

# General Contractor/Construction Manager (GC/CM) Preconstruction Services Contract

## W.O. 19-12, West End Raw Water Pipeline Project

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In consideration of the mutual promises herein, City of Billings and COP Construction, 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;
- Part III, consisting of 8 Sections of Supplemental Provisions
- Appendix A consisting of 5 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 5 pages (Preconstruction Multiplier and Schedule of Fees & Rates);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of 32 pages (Certificate(s) of Insurance); and

### PART I SPECIAL PROVISIONS

#### Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means General Contractor/Construction Manager (GC/CM).
- D. "Engineer" means HDR Engineering Company, Inc.

#### Section 2. Scope of Services.

- A. The Contractor shall perform 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 Preconstruction Multiplier and Schedule of Fees and Rates 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.

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 June 30, 2022.

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 reasonably specify 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 and as a condition precedent to payment, 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.
- 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 and the Engineer, its owners, officers, agents and employees 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 in favor of Billings and the Engineer, its owners, officers, agents and employees.

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 e-mail or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: Randy Straus  
City of Billings  
Engineering Division  
2224 Montana Avenue  
Billings, Montana 59101

E-mail: [strausr@billingsmt.gov](mailto:strausr@billingsmt.gov)

Contractor: Eric Smith, Project Manager  
COP Construction LLC  
242 S. 64th Street West  
Billings, MT 59106

E-mail: [esmith@copconstruction.com](mailto:esmith@copconstruction.com)

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, pandemics, epidemics, 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 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.
- G. The Contractor and subcontractor shall abide by the requirements of 41 CRF 60-1.4, which states employees or applicates may not be discharges or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of

other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information.

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: Project Manager  
(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 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.

**Part III**  
**SUPPLEMENTAL PROVISIONS**

Section 1. Recitals

1.01 Preconstruction services covered by this agreement includes attendance at meetings and workshops, development of a Cost Model, cost estimating, constructability reviews, biddability reviews, Alternate System Evaluations (Value Engineering), development of a Project Schedule, advising on the scope for construction packages and other items described herein and in the Basic Services of Contractor provided in Appendix A.

1.02 The GC/CM has represented to Billings the ability to provide preconstruction services and to construct the project.

1.03 Based on this representation, Billings intends to enter into a contract with the GC/CM for the preconstruction services identified in this agreement. At the end of the preconstruction, at Billings' discretion, Billings may enter into separate construction agreement with the GC/CM for construction services. Alternatively, Billings may choose not to continue the GC/CM Contract beyond the completion of preconstruction phase services or any early work amendments, instead soliciting bids from qualified contractors for the project construction, and otherwise reserve all rights to terminate the Contract for convenience.

Section 2. Terms and Definitions

2.01 Alternate Systems Evaluations (Value Engineering) - Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional project that meets Billings' requirements.

2.02 Construction Services Fee – Expressed as a percentage of the Cost of the Work, the percentage that represents the GC/CM's administrative costs, home office overhead, and profit, whether at the GC/CM's principal or branch offices. This Fee excludes items covered in the Cost of the Work and General Conditions Costs, and any cost not allocated or paid by Billings or other limitations and exclusions set forth in the General Conditions and Supplementary Conditions for construction. The Construction Services Fee is proposed by the GC/CM in Section 6 and will be the percentage applied to determine the GMP.

2.03 Contingency, GC/CM - A fund to cover cost growth during the project used at the discretion of the GC/CM usually for costs that result from project circumstances. The amount of the GC/CM Contingency will be negotiated as a separate line item in the GMP.

2.04 Contingency, Billings' - A fund to cover cost growth during the project used at the discretion of Billings usually for costs that result from Billings directed changes or site conditions. The amount of the Billings' Contingency will be set solely by Billings and will be in addition to the project costs included in the GC/CM's cost estimate summary.

2.05 Cost Model - A breakdown of the scope of the project that is initially developed by the GC/CM based on information from the Engineer and the GC/CM's records of similar projects.

The model will evolve as the design progresses and be maintained by the GC/CM throughout the design and will include any assumptions and clarifications made by the GC/CM. The model will support any cost estimates, Alternate Systems Evaluations (Value Engineering), and eventually the GMP Proposal, when required by Billings.

2.06 Cost of the Work - The direct costs necessarily incurred by the GC/CM in the proper performance of the work. The Cost of the Work includes direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment used in the performance of the work, costs of establishing temporary facilities and controls, project related permit and license fees, cost of materials testing and related items, and the cost of consultants required for any delegated design. The Cost of the Work will cover all work required in the GMP Documents including the work shown on drawings; the work specified in specification Divisions 01 through 48. Cost of the Work does not include the GC/CM's Construction Services Fee, General Conditions Costs, applicable taxes, bonds, insurance costs, or any cost item that is furnished or procured by Billings.

2.07 Deliverables - The work products prepared by the GC/CM in performing the services described in this agreement. Some of the major Deliverables to be prepared and provided by the GC/CM during preconstruction may include but are not limited to: Cost Model, Project Management Plan, Project Schedule, Schedule of Values, Alternate Systems Evaluations (Value Engineering), procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposal(s), subcontractor procurement plan, subcontractor agreements, subcontractor bid packages, supplier agreements, and others as indicated in this agreement or required by Billings.

2.08 Engineer – HDR Engineering shall provide all architectural and engineering design services necessary for the completion of the work excluding, however, (a) design services delegated to the GC/CM in accordance with the contract, and (b) services within the construction means, methods, techniques and sequences employed by the GC/CM, its subcontractors, and subcontractors in connection with their construction operations.

2.09 General Conditions Costs - Includes, but is not limited, to the following costs: (a) payroll costs and other compensation, benefits, bonuses of GC/CM's supervisory and administrative personnel directly associated with the work either part-time or full time, including but not limited to project managers, construction managers, superintendents, safety managers, quality managers, inspectors, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, schedulers, clerks, and other any other non-craft labor personnel employed by GC/CM, whether at the site or off-site involved in planning, managing, supervising, inspecting, and administering the work, (b) site offices and temporary facilities costs including office equipment, materials, supplies, equipment, utilities, fuel, sanitary facilities and phone and fax services at the site, (c) procurement costs for project equipment, materials, and subcontracts, including reproduction of documents, mailings, evaluation, bid results presentations and recommendations for supplier and subcontractor selection to be incorporated into the contract price, (d) site security systems, internet services and website for project information and oversight, (e) cost less salvage value of consumable materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the work and which remain the property of GC/CM, including the costs of

transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items, (f) cost of removal of debris and waste from the site except for debris from required demolition or dismantling and removal which is part of the work, and site sanitary services, (g) reasonable costs and expenses incurred in mobilizing, operating and demobilizing the site office, including the cost of phone, fax, postage and express delivery charges, telephone service, and photocopying and similar offices services, (h) sales, use or similar taxes, tariffs or duties incurred in the performance of work, (i) signing at the site for the project, (j) all fuel and utility costs incurred by the GC/CM field office and for management and administration in the performance of the work, (k) safety training, orientation, equipment, clothing, and materials for GC/CM craft labor, management and staff, as well as for GC/CM visitors to the project. General Conditions Costs do not include items covered in the Cost of the Work or the Construction Services Fee, and any cost not allocated or paid by Billings or other limitations and exclusions set forth in the General Conditions and Supplementary Conditions for construction.

2.10 Guaranteed Maximum Price (GMP) - The sum of the Cost of the Work, the GC/CM's Construction Services Fee, General Conditions Cost, applicable taxes, bonds, insurance costs, and GC/CM Contingency(ies).

2.11 GMP Documents - The printed sets of construction documents labeled "Final For Construction GMP", pursuant to Section 3.06 upon which a Guaranteed Maximum Price Proposal is based. GMP Documents in electronic PDF format will also be provided.

2.12 Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the GC/CM submitted on the prescribed form setting forth the GMP prices for the entire work or portions of the work to be performed during construction. The GMP Proposal(s) are to be developed pursuant to Section 3 of this agreement.

2.13 Indirect Costs – Includes General Conditions Cost, insurance costs and bond costs.

2.14 Project Team – Preconstruction services team consisting of the Engineer, GC/CM and Billings, who are responsible for making decisions regarding the project.

2.15 Total Float - Number of days by which the preconstruction services or construction work or any part of the same may be delayed without necessarily delaying the times agreed to for completion of milestones and for completion of the work as shown in the Project Schedule.

### Section 3. Preconstruction Phase Services

#### 3.01 General

A. The GC/CM, to further the interest of Billings, will perform the services required by, and in accordance with this agreement, to the satisfaction of Billings, exercising the degree of care, skill and judgment a construction manager performing similar services in Billings, MT would exercise at such time, under similar conditions. The GC/CM will perform the required services consistent with sound and generally accepted construction management and construction contracting practice.

B. The GC/CM will attend Project Team meetings which may include, but are not limited to, project review meetings, project workshops, special project meetings, and perform construction document reviews. Teleconferencing for certain meeting attendees may suffice for some meetings as determined by Billings.

C. The GC/CM will provide preconstruction services, described herein, in a proactive manner and consistent with the intent of the most current drawings and specifications. The GC/CM will proactively communicate with the Project Team whenever the GC/CM determines that any drawings or specifications are inappropriate for the project or cause changes in the work requiring an adjustment in the Cost Model, Project Schedule, GMP Proposal or in the times agreed to for completion of milestones and for completion of the work.

D. The GC/CM, when requested by Billings, will attend, make presentations and participate in public agency and or community meetings, germane to the project. The GC/CM will provide drawings, schedule diagrams, budget charts and other materials describing the project, when their use is required in any such public agency meetings.

### 3.02 Project Management Plan

A. The GC/CM shall prepare a Project Management Plan (PMP) for discussion and Billings approval, which will at a minimum include (a) a matrix summarizing each Project Team member's responsibilities and roles, (b) communications protocols, (c) GC/CM's opinions concerning investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (d) GC/CM's opinions concerning project milestone dates and the Project Schedule, development, control including the broad sequencing of the design and construction of the project, (e) basis of the Cost Model, management and tracking (f) permitting issues and strategies, (g) site safety plan, (h) construction quality control, (i) site access and control, (j) site staging plan

B. Attachments to the PMP will include:

1. Risk Management Plan,
2. Project Packaging/Phasing Plan
3. Subcontracting Plan

C. The GC/CM shall add detail to its previous version of the PMP to keep it current throughout the preconstruction, so that the PMP is ready for implementation at the start of project construction. The update/revisions may consider (a) revisions in drawings and specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by Billings, Engineer or the GC/CM, (c) unresolved permitting issues, and significant permitting issues, if any, (d) Risk Management Plan, (e) the fast – tracking/phasing, if any, of the project or other chosen construction delivery methods, (e) the requisite number of separate bidding documents, procurement efforts, or subcontracts to be advertised, or solicited and, (f) the status of the procurement of long-lead time equipment (if any) and/or materials.

### 3.03 Project Schedule

A. The fundamental purpose of the Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all Project Team members for all phases of the project and then for the Project Team to utilize the deliverable as a basis for managing and monitoring the teams' compliance with the schedule requirements of the project. Each Project Team member is responsible for its compliance with those Project Schedule requirements. The GC/CM will, however, develop and maintain the Project Schedule on behalf of, and to be used by, the entire Project Team based on input from all Project Team members. The Project Schedule will be consistent with the most recent revised/updated Project Management Plan and will use the Critical Path Method (CPM) technique, unless required otherwise in writing by Billings. The GC/CM will use scheduling software to develop the Project Schedule that is acceptable to Billings. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If project phasing as described below is required, the Project Schedule will indicate milestone dates for each phase as determined.

B. The GC/CM will include and integrate into the Project Schedule the services and activities required of Billings, Engineer and GC/CM including all design and construction activities utilizing the input received from Billings and the Engineer. The Project Schedule will detail activities to the extent required to show: (a) the coordination between various design documents, (b) separate longlead procurements, (c) permitting requirements, (d) bid packaging strategy and awards to subcontractors and suppliers, (e) major stages of construction, (f) interim milestones, (g) coordination with utilities and agencies, and (h) start-up and commissioning.

C. The Project Schedule shall include a Critical Path Method (CPM) diagram that shows the sequence of activities, the interdependence of each activity and indicates the critical path. The schedule shall be in days and indicate duration, earliest and latest start and finish dates for all activities, and total float for all activities. The CPM schedule shall include all relationships between activities.

D. Float time shall be as prescribed below:

1. The total float within the overall schedule, is not for the exclusive use of either Billings or the GC/CM but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the project completion date.

2. The GC/CM will not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond times agreed to for completion of milestones and for completion of the work.

E. The Project Schedule is intended to become more detailed as the design progresses, evolving from conceptual to detailed. Early Project Schedules will concentrate on milestones for each design deliverable (i.e. 60%, 90%, and Final), equipment and material lead times, and general construction durations. The Project Schedule will become the progress schedule referenced in the construction phase agreement. The Project Schedule will be expanded, updated, and maintained by the GC/CM throughout the preconstruction such that it will not

require significant changes at the start of the construction to incorporate the GC/CM's plan for the performance of construction work.

F. The GC/CM will provide updates and/or revisions to the Project Schedule for use by the Project Team on a monthly basis. The GC/CM will include with each submittal a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

G. Construction Phasing: If further phasing is deemed appropriate and Billings and Engineer approve, the GC/CM will review the design and make recommendations regarding the phased issuance of construction documents to facilitate phased construction of the work, with the objective of reducing the Project Schedule and/or Cost of the Work. The GC/CM will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

### 3.04 Design Document Reviews

A. The GC/CM will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the Cost Model or cost estimate, GMP Proposals and/or the Project Schedule.

B. The GC/CM will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its opinion, are required to provide the necessary information for the GC/CM to construct the project. Prior to start of construction activity, the GC/CM may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the construction documents.

C. The GC/CM will meet with the Project Team as required to review designs during their development. The GC/CM will familiarize itself with the evolving documents through the various design stages. The GC/CM will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The GC/CM will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the drawings and specifications. The GC/CM will recommend cost effective alternatives.

D. The GC/CM will routinely conduct constructability and biddability reviews of the drawings and specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the construction documents especially those related to clarity, consistency, and coordination of work of subcontractors and suppliers.

1. Constructability Reviews: The GC/CM will evaluate whether (a) the drawings and specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the drawings and

specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under seasonal and adverse weather conditions, (f) sequences of work required by or inferable from the drawings and specifications are practicable, (g) construction package conflicts with preceding or subsequent construction, and (h) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging offsite facilities, construction parking, and other similar pertinent issues.

2. Biddability Reviews: The GC/CM will check cross-references and complementary drawings and sections within the specifications, and in general evaluate whether (a) the drawings and specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) specifications include alternatives in the event a requirement cannot be met in the field.

3. The results of the reviews will be provided to Billings in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the drawings and specifications with notations and recommendations made on the drawings, specifications and other documents. If requested by Billings, the GC/CM will meet with Billings and Engineer to discuss any findings and review reports.

4. The GC/CM's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during construction, responsibility for the drawings and specifications will remain with the Engineer.

E. Alternate Systems Evaluations (Value Engineering): The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, innovations and design changes that have the potential to reduce project costs while still delivering a quality and functional product. If the Project Team agrees, the GC/CM in cooperation with the Engineer will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the project. The Engineer will have full responsibility for the incorporation of the alternatives into the drawings and specifications. The GC/CM will include the cost of the alternatives into the Cost Model or cost estimate and the GMP Proposal(s).

### 3.05 Cost Model, Cost Estimates and Schedule of Values

A. As soon as practical following an initial field inspection, the GC/CM will review all available information regarding the design and scope of the project, the GC/CM's experience in performing similar work, and based on that review will develop a Cost Model for review and approval by Billings. The Cost Model shall include all cost categories except Billings' Contingency included in the cost estimate submittal. Once approved by Billings, the Cost Model will be continually updated and kept current as the design progresses throughout the preconstruction until a final GMP for each construction package and the entire project is established. The Cost Model will be the best representation of the GC/CM of what the complete functional project's construction costs will be. The GC/CM will communicate to the Project Team, any assumptions made in preparing the Cost Model. The Cost Model will support the GC/CM's construction cost estimates and may be broken down initially as dictated by the available information, but eventually must be broken down into the 48 Division CSI format and other breakdowns, as required by Billings.

B. After receipt of the Engineer's most current documents from the specified design milestones, the GC/CM will provide a detailed written report to the Project Team regarding the impact of and changes to the Cost Model based on the GC/CM's review of the design documents made available at the specified design milestone. The Project Team will reconcile any comments/exceptions on the estimate to arrive at an agreed to estimate for the construction costs based on the scope of the project through that specified design milestone. The design milestones are: detailed design completion at 30%, 60%, and 90%. If no consensus is reached, Billings will make the final determination. If the Project Team requires additional updates of the Cost Model beyond that specified in this section, the GC/CM will provide the requested information in a timely manner.

C. If at any point the estimate submitted to Billings exceeds previously accepted estimates agreed to by the Project Team or other key aspects of the Cost Model or Billings' project budget, the GC/CM will make appropriate recommendations to Billings and Engineer on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, (without altering Billings' basic project) such that it is equal to or less than the established Project Team's target and the project budget.

D. Near completion of the 60% detailed design review and included with the associated report, the GC/CM will also submit to Billings for review and approval a Schedule of Values which complies with the following requirements. The Schedule of Values will be formatted based on the 48 division CSI format. The Schedule of Values will be directly related to the breakdowns reflected in the Project Schedule and the GC/CM's Cost Model. In addition, the Schedule of Values will: (a) detail unit prices and quantity take-offs, (b) segregate work covered by any changes to construction work already in progress, (c) reconcile used and remaining GC/CM contingency, (d) detail all other allowances and unit price work shown and specified in the detailed design documents, and (e) segregate unit costs, material and equipment costs, labor costs, General Conditions Costs, hourly labor rates, payment for delegated design services and total cost. Labor costs in the Schedule of Values will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the work to be performed by subcontractors will include subcontractor overhead and profit.

E. The GC/CM will submit to Billings a final Schedule of Values based on the GMP Documents for the entire project or any portion thereof, which final Schedule of Values will also be included in any proposed GMP(s).

F. The GC/CM will submit to Billings a cash flow projection for the project based on the current updated/revised Project Schedule and the anticipated level of payments to the GC/CM during construction. A cash flow projection is required for the GMP associated with each construction package.

### 3.06 Guaranteed Maximum Price (GMP) Proposals

A. The proposed GMP for the entire work (or portions thereof) will be presented in a format acceptable to Billings. Billings may request a GMP Proposal for all or any portion of the project at any time during preconstruction. Any GMP Proposals submitted by the GC/CM will be based on and consistent with the current updated/revised cost estimate submittal at the

time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

B. GMP Proposals for the entire project will be the sum of: 1) the Cost of the Work; 2) Indirect Costs including General Conditions Cost; 3) GC/CM's Construction Services Fee; and 4) GC/CM Contingency; and 5) Billings' Contingency (if applicable). The GC/CM guarantees to complete the project at or less than the final GMP Proposal amount approved by Billings plus approved contract modifications and agrees that it will be responsible for any increase in the actual Cost of the Work above that amount.

C. The GC/CM, in preparing any GMP Proposal, will obtain from the Engineer, three sets of signed, sealed, and dated GMP Documents (including all addenda). The GC/CM will prepare its GMP in accordance with Billings' request for GMP Proposal. The GC/CM will mark the face of each document of each set upon which its proposed GMP is based. These documents will be identified as the GMP Documents. The GC/CM will send one set of those documents to Billings' Project Manager, keep one set and return the third set to the Engineer.

D. An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Documents. Any such Project Schedule updates/revisions will continue to comply with the requirements of Section 3.03.

E. In the event the GC/CM elects, at its sole discretion, to maintain a GC/CM Contingency allowance within the GMP, the criteria for development of that allowance must be acceptable to Billings. In addition, the terms and conditions regarding use of that allowance during construction will be established by Billings and reflected in the project's Construction Services Agreement. At completion of the work, the Project Team will evaluate the risk assignment of tasks with remaining funds within the GC/CM Contingency and determine fair distribution of those remaining funds to Billings and to the GC/CM. Final payment to the GC/CM will also reconcile amounts used and remaining within the GC/CM's contingency allowance.

F. All GMP savings in the Cost of the Work and Indirect Costs (including General Conditions Costs) resulting from a lower actual project cost than anticipated by the GC/CM will revert to Billings.

#### G. GMP Proposal(s) Review and Approval

1. The GC/CM will attend, and participate in, workshops and other meetings with Billings and Engineer to review the GMP Proposal(s) and the written statement of its basis. As part of this statement of basis, the GC/CM shall identify and justify any costs that are significantly different than the latest Cost Model provided by the GC/CM. In the event Billings or Engineer discovers inconsistencies or inaccuracies in the information presented, the GC/CM will make adjustments as necessary to the GMP Proposal, its basis or both.

2. Billings upon receipt of any GMP Proposal from the GC/CM, may submit the GMP Documents to an independent third party or to the Engineer for review and verification. The third party and/or Engineer will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposal.

3. If the GC/CM GMP Proposal is greater than the independent third party and/or Engineer's estimate, Billings may require the GC/CM to reconfirm its GMP Proposal. The GC/CM will

accept the independent third parties or Engineer's estimate for the Cost of the Work as part of the GMP or present a report within seven days of a written request to Billings identifying, explaining and substantiating the differences. The GC/CM may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by Billings. At that time Billings may do one of the following.

a. Accept the GC/CM original or revised GMP Proposal, if within Billings' budget, without comment.

b. Accept the GC/CM original or revised GMP Proposal that exceeds Billings' budget and indicate in writing to the GC/CM that the project budget has been increased to fund the differences.

c. Reject the GC/CM's original or revised GMP Proposal because it exceeds Billings' budget, the independent third party's and/or Engineer's estimate, in which event Billings may terminate this agreement or elect to not enter into a separate agreement with the GC/CM for the construction associated with the scope of work reflected in the GMP Proposal.

4. If during the review and negotiation of GMP Proposals design changes are required, Billings will authorize and cause the Engineer to revise the construction documents by addenda to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised construction documents will be furnished to the GC/CM. The GC/CM will promptly notify the Engineer and Billings in writing if any such revised construction documents are inconsistent with the agreed-upon assumptions and clarifications.

H. Each GMP Proposal will include a GC/CM Contingency line item. The Contingency is available for GC/CM's exclusive use for unanticipated Costs of the Work that it has incurred that are not the basis for a change order under the contract documents, but subject to: (i) Billings approval as more specifically described below; and (ii) other limitations set forth in the contract documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming work, including design errors or omissions, however caused; and (e) subcontractor defaults. The GC/CM Contingency will have no markups applied at the time of submission of the GMP Proposal. The GC/CM Contingency is not available to Billings for any reason, including, but not limited to changes in scope or any other item which would enable GC/CM to increase the GMP under the contract documents. GC/CM may draw upon the GC/CM Contingency by making a written request to Billings, identifying the reason and amount of the draw, and by obtaining Billings' written approval, which shall not be unreasonably withheld. If Billings approves a draw against the GC/CM Contingency, GC/CM shall, in its Payment Applications, show an increase in the relevant line item by the amount drawn and a decrease in the line item for the GC/CM Contingency. GC/CM agrees that with respect to any expenditure from the GC/CM Contingency relating to a subcontractor default or an event for which insurance or bond may provide reimbursement, GC/CM will in good faith exercise reasonable steps to obtain performance from the subcontractor and/or recovery from any surety or insurance. GC/CM agrees that if GC/CM is subsequently reimbursed for said costs, then said recovery will be credited back to the GC/CM Contingency, net of any costs and expenses incurred by GC/CM in pursuing such recovery.

I. Billings' Contingency will be used at the sole discretion of Billings, if applicable. At the time that the GC/CM submits its GMP Proposal to Billings for approval, Billings may add an

additional amount to the sum of the GMP Proposals for approval by City Council to cover any increases in project costs that result from Billings directed changes. The total project cost approved by Billings will be the sum of the GC/CM's GMP Proposals and Billings' Contingency, if applicable.

1. If Billings elects to establish a City Contingency, the contingency amount will be included within the contract price agreed to with the GC/CM. If included within the contract price and Billings decides to utilize some of its contingency funds, a contract modification will be processed using the contract modifications process described in the General Conditions of the construction contract.

### 3.07 Subcontractor and Major Supplier Selections

A. The selection of subcontractors and major suppliers may occur prior to submission of a GMP Proposal. Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. The selection of subcontractors/suppliers is the responsibility of the GC/CM except for Billings furnished equipment and items where substitution is not allowed or approved in construction documents. In any case, the GC/CM is solely responsible for the performance of the selected subcontractors/suppliers.

1. The GC/CM will prepare a subcontractor/supplier selection plan and submit the plan to Billings for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per Section 3.07.B and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Section 3.07.C. The subcontractor selection plan must be consistent with the selection requirements included in this agreement.

B. Selection by qualifications only - Billings may approve the selection of a subcontractor(s) or suppliers(s) based only on their qualifications when the GC/CM can demonstrate it is in the best interest of the project.

1. Qualification based selection of a subcontractor(s)/supplier(s) should only occur during preconstruction to achieve maximum benefit of the subcontractors' involvement prior to the submittal of the GMP Proposal.

2. The GC/CM shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a subcontractor(s) or supplier(s) and provide Billings with its review and recommendation.

3. The GC/CM must receive Billings approval of the selected subcontractor(s)/supplier(s).

4. The GC/CM shall negotiate costs for services/supplies from each subcontractor/supplier selected under this method.

C. Selection by qualifications and competitive bid - The GC/CM shall apply the subcontractor selection plan in the evaluation of the qualifications of subcontractors and suppliers and provide Billings with its process to prequalify prospective subcontractors and suppliers. All work shall then be competitively bid to the prequalified subcontractors unless a subcontractor or supplier was selected pursuant to Section 3.07.B above. Competitive bids may occur prior to, or after, the GMP Proposal(s).

1. The GC/CM will develop subcontractor and supplier interest, submit the names of a minimum of three qualified subcontractors or suppliers for each trade in the project for approval by Billings and solicit bids for the various work categories. If there are not three

qualified subcontractors/suppliers available for a specific trade or there are extenuating circumstances warranting such, the GC/CM may request approval by Billings to submit less than three names. Without prior written notice to Billings, no change in the recommended subcontractors/suppliers will be allowed.

2. If Billings objects to any nominated subcontractor/supplier or to any self-performed work for good reason, the GC/CM will nominate a substitute subcontractor/supplier that is acceptable to Billings.

3. The GC/CM will distribute drawings and specifications, and when appropriate, conduct a prebid conference with prospective subcontractors and suppliers.

4. The GC/CM shall request the pre-qualified subcontractors provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The GC/CM shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the GC/CM, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the work. The final evaluation of subcontractor/supplier bids will be done with Billings' Project Manager and Engineer in attendance to observe and witness the process. The GC/CM will resolve any subcontractor/supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

D. The GC/CM will be required to prepare two different reports on the subcontracting process.

1. Within fifteen days after each major subcontractor/supplier bid opening process, the GC/CM will prepare a report for Billings' review and approval identifying the recommended subcontractors/supplier for each category of work. The report will provide (a) the name of the recommended subcontractor/supplier and the amount of the subcontractor/supplier bid for each subagreement, (b) the sum of all recommended subcontractor/supplier bids received, (c) a copy of the bids received from each subcontractor, and (d) trade work and its cost that the GC/CM intends to self-perform, if any.

2. Upon completion of the subcontractor/supplier bidding process, the GC/CM shall submit a summary report to Billings of the entire subcontractor/supplier selection process. The report will indicate, by bid process, all subcontractors/suppliers contacted to determine interest, the subcontractors/suppliers solicited, the bids received and costs negotiated, and the recommended subcontractors/suppliers for each category of work.

E. The approved subcontractors/suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.

F. If after receipt of bids or after award of subcontractors and suppliers, Billings objects to any nominated subcontractor/supplier or to any self-performed work for good reason, the GC/CM will nominate a substitute subcontractor or supplier, preferably if such option is still available, from those who submitted subcontractor bids for the work affected. Once such substitute subcontractors and suppliers are consented to by Billings, the GC/CM's proposed GMP for the work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

G. Promptly after of the Notice of Award for construction phase services, Billings will conduct a pre-award conference with the GC/CM and other Project Team members. At the pre-award conference, the GC/CM will (a) review the nominated slate of subcontractors and suppliers and discuss any concerns with or objections that Billings has to any nominated subcontractor or supplier; (b) discuss Billings' concerns relating to proposed self-performed work; (c) review the GC/CM's proposed contract price for the work during construction; (d) discuss the conditions, if any, under which Billings will agree to leave any portion of the remaining GC/CM Contingency within the contract price for construction work; (e) resolve possible time frames for the date of commencement and for times agreed to for completion of milestones and for completion of the work to be included in the Notice to Proceed for construction work; (f) schedule the preconstruction conference; and (g) discuss other matters of import.

#### Section 4. Period of Preconstruction Phase Services

4.01 The preconstruction services described in this agreement will be performed by GC/CM in accordance with the most current updated/revised Project Schedule. Failure on the part of the GC/CM to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this agreement by Billings.

4.02 Upon failure to adhere to the Project Schedule, Billings may provide written notice to GC/CM that it intends to terminate the agreement unless the problem cited is cured, or commenced to be cured, within three days of GC/CM's receipt of such notice.

4.03 Preconstruction services are expected to commence upon issuance of a Notice to Proceed. Preconstruction services will conclude upon final acceptance by Billings of the last GMP Proposal for the project.

#### Section 5. Contract Amount and Payments for Preconstruction Phase Services

##### 5.01 Contract Amount

A. Based on the preconstruction services fee proposal submitted by the GC/CM and accepted by Billings (Appendix D – Preconstruction Multiplier and Schedule of Fees & Rates) with dollar amounts completed which by reference is made a part of this contract, Billings will pay the GC/CM in accordance with a not-to-exceed contract amount of Ninety Eight Thousand Nine Hundred Eighty Seven Dollars (\$98,987).

##### 5.02 Payments

A. Consistent with Part I, Section 4 of this agreement, requests for payments by the GC/CM for preconstruction services will be submitted monthly and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their work. Payment for services negotiated as a fixed fee shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

B. The fees for the GC/CM and any subconsultants will be based upon the preconstruction services fee proposal included in Appendix D – Preconstruction Multiplier and Schedule of Fees & Rates.

## Section 6. Fees and Payments - Construction Phase Services

### 6.01 GC/CM Construction Services Fee

A. During the period of construction services, Billings will pay the GC/CM an amount derived from the product of the Construction Services Fee and the Cost of the Work that results from efforts of the Project Team during the preconstruction services. The Construction Services Fee is the binding and enforceable promise of the GC/CM that will not be modified or renegotiated as a result of adjustments in the Cost of the Work. Based on the Construction Phase Multiplier (Construction Services Fee) submitted by the GC/CM in their project Price Proposal dated June 7, 2021, the Construction Services Fee is 12.50% and will apply for all construction packages during the period of construction services regardless of the magnitude of the accepted GMP Proposal.

B. GC/CM Construction Services Fee items included but are not limited to the following:

1. Wages or salaries and expenses of GC/CM executive, administrative, and management personnel not directly associated with the project work, stationed at GC/CM's principal or branch offices to manage the company operations and/or provide corporate services, such as accounting, insurance and risk management, safety and health, legal, human resources, etc. to support the company operations for general business and various projects.
2. Costs incurred by GC/CM for employee benefits, executives, management, premiums, taxes, company expenses in office equipment, computers, software, and all related offices services, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by GC/CM, to the extent such costs are based on wages and salaries paid to employees of GC/CM.
3. GC/CM's general sales, marketing and bidding costs.
4. Bidding / proposal, negotiation costs associated with responding to Billings requests for contract prices, including GMPs and other pricing formats to be included under the Construction Services Agreement.
5. General basic insurance coverages, not project specific, maintained on a routine basis for all its business activities by the GC/CM.
6. Cost of GC/CM's capital used in the performance of the work.
7. Legal costs, court costs and costs of mediation and arbitration reasonably arising from GC/CM's performance of the work.
8. Cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product, paying legal judgments against GC/CM resulting from such suits or claims. If such suits or claims are from items or circumstances specifically required by Billings, the related costs and settlements as approved by Billings will be an adjustment to the Contract price.
9. Management and staff personnel training and business planning activities.
10. Other generally accepted company overhead and general business expenses.
11. Costs for copying, record retention / storage for project related files.
12. Costs for temporary housing for GC/CM's management and staff (not-craft labor) employees, if required by the GC/CM.

13. Development and negotiation of GMP Proposals, and revisions as agreed by the GC/CM and Billings.

14. All profit or loss associated with performing the project

C. For purposes of establishing the GC/CM Construction Services Fee, the Cost of the Work means the sum of all costs, less any discounts, rebates or salvage taken by the GC/CM, necessary for the proper performance of the work at issue, as further defined below. Such costs shall be at rates not higher than typically paid in the locality of the work, except with the prior written consent of Billings. The Cost of the Work shall be based on the actual documented cost of reasonable and necessary Cost of the Work items and is a not-to-exceed reimbursable amount. As used in this definition, "reasonable and necessary Cost of the Work items paid or incurred by the GC/CM in the proper performance of the work" include: (a) costs of work necessitated by ordinary mistakes or inadvertence, (b) costs incurred in repairing or correcting defective, damaged or non-conforming work (including any warranty or corrective project implementation work performed after Substantial Completion), (c) additional costs incurred due to subcontractor delay or non-performance, (d) costs incurred in performing corrective action needed to address a failure to demonstrate compliance with the requirements for Substantial Completion; and (e) costs of Billings authorized changes to the work based on the provisions of the Contract Documents. Except as otherwise may be agreed in writing by Billings, costs included in the Cost of the Work shall include only the following items:

1. Payroll costs for craft labor in the direct employ of GC/CM on the site or off site in the performance of the work. Such craft labor shall include, without limitation, general foreman, foremen, and other craft labor personnel employed full-time or part-time on the work. Payroll costs for employees not employed full-time on the work shall be apportioned based on their time spent on the work. Payroll costs to be allowed for determination of the Cost of the Work for craft labor in the direct employ of GC/CM shall include craft labor salaries and wages plus a labor burden rate to cover all other employee related costs, including the cost of fringe benefits, social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto but excluding the General Conditions Cost and GC/CM Construction Services Fee.

2. The expenses of performing work outside of regular working hours during the week, on Saturday, Sunday, or legal holidays, shall be included to the extent authorized by Billings. Travel, lodging and subsistence expenses for craft labor acquired by the GM/GC from outside the area will be included to the extent authorized, in advance, by Billings and will be indicated as a separate line item in the Cost of the Work and Schedule of Values.

3. The allowable Labor Burden Rate on craft labor direct labor payroll costs shall be limited to a maximum of 42% of labor costs for straight time which is a maximum of eight (8) hours per business day and 30% for overtime which is in excess of eight (8) hours per business day, unless the GC/CM justifies to the satisfaction of Billings that the actual costs for such items exceed these limits. Labor burden items are the net costs actually incurred by the GC/CM for all labor related costs associated with the employment of the GC/CM's personnel in the performance of the work. For union labor, the burden rate shall be the actual amount defined by the union agreement in effect when the GMP Proposal or change proposal is submitted. If the GC/CM requests Billings' consideration of a burden rate exceeding these limits, the GC/CM shall submit complete documentation of its higher costs for Billings' review and approval at Billings' sole discretion.

4. Cost of all materials and equipment furnished and incorporated into the work, including costs of transportation thereof, and suppliers' field services required in connection with installation, testing and acceptance. All cash discounts shall accrue to GC/CM unless Billings deposits funds with GC/CM with which to make payments, in which case the cash discounts shall accrue to Billings. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Billings, and GC/CM shall make provisions so that they may be obtained.
5. Invoices, prorated to these actual quantities, including freight to site, if not transported by trucks paid for otherwise, plus applicable sales tax, shall constitute the only reimbursable materials expenses. Material prices shall be consistent with or under values established by industry guides recording the lowest prices for Billings, MT.
6. Payments made by GC/CM to subcontractors for work performed by subcontractors. As required by Billings, GC/CM shall obtain competitive bids from subcontractors acceptable to Billings and GC/CM and shall deliver such bids to Billings who will then determine, with the advice of Engineer and Project Manager which bids, if any, will be acceptable. If subcontract provides that the subcontractor is to be paid on the basis of Cost of the Work, the subcontractor's Cost of the Work shall be determined in the same manner as GC/CM's Cost of the Work as provided herein.
7. Costs of special subconsultants including, but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the work.
8. Other costs included in the Cost of the Work are the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of GC/CM's craft labor incurred in discharge of duties connected with the work as approved in advance by Billings.
  - b. Cost, including transportation and maintenance, of all materials, equipment, machinery, appliances, and hand tools in excess of \$100 each not owned by the craft labor, which are consumed in the performance of the work, and cost, less market value, of such items used but not consumed which remain the property of GC/CM.
  - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from GC/CM or others in accordance with rental agreements approved by Billings with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the work. This excludes general purpose vehicles, including buses and trucks, for any GC/CM supervision, administrative and non-craft labor support personnel which are covered in the General Conditions Cost.
  - d. If the construction equipment is owned or leased by the GC/CM or subcontractor (of any tier), the equipment rates shall be in accordance with the properly adjusted rates indicated in the most recent Rental Rate Blue Book by Dataquest Inc. ("Blue Book"), applicable to the date additional work activity was approved, for the period of actual use of such equipment. Maximum rates for equipment not listed in the Blue Book shall be established by capacity comparisons to other listed equipment. No overtime charges shall be made for equipment operating longer than eight (8) hours per day and only daily or prorated weekly or monthly rates per day shall be allowed depending on the actual rental period. For rental equipment, the GC/CM shall provide copies of the rental agreement for each item of equipment required for the work. No payment will be made for repairs or repair down time.

- e. Sales, consumer, use, and other similar taxes related to the work, and for which GC/CM is liable, as imposed by Laws and Regulations.
- f. Deposits lost for causes other than negligence of GC/CM, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- g. Losses and damages (and related expenses) caused by damage to the work, not compensated by insurance or otherwise, sustained by GC/CM in connection with the performance of the work (except losses and damages within the deductible amounts of property insurance established in accordance with the Contract), provided such losses and damages have resulted from causes other than the negligence of GC/CM, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Billings. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining GC/CM's General Conditions Cost or GC/CM Construction Services Fee.
- h. The cost of utilities, fuel, and sanitary facilities directly attributable to the craft labor and construction equipment in the work at the site.
- i. Cost of materials, supplies, equipment, and facilities used temporarily by the GC/CM during construction but not consumed or salvaged in the performance of the work, which will be turned over to Billings for Billings beneficial use when no longer used by GC/CM.
- j. Cost less salvage value on materials, supplies, equipment, and temporary facilities used directly for the work, (e.g. ladders, scaffolding) but not consumed, and which remain the property of the GC/CM.
- k. Rental charges consistent with the most recent Blue Book on all necessary temporary facilities and equipment, exclusive of hand tools used on site, whether rented from the GC/CM or elsewhere. Such rental charges include operation, installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs, that are used in the support of a subcontractor or the GC/CM's own forces in the performance of the work.
- l. Subject to Montana Code, sales, use, gross receipts or similar taxes paid by the GC/CM or its subcontractors related to allowable direct costs of a GMP, legally imposed by any governmental authority.
- m. Costs incurred because of an emergency affecting the safety of persons and property to the extent they are reasonable and fully documented and supported by appropriate backup documentation and are not caused by any act or failure to act by GC/CM, its employees, agents, subcontractors or suppliers of any tier.
- n. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools in excess of \$100 each not customarily owned by the workers, which are provided by GC/CM at the site, whether rented from GC/CM or others, and incurred in the direct performance of the work.
- o. Costs for logistical control of the site, including horizontal and vertical transportation of materials, temporary roads, and parking space for craft labor.
- p. Direct permit costs on a receipted actual cost basis of the necessary approvals, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- q. Costs of all necessary surveys and required reports.
- r. Other costs necessarily incurred directly in the performance of the work if, and to the extent, approved in advance in writing by Billings.

D. Payments associated with contract modifications during construction will be made in accordance with the construction documents.

E. Requests for payments associated with the construction will be reviewed and paid in accordance with the construction documents.

Section 7. Billings's Responsibilities

7.01 Billings, at no cost to the GC/CM, will furnish the following information:

A. Data Billings determines pertinent to the project; however, the GC/CM will be responsible for searching records and requesting information it deems reasonably required for the project.

B. All available information pertaining to relevant policies, standards, criteria, studies, etc.

7.02 Billings additionally will:

A. Contract separately with one or more Engineers to provide engineering design services for the project. The GC/CM will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to Billings and Engineer.

B Supply, without charge, all necessary electronic format (PDF) copies of reports, background documents, drawings, and specifications, and addenda reasonably required by the GC/CM.

C. Provide the GC/CM with adequate information in its possession or control regarding Billings' requirements for the project.

D. Give prompt written notice to the GC/CM when Billings becomes aware of any default or defect in the project or non-conformance with the drawings and specifications or GMP Documents, or any of the services required hereunder. Upon notice of failure to perform, Billings may provide written notice to GC/CM that it intends to terminate the agreement unless the problem cited it cured, or commenced to be cured, within three days or GC/CM's receipt of such notice.

E. Notify the GC/CM of changes affecting the budget allocations.

Section 8. Contract Conditions

8.01 Completeness and Accuracy of GC/CM's work

A. The GC/CM will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other preconstruction Deliverables prepared or compiled pursuant to its obligations under this agreement and will at its sole own expense correct its work or Deliverables. Any damage incurred by Billings as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the GC/CM to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a GC/CM in Billings, MT would exercise under similar conditions. The fact that Billings has accepted or approved the GC/CM's work or Deliverables

will in no way relieve the GC/CM of any of its responsibilities under the agreement, nor does this requirement to correct the work or deliverable constitute a waiver of any claims or damages otherwise available by law or contract to Billings. Correction of errors, omissions and acts discovered on architectural or engineering drawings and specifications shall be the responsibility of the Engineer.

#### 8.02 Project Staffing

A. Prior to the start of any services or deliverable under this agreement, the GC/CM will submit to Billings, an organization chart for the GC/CM staff and subconsultants and detailed resumes of key personnel that will be involved in performing the services prescribed in the contract. Unless, otherwise informed, Billings hereby acknowledges its acceptance of such personnel to perform such services under this agreement. In the event the GC/CM desires to change such key personnel from performing such services under this agreement, the GC/CM will submit the qualifications of the proposed substituted personnel to Billings for prior approval. Key personnel will include, but are not limited to, Project Manager, Preconstruction Manager, Procurement Manager, Construction Manager, Lead Construction Superintendent, Quality Manager, Safety Manager and those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and subcontractor and major supplier selection/bidding.

#### 8.03 Subconsultants

A. Prior to beginning the work or deliverable, the GC/CM will furnish Billings for approval, the names of all subconsultants to be used on this project. Subsequent changes are subject to the approval of Billings.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Contractor

\_\_\_\_\_  
William A. Cole, Mayor

\_\_\_\_\_  
COP Construction LLC

Name: Eric Smith 

Title: Project Manager

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

Date: 8/9/2021

ATTEST:

IRS Tax ID # 47-0897586

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

APPROVED AS TO FORM:

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

By \_\_\_\_\_

Thomas Pardy, City Attorney

STATE OF MONTANA            )  
  :ss.  
COUNTY OF YELLOWSTONE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, 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 Contractor City of Billings W.O. 19-12, West End Raw Water Pipeline Project

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

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Contractor's portion of the project as defined in the scope of work and to prepare and deliver to Billings all other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Contractor shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Contractor's work shall 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, 18-2-122, and 18-2-501 to 503 and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. 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 Contractor. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- G. Name a Task Director who shall be the liaison between Billings and the Contractor. For this project the Task Director designated for the Contractor is Eric Smith, Project Manager working under the Principal-in-Charge, Joe Allen, Construction Manager

#### 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 Contractor and Billings. For this project, the Task Director designated is Randy Straus working under the City Engineer, Mac Fogelsong.

### Section 3. Scope of Work.

- Project Kickoff / Partner Team Meeting
  - Discuss partnering and roles of all team members
  - Discuss communication control plan
  - Review project scope and goals
  - Review requirements of Contractor's Project Management Plan (PMP)
    - Following Kickoff Meeting Contractor to prepare PMP as previously defined in Contract Part III, Supplemental Provisions, Section 3.02
  - Review major risks/Risk Plan
    - Following Kickoff Meeting Contractor to prepare Risk Register identifying risks, risk level, cost impact, schedule impact, responsible party, and approaches to minimize risk.
  - Discuss Cost model
    - Following Kickoff Meeting, Contractor to prepare cost model based on input from team. Mode is an open and transparent document that defines the Contractors pricing assumptions for use by the Owner and Engineer. The model defines costs related to labor, materials, equipment, subcontractor and supplier quotes, means & methods, productions rates, risks, direct costs, mobilization, overhead & profit.
  - Discuss ownership of project schedule
  - Discuss Team approach to price escalation
  - Discuss potential pipe materials, joining & restraining methods, installation
- Pipe Material & Size Workshop
  - Prep Items – prices, production/installation rough cost comparisons between materials
  - Goal – pick one material to base initial cost estimate on (other materials will still be considered as project progresses).
- Walk alignment/Corridor
  - Prep – One Call, RR right-of-way access
  - Goals – Feasibility of alignment to date, recommendations of alignment changes, define I90/MRL crossing method for baseline cost estimate
  - Contractor follow-up
    - Submit schedule of values for basis of cost estimate
    - Recommendations for utility conflicts
    - Recommendations for additional survey
    - Recommendations for additional Geotech
    - Recommendations for potholing
    - Recommendations for temporary easement areas
- Discuss Contractor follow-up items, Virtual Meeting
- Complete potholing/Dig Test Pits
  - Contractor to include a \$15,000 allowance
- Contractor to complete and submit PMP (including Cost Model and Risk Register), Baseline Cost Estimate and Project Schedule

- Cost estimate based on one pipe material and both 36-inch and 42-inch pipe sizes
- Cost estimate to include separate line items for appurtenances, contractor contingency and for price escalation
- Assumptions – Engineer provides updated drawings from walk through.
- Review Baseline (30%) Cost Estimate and Schedule
  - Baseline Cost Estimate
    - Discuss any adjustments to format
    - Come to agreement on cost estimate
  - Schedule
    - Review schedule format
    - Review project sequencing/phasing
  - Review capacity of pipe sizes, 36-inch and 42-inch
  - Discuss and determine pipe size
  - Contractor continues to monitor material prices and inform team of any significant changes.
- Public Meeting
  - Assume prep and attendance of one public meeting
- Subcontractor and Crossings Meeting
  - Prep – Contractor provides approach for each significant crossing and information on potential subcontractors
  - Review options for crossings and come to agreement on approach
  - Discuss potential subcontractors and timing of bringing them onto Team
  - Decide on approach to subcontractors
    - Assume a tunneling subcontractor will be added to team based on qualifications
      - Project team selects subcontractor
      - Contractor to include an allowance of \$5,000 for tunneling subcontractor preconstruction activities.
    - Assume other subcontractors will be based on qualification and price
- I-90/MRL Crossing Meeting
  - Follow-up to previous crossings discussion
  - Tunneling subcontractor included in meeting
  - Finalize crossing approach and land requirement for construction
  - Determine any additional Geotech pertinent to crossing
- Easement Review Meeting
  - Prep – Engineer provides most recent drawings with right-of-way and easements.
  - Go through alignment and determine where additional easements are required.
  - Follow-up
    - City prepares easements
    - Project Team reviews easements and determines any refinements.
- Meeting to Review 60% Drawings and Specs
  - Assumptions – Engineer prepares documents
- Contractor prepares and submits 60% Cost Estimate, Risk Register and Schedule

- Price Reconciliation Meeting/Value Engineering Meeting
  - Review schedule of values
  - Project team reviews and reconciles cost estimate
  - Project team reviews schedule
  - Discuss constructability/biddability
  - Value Engineering/Innovation ideas are analyzed
    - Determine any changes to design
  - Identify risk items
  - Evaluate Contractor contingency
  - Verify if any additional field work- potholing, utility coordination, Geotech is required
  - Follow-up – Contractor provides cost savings estimate from value engineering/innovation concepts
  - Begin discussions on development of early work package(s) and GMPs to make stream, canal, ditch crossings before ground water rises and irrigation season
- Complete any additional field work
- 90% pipeline design and 100% Crossings Design
  - Assumptions – Engineer provides and distributes design documents
  - Project team reviews 100% Crossings Design and provides comments
  - Engineer updates crossing designs and submits with other documents for various permitting (MRL, MDT, Yellowstone County, BBWA, etc.)
- Contractor prepares and submits 90% Cost Estimate, Risk Register, Schedule and Cost Flow Projection
- Price Reconciliation Meeting/Value Engineering Meeting
  - Project team reviews and reconciles cost estimate
  - Project team reviews schedule
  - Discuss constructability/biddability
  - Value Engineering/Innovation is discussed
    - Determine any changes to design
  - Review risk items.
  - Review Contractor contingency
  - Review cost flow information
  - Project team reviews plans for early work package(s) and construction contract to make stream, canal, ditch, etc. crossings before ground water rises and irrigation season; develop and agree to separate GMP(s).
  - Follow-up – Contractor adjusts Cost Model, Schedule, Pricing based on meeting
- Contractor prepares and submits 100% Cost Estimate, Risk Register and Schedule
  - Assumptions – Engineer provides signed and sealed documents
- Price Reconciliation Meeting/Value Engineering Meeting
  - Project team reviews and reconciles cost estimate
  - Project team reviews schedule
  - Review risk items.
  - Review Contractor contingency

- Contractor prepares Guaranteed Maximum Price (GMP)
  - GMP timing to be discussed at 60%, 90% Price Reconciliation Meetings
- Project Team meets to accept GMP, agree to modify GMP or not accept GMP and end Pre-Construction Services
- Contractor bids work as applicable
  - Contractor provides bid recommendations to City/Engineer (as discussed during the subcontracting meeting)
- Miscellaneous Meetings
  - MDT
  - MRL
  - Yellowstone County
  - BBWA
  - Canyon Creek Ditch company
  - Various utilities
- Materials Pre-Procurement (could occur at anytime during process or not all)
  - Assumptions
    - Effort to pre-procure pipe (pipe payment would be under separate contract)
    - Effort to pre-procure valves (valve payment would be under separate contract)
- Additional pre-construction services
  - The Contractor may provide additional services to assist the City of Billings in the development of the project as described in the contract agreement. Additional services, if requested, will result in an amendment to the pre-construction services.

## **Appendix B**

### **Methods and Times of Payment City of Billings W.O. 19-12, West End Raw Water Pipeline Project**

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

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

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.

For services rendered prior to construction, Appendix A, the Contractor shall be paid based upon actual time accrued in accordance with the preconstruction services fee contained in Appendix D – Preconstruction Multiplier and Schedule of Fees & Rates, but not to exceed Ninety Eight Thousand Nine Hundred Eighty Seven Dollars (\$98,987.00).

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

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

#### Section 3. Corrections.

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

#### Section 4. Fee Increases

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

## **Appendix C**

### **Additional Services of Contractor City of Billings W.O. 19-12, West End Raw Water Pipeline Project**

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

## **Appendix D**

### **Preconstruction Multiplier and Schedule of Fees & Rates City of Billings W.O. 19-12, West End Raw Water Pipeline Project**

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This section includes the preconstruction services not-to-exceed fee proposal submitted by the Contractor and accepted by the City of Billings. The fee proposal is based on the attached schedule of rates and fees for COP Construction's key preconstruction services personnel, an estimated level of effort for these personnel to perform the Scope of Work included in Appendix A, Section 3, and a preconstruction multiplier of 17%.

The basis of the preconstruction multiplier and resulting fee is described the project's Request for Proposals (RFP), clarified in RFP Addendum No. 1 dated May 13, 2021 and applied to the Scope of Work included in Appendix A, Section 3.

COP Construction's Statement of Qualifications dated April 16, 2021 and Technical and Price Proposals dated June 7, 2021 are not attached but are part of this contract.

8/3/2021

**COP CONSTRUCTION LLC**  
**STANDARD ADMINISTRATIVE WAGES**  
**Rates Good Through 04/01/2022**

**Montana**

		<b>Project Manager</b>	<b>Super- intendent</b>	<b>Project Engineer</b>	<b>Project Estimating</b>
Direct - to - Person Wage rate:		55.69	46.91	27.83	46.21
Payroll Burden & Fringe					
Payroll Burden					
FICA	7.65%	4.26	3.59	2.13	3.54
FUTA	0.60%	0.33	0.28	0.17	0.28
SUTA	4.50%	2.51	2.11	1.25	2.08
General & Umbrella Liab & Add'	5.543%	3.09	2.60	1.54	2.56
Work Comp	0.99%	<u>0.55</u>	<u>0.46</u>	<u>0.28</u>	<u>0.46</u>
Subtotal Payroll Burden		10.74	9.04	5.37	8.92
Fringe Benefits					
Health	6.80 /hr	6.80	6.80	6.80	6.80
Pension or 401(k)	5.00%	2.78	2.35	1.39	2.31
Disability	0.0069	0.38	0.32	0.19	0.32
Vacation	120.00 Hrs	3.21	2.71	1.61	2.67
Holiday	80.00 Hrs	2.14	1.80	1.07	1.78
Personal/Sick days	- Hrs	-	-	-	-
Subtotal Fringe Benefits		<u>15.31</u>	<u>13.98</u>	<u>11.06</u>	<u>13.88</u>
Total Payroll Burden & Fringe		26.05	23.02	16.43	22.80
STS & Safety Equipment	0.0%	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total Labor Rate		81.74	69.93	44.26	69.01
Overhead	0.0%	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Profit	0.0%	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Billing Rate		<u>81.74</u>	<u>69.93</u>	<u>44.26</u>	<u>69.01</u>
Billing Rate Rounded		<u>82.00</u>	<u>70.00</u>	<u>44.00</u>	<u>69.00</u>

**PreConstruction Not-to-Exceed Fee, W.O. 19-12, West End Raw Water Pipeline Project**

	Eric	Jon	Jason	Dave	Josh	Allowance
<ul style="list-style-type: none"> <li>• <b>Project Kickoff / Partner Team Meeting – 4 hours (PM, Estimator, Super)</b> <ul style="list-style-type: none"> <li>o Discuss partnering and roles of all team members</li> <li>o Discuss communication control plan</li> <li>o Review project scope and goals</li> <li>o Review requirements of Contractor's Project Management Plan (PMP)                             <ul style="list-style-type: none"> <li>▪ Following Kickoff Meeting Contractor to prepare PMP as previously defined in Contract Part III, Section 3.02</li> </ul> </li> <li>o Review major risks/Risk Plan                             <ul style="list-style-type: none"> <li>▪ Following Kickoff Meeting Contractor to prepare Risk Register identifying risks, risk level, cost impact, schedule impact, responsible party, and approaches to minimize risk.</li> <li>o Discuss Cost model                                     <ul style="list-style-type: none"> <li>▪ Following Kickoff Meeting, Contractor to prepare cost model based on input from team. Mode is an open and transparent document that defines the Contractors pricing assumptions for use by the Owner and Engineer. The model defines costs related to labor, materials, equipment, subcontractor and supplier quotes, means &amp; methods, productions rates, risks, direct costs, mobilization, overhead &amp; profit.</li> </ul> </li> <li>o Discuss ownership of project schedule</li> <li>o Discuss Team approach to price escalation</li> <li>o Discuss potential pipe materials, joining &amp; restraining methods, installation</li> </ul> </li> </ul> </li> </ul>	4	4	4	4	4	
<ul style="list-style-type: none"> <li>• <b>Pipe Material &amp; Size Workshop – 3 hours (PM, Estimator, Super)</b> <ul style="list-style-type: none"> <li>o Prep Items – prices, production/installation rough cost comparisons between materials</li> <li>o Goal – pick one material to base initial cost estimate on (other materials will still be considered as project progresses).</li> </ul> </li> </ul>	16	3	3	40		
<ul style="list-style-type: none"> <li>• <b>Walk alignment/corridor – 2 days on site (PM, Estimator, Super)</b> <ul style="list-style-type: none"> <li>o Prep – One Call, RR right-of-way access</li> <li>o Goals – Feasibility of alignment to date, recommendations of alignment changes, define 190/MRL crossing method for baseline cost estimate</li> <li>o Contractor follow-up                             <ul style="list-style-type: none"> <li>▪ Submit schedule of values for basis of cost estimate</li> <li>▪ Recommendations for utility conflicts</li> <li>▪ Recommendations for additional survey</li> <li>▪ Recommendations for additional Geotech</li> <li>▪ Recommendations for potholing</li> <li>▪ Recommendations for temporary easement areas</li> </ul> </li> </ul> </li> </ul>	16	16	16	16	16	8
<ul style="list-style-type: none"> <li>• <b>Discuss Contractor follow-up items, Virtual Meeting – 1 hour (PM)</b></li> </ul>	1		1	1		
<ul style="list-style-type: none"> <li>• <b>Complete potholing/Dig Test Pits</b> <ul style="list-style-type: none"> <li>o Assume 20 locations (per location price)</li> </ul> </li> </ul>	6			5	40	\$15,000
<ul style="list-style-type: none"> <li>• <b>Contractor to complete and submit PMP (including Cost Model and Risk Register), Baseline Cost Estimate and Project Schedule</b> <ul style="list-style-type: none"> <li>o Cost estimate based on one pipe material and both 36-inch and 42-inch pipe sizes</li> <li>o Cost estimate to include separate line items for appurtenances; contractor contingency and for price escalation</li> <li>o Assumptions – Engineer provides updated drawings from walk through.</li> </ul> </li> </ul>	16	8	16	40	16	
<ul style="list-style-type: none"> <li>• <b>Review Baseline (30%) Cost Estimate and Schedule – 4 hours (PM, Estimator, Super)</b> <ul style="list-style-type: none"> <li>o Baseline Cost Estimate                             <ul style="list-style-type: none"> <li>▪ Discuss any adjustments to format</li> <li>▪ Come to agreement on cost estimate</li> </ul> </li> <li>o Schedule                             <ul style="list-style-type: none"> <li>▪ Review schedule format</li> <li>▪ Review project sequencing/phasing</li> <li>o Review capacity of pipe sizes, 36-inch and 42-inch</li> </ul> </li> </ul> </li> </ul>	4	4	4	4	8	

**PreConstruction Not-to-Exceed Fee, W.O. 19-12, West End Raw Water Pipeline Project**

	Eric	Jon	Jason	Dave	Josh	Allowance
<ul style="list-style-type: none"> <li>o Discuss and determine pipe size</li> <li>o Contractor continues to monitor material prices and inform team of any significant changes.</li> </ul>	4			8		
<ul style="list-style-type: none"> <li>• <b>Public Meeting – 2 hours (PM, Estimator, Super)</b></li> <li>o Assume prep and attendance of one public meeting</li> </ul>	2	2	2	2	2	
<ul style="list-style-type: none"> <li>• <b>Subcontractor and Crossings Meeting – 3 hours (PM, Estimator, Super)</b></li> <li>o Prep – Contractor provides approach for each significant crossing and information on potential subcontractors</li> <li>o Review options for crossings and come to agreement on approach</li> <li>o Discuss potential subcontractors and timing of bringing them onto Team</li> <li>o Decide on approach to subcontractors                             <ul style="list-style-type: none"> <li>▪ Assume a tunneling subcontractor will be added to team based on qualifications                                     <ul style="list-style-type: none"> <li>• Project team selects subcontractor</li> <li>• Contractor to include an allowance of \$XXXX for tunneling subcontractor preconstruction activities.</li> </ul> </li> <li>▪ Assume other subcontractors will be based on qualification and price</li> </ul> </li> </ul>	3		3	3		
	8		4	4	16	
<ul style="list-style-type: none"> <li>• <b>I-90/MRL Crossing Meeting – 4 hours (PM, Estimator, Super, Subcontractor Team)</b></li> <li>o Follow-up to previous crossings discussion</li> <li>o Tunneling subcontractor included in meeting</li> <li>o Finalize crossing approach and land requirement for construction</li> <li>o Determine any additional Geotech pertinent to crossing</li> </ul>	4	4	4	4		\$5,000
<ul style="list-style-type: none"> <li>• <b>Easement Review Meeting – 3 hours (PM, Estimator, Super)</b></li> <li>o Prep – Engineer provides most recent drawings with right-of-way and easements.</li> <li>o Go through alignment and determine where additional easements are required.</li> <li>o Follow-up                             <ul style="list-style-type: none"> <li>▪ City prepares easements</li> <li>▪ Project Team reviews easements and determines any refinements.</li> </ul> </li> </ul>	3			3	3	
	16				16	
<ul style="list-style-type: none"> <li>• <b>Meeting to Review 60% Drawings and Specs</b></li> <li>o Assumptions – Engineer prepares documents</li> </ul>	4		4	4		
<ul style="list-style-type: none"> <li>• <b>Contractor prepares and submits 60% Cost Estimate, Risk Register and Schedule</b></li> <li>• <b>Price Reconciliation Meeting/Value Engineering Meeting – 8 hours (PM, Estimator, Super)</b></li> </ul>	8	8	8	24		
<ul style="list-style-type: none"> <li>o Review schedule of values</li> <li>o Project team reviews and reconciles cost estimate</li> <li>o Project team reviews schedule</li> <li>o Discuss constructability/biddability</li> <li>o Value Engineering/Innovation ideas are analyzed                             <ul style="list-style-type: none"> <li>▪ Determine any changes to design</li> <li>▪ Identify risk items</li> </ul> </li> <li>o Evaluate Contractor contingency</li> <li>o Verify if any additional field work- potholing, utility coordination, Geotech is required</li> <li>o Follow-up – Contractor provides cost savings estimate from value engineering/innovation concepts</li> </ul>	8	8	8	8		
<ul style="list-style-type: none"> <li>• <b>90% pipeline design and 100% Crossings Design</b></li> <li>o Assumptions – Engineer provides and distributes design documents</li> <li>o Project team reviews 100% Crossings Design and provides comments</li> <li>o Engineer updates crossing designs and submits with other documents for various permitting (MRL, MDT, Yellowstone County, BBWA, etc.)</li> </ul>	2		2	8		
<ul style="list-style-type: none"> <li>• <b>Contractor prepares and submits 90% Cost Estimate, Risk Register, Schedule and Cost Flow Projection</b></li> <li>• <b>Price Reconciliation Meeting/Value Engineering Meeting – 6 hours (PM, Estimator, Super)</b></li> </ul>	8	8	8	8		
<ul style="list-style-type: none"> <li>o Project team reviews and reconciles cost estimate</li> </ul>	6		6	6		

**PreConstruction Not-to-Exceed Fee, W.O. 19-12, West End Raw Water Pipeline Project**

	Eric	Jon	Jason	Dave	Josh	Allowance
<ul style="list-style-type: none"> <li>o Project team reviews schedule</li> <li>o Discuss constructability/biddability</li> <li>o Value Engineering/Innovation is discussed                             <ul style="list-style-type: none"> <li>▪ Determine any changes to design</li> </ul> </li> <li>o Review risk items.</li> <li>o Review Contractor contingency</li> <li>o Review cost flow information</li> <li>o Follow-up – Contractor adjusts Cost Model, Schedule, Pricing based on meeting</li> </ul>						
<ul style="list-style-type: none"> <li>• <b>Contractor prepares and submits 100% Cost Estimate, Risk Register and Schedule</b></li> </ul>	8	8	8	8	8	8
<ul style="list-style-type: none"> <li>o Assumptions – Engineer provides signed and sealed documents</li> </ul>	4		4	4		
<ul style="list-style-type: none"> <li>• <b>Price Reconciliation Meeting/Value Engineering Meeting – 4 hours (PM, Estimator, Super)</b></li> </ul>						
<ul style="list-style-type: none"> <li>o Project team reviews and reconciles cost estimate</li> <li>o Project team reviews schedule</li> <li>o Review risk items.</li> <li>o Review Contractor contingency</li> </ul>	8		8	8		
<ul style="list-style-type: none"> <li>• <b>Contractor prepares Guaranteed Maximum Price (GMP)</b></li> </ul>						
<ul style="list-style-type: none"> <li>o GMP timing to be discussed at 60%, 90% Price Reconciliation Meetings</li> </ul>						
<ul style="list-style-type: none"> <li>• <b>Project Team meets to accept GMP, agree to modify GMP or not accept GMP and end Pre-Construction Services – 2 hours (PM, Estimator, Super)</b></li> </ul>	2		2	2		
<ul style="list-style-type: none"> <li>• <b>Contractor bids work as applicable</b></li> </ul>	8			8		
<ul style="list-style-type: none"> <li>o Contractor provides bid recommendations to City/Engineer (as discussed during the subcontracting meeting)</li> </ul>						
<ul style="list-style-type: none"> <li>• <b>Miscellaneous Meetings – 1 hour each (PM)</b></li> </ul>						
<ul style="list-style-type: none"> <li>o MDT</li> <li>o MRL</li> <li>o Yellowstone County</li> <li>o BBWA</li> <li>o Canyon Creek Ditch company</li> <li>o Various utilities</li> </ul>	4					4
	4					4
	2					2
	2					2
	2					2
	16					16
<ul style="list-style-type: none"> <li>• <b>Materials Pre-Procurement (could occur at anytime during process or not all)</b></li> </ul>						
<ul style="list-style-type: none"> <li>o Assumptions                             <ul style="list-style-type: none"> <li>▪ Effort to pre-procure pipe (pipe payment would be under separate contract)</li> <li>▪ Effort to pre-procure valves (valve payment would be under separate contract)</li> </ul> </li> </ul>						
<ul style="list-style-type: none"> <li>• <b>Early Work Package GMP Development</b></li> </ul>	40	20	20	40		
	251	101	121	298	147	
<b>Total Hours:</b>						
<b>Hourly Rates (base wage, payroll burden, fringes):</b>	\$ 82.00	\$ 70.00	\$ 82.00	\$ 69.00	\$ 44.00	
<b>Total Amount:</b>	\$ 20,582.00	\$ 7,070.00	\$ 9,922.00	\$ 20,562.00	\$ 6,468.00	\$ 20,000.00
<b>Pre-Construction Sub Total:</b>	\$84,604.00					
<b>Pre-Construction Multiplier:</b>	17%					
<b>Pre-Construction Grand Total:</b>	\$98,986.68					

## Appendix E

### Project Schedule City of Billings W.O. 19-12, West End Raw Water Pipeline Project

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Based on a notice to proceed by Billings date no later than August 23, 2021, the completion date for the Contractor's work through preconstruction services shall be no later than June 30, 2022 based on the following estimated schedule of work:

- Project Kickoff / Partner Team Meeting August 26, 2021
- Pipe Material and Size Workshop September 8, 2021
- Alignment / Corridor Walkthrough September 9 & 10, 2021
- Complete Potholing, Test Pits October 2021
- Submit Baseline (30%) Cost Estimate & Schedule October 4, 2021
- Submit 60% CE, Sch & Risk Register November 19, 2021
- Submit 90% CE, Sch, RR & Cost Flow Projection December 21, 2021
- Submit 100% CE, Sch & RR February 7, 2022
- Ready to Construct Early Work Package(s) March 1, 2022
- Submit Guaranteed Maximum Price (GMP) March 4, 2022
- Notice to Proceed, Phase 2 – Construction March 21, 2022

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

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

## **Appendix F**

### **Certificate(s) of Insurance City of Billings W.O. 19-12, West End Raw Water Pipeline Project**

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(Attach Certificate(s) of Insurance)