

**Contract for Professional Engineering Services**  
**City of Billings W.O. 12-17**  
**INTEGRATED WATER PLAN IMPLEMENTATION**  
**Stormwater System Study**

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In consideration of the mutual promises herein, City of Billings and Sanderson Stewart 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 6 pages (Basic Services of Engineer);
- Appendix B consisting of 2 pages (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Engineer);
- Appendix D consisting of 3 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of 4 pages (Certificate(s) of Insurance)

**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 the designee.
- B. "Billings" means the City of Billings.
- C. "Engineer" means Sanderson Stewart.
- D. "Contractor" means the third party responsible for the physical construction of the project.

Section 2. Scope of Services.

- A. The Engineer 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 Engineer 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 Engineer may provide, at its own expense, any other services that are consistent with this Contract.

~~D. The Engineer shall provide as-built drawings as specified hereafter, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.~~

~~E. The Engineer shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.~~

### Section 3. Time for Performance.

A. This Contract becomes effective when signed on behalf of Billings.

B. The Engineer 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 30, 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 Engineer 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 Engineer's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Engineer of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Engineer within 30 days of receiving an acceptable invoice.

B. The Engineer is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.

C. As a condition of payment, the Engineer shall have paid all City taxes currently due and owing by the Engineer.

### Section 5. Termination of the Engineer's Services.

The Engineer'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 Engineer 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 Engineer's services for convenience, Billings shall pay the Engineer 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 Engineer shall become the property of Billings.

- B. If the Engineer's services are terminated for cause, Billings shall pay the Engineer the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Engineer'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 Engineer under this Contract shall become the property of Billings at its option.
- C. If the Engineer 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 Engineer shall not be entitled to any compensation under this Section until the Engineer has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Engineer's services are terminated for whatever reason the Engineer 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 Engineer'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 Engineer'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 Engineer shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Engineer shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Engineer 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 occurrence.
- 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 Engineer 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 Engineer 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 Engineer 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. The engineer shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Engineer shall have the right to include photographic or artistic representations of the design and construction of the Project among the Engineer's promotional and professional materials. The Engineer's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Engineer in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Engineer 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 Engineer 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 work product provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Engineer's or subcontractor's signature, professional seals and dates removed. Such reuse of work product, 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: City Engineer (Debi Meling, PE)  
City of Billings  
Public Works Department  
2224 Montana Avenue  
Billings, Montana 59101 FAX: (406) 237-6291 / PHONE : (406) 657-3097

Engineer: Sanderson Stewart  
Rick Leuthold, PE, Chairman  
1300 North Transtech Way  
Billings, Montana 59102 FAX: (406) 656-0967 / PHONE: (406) 656-5255

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 Engineer 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 Engineer 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 Engineer'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 Engineer;
- 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 Engineer agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Engineer 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 Engineer delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Engineer.
- 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 Engineer shall perform its obligations hereunder as an independent Engineer of Billings. Billings may administer the Contract and monitor the Engineer's compliance with its obligations hereunder. Billings shall not supervise or direct the Engineer other than as provided in this Section.

### Section 2. Nondiscrimination.

- A. The Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Engineer 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 Engineer under this Contract.
- E. The Engineer shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

### Section 3. Permits, Laws, and Taxes.

The Engineer 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 Engineer under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Engineer 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:

Engineer: Rick Leuthold, PE, Chairman  
(title of position)

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 Engineer 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 Engineer or any agent, employee or subcontractor as a result of the Engineer's or any subcontractor's performance pursuant to this Contract.

- A. The Engineer 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 Engineer, the Engineer 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 Engineer's or any subcontractor's wrongful or negligent acts occurring as a result from the Engineer's performance pursuant to this Contract.

Billings shall indemnify, defend, save, and hold the Engineer 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 Billings or any agent, employee or subcontractor as a result of Billings' or any subcontractor's performance pursuant to this Contract.

- A. Billings shall not indemnify, defend, save and hold the Engineer 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 the Engineer 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 Engineer, Billings shall indemnify, defend, save, and hold the Engineer 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 Billings' or any subcontractor's wrongful or negligent acts occurring as a result from Billings' performance pursuant to this Contract.

#### Section 10. Inspection and Retention of Records.

The Engineer 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 Engineer is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Engineer 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 Engineer 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 Engineer 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

Engineer

\_\_\_\_\_  
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 \_\_\_\_\_, 2012, 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 Engineer's signature to be notarized.**

## Appendix A

### Basic Services of Engineer W.O. 12-17 IWPI--Stormwater System Study

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#### Section 1. Engineer's Rights and Duties.

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

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

## Section 3. Scope of Work.

### **SCOPE OF WORK:**

#### W.O. 12-07 Integrated Water Plan—Stormwater Study

The purpose of the study is to prepare the City of Billings for upcoming regulation changes that affect how stormwater is managed. This study will identify existing ditches and drains, and review potential stormwater storage areas that are amenable to treatment locations. The review of existing and potential stormwater storage areas, combined with a review of current discharge locations, will provide a tool for the City to make informed management decisions for the planning study area. This study is part of a larger City of Billings Integrated Water Plan project consisting of several other studies. The geographic limits of this study are from 64<sup>th</sup> Street West east to Bitterroot Drive, with a southern boundary of the Yellowstone River and a northern boundary of Alkali Creek and Five Mile Creek. The Briarwood annexation area will be reviewed as a separate component of this study.

### **Phase 100 Project Initiation and Project Management**

- Task 101. Project Initiation and interaction with City Staff on Existing Studies. Develop project goals and provide memorandum including meeting summary.
- Task 102. Project management of monthly project update correspondence
- Task 103. Meet with City staff on a periodic basis to review progress and coordinate information. This task includes up to six meetings.
- Task 104. Project quality control review

Task 105. Project schedule review

### **Phase 200 Review and Inventory of Existing Ditches and Drains**

- Task 201. Inventory the following irrigation ditches: Cove Ditch, Big Ditch, Hi-Ditch, Billings Bench Water Users Association (BBWA) and up to 5 major laterals, Grey Eagle Ditch, Canyon Creek Ditch, Snow Ditch and Suburban Ditch.
- Task 202. Inventory the following drains: "56<sup>th</sup> Street" Drain, Danford Drain, Arnold Drain, City-County Drain, Yegen Drain, Birely Drain, Hogan's Slough, Shiloh Drain, 64<sup>th</sup> Street Drain, Hidden Drain, Piney Drain, Rimrock Drain, and Holling Drain.
- Task 203. Inventory the following stormwater receiving waters: Canyon Creek, Cove Creek, Five Mile Creek, Alkali Creek, Blue Creek, and the Yellowstone River.
- Task 204. Research company ownership and organizational structure for those entities having ownership, district, or board structure including district boundaries if readily available. [This task is to be completed in its entirety by City of Billings staff. Sanderson Stewart will coordinate with City of Billings staff and integrate City findings into the final report.]
- Task 205. With each irrigation ditch company, provide a review of existing share ownership and summarize in a tabular format with corresponding shareholder map. [This task is to be completed in its entirety by City of Billings staff. Sanderson Stewart will coordinate with City of Billings staff and integrate City findings into the final report.]
- Task 206. Meet one time with Ditch and Drain company representatives and summarize findings in one-page memorandum for each facility. The goal of meeting with the companies is to ascertain the brief history of the company, organizational structure, operating budget, and key contacts. This meeting will provide information key to understanding potential takeover of ditch companies by the City.
- Task 207. Research water right ownership and priority dates with each ditch company. [This task is to be completed in its entirety by City of Billings staff. Sanderson Stewart will coordinate with City of Billings staff and integrate City findings into the final report.]
- Task 208. Review relationship between existing drains and existing City of Billings storm drainage piping systems
- Task 209. Review existing ditch unloader structures and potential future ditch unloader structures

- Task 210. Summarize existing point discharges to ditches and drains from agricultural users, City or County rights-of-way, and subdivisions.
- Task 211. Review existing City of Billings studies, maps, reports, and field work as it relates to storm drainage piping, ditches and drains
- Task 212. Inventory headgates along each irrigation ditch by walking each ditch, taking up to two photos of each visually identifiable structure, and taking one hand-held GPS location at each structure.
- Task 213. Inventory agricultural ditch waste or piped inputs into drains

Deliverable: Preliminary written report of ditch inventory with summary tables of existing ditch and drain ownership, function, and contact information. Written report shall contain basic ditch and drain company research, including the basic history of the company and a discussion of previous history of abandonment of ditches. The report tables shall detail each of the headgate sizes and unloader structure sizes. Discharge inputs to ditches and drains will also be described in tabular format. The preliminary report will include copies of any historic mapping provided by the ditch and drain companies in appendices of the report. Provide six (6) hard copies of preliminary report to the City of Billings for review.

### **Phase 300 Inventory of Existing Storage Areas**

- Task 301. Review significant existing subdivision storm water storage areas and other sources of information and summarize existing stormwater storage areas including detention areas and retention areas serving drainage areas of more than about 4 acres. Small individual site retention and detention areas serving areas less than 4 acres will not be identified in said report. Include existing retention and detention areas in drainage basin type regions in tabular format denoting basin size, function, and design storm basis if information is available.
- Task 302. Identify and include existing storage areas in GIS mapping as a layer. [This task is to be completed in its entirety by City of Billings staff. Sanderson Stewart will coordinate with City of Billings staff and integrate City findings into the final report.]
- Task 303. Deliverable: Technical memorandum to be included as chapter in final report on existing stormwater storage areas. Include in GIS mapping exercise, a layer showing existing stormwater storage areas (mapping and layer performed by the City of Billings Staff).

## **Phase 400 Feasibility and Potential of Ditches or Drains to Become City-Owned**

- Task 401. Evaluate whether existing ditches and or drains not under City ownership or control are useful or valuable for City stormwater needs and provide opinions based on inventory and proximity to existing stormwater discharge points.

## **Phase 500 Existing and Potential Stormwater Outfall Locations**

- Task 501. Identify and inventory major existing stormwater outfalls to Five Mile Creek, Alkali Creek, Canyon Creek, Cove Creek, the Danford Drain, the Arnold Drain, Hogan's Slough, the City County Drain, the "56<sup>th</sup> Street Drain", the Yegen Drain, Shiloh Drain, Birely Drain, and the Holling Drain. Show locations on GIS mapping noted in Phase 200 (By City of Billings Staff). Identify magnitude of flows from previous published information
- Task 502. Provide tabular listing of identified outfalls and published flows within technical memorandum.
- Task 503. Review approximately 9 existing outfalls to the Yellowstone River and each discharge location relative to areas where treatment could occur. Generally, these areas would be areas where storage could be located for treatment and/or re-use.
- Task 504. Review existing storm drain outfalls (including intermediate outfalls) and provide opinions on intermediate treatment alternatives. (e.g. existing detention pond storage areas)
- Task 505. Briefly discuss each discharge location and outfall relative to areas where treatment or re-use could be located in a technical memorandum (5-10 pages).

## **Phase 600 Reuse of Stormwater**

- Task 601. Evaluate and review potential locations for storage and reuse
- Task 602. Show potential storage and reuse locations on GIS mapping layer (By City of Billings Staff).
- Task 603. Review potential additional discharge points based on either existing or potential storage locations
- Task 604. Review potential locations for storage and groundwater recharge of reclaimed stormwater.

## **Phase 700 Policy Guidelines for Future Operation and Management of the System**

- Task 701. Develop and provide bullet-type list of policies and priorities based on findings from inventory of ditches and drains, storage and treatment alternatives

## **Phase 800 Prepare Final Report**

- Task 801. Compile all information gathered and prepared from Phases 100 through 700 into draft final report consisting of the following: Executive Summary, Review and Inventory of Existing Ditches and Drains, Inventory of Existing Storage Areas, Feasibility and Potential of Ditches or Drains to Become City-Owned, Reuse of Stormwater, and Policy Guidelines for Future Operation and Management of the System.
- Task 802. Provide four hard copies of draft final report to City staff for review and comment
- Task 803. Provide five (5) hard copies of final report revised based on single set of combined City comments and provide one electronic pdf format copy to the City of Billings.

## Appendix B

### Methods and Times of Payment W.O. 12-17 IWPI--Stormwater System Study

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#### Section 1. Payments for Basic Services.

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

Billings shall deduct five percent (5%) 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 construction, Appendix A, the Engineer shall be paid based upon actual time accrued, but not to exceed \$193,365.00 (One hundred ninety three thousand, three hundred sixty-five dollars) based on the following tasks:

Phase 100	Project Initiation and Project Management	<u>\$20,975.00</u>
Phase 200	Review and Inventory of Existing Drains and Ditches	<u>\$119,240.00</u>
Phase 300	Inventory of Existing Storage Areas	<u>\$8,530.00</u>
Phase 400	Feasibility & Potential of Drains and Ditches to Become City-Owned	<u>\$5,200.00</u>
Phase 500	Existing and Potential Stormwater Outfall Locations	<u>\$12,150.00</u>
Phase 600	Reuse of Stormwater	<u>\$4,320.00</u>
Phase 700	Policy Guidelines for Future Operation and Management of the System	<u>\$8,640.00</u>
Phase 800	Prepare Final Report	<u>\$14,310.00</u>
	TOTAL	<u>\$193,365.00</u>

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

#### Section 2. Payments for Extra Services when Authorized by Billings.

Work 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 or by an addendum to the agreement.

#### Section 3. Corrections.

Costs of Billings' work that is required for the purpose of correcting the Engineer's work shall be deducted from any payments due the Engineer if the Engineer fails to make the required corrections.

Section 4. Fee Increases

For contracts and services that are expected to require more than one (1) year to complete, the above stated basic services payments may be reviewed and adjusted annually by mutual agreement of the parties, based upon documented evidence that the Engineer's costs and hourly rates as shown in Appendix D have increased for all comparable clients.

## **Appendix C**

### **Additional Services of Engineer W.O. 12-17 IWPI--Stormwater System Study**

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

- A. Requests made or conditions identified which are beyond the scope and intent of the services identified under Appendix A.

## **Appendix D**

### **Schedule of Professional Fees W.O. 12-17--Stormwater System Study**

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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.

The cost of Professional Liability Insurance coverage is included in the hourly rates of personnel.

## CHARGE OUT RATES EFFECTIVE AUGUST 1, 2012

At Sanderson Stewart, we strive to provide great customer service and value. While we can offer the traditional method of billing by hourly charge rates, we strongly encourage our current and prospective clients to consider a fixed-fee arrangement in determining your overall project compensation. Fixed-fee projects can result in substantial savings over our posted hourly billing rates and provide a level of certainty at the outset of your project.

### STAFF PERSONNEL SERVICES

Expert Witness/Special Consultant	\$ 250.00 /hour
Principal	\$ 180.00 /hour
Senior Engineer	\$ 135.00 /hour
Project Engineer	\$ 90.00 /hour
Staff Engineer	\$ 85.00 /hour
Engineer Intern	\$ 65.00 /hour
Land Planner/Landscape Architect	\$ 110.00 /hour
Landscape Designer	\$ 80.00 /hour
Senior Professional Land Surveyor	\$ 115.00 /hour
Professional Land Surveyor	\$ 100.00 /hour
Staff Surveyor	\$ 80.00 /hour
Field Survey Technician	\$ 70.00 /hour
Designer	\$ 80.00 /hour
Graphic Designer	\$ 100.00 /hour
CADD Technician	\$ 75.00 /hour
Senior Construction Engineering Technician	\$ 95.00 /hour
Construction Engineering Technician	\$ 70.00 /hour
Construction Inspector	\$ 80.00 /hour
Project Administrator	\$ 65.00 /hour
Administrative/Clerical	\$ 60.00 /hour



## Appendix E

### Project Schedule W.O. 12-17 IWPI--Stormwater System Study

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Based on a notice to proceed by Billings date no later than December 10, 2012, the completion date for the Engineer's work through the final report shall be:

1. Phase 100	Project Initiation and Project Management	May 15, 2013
2. Phase 200	Review and Inventory of Existing Drains and Ditches	February 15, 2013
3. Phase 300	Inventory of Existing Storage Areas	February 15, 2013
4. Phase 400	Feasibility & Potential of Drains and Ditches to Become City-Owned	March 15, 2013
5. Phase 500	Existing and Potential Stormwater Outfall Locations	February 15, 2013
6. Phase 600	Reuse of Stormwater	March 15, 2013
7. Phase 700	Policy Guidelines for Future Operation and Management of the System	April 1, 2013
8. Phase 800	Prepare Final Report	May 15, 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 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 W.O. 12-17 IWPI--Stormwater System Study**

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Attach Certificate(s) of Insurance







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/26/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Hoiness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): - FAX (A/C, No): E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE INSURER A: <b>Travelers Casualty &amp; Surety Co.</b> NAIC #
<b>INSURED</b> Engineering, Inc. DBA Sanderson Stewart 1300 North Transtech Way Billings, MT 59102	INSURER B:
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
<b>A</b>	<b>Professional</b>			<b>105269194</b>	<b>04/17/2012</b>	<b>04/17/2013</b>	<b>\$3,000,000 Each Claim</b> <b>\$3,000,000 Aggregate</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
**Job: City of Billings W.O. 12-17; Integrated Water Plan Implementation Stormwater System Study**  
 All operations performed by the above insured.

<b>CERTIFICATE HOLDER</b> City of Billings Public Works Department; City Engineer 2224 Montana Avenue Billings, MT 59101	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <b>JOHN ROBERTS</b>
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