

# Contract for Professional Architectural and Engineering Services

## W.O. 23-09 5th Avenue Corridor – Phase I Preliminary Design

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In consideration of the mutual promises herein, City of Billings and Sanderson Stewart agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 7 pages (Basic Services of Contractor);

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

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

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

Appendix E consisting of 1 page (Project Schedule);

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

### **PART I SPECIAL PROVISIONS**

#### Section 1. Definitions.

In this Contract:

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

#### Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.

- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Engineer shall provide as-built drawings as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings. Requirements for submitting as constructed documents of completed Private Contracts, Work Orders, Special Improvement Districts and Site plans involving any City of Billings infrastructure: a point file; 1 (\*.asc, \*.txt, comma delimited; point number, northing, easting, elevation and description) / 2 (\*.csv, with headings for; point number, northing, easting, elevation and description), with northings and eastings to the nearest tenth of a foot, elevations to the nearest hundredth of a foot, representing new, updated or relocated City of Billings infrastructure features such as, but not limited to Sanitary Sewer Manholes, Storm Drain Manholes, Water Valves, Water Bends, Signals, Street Light, etc., in the coordinates of Montana State Plane, Zone 2500 using NAD83(2011), Horizontal and NAVD88 Vertical, Horizontal units and Vertical units will be International feet, one half size paper copy to scale, one full size paper copy to scale, two CD's or DVD's with PDF files being half size to scale and full size to scale and AutoCAD DWG files as-constructed / as-built, Version 2016, or equivalent.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

### Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31st, 2024.

### Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

### Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

#### Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

## Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
  - 1. Workers' compensation and employer's liability coverage as required by Montana law.
  - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
  - 3. Commercial automobile liability -- \$1,500,000 per accident.
  - 4. Professional liability in the amount of \$1,500,000 per claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

## Section 8. Assignments.

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

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

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless

the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

#### Section 10. Notices.

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

Billings: Mac Fogelsong, PE, City Engineer  
City of Billings  
Engineering Department  
2224 Montana Ave  
Billings, Montana 59101 FAX : (406) 237-6291

Contractor: Sanderson Stewart  
DJ Clark  
Billings Regional Manager  
1300 N Transtech Way  
Billings, MT 59102

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

#### Section 11. Contract Budget.

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

#### Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
  1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
  2. Strikes or Work stoppages.

3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
4. Order of court, administrative agencies or governmental officers other than Billings.

#### Section 13. Financial Management System.

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

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

#### Section 14. Funding Requirements.

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

#### Section 15. Subcontracts.

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

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

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

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- F. The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.
- 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: DJ Clark, PE, PTOE, Billings Regional 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 Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract

shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

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

City of Billings

Contractor

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

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

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

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

ATTEST:

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

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

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

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

APPROVED AS TO FORM:

By \_\_\_\_\_

City Attorney

**Appendix A**  
**Basic Services of Engineer**  
**W.O. 23-09**  
**5th Avenue Corridor – Phase I Preliminary Design**

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Section 1. Engineer's Rights and Duties.

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

- J. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project, the Task Director designated for the Engineer is D.J. Clark, PE, PTOE.

Section 2. Billings Rights and Duties.

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

Section 3. Scope of Work.

The project description (from the RFP) is as follows:

*A 5th Avenue North Corridor Feasibility Study (Study) was completed in 2021. The Study considered the feasibility of a multimodal trail from North 32nd Street to Main Street along the 5th Avenue North corridor, which currently does not contain any roadway improvements. The Study found the project to be feasible, however recommends phasing the project.*

*WO 23-09 will continue with the planning effort based on recommendations within the Study, developing 30-percent level design plans and cost estimate for the section of corridor between the YMCA and Yellowstone Art Museum (Phase I). This section has been identified in the Study as the "Linear Park" and provides an opportunity for both a multi-use trail and a green space to enhance downtown Billings. A 30-percent cost estimate will allow staff to identify future funding options for final design and construction of Phase I.*

*Right-of-way or easements have not been secured for the 5th Avenue North Corridor. Given this, Phase I will include property owner engagement as well as additional public participation to determine a 30-percent level design alignment. Landscaping, placemaking, and wayfinding consistent with the Study recommendations should be considered for 30-percent design. Other major project components include street crossings, with the crossing at North 27th Street of particular interest.*

**Phase 100. Project Administration**

- Task 1. Project scoping, fee estimate, and subconsultant contracting.
- Task 2. General project management, including internal meetings and administrative tasks.
- Task 3. Meetings and correspondence with City of Billings staff on project-related items.
- Task 4. Meetings and coordination with the Montana Department of Transportation.
- Task 5. Weekly project status update e-mails will be sent to the City of Billings Project Manager (Sarah Plath) and any other recipients as directed by the City.

- Task 6. Monthly project invoicing.
- Task 7. Internal project kickoff meeting.
- Task 8. QA/QC (all draft and final deliverables)

Phase 100 Deliverables:

Draft and final project contract documents and supporting information; weekly project status update e-mails; monthly project invoices.

**Phase 200. Survey/Data Collection**

- Task 1. Survey project management, including resource coordination, pre-survey research, and any meetings or correspondence.
- Task 2. Field work related to LIDAR scanning survey. This includes the required setting of control and all initial field work associated with the Frontier Precision demonstration.
- Task 3. Office work related to LIDAR scanning survey. Downloading and registration of scanning data to create one point cloud. Review of LIDAR scan data to determine if there are any voids in the scan data that need to be surveyed.
- Task 4. Conventional/GPS topographic survey pickups of project area to supplement LIDAR scanning data.
- Task 5. Drafting in AutoCAD of line work and point features utilizing LIDAR scanning data for use in design. Resulting CADD line work will be integrated in a dedicated CADD file for use in design. Creation of existing conditions surface model in AutoCAD based on LIDAR scanning surface data for use in design. Unless otherwise directed by the City, the project will use the following coordinate systems:
  - a. Billings Low Distortion Projection (NAD83-2011) with horizontal units expressed in international feet.
  - b. Vertical datum will be NAVD88 with GPS elevations derived from GEOID12A and vertical units expressed in U.S. survey feet.
- Task 6. Miovision traffic counts on North 27<sup>th</sup> St. at the 4<sup>th</sup> Ave. North and 6<sup>th</sup> Ave. North intersections. Data will be collected starting on a Wednesday afternoon and continuing through Sunday morning, avoiding any holiday weekends or adverse weather conditions if possible. Data will be processed for the 72 consecutive-hour period that spans Thursday through Saturday to establish typical weekday and weekend traffic volume demand levels. Vehicle classifications (passenger vehicle/truck/bus) will be quantified as part of the data processing.

- Task 7. Research of, correspondence with, and review of maps and other information provided by private utility companies with facilities in the project area.

Phase 200 Deliverables:

Weekly project status update e-mails; monthly project invoices.

### **Phase 300. Concept (30%) Design and Stakeholder Engagement**

- Task 1. Creation of property boundary/ownership exhibits that show proposed corridor alignment. The exhibits will utilize previous surveys and available property line work to approximate anticipated right-of-way/easement needs. These exhibits will be useful for our initial concept design work, as well as for property owner meetings.
- Task 2. Corridor site visit with City of Billings staff to review preferred alignment, potential place/node locations, street crossings, and anticipated challenges.
- Task 3. Design charette meeting with Alta and City of Billings. During this meeting, which will be held the same day as the corridor site visits, we will discuss design concepts, anticipated challenges, and strategies for developing initial concept design exhibits to be utilized for the first round of property owner meetings.
- Task 4. Parking, access and site circulation analysis and summary memo. The purpose of this exercise will be to identify impacts to private property parking, access, and site circulation, as well as strategies for mitigating those impacts. Results will be summarized in a brief memo with exhibits as required to illustrate proposed solutions. Memo will be submitted to City for review, with revisions made as required based on City comments.
- Task 5. Design concept development and exhibits – the project team will develop two (2) alternatives for the overall corridor typical section. The preferred cross section will be used to understand property impacts and will be modified on a site-by-site basis to mitigate those impacts. The project team will prepare up to six (6) exhibits, one for each block, that communicate concept alternatives and impacts to property owners; these exhibits will be used for property owner meetings (Task 6). Each exhibit will consist of the preferred alignment, typical cross section, and, as needed, plan view and perspective sketches to communicate design intent. Additionally, the project team will develop two (2) alternatives for each of the public street crossings at North 27th St., North 32nd St., and one other crossing. The project team will also develop one (1) initial design concept for up to three (3) node or place

locations along the corridor.

- Task 6. Introductory property owner meetings (1 meeting with each property owner with parcels that abut the preferred alternative corridor). Meetings will be held in-person and on-site, unless a particular property owner prefers otherwise. Sanderson Stewart will facilitate the meetings with attendance by the City of Billings Project Manager (Sarah Plath) at her discretion.
- Task 7. Follow-up design team meeting with the City. Once we have met with each of the property owners to discuss the preferred alignment and design concepts, Sanderson Stewart will host a meeting with the City and the design team via Microsoft Teams to discuss the feedback received and any modifications to the initial design concepts that will be required to take the project forward. We would also anticipate settling on final preferred alternatives for all elements of the project to take forward to formal design development.
- Task 8. Meeting with MDT (Billings District) to review design concepts and discuss preferred alternative(s) for the North 27<sup>th</sup> Street crossing.
- Task 9. Corridor Branding, Wayfinding, and Materials Strategy. Through this task, the project team will develop a concept package for urban design elements related to branding, wayfinding/information, and materials. The process will include the development of one (1) concept for a suite of branding and wayfinding elements – up to five (5) elements – including information kiosks, gateway markers, etc. The project team will also develop a materials palette that will serve as a guide for the aesthetic of the corridor, including furnishings, pavement materials, and landscaping. The project team will respond to one (1) round of comments from the City of Billings and make revisions to the branding, wayfinding, and materials concept package accordingly.
- Task 10. Concept design plans development. Through this task, the project team will create a 30% design level plan set based on the preferred alternative design concepts. The plan set will consist of a cover sheet, plan view design/exhibit sheets, and detail sheets as required to describe key design elements. The concept design efforts will implement high-level landscape improvement concepts but will not include detailed landscape or irrigation design elements.
- Task 11. Concept design opinion of probable construction cost. The project team will develop a cost estimate with a 15% contingency line item and fee estimates for engineering design and construction-phase services for the City to use in procuring projecting funding. The opinion of probable construction cost will be broken into two schedules – one for the North 27<sup>th</sup> St. crossing treatment and another for the remainder of the project.

- Task 12. Concept design package submittal to City for review. We would anticipate having a follow-up meeting either in-person or via Teams to review comments from the City on the concept design submittal. A separate, targeted submittal will also be made to MDT for the North 27<sup>th</sup> St. crossing. The MDT submittal will include plan view exhibit sheets, detail sheets, and an opinion of probable construction cost for the North 27<sup>th</sup> St. crossing treatment.
- Task 13. Preparation of memorandum of understanding (MOU) documents for each abutting property owner to define some level of commitment to providing easement or right-of-way dedication for the 5<sup>th</sup> Avenue Corridor.
- Task 14. Additional meetings with property owners to present preferred alternative design concepts and the MOU documents associated with each property/owner.
- Task 15. Concept design revisions based on comments received from City and MDT. Parking and access memo will also be updated as required based on property owner, City, and/or MDT comments.
- Task 16. Public meeting to present design concepts.

Phase 300 Deliverables:

Concept (30%) plan view exhibits and detail sheets, opinions of probable construction cost. Submittals will typically be made electronically with physical deliverables to include up to four (4) sets of 11x17-sized plans/exhibits, upon request.

**Exclusions from Scope of Work**

The following work items are excluded from the scope of work for this project and shall be considered as Additional Work. If the City of Billings determines that Additional Work is required, Sanderson Stewart will provide those services for an additional agreed-upon fee.

1. A formal and detailed cadastral survey to determine exact property/right-of-way boundaries. The effort for this project will be abbreviated with the end goal of depicting approximate property boundaries.
2. A geotechnical investigation, borings, and/or a summary report. The expectation is that the multi-use trail will utilize a standard pavement section consistent with the City of Billings Standard Modifications to MPW and/or based on direction from the City.
3. Landscape or irrigation design and specifications beyond high-level concepts as referenced in the detailed scope of work.
4. Street lighting or electrical design and specifications. Although the N. 27<sup>th</sup> Street crosswalk may require a pedestrian hybrid beacon (HAWK) signal, we do not anticipate that formal design of the electrical improvements will be required for 30% design development.
5. Design, specifications or permitting related to erosion control and storm water management during construction. This work shall be the

responsibility of the contractor. Sanderson Stewart will be in no way responsible for reviewing, approving or monitoring Contractor-required storm water pollution prevention plan (SWPPP) documentation or installation measures. The Contractor shall be required to prepare and submit for approval the Notice of Intent (NOI), Notice of Termination (NOT) and all related supportive materials.

6. Design of retaining walls or other structural features (not anticipated to be required at this time). If the design of such features is required for the project design, the additional services can be provided through an amendment to the contract.
7. Design of private utilities (natural gas, oil, power, fiber optic, telephone, cable television or other) facilities. Sanderson Stewart will however provide coordination with private utility companies to address any anticipated conflicts and/or replacement/relocation work.

**Appendix B**  
**Methods and Times of Payment**  
**W.O. 23-09**  
**5th Avenue Corridor – Phase I Preliminary Design**

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Section 1. Payments for Basic Services.

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

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

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

Phase 100 – Project Administration	\$28,305.00
Phase 200 – Survey/Data Collection	\$5,510.00
Phase 300 – Concept Design/Stakeholder Engagement	\$70,612.00
<b>TOTAL CONTRACT</b>	<b>\$104,427.00</b>

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

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

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable hourly rates as referenced in Appendix D and below in Section 4.

Section 3. Corrections.

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

Section 4. Fee Increases

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

## **Appendix C**

### **Additional Services of Engineer**

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

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

## **Appendix D**

### **Schedule of Professional Fees**

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Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

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

# CHARGE OUT RATES

EFFECTIVE NOVEMBER 1, 2022

## STAFF PERSONNEL SERVICES

Staff Engineer I	\$115.00/hour
Staff Engineer II	\$128.00/hour
Project Engineer I	\$135.00/hour
Project Engineer II	\$145.00/hour
Senior Engineer I	\$180.00/hour
Senior Engineer II	\$210.00/hour
Principal	\$235.00/hour
Engineer Intern	\$75.00/hour
Expert Witness/Special Consultant	\$290.00/hour
Staff Planner I	\$100.00/hour
Staff Planner II	\$110.00/hour
Planner I	\$130.00/hour
Planner II	\$145.00/hour
Senior Planner I	\$155.00/hour
Senior Planner II	\$175.00/hour
Right-of-Way Agent	\$168.00/hour
Staff Landscape Designer I	\$100.00/hour
Staff Landscape Designer II	\$108.00/hour
Landscape Architect I	\$135.00/hour
Landscape Architect II	\$145.00/hour
Senior Landscape Architect I	\$160.00/hour
Senior Landscape Architect II	\$170.00/hour
Field Survey Technician I	\$85.00/hour
Field Survey Technician II	\$88.00/hour
Staff Surveyor I	\$110.00/hour
Staff Surveyor II	\$120.00/hour
Professional Land Surveyor I	\$135.00/hour
Professional Land Surveyor II	\$148.00/hour
Senior Professional Land Surveyor I	\$160.00/hour
Senior Professional Land Surveyor II	\$178.00/hour
Graphic Artist	\$100.00/hour
CADD Technician I	\$88.00/hour
CADD Technician II	\$95.00/hour
Designer I	\$100.00/hour
Designer II	\$110.00/hour
Senior Designer I	\$120.00/hour
Senior Designer II	\$135.00/hour
Construction Inspector	\$88.00/hour
Construction Engineering Technician	\$100.00/hour
Senior Construction Engineering Technician	\$135.00/hour
Construction Engineer I	\$135.00/hour
Construction Engineer II	\$145.00/hour

## STAFF PERSONNEL SERVICES CONTINUED

Project Administrator	\$95.00/hour
Senior Project Administrator	\$110.00/hour
Administrative/Clerical	\$90.00/hour
Senior Administrative Director	\$165.00/hour
Marketing Coordinator	\$105.00/hour
Senior Marketing Coordinator	\$115.00/hour
Marketing Director	\$155.00/hour

## SURVEY CREW SERVICES

I-man Crew/2-man Crew	\$Per Job
Survey Equipment	\$15.00 /fieldwork hour
Survey Vehicle Mileage	\$.75 /mile
Scanner Equipment	\$150.00 /hour
Scanner Equipment (Hourly)	\$150 /hour
Scanner Equipment (Full Day)	\$1,050 /day

## OUTSIDE CONSULTANTS

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

## INDEPENDENT LABORATORIES

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

## ADMINISTRATIVE EXPENSES

Administrative expenses  
(including copies, prints, phone, postage, materials, and travel) 3.5% \*

\* based on professional services only, unless modified by contract

Vehicle Mileage IRS Rate

These rates are updated periodically to reflect market conditions. Rate increases will be reflected in future invoicing.

## **Appendix E**

### **Project Schedule**

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Based on a notice to proceed by Billings date no later than December 19<sup>th</sup>, 2022, the completion date for the Engineer's work through final design shall be:

- |  |                  |
|--|------------------|
| A. Phase 200 – Survey/Data Collection                    | February 1, 2023 |
| B. Phase 300 – Concept Design and Stakeholder Engagement | October 1, 2023  |

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

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

