

**Contract for Professional Consulting, and Planning Services
for
Yellowstone County**

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

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 17 Sections of General Provisions;

Appendix A consisting of 5 pages (Basic Services of Consultant);

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 1 page (Schedule of Professional Fees);

Appendix E consisting of 1 page (Project Schedule);

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

**PART I
SPECIAL PROVISIONS**

Section 1. Definitions.

In this Contract:

- A. "County" means the Yellowstone County
- B. "Consultant" means Sanderson Stewart
- C. "Contractor" means any third party responsible for the physical construction of a project

Section 2. Scope of Services.

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

- D. For projects containing a construction phase, the Consultant shall provide record drawings as specified hereafter, as approved by the County public works director, to the County within 90 days after the project substantial completion date. Final payment will be withheld until the record drawings are received by the County. Sealed hard copy and electronic copies of record drawings shall be provided to the County.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of the County.
- B. The Consultant shall commence performance of the work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2024, but may be extended additional calendar years in one-year increments, at the discretion of both the County, as authorized by the County Commission, and Sanderson Stewart.

Section 4. Compensation; Method of Payment.

- A. Subject to the Consultant's satisfactory performance, the County shall pay the Consultant in accordance with the schedule of fees in Appendix D.
- B. The Consultant is not entitled to any compensation under this Contract, other than is expressly provided for in this section.

Section 5. Termination of the Consultant's Services.

The Consultant's services under Section 2 of this part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of the County, provided that the County, acting through the County commission notifies the Consultant 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 specific grounds therefore, and the other party fails to cure the default within 30 days after receiving the notice.
- D. If the County chooses not to follow recommendations of the Consultant, it is at the County's own risk and may be considered grounds for termination under this section by Consultant.

Section 6. Duties Upon Termination

- A. If the County terminates the Consultant's services for convenience, the County shall pay the Consultant for its actual costs reasonably incurred in performing before termination. All finished and unfinished documents and materials prepared by the Consultant shall become the property of the County.

- B. If the Consultant's services are terminated for cause, the County shall pay the Consultant the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by the County because of the Consultant's failure to perform satisfactorily. Any finished or unfinished documents or materials prepared by the Consultant under this Contract shall become the property of the County at its option.
- C. The Consultant shall not be entitled to any compensation under this Section until the Consultant has delivered to the County all documents, records, work product, materials and equipment owned by the County and requested by the County.
- D. If the Consultant's services are terminated for whatever reason, the Consultant shall not claim any compensation under this Contract, other than that allowed under this section.
- E. Except as provided in this section, termination of the Consultant'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 Consultant shall maintain in good standing the insurance described in Subsection B of this section. Before rendering any services under this Contract, the Consultant shall furnish the County with proof of insurance in accordance with Subsection B of this section.
- B. The Consultant 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 -- \$1,500,000 per occurrence.
 - 3. Commercial automobile liability -- \$500,000 per accident.
 - 4. Professional liability in the amount of \$1,500,000.
- C. Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the County prior to cancellation.
- D. The County shall be listed as an additional insured on all policies except Professional Liability and Workers Compensation Policies. In addition, all policies except Professional Liability and Workers Compensation shall contain a waiver of subrogation against the County.

Section 8. Assignments.

No assignment without consent: Neither party may assign this Agreement without the written agreement of the other party.

Section 9. Publication, Reproduction and Use of Material.

- A. Should the County elect to reuse work products provided under this Contract for other than the original project and/or purpose, the County will indemnify and hold harmless the Consultant 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 Consultant'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), emailed, or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Yellowstone County: Monica Plecker
Yellowstone County
P.O. Box 35003
Billings, MT 59101
Phone: (406) 256-2735 / Fax: (406) 254-7946

Consultant: John Halverson
Sanderson Stewart
1300 North Transtech Way
Billings, Montana 59102
Phone: (406) 869-3320

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

Section 11. Contract Budget.

In connection with its performance under this Contract, the Consultant 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 the County or neglect of the County 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 the County.

Section 13. Financial Management System.

The Consultant 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 Consultant's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, 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. Provides accounting records supported by source documentation.

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

The Consultant 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 thereof.
- B. 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 Consultant shall perform its obligations hereunder as an independent Consultant and Consultant of the County. The County may administer the Contract and monitor the Consultant's compliance with its obligations hereunder. The County shall not supervise or direct the Consultant other than as provided in this section.

Section 2. Nondiscrimination.

- A. The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall comply with any and all reporting requirements that may apply to it which the County may establish by regulation.
- D. The Consultant 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 Consultant under this Contract.
- E. The Consultant shall comply with all applicable federal, state, and County laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Consultant 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 Consultant under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant 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 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:

Consultant: DJ Clark, PE, PTOE, Principal
(title of position)

Yellowstone County: Monica Plecker, Planning Division Manager

- 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 Third Judicial District of the State of Montana, Yellowstone County. 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 Consultant shall indemnify, defend, save, and hold the County harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Consultant or any subcontractor as a result of the Consultant's or any subcontractor's performance pursuant to this Contract.

- A. The Consultant shall not indemnify, defend, save and hold the County harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission of the County 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 the County and the Consultant, the Consultant shall indemnify, defend, save, and hold the County harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Consultant's or any subcontractor's wrongful or negligent acts occurring as a result from the Consultant's performance pursuant to this Contract.

The County shall indemnify, defend, save, and hold the Consultant harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the County as a result of the County's performance pursuant to this Contract.

- A. The County shall not indemnify, defend, save and hold the Consultant harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission of the Consultant 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 the County and the Consultant, the County shall indemnify, defend, save, and hold the Consultant harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the County's wrongful or negligent acts occurring as a result from the County's performance pursuant to this Contract.

Section 10. Interest, Suspension, and Collection Costs.

Any invoice not paid within 30 days of date of invoice shall bear interest at 1.5 percent per month on the unpaid balance. If County fails to make payment within 45 days of the date of any invoice, Consultant shall have the right, but not the obligation, to suspend work and withhold deliverables until payment in full, including interest, is received. Consultant shall have no liability whatsoever to the County for any costs or damages as a result of such suspension. If Consultant resumes services after payment by County, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Consultant to resume performance.

If an invoice remains unpaid for more than 90 days, Consultant shall have the right, but not the obligation, to initiate collection procedures. If the County fails to make payment when due and Consultant incurs any costs in order to collect sums from the County, the County agrees that all such collection costs incurred shall immediately become due and payable to Consultant. Collection costs shall include, but are not limited to, legal fees, collection agency fees and expenses, court costs, collection bonds, and reasonable staff costs for Consultant's staff for time spent in efforts to collect. This obligation of County to pay Consultant's collection costs shall survive the term of this Agreement or any termination by either party.

It is understood and agreed that Consultant's services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a Supplemental

Agreement may be negotiated between the County and Consultant describing the services desired and providing a basis for compensation to Consultant.

Section 11. Information Provided By the County or Others.

The County agrees to provide to Consultant all available information necessary to perform duties as outlined in the attached scope of services. The County shall furnish, at the County's expense, all information, requirements, reports, data, surveys, and instructions required. Consultant is entitled to rely on the accuracy and completeness of all such information provided.

The County shall furnish right-of-way entry onto the project site for Consultant to perform necessary field measurements or studies.

Section 12. Ownership of Instruments of Service.

All reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by Consultant as instruments of service shall remain the property of Consultant. Consultant acknowledges that the County is a public agency with full disclosure and dissemination of information. Consultant retains all common law, statutory and other reserved rights, including the copyright to all instruments of service. If any instruments of service must be filed with governmental agencies, Consultant will furnish copies to the County upon request. The County will not reuse or modify the instruments of service without Consultant's prior written authorization. The County agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Consultant, its officers, directors, employees, and agents, from and against any and all damages, claims, liabilities, costs, or suits, including reasonable attorney's fees and defense costs, arising from, allegedly arising from, or in any way connected with the unauthorized reuse or modification, caused or authorized by the County, of any instrument of service by any person or entity other than Consultant.

Section 13. Electronic Files.

Consultant may furnish drawings, reports, or data on electronic media generated and furnished by Consultant. The Consultant shall provide electronic copies of information to the County upon request by the County and said electronic copies of information shall not be unreasonably withheld by Consultant. The County understands and agrees that all such electronic files are instruments of service of Consultant, that Consultant shall be deemed the author, and shall retain all common law, statutory law, and other rights, including copyrights. The County agrees not to reuse these electronic files, in whole or in part, for any other purpose other than for the project. The County agrees not to transfer these electronic files to others without the prior written consent of Consultant. The County further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than Consultant.

The County is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by Consultant and electronic files, the signed or sealed hard-copy construction documents shall govern.

Additionally, the County agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Consultant, its officers, directors, employees, and agents, against all damages, liabilities, claims, or suits, including reasonable attorney's fees and defense costs, arising from any changes made by anyone other than Consultant, or from any reuse of the electronic files without the prior written consent of Consultant.

Under no circumstances shall delivery of electronic files for use by the County be deemed a sale by Consultant; and Consultant makes no warranties, either express or implied, of merchantability or fitness for any particular purpose. Consultant shall not be liable for indirect or consequential damages as a result of the County's use or reuse of electronic files.

Section 14. Opinions of Probable Cost.

The County hereby acknowledges that Consultant cannot warrant that any opinions of probable cost provided by Consultant will not vary from actual costs incurred by the County. The County understands that Consultant has no control over the cost or availability of labor, equipment, materials, or over market conditions or the Contractor's method of pricing. Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from Consultant's opinion of probable cost.

Section 15. Consequential Damages.

Notwithstanding any other provision in this Agreement, neither the County nor Consultant, their respective officers, directors, shareholders, partners, employees, agents, members, subconsultants, or employees shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or in any way connected to the project or this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action.

Section 16. Standards of Performance.

The standard of care for all professional consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

Section 17. Inspection and Retention of Records.

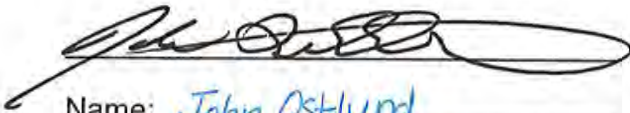
The Consultant shall, at any time during normal business hours and as often as the County may deem necessary, make available to the County, for examination, all its records with respect to all matters covered by this Contract for a period ending three years after the date the Consultant is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Consultant shall submit such other information and reports relating to its activities under this Contract, to the County, in such form and at such times as the County may reasonably require. The Consultant shall permit the County 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. The County may, at its option, permit the Consultant to submit its records to the County in lieu of the retention requirements of this section.

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

Yellowstone County

Sanderson Stewart



Name: John Ostlund
Title: Board Chair
Date: 11-14-23

Name: D.J. Clark
Title: Principal/Billings Region Manager
Date: 11-15-2023

ATTEST:

IRS Tax ID # 81-0304565



Jeff Martin
Clerk & Recorder

Date: November 14, 2023

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this ____ day of _____, 2023, 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 Consultant

Section 1. Consultant's Rights and Duties

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Consultant's portion of the project as defined in the scope of work and to prepare and deliver to the County all plans, specifications, bid documents, and other material as designated herein, or as designated by the scope of the specific task or project.
- 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 the County but shall keep the County 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 the County to pass critical judgment on the features of the work. The Consultant shall make changes, amendments, or revisions in the detail of the work as may be required by the County. When alternates are being considered, the County shall have the right of selection.
- D. Consultant's work shall be in accordance with the standards of engineering and planning and represent City, County, 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 Consultant 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 the County's representative in those phases of the project to which this agreement applies.
- H. Where Federal or State funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Name a task director who shall be the liaison between the County and the Consultant. For this project, the task director designated for the Consultant is John Halverson, LEED AP, Project Manager working under D.J. Clark, PE, PTOE, Principal.

Section 2. County Rights and Duties

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the County's portion of the project as designated in the scope of work.
- B. Name a task director who shall be the liaison between the Consultant and the County. For this project, the task director designated is Monica Plecker, Planning Division Manager. Other task directors may be identified based on the specific project identified under this Contract.

Section 3. Scope of Work

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

The primary objective of this project is to provide a comprehensive update to the West Billings Neighborhood Plan (adopted in 2002) and align its mission with the current and future needs of the City of Billings and Yellowstone County. This updated plan should:

- (1) *Promote a growth plan that includes a compatible and serviceable development pattern for residential and commercial uses and consider the services available by Yellowstone County and the City of Billings. Growth patterns and uses will differ between the jurisdictions;*
- (2) *focus on public participation and engagement;*
- (3) *evaluate and update existing goals, policies, and implementation strategies; and*
- (4) *integrate a comprehensive transportation analysis into the planning process.*

The existing study area is approximately 35 square miles and includes land located in the City of Billings and Yellowstone County. This plan will need to consider and guide growth and development appropriately based on available infrastructure and services, environmental constraints, etc.

Phase 1: Project Administration

- a) General project management, including internal meetings and administrative tasks.
- b) Meetings and general correspondence with City and County staff on project related items.
- c) Weekly project emails to be sent to the County project manager (Monica Plecker) and other recipients as directed by the City and County.
- d) Monthly project invoices will be prepared and provided to the County.

Phase 2: Project Initiation

- a) Convene staff and stakeholders in kickoff meeting to complete the following:
 - i) Review and refine project objectives.
 - ii) Review and refine project timeline.
 - iii) Confirm plan elements.
 - iv) Review and recommend study area boundary for endorsement by Billings City Council and Yellowstone County Commissioners.
- b) Form Project Steering Committee
 - i) Coordinate with County staff to identify representatives, local officials, and stakeholders to serve on the committee.
 - ii) Identify meeting schedule, with a maximum of one meeting per month, up to 14 months.

- c) Create Project Coordination Plan
 - i) Refine project schedule based on kickoff meeting.
 - ii) Identify key decision points.

Phase 3: Public Participation and Engagement

- a) Create a Public Outreach Plan, consistent with the MPO Public Participation Plan, to ensure continuous public engagement. The plan will reflect the following activities, with any additional elements to be included resulting from the project kick off meeting.
- b) Create a project specific website to host information, project updates and engagement opportunities. The website will also include an interactive map of the project area for the public to provide input during the data collection phase of the project.
- c) Create social media posts to provide project updates.
- d) Create in-person community engagement events, including the following:
 - i) Hold two (2) open house events.
 - ii) Hold four (4) pop-up events.
 - iii) Hold four (4) interest group meetings (focused on housing, commercial development, parks and open space, and transportation).
 - iv) Attend two (2) public meetings to update local elected officials on project progress at the mid-project point.
 - v) Attend (6) public meetings as part of the plan adoption process.

Phase 4: Comprehensive Analysis

- a) Review previous documents, including West End Multi-modal Plan, 2002 West Billings Plan, Montana Land Use Planning Act, area and local plans.
- b) Analyze population and demographic changes and trends, based on 2023 ACS data and data collected by the MPO for the 2023 LRTP update.
- c) Land use and zoning analysis including analysis of:
 - i) Existing development patterns, and land use.
 - ii) Annexation policy and map.
 - iii) Estimates of anticipated growth and demand for services.
- d) Housing Analysis
 - i) Analysis of availability, affordability, and future housing demand to comply with requirements of Section 10 of the Montana Land Use Planning Act.
- e) Commercial Market analysis
 - i) Analysis of publicly available data resources including Census, Bureau of Labor Statistics, State and County data as well as local commercial Realtor and MLS data to determine commercial land use needs.
- f) Existing Policy analysis
 - i) Prepare a SWOT (strengths, weaknesses, opportunities, and threats) analysis of existing City and County development standards and the existing 2002 West Billings Plan.

Phase 5: Transportation Analysis

- a) Update the *West End Multi Modal Plan* with data from the recently approved Billings Urban Area Long Range Transportation Plan, and Safe Routes to School Phase I and II studies.
- b) Collect and analyze traffic count data including vehicle, pedestrian, and bicycle within the study area. Average daily traffic counts available through the MPO will be used, with supplemental counts provided to fill gaps.
- c) Review identified transportation projects in the 2016 Plan, as well as the MPO TIP, City of Billings CIP, MDT STIP, and other appropriate plans and documents. Based on the

- review, a list of proposed transportation projects including motorized, non-motorized and City of Billings Complete Streets elements will be developed.
- d) In conjunction with Phase 6, land use and growth assumptions will be evaluated with transportation deficiencies. General recommendations for transportation improvements will be provided.
 - e) Recommendations should include an inclusive review of the City of Billings complete streets policy elements and incorporate as appropriate within the study area.
 - f) Compose two sets of transportation-related recommendations – one for the City of Billings and separate set for Yellowstone County.

Phase 6: Comprehensive Recommendations

- a) Draft a vision statement based on public engagement and steering committee input, comprehensive analysis phase, and the transportation analysis phase.
- b) Draft goals, objectives, and implementation strategies for the West Billings Neighborhood Plan to advance the vision.
- c) Develop recommendations for land use, zoning, and policy updates consistent with the vision statement, goals, CPTED principles and the Montana Land Use Planning Act.
- d) Develop a draft future land use map and narrative based on comprehensive analysis.
- e) Review the recommendations with the steering committee and staff.
- f) Present the comprehensive recommendations to the Billings city council and the Yellowstone county commissioners for review and comment.
- g) Modify the comprehensive recommendations as needed to address comments.
- h) Receive written confirmation from staff and steering committee of acceptance of draft recommendations prior to proceeding with the draft plan.

Phase 7: Draft Plan

- a) The plan document resulting from the above-listed tasks will be drafted to include:
 - i) Executive Summary
 - ii) Vision statement
 - iii) List of goals and objectives to achieve the vision
 - iv) Implementation strategies to meet those goals and objective.
 - v) All elements required by State of Montana statutes regulating neighborhood plans
 - vi) Supporting graphics and illustrations
 - vii) Summary of public engagement
 - viii) Summary of the background information completed as part of Phases 4 and 5
 - ix) Recommendations sorted into short, medium, and long-term

Phase 8: Plan Adoption

- a) Public Review Draft Plan
 - i) The public review draft will be available on the project website and provided to City/County staff, and project steering committee.
 - ii) Coordinate with City and County staff to evaluate all comments received during the review phase and agree on those to be addressed within the Final Draft Plan.
- b) Final Draft Neighborhood Plan
 - i) Submit the final Neighborhood Plan for review, recommendation, and adoption by the Yellowstone County board of planning (2 meetings), Billings city council (2 meetings), Yellowstone county commissioners (2 meetings), technical advisory committee (1 meetings), and the policy coordinating committee (1 meeting).

- ii) The final plan document will be made available to the public in print and electronic form during the approval process.

Phase 9: Final Document

- a) Upon final adoption the Consultant will prepare and deliver the following:
 - i) Prepare an implementation timeline consistent with current and future projects planned in the study area assigning responsibilities for each action item.
 - ii) Establish an evaluation framework to track progress toward meeting the plan goals.
 - iii) Prepare a report summarizing the update process, key findings, and recommendations of the plan.
 - iv) Deliver to the client a version of the plan document for electronic publication.
 - v) Deliver to the client up to ten printed copies of the plan.
 - vi) Deliver to the client a digital copy of the plan with native files.

Appendix B Methods and Times of Payment

Section 1. Payments for Basic Services.

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

Partial payment shall be made to the Consultant upon receipt of the Consultant's pay estimate, said estimate being proportioned to the work completed by the Consultant. The County 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 the County, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered, the Consultant shall be paid based upon actual time accrued, including any subconsultant fees according to the schedule of fees in Appendix D.
- B.

	Phase	Land Use	Transportation	Total
1.	Project Administration	\$3,828	\$5,742	\$9,570
2.	Project Initiation	\$2,072	\$3,108	\$5,180
3.	Public Participation and Engagement	\$7,608	\$11,412	\$19,020
4.	Comprehensive Analysis	\$18,848		\$18,848
5.	Transportation Analysis		\$28,272	\$28,272
6.	Comprehensive Recommendations	\$1,566	\$2,349	\$3,915
7.	Draft Plan	\$9,164	\$13,746	\$22,910
8.	Plan Adoption	\$4,842	\$7,263	\$12,105
9.	Final Document	\$2,072	\$3,108	\$5,180
	Total	\$50,000	\$75,000	\$125,000

TOTAL CONTRACT

\$125,000

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

Section 2. Payments for Extra Services when Authorized by the County

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 County work that is required for the purpose of correcting the Consultant's work shall be deducted from any payments due the Consultant, if the Consultant fails to make the required corrections.

Section 3. Fee Increases

The above stated basic services payments in Appendix D shall be updated periodically to reflect market conditions.

Appendix C

Additional Services of Engineer

Extra services of the Consultant will be paid only with written prior authorization by the County.

- A. Average daily traffic counts.
- 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

See attached rate sheet (following pages)

Appendix E
PROJECT SCHEDULE

Based on a notice to proceed by the County by a date no later than November 14, 2023, the completion date for the Consultant's work shall be:

- | | | |
|----|-------------------------------|-------------------|
| A. | Draft Plan Submittal | August 01, 2024 |
| B. | Final Plan Document Submittal | November 31, 2024 |
| C. | Adoption of Final Plan | December 31, 2024 |

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

Appendix F

Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

CHARGE OUT RATES

EFFECTIVE AUGUST 5, 2023

**SANDERSON
STEWART** 

a sanderson bellecci company

STAFF PERSONNEL SERVICES

Staff Engineer I	\$115.00/hour
Staff Engineer II	\$130.00/hour
Staff Engineer III	\$135.00/hour
Project Engineer I	\$145.00/hour
Project Engineer II	\$150.00/hour
Senior Engineer I	\$185.00/hour
Senior Engineer II	\$210.00/hour
Principal	\$240.00/hour
Engineer Intern	\$75.00/hour
Expert Witness/Special Consultant	\$290.00/hour
Staff Planner I	\$100.00/hour
Staff Planner II	\$115.00/hour
Planner I	\$130.00/hour
Planner II	\$145.00/hour
Senior Planner I	\$155.00/hour
Senior Planner II	\$195.00/hour
Senior Planner III	\$200.00/hour
Right-of-Way Agent	\$168.00/hour
Staff Landscape Designer I	\$100.00/hour
Staff Landscape Designer II	\$115.00/hour
Landscape Architect I	\$135.00/hour
Landscape Architect II	\$145.00/hour
Senior Landscape Architect I	\$160.00/hour
Senior Landscape Architect II	\$175.00/hour
Field Survey Technician I	\$85.00/hour
Field Survey Technician II	\$88.00/hour
Staff Surveyor I	\$110.00/hour
Staff Surveyor II	\$125.00/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	\$180.00/hour
Graphic Artist	\$105.00/hour
CADD Technician I	\$100.00/hour
CADD Technician II	\$105.00/hour
Designer I	\$100.00/hour
Designer II	\$110.00/hour
Senior Designer I	\$120.00/hour
Senior Designer II	\$145.00/hour
Construction Inspector	\$88.00/hour
Construction Engineering Technician	\$100.00/hour
Senior Construction Engineering Technician	\$145.00/hour
Construction Engineer I	\$145.00/hour
Construction Engineer II	\$150.00/hour

STAFF PERSONNEL SERVICES CONTINUED

Project Administrator	\$100.00/hour
Senior Project Administrator	\$115.00/hour
Administrative/Clerical	\$95.00/hour
Senior Administrative Director	\$185.00/hour
Marketing Coordinator	\$110.00/hour
Senior Marketing Coordinator	\$125.00/hour
Marketing Director	\$175.00/hour

SURVEY CREW SERVICES

I-person/2-person Crew	\$Per Job
Survey Equipment	\$30.00 /fieldwork hour
Survey Vehicle Mileage	IRS Rate/Mile + \$0.10/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.



SANDBEL-02

CTHELEN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/9/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Billings Office Marsh McLennan Agency LLC P.O. Box 30638 Billings, MT 59107-0638	CONTACT NAME: PHONE (A/C, No, Ext): (406) 238-1900	FAX (A/C, No): (406) 245-9887
	E-MAIL ADDRESS:	
INSURED Sanderson Bellecci, Inc., Engineering, Inc. dba Sanderson Stewart, Bellecci & Associates, Inc. Summit Engineering Corporation 1300 North Transtech Way Billings, MT 59102		INSURER(S) AFFORDING COVERAGE
		NAIC #
		INSURER A: Charter Oak Fire Insurance Company 25615
		INSURER B: Phoenix Insurance Company 25623
		INSURER C: Travelers Property Casualty Co of Amer 25674
		INSURER D: Zurich American Insurance Company 16535
		INSURER E: Travelers Casualty and Surety Company 19038
		INSURER F:

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X		P-660-7W723958-COF-23	5/19/2023	5/19/2024	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
B	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			810-7W72070A-23-43-G	5/19/2023	5/19/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP-7W728500-23-43	5/19/2023	5/19/2024	EACH OCCURRENCE \$ 5,000,000
							AGGREGATE \$ 5,000,000
							\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y <input type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC8664223-01	7/1/2023	7/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
E	Professional Pollution			105269194	4/17/2023	4/17/2024	Liability 2,000,000
				105269194	4/17/2023	4/17/2024	Liability 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The County, the State, the Department, and their officers, officials, employees, and volunteers are additional insureds for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

CERTIFICATE HOLDER Yellowstone County PO Box 35015 Billings, MT 59107	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|--|--|
| <ul style="list-style-type: none"> A. Non-Owned Watercraft – 75 Feet Long Or Less B. Who Is An Insured – Unnamed Subsidiaries C. Who Is An Insured – Retired Partners, Members, Directors And Employees D. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees E. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies F. Blanket Additional Insured – Controlling Interest G. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers | <ul style="list-style-type: none"> H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises I. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations J. Incidental Medical Malpractice K. Medical Payments – Increased Limit L. Amendment Of Excess Insurance Condition – Professional Liability M. Blanket Waiver Of Subrogation – When Required By Written Contract Or Agreement N. Contractual Liability – Railroads |
|--|--|

PROVISIONS

A. NON-OWNED WATERCRAFT – 75 FEET LONG OR LESS

1. The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:
 - (2) A watercraft you do not own that is:
 - (a) 75 feet long or less; and
 - (b) Not being used to carry any person or property for a charge;
2. The following replaces Paragraph 2.e. of **SECTION II – WHO IS AN INSURED**:
 - e. Any person or organization that, with your express or implied consent, either

uses or is responsible for the use of a watercraft that you do not own that is:

- (1) 75 feet long or less; and
- (2) Not being used to carry any person or property for a charge;

B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and

COMMERCIAL GENERAL LIABILITY

- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

C. WHO IS AN INSURED – RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2. of SECTION II – WHO IS AN INSURED:

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

(1) "Bodily injury":

- (a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;
- (b) To the spouse, child, parent, brother or sister of that current partner, member or director as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(2) "Personal injury":

- (a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph (2)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (2)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(3) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by; you, any of your retired partners, members or directors, your current or retired "employees" or "volunteer workers", any current partner or member (if you are a partnership or joint venture), or any current member (if you are a limited liability company) or current director.

D. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of SECTION II – WHO IS AN INSURED:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such

organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

F. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of SECTION II – WHO IS AN INSURED:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

G. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed,

COMMERCIAL GENERAL LIABILITY

subsequent to the signing of that contract or agreement; and

- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away

openings, sidewalk vaults, elevators, street banners or decorations.

I. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis,

that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

K. MEDICAL PAYMENTS – INCREASED LIMIT

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE:**

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

- a. \$10,000; or
- b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY

The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If the insured has agreed in a written contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

COMMERCIAL GENERAL LIABILITY

N. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
 - c. Any easement or license agreement;
2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is limited as follows:

- c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.
- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured ap-

plies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

2. The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

Duties Of An Additional Insured

As a condition of coverage provided to the additional insured:

- a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
 - ii. Notify us as soon as practicable.
- The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.