase shall be **June 3, 2013**.
- B. Upon Notice to Proceed, Contractor shall prepare a Work Plan Schedule demonstrating the approved project scope and proposed timeline for the project.
- C. 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.
- D. If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F

Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)