

# Contract for Professional Engineering Services

## City of Billings W.O. 14-01--Schedule 2 SANITARY SEWER MAIN REPLACEMENT

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

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 7 pages (Basic Services of Engineer);
- Appendix B consisting of 1 page (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Engineer);
- Appendix D consisting of 3 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of 22 pages (Certificate(s) of Insurance)

### PART I SPECIAL PROVISIONS

#### Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or the designee.
- B. "Billings" means the City of Billings.
- C. "Engineer" means Morrison Maierle, Inc.
- D. "Contractor" means the third party responsible for the physical construction of the project.

#### Section 2. Scope of Services.

- A. The Engineer shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Engineer in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Engineer may provide, at its own expense, any other services that are consistent with this Contract.

- D. The Engineer shall provide as-built drawings as specified hereafter, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. ~~The Engineer shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.~~

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Engineer shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2014.

Section 4. Compensation; Method of Payment.

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

Section 5. Termination of the Engineer's Services.

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

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

Section 6. Duties Upon Termination

- A. If Billings terminates the Engineer's services for convenience, Billings shall pay the Engineer for its actual costs reasonably incurred in performing before termination

and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Engineer shall become the property of Billings.

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

#### Section 7. Insurance.

- A. The Engineer shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Engineer shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Engineer shall provide the following insurance:
  - 1. Workers' compensation and employer's liability coverage as required by Montana law.
  - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
  - 3. Commercial automobile liability -- \$1,500,000 per accident.
  - 4. Professional liability in the amount of \$1,500,000 per occurrence.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: City Engineer (Debi Meling, P.E.)  
City of Billings  
Public Works Department  
2224 Montana Avenue  
Billings, Montana 59101 FAX: (406) 237-6291 / PHONE : (406) 657-3097

Engineer: Carl Anderson, P.E.  
Morrison Maierle, Inc.  
315 North 25<sup>th</sup> Street, Suite 102  
Billings, Montana 59101 FAX: (406) 671-3255 / PHONE: (406) 656-6000

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

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

Section 13. Financial Management System.

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

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Engineer's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Engineer;
- G. Provides accounting records supported by source documentation; and

- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

DRAFT

**PART II**  
**GENERAL CONTRACT PROVISIONS**

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

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

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Engineer: President or Vice President  
(title of position)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

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

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

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

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

DRAFT



## Appendix A

DRAFT

### 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 Engineer. For this project the Task Director designated for the Engineer is Casey M. Hanson, PE.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Randy Straus, PE working under Debi Meling, PE, Engineering Division Manager.

Section 3. Scope of Work.

The scope of work includes the following items:

1. The Engineer shall perform the work outlined within this agreement that includes the completion of design and construction phase services for 2014 Sanitary Sewer Replacement; Engineer shall assist Billings in identifying areas where sewer main alignments best serve the needs of the project area. Engineer will coordinate work efforts with other related or unrelated improvement projects expected to be completed concurrently in the project area. Design and construction work for the 2014 Sanitary Sewer Replacement project has been based on 15,000 linear feet of sewer main.

Completion of said design shall include the following tasks:

**A. Preliminary Engineering Services (30% Design)**

1. Field surveys within the project limits and extending to appropriate match lines. Data collection shall include establishment of permanent horizontal and vertical control, topographic features and existing property pins. Engineer will provide appropriate temporary traffic control measures for all data collection completed in traffic areas. Field survey data will be utilized by the Engineer to develop preliminary project base mapping.
2. Research will be performed to verify existing right-of-way locations utilizing platted information, ownership records and found property pins.
3. Apply for all permits, licenses, and approvals necessary to construct the project. All permit and licensing fees will be paid by Billings.
4. Geotechnical engineering as provided by sub consultant to consultant shall include field sampling, laboratory testing and review of subsurface soils to determine appropriate pavement section design alternatives, sub-grade treatment, groundwater conditions, and foundations for utility installations. Recommendations for specific

construction materials established in this review will be included in the project plans and specifications. Design geotechnical work will include 30 soil borings (15 at 20' deep and 15 at 25' deep) and 20 asphalt cores.

5. Coordinate with Billings staff and other public and private stakeholders in the development of roadway and utility improvements.
6. Coordination with property owners adjacent to the project.
7. Planning and facilitating one (1) public informational meeting during the design phase.
8. Design of utility alignments and cross-sections; sewer main; and related improvements.
9. Coordination with owners residents in piping or abandonment alternatives within the right-of-way. This may include verification of user(s).
10. Confirm appropriate utility sizing within the project limits. Design replacement of existing utilities.
11. Coordinating the identification and potential relocation of private utilities including, but not limited to, overhead and underground power, cable TV, underground telephone and communications, petroleum oil, and natural gas.
12. Prepare and submit of a Preliminary Design Report, report shall summarize project related design parameters; public utility improvements; right-of-way impacts; stakeholder impacts; traffic operations and traffic control measures; pedestrian improvements; corridor landscaping; and preliminary construction costs. Up to two (2) conceptual alternatives may also be considered for certain utility improvements. The report will also include a preliminary environmental evaluation, which reviews historical data related to the project area, including hazardous waste research and other know environmental issues. Five (5) copies of the Preliminary Design Report and two (2) 24"x36" copies and two (2) 11"x17" copies of 30% plans will be provided to the City for review.

#### **B. Preliminary Engineering Services (70% Design)**

1. The 70% design package will incorporate Billings' comments pertaining to the Preliminary Design Report and preliminary public utility plans. Updated roadway plan and profile sheets will be presented, where applicable, as well as further development of the water main, and other recommended improvements.

Two (2) 24"x36" copies and two (2) 11"x17" copies of 70% plans and three (3) project specifications will be provided to the City for review.

2. Attend periodic design review meetings with Billings.
3. Send 70% construction plans to the private utilities for review and comment, and hold a subsequent coordination meeting with the private utilities to assemble and evaluate comments.

**C. Preliminary Engineering Services (90% & Final 100% Design)**

1. The 90% design package will incorporate comments received from Billings, after the 70% design package submittal and periodic design review meetings are complete. The plan package will include design of the plan and profile utilities drawings, related traffic control measures, sewer main, and other recommended improvements.

Two (2) 24"x36" copies and two (2) 11"x17" copies of 70% plans and three (3) project specifications will be provided to the City for review.

2. Attend periodic design review meetings with Billings.
3. Engineer will provide final design services, upon receiving Billings' approval of the 90% plan package submittal. Plans and specifications will be prepared in accordance with the Montana Public Works Standard Specifications, Sixth Edition, April 2010 and the most current edition of the City of Billings Standard Modifications.
4. Stamp and sign all plans and specifications with seal of Professional Engineer in charge.
5. Computation of project construction quantities and preparation of an engineer's opinion of probable construction cost.
6. Prepare and supply of all project specifications and bidding documents necessary for bidding and construction. Bid advertisement text will be provided to Billings for publication. Schedule and hold a pre-bid conference, publish meeting minutes, and prepare any necessary addenda. Conduct a pre-bid field review with contractors as necessary. Attend the bid opening, analyze bids, submit a bid tabulation, and make a construction contract award recommendation.
7. Preparation of a complete construction traffic control plan. The plan will show required detours, required signing, applicable construction phasing.
8. Furnish contract plans and specifications in sufficient number for bidding and contracting the project. It is anticipated that forty (40) 11"x17" copies will be required. Proceeds from plan sales will be credited against the project.
9. Submittal of seven (7) copies of construction contract documents.
10. Electronic submittal of construction plans and bid documents.
11. Submittal of two (2) copies of the project specifications, two (2) half-size plan sets, contract-bidding documents, design report and certified sewer checklist to Montana department of Environmental Quality for approval.

**D. Construction Services**

1. Construction Layout and Control.

- i. 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.
- ii. Reference and preserve all existing survey monuments and benchmarks. All monuments required within the project shall be punched and elevations shown on as-built drawings.

## 2. Inspection and Testing.

- i. Coordinate appropriate testing of materials intended for incorporation into the project and require documentation of testing results.
- ii. Provide review of construction to check the Contractor's work for compliance with the drawings, specifications, and other applicable documents, codes or standards. Review of work shall be made on a full-time basis 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; paving; signalization, lighting, and striping. 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.
- iii. 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.
- iv. The Engineer shall record the location of all underground utilities (including, but not limited to, conduit for all street lighting, signalization, or flasher assemblies) installed under and on the surface within the public right-of-way and show these facilities, together with a representation of the general corridors in which other underground utilities are located, on the record drawings.

## 3. Submittal Review and Document Preparation.

- i. 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.
- ii. Review 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.

- iii. Prepare change orders that do not require additional engineering design or inspection.
- iv. 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.
- v. Issue notice to the Contractor to suspend work in whole or part when, in the opinion of the Engineer, and when directed by the Owner, work is not being, or cannot be performed in accordance with the contract documents and specifications.
- vi. 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.
- vii. 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 overage will be processed by approved change orders using Billings standard format.

#### 4. Public Involvement Services.

- i. Schedule and hold a neighborhood meeting at the beginning of construction. At a minimum, all affected property owners and businesses shall be invited to attend. Engineer will develop a mailing list to be used for notification.
- ii. Develop an overall public involvement plan to be used during construction. At a minimum, plan will include provisions for providing information to Billings to be included in monthly newsletters; press releases and road closure notifications; weekly updates (figures and narratives) showing updated construction areas and traffic control layouts for Billings to post online (and to email to affected property owners at their request); weekly construction meetings; and Contractor handouts. Plan to approved by Billings prior to implementation. Additional approvals by Billings may be required for release of public involvement plan materials to the public.
- iii. In addition to holding one (1) neighborhood meeting during the design phase of the project, schedule and hold one (1) public meeting during the course of construction, at Billings' request. Meeting times and locations are to be determined by Engineer and approved by Billings. Additional meetings if requested by Billings would be compensated for in accordance with the provisions of this contract.

#### 5. Final Services.

- i. Prepare record drawings (As-Built) and furnish Billings with one (1) paper set for review and comments.

- ii. Following receipt of review comments from Billings, make necessary changes and furnish Billings with two (2) sets of 24"x36" paper, one (1) Portable Document Format (PDF) of 24"x36" size, and one (1) electronic set in AutoCAD (\*.dwg) format, of record drawings.
  - a. Record drawings to show offset distances from centerline of rights-of-way to all sanitary sewer mains.
  - b. Locations of sewer services based on measurements from property lines.
  - c. Invert elevations marked for each manhole, structure, and each connection thereto, as well as at the end of each stubbed sanitary sewer line, and stubbed sanitary service line.
  - d. All above elevations shall be referenced to a permanent benchmark elevation – clearly show on the plans.
  - e. Record drawings are due within 60 days of Contractor's final payment and before final payment to the Engineer.
- iii. Provide one (1) bound copy (may include multiple volumes) of a project manual through final completion. 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 plan and documentation, and other appropriate project records as determined by Billings.
- iv. 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.
- v. Schedule and make an inspection with Billings prior to the expiration of 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 W.O. 14-01--Schedule 2; Sanitary Sewer Main Replacement

---

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

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

Billings shall deduct five percent (5%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered under Appendix A of this Agreement, the Engineer shall be paid based upon actual time accrued, but not to exceed \$617,728.00 (Six Hundred Seventeen Thousand Seven Hundred Twenty Eight and No/100 Dollars) based on the following tasks:

Task 1	Project Management	\$5,256.00
Task 2	Design Survey	\$80,497.00
Task 3	Geotechnical	\$74,250.00
Task 4	Design	\$191,879.00
Task 5	Construction Administration	\$243,435.00
Task 6	Closeout	\$16,891.00
Task 7	Quality Assurance	\$5,520.00

- 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 by interested groups at the agency or public meetings which are beyond the scope and intent of the services to be performed under Appendix A shall be paid for on an hourly basis at the applicable fees in Appendix D or by an addendum to this Agreement.

#### Section 3. Corrections.

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

#### Section 4. Fee Increases

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

## Appendix C

### Additional Services of Engineer W.O. 14-01--Schedule 2; Sanitary Sewer Replacement

---

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

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

DRAFT

## Appendix D

### Schedule of Professional Fees W.O. 14-01--Schedule 2; Sanitary Sewer Main Replacement

---

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

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

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

DRAFT

## Appendix E

### Project Schedule W.O. 14-01--Schedule 2; Sanitary Sewer Main Replacement

---

Based on a notice to proceed by Billings date no later than October 16, 2013, the completion date for the Engineer's work through final design shall be:

1. Preliminary Engineering Services (30% Design): December 16, 2013
2. Preliminary Engineering Services (70% Design): January 27, 2014
3. Final Engineering Services (100% Design): March 17, 2014

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

**Appendix F**

**Certificate(s) of Insurance  
W.O. 14-01--Schedule 2; Sanitary Sewer Replacement**

---

Attach Certificate(s) of Insurance

DRAFT