

# Contract for Professional Architectural and Engineering Services

## Project Work Order 15-06 Poly Drive

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In consideration of the mutual promises herein, City of Billings and Sanderson Stewart agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 9 pages (Basic Services of Contractor);

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

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

Appendix D consisting of 3 pages (Schedule of Professional Fees);

Appendix E consisting of 1 page (Project Schedule);

Appendix F consisting of 3 pages (Certificate(s) of Insurance); and

### **PART I SPECIAL PROVISIONS**

#### Section 1. Definitions.

In this Contract:

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

#### Section 2. Scope of Services.

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

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

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2016.

Section 4. Compensation; Method of Payment.

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

Section 5. Termination of the Contractor's Services.

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

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

Section 6. Duties Upon Termination

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

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
  - 1. Workers' compensation and employer's liability coverage as required by Montana law.
  - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
  - 3. Commercial automobile liability -- \$1,500,000 per accident.
  - 4. Professional liability in the amount of \$1,500,000 per occurrence.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.

- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: City Engineer (Debi Meling)  
City of Billings  
Public Works - Engineering  
2224 Montana Avenue  
Billings, Montana 59101 FAX: (406) 237-6291

Contractor: DOWL HKM  
Wade Irion, P.E.  
Regional Manager  
222 N. 32<sup>nd</sup> Street, Suite 700  
Billings, MT 59101 FAX: (406) 656-6398

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

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

Section 13. Financial Management System.

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

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

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

#### Section 14. Funding Requirements.

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

#### Section 15. Subcontracts.

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

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

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

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

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

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Contractor: Wade Irion, P.E., Regional Engineer

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

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

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

Contractor

\_\_\_\_\_  
City Council or Designee

\_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

IRS Tax ID # \_\_\_\_\_

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

Date: \_\_\_\_\_

By \_\_\_\_\_

BRENT BROOKS, City Attorney

STATE OF MONTANA            )  
  :ss.  
COUNTY OF YELLOWSTONE    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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

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#### Engineer's Rights and Duties.

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

Billings Rights and Duties.

- K. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
  
- L. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Chris Hertz, P.E.

Scope of Work.

**Task 100 – Project and Public Involvement**

- 1) Project scoping meeting (field and office review) with City personnel
- 2) Investigate available information, documents, and studies
- 3) General coordination with the City of Billings to begin project
- 4) Coordination and development of public involvement:
  - a. DOWL HKM will draft a News Release regarding the start of the project to be submitted to the City for distribution to media outlets and for posting on the City's website.
  - b. DOWL HKM will develop an informational letter to be sent by the City to all adjacent property owners within the limits of the corridor. This letter will serve as the initial public outreach for this project.
  - c. DOWL HKM will address questions and participate in individual meetings with property owners and City staff, as directed by the City.
  - d. DOWL HKM will attend and assist with one (1) public informational meeting. For the public informational meeting, DOWL HKM will:
    - i. Draft a meeting announcement letter for all landowners adjacent to the project corridor to be used by the City,
    - ii. Provide figures and/or electronic presentation materials for the meeting;
    - iii. Monitor sign-in sheets during the meeting; and
    - iv. Draft meeting minutes after the meeting.

For the public informational meeting, the City will:

- i. Set up meeting location and time;
  - ii. Advertise all meeting announcements;
  - iii. Send meeting announcement letters to property owners adjacent to the project; and
  - iv. Moderate the meeting.
- Fees associated with advertisements, mailings, or securing meeting locations will be the responsibility of the City.
- 5) Prepare monthly progress reports for the City detailing the work completed that month, expected work to be accomplished in the coming period, and listing action items for both DOWL HKM and the City. The monthly progress reports will be completed and submitted with each monthly invoice.

***Submittals: Draft News Release  
Property Owner Informational Letter  
Meeting Announcement  
Monthly Progress Reports***

**Task 110 – Right-of-Way, Utilities, and Mapping**

- 1) The City will provide DOWL HKM with all existing City right-of-way plans and as-built or record drawings applicable to this project.

- 2) DOWL HKM will acquire available plats and certificates of survey to develop property lines within the corridor. A recorded Certificate of Survey for a retracement of public right-of-way is not included in this scope of services. DOWL HKM will survey property controlling corners (e.g. section corners, quarter corners, centerline monument boxes) along the corridor and property corners along the corridor that can be searched and tied with minimal effort. Property corners that are not found will not be reset.
- 3) The City will provide DOWL HKM with an ownership report listing current property ownership adjacent to the project corridor. The information will be included on the plan sheets to identify addresses and owners of each parcel along the corridor. While right-of-way is not expected to be necessary for this project, the ownership report will serve as a framework for both the public outreach as well as the identification of right-of-way needs, if necessary.
- 4) Unless directed otherwise by the City, DOWL HKM will use the following coordinate system parameters:
  - a. Montana State Plane Zone 2500 (NAD83-2011) with horizontal units expressed in international feet.
  - b. Vertical datum will be NAVD88 with GPS elevations derived from GEOID12A and vertical units expressed in U.S. survey feet.DOWL HKM will provide coordinate listings of benchmarks and control stations for new and existing survey control in the plans.
- 5) DOWL HKM will coordinate with private utility companies for the location, type, and size of their utilities within the project corridor. Utility information will be determined through utility-provided atlas mapping, Montana One Call, and surface features as marked or indicated by the respective owners. DOWL HKM will notify the City of any non-responsive utility companies.
- 6) Phase II SUE (soft digs) is not included as part of this scope of services. DOWL HKM will coordinate with the City if soft digs are determined to be necessary prior to construction.

#### **Task 120 – Preliminary Geotechnical and Materials**

- 1) The City will provide geotechnical information and reports submitted for adjacent road projects, subdivisions, or housing developments, if available. DOWL HKM will review available geotechnical information provided by the City and will research and review regional geology, soil survey, site setting and topography.
- 2) DOWL HKM will conduct a site investigation including field exploration, borings, and laboratory testing for the project. In particular, DOWL HKM will:
  - a. Facilitate and conduct nine (9) borings approximately every 500 feet to a depth of approximately 15 to 20 feet;
  - b. Perform laboratory testing including classification (gradation & Atterberg Limits), moisture content, and CBR; and
  - c. Identify groundwater levels encountered at the time of field exploration.
- 3) A visual inventory of existing surfacing will be conducted for the project area to estimate what sections of roadway, if any, could be reused. Up to five (5) pavement cores will be collected to supplement this review.
- 4) DOWL HKM will use City-supplied traffic data (ADT, vehicle classifications) to develop a preliminary surfacing design for approval by the City.
- 5) A Preliminary Geotechnical Technical Memorandum including a review of the existing data, surfacing evaluation, subsurface exploration, laboratory testing, and a preliminary surfacing design will be prepared for the City. Two (2) copies of the memo will be issued to the City.

***Submittal: Preliminary Geotechnical Memorandum***

**Task 130 – Preliminary Traffic**

- 1) The City has identified the need for an enhanced pedestrian crossing at 32<sup>nd</sup> Street West across Poly Drive. DOWL HKM will coordinate with the City to determine the type of crossing to develop at this location. No new field data will be collected.
- 2) DOWL HKM will inventory existing signing along the corridor within the project limits.
- 3) The proposed cross section includes one driving lane, a bike lane, and parking lane on both sides of the centerline. Lane widths will accommodate all improvements within the existing right-of-way. DOWL HKM will develop preliminary pavement marking plans as part of Task 160.
- 4) DOWL HKM will design a traffic signal at the Poly Drive and Zimmerman Trail intersection, replacing the current four-way stop with supplemental flashing beacons. Under this task, the City will:
  - a. Provide DOWL HKM with record drawing information about the current flashing beacon installation and operation.DOWL HKM will:
  - a. Review the record drawing information and field verify that the record drawing information is accurate; and
  - b. Preliminarily layout the traffic signal equipment to ensure that the equipment can be installed within existing right-of-way and meet all MUTCD, ADA, and City of Billings design requirements.
- 5) An operational analysis, level-of-service analysis, or signal warrant analysis for the corridor or the intersections within the project limits are not anticipated for the project and are not included in this scope of services. DOWL HKM assumes the City has determined the proposed traffic signal installation at Poly Drive and Zimmerman Trail meets MUTCD traffic signal warrants.

**Task 140 – Preliminary Utility Design**

- 1) DOWL HKM will coordinate with PUD for replacement of approximately 1,500 LF of sanitary sewer main, including manholes and service reconnections, between 32<sup>nd</sup> Street and Zimmerman Trail. This scope does not include replacement of side street mains within the Poly right-of-way limits. DOWL HKM will coordinate with PUD for the appropriate design criteria. Hydraulic modeling, field flow metering, or other pipe sizing analyses are not included in this scope.
- 2) DOWL HKM will acquire from City all available as-builts, sewer service line records, CCTV inspections, and other information and studies as applicable. DOWL HKM will incorporate available information into design drawings and specifications.
- 3) Design of sewer main alignment, profile, and related improvements, to a 30% design level to be included in preliminary roadway submittal. Evaluate project segments for the feasibility of utilizing trenchless utility replacement methods, and design trenchless alternatives as applicable.
- 4) Geotechnical engineering information including field sampling, laboratory testing and review of subsurface soils gathered under Task 120 “Preliminary Geotechnical and Materials” will be used to determine design alternatives, subgrade treatment, groundwater conditions, pipe material selections, and foundations for utility installations.

***Submittal: Trenchless Evaluation Memorandum***

### **Task 150 – Preliminary Hydraulics**

- 1) Identify existing flooding issues along the project area, including interviews with City of Billings Maintenance personnel to understand existing drainage patterns and problems.
- 2) Compile and review storm drainage reports and as-built drawings from City of Billings projects W.O. 01-06 and W.O. 89-06.
- 3) Visit the site to inventory the existing storm drain facilities and verify facilities depicted on the atlas maps.
- 4) Identify and evaluate drainage basins, drainage patterns, and basin characteristics from the area north of Poly Drive between Poly Drive and the High Ditch (on-site visual inspection).
- 5) DOWL HKM currently maintains a stormwater model for a majority of the Poly Drive Study Area. DOWL HKM will update the stormwater model to reflect recent changes in the area, including changes from the Zimmerman Trail extension project and the Rimrock Road – Shiloh Rd to Forsythia Blvd project.
- 6) DOWL HKM will perform a drainage evaluation for the Poly Drive Study Area. The drainage evaluation will include the existing storm facilities, a proposed Poly Drive storm drain system, and connecting the new Poly Drive storm drain system to the existing Zimmerman Trail storm drain.
- 7) DOWL HKM will evaluate improvements to the Zimmerman Trail storm drain system at the intersection with Poly Drive to reduce losses associated with the two current 90° bends.
- 8) DOWL HKM will use the stormwater model to size the new storm drain system along Poly Drive, including sizing and locating inlets, determining the storm drain pipe sizing, evaluating flood hazards, and determining improvements to the connection to Zimmerman Trail storm drain.
- 9) DOWL HKM will develop a memorandum discussing the stormwater design for Poly Drive and potential improvements to increase efficiency in the Zimmerman Trail system.
- 10) DOWL HKM will develop preliminary plan and profile SD alignment for the preliminary roadway design submittal. Storm drain details including lateral profiles and structural details will be provided under Task 250.

### ***Submittal: Preliminary Storm Drain Memorandum***

### **Task 160 – Preliminary Roadway Design and Plan Review**

- 1) The typical section for this segment will mirror the typical section directly east of the proposed project limits which includes driving lanes, bike lanes, on-street parking, curb, gutter and sidewalks. Proposed widths will accommodate all improvements within the existing right-of-way.
- 2) DOWL HKM will develop a preliminary design that will include the following:
  - a. Strip Plot. The strip plot will include of the:
    - i. Proposed horizontal and vertical alignment (plan and profile)
    - ii. Proposed construction limits
    - iii. Preliminary sanitary sewer main alignment (Task 140)
    - iv. Preliminary storm drainage alignment (Task 150)
    - v. Preliminary pavement markings
    - vi. Intersection improvements (preliminary layout only)
    - vii. Existing right-of-way

- viii. Existing utilities
  - b. Plan Sheets. Plan sheets will contain:
    - i. Typical section(s)
    - ii. Preliminary traffic signal layout (Task 130)
  - c. Preliminary quantities and opinion of probable construction cost
- 3) DOWL HKM will perform Quality Assurance and Quality Control practices during the preliminary design and especially prior to preliminary plan review meeting.
  - 4) DOWL HKM will conduct an “over-the shoulder” plan review meeting with City staff to discuss the preliminary plan package. DOWL HKM will document the City’s comments during the “over-the-shoulder” plan review meeting and distribute to the City.
  - 5) DOWL HKM will create roadway, storm drain, and waterline plan sheets for distribution to the private utility companies on the project. One copy of the preliminary plans will be sent to each private utility company for their review and comment.

***Submittals: Preliminary Design Package  
Opinion of Probable Construction Costs***

**Task 220 – Final Geotechnical and Materials**

- 1) Develop final surfacing design recommendations based on City’s comments to the preliminary geotechnical memorandum and design considerations developed in Task 160.
- 2) DOWL HKM will submit a final geotechnical memorandum to the City for their record and to be included in the final construction documents.

***Submittal: Final Geotechnical Memorandum***

**Task 230 – Final Traffic**

- 1) DOWL HKM will prepare Pavement Marking detail sheets and plan sheets for the Pre-Final Design Package.
- 2) DOWL HKM will prepare signing detail sheets, D3 format sheets, and signing plans sheets for the Pre-Final Design Package.
- 3) Upon City’s approval of the preliminary traffic signal layout, DOWL HKM will perform the following traffic signal design tasks for the Pre-Final Design Package:
  - a. Develop a Traffic Signal Plan sheet to include a plan view layout of the intersection, conduit and wire schedule, traffic signal and pole schedule, the proposed phase diagram, signal and pedestrian indication table, conduit run designation table, loop detector wiring schematic and general notes necessary for design.
  - b. Develop a Utility Plan sheet that depicts the assumed location of existing utilities and/or the proposed relocation of existing utilities relative to the proposed relocation of the traffic signal equipment.
  - c. Develop a Service and Wiring Diagram detail sheet.
  - d. Develop standard detail sheets in accordance with standard City of Billings and MDT traffic signal details.
  - e. Calculate conduit fill to ensure compliance with NEC or other City of Billings requirements and submit the results to the City.
  - f. DOWL HKM will prepare Northwestern Energy’s (NWE) Application for New Service and submit to the City. The City will submit the application to NWE and coordinate the service installation with NWE.

- 4) Develop preliminary specifications and construction cost estimates for traffic related items for the Pre-Final Design Package.
- 5) Construction traffic control plans are not anticipated for this project by DOWL HKM. DOWL HKM will develop a traffic control special provision to provide guidance to the construction contractor. The construction contractor will develop and submit a proposed traffic control plan based on their proposed project sequencing.

***Submittals: Conduit Fill Compliance Calculations  
Application for New Service***

**Task 240 – Final Utility Design**

- 1) DOWL HKM will incorporate PUD and City comments pertaining to the preliminary design package, and will prepare sewer main replacement plan and profile sheets to the Pre-Final design package.
- 2) DOWL HKM will prepare project specifications, details, special provisions, quantities, and probable construction costs for sewer main replacement work to be incorporated into the Pre-Final Design Package.
- 3) DOWL HKM will include existing and proposed private utilities to the plan set as provided by the private utility companies. DOWL HKM will not provide design or engineering for the relocation of private utilities.
- 4) DOWL HKM will prepare sewer main design report for the City, and as required for Montana Department of Environmental Quality (MDEQ) approval. DOWL HKM will submit construction documents and related checklist materials for approval by MDEQ. All MDEQ review fees will be paid by the City.
- 5) Construction stormwater permits shall be the responsibility of the construction Contractor and are excluded from this scope.

***Submittals: Sewer Main Design Report  
MDEQ submittal package***

**Task 250 – Final Hydraulics**

- 1) DOWL HKM will finalize the hydraulic design of the storm drain systems in Poly Drive and Zimmerman Trail. City comments will be incorporated and inlet sizes, inlet location, and storm drain pipe sizes will be finalized.
- 2) DOWL HKM will develop storm drain lateral details based on known and assumed utility locations. DOWL HKM will note potential utility conflicts on the plans; however, DOWL HKM assumes Phase II SUE (soft digs) will not be conducted for this project. Should soft digs be determined to be necessary prior to the initial construction work, DOWL HKM will coordinate with the City to address this work.
- 3) DOWL HKM will prepare project specifications, details, special provisions, quantities, and probable construction costs for storm drain construction to be incorporated into the Pre-Final Design Package.

**Task 260 – Pre-Final Design and Review**

- 1) DOWL HKM will incorporate the City's preliminary design package comments into the Pre-Final Design Package, including modifications to the plan, profile, typical sections and cross sections.
- 2) DOWL HKM will develop demolition plans to identify removal items or items to be adjusted. Tree removals will be identified; however, the final determination of tree removal will be identified by City field personnel prior to construction.

- 3) Isolated locations along the project may require short runs of block retaining walls to facilitate the development of a full roadway section with a sidewalk. DOWL HKM will develop block retaining wall details if necessary. Structural retaining walls are not anticipated for this project, and are not included in this scope.
- 4) DOWL HKM will develop landscaping plan sheets to identify private property restoration. Restoration may include sodding, seeding, or stockpiling and replacing existing landscape treatments. This scope does not include the design of irrigation system replacements.
- 5) DOWL HKM will develop construction plans for a Pre-Final Design Package for the City's review. Plans will include:
  - a. Cover sheet;
  - b. Sheet Index, Legend and Notes sheet;
  - c. Typical sections;
  - d. Miscellaneous Detail sheets (including retaining wall details, if needed);
  - e. Demolition sheets;
  - f. Roadway Sheets (plan and profile, intersection details, driveway details);
  - g. Storm drain sheets ;
  - h. Sanitary sewer sheets;
  - i. Electrical sheets;
  - j. Pavement marking sheets;
  - k. Signing sheets;
  - l. Landscaping sheets; and
  - m. Roadway cross section sheets.
- 6) DOWL HKM will perform Quality Assurance and Quality Control practices during the Pre-Final design and especially prior to Pre-Final design package submittal.
- 7) DOWL HKM will develop a Pre-Final project manual. The project manual will include project specifications and special provisions based on the current edition of the Montana Public Works Standard Specifications (MPWSS) and City of Billings Standard Modifications to the MPWSS.
- 8) DOWL HKM will prepare a Pre-Final Opinion of Probable Construction Cost.
- 9) One copy of the Pre-Final Plans will be sent to each private utility company for their review and comment.

***Submittals: Pre-Final Plans  
Pre-Final Project Manual  
Pre-Final Opinion of Probable Construction Cost***

**Task 360 – Final Design Package**

- 1) DOWL HKM will attend a comment resolution meeting with City staff to discuss City's Pre-Final design comments. DOWL HKM will develop a comment response matrix to formally address City comments.
- 2) DOWL HKM will prepare final design plans by incorporating the City's Pre-Final comments.
- 3) DOWL HKM will prepare the final project manual by incorporating the City's Pre-Final comments.
- 4) DOWL HKM will prepare the final opinion of probable construction costs by incorporating the City's Pre-Final comments.
- 5) DOWL HKM will perform Quality Assurance and Quality Control practices during the final design and especially before the Final design package submittal.

- 6) DOWL HKM will provide the City with one copy of the final plans and project manual to verify all Pre-Final comments were addressed before advertisement.
- 7) After the City's final approval, DOWL HKM will prepare bid-ready plans and project manual for bid advertisement. The number of copies of plans and project manuals to be produced will be determined by the City of Billings.
- 8) One copy of the final plans will be sent to each private utility company for their use.

***Submittals: Final Construction Plans and Project Manual  
Final Opinion of Probable Construction Cost***

**Task 400 – Bidding and Preconstruction Services**

- 1) DOWL HKM will provide bid advertisement text from the project manual to the City for publication by the City. The City will advertise the project.
- 2) DOWL HKM will distribute bid sets, maintain the plan-holders list, and issue addenda and clarifications.
- 3) DOWL HKM will attend the pre-bid meeting and assist the City during the pre-bid meeting with questions related to the construction documents. DOWL HKM will issue pre-bid meeting minutes within one week after the meeting.
- 4) DOWL HKM will tabulate all received bids and provide the City with an award recommendation.
- 5) All other preconstruction and construction services, including construction staking or exploratory excavation are not included within this scope of work.

***Submittals: Pre-Bid Meeting Minutes  
Bid Tabulation  
Award Recommendation***

**Task 500 – Record Drawings and Project Completion**

- 1) DOWL HKM will prepare record drawings based on City-supplied construction notes and drawings upon project completion.
- 2) DOWL HKM will attend and assist the City on a substantial completion walk-through of the project.
- 3) DOWL HKM will attend and assist the City on a one-year warranty walk-through of the project.

***Submittal: Record Drawings***

## Appendix B

### Methods and Times of Payment

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

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

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

- A. For services rendered prior to construction, Appendix A, the Engineer shall be paid based upon actual time accrued, but not to exceed the following amounts:

Design Services	\$271,460.00
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- B. Final payment shall be the above stated basic fee less all previous payments.

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

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

#### Section 3. Corrections.

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

#### Section 4. Fee Increases

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

## Appendix C

### Additional Services of Engineer

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

1. Field and laboratory testing and reports.
2. Resetting lost or destroyed monuments after construction.
3. Construction inspection.
4. Construction inspection after expiration of the construction contract completion time.
5. Preparation of change orders, which do require additional engineering design or construction review.
6. Requests made or conditions identified by interested groups, which are in excess of basic services.
7. Revisions or additions when such revisions or additions are inconsistent with written approvals or instructions previously given, required by enactment or revisions of codes, laws, or regulations, or are due to other causes not solely within control of the Engineer.
8. As may be requested by Billings, additional design services not included in the original scope of work as outlined in Appendix A.
9. Additional time and/or services resulting from additional requirements imposed by any funding source for use of those funds, as outlined in Part I, Section 14 of this Contract.

## **Appendix D**

### **Schedule of Professional Fees**

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

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit.

**MONTANA FEE SCHEDULE**
**Personnel Billing Rates**

Senior Manager I	\$195.00
Project Manager II	\$110.00
Engineer VII	\$175.00
Engineer VI	\$155.00
Engineer V	\$145.00
Engineer IV	\$120.00
Engineer III	\$105.00
Engineer II	\$90.00
Engineer I	\$80.00
Engineering Technician IV*	\$105.00
Engineering Technician III *	\$85.00
Engineering Technician II *	\$75.00
Engineering Technician I *	\$55.00
Planner V	\$135.00
Planner II	\$85.00
Environmental Specialist III	\$100.00
Geologist II	\$110.00
Laboratory Supervisor	\$95.00
Laboratory Manager *	\$95.00
Laboratory Technician *	\$60.00
Lead Laboratory Technician *	\$65.00
Inspector *	\$90.00
Survey Manager	\$130.00
Professional Land Surveyor *	\$105.00
Project Surveyor*	\$95.00
Crew Chief *	\$75.00
Survey Technician *	\$60.00
Accounting Technician *	\$75.00
Marketing Coordinator	\$75.00
Marketing Assistant *	\$75.00
Administrative Assistant *	\$55.00

*\*Subject to overtime at 1.5 times above rates.*

**Equipment, Materials, & Supplies**

ATVs/Trailer	=	\$150.00/day		
Boat/Trailer	=	\$150.00/day		
		<u>DAY</u>	<u>WEEK</u>	<u>MONTH</u>
2 GPS Receivers (Survey Quality)		\$425.00	\$1,600.00	\$4,320.00
Single/Each Additional Receiver		\$250.00	\$900.00	\$2,700.00

**Travel, Mileage, & Miscellaneous**

Per diem will be billed after 6 hours in the field and when more than 50 miles from the office at ¼ rate for every 6 hours or portion of a quarter day greater than 3 hours. For the day of departure, the day begins at time of departure. For the day of return, the day ends when employee arrives at authorized point of destination (office, home, etc.).

Per diem (per person, per day Montana)	=	\$51.00/day
Lodging	=	cost per night
Airfare	=	cost
Vehicle Usage – Automobiles	=	0.75/mile
Vehicle Usage – Pickups, Suburban	=	1.00/mile
Printing/Supplies/Phone/Fax/Postage	=	Note 2
Specialized Software/Hardware	=	Note 3
Subcontractors	=	Cost + 10%
Laboratory Analysis	=	Cost + 10%
Other/Miscellaneous	=	Cost + 10%

**Notes**

1. DOWL HKM's Professional Fee Services Fee Schedule is subject to adjustment each year (May 1<sup>st</sup>) or at the end of a contract period, whichever is appropriate. Should adjustments be anticipated or required, such adjustments will not affect existing contracts without prior agreement between Customer and DOWL HKM.
2. Costs included in overhead rates for reasonable requests. Requests beyond those considered reasonable by the project manager billed at Cost + Agreed Upon Mark-up.
3. Specialized computer software or hardware necessary for a unique application for will be billed at a negotiated rate or unit cost.

## **Appendix E**

### **Project Schedule**

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Based on a written notice to proceed by Billings no later than October 14, 2014, the completion date, including agency reviews, for the Engineer's work through final design shall be:

1. Preliminary Design – Mid-December 2014
2. Pre-Final PS&E Package – End of February 2015
3. Final PS&E Package – End of March 2015

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

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

**Appendix F**  
**Certificates of Insurance**

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See attached Certificates of Insurance.