

Contract for Professional Architectural and Engineering Services

SID # 1382 – Colton Boulevard (38th Street West to Zimmerman Trail)

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 regular bond paper 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 September 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 what 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 Contractor

I. GENERAL DESCRIPTION

Contractor's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Contractor'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 Contractor 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. Contractor'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 Contractor 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 Contractor. 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 Contractor. For this project, the Task Director designated for the Contractor is Dave Mosser 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 Contractor and Billings. For this project, the Task Director designated is Chris Hertz, PE.

Scope of Work.

The Colton Boulevard SID 1382 construction project entails professional engineering services for design, bidding and construction administration of street and utility improvements for the extension of Colton Boulevard between Zimmerman Trail and 38th Street West. It is anticipated that two sets of bidding documents will need be prepared, there will be two separate bidding processes, and two construction projects completed. The two projects anticipated are:

- A. Project 1 – The design and construction of the components which will impact the use of the Big Ditch, this includes: installation of the two 42” culverts, the first where Colton Boulevard will cross over the Big Ditch, and the second where the shared-use path crosses over the ditch on the south end of 38th Street West; and the installation of the proposed water and storm drain facilities that will cross under the Big Ditch.
- B. Project 2 – The design and construction of the Colton Boulevard street improvements, the curb and gutter along Colton Boulevard and adjacent intersections, the shared use pedestrian path, and the remaining portions of the water and storm drain improvements not included with Project 1.

The following summarizes the general objectives for the Contractor's scope of services for the design, bidding and construction administration services of the Colton Boulevard extension including street construction; curb & gutter; pedestrian facilities; and water and storm drain facilities. No sanitary sewer will be constructed as this utility already is in place. The scope of services will be as follows:

- The Colton Boulevard intersection with Zimmerman Trail will remain as presently constructed with no changes to the traffic signing or movements. Contractor will design curb/gutter and the full width Colton Boulevard street improvements west of this intersection, but such improvements will not be constructed as part of SID 1382. A traffic operations analysis will not be completed, nor the design of any improvements to Zimmerman Trail.
- The Colton Boulevard intersection with 38th Street West will be designed as a two-legged intersection permitting traffic movement to the north and to the east. There will

be no extension of Colton Boulevard to the west of 38th Street West, nor shall there be an extension of 38th Street West to the south of Colton Boulevard.

- The design of Colton Boulevard will be for a full width street from Zimmerman Trail to 38th Street West. The construction of Colton Boulevard will be limited to the following:
 - From the centerline of Zimmerman Trail to approximately 340 feet west (end of existing pavement) no construction will occur as part of SID 1382.
 - From approximately 340 feet west of the centerline of Zimmerman Trail (end of existing pavement), and continuing west approximately 1,620 feet, only the north half of Colton Boulevard will be constructed.
 - From this point to the west edge of the 38th Street West intersection, approximately 720 feet, full width street construction will be completed.
 - Concrete curb and gutter will be installed for those portions of Colton Boulevard that are constructed.
- Design and construction services for full width street improvements, including curb and gutter, on Green Valley Drive, Avalon Road, and Plenty View Drive for those uncompleted sections of street where each ties into Colton Boulevard.
- Design and construction services for a shared-use path on the south side of Colton Boulevard starting at 38th Street West and continuing east approximately 720 feet paralleling the full street width improvements.
- Design and construction services for approximately 2,400 feet of 8" and 12" waterline. 2,100 feet of 12" water line will run from 38th Street West to Green Valley Drive where it will tie into an existing 12" waterline, and 260 feet of 8" waterline will be placed on Avalon and Plenty View to tie-in existing 8" dead-end lines to the new 12" main.
- Design and construction services for approximately 1,800 feet of storm drain in Colton Boulevard.
- Design and construction services to extend approximately 17 water services to those subdivided properties on the north side of Colton Boulevard which do not currently have water service. Billings will determine location of water main branch lines and services to the south, if any, and provide such locations to Contractor prior to 80% design.
- Size and design a culvert for the Big Ditch where it passes under Colton Boulevard, and also for the shared-use path at 38th Street West.
- Existing fences, landscaping or other private property features adjacent to the road may 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. 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 into the construction bid documents. Other landscape improvements (gardens, planters, etc.) within the right-of-way will be the property owner's responsibility to remove or relocate prior to construction, coordination of which will be Billings' responsibility.
- Buffers between pedestrian and vehicular traffic, if applicable, will be dry land grass seeded with no special landscaping, irrigation or sodding requirements. Landscaping is limited to re-seeding dryland grass in boulevards and adjacent properties that may be 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 Contractor's plan preparation (CADD) standards.

II. SERVICES TO BE PERFORMED

100 PROJECT MANAGEMENT

Contractor shall be responsible for developing a project work plan; coordinating project goals and objectives with Billings; specifying tasks and resources; and creating budgets and timelines. Even though two separate construction projects are anticipated for Colton Boulevard, Contractor will complete the 100 Level project coordination efforts simultaneously for both projects. Coordination shall be accomplished through a series of meetings between Billings and Contractor including:

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

Contractor will coordinate communication with Billings staff, Contractor project staff, and utility owners. Billings will be responsible for coordinating with SID participants.

104 Schedule and Budget Monitoring / Progress Reports

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

105 Unscheduled Meetings

Attend periodic unscheduled meetings with Billings or other stakeholders. Provide meeting documentation. Up to four (4) unscheduled meetings are included in Contractor's fee.

106 Milestone Field Reviews

Conduct two (2) field review meetings with Billings. The first, following completion of preliminary engineering (30%) and the second following submittal of 80% construction documents for Project 2. No 80% field review meeting is included for Project 1. Minutes will be provided for all meetings. Separate design projects and bid packages will be initiated following completion of the 30% preliminary engineering review.

200 PUBLIC INVOLVEMENT

Public involvement services are not included in this scope of work. If required, these services would be considered additional services and will be negotiated at a later date.

300 30% PRELIMINARY ENGINEERING AND SURVEY

Preliminary design drawings will be conceptual in nature, at the level of detail required to accompany technical memoranda when needed. Contractor will only provide preliminary drawings or sketches of design elements necessary for decisions required by Billings; the first complete set of drawings will be submitted following the 80% design stage. Contractor will provide the following preliminary engineering and survey services:

301 Storm Drain Analysis

Complete a preliminary storm drain analysis for the project based on: 1.) the 1999 Stormwater Management Design Report for Colton Boulevard from 38th Street West to Avalon Road; 2.) the 1996 Stormwater Management Design Report for a Portion of Poly Vista Subdivision; and 3.) the projected improvements the City is considering for the Poly Drive storm drain improvements. The analysis will focus on evaluating the ability to extend the existing storm drain system to serve all portions of the project as needed.

Provide a written summary for Billings' consideration, summarizing the routing of the stormwater, the sizing for new stormwater infrastructure, and identification of existing system restrictions.

302 Right-of-Way Survey and Mapping

(completed under separate contract)

303 Topographic/Design Survey

(completed under separate contract)

304 Base Drawing Preparation

(completed under separate contract)

305 Cross Section Analysis

The street cross sections will be determined by Billings and provided to Contractor. Contractor will evaluate adjacent properties for impacts to features such as landscaping, retaining walls, fences, etc. for Billings' 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 Additional Services and will be negotiated at a later date.

306 Evaluate Existing Utilities

Research and document existing public and privately-owned utilities, and evaluate if existing or potential conflicts necessitate utility relocation. Provide Billings a technical memorandum with conclusions and recommendations. Coordinate private utility locations and relocations with utility owners, and provide drawings and exhibits as

necessary to show location of proposed improvements Completion of a Subsurface Utility Engineering (SUE) survey is not included in this scope of work.

307 Geotechnical Evaluation

Provide a geotechnical investigation and report for the pavement design and underground utility construction considerations. Contractor will coordinate with the geotechnical Contractor to meet project objectives.

308 Preliminary Review Meeting

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

400 ENVIRONMENTAL DOCUMENTATION AND PERMITTING

Environmental documentation and permitting is not anticipated, and related services are not included in this scope of work.

500 50% DESIGN ENGINEERING AND REVIEWS (NOT INCLUDED)

600 80% DESIGN ENGINEERING AND REVIEWS

It is anticipated that 80% design engineering and reviews tasks will not commence until the 30% Preliminary Review Meeting is complete, and comments are received from Billings accordingly.

Based on the conclusions of the 30% preliminary design and coordination meetings, two sets of construction plans and specifications will be developed to accommodate the Big Ditch operating season, as described above. The extent of Project 1 and Project 2 will be determined during the coordination and preliminary design meetings. Each set of contract documents will be developed in general accordance with the following design procedures.

Eighty-percent design engineering and reviews include design and initial construction document preparation, culminating with Billings' review and comment period. The intent of this milestone is to finalize any unanswered questions, and identify significant changes required by Billings prior to proceeding to final (100%) construction document preparation. Contractor shall complete the following leading up to the 80% submittal:

601 Private Utility Coordination

Coordinate with the existing utility providers within the project area and reflect on the construction drawings the location of existing utilities, and assist with determining location of relocated utilities, if necessary.

602 Water and Storm Drain Design

Complete the design of the storm drain improvements on Colton Boulevard as determined in the 30% preliminary storm drain analysis. Complete the public water lines design on Colton Boulevard based on 30% preliminary review comments

received from Billings, and incorporate changes into the construction plans and specifications. Design and locate approximately 17 new water services to service subdivided properties along the north side of Colton Boulevard.

603 Big Ditch Culverts

Determine the culvert size and alignment grades for the culvert to be installed where Colton Boulevard crosses the Big Ditch and for the culvert where the shared-use path at 38th Street West crosses the Big Ditch.

604 Geometric and Cross Section Design

Finalize a typical street section based on Billings' direction during preliminary design and the recommendations of the geotechnical report. Design horizontal and vertical alignment. Coordinate alignment and grade with storm drainage recommendations and adjacent property constraints.

Design and grade each intersection where Colton Boulevard ties into existing side streets along the corridor to provide adequate transitions necessary for accommodating accessibility ramps and appropriate curb tie-ins.

Refine the street geometric design based on review comments received from Billings during the 80% design phase. Refine typical section and cross section drawings. Incorporate changes into the construction plans and specifications.

605 Pedestrian Facility Design

Design pedestrian facilities in accordance with local and federal guidelines. Evaluate intersections for accessibility accommodations. Refine pedestrian facility design based on review comments received from Billings, and incorporate changes into the construction plans and specifications.

606 Street, Water and Storm Drain Plan & Profile Drawings

Create plan & profile drawings showing the proposed roadway, water, and storm drain improvements, as well as other pertinent design elements described herein. Design may include relocation of the existing irrigation lateral along the south side of the proposed street section. The lateral location will be provided to the Contractor by Billings following negotiations with the property owner.

Driveway locations, where required, will be provided by Billings and will be incorporated in Contractor's construction drawings. Detail drawings of intersection grading and other supplemental design information required for construction will be completed.

607 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.

608 Lighting Design (Not Included)

609 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.

610 Temporary & Permanent Easements (Not Included)

611 Specifications and Project Manual

Prepare draft technical specifications, project special provisions, and the construction bid form based on design to-date. Include required construction traffic control provisions in the specifications.

612 Quantities and Opinion of Cost

Update quantity take-offs and opinion of probable construction cost and provide with the 80% completion submittal.

613 Quality Assurance Review

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

614 MT DEQ Submittal and Certification

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

615 Construction Documents Submittal (80% Completion)

Submit construction drawings, special provisions, technical specification, and opinion of probable cost to Billings for review and comment, prior to commencing with preparation of final documents. Material changes to the design or drawing format as required by Billings should be disclosed during the 80% design review meeting. Contractor does not intend to proceed with preparation of bid documents until any question(s) regarding potential material changes is resolved with Billings.

700 100% DESIGN AND BIDDING

701 Final Drawings, Specifications, and Project Manual Revisions

Contractor will address comments from 80% completion review. Prepare, review, and seal final construction drawings and associated documents. Contractor will provide Billings one set of original paper documents and an electronic copy of all final drawings and specifications for use by Billings during the bidding process.

702 Final Quantities and Opinion of Construction Cost

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

703 Bid Documents

Billings will assemble and collate final bid documents required for the advertisement and bidding periods. Contractor will provide Billings with the technical specifications, project special provisions, and the project bid form. Billings will develop and provide all

other sections of the Project Manual. Billings will print and distribute to project bidders the required project bidding documents.

704 Bid Assistance

Contractor will respond to bidders questions, prepare addenda as appropriate to clarify the contract documents, and provide to Billings for distribution to bidders.

705 Conduct Pre-Bid Meeting

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

706 Attend Bid Opening

Contractor will attend the bid opening.

707 Prepare Bid Tabulation and Award Recommendation

Contractor will review the bids received, prepare a tabulation of bids, and based on conformance with the contract requirements prepare a Notice of Award recommendation to Billings.

708 Prepare and Circulate Contract Documents

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

709 Issue Conformed Drawings and Project Manual

Contractor will produce the appropriate number of conformed drawings requested by Billings and the construction contractor. Billings will provide the necessary copies of the Project Manual.

800 RIGHT-OF-WAY (NOT INCLUDED)

900 CONSTRUCTION PHASE SERVICES

901 Preconstruction Conference

Schedule and facilitate a preconstruction conference to discuss the Contractor's proposed construction aspects, schedule and various requirements of the project specifications.

902 Notice to Proceed

Prepare notice to proceed for Billings to review, execute, and issue.

903 Construction Survey

Establish horizontal and vertical control for the various project components. Horizontal control shall include providing the construction contractor horizontal offsets and horizontal alignment stakes for the water and storm drain utility improvements, the two Big Ditch culverts, and street centerline monuments. Vertical controls including establishing elevation benchmarks, and identifying general project references. It will

be the responsibility of the construction contractor to provide his own construction staking for curb and gutter work, utility grade staking, blue topping of street subgrade, sidewalks and approaches, and resetting disturbed survey markers or monuments. Contractor shall identify all construction staking responsibilities in the technical specifications.

904 Submittal Review

Review of construction submittals for compliance with plans and specifications.

905 Construction Administration

Provide coordination and administration of project construction activities. Prepare project correspondence, and monthly construction pay estimate forms. Review certified pay-rolls (from construction contractor and sub-contractors) if necessary, and review requests for information (RFI) and provide appropriate response. Evaluate change order requests and provide recommendations to Billings. Facilitate negotiations on change orders if any from either Billings or the construction contractor, and prepare change orders.

906 Review Progress Schedules

Review construction progress schedule to identify conformance with project schedule.

907 Progress Meetings

Schedule and conduct meetings to discuss project with Billings and construction contractor. Schedule meetings and/or conference calls twice a month or as needed during construction operations.

908 Coordinate Quality Assurance Testing

Coordinate quality assurance (QA) testing with the construction contractor and independent testing laboratories. Review testing results and advise the construction contractor of noncompliant work. The costs for geotechnical and concrete or any other QA testing are the responsibility of Billings.

909 Construction Observation

Provide full time site observations as necessary to ensure the construction contractor complies with plans and specifications. Observation will include full time construction observation for:

- the installation of the water main piping, the storm drain piping, and the two culverts in the Big Ditch;
- during pouring of the concrete curb and gutter and curb approaches; and
- during the AC paving of Colton Boulevard.

Part time observation will be provided during:

- the layout of the concrete curb and gutter;
- construction of the pedestrian walk path;
- street subgrade preparation;
- contractor clean-up and the other minor components of the project.

Construction observation includes maintaining a diary of construction activities, observations, and material quantities, and taking construction photographs.

It is expected 350 hours of resident project representative (RPR) time will be sufficient to provide necessary construction observation throughout the construction of the project. RPR hours beyond this estimation are Additional Services and would require written authorization prior to proceeding. Hours in which the construction contractor works outside of the normal 40 hour work week and which requires construction observation, will be assessed against the construction contractor, and Billings agrees to withhold such additional charges from the construction contractor in order to compensate Contractor for such services.

910 Substantial Completion Walkthrough

Schedule and facilitate a walkthrough with the construction contractor and Billings to review all project components. Prepare a punch list of incomplete or unsatisfactory items to be resolved before final project closeout. Create and issue Certificate of Substantial Completion.

911 Final Walkthrough and Project Closeout

Schedule and facilitate a final walkthrough with the construction contractor and Billings to review the punch list developed during the substantial completion walkthrough to ensure punch list items satisfactorily completed.

912 Record Drawings

Prepare record drawings for the project. Supply Billings with three (3) paper copies (1 full-size, 2 half-size) and 2 CDs with PDF files of the record drawings. Supply the Department of Environmental Quality with record drawings.

913 1-Year Warranty Inspection

Approximately 11 months after substantial completion, schedule with all parties and be present at a 1-year warranty walkthrough of all project components. Coordinate warranty repairs with the construction contractor.

III. DELIVERABLES

The following deliverables will ultimately be provided by Contractor to Billings.

- Meeting minutes and other appropriate documentation
- Meeting display materials
- Technical memoranda (as necessary)
- Preliminary storm drain analysis
- 80% and final drawings and specifications
- Quantities and opinion of costs
- Bid tabulation and award recommendation
- Contract documents
- Final drawings and specifications

- Record Drawings – three paper copies (one 22”x34” and two 11”x17”) and 2 CDs with PDF files
- Construction certification and close-out documents

IV. EXCLUSIONS

Appendix A 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 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
- Stormwater hydraulic modeling
- Retaining wall design
- Tasks associated with administering the Special Improvement District (SID)
- Landscaping and irrigation system design, including boulevards
- Hardscape design other than sidewalks and shared-use paths
- Lighting design
- Payment of construction quality assurance testing.
- Structural design, including retaining walls
- 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

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

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

Partial payment shall be made to the Contractor upon receipt of the Contractor's pay estimate, said estimate being proportioned to the work completed by the Contractor. 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. **Project Design, Bidding and Construction** - For services rendered under Appendix A Phases 100, 300, 600, 700 and 900 the Contractor shall be paid based upon actual time accrued, but not to exceed the following amount:

Design, Bidding and Construction Services.....\$162,780.00

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

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

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of 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 Contractor's work which requires redoing by Billings shall be deducted from any payments due the Contractor, if the Contractor 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 Contractor's costs and hourly rates as shown in Appendix D have increased for all comparable clients.

Appendix C

Additional Services of Contractor

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

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups or public meetings, which are beyond the scope and intent of this project.
- C. Services to make requested changes, amendments or revisions to Contractor's work, after work was previously approved by Billings.
- D. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Contractor when such revisions are required by changes in Laws and Regulations enacted subsequent to the effective date or are due to any other causes beyond Contractor's control.
- E. Preparing to serve or serving as a consultant or witness for Billings in any litigation, arbitration, or other dispute resolution process related to the Project.
- F. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
- G. Additional or extended services during construction made necessary by Force Majeure as described in Part I, Section 12-B of the Special Provisions.
- H. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by the construction contractor.
- I. Resetting lost or destroyed monuments after construction.
- J. Construction inspection after expiration of the construction contract completion time.
- K. Preparation of change order supporting documents, which require additional engineering design or construction review.

Appendix D
Schedule of Professional Fees

Not Used

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 Contractor's work through final design shall be:

Project 1 – Big Ditch Related Improvements

1. 80% Design Submittal – January 31, 2015
2. Final Design Submittal – 2 weeks following Billings' review comments

Project 2 – Colton Boulevard Improvements

1. Preliminary Design – March 1, 2015
2. 80% Design Submittal – April 15, 2015
3. Final Design Submittal – May 31, 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 Contractor is behind on this Contract due to no fault of Billings, then the Contractor hereby acknowledges the right of Billings to withhold future Contracts to the Contractor in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F
Certificates of Insurance

See attached Certificates of Insurance.