

Contract for Professional Engineering Services

City of Billings W.O. 18-01, Schedule 2 Sanitary Sewer Rehabilitation Project

In consideration of the mutual promises herein, City of Billings and Morrison-Maierle, Inc. agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 7 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 20 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 their designee.
- B. "Billings" and/or "Owner" means the City of Billings.
- C. "Contractor" and/or "Engineer" means Morrison-Maierle, Inc.

Section 2. Scope of Services.

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

- D. The Contractor shall provide as-built drawings 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. Requirements for submitting as constructed documents of completed Private Contracts, Work Orders, Special Improvement Districts and Site plans involving any City of Billings infrastructure: one half size paper copy to scale, one full size paper copy to scale, two CD's or DVD's with PDF files to scale and AutoCAD DWG files, Version 2016, or equivalent including points to represent City of Billings infrastructure (Sanitary Sewer Manholes, Signs, Storm Drain Manholes, Signals...) in Montana NAD83 (2011), NAVD 88 Vertical, State Plane Coordinates in Horizontal and Vertical units of International Feet.

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, 2018.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than as 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, they 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: City Engineer (Debi Meling, PE)
City of Billings
Public Works Department
2224 Montana Avenue
Billings, Montana 59101 FAX: (406) 237-6291 / PHONE : (406) 657-3097

Engineer: Morrison Maierle, Inc.
Carl Anderson, PE
315 North 25th Street, Suite 102
Billings, Montana 59101 FAX: (406) 237-1201 / PHONE: (406) 656-6000

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: President or Vice President
(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.

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.

Billings shall indemnify, defend, save, and hold the Contractor 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 Billings or any agent, employee or subcontractor as a result of Billings' or any subcontractor's performance pursuant to this Contract.

Billings shall not indemnify, defend, save and hold the Contractor 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 the Contractor occurring during the course of or as a result of the performance of the Contract.

Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, Billings shall indemnify, defend, save, and hold the Contractor 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 Billings' or any subcontractor's wrongful or negligent acts occurring as a result from Billings' 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

Morrison-Maierle, Inc.

Name: Carl J. Anderson
Title: Vice President

Date: _____

Date: 11/9/2017

ATTEST:

IRS Tax ID # 81-0217149

City Clerk

APPROVED AS TO FORM:

Date: _____

By _____

BRENT BROOKS, City Attorney

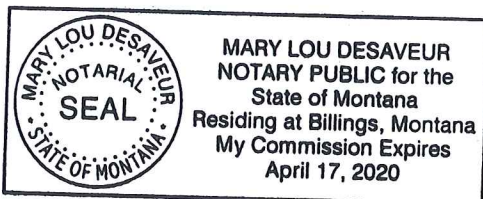
STATE OF MONTANA)

:ss.

COUNTY OF YELLOWSTONE)

On this 9th day of November, 2017, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Carl J. Anderson, known to me to be the Vice President of Morrison-Maierle, Inc., 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.



Mary Lou Desaveur
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: April 17, 2020

Note: Final contract documents will require the Contractor's signature to be notarized if Federal funds are used.

Appendix A

Basic Services of Engineer

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 Kurtis DeShaw, P.E. working under the Principal-in-Charge, Carl Anderson, P.E.

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 Travis Harris, P.E.

Section 3. Scope of Work.

The scope of work includes the following items:

1. The Engineer shall perform the work outlined within this agreement that includes the completion of design and construction phase services for W.O. 18-01 Schedule 2 Sanitary Sewer Rehabilitation Project. Design and construction work for the W.O. 18-01 Schedule 2 Sanitary Sewer and Water Rehabilitation Projects is based on the following construction zones:

Zone A: Rose Park Area – 4,200 linear feet (LF) of 8-inch sewer main replacement. 1,250 LF of sewer main in this area has been surveyed as part of a previous project and will be verified for any new utilities as part of this project.

Zone B: Division Street Area – 5,150 LF of 8-inch sewer main replacement. Approximately 1,000 LF of storm drain to replace the existing storm drain in the alleys that will be disrupted by construction.
2. Potholing or other exploratory (e.g. additional video or service location methods) may be required during design and/or construction of this project. This scope includes up to \$10,000 for potholing or exploratory services as required.
3. This scope includes up to \$4,000 for DEQ review permit fees.

Completion of said design shall include the following tasks:

A. Preliminary Engineering Services (30% Design)

1. Field surveys within the project limits and extending to appropriate match lines. Data collection shall include establishment of permanent horizontal and vertical control, topographic features and existing property pins. Engineer will provide appropriate temporary traffic control measures for all data collection completed in traffic areas. Field survey data will be utilized by the Engineer to develop preliminary project base mapping.

2. Research will be performed to verify existing right-of-way locations utilizing platted information, ownership records and found property pins.
3. Geotechnical engineering as provided by sub consultant to consultant shall include field sampling, laboratory testing and review of subsurface soils to determine appropriate pavement section design alternatives, sub-grade treatment, groundwater conditions, and foundations for utility installations. Recommendations for specific construction materials established in this review will be included in the project plans and specifications. Design geotechnical work will include 19 soil borings ranging from 11 to 16 feet deep, 1 piezometer in 17th Street West, and 2 asphalt cores.
4. Coordinate with City of Billings staff and other public and private stakeholders in the development of roadway and utility improvements.
5. Coordination with property owners adjacent to the project.
6. Design of utility alignments and cross-sections; sewer main; and related improvements.
7. Coordination with property owners regarding piping or abandonment alternatives within the right-of-way. This may include verification of service locations.
8. Confirm appropriate utility sizing within the project limits. Design replacement of existing utilities.
9. Coordinating the identification and potential relocation of private utilities including, but not limited to, overhead and underground power, cable TV, underground telephone and communications, petroleum oil, and natural gas.
10. One (1) 11"x17" copy of 30% plans will be provided to the City for review.

B. Preliminary Engineering Services (70% Design)

1. The 70% design package will incorporate Billings' comments pertaining to the Preliminary Design Report and preliminary public utility plans. Updated plan and profile sheets will be presented, where applicable, as well as further development of the sewer main, and other recommended improvements.

One (1) 22"x34" copy and one (1) 11"x17" copy of 70% plans and two (2) project specifications will be provided to the City for review.

2. Attend periodic design review meetings with Billings.
3. Send 70% construction plans to the private utilities for review and comment, and hold a subsequent coordination meeting with the private utilities to assemble and evaluate comments.
4. Planning and facilitating one (1) public informational meeting during the design phase.

C. Preliminary Engineering Services (90% & Final 100% Design)

1. The 90% design package will incorporate comments received from Billings, after the 70% design package submittal and periodic design review meetings are complete. The plan package will include design of the plan and profile utilities drawings, related traffic control measures, sewer main, and other recommended improvements.
2. Attend periodic design review meetings with Billings.
3. Engineer will provide final design services, upon receiving Billings' approval of the 90% plan package submittal. Plans and specifications will be prepared in accordance with the Montana Public Works Standard Specifications, Sixth Edition, April 2010 and the most current edition of the City of Billings Standard Modifications.
4. Stamp and sign all plans and specifications with seal of Professional Engineer in charge.
5. Computation of project construction quantities and preparation of an engineer's opinion of probable construction cost.
6. Prepare and supply all project specifications and bidding documents necessary for bidding and construction. Bid advertisement text will be provided to Billings for publication. Schedule and hold a pre-bid conference, and prepare any necessary addenda. Conduct a pre-bid field review with contractors as necessary. Attend the bid opening, analyze bids, submit a bid tabulation, and make a construction contract award recommendation.
7. Preparation of a complete construction traffic control plan. The plan will show required detours, required signing, applicable construction phasing.
8. Furnish contract plans and specifications in sufficient number for bidding and contracting the project. It is anticipated that twenty-five (25) 11"x17" copies will be required. Proceeds from plan sales will be credited against the project.
9. Submittal of four (4) copies of construction contract documents.
10. Prepare and submit Preliminary Design Report for the project, report shall summarize project related design parameters; public utility improvements; right-of-way impacts; stakeholder impacts; traffic operations and traffic control measures; pedestrian improvements; corridor landscaping; and preliminary construction costs. Up to one (1) conceptual alternative may also be considered for certain utility improvements. The report will also include a preliminary environmental evaluation, which reviews historical data related to the project area, including leaking underground storage tank research and other known environmental issues.
11. Submittal of three (3) copies of the project specifications, three (3) half-size plan sets, contract-bidding documents, design report and certified sewer checklist to Montana department of Environmental Quality for approval.
12. Apply for all permits, licenses, and approvals necessary to construct the project. All DEQ permit and licensing fees will be paid by the Engineer up to a total of \$4,000.

D. Construction Services

1. Construction Layout and Control.

- i. Provide personnel, equipment, and supplies for construction layout and control. Construction layout shall include, but not be limited to, measurements, lines, locations, and grades necessary for construction.
- ii. Reference and preserve all existing survey monuments and benchmarks. All monuments required within the project shall be punched and elevations shown on as-built drawings.

2. Inspection and Testing.

- i. Coordinate appropriate testing of materials intended for incorporation into the project and require documentation of testing results.
- ii. Provide review of construction to check the Contractor's work for compliance with the drawings, specifications, and other applicable documents, codes or standards. Review of work shall be made on a full-time basis while any major item of work is in progress. Major items of work shall be water; sanitary sewer; storm drain, and irrigation utilities; subgrade preparation; gravel base course preparation; concrete pouring and finishing; paving; signalization, lighting, and striping. The Engineer shall provide a minimum of **48** hours notice for Billings personnel when specific inspections or testing require their presence on the project. Each daily review shall be documented in permanent reproducible form and kept in consecutive order with the project file. Copies of the daily review reports shall be furnished to Billings as requested during construction. Engineer will notify Billings immediately of contract problems or deviation from approved plans. The planned resident project representative effort for each schedule are as follows:

Zone A of this project is planned for one (1) full time resident project representative at ten (10) hours per working day for 79 working days of the 110 calendar day project.

Zone B of this project is planned for one (1) full time resident project representative at ten (10) hours per working day for 93 working days of the 130 calendar day project.

- iii. Provide the services of a qualified materials engineering technician who will observe construction and provide representative tests. Provide direct coordination of laboratory and field quality assurance testing and geotechnical engineering between the project engineer, field inspector, and a project construction materials engineer. Geotechnical and materials engineering shall include interpretation and recommendations for the Engineer and Billings based upon field observation.
- iv. The Engineer shall record the location of all underground utilities (including, but not limited to, conduit for all street lighting, signalization, or flasher assemblies)

installed under and on the surface within the public right-of-way and show these facilities, together with a representation of the general corridors in which other underground utilities are located, on the record drawings.

3. Submittal Review and Document Preparation.

- i. Review the construction operations and the traffic controls for construction, prior to the start of work. Engineer shall ascertain that the Contractor has all needed permits to accomplish his work during construction.
- ii. Review shop drawings, samples, equipment, asphaltic concrete mix design, concrete mix design, aggregate, and other data submitted by the Contractor for compliance with drawings and specifications.
- iii. Review Contractor submitted monthly pay estimates and final pay estimates for construction and prepare contract administration forms on a monthly basis. These will be submitted in Billings' approved format.
- iv. Contact Billings with any proposed plan or specification changes when required due to initial design and engineering deficiencies in order to complete the project in its original concept. Plan and specification changes shall be prepared by the design engineer.
- v. Prepare and recommend work change directives and change orders when necessary due to conditions encountered during construction. The Engineer is not authorized to order additional work without the approval of Billings' Task Director. Any work resulting in contract overage will be processed by approved change orders using Billings standard format.

4. Public Involvement Services.

- i. Develop an overall public involvement plan to be used during construction. At a minimum, plan will include provisions for providing information to Billings to be included in monthly newsletters; press releases and road closure notifications; weekly updates (figures and narratives) showing updated construction areas and traffic control layouts for Billings to post online (and to email to affected property owners at their request); weekly construction meetings; and Contractor handouts. Plan to be approved by Billings prior to implementation. Additional approvals by Billings may be required for release of public involvement plan materials to the public.
- ii. Develop a handout to provide information to homeowners and tenants on the construction prior to construction beginning in their alley.

5. Closeout Services.

- i. Prepare record drawings (As-Built) and furnish Billings with one (1) paper set for review and comments.

- ii. Following receipt of red-lined drawings from the general contractor and any review comments from Billings, make necessary changes and furnish Billings with record drawings as indicated in Section 2D of Part I of this contract. Record drawings shall include, but not be limited to:
 - a. Locations of sewer services based on alignment stationing.
 - b. Invert elevations marked for each manhole, structure, and each connection thereto, as well as at the end of each stubbed sanitary sewer line, and stubbed sanitary service line.
 - c. All above elevations shall be referenced to a permanent benchmark elevation – clearly show on the plans.
 - d. Record drawings are due within 60 days of Contractor's final payment and before final payment to the Engineer.
- iii. Provide one (1) CD of Contractor submittals.
- iv. Schedule and make final inspection with Billings and certify to Billings all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
- v. Schedule and make an inspection with Billings prior to the expiration of construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to Billings and Contractor and continue until acceptable.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

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

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

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

Phase 00	Project Management	\$7,152.00
Phase 31	Design Survey	\$45,837.00
Phase 32	Construction Survey	\$26,366.00
Phase 39	Geotechnical	\$53,350.00
Phase 40	Design	\$168,480.00
Phase 50	Construction Administration	\$332,865.00
Phase 60	Project Closeout	\$15,084.00
Phase 88	Quality Assurance	<u>\$3,940.00</u>

TOTAL **\$653,074.00**

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

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

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

Section 3. Corrections.

Costs of Billings work that is required for corrections to the 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

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

- A. Field and laboratory testing of materials and reports that are in addition to those listed in Appendix A.
- 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.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

Standard Billing Rates Schedule
Rates Effective Thru
May 31, 2018

			Standard Rate	Overtime Rate
Professional Services	Principal	Principal	206.00	206.00
	Engineer	Supervising Engineer III	194.00	194.00
		Supervising Engineer II	183.00	183.00
		Supervising Engineer I	173.00	173.00
		Senior Engineer II	160.00	160.00
		Senior Engineer I	146.00	146.00
		Design Engineer II	135.00	135.00
		Design Engineer I	124.00	124.00
		Engineer Intern II	111.00	111.00
		Engineer Intern I	100.00	100.00
	Planner	Supervising Senior Planner	187.00	187.00
		Senior Planner	150.00	150.00
		Planner III	106.00	106.00
	Scientist	Environmental Scientist II	111.00	111.00
		Environmental Scientist I	101.00	101.00
		Senior Geologist	184.00	184.00
		Geologist III	160.00	160.00
		Geologist I	116.00	116.00
	Engineering Technician	Senior Engineering Technician	136.00	136.00
		Engineering Technician	100.00	100.00
		Cad Designer II	117.00	117.00
		Cad Designer I	107.00	160.50
		Cad Tech III	100.00	150.00
		Cad Tech II	94.00	141.00
		Cad Tech I	83.00	124.50
	Resident Project Representative	Senior Resident Project Representative	140.00	140.00
		Resident Project Representative II	117.00	117.00
	Resident Project Representative I	102.00	153.00	
Clerical and Graphics	Administrative Manager	102.00	102.00	
	Administrative Coordinator III	94.00	94.00	
	Administrative Coordinator II	88.00	88.00	
	Administrative Coordinator I	73.00	109.50	
	Project Coordinator III	94.00	141.00	
	Project Coordinator II	83.00	124.50	
	Project Coordinator I	73.00	109.50	
	Technical Intern	70.00	105.00	
	Senior Communication Specialist	100.00	100.00	
	Graphic Designer	84.00	84.00	
Surveying Services	Survey	Senior Survey Manager	167.00	167.00
		Land Surveyor IV	139.00	139.00
		Land Surveyor III	131.00	131.00
		Land Surveyor II	117.00	117.00
		Land Surveyor I	106.00	106.00
		Survey Technician IV	100.00	150.00
		Survey Technician III	93.00	139.50
		Survey Technician I	69.00	103.50
Expert Witness	Recommended rate for expert witness services (depositions and/or time in court) is charged at an hourly rate of 150-200% of the standard billing rate.			

EQUIPMENT RATES

Company Vehicle: highway miles - Pickups/SUV/4WD	\$.699/mile
highway miles - Sedans	\$.574/mile
on-site mileage	\$.574/mile plus \$5.00/hour
Private Vehicle	\$.535/mile
ATV/Snowmobile	\$50.00/day
UTV	\$100.00/day
GPS (1 Receiver)	\$120.00/day
GPS (2 Receivers)	\$30.00/hour, \$240.00/day
Total Station	\$80.00/day
Robotic Total Station	\$240.00/day
FARO Focus 3D X 130 Laser Scanner	\$50.00/hour, \$400.00/day
Nuclear Density Meter	\$10.00/hour, \$35.00/day
Airflow Balancing Hood	\$75.00/day
Core Drill	\$10.00/hole
Digital Level	\$50.00/day
Trimble V10 Image Rover	\$50.00/day

HYDROLOGICAL EQUIPMENT

Conductivity Meter	\$15.00/day
Disposable Bailers	\$10.00/each
Dissolved Oxygen Meter	\$20.00/day
PH Meter	\$15.00/day
PH/Temp/Conductivity Meter	\$25.00/day
Water Sample Fee	\$10.00/each
In Situ Level Troll 700	\$63.00/day, \$250.00/week
AquaCalc Pro	\$60.00/day, \$120.00/week
Marsh McBirney 2000 Flowmeter	\$60.00/day, \$120.00/week
Global Water FP 111 Flowmeter	\$25.00/day, \$75.00/week
Submersible Pump (Redi Flo 2)	\$155.00/day
Water Level Meter, 300 Ft.	\$25.00/day, \$50.00/week
Water Level Meter, 500 Ft.	\$35.00/day, \$75.00/week
Oil/Water Interface Well Probe	\$40.00/day, \$120.00/week
Hach Flo-Dar (logger & sensor)	\$400.00/week, \$1,000.00/month
Rain Gauge Sensor	\$15.00/week, \$60.00/month

PRINTING EXPENSES

Black & White Copies	\$.10/8.5x11, \$.20/11x17, \$.13/8.5x14
Color Copies	\$.20/8.5x11, \$.40/11x17, \$.20/8.5x14
Binding	\$.25/each
Lamination	\$1.00/each
Cover Stock	\$.10/each
Acetate	\$.30/each
Tabs	\$.10/each
Oversize Print Black & White	\$5.00/each
Oversize Print Color	\$6.00/each
Print & Basic Mount	\$12.00/each
Print & Machine Mount	\$20.00/each
Print, Machine & Laminate White Board	\$32.00/each
Print, Machine & Laminate Black Board	\$35.00/each
Foam Board	\$3.50/each
Small View Binder	\$5.00/each
Large View Binder	\$10.00/each

MISCELLANEOUS EXPENSE

Lodging	Current Rates
Meals	\$40.00/day

Materials and other direct costs will be invoiced at current rates plus a 10% handling fee. Included as direct costs are the following:

- * Approved employee meals, lodging, transportation
- * Premium delivery service (UPS, Federal Express, etc.)
- * Testing supplies
- * Premiums for Special Insurance, Performance Bonds, etc.
- * Other out-of-pocket expenses
- * Consultants

The cost of professional liability insurance coverage is included in the hourly rates of personnel.

Appendix E

Project Schedule

Based on a notice to proceed by Billings date no later than November 27, 2017, the completion date for the Engineer's work through final design shall be:

1. Preliminary Engineering Services (30% Design): January 2018
2. Preliminary Engineering Services (70% Design): February 2018
3. Preliminary Engineering Services (90% Design): March 2018
4. Final Engineering Services (100% Design): April 2018
5. Construction Services to be based on Contractor Schedule.

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

(Attach Certificate(s) of Insurance)