

# Contract for Professional Architectural and Engineering Services

## Project W.O. 19-10

---

In consideration of the mutual promises herein, City of Billings and Performance Engineering, LLC 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 4 pages (Basic Services of Contractor);

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

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

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

Appendix E consisting of 2 pages (Project Schedule);

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

### **PART I SPECIAL PROVISIONS**

#### Section 1. Definitions.

In this Contract:

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

#### 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 Engineer 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: a point file; 1 (\*.asc, \*.txt, comma delimited; point number, northing, easting, elevation and description) / 2 (\*.csv, with headings for; point number, northing, easting, elevation and description), with northings and eastings to the nearest tenth of a foot, elevations to the nearest hundredth of a foot, representing new, updated or relocated City of Billings infrastructure features such as, but not limited to Sanitary Sewer Manholes, Storm Drain Manholes, Water Valves, Water Bends, Signals, Street Light, etc., in the coordinates of Montana State Plane, Zone 2500 using NAD83(2011), Horizontal and NAVD88 Vertical, Horizontal units and Vertical units will be International feet, one half size paper copy to scale, one full size paper copy to scale, two CD's or DVD's with PDF files being half size to scale and full size to scale and AutoCAD DWG files as-constructed / as-built, Version 2016, or equivalent.
- 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 2020.

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: City Engineer  
City of Billings  
Public Works - Engineering  
2224 Montana Ave  
Billings, Montana 59101 FAX: (406) 237-6291

Contractor: Performance Engineering  
7100 Commercial Ave  
Suite 4  
Billings, Montana 59101 FAX: (xxx ) \_\_\_\_\_

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: Craig Dalton, Owner  
(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

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

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

ATTEST:

IRS Tax ID # \_\_\_\_\_

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

APPROVED AS TO FORM:

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

By \_\_\_\_\_

BRENT BROOKS, City Attorney

STATE OF MONTANA            )  
  :ss.  
COUNTY OF YELLOWSTONE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

## 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 Craig Dalton, PE working under the Principal-in-Charge, Craig Dalton.

## 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 Ken Ard, PE.

## Section 3. Scope of Work.

### **Infrastructure Schematic Design**

To refine the preliminary details of the project, this portion of the engineering effort forecasts action broadly in three areas, those being: Route Alternatives Analysis, Survey, and Preliminary Design. Each of these specifically includes time to meet in person with City staff to discuss progress, update construction cost estimates and schedules, and identify obstacles and opportunities which may affect production or progress.

1) Route Alternatives Analysis: Discussions with City personnel have revealed that there may be acceptable alternatives to the route broadly presented in the request for proposals. Given that the route is not "set in stone", it is wholly appropriate to step back and investigate other approaches which can accomplish the end goal of providing water to the area near the scales at the landfill. In order for the City to select a route which best achieves its goals, we will provide a simple comparative analysis of the straightforward approaches we have identified. While not an exhaustive report, it will highlight comparative items and allow for an informed selection.

2) Survey: Once a route has been finalized, we will gather relevant property, as-built, and right-of-way documents which will allow us to identify possible gross conflicts with the project (like extremely narrow right of way, stream crossings, and other utilities). We will develop a rough estimate of the alignment in order for our survey crews to collect extra data in and around potential conflict or constrained locations. Utility locates will be called in and that information will be collected simultaneously. The survey crews will locate existing benchmarks from prior projects on file as well as public records to ensure the project is oriented and located correctly and set to the common datum. The field data will be downloaded and checked daily. This makes quality assurance a continuous, ongoing process allowing the design team to make informed decisions using the most accurate and up-to-date information.

3) Preliminary Design: Once the route has been completely surveyed, we will prepare a preliminary design which will include a limited scope hydraulic analysis, pipe diameter, classification, and material. The first project specific construction cost estimate will be delivered. We will engage regulatory stakeholders and City staff to identify specific areas of concern and incorporate those into the developing project plans.

## **Infrastructure Design Development**

With the route established and revised in accordance with City comments, work towards the final design will proceed with Geotechnical and Utility Site Investigations, Final Design Development, and assembly of the Construction Documents.

1) Geotechnical and Utility Site Investigations: Depending on the route chosen during the Infrastructure Schematic Design phase, existing buried utilities may play a significant role in construction complexity, and in turn may dictate the best construction methods for certain locations. Based on the available drawings, we expect to vacuum excavate approximately 5 locations. The final number of potholes will depend on the “One Call” field marks along the selected route. Our surveyors will locate exposed utilities along the route and collect data to be incorporated into the project drawings for further refinement of the plans and to assist contractors in developing bids and executing the work safely and without avoidable delays.

2) Final Design Development: Final Design Development will refine the alignment and profiles, making adjustments to minimize fitting installations, resolve and avoid as many incidental pipe conflicts as possible. These details will be incorporated into the hydraulic model and checked to ensure that projected performance meets or exceeds DEQ and City criteria. At this juncture, we will provide 60% progress plans and updated construction cost estimate to the City and meet to discuss concerns, address questions, and collect comments for revisions.

## **Construction Documents**

1) Construction Documents: With plans that are technically complete and which align with the City’s project budget, we will assemble the construction document package and present permit applications to stakeholder agencies (which may include MDT, Yellowstone County, MT DEQ, and the Army Corps of Engineers, among others). As the guiding technical design references will be the stakeholders’ references, and as we will have been in contact with them early in the process, such reviews are usually straight forward and permits are issued without delay. Some submittal timings may be adjusted to comply with some agency sequencing or “complete package” requirements. However, it is during this period that we will have developed and distributed approved construction documents to agencies and utilities in the construction corridor.

## **Construction Administration**

The final project phase is Construction Administration. This period broadly includes Bid and Construction Assistance, Submittal Reviews, Construction Staking, Construction Observation and Documentation, and Project Closeout.

1) Bid and Construction Assistance: We will conduct a pre-bid meeting for plan holders which may include a site visit to walk the pipeline route and call attention to specific locations where the design process has brought concerns to light. We will receive questions from plan holders, responding and publishing those to all plan holders in order to maintain a level informational playing field. Once the City has received, opened, and read the bids, we will consolidate the bids into a comprehensive document which will verify the bidder’s mathematics and notify the City of any irregularities. As requested, we will conduct telephone reference checks of bidders, and finally make a recommendation of award to the City. Once approved, we will complete the forms, notifying the awardee of the decision, and setting the calendar for the accumulation and verification of relevant documents like the construction schedule, insurance, bonds, and execution of the construction contract itself.

2) Submittal Reviews: Once the construction contract is in place, we will review contractor material submittals for compliance as well as discuss any special construction methods the contractor proposes. Boring and jacking is one such process which requires special consideration and planning. So while we do not dictate or direct contractor methods, we seek to be part of the contractor's plans to avoid unnecessary delays, injuries or facility damage.

3) Construction Staking: In accordance with the Contractor's published schedule and marking requirements, we will field stake the project for construction and walk the project one last time before construction begins to ensure that the scope, route and project plans are unmistakably clear and unambiguous. The right-of-way and benchmarks established during the route location phase will be clearly marked for reference during construction. Buried appurtenance locations will be staked with station and offset to ensure that the Contractor has all the information necessary to document the installation as it progresses. This helps to ensure the accuracy and reliability of the record drawings.

4) Construction Observation and Documentation: During construction, we will be on site to document the project any time that construction activity is active including excavation, bedding, placement, backfill, and compaction of pipe, fittings, and appurtenances. We will document typical conditions daily, and unusual situations (change in soil conditions, springs and seeps, etc.) as they are encountered. The contractor will schedule, and we will attend, construction progress meetings on a day and at a time which is consistent from week to week so that the City (and other regulatory stakeholders) can plan on attending at will. Weekly, we will publish the prior week's daily log forms, testing results, and minutes from that week's construction progress meeting. That record will include photograph(s) of the contractor's progress record drawings, so that office support staff can maintain those concurrently with construction progress. We will observe pressure testing and sample collection to satisfy the requirements of the construction documents and will advise the City when all of the regulatory and administrative requirements have been met to place the line into service. We will maintain records of progress which we will reconcile against each request for progress payment so that any discrepancies and disputes are resolved before we endorse the request. For the purposes of this scope of work, a 12 week construction schedule was assumed.

5) Project Closeout: Once the City has beneficial occupancy, a certificate of substantial completion can be prepared which will begin the new facility's warranty period. An 11-month warranty walk through will be scheduled. With the City staff and the contractor, we will develop and publish the final quantities change order, endorse the final payment request (presumably with release of retainage), and the acceptance punch list, verifying for the City that we believe that the contractor has met the terms, conditions and requirements of a complete project. To close the project, we will provide a comprehensive volume of project records which will include the daily logs, as built drawings (on paper and in digital format), correspondence including submittals and requests for information, and our certification that the project has been installed in accordance with the approved plans and specifications. We will provide this also to the MT DEQ to meet the terms of their standard permit language, as well as to any other bodies or agencies with similar permit requirements. Once those have been satisfied, we will apply to the City for final payment on the project.

## 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:

1. Infrastructure Schematic Design	\$13,758
2. Infrastructure Design Development	\$34,602
3. Construction Documents	\$14,562
4. Construction Administration	\$99,264

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.
- 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.

#### Section 1. Professional Services.

	<u>Standard Rate</u>	<u>Overtime Rate</u>
A. Principal	\$ <u>165</u>	\$ <u>165</u>
B. Engineer		
1. Engineer Level 5	\$ <u>165</u>	\$ <u>165</u>
2. Engineer Level 4	\$ <u>140</u>	\$ <u>140</u>
3. Engineer Level 3	\$ <u>135</u>	\$ <u>135</u>
4. Engineer Level 2	\$ <u>115</u>	\$ <u>115</u>
5. Engineer Level 1	\$ <u>95</u>	\$ <u>95</u>
6. Engineer Intern	\$ <u>75</u>	\$ <u>100</u>
	<u>Standard Rate</u>	<u>Overtime Rate</u>
C. Clerical and Computer		
1. Administrative Coordinator	\$ <u>65</u>	\$ <u>97.50</u>

#### Section 2. Surveying Services.

A. Land Surveyor 3	\$ <u>135</u>	\$ <u>135</u>
B. Land Surveyor 2	\$ <u>115</u>	\$ <u>115</u>
C. Land Surveyor 1	\$ <u>95</u>	\$ <u>95</u>
D. Survey Crew		
1. 2-Man Crew	\$ <u>190</u>	\$ <u>190</u>

Section 3. Equipment Rates.

- |                          |  |
|--------------------------|--|
| 1. Vehicle - Larger of   | \$ <u>0.80/mile</u> or <u>\$5/hour</u> |
| B. ATV/Snowmobile        | <u>\$150/day</u>                       |
| C. Computer Equipment    |  |
| 1. CADD Plotter          |  |
| a. Bond (24"x36")        | <u>\$3/page</u>                        |
| 2. 11"x17" Plots         | <u>\$1/page</u>                        |
| D. Robotic Total Station | <u>\$20/hour</u>                       |
| E. RTK GPS Equipment     | <u>\$20/hour</u>                       |

Section 4. Supplies, Office, Drafting, & Reproduction.

- A. Copier Reproduction (Reduced Rates for Volume Copying)
1. 8-1/2 x 11 - \$ 0.25 per page
  2. 11 x 17 – R \$ 1.00 per page

Section 9. Materials and Other Direct Costs.

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

- A. Approved Employee Meals, Lodging, Transportation
- B. Premium Delivery Service (UPS, Federal Express, etc.)
- C. Toll Communication Services (Telephone, Fax, etc.)
- D. Supplies
- E. Premiums for Special Insurance, Performance Bonds, etc.
- F. Other Out-of-Pocket Expenses
- G. 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 **December 31, 2018**, the completion date for the Engineer's work through final design shall be:

#### A. Submittals and Meetings

1. Infrastructure Schematic Design – 01/15/19 to 02/07/19
  - a) Preliminary Analysis of Route Alternatives – 01/15/19
  - b) Project Kickoff Meeting – 01/15/19
  - c) Topo and Boundary Survey – 01/21/19
  - d) Preliminary Water Main Design – 01/30/19
2. Infrastructure Design Development – 02/01/19 to 02/28/19
  - a) Geotechnical and Utility Site Investigations – 02/01/19
  - b) Final Design Development – 02/15/19
    - I. 60% Design Review Meeting – 02/21/19
3. Construction Plan Set and Specifications – 03/01/19 to 03/21/19
  - a) 90% Design Review Meeting – 03/14/19
  - b) Final Construction Documents Submittal – 03/21/19
4. Construction Administration – 04/01/19 to 09/30/19
  - a) Bidding and Contracting – 04/01/19
  - b) Project Award – 05/13/19
  - c) Construction Submittals – 05/20/19
  - d) Construction Start – 06/13/19
  - e) Construction Completion – 09/06/19
  - f) Project Closeout and Record Drawings – 09/30/19

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)