

Contract for Professional Architectural and Engineering Services

Project SID 1395 Boca Raton Road

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 Contractor);

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

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

Appendix D consisting of 2 pages (Schedule of Professional Fees);

Appendix E consisting of 1 page (Project Schedule);

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

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Sanderson Stewart.

Section 2. Scope of Services.

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

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

Section 3. Time for Performance.

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

Section 4. Compensation; Method of Payment.

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

Section 5. Termination of the Contractor's Services.

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

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

Section 6. Duties Upon Termination

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

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
 - 1. Workers' compensation and employer's liability coverage as required by Montana law.
 - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 - 3. Commercial automobile liability -- \$1,500,000 per accident.
 - 4. Professional liability in the amount of \$1,500,000 per 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 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: City Engineer (Debi Meling)
City of Billings
Public Works - Engineering
2224 Montana Avenue
Billings, Montana 59101

FAX: (406) 237-6291

Contractor: Mac Fogelsong
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

FAX: (406) 656-0967

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: Mac Fogelsong, PE
Principal

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 _____, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

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

Appendix A

Basic Services of Engineer

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 bi-weekly 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. 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.

Billings Rights and Duties.

- K. 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.
- L. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Chris Hertz, P.E.

Scope of Work.

The Engineer shall perform the work outlined within this agreement that includes the completion of design, bidding, and construction administration services for the installation of improvements for Boca Raton Road between Annandale Road and Clubhouse Way. The project includes a short extension of Annandale Road and Clubhouse Way about 1-2 lot depths in length.

Completion of said scope of work shall include the following tasks:

- A. Preliminary Services (30% Design).
 - 1. Conduct Preliminary Field Review (PFR) to determine major design features, project-related issues.
 - 2. Research property ownership within the project limits to update and supplement existing records.
 - 3. Confirm locations of utilities, public and private, within project limits. Information to be obtained from review of available as-built drawings, field investigations, and the Montana One Call System.
 - 4. Conduct a preliminary soils survey and geotechnical investigation to evaluate the soil conditions within the project limits. The investigation will include:
 - a. soil strata;
 - b. bearing capacity of buried utility pipes;
 - c. ground water;
 - d. pavement thickness design;
 - e. criteria for utility installations; and
 - f. Construction recommendations for the above.
 - 5. Review existing reports that include, but are not limited to hydrologic/hydraulic reports and subdivision plats.
 - 6. Conduct preliminary surveys that will include the following:
 - a. existing field conditions (topography, vegetation, existing structures, and road design features, etc.);
 - b. drainage features;
 - c. existing field landmarks;

- d. existing utilities (above and below ground as marked by a utility locate call);
 - e. existing right-of-way markers and property lines; and
 - f. alignment and cross section of any existing intersecting roads and driveways within or adjacent to the project limits.
7. Prepare preliminary plan/profile sheets for the project. As appropriate for the project, the plan and profile sheets may include:
- a. topographical data from the field survey;
 - b. relevant existing on-the-ground survey information;
 - c. plan views of underground utilities;
 - d. in profile view, crossing elevations of underground utilities;
 - e. existing centerline elevations; and
 - f. ADA curb ramp location and orientation.
- B. Preliminary Design Services (90% Design).
1. Prepare detailed utility, storm water management, and road design plans. The detailed road design may include but not necessarily be limited to:
 - a. generating the detailed cross section, including any utilities potentially in conflict with the road design;
 - b. presenting the necessary details on the typical sections;
 - c. presenting the necessary details on the plan and profile sheets (e.g., grade percents, vertical and horizontal curvature data, structure sizes, stationing);
 - d. developing the temporary erosion control plan; and
 - e. preparing special provisions for road design items
 - f. Prepare a Storm Water Management Design (SWMD) Report.
 2. Based on the detailed design plans, calculate the project quantities.
 3. Prepare specifications and opinion of probable cost.
 4. Provide to Billings four (4) complete sets of a complete 90% Design Plans, Specifications, two copies of SWMD Report, and Estimate (PS&E) package for review and approval.
 5. Provide to Heights Water two (2) complete copies of a complete 90% Design PS&E package for review and approval.
 6. Following receipt of written review comments from Billings and Heights Water, facilitate a 90% design review meeting, as required, with Billings staff to discuss review comments on these Preliminary Design Services.

C. Final Design Services (Final Design).

1. Prepare and furnish to Billings four (4) copies of a complete PS&E package for review and approval.
2. Provide to Heights Water two (2) complete copies of a complete Design PS&E package for review and approval.
3. Following receipt of written review comments from Billings and Heights Water, facilitate a design review meeting, as required, with Billings staff to discuss review comments on the final review documents.
4. Prepare and furnish to Billings three (3) hard copies accompanied by one (1) disk containing the appropriate computer files for the plan (AutoCAD format, *.dwg) and specification (Microsoft Word format, *.doc) information of a complete final PS&E package. Stamp and sign all plans and specifications with the seal of the Professional Engineer in responsible charge.
5. Prepare and furnish to Billings two (2) hard copies of a complete final plans and specifications package and appropriate processing fees for the water main and sewer main certified checklist submittals to the Montana Department of Environmental Quality. Stamp and sign all plans and specifications with the seal of the Professional Engineer in responsible charge.
6. Prepare and furnish to Heights Water one (1) hard copy of a complete final PS&E package. Stamp and sign all plans and specifications with the seal of the Professional Engineer in responsible charge.

D. Bidding Services.

1. Prepare and furnish full size (24x36-inch) plans and specifications in sufficient number for bidding purposes.
2. Stamp and sign all plans and specifications with the seal of the Professional Engineer in responsible charge for the design.
3. Schedule and hold a pre-bid conference.
4. Prepare any required addenda to plans and specifications. Addenda shall be approved by Billings.
5. Attend construction bid opening.
6. Analyze bid proposals and make a recommendation on awarding a construction contract for the proposed work based upon the lowest responsive bid submitted by a responsible bidder as set forth in the specifications and final plans.
7. Prepare and provide to Billings a bid tabulation and recommendation package that includes a recommendation on award, bid tabulation sheet, and bid proposal sheets.

E. Construction Services.

1. Prepare and provide to Billings and the successful contractor for the project a notice of award and notice to proceed.
2. Schedule and hold a pre-construction conference.
3. Notify Billings before the work is started. The Engineer recognizes that all work is subject to Billings inspection and approval at any time.
4. Construction Layout and Control.
 - a. Provide personnel, equipment, and supplies for construction layout and control. Construction layout shall include, but not be limited to, measurements, lines, locations, and grades necessary for construction.
 - b. Reference and preserve all existing survey monuments and benchmarks. All monuments installed with the project shall be punched and elevations shown on record drawings.
5. Inspection and Testing.
 - a. Coordinate appropriate testing of materials intended for incorporation into the project and require documentation of testing results. Testing frequency shall be based on the City of Billings Standard Modifications to the Montana Public Works 6th Edition dated March 2013.
 - b. Provide general observation of construction to check the Contractor's work for compliance with the drawings, specifications, and other applicable documents, codes, or standards. Observation of work shall be made on a full-time basis (to be based on the Contractor's work schedule) while any major item of work is in progress. Major items of work shall be water, sanitary sewer, storm drain, and irrigation utilities; subgrade preparation; gravel base course preparation; concrete pouring and finishing; and paving. The Engineer shall provide a minimum of **48** hours notice for Billings personnel when specific inspections or testing require their presence on the project. Each daily review shall be documented in permanent reproducible form and kept in consecutive order with the project file. Copies of the daily review reports shall be furnished to Billings as requested during construction. Engineer will notify Billings immediately of contract problems or deviation from approved plans. Engineer's fee is based on 40 works days for utility inspection and 15 working days for street inspection items.
 - c. Provide the services of a qualified materials engineering technician who will observe construction and provide representative tests. Provide direct coordination of laboratory and field quality assurance testing and geotechnical engineering between the project engineer, field inspector, and a project construction materials engineer. Geotechnical and materials engineering shall include interpretation and recommendations for the Engineer and Billings based upon field observation. The services of a qualified geotechnical consultant will be utilized for all materials testing and geotechnical engineering for this Contract.

6. Submittal Review and Document Preparation.

- a. Review the construction operations and the traffic controls for construction, prior to the start of work. Engineer shall ascertain that the Contractor has all needed permits to accomplish his work during construction.
- b. Check shop drawings, samples, equipment, asphaltic concrete mix design, concrete mix design, aggregate, and other data submitted by the Contractor for compliance with drawings and specifications.
- c. Prepare change orders that do not require additional engineering design or inspection. The Engineer will obtain prior written approval from Billings for all changes in specifications, addition of work, and significant changes in quantities.
- d. Prepare monthly pay estimates and final pay estimates for construction and prepare contract administration forms on a monthly basis. These will be submitted in Billings approved format. The pay estimates shall include the actual bid item quantities.
- e. Issue notice to the Contractor to suspend work in whole or in part when, in the opinion of the Engineer, work is not being, or cannot be performed in accordance with the contract documents and specifications.
- f. Contact Billings for any proposed plan or specification changes when required due to initial design and engineering deficiencies in order to complete the project in its original concept. Plan and specification changes shall be prepared by the design engineer. The Engineer will obtain prior written approval from Billings for all changes in design.
- g. Prepare and recommend work change directives and change orders when necessary due to conditions encountered during construction. The Engineer is not authorized to order additional work without the approval of Billings' Task Director. Any work resulting in contract overages will be processed by approved change orders using Billings' standard forms.

F. Final Services.

1. Prepare record drawings and furnish Billings with one (1) complete hard copy for review and comment.
2. Following receipt of review comments from Billings, make necessary changes and furnish Billings with two (2) sets of reproducible mylars accompanied by one (1) disk containing the appropriate computer files for the record drawings (AutoCAD format, *.dwg).
 - a. Record drawings to show offset distances from centerline of rights-of-way to all public storm drains, water mains, and sanitary sewers.
 - b. Also shown will be any invert elevations for manholes, structures, and connections thereto. Elevations shall be shown at each street or right-of-way crossing plus any additional locations requested by the City Engineer or authorized representative.

- c. All above elevations shall be referenced to a permanent benchmark elevation – clearly shown on the plans.
 - d. Record drawings and traffic control submissions are due within 60 days of Contractor's final payment and before final payment to the Engineer.
3. Provide one (1) bound copy (may include multiple volumes) of a project manual through final completion to Billings within 90 days of final project acceptance. At a minimum, the project manual shall include: project specifications and contract documents, pay estimates, correspondence, any change orders, Contractor submittals, test reports, daily inspection reports, public involvement documentation, and other appropriate project records and documentation as determined by Billings.
 4. Schedule and make final inspection with Billings and certify to Billings all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
 5. Provide certification of completion in accordance with the approved plans and record drawings as necessary for submittal to the Montana Department of Environmental Quality within 90 days of project completion.
 6. Schedule and make an inspection with Billings prior to the expiration of the construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to Billings and Contractor and continue until acceptable.

Appendix B

Methods and Times of Payment

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.

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct 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 the following amounts:

Design, Construction Administration, and Materials Testing \$106,396.60

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

Section 2. 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 3. Corrections.

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

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

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

- 5. Field and laboratory testing and reports.
- 6. Resetting lost or destroyed monuments after construction.
- 7. Construction inspection in excess of basic services.
- 8. Construction inspection after expiration of the construction contract completion time.

9. Preparation of change orders, which do require additional engineering design or construction review.
10. Requests made or conditions identified by interested groups, which are in excess of basic services.
11. Revisions or additions when such revisions or additions are inconsistent with written approvals or instructions previously given, required by enactment or revisions of codes, laws, or regulations, or are due to other causes not solely within control of the Engineer.
12. As may be requested by Billings, additional design services not included in the original scope of work as outlined in Appendix A.
13. Additional time and/or services resulting from additional requirements imposed by any funding source for use of those funds, as outlined in Part I, Section 14 of this Contract.

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.

1. *Survey Crew Services.*

1-man Crew/2-man Crew

\$ Per Job

- NOTE:
- 1) Charge out rate for travel time to and from the site same as above.
 - 2) Minimum of one-hour charge for field crew time.

2. *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
Senior Professional Land Surveyor	\$115.00 /hour
Professional Land Surveyor	\$100.00 /hour
Staff Surveyor	\$ 80.00 /hour
Designer	\$ 80.00 /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
Field Survey Technician	\$ 70.00 /hour
Administrative/Clerical	\$ 60.00 /hour

Outside Consultants:

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

Independent Laboratories:

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

Appendix E

Project Schedule

Section 1. Design Services.

Based on a written notice to proceed by Billings on May 14, 2013, the completion date, including agency reviews, for the Engineer's work through final design shall be:

- 14. 30% Design – June 10, 2013
- 15. 90% PS&E Package – June 20, 2013
- 16. Final PS&E Package – July 3, 2013

Bidding Services.

Based on written notice from Billings of the advertisement for bids, the schedule for the Engineer's work for bidding services shall be:

17. Pre-Bid Conference – Tuesday following the final posting of the advertisement for bids.
18. Construction Bid Opening – second Tuesday following the final posting of the advertisement for bids. (Anticipated July 23, 2013)
19. Bid Tabulation and Recommendation Package – 12:00 p.m. MST on Friday following construction bid opening.

Construction Services.

Based on written notice of award (tentatively August 12, 2013) as provided in Appendix B, Section 3.G.1, the schedule for the Engineer's work for construction services based on **working days** shall be:

20. Pre-Construction Conference – within 10 days following notice of award.
21. The schedule for construction services shall be dictated by the term of the construction contract for this project and completion of the scope of work contained in Appendix A.

Delays in the Scope of Work.

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

Certificates of Insurance

See attached Certificates of Insurance.