

Contract for Professional Architectural and Engineering Services

Project Work Order 15-07 Orchard Lane

In consideration of the mutual promises herein, City of Billings and Kadrmas, Lee & Jackson, 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 12 pages (Basic Services of Contractor);

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

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

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

Appendix E consisting of 1 page (Project Schedule);

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

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Kadrmas, Lee & Jackson, Inc..

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 April 30, 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: Carl Jackson
Kadmas, Lee & Jackson Inc.
2611 Gabel Road
Billings, MT 59102

FAX: (855) 288-8055

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: Director or Authorized Designee

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

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 Carl Jackson, PE.

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 Ken Ard, P.E.

Scope of Work.

I. DESCRIPTION

The Orchard Lane reconstruction project entails professional engineering services for design and bidding of Orchard Lane improvements between State Avenue and King Avenue East. In summary, the project consists of design survey and right-of-way mapping, public involvement, preliminary design, final design plans and bidding document preparation. The goal of this project is to reconstruct and widen Orchard Lane between State Avenue and King Avenue East.

The following list summarizes the general objective of this scope of work.

- Engineer's services will primarily entail design of road improvements including widening, curb & gutter, pedestrian facilities, and storm drain.
- Traffic operations analysis is not included. The final cross section will be provided by the City. Posted speed limit will remain. Signalized or alternative intersection design is not included. Existing stop controlled intersections will remain. New pedestrian refuge islands are not anticipated. Postal delivery turn outs are not included.
- The Orchard Lane signalized intersections at State Avenue and King Avenue East will remain as presently constructed with no changes to the traffic signal equipment or operations. Engineer will evaluate approach lane configurations and make recommendations if pavement marking modifications are deemed appropriate. Designing and bidding improvements to State Avenue and King Avenue East is not included.
- On-street parking is to be determined. Depending on the final cross section determination, right-of-way constraints may preclude on-street parking altogether. Engineer's services do not include conducting parking studies. Engineer will not proceed with design until after a parking determination is made.
- At the City's direction, Engineer will incorporate a shared-use path in lieu of sidewalk on one side. Right-of-way constraints may preclude incorporating a shared-use path.
- Impacts to adjacent properties will be minimized and will be identified during preliminary design.
- Existing fences, landscaping or other private property features adjacent to the road will likely be impacted. Since the extent of potential impacts is undetermined, this scope of work does not include design of repairing or replacing adjacent private property features. If required, Engineer's related effort would be considered Additional Services and would be negotiated at a later date. Fences and irrigation systems damaged as a result of the project will be the construction contractor's responsibility to design, relocate and/or reconstruct and will be incorporated as such in Engineer's bid documents. Retaining wall design and construction is not anticipated, and is not

included in this project. Other landscape improvements (gardens, planters, etc.) will be the property owner's responsibility to remove or relocate prior to construction, coordination of which will be the City's responsibility.

- Buffers between pedestrian and vehicular traffic, if applicable, will be paved hardscape. Vegetation establishment is limited to re-seeding grass in properties outside of the typical section that are disturbed by construction. Landscape design, including evaluating and preparing a planting and irrigation plan, is not included.
- The project will be designed and plans produced with AutoCAD and Civil3D software using Engineer's plan preparation (CADD) standards.
- It is anticipated that a subsequent Additional Services agreement will be executed between the City and Engineer for construction staking, on-call construction observation, and project close-out and record drawings.

II. SERVICES TO BE PERFORMED

100 PROJECT MANAGEMENT

Project management addresses and allocates resources on a wide range of activities from conception to completion of a project, including: developing a project work plan and a project team; defining project goals and objectives; specifying tasks and resources; and creating budgets and timelines. The project manager handles all day to day activities and coordination for all actions throughout the duration of the project. The project manager also ensures quality control procedures are on-going throughout the project.

One of the most critical components of project management is communication with the client and project team. Essentially, the project manager is the liaison between external parties and the Engineer team. It is the project manager's responsibility to notify the client of any issues, problems, or concerns regarding the project. The project manager also delegates all activities to the project team and coordinates the progress and completion of these activities. In addition, if any items arise during the duration of the project that are outside this scope of work, the project manager will address them with the City. Ultimately, the project manager is accountable for delivering a successful project.

101 Work Plan

Prepare a work plan to include communication protocol, scope of work, time entry guidelines, schedules, and other guidelines and standards used by the project team.

102 Kick-off Meeting and Project Schedule

Conduct a kick-off meeting to review final task items and establish schedule milestones. At the kick-off meeting the work products and the schedule sequence and information needs will be refined. Following the kick-off meeting, the schedule will be modified to include milestone dates for the major work items. The schedule will be reviewed and adjusted as necessary to incorporate changes in the work concept and progress to-date.

103 Project Coordination

Project coordination will include communication with City staff, Engineer project staff, utility owners, South Billings Urban Renewal District (SBURD) and other stakeholders.

104 Schedule and Budget Monitoring / Progress Reports

Manage the timeline and budget, and prepare invoices and progress reports according to City requirements.

105 Unscheduled Meetings

Attend periodic unscheduled meetings with the City or other stakeholders. Provide meeting documentation. Ten (10) unscheduled meetings are included in Engineer's fee.

106 Milestone Field Reviews

Conduct milestone field reviews with representatives from City of Billings. Time has been included for three (3) field review meetings. The first, following completion of preliminary engineering (30%); the second following City review of the 70% plans and specifications submittal; and the third following submittal of 90% construction documents and prior to bidding. Minutes will be provided for all meetings.

200 PUBLIC INVOLVEMENT

The City will coordinate with news media as needed. The City will develop a landowner mailing list, arrange and facilitate all public meetings, and will coordinate with the City Council and City departments as needed.

201 Landowner Letter

Using the City's mailing list, Engineer will prepare an initial letter to all adjacent property owners as notification that the project is commencing. The letter will request permission to survey private property and also provide contact information should anyone have questions about the project, moving forward.

202 Landowner Coordination Meetings

The Engineer will field calls from property owners. Upon request, Engineer will meet with individual landowners to discuss proposed improvements and probable impacts, and to answer questions. Engineer will provide exhibits and preliminary drawings to assist with the discussion. A record of conversation will be completed for each meeting. Ten (10) individual landowner meetings are included in Engineer's fee.

203 Neighborhood Meetings

Two (2) neighborhood meetings are included to provide a project status update and receive comments from the public. Engineer will provide design exhibits (or sketches) for and attend one meeting at the project onset and a second following the 90% phase. Exhibits will consist of typical roadway sections and plan view drawings, and will be provided on display boards or PowerPoint according to the City's discretion. Preparation of 3-D renderings or similar artistic graphical displays is not included.

300 PRELIMINARY ENGINEERING AND SURVEY

Preliminary engineering and survey tasks are intended to complete the preliminary analysis and design necessary for preparing technical memoranda. Technical memoranda will be provided for project decisions that require action or direction from the City. Design tasks that

do not require action or direction from the City will not begin until 70% design engineering and will not be included in the preliminary engineering phase.

Preliminary design drawings will be conceptual in nature, at the level of detail required to accompany technical memoranda when needed. Engineer will only provide preliminary drawings or sketches of design elements necessary for decisions required by the City; the first complete set of drawings will be submitted following the 70% design stage.

301 Land Ownership Research

Verify the property ownership listing provided to Engineer by the City and include names and addresses on the base drawing. Engineer will document discrepancies and assist with developing a new listing, as required.

302 Right-of-Way Survey and Mapping

Research property boundaries based on plats and certificates of survey obtained from public records. The right-of-way survey is projected to include ties only to existing Public Land Survey System monuments along Orchard Lane in order to allow survey maps on each side to be computed and attached to the base drawing. This procedure is anticipated to be sufficiently accurate to reasonably determine the existing right-of-way and decide if right-of-way acquisition should be evaluated in greater detail. If acquisition is necessary, subject properties likely will require individual surveys and lot lines verified, the work associated with which is not included in this scope of work and will be addressed as Additional Services.

303 Topographic/Design Survey

Complete and furnish preliminary ground survey of project limits to include site contours, existing surface features, and above- and below-ground utilities. Topographic survey will generally be bounded within right-of-way limits, and occasionally beyond as needed to verify grades, adjacent features, and structures. The topographic survey will be accomplished by conventional survey methods. Primary control points will be established as Montana NAD83 (2002) OPUS corrected State Plane Coordinates or City of Billings Coordinates Datum if available. Prior to beginning topographic data collection a level network will be run through all control points and tied to the published City of Billings Vertical Datum. As topographic data is collected an ongoing QC-QA process will verify all data and make sure pertinent features are included on the map.

304 Base Drawing Preparation

Create a base drawing depicting calculated parcel boundaries, topographic survey data, and record drawings provided by the City and other utility owners.

305 Cross Section Alternatives Analysis

The cross section will be determined by the City. After right-of-way limits are defined, the cross section will be evaluated along the corridor. During this time, Engineer will identify areas that preclude the preferred section and also determine if additional features can be considered for the final cross section. This analysis will include consideration of adjacent property impacts, business access, auxiliary lanes, shared-

use paths, bike lanes, accessibility, parking, and impacts from lighting, mailboxes, and utilities.

Engineer will also evaluate adjacent properties for impacts to features such as landscaping, retaining walls, fences, etc. for the City's consideration. This scope of work does not include designing or specifying repairing or replacing adjacent features referenced above that are impacted as a result of the project. If required, these services would be considered extra work and would be negotiated at a later date

It is anticipated that a technical memorandum will be prepared to address the preferred cross section. The technical memorandum will summarize preliminary design results, offer recommendations, and identify action items requiring feedback from the City.

306 Evaluate Existing Utilities

Research and document existing public and privately-owned utilities, and evaluate if existing or potential conflicts necessitate utility relocation. Provide a technical memorandum with conclusions and recommendations. Completion of a Subsurface Utility Engineering (SUE) survey is not included in this scope of work.

307 Geotechnical Evaluation

Engineer's subconsultant will provide geotechnical recommendations, including pavement design and underground utility construction considerations. Engineer will coordinate with the geotechnical engineer to meet project objectives.

400 ENVIRONMENTAL DOCUMENTATION AND PERMITTING

Environmental documentation and permitting is not anticipated, and related services are not included in this scope of work. If required, these services would be considered extra work and would be negotiated at a later date.

500 70% DESIGN ENGINEERING AND REVIEWS

Seventy-percent design engineering and reviews includes design and preliminary construction document preparation, culminating with the City's review and comment period. The intent of this milestone is to finalize any unanswered questions and identify significant changes required by the City prior to proceeding to 90% construction document preparation.

Project decisions, identified during preliminary design that requires written direction from the City, will be finalized prior to commencing with the related tasks below. If the City's subsequent direction requires services that Engineer determines is beyond the scope of work defined below, a contract supplement will be negotiated and approved before proceeding.

It is anticipated that the second public meeting will be held following completion of the City's 70% design review process, prior to commencing with the next stage.

501 Private Utility Coordination

Based on preliminary engineering results, Engineer will coordinate private utility relocations with utility owners, and provide drawings and exhibits as necessary to

show location of proposed improvements. This task includes facilitating one (1) utility coordination meeting to provide technical data and project requirements to utility companies.

502 Pick Up Survey and Base Drawing Updates

Complete additional survey and update the base drawing as required based on preliminary design discoveries and final direction provided by the City.

503 Storm Drain Design

Prepare a preliminary analysis of on-site stormwater facilities to identify if there are any local deficiencies with the on-site system. Evaluate the condition of existing on-site drainage inlets. Evaluate the ability to extend the existing storm drain system to serve all portions of the project as needed and identify any grade constraints. Provide a written summary for City's consideration, giving recommendations for any needed replacements and repairs, summary of sizing for new stormwater infrastructure and recommendation for upgrades to the existing on-site system if needed.

504 Sanitary Sewer Services Design

Approximately 20 new sanitary sewer services will be designed and specified by Engineer, in locations provided by the City. The new services will be shown on the road and storm drain plan and profile drawings.

505 Typical Sections

Develop typical sections based on the preferred cross section verified during preliminary design. Based on a review of the geotechnical report completed by others, and an analysis of the existing pavement condition, segments of the project suitable for pavement overlay will be identified separately from those requiring full-depth reconstruction.

506 Geometric Design

Design horizontal and vertical alignment. Coordinate alignment and grade with storm drain and adjacent property constraints. Evaluate cut sections for impacts to existing utilities, which may create a conflict due to shallow bury depth.

This task also includes grading design at each intersection along the corridor. Intersection grading design will generally stop within approximately 25 feet of the side street curb radius point, or less, to provide adequate transitions necessary for accommodating accessibility ramps and appropriate curb tie-ins.

507 Driveway Design

Evaluate driveways for grades and pedestrian accommodations. If multiple approaches exist at a single property, coordinate with the City and property owner to determine if access can be provided at a single location.

508 Pedestrian Facility Design

Design pedestrian facilities in accordance with local and federal guidelines. Design hardscape buffer when applicable; hardscape buffer will be designed consistently

throughout the project when needed and hardscape design for individual property owners is not included. Evaluate intersections for accessibility accommodations.

509 Typical Sections and Cross Section Drawings

Create typical section and cross section drawings. This task includes the iterative process of evaluating cross sections in detail to design driveway and adjacent property tie-in grades.

510 Road and Storm Drain Plan & Profile Drawings

Create plan & profile drawings showing the proposed roadway and storm drain improvements, as well as other pertinent design elements described herein.

511 Traffic Control Plans

Develop plans for permanent traffic control signs and pavement markings based on local requirements and Manual on Uniform Traffic Control Devices guidelines. Create a sign summary sheet depicting materials, quantities, and locations.

512 Lighting Coordination (Design Not Included)

Existing lighting is assumed to be owned by City of Billings and/or NorthWestern Energy. Although lighting design is not included in this contract, Engineer will coordinate necessary removal or relocation with the owner(s) during the road design process.

513 Detail Drawings

Create detail drawings of intersection grading and other supplemental design information required for construction.

514 Construction Traffic Control Specifications

Engineer will include required construction traffic control provisions in the specifications. Designing construction traffic control plans is not included and will be the contractor's responsibility.

515 Permanent Easements

Determine extents of, and prepare preliminary exhibits depicting locations of, easements required for construction of sidewalks and accessibility ramps. Negotiations for permanent easements will be conducted by the City. Assist the City with easement negotiations.

516 Temporary Construction Easements

Determine extents of, and prepare preliminary exhibits depicting locations of, temporary easements required for construction. Negotiations for temporary construction easements will be conducted by the City. Assist the City with easement negotiations.

517 Technical Specifications and Special Provisions

Prepare draft technical specifications and special provisions for review based on design to-date.

518 Quantities and Opinion of Cost

Complete quantity take-offs and opinion of probable construction cost and provide with the 70% completion submittal.

519 Preliminary Construction Documents Submittal (70% Completion)

Submit construction drawings, special provisions, and opinion of probable cost to the City for review and comment, prior to commencing with additional design.

600 90% DESIGN ENGINEERING AND REVIEWS

It is anticipated that 90% design engineering and reviews tasks will not commence until the preliminary construction documents review meeting is complete, and comments are received from the City accordingly.

The City's 90% design review below is intended to address routine comments or corrections. As such, material changes to the design or drawing format as required by the City should be disclosed during the 70% design review meeting. Engineer does not intend to proceed with 90% design engineering until any question(s) regarding potential material changes is resolved with the City.

601 Private Utility Coordination

Provide revised drawings and exhibits as necessary to show location of proposed improvements. Assist with determining location of relocated utilities, if necessary.

602 Storm Drain Design

Refine storm drain design based on 70% review comments received from the City, and incorporate changes into final construction plans and specifications. Prepare a Comprehensive Drainage Plan in accordance with the City standards to support the sizing and other design decisions for all on-site stormwater facilities constructed with the project.

603 Geometric Design

Refine geometric design based on 70% review comments received from the City, and incorporate changes into final construction plans and specifications.

604 Driveway Design

Refine driveway design based on 70% review comments received from the City, and incorporate changes into final construction plans and specifications.

605 Pedestrian Facility Design

Refine pedestrian facility design based on 70% review comments received from the City, and incorporate changes into final construction plans and specifications.

606 Typical Sections and Cross Section Drawings

Refine typical section and cross section drawings.

607 Road and Storm Drain Plan & Profile Drawings

Refine plan & profile drawings showing the proposed roadway and storm drain improvements, as well as other pertinent design elements described herein.

608 Water Main Plan & Profile Drawings

Refine plan & profile drawings for water main reconstruction.

609 Traffic Control Plans

Refine plans for permanent traffic control signs and pavement markings. Refine the sign summary sheet as necessary.

610 Detail Drawings

Refine detail drawings of intersection grading and other supplemental design information required for construction.

611 Temporary Erosion Control Analysis and Construction Measures

Evaluate the proposed improvements and construction activities for temporary erosion control measures. Incorporate recommended practices in a temporary erosion control plan. Preparing and payment of a MPDES construction permit application is not included.

612 Permanent and Temporary Easements

Finalize easement exhibits. Negotiations for easements will be conducted by the City. Assist the City with easement negotiations.

613 Specifications and Project Manual

Complete the project manual, technical specifications, and special provisions based on the required information to proceed with bidding and construction.

614 Quantities and Opinion of Cost

Update quantity take-offs and opinion of probable construction cost and provide with the 90% completion submittal.

615 Quality Assurance Review

Conduct internal quality assurance review according to Engineer quality assurance and quality control procedures.

616 MT DEQ Submittal and Certification

Prepare a submittal to Montana Department of Environmental Quality as appropriate to utility design. Applicable fees will be paid by the City.

617 Construction Documents Submittal (90% Completion)

Submit construction drawings, special provisions, and opinion of probable cost to the City for review and comment, prior to commencing with preparation of bid documents.

700 100% DESIGN AND BIDDING

701 Final Drawings, Specifications, and Project Manual Revisions

Address comments from 90% completion review. Prepare, review, and seal final bid documents.

702 Final Quantities and Opinion of Construction Cost

After completing final changes to drawings and specifications, and prior to bidding, update the quantity take-offs and opinion of probable construction cost.

703 Prepare Bid Documents

Assemble bid documents and coordinate with the City and other entities required for the advertisement and bidding periods.

704 Bid Assistance

Respond to contractor questions, maintain a plan holders list, and assemble and distribute addenda as appropriate to clarify the contract documents.

705 Conduct Pre-Bid Meeting

Prepare an agenda, facilitate the pre-bid meeting and respond to questions as needed.

706 Attend Bid Opening

Attend the bid opening and collect copies of the bids.

707 Prepare Bid Tabulation and Award Recommendation

Review the bids received, prepare a tabulation of bids, and based on conformance with the contract requirements prepare a Notice of Award recommendation to the City.

708 Prepare and Circulate Contract Documents

Upon dissemination of the Notice of Award assemble, distribute, and coordinate execution of the contract documents.

709 Issue Conformed Drawings and Project Manual

Produce the appropriate number of conformed drawings and project manual copies requested by the City and contractor.

800 RIGHT-OF-WAY

Right-of-way acquisition services are not included in this scope of work. This includes all survey, title work, appraisals, exhibits, legal descriptions and other acquisition services. If required, these services would be considered extra work and would be negotiated at a later date.

900 CONSTRUCTION ADMINISTRATION

Construction administration services are not included in this scope of work. If required, these services would be considered extra work and would be negotiated at a later date.

III. DELIVERABLES

The following deliverables will ultimately be provided by Engineer.

- Meeting minutes and other appropriate documentation
- Meeting display materials
- Technical memoranda
- Comprehensive Drainage Plan at 90% design
- 70%, 90% and final drawings and specifications
- Temporary construction easement descriptions and exhibits
- Quantities and opinion of costs (3 iterations)
- Bid tabulation and award recommendation
- Contract documents
- Conformed drawings and specifications

IV. EXCLUSIONS

This scope of work contains specific information regarding tasks, number of iterations, and deliverables included in the Agreement. Additional services beyond this scope of work are extra and will be addressed as a contract supplement. In addition to those specifically identified in the above tasks, the following list, which is not intended to be exclusive, summarizes exclusions.

- Permits applications other than MT DEQ permit for water main or sanitary sewer construction
- 3-D/Artistic renderings
- Subsurface Utility Engineering
- Design of stormwater detention or treatment facilities
- Analysis of or designing upgrades for off-site stormwater facilities
- Sanitary sewer main analysis and design
- Water distribution system analysis and design
- Hydraulic modeling
- Retaining wall design
- Tasks associated with creating a Special Improvement District (SID) or Special Improvement Light Maintenance District (SILMD)
- Landscaping and irrigation system design
- Structural design
- Traffic analysis, reporting and intersection design other than as indicated above
- Archaeology/Cultural/Historic/etc. impacts research, field work, reporting, and mitigation plans
- Preparation of environmental document, including Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement
- Legal testimony arising out of litigation regarding project decisions
- Record drawings and construction certifications

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

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

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

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

Design Services	\$241,000.00
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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

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

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.

Appendix E

Project Schedule

Based on a written notice to proceed by no later than November 30, 2014, the completion date, including agency reviews, for the Engineer's work through final design shall be:

1. Preliminary Design – April 2015
2. 90% Design Submittal – October 2015
3. Final Design Submittal – January 2016

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

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

Appendix F
Certificates of Insurance

See attached Certificates of Insurance.