

# Contract for Professional Architectural and Engineering Services

## W.O. 17-26; Rimrock and 62<sup>nd</sup> Stormwater Detention Pond

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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 pages (Additional Services of Contractor);

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

Appendix E consisting of 1 pages (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~~ in print, and in digital format (PDF and AutoCAD), as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- ~~E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.~~

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2019.

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, Montana 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: DOWL, Wade Irion, 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

County of \_\_\_\_\_

This instrument was signed and sworn to before me

on \_\_\_\_\_ by \_\_\_\_\_

(Name of signer)

\_\_\_\_\_  
(Notary Signature)

[Affix seal/stamp to the left or below]

**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 \_\_\_\_\_.

Section 3. Scope of Work.

See following Pages:

# SCOPE OF WORK

## W.O. 17-26

### 62<sup>nd</sup> and Rimrock Detention Pond

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#### Project Management

- DOWL will perform general project management tasks including monthly billing, project status updates, and regular coordination with the project team and the City of Billings.
- DOWL has also assumed coordination with third party developer's contractor and City of Billings for removal of soils within the 62<sup>nd</sup> Street Detention Pond Site.

#### Survey

- Establish new project control and tie the existing City of Billings control to the new control. DOWL anticipates setting 5-6 new project control points, observe their horizontal locations with GPS, and run differential levels to obtain vertical values. The new control and existing City of Billings control will all be converted to state plane. Control verification results will be shared with the City of Billings.
- DOWL will perform a validation survey to check the existing LIDAR data. This validation survey will consist of several cross section surveys through the site along with a channel survey for the lower portion of the City property, below pond 2.
- DOWL anticipates staking borrow excavation limits for a possible third party developer at each of the 4 pond locations. It is assumed that the project staking task will be executed once, with no need for re-staking.
- DOWL anticipates performing a topographic survey of the site following borrow excavation to establish the new baseline topography. This will allow DOWL to finalize the cut and fill quantities for the City contracted construction.
- DOWL survey services for this project do not include legal research or field survey relating to property locations with the assumption that this was all completed as part of the land purchase.
- DOWL will request locates of underground utilities on the project site and will survey any utilities identified within or adjacent to the project site.

## Geotechnical

- DOWL will explore subsurface conditions at the site by drilling 7 soil borings within the cell and pond footprints. The soil borings will extend to a depth of approximately 20 feet, sound bearing stratum or auger refusal, whichever comes first.
- Perform a standard penetration resistance test.
- Obtain undisturbed Shelby tube samples for material testing.
  - Moisture content
  - Atterberg limits
  - Sieve analysis
  - Standard proctor
  - Unconfined compressive strength
  - PH/resistivity/water soluble sulfates
- Develop geotechnical report discussing considerations for design and construction of the new structures, subgrade improvement, slope stability, and corrective earthwork if necessary.  
The geotechnical report will include the following:
  - Foundation system alternates with associated design parameters,
  - Estimated settlement,
  - Groundwater conditions,
  - Seismic site classification,
  - Lateral earth pressures,
  - Subgrade preparation,
  - Water soluble sulfate content testing for use in concrete design,
  - Expected frost penetration depth and native soil susceptibility to frost heave,
  - Site grading and earthwork recommendations,
  - Utility trench excavation, shoring, backfill and compaction recommendations, and
  - Slope stability recommendations.

## Grading Plan & Landscape Plan

- Develop a basemap of the site as it exists before borrow excavation by potential third party development contractor. The existing conditions basemap will be updated using the supplemental survey and will be used as a basis of excavation quantities and topsoil stockpile locations to guide borrow excavation activities.
- Develop the borrow excavation plan for the third party development contractor to be consistent with the planned final configuration of the site.

- Develop a post-borrow excavation basemap to be used as the basis of evaluating quantities for the City contracted project.
- Design final grading plan to define the low flow channel, detention berms, pond bottoms, water control structures, and access path.
- Coordinate with the City for incorporation of landscape features; which are anticipated to consist of revegetation with native grasses, and a limited number of trees and shrubs. No landscape irrigation system is anticipated.

## Hydraulic Modeling

- Perform hydraulic modeling to evaluate the required site function with full-build out of the contributing areas.
  - Size outfall structures to restrict runoff from the 2-year, 10-year and 100-year storms to pre-development rates.
- Coordinate with the City of Billings to project development phasing and timing for the contributing areas. This information will be used to guide adaptive design of the outlet structures such that they can be used to control runoff under phased buildout .
- Design outfall structures and spillways. It is assumed that each of the structures will be very similar.
- Develop design memo documenting the methodology and results of the geotechnical evaluation and the hydrologic and hydraulic design.

## Preliminary Design Package

- DOWL will develop a tree removal plan identifying Russian Olive or other trees or debris to be removed and disposed of. The final determination of tree removal will be coordinated through City personnel prior to construction.
- DOWL will develop landscaping plan sheets to guide the construction of elements to improve site aesthetics and public access. Plans sheets will include planting schematics and trails. The City will provide a desired list of trees and shrubs to be planted.
- DOWL will develop Preliminary Construction Plans for the City's review. Plans will include:
  - Cover sheet;
  - Sheet Index, Legend and Notes sheet;
  - Tree Removal and Demolition sheet;
  - Grading Plans of the Detention Ponds

- Miscellaneous Detail sheets (including embankment details, etc...);
  - Low Flow Channel Plan and Profile;
  - Outfall & Spillway Structural Detail sheets; and,
  - Landscaping sheets
- DOWL will develop a Preliminary Project Manual. The project manual will include project specifications and special provisions based on the current edition of the Montana Public Works Standard Specifications (MPWSS) and City of Billings Standard Modifications to the MPWSS.
- DOWL will prepare a Pre-Final Opinion of Probable Construction Cost.
- DOWL will perform Quality Assurance and Quality Control checks during the Preliminary design submittal.

## **Final Design Package**

- DOWL will attend a review meeting with City to discuss the City's Pre-Final design comments. DOWL will develop a comment response matrix to formally address City comments.
- DOWL will prepare Final Design Plans by incorporating the City's Pre-Final comments.
- DOWL will prepare the Final Project Manual by incorporating the City's Pre-Final comments.
- DOWL will prepare the final opinion of probable construction costs by incorporating the City's Pre-Final comments.
- DOWL will perform Quality Assurance and Quality Control before submittal of the Final design package.
- DOWL will provide the City with one copy of the final plans and project manual to verify all Pre-Final comments were addressed before advertisement.
- Following the City's final approval, DOWL will prepare bid-ready plans and project manual for bid advertisement. The number of copies of plans and project manuals to be produced will be determined by the City of Billings.

## **Environmental Permitting**

- DOWL will conduct a wetland delineation of the project site utilizing the 1987 Army Corps of Engineers (USACE) Manual and the 2010 Regional Supplement – Great Plains Region. Wetland boundaries and waterways will be mapped using a map-grade GPS unit.

- Upon completion of the field delineation, DOWL will prepare figures, using current available aerials of the project site, and prepare a Wetland Delineation Report for submittal to the USACE.
- DOWL will coordinate with the USACE early in the project schedule regarding the proposed project scope and associated 404 permit requirements.
- DOWL will complete a Montana Joint Application for proposed work in Montana's Streams, Wetlands, Floodplain, and other Water Bodies and submit to the USACE for approval and authorization of a Section 404 permit. DOWL assumes the authorization will take place under a Nationwide Permit, and an individual 404 permit would not be required. DOWL will address comments and make changes to the permit application and plan set as needed. It is assumed that any comments received will only require minor refinement to the plan.

## **Bidding and Preconstruction Services**

- DOWL will provide bid advertisement text, from the project manual, to the City for publication. The City will advertise the project.
- DOWL will distribute bid sets, maintain the plan-holders list, and issue addenda and clarifications.
- DOWL will attend the pre-bid meeting and assist the City during the pre-bid meeting with questions related to the construction documents. DOWL will issue pre-bid meeting minutes within one week after the meeting.
- DOWL will tabulate all bids received and provide the City with an award recommendation.

## **Construction Administration**

- This scope of work and the associated fee estimate assumes:
  - One (1) construction contract/Contractor for this project, with construction duration not to exceed 70 calendar days.
  - Engineer shall consult with the City and act as representative for the City as defined in the construction contract documents, which will incorporate the MPWSS, and specifically the General Conditions contained therein as modified by the City of Billings Standard Modifications, latest edition.
  - The extent and limitation of the duties, responsibilities, and authority of the Engineer will be as assigned in the construction contracts documents and shall not be modified, except as Engineer may otherwise agree in writing.

- The City will schedule and conduct a pre-construction conference and publish meeting minutes. DOWL will address contractor questions. DOWL will attend a pre-construction field review with contractors as necessary.
- Take pre-construction photos and videos of the project area.
- It is assumed that DOWL will provide part-time construction observation for 5 calendar weeks of construction and full-time construction observation for the remaining 5 calendar weeks of construction. DOWL's Resident Project Representative (RPR) will assist the Engineer in observing progress, quality of work, and conformance to the contract documents and other applicable codes and standards. During full-time observation, one RPR will be on-site for 40 hours per week, 5 days a week. During part-time observation, one RPR will be on-site for 8 hours per week, 5 days a week. Inspection activities will include review of all major work items in the construction documents, including traffic control set-ups and sediment and erosion control plans. The RPR will prepare daily inspection reports, daily quantity summaries, weekly progress reports, weekly workforce and equipment reports, and other reports as required. RPR responsibilities are further defined in the General Conditions contained in the City of Billings Standard Modifications, latest edition.
- Develop and implement a quality assurance testing plan for materials testing in accordance with the City of Billings Standard Modifications, latest edition. DOWL will conduct a pre-construction testing meeting with RPRs, surveyors, field testing personnel, and lab manager to coordinate testing requirements. DOWL will provide qualified personnel, equipment, and supplies for surveying and field testing of materials throughout construction. Monitor and collect results from contractor's separate quality control materials testing program. Monitor and collect results from contractor's separate quality control materials testing program.
- Attend and conduct a weekly construction meeting with the City and contractor. Allow up to 3 hours per week for the weekly construction meeting and any related follow-up activities.
- Review contractor's submittals, such as shop drawings, samples, equipment, mix designs, aggregates, and other data, for conformance to the contract documents. This review does not include or extend to contractor's means, methods, techniques, sequences, procedures, or safety programs.
- Respond to contractor requests for information. Issue necessary clarifications and interpretations of the contract documents. Notify the City immediately of any contract problems or deviations from the approved contract documents. Issue notices as required by the construction contract. Recommend and prepare Work Change Directives and Change Orders for the City as necessary. Change orders that require additional design or

construction services by Engineer will be considered Additional Services and compensated in accordance with the provisions of this Contract.

- Receive, review, and transmit to City all contractor requests for City staff involvement and approvals, such as traffic control reviews, etc. Assure required advance notice requirements are being met by contractor for all requests to the City for reviews and inspections.
- Make visits to the site at intervals appropriate to various stages of construction to observe, as an experienced and qualified design professional, the progress of the contractor's work. Visits by the Engineer shall be limited to spot checking and similar methods of general observation of the work as assisted by the RPR.
- Review and recommend monthly contractor payment requests.
- Conduct substantial completion and final inspections with City and contractor. Prepare and monitor punchlist items required for completion of the work by contractor.
- Provide project management and internal quality assurance throughout this task.
- It is assumed that construction staking will be the responsibility of the contractor.

### **Record Drawings and Project Completion**

- DOWL will prepare record drawings upon project completion based on construction notes and drawings compiled by the RPR.
- DOWL will attend and assist the City on a substantial completion walk-through of the project
- DOWL will attend and assist the City on a one-year warranty walk-through of the project.

## 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 the Scope of Work in Appendix A, the Engineer shall be paid based upon the following:

1. Design Phase Services (Tasks 100 through 160)	\$80,634
2. Bidding Phase Services (Task 200)	\$5,430
3. Construction Phase Services (Task 300)	\$54,180
4. Post-Construction Close-Out (Task 400)	\$5,460
TOTAL	\$145,704

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 through the course of this contract, which are beyond the scope and intent of this work 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. Additional services may include, but are not limited to the following:

- A. Additional surveying
- B. Additional field and laboratory testing of materials and reports.
- C. Additional construction inspection services
- D. Additional hydrologic modeling and planning.

## 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.

Personnel of the Engineer will be identified on invoices by name and/or labor category.

Description	Rate	Description	Rate
Accounting Manager	\$150	Engineering Technician IV	\$110
Accounting Technician	\$80	Engineering Technician V	\$115
Administrative Assistant	\$55	Environmental Specialist I	\$90
Administrative Manager	\$90	Environmental Specialist II	\$105
Archaeologist	\$85	Environmental Specialist III	\$110
Biologist III	\$115	Environmental Specialist IV	\$115
Biologist IV	\$125	Environmental Specialist IX	\$210
Biologist V	\$160	Environmental Specialist V	\$125
Civil and Transportation Designer	\$90	Environmental Specialist VI	\$165
Corporate Development Manager	\$150	Environmental Specialist VII	\$180
Crew Chief I	\$85	Environmental Specialist VIII	\$185
Crew Chief II	\$95	Environmental Specialist X	\$225
Crew Chief III	\$100	Field Project Representative	\$95
Crew Chief IV	\$110	Geologist II	\$110
Crew Chief V	\$120	Geologist III	\$120
Cultural Resources Specialist I	\$85	Geologist IV	\$140
Cultural Resources Specialist III	\$110	GIS Coordinator	\$120
Cultural Resources Specialist IV	\$135	GIS Specialist	\$85
Cultural Resources Specialist V	\$155	GIS Technician	\$75
Dispatcher	\$90	Graphics Designer	\$100
Document Production Supervisor	\$110	Hydrogeologist	\$110
Engineer I	\$90	Hydrologist	\$110
Engineer II	\$95	Hydrologist III	\$115
Engineer III	\$105	Inspector - Supervisor	\$130
Engineer IV	\$135	Inspector I	\$90
Engineer IX	\$210	Inspector II	\$100
Engineer V	\$150	Intern	\$50
Engineer VI	\$165	Laboratory Manager	\$95
Engineer VII	\$175	Laboratory Supervisor	\$105
Engineer VIII	\$185	Landscape Architect I	\$100
Engineer X	\$225	Landscape Architect II	\$105
Engineering Technician I	\$65	Landscape Architect III	\$120
Engineering Technician II	\$80	Landscape Architect IV	\$145
Engineering Technician III	\$90	Landscape Architect V	\$160



Description	Rate	Description	Rate
Landscape Architect VII	\$180	Project Manager V	\$170
Landscape Planner	\$105	Project Manager VI	\$190
Lead Materials Technician	\$70	Project Quality Assurance Manager	\$160
Marketing & Administrative Manager	\$125	Proposal Manager	\$110
Marketing Assistant	\$75	Public Involvement Assistant	\$80
Marketing Coordinator	\$90	Public Involvement Coordinator	\$110
Materials Manager	\$100	Public Involvement Planner	\$95
Materials Supervisor	\$105	Public Involvement Program Manager	\$125
Materials Technician	\$60	Real Estate Services Manager	\$150
Materials Technician II	\$70	Right of Way Agent I	\$95
One-Person Survey Crew	\$120	Right of Way Agent II	\$110
One-Person Survey Crew GPS/Robotics	\$130	Right of Way Agent III	\$125
Planner I	\$85	Right of Way Agent IV	\$150
Planner II	\$105	Right of Way Agent VI	\$185
Planner III	\$125	Right of Way Assistant	\$85
Planner IV	\$145	Risk Manager	\$170
Planner IX	\$210	Senior Manager I	\$195
Planner V	\$160	Senior Manager II	\$210
Planner VII	\$165	Senior Manager III	\$220
Planner VIII	\$195	Senior Manager IV	\$250
Planner X	\$250	Senior Materials Technician	\$75
Platting/Survey Technician	\$120	Survey Crew Surveyor I	\$60
Professional Land Surveyor I	\$90	Survey Crew Surveyor II	\$70
Professional Land Surveyor II	\$100	Survey Crew Surveyor III	\$80
Professional Land Surveyor III	\$110	Survey Crew Surveyor IV	\$90
Professional Land Surveyor IV	\$120	Survey Crew Surveyor V	\$100
Professional Land Surveyor IX	\$170	Survey Technician -- Supervisor	\$120
Professional Land Surveyor V	\$130	Survey Technician I	\$50
Professional Land Surveyor VI	\$135	Survey Technician II	\$60
Professional Land Surveyor VII	\$145	Survey Technician III	\$70
Professional Land Surveyor VIII	\$155	Survey Technician IV	\$85
Professional Land Surveyor X	\$180	Survey Technician V	\$90
Project Administrator	\$80	Survey Technician VI	\$100
Project Assistant I	\$85	Systems Administrator	\$125
Project Assistant II	\$100	Technical Coordinator	\$135
Project Manager I	\$115	Three-Person Survey Crew	\$260
Project Manager II	\$120	Two-Person Survey Crew	\$180
Project Manager III	\$130	Two-Person Survey Crew (PLS + LSIT)	\$225
Project Manager IV	\$165	Two-Person Survey Crew GPS/Robotics	\$190
		Two-Person Survey Crew w/o GPS/Robotics	\$160



**Equipment, Materials, & Supplies**

ATVs/Trailer	=	\$150.00/day		
Boat/Trailer	=	\$150.00/day		
			<u>DAY</u>	<u>WEEK</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 from the City of Billings no later than August 15, 2017, the completion dates for the Engineer's work shall be as follows:

Final Design	March 1, 2018
Bidding Documents	May 1, 2018
Project Close-Out	December 31, 2019

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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(Attach Certificate(s) of Insurance)

Certificates to be attached prior to City signatures.