

# Contract for Professional Architectural and Engineering Services

## W.O. 16 – 14 West Billings Stormwater Development Plan

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In consideration of the mutual promises herein, City of Billings and DOWL 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 5 pages (Basic Services of Contractor);
- Appendix B consisting of 2 pages (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Contractor);
- Appendix D consisting of 3 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of 3 pages (Certificate(s) of Insurance); and

### **PART I SPECIAL PROVISIONS**

#### Section 1. Definitions.

In this Contract:

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

#### 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 October 1, 2017.

Section 4. Compensation; Method of Payment. (Choose payment method A, B, or C)

- 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 claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except

Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: Tyler Westrope, PE  
City of Billings  
Public Works - Engineering  
2224 Montana Avenue  
Billings, Montana 59101  
FAX: (406) 237-6291

Contractor: Wade Irion, PE  
DOWL  
Water Practice Lead  
222 N 32<sup>nd</sup> Street, STE 700  
Billings, MT 59101  
FAX: (406) 656-6398

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

#### Section 11. Contract Budget.

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

#### Section 12. Force Majeure.

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

#### Section 13. Financial Management System.

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

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

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

#### Section 14. Funding Requirements.

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

#### Section 15. Subcontracts.

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

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

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

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- F. The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

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: Water Practice Lead  
(title of position)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

Any civil action 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

\_\_\_\_\_  
Wade Irion, DOWL

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

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

Title: Water Practice Lead

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

ATTEST:

IRS Tax ID # 92-0166301

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

APPROVED AS TO FORM:

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

By \_\_\_\_\_

BRENT BROOKS, City Attorney

STATE OF MONTANA            )  
  :ss.  
COUNTY OF YELLOWSTONE )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

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

## Appendix A

### Basic Services of Engineer

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#### Section 1. Engineer's Rights and Duties.

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

Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.

- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Wade Irion working under the Principal-in-Charge, John Shoff.

Section 2. Billings Rights and Duties.

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

Section 3. Scope of Work.

See following pages:

# **W.O. 16-14**

## **West Billings Stormwater Development Plan**

### **SCOPE OF WORK**

#### ***Introduction***

The West Billings Stormwater Development Plan will be used to guide ongoing development and drainage improvements for the Billings West End. The project area generally extends from Shiloh Road to 70<sup>th</sup> Street West and from Rimrock Road to Hesper Road. The Plan development will be prioritized to initially focus within the limits of annexation and particularly areas currently served by water and sewer, such as the areas in the vicinity of the new Ben Steele Middle School. There are many different alternatives to be considered for managing stormwater runoff and there are many stakeholders that will influence the ultimate direction of this plan. The following generalized scope of work is developed in recognition of these many factors that have the potential to alter the course of this planning study. DOWL will work closely with City of Billings to set and adjust the course of this project. However, for budgeting and project management purposes, our work plan is based on the scope of work and assumptions described in the following sections. Increases and/or decreases in the required work effort and associated budget will be coordinated closely with the City of Billings.

The following Scope of Work outlines DOWL's vision for the key tasks to be completed in developing the West Billings Stormwater Development Plan.

#### ***TASK 100 - Project Management & Coordination***

DOWL will coordinate closely with the City in establishing the desired project goals and objectives and in establishing project direction. DOWL will perform general project management duties including coordination with the various stakeholders, monthly progress reporting, and bi-weekly status update meetings/work sessions.

#### ***TASK 200 - Data Collection***

Key data and information is required as a basis for a comprehensive analysis of drainage needs and alternatives. DOWL has already obtained the majority of the GIS data to begin the analysis and will continue to research and collect additional data as needed. It is anticipated that this will include field visits, minor supplemental surveys of key features, flow measurement at key locations, as well as collecting and reviewing data from other stakeholders.

## ***TASK 300 - Ditch/Drain Company Coordination***

DOWL has already had initial discussions with the Cove Ditch, High Ditch, Big Ditch, and Birely Drain companies to discuss their irrigation operations and the City of Billings' stormwater needs. DOWL will conduct additional meetings to continue these discussions and to explore mutually beneficial solutions. DOWL will perform title research related to existing easements of the various ditch and drain companies. This will include record review at the Yellowstone County Clerk and Recorder's offices, City of Billings' records, and ditch company records. DOWL will develop a summary of the findings, building upon the easement documentation provided in the Integrated Stormwater Plan.

## ***TASK 400 - Existing Drainage Patterns and Key Facilities***

DOWL will update the model used for planning and design of the Shiloh Conservation Area to better represent existing runoff patterns in the planning area. This will include updating the drainage basin delineations and runoff characteristics to reflect continued development, and incorporating more details of drainage structures such as culverts, ponds, and storm drains. The model will incorporate the existing irrigation ditches and drains to determine feasible options for incorporating these facilities into the ultimate plan. The existing conditions model will be calibrated to recorded storm events and observations of runoff or flooding by the study team, residents or stakeholders familiar with the area. DOWL will identify key capacity constraints and opportunities for improvements within the existing system.

## ***TASK 500 - Stormwater Management Alternatives***

DOWL will develop an ultimate build-out scenario and update the basin characteristics to represent different scenarios of drainage control for future developments. DOWL will evaluate drainage needs for City Streets, adjacent developments, and floodflow "unloaders" for the ditch companies. Required storm drainage facilities will be evaluated under the following assumptions of alternative stormwater management policy:

- Storm drainage facilities for planned City Streets only
- with runoff from adjacent developments restricted to pre-development rates
- with runoff from adjacent developments restricted to current policy criteria
- with runoff from adjacent developments further restricted beyond current criteria
- with the addition of regional detention storage and new open channel conveyances.

## ***TASK 600 - Detailed Evaluation of Priority Areas***

DOWL will divide the West Billings study area into priority areas for development of detailed stormwater management recommendations. This will include sizing of roadside ditches,

culverts, storm drains, storage facilities, and identification of potential flood hazards. It assumed that this level of detail will be provided for the priority area generally extending from Rimrock Road to Broadwater Avenue.

## ***TASK 700 - Report***

DOWL will develop a report to present the general stormwater management plan for the entire study area and a supplemental report which presents the detailed plan for the priority area(s). The reports will include correspondence, data summaries of the modeling results, presentations of alternatives considered, cost estimates, and the recommended drainage alternative and phasing plan. The report will include GIS exhibits illustrating the alternatives.

## Appendix B

### Methods and Times of Payment

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

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

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

A. For services rendered in accordance with Appendix A, the Engineer shall be paid based upon actual time accrued, but not to exceed the following Total amount:

1. Project Management and Coordination	\$21,835
2. Data Collection	\$27,976
3. Ditch/Drain Company Coordination	\$28,500
4. Existing Drainage Patterns and Key Facilities	\$38,230
5. Stormwater Management Alternatives	\$41,940
6. Detailed Evaluation of Priority Areas	\$22,350
7. Report	<u>\$17,860</u>
TOTAL	\$198,691

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

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

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

#### Section 3. Corrections.

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

#### Section 4. Fee Increases

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

## **Appendix C**

### **Additional Services of Engineer**

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

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

## 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.

#### DOWL FEE SCHEDULE

##### Personnel Billing Rates

Personnel are identified on our invoices by name and/or labor category.

		Biologist IV	\$155.00
		Biologist III	\$115.00
		Archaeologist	\$85.00
Senior Manager I	\$195.00	Landscape Architect VII	\$180.00
Project Manager VI	\$190.00	Landscape Architect V	\$160.00
Project Manager V	\$170.00	Landscape Architect IV	\$145.00
Project Manager IV	\$165.00	Landscape Architect III	\$120.00
Project Manager III	\$130.00	Landscape Architect II	\$105.00
Project Manager II	\$140.00	Landscape Architect I	\$100.00
Project Manager I	\$115.00	Landscape Planner	\$105.00
Project Administrator	\$80.00	Planner X	\$250.00
Project Quality Assurance Manager	\$160.00	Planner IX	\$210.00
Field Project Representative	\$95.00	Planner VIII	\$195.00
Project Assistant II	\$100.00	Planner VII	\$165.00
Project Assistant I	\$85.00	Planner V	\$160.00
Engineer X	\$225.00	Planner IV	\$145.00
Engineer IX	\$210.00	Planner III	\$125.00
Engineer VIII	\$185.00	Planner II	\$105.00
Engineer VII	\$175.00	Planner I	\$75.00
Engineer VI	\$160.00	Geologist IV	\$140.00
Engineer V	\$150.00	Geologist III	\$120.00
Engineer IV	\$125.00	Geologist II	\$110.00
Engineer III	\$105.00	Hydrologist III	\$115.00
Engineer II	\$90.00	Hydrologist	\$110.00
Engineer I	\$85.00	Hydrogeologist	\$110.00
Civil and Transportation Designer	\$90.00	Cultural Resources Specialist IV	\$155.00
Environmental Specialist X	\$225.00	Cultural Resources Specialist III	\$110.00
Environmental Specialist IX	\$210.00	Cultural Resources Specialist I	\$85.00
Environmental Specialist VIII	\$185.00	Intern	\$50.00
Environmental Specialist VII	\$180.00	Engineering Technician V	\$115.00
Environmental Specialist VI	\$165.00	Engineering Technician IV	\$110.00
Environmental Specialist V	\$150.00	Engineering Technician III	\$85.00
Environmental Specialist IV	\$115.00	Engineering Technician II	\$75.00
Environmental Specialist III	\$110.00	Engineering Technician I	\$65.00
Environmental Specialist II	\$105.00	Public Involvement Program Manager	\$125.00
Environmental Specialist I	\$90.00	Public Involvement Coordinator	\$110.00



Public Involvement Planner	\$95.00	Proposal Manager	\$110.00
Public Involvement Assistant	\$80.00	Risk Manager	\$170.00
Real Estate Services Manager	\$150.00	Materials Supervisor	\$105.00
Right of Way Agent VI	\$185.00	Materials Manager	\$100.00
Right of Way Agent IV	\$150.00	Laboratory Supervisor	\$105.00
Right of Way Agent III	\$125.00	Laboratory Manager	\$95.00
Right of Way Agent II	\$110.00	Senior Materials Technician	\$75.00
Right of Way Agent I	\$95.00	Lead Materials Technician	\$65.00
Right of Way Assistant	\$85.00	Materials Technician	\$60.00
Professional Land Surveyor X	\$180.00	Inspector - Supervisor	\$130.00
Professional Land Surveyor IX	\$170.00	Inspector II	\$100.00
Professional Land Surveyor VIII	\$155.00	Inspector I	\$90.00
Professional Land Surveyor VII	\$145.00	Dispatcher	\$85.00
Professional Land Surveyor VI	\$135.00		
Professional Land Surveyor V	\$130.00		
Professional Land Surveyor IV	\$120.00		
Professional Land Surveyor III	\$110.00		
Professional Land Surveyor II	\$100.00		
Professional Land Surveyor I	\$90.00		
Crew Chief V	\$120.00		
Crew Chief IV	\$110.00		
Crew Chief III	\$100.00		
Crew Chief II	\$95.00		
Crew Chief I	\$85.00		
Survey Crew Surveyor V	\$100.00		
Survey Crew Surveyor IV	\$90.00		
Survey Crew Surveyor III	\$80.00		
Survey Crew Surveyor II	\$70.00		
Survey Crew Surveyor I	\$60.00		
Survey Technician VI	\$100.00		
Survey Technician V	\$90.00		
Survey Technician IV	\$85.00		
Survey Technician III	\$70.00		
Survey Technician II	\$60.00		
Survey Technician I	\$50.00		
Platting/Survey Technician	\$120.00		
Survey Technician - Supervisor	\$120.00		
GIS Coordinator	\$120.00		
GIS Specialist	\$85.00		
GIS Technician	\$75.00		
Graphics Designer	\$100.00		
Administrative Manager	\$90.00		
Administrative Assistant	\$55.00		
Document Production Supervisor	\$110.00		
Technical Coordinator	\$135.00		
Systems Administrator	\$125.00		
Accounting Manager	\$145.00		
Accounting Technician	\$75.00		
Corporate Development Manager	\$150.00		
Marketing & Administrative Manager	\$125.00		
Marketing Coordinator	\$85.00		
Marketing Assistant	\$75.00		



**Survey Crews**

One-Person Survey Crew	=	\$120/hour
One-Person Survey Crew GPS Robotics	=	\$130/hour
Two-Person Survey Crew w/o GPS Robotics	=	\$160/hour
Two-Person Survey Crew	=	\$180/hour
Two-Person Survey Crew GPS Robotics	=	\$190/hour
Two-Person Survey Crew (PLS + LSIT)	=	\$225/hour
Three-Person Survey Crew	=	\$260/hour

**Equipment, Materials, & Supplies**

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

**Travel, Mileage, & Miscellaneous**

Per diem will be billed when travel is more than 50 miles from the office during a meal allowance period of three or more consecutive hours or involves an overnight stay. The three meal allowance periods are breakfast (midnight to 10 am), lunch (10 am – 3 pm) and dinner (3 pm to midnight).

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

**Notes**

1. DOWL's Professional Fee Services Fee Schedule is subject to adjustment each year or at the end of a contract period, whichever is appropriate. Should adjustments be anticipated or required, such adjustments will not affect existing contracts without prior agreement between Customer and DOWL.
2. Costs included in overhead rates for reasonable requests. Requests beyond those considered reasonable by the project manager billed at Cost + Agreed Upon Mark-up.
3. Specialized computer software or hardware necessary for a unique application for will be billed at a negotiated rate or unit cost.
4. Late charges will be assessed on the unpaid balance of all accounts not paid within 30 days of the billing date, at a rate of 1.0 percent per month (12% per year).

## **Appendix E**

### **Project Schedule**

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Based on a notice to proceed by Billings date no later than July 15, 2016, the completion date for the Engineer's work through submission of the draft West Billings Stormwater Development Plan shall be :

January 15, 2017

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

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

## **Appendix F**

### **Certificate(s) of Insurance**

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Insurance Certificates Attached



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/14/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Alaska USA Insurance Brokers LLC P.O. Box 196530  Anchorage AK 99519		<b>CONTACT NAME:</b> Margery Moberly, CIC, CISR <b>PHONE (A/C. No. Ext):</b> (907) 561-1250 <b>FAX (A/C. No):</b> (907) 561-4315 <b>E-MAIL ADDRESS:</b> m.moberly@alaskausainsurance.com	
<b>INSURED</b> DOWL, LLC operating as DOWL 222 N. 32nd Street, Ste 700  Billings MT 59101		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> National Surety Corp. NAIC # 21881 <b>INSURER B:</b> Liberty Northwest Insurance <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 15-16 MT Billings

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	Y	MXX80966409	12/1/2015	12/1/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1,000,000
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	Y	MXA80315846	12/1/2015	12/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Underinsured motorist \$ <b>Included</b>
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			XAE15195381	12/1/2015	12/1/2016	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ \$
B	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC41NC019467015	12/1/2015	12/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

DOWL Project No. 4036.21263.01, Project Name: West Billings Stormwater Development Plan, WO 16-14. The Certificate Holder is an Additional Insured on the General Liability & Automobile policies, but only with respect to work done by or on behalf of the named insured for the project referenced. Subject to policy terms, conditions & exclusions. The Certificate Holder is granted Waiver of Subrogation on the General Liability, Automobile and Workers' Compensation policies as respects the referenced project subject to the policy terms, conditions and exclusions.

**CERTIFICATE HOLDER****CANCELLATION**

City of Billings, Montana Attn: Tyler Westrope Engineering Division 2224 Montana Avenue Billings, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE M Moberly, CIC, CISR/ <i>Margery Moberly</i>
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Terra Insurance Company  
(A Risk Retention Group)  
Two Fifer Avenue, Suite 100  
Corte Madera, CA 94925



## CERTIFICATE OF INSURANCE

**DATE**

06/15/16

**NAME AND ADDRESS OF INSURED**

DOWL, LLC operating as  
DOWL  
222 North 32nd Street, Suite 700  
Billings, MT 59101

This certifies that the "claims made" insurance policy (described below by policy number) written on forms in use by the Company has been issued. This certificate is not a policy or a binder of insurance and is issued as a matter of information only, and confers no rights upon the certificate holder. This certificate does not alter, amend or extend the coverage afforded by this policy.

The policy of insurance listed below has been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy. Aggregate limits shown may have been reduced by paid claims.

**TYPE OF INSURANCE** Professional Liability

**POLICY NUMBER**

216089

**EFFECTIVE DATE**

01/01/16

**EXPIRATION DATE**

12/31/16

**LIMITS OF LIABILITY** \$1,500,000 EACH CLAIM  
\$1,500,000 ANNUAL AGGREGATE

**PROJECT DESCRIPTION**

West Billings Stormwater Development Plan  
WO 16-14  
4036.21263.01

**CANCELLATION:** If the described policy is cancelled by the Company before its expiration date, the Company will mail written notice to the certificate holder thirty (30) days in advance, or ten (10) days in advance for non-payment of premium. If the described policy is cancelled by the insured before its expiration date, the Company will mail written notice to the certificate holder within thirty (30) days of the notice to the Company from the insured.

**CERTIFICATE HOLDER**

City of Billings, Montana  
Attn: Tyler Westrope  
Engineering Division  
2224 Montana Avenue  
Billings, MT 59101

**ISSUING COMPANY:**

A handwritten signature in blue ink that reads "David Collett".

**President**