

**Contract for Professional Engineering Services
For
Aronson Bypass Trail at Swords Park**

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 3 pages (Methods and Times of Payment);
- Appendix B consisting of 4 pages (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Contractor);
- Appendix D consisting of 3 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of ___ pages (Certificate(s) of Insurance);
- Appendix G consisting of 2 pages (Certificate of Contractor);
- Appendix H consisting of 1 page (Certificate of the City of Billings);
- Appendix I consisting of 2 pages (Notice to Contractor).

**PART I
SPECIAL PROVISIONS**

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the Park Planner of the Parks, Recreation and Public Lands 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.

May 13, 2013

- 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 Consultant shall provide deliverables as outlined in Appendix A 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 deliverables are received by the City of Billings.
 - a. Survey drawings shall be provided two (2) paper copies of As Built construction drawings and in Auto CAD.DWG file digital format. All files must be readable by the CITY; any files not readable or corrupted shall be resubmitted. Compressed Files are not acceptable. Drawings using separate reference files, X-ref, shall be bound into one file prior to submission.
 - b. Word processing files in Microsoft Word.doc format. Files must be readable by the CITY.
- 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, accompanied by the *Contractor Invoice Cover Letter*, 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 claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

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

Billings: Mark Jarvis, Park Planner
City of Billings
Parks, Recreation and Public Lands
390 North 23rd Street
Billings, Montana 59101 FAX: (406) 247-8641

Contractor: Danielle Scharf, PE
Sanderson Stewart
1300 North Transtech Way
Billings, Montana 59102 FAX: (406) 922-2768

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. See Appendix I.

Section 3. Non-Collusion Certification

- A. The parties to this Agreement have each executed a certification. The Certificate Of Contractor, labeled Appendix G, is attached and by this reference made a part of this Agreement. The Certificate Of The City of Billings, labeled Appendix H, is attached and by this reference made a part of this Agreement.

Section 4. 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 5. 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 6. 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: **Michael Sanderson, PE**
(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 7. 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 8. 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 10. 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 11. 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 12. 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 # _____

Cari Martin, City Clerk

APPROVED AS TO FORM:

Date: _____

By _____

BRENT BROOKS, City Attorney

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this ____ day of _____, 2004, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

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

Appendix A

Basic Services of Engineer

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 Contractor. For this project the Task Director designated for the Contractor is **Danielle Scharf, PE** working under the Principal-in-Charge, **Michael Sanderson, PE**.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Contractor and Billings. For this project, the Task Director designated is **Mark Jarvis, Park Planner**.

Section 3. Scope of Work.

The Aronson Bypass Trail project will include design and construction administration services for a new trail connection from the existing trail north of Alkali Creek and west of Aronson Avenue extending eastward under the Aronson Avenue bridge through parkland along Alkali Creek and then parallel to Swords Lane connecting to the existing sidewalk along the north side of Airport Road. The detailed scope of work includes the following steps/tasks.

- A. Project Management
 - 1. General project management tasks
 - 2. Weekly progress reports and up to 3 progress meetings with PRPL
 - 3. Contract Management/Billing
 - 4. Coordination with sub-consultants
 - 5. QA/QC
- B. Concept Development
 - 1. Conduct site visit to review alignment alternatives and prepare concept alignment
 - 2. Coordination meeting with MDT
- C. Topographic Survey
 - 1. Task management and coordination
 - 2. Conduct pre-survey research of property boundary and control information
 - 3. Survey computations
 - 4. Establish survey control
 - 5. Conduct design-level topographic survey of area identified for preferred alternative
 - 6. Pick up additional topographic survey as needed throughout design process
- D. Environmental Documentation
 - 1. Prepare Group (d) Categorical Exclusion
 - 2. Cultural resources review (see attached scope of work from Ethnoscience)

- E. Geotechnical Analysis
 1. Prepare a geotechnical report using previous nearby analysis if available. Assume that a minimum of two borings would be required for the new trail segment.
- F. Trail Signage Package
 1. Develop signage plans (including new kiosk/trailhead signage) based on PRPL standards/Swords Park Framework
 2. Develop trail mileage marker implementation plan
- G. Plans and Specifications
 1. Develop preliminary design documents
 2. Develop draft engineering specifications and contract documents
 3. Develop preliminary cost estimate based on unit prices from bids for recent comparable projects
 4. Submit preliminary design documents for PRPL review
 5. Revise documents as required and submit for CTEP review
- H. Construction Bid Package
 1. Make revisions to plans and specifications based CTEP review comments
 2. Prepare final bid documents with bid alternates
 3. Prepare final cost estimate
- I. Bid Process
 1. Prepare bid advertisement
 2. Facilitate pre-bid meeting
 3. Attend bid opening, prepare bid tabulation and recommendation of award letter
 4. Process contract documents
- J. Construction Staking
 1. Task management and coordination
 2. Upload staking alignments
 3. Build staking alignments
 4. Slope stake or O/S stake trail for cut and fill
 5. Stake multi-use trail at 2-ft O/S and 50-ft stationing for approximately 1800 LF
 6. Miscellaneous staking for turnouts, parking areas, etc.
- K. Construction Administration
 1. Facilitate pre-construction meeting
 2. Shop drawing review
 3. Construction inspection for key construction activities
 4. Construction testing coordination and review
 5. Process pay applications and change orders
- L. Project Closeout
 1. Substantial completion walkthrough and punch list
 2. Complete and submit as-built drawings
 3. Conduct one-year warranty inspection and prepare punch list

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

- A. For services rendered as outlined in Appendix A, the Contractor shall be paid a total of **\$52,245.00** as follows:

PROPOSED FEE SCHEDULE:

The attached Budget Worksheet (pages 1 and 2) provides a breakdown of the project labor hours and resulting proposed Fee for Services. The fee includes expenses. See Attachment A.

FEE SCHEDULE:

<u>Task</u>	<u>FEE</u>
Task 1 – Project Management	\$3,780.00
Task 2 – Concept Development	\$2,230.00
Task 3 – Topographic Survey	\$2,915.00
Task 4 – Environmental documentation	\$6,232.00
Task 5 – Geotechnical Analysis	\$2,960.00
Task 6 – Trail Signage Package	\$3,720.00
Task 7 – Plans and Specifications	\$10,115.00
Task 8 – Construction Bid Package	\$2,050.00
Task 12 – Bid Process	\$1,620.00
Task 13 – Construction Staking	\$4,530.00
Task 14 – Construction Administration	\$9,340.00
Task 15 – Project Closeout	\$1,240.00
Expenses (3.5% of Labor Only)	\$1,513.00
Direct Sub-consultant Expenses	<u>\$ 0.00</u>

TOTAL PROPOSED FEE: \$52,245.00

- 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 which are beyond the scope and intent of this work 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.

ARONSON BYPASS TRAIL - BLNGS
 STPE 1099(84) UPN 7934
 4/16/2013

Task Description	Sanderson Stewart Staff Position/Charge-Out Rate								Sanderson Stewart Total	Ethnoscience	Terracon	Total incl. Sub-Consultants
	Senior Engineer	Landscape Architect	Project Engineer	CADD Technician/Designer	Construction Inspector	Sen. Professional Land Surveyor	Staff Surveyor	Admin./ Clerical				
	\$135.00	\$110.00	\$90.00	\$80.00	\$80.00	\$115.00	\$80.00	\$60.00		At cost	At cost	
Task 1: Project Management												
a. General Project Management	8								\$1,080.00			
b. Progress Reports and Meetings	8								\$1,080.00			
c. Contract Management/Billing	4								\$540.00			
d. Coordination with Sub-consultants	4								\$540.00			
e. QA/QC	4								\$540.00			
Subtotal for Task 1	\$3,780.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,780.00	\$0.00	\$0.00	\$3,780.00
Task 2: Concept Development												
a. Site Visits and Concept Alignments	8	8							\$1,960.00			
b. Meeting w/ MDT	2								\$270.00			
Subtotal for Task 2	\$1,350.00	\$880.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,230.00	\$0.00	\$0.00	\$2,230.00
Task 3: Topographic Survey												
a. Task Management and Coordination	1					2			\$365.00			
b. Pre-Survey Preparation and Research						2	1		\$310.00			
c. Survey Computation							4		\$320.00			
d. Survey Control							4		\$320.00			
e. Topographic Survey							16		\$1,280.00			
f. Pick-up Topographic Survey							4		\$320.00			
Subtotal for Task 3	\$135.00	\$0.00	\$0.00	\$0.00	\$0.00	\$460.00	\$2,320.00	\$0.00	\$2,915.00	\$0.00	\$0.00	\$2,915.00
Task 4: Environmental Documentation												
a. Prepare Group (d) Categorical Exclusion	20								\$2,700.00			
b. Cultural Resources Review									\$0.00	\$3,532.00		
Subtotal for Task 4	\$2,700.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,700.00	\$3,532.00	\$0.00	\$6,232.00
Task 5: Geotech Analysis												
a. Complete Geotech Analysis and Report									\$0.00		\$2,960.00	
Subtotal for Task 5	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,960.00	\$2,960.00
Task 6: Trail Signage Package												
a. Develop trail signage plans	4	16							\$2,300.00			
b. Develop trail mileage marker implementation plan	4	8							\$1,420.00			
Subtotal for Task 6	\$1,080.00	\$2,640.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,720.00	\$0.00	\$0.00	\$3,720.00
Task 7: Plans and Specifications												
a. Preliminary design documents	8	8	20	40					\$6,960.00			
b. Draft engineering specifications and contract docs	4		12				1		\$1,680.00			
c. Preliminary cost estimate	2		4						\$630.00			
d. Submit preliminary documents for PRPL review	1						1		\$195.00			
e. Revise documents and submit for CTEP Review	2			4			1		\$650.00			
Subtotal for Task 7	\$2,295.00	\$880.00	\$3,240.00	\$3,520.00	\$0.00	\$0.00	\$180.00	\$0.00	\$10,115.00	\$0.00	\$0.00	\$10,115.00
Task 8: Construction Bid Package												
a. Revise documents based on CTEP review	4			8					\$1,180.00			
b. Prepare final bid documents with bid alternates	4						1		\$600.00			
c. Prepare final cost estimate	2								\$270.00			
Subtotal for Task 8	\$1,350.00	\$0.00	\$0.00	\$640.00	\$0.00	\$0.00	\$0.00	\$60.00	\$2,050.00	\$0.00	\$0.00	\$2,050.00
Task 9: Bid Process												
a. Bid advertisement	2								\$270.00			
b. Facilitate pre-bid meeting	4								\$540.00			
c. Bid opening, bid tabulation and recommendation of award	4								\$540.00			
d. Process contract documents	2								\$270.00			
Subtotal for Task 9	\$1,620.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,620.00	\$0.00	\$0.00	\$1,620.00
Task 10: Construction Staking												
a. Task Management and Coordination						4			\$460.00			
b. Upload Alignments						1			\$115.00			
c. Build Staking Alignments						1			\$115.00			
d. Slope Stake or O/S Stake Trail for Cut and Fill							20		\$1,600.00			
e. Trail Staking 20/S 507 STA for 1800 LF							20		\$1,600.00			
f. Miscellaneous Staking							8		\$640.00			
Subtotal for Task 10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$690.00	\$3,840.00	\$0.00	\$4,530.00	\$0.00	\$0.00	\$4,530.00
Task 11: Construction Administration												
a. Facilitate pre-construction meeting	2								\$270.00			
b. Shop drawing review	2								\$270.00			
c. Construction inspection	4				80				\$6,940.00			
d. Construction testing coordination and review					4				\$320.00		\$1,000.00	
e. Process pay applications and change orders	4								\$540.00			
Subtotal for Task 11	\$1,620.00	\$0.00	\$0.00	\$0.00	\$6,720.00	\$0.00	\$0.00	\$0.00	\$8,340.00	\$0.00	\$1,000.00	\$9,340.00
Task 12: Project Closeout												
a. Substantial completion walkthrough and punch list	4								\$540.00			
b. As-built drawings	2			2					\$430.00			
c. One-year warranty inspection and punch list	2								\$270.00			
Subtotal for Task 12	\$1,080.00	\$0.00	\$0.00	\$160.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,240.00	\$0.00	\$0.00	\$1,240.00
Total Hours	126	40	36	54	84	10	77	4	431			
Total Labor Fee	\$17,010.00	\$4,400.00	\$3,240.00	\$4,320.00	\$6,720.00	\$1,150.00	\$6,160.00	\$240.00	\$43,240.00	\$3,532.00	\$3,960.00	\$50,732.00
Administrative Fee (3.5% of Labor Only)	\$595.00	\$154.00	\$113.00	\$151.00	\$235.00	\$40.00	\$216.00	\$8.00	\$1,513.00	\$0.00	\$0.00	\$1,513.00
Direct Sub-consultant Expenses									\$0.00	\$0.00	\$0.00	\$0.00
Schedule I Total (Sanderson Stewart, Subs, Project Total)									\$44,753.00	\$3,532.00	\$3,960.00	\$52,245.00

Appendix C

Additional Services of Engineer

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

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

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Appendix D

Schedule of Professional Fees

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.

Section 1. Professional Services.

- A. The following 2 pages provide a breakdown of professional fees.



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

1300 North Transtech Way
Billings, Montana 59102
Phone 406.656.5255
Fax 406.656.0967
www.sandersonstewart.com

SURVEY CREW SERVICES

1-man Crew/2-man Crew \$ Per Job

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.

ADMINISTRATIVE EXPENSES

Administrative expenses (including copies, prints, phone, postage, materials, and travel) based on professional services only 3.5% *

* *unless modified by contract*

08-01-12

Appendix E

Project Schedule

Section 1. Project Timeline

- A. Based on Contract approval by Billings City Council, a notice to proceed will be issued by Billings on or about May 14, 2013, the completion date for the Contractor's work shall be December 31, 2013.
- B. Upon notice to proceed, Contractor shall prepare a Work Plan Schedule demonstrating the approved Project Scope and proposed timeline for the project.
- C. Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or cause by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.
- D. If the Contractor is behind on this contract due to no fault of Billings, then the Contractor hereby acknowledges the right of Billings to withhold future contracts to the Contractor in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F

Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

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Appendix G

CERTIFICATE OF CONTRACTOR

I am a duly authorized representative of the firm of **Sanderson Stewart**, whose address is 1300 North Transtech Way, Billings, MT 59102 and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:
 - a. has employed or retained for commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
 - b. has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
 - c. has paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; with no exceptions.

2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:
 - a. is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any Federal agency or any agency of any State government;
 - b. has, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - c. is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2.b of this certification; or
 - d. has had one or more public transactions terminated for cause or default within a three-year period preceding this Agreement.

3. That to the best of my knowledge and belief:
 - a. no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement; and

- b. if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a

Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the City of Billings, State of Montana, Department of Transportation and the Federal Highway Administration, in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

Appendix H

CERTIFICATE OF THE CITY OF BILLINGS

I hereby certify that I am the Mayor of the City of Billings of the State of Montana, and that the above consulting firm, or his representatives, has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- a. employ or retain, or agree to employ or retain, any firm or person, or
- b. pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished the Montana Department of Transportation and Federal Highway Administration in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

Mayor

Attachment I

NOTICE TO CONTRACTOR

During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

A. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

1. Compliance with Regulations: The Contractor shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even though only State funding is here involved.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination.
4. Information and Reports: Contractor will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Local Entity, MDT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Local Entity, MDT or the FHWA as requested, setting forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, Local Entity or MDT may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - a. withholding payments to the Contractor under the Agreement until the Contractor complies, and/or
 - b. cancellation, termination or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions: Contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Contractor will take such action with respect to any subcontract or procurement as the Local Entity, MDT or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor is sued or is

threatened with litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the Local Entity to enter into the litigation to protect the interests of the Local Entity or State, and, in addition, the Contractor or the Local Entity may request the United States to enter into such litigation to protect the interests of the United States.

B. COMPLIANCE WITH MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, 49-3-207, MCA

In accordance with Section 49-3-207, MCA, Contractor agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

1. Contractor will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
2. Contractor will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Contractor will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Contractor. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Contractor."
3. All video recordings produced and created under the Agreement will be closed-captioned.

D. COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR 26.

Each Agreement the Local Entity signs with a Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."