ATTENTION

The City Council meeting will be held in a hybrid format that may include both in-person AND virtual attendance via Zoom. Unless they have cause to appear virtually, Councilmembers will attend this meeting in person in Billings Public Library - Community Room, 510 N. Broadway. In order to honor the Right of Participation and the Right to Know in Article II, Sections 8 and 9, of the Montana Constitution, the City of Billings and City Council are making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- Review the Agenda Packet on the City's website at: www.billingsmt.gov and click on "Your Government," "City Council," and "Agendas & Minutes".
- View the meeting:
  - On Community 7 TV - Channel 7 or Channel 507 -- Spectrum Cable. *(On evenings when there is a conflict with School District No. 2 Board meetings, the City Council meeting will be broadcast on Channel 8 - Spectrum Cable.)* Channel 7 or Channel 978 - TDS Fiber.
  - Online at www.comm7tv.com and click on the "Watch Live" icon. Community 7 also has links to their Facebook page and YouTube channel.
  - On the City's website at www.billingsmt.gov and click on "Watch Meetings Online" on the homepage.
  - In-Person.

Citizens may submit public comment via the following methods:

- Mail: City Clerk, P.O. Box 1178, Billings, MT 59103
- Email: Council@billingsmt.gov.
  - Emails received after 3:00 PM on the day of the meeting, may be posted on the Council's webpage the following day for public viewing.
- Attend the meeting in person

Please contact Denise Bohlman, City Clerk, at bohlmand@billingsmt.gov, or at 406.657.8210, with any questions.

CITY OF Billings

VISION STATEMENT:
"The Magic City: A diverse, welcoming community where people prosper and business succeeds."

REVISED 12.12.2024
*CLOSED EXECUTIVE SESSION ADDED
Regular Agenda Item No. 2 Staff Memo and Attachments Added
Consent Agenda Item 1E was intentionally left blank

CITY COUNCIL
REGULAR BUSINESS MEETING
AGENDA

*CLOSED EXECUTIVE SESSION BEGINS AT 4:30 P.M.
BUSINESS MEETING BEGINS AT 5:30 P.M.

BILLINGS PUBLIC LIBRARY - COMMUNITY ROOM
510 N. BROADWAY

DECEMBER 16, 2024

CALL TO ORDER: Mayor Cole

RECESS TO CLOSED EXECUTIVE SESSION (4:30 P.M. - 5:30 P.M.)
- **City Administrator, Chris Kukulski's Job Performance Discussion

**Note: The Executive Session will be closed, as allowed in Section 2-3-203(3), MCA, as discussions relate to matters of individual privacy and wherein the demands of individual privacy exceed the merits of public disclosure.

PLEDGE OF ALLEGIANCE: Mayor Cole

INVOCATION: Councilmember Shaw

ROLL CALL: Councilmembers present on roll call were: ☐ Shaw, ☐ Gulick, ☐ Neese, ☐ Owen, ☐ Joy, ☐ Kennedy, ☐ Aspenlieder, ☐ Tidswell, ☐ Boyett, ☐ Rupsis

MINUTES: December 9, 2024 (Pending)

COURTESIES:

PROCLAMATIONS: Healthcare for the Homeless Memorial Day - December 20, 2024

COUNCIL REPORTS:

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2 and 3 ONLY. Speaker sign-in required. (Comments are limited to three (3) minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium. Comments on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

1. CONSENT AGENDA -- Separations:

A. **Bid Awards: NONE**

B. **Professional Engineering Services Contract** with DOWL for W.O. 25-01, Contract 1: 2025 Water Main Replacement.

C. **Professional Engineering Services Contract** with Morrison-Maierle, Inc. for W.O. 25-01, Contract 3: Rosemont Water Main Replacement.

D. **Billings Urban Fire Service Area (BUFSA) Agreement** with Yellowstone County.

E. INTENTIONALLY LEFT BLANK

F. **Amendment No. 3,** to Airport Automobile Parking Concession Agreement with SP Plus, formerly known as Standard Parking.

G. **Amendment No. 3,** to the Purchase and Sale Agreement (PSA) for City Hall building at 210 N. 27th Street, with Honaker Realty, LLC and JWT Capital, LLC.

H. **Change Order No. 3,** to General Contractor/Construction Manager Construction Services Contract with Dick Anderson Construction, Inc. for W.O. 19-12: West End Reservoir Project.

I. **Donation** to Parks and Recreation Department from Partners for Parks for reimbursement of Patriot Run expenses.

J. **Fish, Wildlife and Parks Recreational Trails Program Grant** for repair and improvements to the Arnold Drain Trail in Lillis Park.

K. **Montana Main Street Adaptive Reuse and Mixed-Use Grant** for redevelopment of the Billings Masonic Lodge.

L. **Bills for the Week of:**

1. November 18, 2024

Recommended Motion: I move to approve the items of the Consent Agenda as submitted, with the exception of items moved for separation.

REGULAR AGENDA:

2. PROFESSIONAL SERVICES CONTRACT with A&E Design, Inc. for design services for Amend Recreation Campus. Staff recommends approval.

Recommended Motion: I move to approve a Professional Services Contract with A&E Design, Inc. for design services for Amend Recreation Campus, as recommended by staff.

3. MEMORANDUM OF UNDERSTANDING (MOU) between the City and Yellowstone Ice Foundation to establish the parties' commitment to enter into a contract to build an ice facility and necessary infrastructure at Amend Park. Staff recommends approval.

Recommended Motion: I move to approve the Memorandum of Understanding (MOU) between the City and Yellowstone Ice Foundation to establish the parties' commitment to enter into a contract to build an ice facility and necessary infrastructure at Amend Park, as recommended by staff.

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)*

COUNCIL INITIATIVES:

ADJOURN:

Council Chambers are readily accessible to individuals with physical disabilities.

For more information or to make requests for special arrangements, please contact the City Clerk's Office at 657-8210 or e-mail bohlmand@billingsmt.gov, 72 hours prior to the meeting date.

~ ~ ~

City Council Regular

Date:	12/16/2024
Title:	W.O. 25-01, Contract 1: 2025 Water Main Replacement Project
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review:	Template Contract
Project Number:	N/A

RECOMMENDATION

Staff recommends the City Council award a professional engineering services contract for W.O. 25-01, Contract 1: 2025 Water Main Replacement, to DOWL in the amount of $486,850.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The City replaces and upgrades its water utilities as part of an annual maintenance program. This project will replace approximately 3,650 feet of existing 20-inch and 24-inch diameter water mains. The water mains being replaced were selected based on several criteria including age, break history, lead joint pipe, lead services, undersized water mains, and replacement prior to future projects. This project will replace the water main along Grand Avenue from Division Street to Virginia Lane (5th Street West), including all intersection lateral mains. The existing water main is bedded in concrete, has a break history, and valves that do not close. Due to the large diameter of the water main and concrete bedding, breaks are difficult and expensive to repair, and are prone to cause water outages to adjacent businesses and Billings Senior High School. Additionally, this section of Grand Avenue will need to have pavement overlay performed within the next 5 to 10 years, so the water main will be replaced ahead of the new paving.

DOWL was selected for the project using the proposal process. Two other proposals were received from Sanbell and Morrison-Maierle. The consultant selection was based on Project Team and Availability; Project Approach; and Firm Qualifications and Experience as related to the project needs.

ALTERNATIVES

City Council may:

- Approve awarding the Professional Engineering Services Contract to DOWL, or;
- Not approve awarding the Professional Engineering Services contract to DOWL. If the project is not awarded, the City's water main in this area will continue to be unreliable and will likely experience ongoing maintenance problems and expenses.

FISCAL EFFECTS

Water main replacements were budgeted in FY25 using Water Funds in the amount of $4,800,000. There are adequate funds to award the contract. The remaining budget will be used for a subsequent engineering services contract for design and construction administration of additional water main replacements (Contract 3), construction, and materials testing.

Attachments

W.O. 25-01 Contract 1: Contract

Contract for Professional Architectural and Engineering Services

Project: City of Billings W.O. 25-01: Contract 1 – 2025 Water Main Replacement

In consideration of the mutual promises herein, City of Billings and DOWL 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 8 pages (Basic Services of Contractor);

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

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

Appendix D consisting of 5 pages (Schedule of Professional Fees);

Appendix E consisting of 1 page (Project Schedule);

Appendix F consisting of (Certificate(s) of Insurance).

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” or "City" means the City of Billings.
C. "Contractor" or "Engineer" means DOWL.

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.

Section 3. Time for Performance.

A. This Contract becomes effective when signed on behalf of Billings.
B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
C. This Contract shall terminate at midnight on December 31, 2026.

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, P.E., City Engineer
City of Billings
Public Works Department
2224 Montana Avenue
Billings, Montana 59101 FAX: (406) 237-6291

Contractor: Douglas Enderson, P.E., Vice President
DOWL
222 North 32nd Street, Suite 700
Billings, Montana 59101 FAX: (800) 865-9847

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 a 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: Douglas Enderson, PE, Vice President
(title of position)

Billings: City Council or Authorized Designee

C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the District Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

A. The Contractor shall indemnify, 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. Contractor's defense obligations mean only the reimbursement of reasonable costs to the proportionate extent of Contractor's actual liability obligation hereunder.
B. 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.
C. Billings shall indemnify, save, and hold Contractor harmless from any and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of Billings or any agent, employee or subcontractor as a result of the Billings' or any subcontractor's performance pursuant to this Contract. Billings' defense obligations mean only the reimbursement of reasonable costs to the proportionate extent of Billings' actual liability obligation hereunder.
D. Billings shall not indemnify, defend, save and hold the Contractor harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the Contractor occurring during the course of or as a result of the performance of the Contract.
E. 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

William A. Cole, Mayor

Date:

ATTEST:

City Clerk

Date:

Contractor

Name: Douglas Enderson
Title: Vice President
Date:

IRS Tax ID # 92-0166301

APPROVED AS TO FORM:

By

City Attorney

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.

B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.

C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.

D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.

E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.

F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.

G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.

H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.

I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.

J. 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 Paul Swenson, P.E.

Section 2. Billings Rights and Duties.

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.

B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Travis Harris, P.E.

Section 3. Scope of Work.

The project consists of design, bidding, and construction phase services for the *City of Billings W.O. 25-01, Contract 1: Grand Avenue Water Main Replacement* project. The project includes approximately 3,650 LF of water main replacement on Grand Avenue from Division Street to Virginia Lane (5th Street West), including all intersection lateral mains. Any additional segments of work requested by the City beyond the total project length of 3,650 LF shall be considered an Additional Service. This scope and associated budget assumes one package of bidding documents (i.e., one set of drawings and one project manual) and one construction contract.

Professional services generally include design of replacement water mains, design surveys, geotechnical investigations and report, preparation of contract plans and specifications, assistance with competitive bidding, administration of the construction contracts, construction oversight, field staking, quality assurance testing, and closeout services. The scope of work covered by this Contract shall include the following tasks:

A. Survey & Mapping

1. Survey Control: Establish permanent horizontal and vertical control points along the project corridor using GPS survey methods. The horizontal and vertical datums shall be approved by the City. Permanent control points will generally be set at a spacing of one per block at street intersections.
2. Aerial Mapping: Design survey will be completed using a small unmanned aircraft system (i.e., drone). A minimum of five ground control points will be used for each mapping segment to georectify the orthomosaic image and terrain mapping derived from drone aerial imagery. Establish temporary control points as needed to supplement permanent control points for this purpose. Drone mapping will be completed by a licensed FAA Part 107 remote pilot, and FAA regulations will be followed. Flight approval will be obtained using the LAANC system. The project plans will use aerial imagery from the drone mapping as a background, and key elevations will be obtained from the collected topographic data. Portions of the mapping may be partially obscured by tree cover, which is not anticipated to have significant impact on project design but may somewhat inhibit survey data collection in certain areas. DOWL will make reasonable efforts to schedule and conduct drone mapping to occur within available weather openings and during acceptable site conditions.
3. Right-of-Way: City-provided GIS information will be used to delineate approximate property and right-of-way lines on the plans. The plans will show street addresses and block/lot designations. Property corner searches and plat research or delineation are not included in this scope. All work is currently expected to be within existing City right-of-way or easements, so this scope of work does not include any assistance with easement acquisition, such as additional legal survey, preparation of easement exhibits, or other related tasks.
4. Existing Utilities & Services: City-provided GIS information will be used to delineate existing water, sewer, and storm drain mains. Utility locates will be requested prior to the drone survey using the 811 service, and located utilities will be delineated from the drone imagery. Field-marked private utility information will be supplemented with available mapping information, if provided by the various utilities upon request. All found water curb stops will be GPS surveyed. This survey will supplement field locates performed by City staff, if provided prior to the drone survey. Any unmarked and unfound water services will be delineated using City-provided service records. Approximate water, sewer, and storm drain depths will be established from City-provided as-built drawings. Utility measure-downs, including water valves, sewer manholes, and storm manholes/inlets, will generally only be performed as needed where as-built information does not exist and/or for any potential conflict or minimal clearance with new work.
5. Deliverables:
    a. High-resolution georectified orthomosaics in TIFF and KMZ formats for each project segment
    b. High-resolution georectified point clouds in LAS format for each project segment

B. Geotechnical

1. Geotechnical Investigations: Perform geotechnical engineering tasks, drill exploratory borings, sampling, and laboratory testing, as necessary, to determine pavement section thicknesses, subgrade treatment, groundwater conditions, utility foundation and backfill, and thrust block recommendations. This scope is based on drilling 6 borings to depths of about ten feet. If a planned borehole cannot be drilled due to utility conflicts or other circumstances, a shallow pavement core up to a maximum depth of two feet will be drilled in its place. Due to the expected groundwater depth (12-15 feet) well below the new water main depth, none of the borings will be completed with a piezometer for groundwater monitoring. Soil borings in the general project area from past projects will be referenced, if available. A literature review of documented environmental issues directly adjacent to project area has already been performed and there are two known leaking underground storage tank sites. A borehole is planned adjacent to each of these two sites, and additional environmental soil monitoring, sampling and testing will be performed at those two sites, consisting of photoionization detector (PID) monitoring and sampling/testing for extractable petroleum hydrocarbons (EPH) and volatile petroleum hydrocarbons (VPH). It is assumed that any contaminated auger cuttings will either be put back into the borehole or sealed in large bulk sample bags for disposal.
2. Geotechnical Report: Prepare a geotechnical report based on the findings of the geotechnical investigations, with recommendations to be incorporated into the construction specifications.
3. Deliverables:
    a. Geotechnical report, including bore logs and test results, incorporated into project manual

C. Pipeline Designs

1. General Water Main Replacement Design: Design utility alignments and profiles for new water mains. Up to two preliminary water main alignments (plan view only) will be considered along Grand Avenue, based on the previously-submitted DOWL proposal, and presented to the City for input on the final design alignment. One preliminary alignment will roughly follow the existing water main horizontal alignment. The final water main design will take into consideration other utility locations, traffic control, business access, temporary water, water main acceptance testing, and input from the City and the Montana Department of Environmental Quality (MDEQ). New water main will be designed with 6.5 feet of ground cover unless the required separation from other utilities cannot be achieved. Pipeline sizes will match existing sizes (20-inch diameter along Grand Avenue and various diameters for side-street lateral mains), with a minimum diameter of 8 inches, unless otherwise directed by the City. No hydraulic modeling, field flow metering, or other sizing studies are included in this scope.
2. Lead Water Services: Document any lead water services to be replaced from water main to curb stop from City-provided records. The City will conduct all communication with property owners and necessary testing during design and construction for lead service replacements.
3. Subsurface Potholing: If necessary, identify locations to perform subsurface potholing at critical utility crossings or conflicts to identify specific utility elevations or locations. Survey the elevations and locations in the field for incorporation into the design and restore the surfacing. Due to the uncertainty of the amount of potholing that will be required, this scope and the associated professional fee includes an allowance of $5,000 for the subcontracted costs of a vacuum truck and any traffic control required to perform the potholing.
4. Design Considerations:
    a. Identify issues related to construction work hours, work zones, construction sequencing, disruptions to private access and parking, and other site constraints and issues relating to construction. Coordinate various construction considerations with the City and incorporate appropriate written specifications.

b. Prepare written specifications addressing project-specific temporary water requirements. Temporary water layouts will generally be the responsibility of the construction contractor in conformance with the specifications; however, if applicable, develop basic temporary water plans for fire services.
c. Develop water main acceptance testing zone schematics to include in the project specifications.
d. Prepare details and specifications for thrust blocks, restrained joints, surface restoration, insulation, cathodic protection using sacrificial anodes at metallic appurtenances, and other required project features.

5. Plans & Project Manual: Prepare preliminary (30%), pre-final (90%), and final (100%) plans, project manual, and opinions of probable cost. Plans and project manual will be prepared in accordance with Montana Public Works Standard Specifications (MPWSS) and City of Billings Standard Modifications, latest editions. City-provided lower resolution aerial imagery may be used as a placeholder in the plans during preliminary design. Attend design review meetings at each design stage, and other necessary coordination meetings or field reviews, with City staff. Send pre-final plans to private utilities for review and comment as necessary, and coordinate with utilities as needed regarding potential conflicts. Stamp and sign all final plans and project manual with the seal of a Professional Engineer.
6. Deliverables:
   a. Preliminary (30%) plans; PDF and/or 11"x17" format
   b. Pre-final (90%) plans; PDF and/or 11"x17" format, and one set of 22"x34" drawings upon request
   c. Pre-final project manual and opinion of probable cost; PDF format
   d. Final (100%) plans and project manual for approvals and bidding; PDF and/or 11"x17" format

D. Construction Traffic Control Plans

1. Preliminary Traffic Control Plans: Create preliminary traffic control plans, which are anticipated to be a combination of site-specific layouts for work zones along Grand Avenue (principal arterial street) and the impacted cross streets, along with details for business access, detours, and/or other traffic control requirements as needed. It is assumed that there will be no full street closures of Grand Avenue, but all adjacent cross streets may include full closures as long as business and emergency access can be maintained. Coordinate with other City construction projects as applicable. Traffic control plans will reference the City of Billings Standard Modifications drawings where applicable. Certain traffic control plans may be left up to the construction contractor to provide through the submittal process.
2. Final Traffic Control Plans: Finalize the preliminary traffic control plans based on City input and final design elements.
3. Deliverables:
   a. Preliminary traffic control plans; PDF and/or 11"x17" format
   b. Final traffic control plans; PDF and/or 11"x17" format

E. Public & Agency Involvement

1. Stakeholder Coordination: Coordinate with City staff, adjacent property owners, and other private and public stakeholders in the development of utility improvements. Compile property owner and occupant information for adjacent parcels form City-provided cadastral data and create address database. Prepare and send one comprehensive informational mailing to all property owners and residents, which shall include general project information, notification of a public meeting, general construction information, and notification of the construction informational website and email list. Attend one public informational meeting during or after final design. Conduct one-on-one follow-up discussions with individuals/businesses as requested or determined to be necessary to address questions or design considerations.
2. Permitting: Apply for all Owner-required permits, licenses, and approvals necessary to

construct the project. This scope assumes a submittal package to MDEQ only. The City will pay all permitting fees directly. Construction stormwater permits and construction dewatering permits shall be the responsibility of the construction contractor and are excluded from this scope.

3. Deliverables:
    a. Property owner informational letter
    b. Design report, certified checklists, and other MDEQ submittal requirements

F. Bidding Assistance

1. Bid Form: Tabulate project quantities and create bid schedule. Finalize the Engineer's opinion of probable cost based on final quantities.
2. Pre-Bid Services: Supply all bidding documents necessary for bidding and construction. Distribution of the plans and project manual will be done electronically using the City's Quest CDN service and through www.montanabid.com. No hard copies of the plans and project manual will be provided to bidders. Provide bid advertisement text to the City for publication. Submission of the advertisement to publications and the cost for advertising will be responsibility of the City. The planholders list will be maintained through Quest CDN. Schedule and conduct a pre-bid conference, prepare meeting agenda and minutes, answer bid questions, and prepare any necessary addenda.
3. Post-Bid Services: Attend the bid opening, analyze the bids, prepare and distribute a bid tabulation, and make construction contract award recommendation(s).
4. Construction Contracting Services: Assist the City in procurement of the final contract agreement, review bonds and insurance provided by the construction contractor, assemble and distribute conforming copies of contract documents, and issue a Notice to Proceed for construction.
5. Deliverables:
    a. Bidding documents; PDF format
    b. Final opinion of probable cost
    c. Bid advertisement
    d. Pre-bid meeting minutes
    e. Addenda, as required
    f. Bid tabulation
    g. Recommendation of Award letter and Notice of Award
    h. Conforming copies of the construction contract; 4 sets total
    i. Notice to Proceed

G. Construction Administration & Inspection

1. Principal Assumptions: This scope and the associated professional fee assume:
    a. One construction contract and prime contractor for this project.
    b. A total construction contract duration of 120 calendar days assuming standard 10-hour workdays and a single mainline pipelaying crew producing an average of approximately 30 LF per contract day.
    c. Engineer shall consult with the City and act as representative for the City as defined in the construction contract documents, which will incorporate the MPWSS, and specifically the General Conditions contained therein as modified by the City of Billings Standard Modifications, latest edition.
    d. The extent and limitation of the duties, responsibilities, and authority of the Engineer will be as assigned in the construction contract documents and shall not be modified, except as Engineer may otherwise agree in writing.
2. Pre-Construction Services: Schedule and conduct a one pre-construction conference, publish meeting minutes, and answer contractor questions. Conduct a pre-construction field review with the contractor as necessary. Design phase drone imagery will serve as the primary pre-construction photo documentation. Supplemental photos and videos will be

taken from the ground in areas not visible in drone imagery.

3. Submittal Review: Review contractor's submittals, such as shop drawings, samples, equipment, mix designs, aggregates, and other data, for conformance to the contract documents. This review does not include acceptance review of any dewatering plans, and shall not extend to contractor's means, methods, techniques, sequences, procedures, or safety programs.
4. Inspection: Provide construction observation using resident project representatives (RPRs) to assist Engineer in observing progress, quality of work, and conformance to the contract documents and other applicable codes and standards. One full-time RPR will be provided for this project. Additional time for RPRs includes contract review and preparation, early temporary water inspection, report preparation, and punchlist item completion. Inspection activities shall include review of all major work items. RPR will prepare daily inspection reports, daily quantity summaries, weekly progress reports, weekly workforce and equipment reports, and other reports as required. RPR responsibilities are further defined in the General Conditions contained in the City of Billings Standard Modifications, latest edition.
5. Quality Assurance (QA) Materials Testing: Develop and implement a QA testing plan for materials testing in accordance with the City of Billings Standard Modifications, latest edition. Provide qualified personnel, equipment, and supplies for field testing of materials throughout construction, including density tests, proctors, asphalt, and concrete testing. Monitor and collect results from contractor's separate quality control materials testing program. Since QA services may vary based on the contractor's means and methods, an allowance of up to $15,000 has been provided for this construction materials testing scope.
6. Construction Staking: Provide personnel, equipment, and supplies for field staking of principal elements of the construction layout, including centerline locations and offsets for valves, hydrants, horizontal fittings, and intermediate points at approximately 100-foot intervals, to give the contractor measurements, lines, locations, and grade necessary for construction. The contractor will be responsible for any detailed layouts, such as laser and/or other line and grade establishment techniques for laying pipe between staking intervals.
7. Construction Administration:
    a. Respond to contractor requests for information. Issue necessary clarifications and interpretations of the contract documents. Notify the City immediately of any contract problems or deviations from the approved contract documents. Issue notices as required by the construction contract. Recommend and prepare Work Change Directives and Change Orders for the City as necessary. Change Orders that require additional design or construction services by Engineer will be considered Additional Services and compensated in accordance with the provisions of this Contract.
    b. Make visits to the site at intervals appropriate to various stages of construction to observe, as an experienced and qualified design professional, the progress of the contractor's work. Visits by the Engineer shall be limited to spot checking and similar methods of general observation of the work as assisted by the RPR.
    c. Receive, review, and transmit to City all contractor requests for City staff involvement and approvals, such as valve and hydrant operation requests, water quality sampling requests, traffic control reviews, etc. Monitor that the required advance notice requirements are being met by contractor for all requests to the City for reviews, inspections, operations, and testing.
    d. Review and recommend monthly contractor payment requests.
8. Weekly Construction Meetings: Attend and conduct a weekly construction meeting with the City and contractor. Allow up to 2 hours per week, assuming an 18-week contract, for the weekly construction meeting and any related follow-up activities.
9. Informational Updates: Prepare weekly project informational update content via email, including current project maps and work descriptions. The City will host and maintain the website and/or social media platforms to publicize the information.
10. Substantial Completion Services: Conduct substantial completion and final inspections with

City and contractor. Prepare and monitor punchlist items required for completion of the work by contractor.

11. Record Drawings: Maintain documentation of all field installations, including the location of all underground utilities encountered during construction, for assistance with preparation of project record drawings. Prepare record drawings by incorporating all field modifications to the construction drawings. Survey all new primary water main surface features (e.g., hydrants and valve boxes) following project completion to incorporate into the record drawings and to provide accurate State Plane Coordinates of these features to the City. Allow review by City of record drawings prior to issuing final record drawings. Record drawings will also include, at a minimum, the location and depth, where available, of all underground utilities installed or uncovered.
12. Anniversary Inspection: Conduct one-year and two-year anniversary inspections of the project. Identify deficiencies and warranty items requiring correction and provide notification to contractor.
13. Deliverables:
    a. Pre-construction meeting minutes
    b. Contractor submittals; electronic copy to City
    c. Weekly RPR inspection reports, upon request
    d. Monthly quality assurance materials testing reports, upon request
    e. Miscellaneous construction forms, as required
    f. Review set of record drawings; 11"x17" and/or PDF format
    g. Final record drawings, in accordance with Part I, Section 2, Article D of this Contract, and as required by MDEQ. The DWG file provided shall be on the project ground coordinate system. The information provided in State Plane Coordinates shall be limited to a point file, or equivalent, of all new primary water system features only.

H. Project Management & Quality Assurance

1. Project Management: Provide project management services throughout design and construction. This task includes all project communication and coordination with the City and all effort necessary to control the schedule and budget of the project.
2. Internal Quality Assurance: Provide internal quality assurance services throughout design and construction, including review of all reports, plans, and specifications developed.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

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

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.

1.	Survey & Mapping	$17,730
2.	Geotechnical	$28,275
3.	Pipeline Design	$75,600
4.	Traffic Control Design	$33,300
5.	Public & Agency Involvement	$16,075
6.	Bidding Assistance	$32,225
7.	Construction Administration & Inspection	$257,845
8.	Project Management & Quality Assurance	$25,800
9.	Total	$486,850

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

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

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

Section 3. Corrections.

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

Section 4. Fee Increases

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

Appendix C

Additional Services of Engineer

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

A. Requests made or conditions identified which are beyond the scope and intent of the services identified under Appendix A.

B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

C. Revisions or additions, when such revisions or additions are inconsistent with written approvals or instructions previously given, required by enactment or revisions of codes, laws, or regulations, or are due to other causes not solely within control of the Engineer.

D. Additional time and/or services resulting from additional requirements imposed by any funding source for the use of those funds, as outlined in Part I, Section 14 of this Contract.

Appendix D

Schedule of Professional Fees

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

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

MONTANA FEE SCHEDULE

Personnel Billing Rates

Personnel are identified on our invoices by name and/or labor category.

Description	Rate	Description	Rate
Accounting Manager	$185	Engineer IX	$250
Accounting Technician	$120	Engineer X	$265
Administrative Assistant	$95	Engineering Technician I	$100
Administrative Manager	$125	Engineering Technician II	$115
Biologist I	$130	Engineering Technician III	$125
Biologist II	$140	Engineering Technician IV	$140
Biologist III	$150	Engineering Technician V	$155
Biologist IV	$160	Engineering Technician VI	$175
Biologist V	$205	Environmental Specialist I	$120
CAD Drafter I	$105	Environmental Specialist II	$135
CAD Drafter II	$120	Environmental Specialist III	$140
CAD Drafter III	$130	Environmental Specialist IV	$150
CAD Drafter IV	$140	Environmental Specialist V	$155
CAD Drafter V	$150	Environmental Specialist VI	$190
Senior CAD Drafter	$170	Environmental Specialist VII	$210
Civil and Transportation Designer	$135	Environmental Specialist VIII	$225
Senior Civil and Transportation Designer	$170	Environmental Specialist IX	$245
Contract Administrator I	$160	Environmental Specialist X	$265
Contract Administrator II	$185	Field Project Representative I	$115
Corporate Development Manager	$230	Field Project Representative II	$125
Cultural Resources Specialist I	$120	Field Project Representative III	$155
Cultural Resources Specialist II	$140	Field Project Representative IV	$170
Cultural Resources Specialist III	$145	Field Project Representative V	$200
Cultural Resources Specialist IV	$180	Geologist I	$135
Cultural Resources Specialist V	$195	Geologist II	$145
Document Production Supervisor	$150	Geologist III	$155
Engineer I	$130	Geologist IV	$175
Engineer II	$140	Geologist V	$205
Engineer III	$155	GIS Coordinator	$175
Engineer IV	$175	GIS Manager	$185
Engineer V	$195	GIS Specialist	$145
Engineer VI	$205	GIS Technician	$110
Engineer VII	$215	Graphics Designer	$130
Engineer VIII	$225	Senior Graphics Designer	$165

Description	Rate
Hydrogeologist I	$140
Hydrogeologist II	$165
Hydrogeologist III	$195
Sr. Hydrogeologist	$225
Intern I	$85
Intern II	$105
Laboratory Manager	$125
Laboratory Supervisor	$105
Landscape Architect I	$130
Landscape Architect II	$145
Landscape Architect III	$160
Landscape Architect IV	$175
Landscape Architect V	$190
Landscape Architect VI	$200
Landscape Architect VII	$210
Landscape Designer I	$95
Landscape Designer II	$115
Marketing Assistant	$105
Marketing Coordinator	$135
Marketing & Administrative Manager	$225
Materials Technician I	$95
Materials Technician II	$105
Lead Materials Technician	$115
Senior Materials Technician	$125
Materials Manager	$130
Planner I	$120
Planner II	$145
Planner III	$160
Planner IV	$175
Planner V	$190
Planner VI	$200
Planner VII	$210
Planner VIII	$225
Planner IX	$240
Planner X	$280
Planning Technician	$110
Professional Land Surveyor I	$120
Professional Land Surveyor II	$130
Professional Land Surveyor III	$140
Professional Land Surveyor IV	$150
Professional Land Surveyor V	$160
Professional Land Surveyor VI	$165
Professional Land Surveyor VII	$175
Professional Land Surveyor VIII	$185
Professional Land Surveyor IX	$210
Professional Land Surveyor X	$220
Professional Land Surveyor XI	$255
Project Administrator	$135
Project Assistant I	$115
Project Assistant II	$130
Project Controller	$165
Senior Project Controller	$185
Project Manager I	$160
Project Manager II	$175
Project Manager III	$190
Project Manager IV	$205
Project Manager V	$220
Project Manager VI	$235
Project Manager VII	$250
Proposal Manager	$140
Senior Proposal Manager	$210
Public Involvement Assistant	$115
Public Involvement Coordinator	$155
Public Involvement Planner	$135
Public Involvement Program Manager	$200
Real Estate Services Manager	$180
Right of Way Agent I	$125
Right of Way Agent II	$140
Right of Way Agent III	$155
Right of Way Agent IV	$170
Right of Way Agent V	$185
Right of Way Agent VI	$215
Right of Way Assistant	$115
Risk Manager	$200
Senior Manager I	$240
Senior Manager II	$260
Senior Manager III	$270
Senior Manager IV	$295

Description	Rate	Description	Rate
Senior Manager V	$315	Survey Technician -- Supervisor	$155
Senior Manager VI	$335	Systems Administrator	$155
Survey Technician I	$90	Technical Coordinator	$180
Survey Technician II	$95	Utility Operator	$145
Survey Technician III	$100	Water Resource Specialist	$195
Survey Technician IV	$115	Water Rights Specialist I	$160
Survey Technician IX	$170	Water Rights Specialist II	$190
Survey Technician V	$120	Water Rights Specialist III	$220
Survey Technician VI	$130	Water Rights Technician I	$105
Survey Technician VII	$145	Water Rights Technician II	$115
Survey Technician VIII	$160	Water Rights Technician III	$125

Survey Crews

One-Person Survey Crew	=	$160 / hour
One-Person Survey Crew GPS/Robotics	=	$180 / hour
Two-Person Survey Crew	=	$240 / hour
Two-Person Survey Crew (PLS + LSIT)	=	$280 / hour
Two-Person Survey Crew GPS/Robotics	=	$255 / hour
Three-Person Survey Crew	=	$350 / hour

Travel, Mileage, and Miscellaneous

Lodging	=	Cost per night
Airfare	=	Cost
Vehicle Usage – Passenger Cars	=	$1.10/mile
Vehicle Usage – Trucks & SUV's	=	$1.30/mile
Printing/Supplies/Phone/Fax/Postage	=	Note 3
In-House Usage Charges	=	Note 4

Per Diem

Unless otherwise specified contractually, per diem will be billed when travel is more than 50 miles from the office during a meal allowance period of three or more consecutive hours or involves an overnight stay. The three meal allowance periods are breakfast (midnight to 10:00 a.m.), lunch (10:00 a.m.-3:00 p.m.), and dinner (3:00 p.m. to midnight).

	Breakfast	Lunch	Dinner	Incidentals	1st and Last Day	Per Diem Rate
Billings	$13.00	$15.00	$26.00	$5.00	$44.25	**$59.00**
Bozeman	$18.00	$20.00	$36.00	$5.00	$59.25	**$79.00**
Helena	$14.00	$16.00	$29.00	$5.00	$48.00	**$64.00**

Description	Rate	Description	Rate

For all other cities not listed above and meal breakdown, use the following link: https://www.gsa.gov/travel/plan-book/per-diem-rates

Notes

1. DOWL's Professional Services Fee Schedule is subject to adjustment each year or at the end of a contract period, whichever is appropriate. Should adjustments be anticipated or required, such adjustments will not affect existing contracts without prior agreement between Client and DOWL.
2. Straight-time rates are given. Multiply by 1.5 for overtime rates. Overtime rates will be applied at the rate prescribed by applicable state law.
3. Direct reimbursable expenses such as travel, freight, subcontractors, and request beyond those requests considered reasonable by the project manager for phone/fax/postage, office supplies, reproduction and photography, and laboratory analysis will be billed at cost plus the negotiated markup.
4. In-house equipment usage charges or specialized software/equipment that are not separately stated on the fee schedule will be negotiated at rates deemed fair and reasonable.
5. Late charges will be assessed on the unpaid balance of all accounts not paid within 30 days of the billing date, at a rate of 1.0 percent per month (12% per year).

Appendix E

Project Schedule

Based on a notice to proceed by Billings date no later than December 9, 2024, the completion date for the Engineer's work through final design shall be:

A. Preliminary (30%) Design: January 24, 2025

B. Pre-Final (90%) Design: February 28, 2025

C. Final (100%) Design and Bid Advertisement: March 21, 2025

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

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

Appendix F

Certificate(s) of Insurance

City Council Regular

Date: 12/16/2024
Title: W.O. 25-01, Contract 3: Rosemont Water Main Replacement Project
Presented by: Debi Meling
Department: Public Works
Presentation: No
Legal Review: Template Contract
Project Number: N/A

RECOMMENDATION

Staff recommends the City Council award a professional engineering services contract for W.O. 25-01, Contract 3: Rosemont Water Main Replacement, to Morrison-Maierle in the amount of $125,900.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The City replaces and upgrades its water utilities as part of an annual maintenance program. This project will replace approximately 1,750 feet of existing 16-inch ductile iron water main that is in poor condition. The water mains being replaced were selected based on several criteria including age, break history, lead joint pipe, lead services, undersized water mains, and replacement prior to future projects. This project will replace the 16-inch ductile iron water main within Turnberry Circle and Rosemont Way from Briarwood Boulevard to McMasters Road with 8-inch PVC, including all intersection lateral mains.

The existing 16-inch ductile iron water main is located in the boulevard under and adjacent to existing utilities such as power and gas. The location and size of the water main makes repair of water main breaks difficult and dangerous. Previous breaks on this water main have had costly private property damage. The new water main will be constructed in a standard location in the street. When complete, this project will provide more reliable water service to residents with a looped feed. In summary, this project is the second phase of a project completed in 2024 by City Public Works to take the 16-inch transmission main out of the residential street, place it within Briarwood Boulevard, and then replace the aging main within the residential street.

Morrison-Maierle was selected for the project using the proposal process. Five other proposals were received from DOWL, KLJ, Performance Engineering, Sanbell, and Stahly Engineering. The consultant selection was based on Project Team and Availability; Project Approach; and Firm Qualifications and Experience as related to the project needs.

ALTERNATIVES

City Council may:

- Approve awarding the Professional Engineering Services Contract to Morrison-Maierle, or;
- Not approve awarding the Professional Engineering Services contract to Morrison-Maierle. If the project is not awarded, the City's water mains in these areas will continue to be unreliable, risk property damage with breaks, and will likely experience ongoing maintenance problems and expenses.

FISCAL EFFECTS

Water main replacements were budgeted in FY25 using Water Funds in the amount of $4,800,000. There are adequate funds to award the contract. The remaining budget will be used for construction and materials testing.

Attachments

WO 25-01 Contract 3: Contract

Contract for Professional Architectural and Engineering Services

Project: City of Billings W.O. 25-01: Contract 3 – Rosemont Way Water Main Replacement

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

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 6 pages (Basic Services of Contractor);

Appendix B consisting of 2 pages (Methods and Times of Payment);

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

Appendix D consisting of 4 pages (Schedule of Professional Fees);

Appendix E consisting of 1 pages (Project Schedule);

Appendix F consisting of 32 pages (Certificate(s) of Insurance); and

PART I
SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

A. "Administrator" means the City Administrator or his designee.
B. “Billings” means the City of Billings.
C. “Engineer” and/or "Contractor" means Morrison-Maierle, Inc.
D. In Appendix A, Contractor is referring to the construction contractor.

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.

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 March 1, 2026. The parties may extend this agreement, by mutual concurrence, for up to three months, in writing prior to its termination.

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

Section 7. Insurance.

A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
B. The Contractor shall provide the following insurance:

    1. Workers' compensation and employer's liability coverage as required by Montana law.
    2. Commercial general liability, including contractual and personal injury coverage's -- $1,500,000 per occurrence.
    3. Commercial automobile liability -- $1,500,000 per accident.
    4. Professional liability in the amount of $1,500,000 per claim.

C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

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

Section 10. Notices.

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

Billings: City Engineer (Mac Fogelsong, PE)
City of Billings
Public Works Department
2224 Montana Avenue
Billings, Montana 59101 FAX: (406) 237-6291 / PHONE: (406) 657-8232

Contractor: Morrison-Maierle, Inc.
Jill Cook, PE
315 North 25th Street, Suite 102
Billings, Montana 59101 PHONE: (406) 656-6000

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:

1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
2. Strikes or Work stoppages.
3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.

4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

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

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

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II
GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than a 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 discharged 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: President or Vice President
(title of position)

Billings: City Council or Authorized Designee

C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the District Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

A. 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.
B. 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.
C. Billings shall indemnify, defend, save, and hold the Contractor harmless from any and all claims, causes of action, lawsuits, damages, judgements, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of Billings or any agent, employee or subcontractor as a result of Billings' or any subcontractor's performance pursuant to this Contract.
D. Billings shall not indemnify, defend, save and hold the Contractor harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the Contractor occurring during the course of or as a result of the performance of the Contract.
E. 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, MONTANA

_____

WILLIAM A. COLE,
MAYOR

APPROVED AS TO FORM:

_____

CITY ATTORNEY'S OFFICE

ATTEST:

_____

DENISE BOHLMAN, CITY CLERK

Morrison-Maierle, Inc.
BUSINESS NAME

_____

SIGNATURE

Jill Cook, P.E.
PRINT NAME

Vice President
PRINT TITLE

Appendix A

Basic Services of Engineer
City of Billings W.O. 25-01: Contract 3 – Rosemont Way Water Main Replacement

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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 Kurtis DeShaw, P.E. working under the Principal-in-Charge, Jill Cook, P.E.

Section 2. Billings Rights and Duties.

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.

B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Travis Harris, P.E.

Section 3. Scope of Work.

The Engineer shall perform the work outlined in this agreement, including the completion of design and construction engineering phase services for W.O. 25-01: Contract 3 – Rosemont Way Water Main Replacement. Design and construction work includes approximately 1,750 linear feet (LF) of 8-inch water main to replace the existing 16-inch water main in Turnberry Circle and Rosemont Way.

The scope of work is summarized below:

TASK 000 - PROJECT MANAGEMENT

Project management for the design and construction phases will include all project coordination between the City and the consultant team members. This management task includes communicating ideas, questions, and issues to ensure the design encompasses the input from the project personnel for both the City and Morrison-Maierle. Project management also involves a project kickoff meeting and the effort necessary to control the project's quality, schedule, and budget.

TASK 030 – SURVEY

Design phase survey services are not included in this scope.

Construction phase survey services will consist of the following:

- Provide personnel, equipment, and supplies for construction layout and control.
- Staking shall include centerline locations and offsets for the principal components of the work (valves, hydrants, horizontal fittings) and intermediate points at approximately 100 feet between principal components for the water main.
- Survey shall reference and preserve all existing survey monuments and benchmarks. All monuments required within the project shall be punched and elevations shown on as-built drawings.

TASK 039 – GEOTECHNICAL EVALUATION

Geotechnical engineering will be provided by a subconsultant and shall include field observation and sampling, laboratory testing, and review of subsurface soils to determine appropriate pavement section design alternatives, sub-grade treatment, groundwater conditions, and foundations and backfill recommendations for utility installations. Recommendations for specific construction materials established in this review will be included in the project plans and specifications. Design geotechnical work will include up to two (2) soil borings in the planned water replacement areas at a depth of 10 feet and up to two (2) asphalt cores.

Quality assurance soil density tests, proctors, asphalt, and concrete testing are included in the construction materials testing scope up to $6,000. Since actual geotechnical testing fees may vary based on the contractor's means and methods, the Engineer shall notify the City as construction progresses if an amendment will be required to cover services above this amount.

TASK 040 – DESIGN AND BIDDING

The following work will be performed under this task:

- Review existing record drawings to verify depths and locations of existing utilities. Perform valve and manhole measure downs to verify depths of existing water and sewer mains where this information is not available on record drawings, or to verify depths where there is minimal clearance at utility crossings.
- The City will locate the water services and notify the Engineer when the location is complete.
    - No additional location services are included in this scope.
    - Services that are not identifiable will be identified to be located by the contractor during construction.
- An initial search on the MDEQ database indicates there are no existing leaking underground storage tank (LUST) sites in the project areas. No additional provisions for LUST sites are included in this scope.
- Cathodic protection shall consist of fusion bonded epoxy coated bends and valves with Mars Caps for bolts and nuts and Poly Wrap around all fittings and valves. No additional design is included in this scope for cathodic protection.
- Only one pipeline alignment will be designed on the final plans.
- General, non-detailed temporary water provisions shall be incorporated into the specifications to discuss the pump station and coordination with the City on the installation of pressure reducing valves if required.
- Coordinate with permitting agencies, including the Montana Department of Environmental Quality (MDEQ), and public/private utilities. No permitting fees are included in the scope of this project.
- Traffic control will be addressed with written specifications and referencing the traffic control drawings in the City of Billings Standard Modifications to MPWSS. No other traffic control plans will be prepared by the Engineer for the other project areas.
- Prepare preliminary plans. Deliverables will include preliminary plans at 50% complete for review by the City. An electronic file (PDF) and one (1) 11"x17"

copy of the review set will be provided to the City for review. A PDF copy will also be sent to each utility company in the project areas. Engineer will follow up with the utilities to ensure they received the plans sent to them. Engineer will hold a meeting for utilities to attend to discuss potential conflicts, if any are expected.

- Hold a review meeting with City staff at 50% to discuss the project.
- Perform up to one field review with City and other agencies, as required.
- Develop 90% plans, specifications, quantity estimates, and opinion of probable costs for final review by City staff. Engineer will meet with City staff to review 90% comments. One 11”x17” copy of plans and one printed project manual will be provided to the City, as well as an electronic file (PDF).
- Seal and sign all final plans, specifications, submitted calculations, and reports with the seal of the Montana licensed Professional Engineer in responsible charge of the work.
- Submit plans, specifications, design summary, certified checklist, and any necessary deviation requests for the water main replacement to MDEQ for review. The City will pay respective permitting fees directly. Coordinate with MDEQ on any follow-up comments/requirements.
- Develop final plans and specifications incorporating any final comments from the City or DEQ.
- Prepare informational letter and deliver to property owners adjacent to the project areas. Attend one informational public meeting during design.

Bidding services will be provided as follows:

- This project will be planned to be bid in one schedule. Update the opinion of probable cost to be used for the bid opening.
- Provide bid advertisement text to City for publication. Submission of the advertisement to publications and the cost for advertising will be responsibility of the City.
- Distribution of plans and specifications will be done electronically using the City’s Quest CDN service and through www.montanabid.com. No hard copies of the plans and specifications will be provided to the bidders. Two (2) 11”x17” copies will be provided to the City, as well as an electronic file (PDF).
- The plan holder’s list will be maintained through Quest CDN.
- Answer prospective bidders’ questions regarding the project.
- Schedule and hold a pre-bid conference with interested contractors and suppliers. Prepare agenda for the meeting.
- Prepare and distribute addenda as necessary.
- Attend bid opening, analyze bid proposals, publish a bid tabulation, and make recommendations on awarding a construction contract.

TASK 050 – CONSTRUCTION ADMINISTRATION

Construction administration will include the following tasks:

- Prepare digital copies of construction contract documents and distribute to Contractor and City.
- Schedule and hold a pre-construction conference prior to commencement of work at the site. Issue meeting minutes to Contractor and City.
- Take pre-construction photos and/or videos of proposed work areas.
- Coordinate appropriate quality assurance testing of materials intended for incorporation into the project and require documentation of testing results.
- Provide RPR services including observation of construction for confirmation of general conformance with the drawings and specifications. Observation of work shall be made on a full-time basis (for a duration of an 8-hour work day) while any major item of work is in progress. Major items of work shall include, but not be limited to, water main installation; subgrade preparation; gravel base course preparation; asphalt trench restoration; and concrete pouring and finishing. The RPR will attempt to prioritize observation of most critical items. Observation, however, is not exhaustive for time extended beyond the planned 8-hour work day. Each daily review shall be documented in a virtual format and kept in consecutive order with the project file. Copies of the daily review reports shall be furnished to the City as requested during construction. Engineer will notify the City as soon as practical of contract problems or deviation from approved plans.
- Coordinate and administer weekly progress meetings for a 35-calendar day project to substantial completion. It is assumed final completion shall be 7-calendar days after substantial completion.
- Coordinate with the public through the development and distribution of informational handouts at the start of construction.
- Prepare a weekly construction update email and project map showing work areas to include on the City's website or Facebook.
- This project is planned based on a construction contract time of 35-calendar days. It is assumed that only one (1) main line construction crew will be allowed to work on this project. This project is planned for one (1) RPR at ten (8) hours per working day for 25 working days. Additional RPR time includes 6 hours of preparation, pre-construction conference meeting, and contract review and 10 hours for punch list items.
- Coordinate with geotechnical subcontractor to interpret QA materials testing results and recommendations and coordinate with field observations.
- The Engineer shall record the location and depth, where available, of all underground utilities.
- Engineer shall ascertain that the Contractor has all needed permits to accomplish his work during construction.
- Review shop drawings, samples, equipment, temporary water plans, traffic control plans, valve operation requests, asphaltic concrete mix design, concrete mix design, aggregate, and other data submitted by the Contractor as described in the construction contract.
- Evaluate and respond to Requests for Information (RFI) from Contractor.
- Prepare monthly and final pay estimates for construction and prepare contract administration forms monthly. These will be submitted in Billings' approved format.
- Engineer shall provide City with geotechnical testing reports after construction.

- Prepare and recommend field orders and change orders when necessary due to conditions encountered during construction or City requested changes. Work resulting in contract overage will be processed by approved change orders using Billings' standard format.
- Engineer construction administration phase time included in this contract is capped at 8 hours for the project manager and 65 for the project engineer. Actual time required may vary based on the Contractor's means and methods. The Engineer shall notify the City as construction progresses if an amendment will be required to cover services above this amount.

TASK 060 – CLOSEOUT

Closeout services will be provided as follows:

- Following receipt of red-lined drawings from the general contractor and any review comments from Billings, make necessary changes and furnish Billings with record drawings in general accordance with Section 2D of Part I of this contract. Record drawings shall include, but not be limited to:
    - Locations of water services, bends, fittings, valves and hydrants will be measured in the field by the RPR.
    - All above elevations shall be referenced to a permanent benchmark elevation that is clearly shown on the plans.
    - Record drawings are due to the City within 60 days of the Contractor's final payment (contingent on the Contractor submitting as-built information) and before final payment to the Engineer.
- Schedule and make a final inspection with Billings and certify to DEQ that all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
- Issue Certificate of Substantial Completion.
- Schedule and review the project with Billings prior to the expiration of construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to Billings and Contractor and continue until acceptable.

TASK 088 – QUALITY ASSURANCE

Internal quality assurance will be provided for all reports, plans, and specifications furnished to the City or other agencies at the 50% and 90% submittals. The Quality assurance reviewer will also provide technical assistance to guide the design team.

Appendix B

Methods and Times of Payment
City of Billings W.O. 25-01: Contract 3 – Rosemont Way Water Main Replacement

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.

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 as described in Appendix A, the Engineer shall be paid based upon actual time accrued, but not to exceed the following total fee:

1.	Task 000 – Project Management	$6,450.00
2.	Task 030 – Survey	$3,650.00
3.	Task 039 – Geotechnical	$12,100.00
4.	Task 040 – Design	$44,050.00
5.	Task 050 – Construction Administration	$50,500.00
6.	Task 060 – Project Closeout	$7,100.00
7.	Task 088 – Quality Assurance	$2,050.00
	TOTAL	**$125,900.00**

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

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

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this project shall be paid for by a negotiated fee.

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
City of Billings W.O. 25-01: Contract 3 – Rosemont Way Water Main Replacement

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

A. Additional Services are defined as requests made or conditions identified which are beyond the scope and intent of the services identified under Appendix A.

Appendix D

Schedule of Professional Fees
City of Billings W.O. 25-01: Contract 3 – Rosemont Way Water Main Replacement

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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.

Section 1. Professional Services.

Morrison Maierle
engineers · surveyors · planners · scientists

Standard Billing Rate Schedule
Effective Thru
December 31, 2024

		Standard Rate	Overtime Rate
Engineer	Supervising Engineer V	$287.00	$287.00
	Supervising Engineer IV	$280.00	$280.00
	Supervising Engineer III	$257.00	$257.00
	Supervising Engineer II	$246.00	$246.00
	Supervising Engineer I	$233.00	$233.00
	Senior Engineer II	$216.00	$216.00
	Senior Engineer I	$197.00	$197.00
	Design Engineer II	$186.00	$186.00
	Design Engineer I	$172.00	$172.00
	Engineer Intern II	$142.00	$142.00
	Engineer Intern I	$125.00	$125.00
Planner	Supervising Senior Planner	$225.00	$225.00
	Senior Planner	$195.00	$195.00
	Planner III	$151.00	$151.00
	Planner II	$138.00	$138.00
	Planner I	$121.00	$121.00
Scientist	Supervising Environmental Scientist	$234.00	$234.00
	Environmental Scientist III	$186.00	$186.00
	Environmental Scientist II	$142.00	$142.00
	Environmental Scientist I	$121.00	$121.00
	Environmental Technician	$106.00	$106.00
	Supervising Geologist	$265.00	$265.00
	Senior Geologist	$222.00	$222.00
	Geologist III	$202.00	$202.00
	Geologist II	$164.00	$164.00
	Geologist I	$140.00	$140.00
Designer and Technician	Senior Communications Designer	$239.00	$239.00
	Communications Designer	$125.00	$125.00
	CAD Designer III	$164.00	$164.00
	CAD Designer II	$143.00	$143.00
	CAD Designer I	$133.00	$199.50
	CAD Tech III	$130.00	$195.00
	CAD Tech II	$111.00	$166.50
	CAD Tech I	$98.00	$147.00
	Senior Engineering Designer	$183.00	$183.00
	Engineering Designer	$125.00	$125.00
Resident Project Representative	Senior Resident Project Representative	$185.00	$185.00
	Resident Project Representative IV	$175.00	$175.00
	Resident Project Representative III	$166.00	$166.00
	Resident Project Representative II	$140.00	$210.00
	Resident Project Representative I	$126.00	$189.00
Administrative	Administrative Manager	$126.00	$126.00
	Administrative Coordinator III	$116.00	$116.00
	Administrative Coordinator II	$110.00	$165.00
	Administrative Coordinator I	$90.00	$135.00
	Project Coordinator III	$113.00	$113.00
	Project Coordinator II	$102.00	$153.00
	Project Coordinator I	$92.00	$138.00
	Technical Intern	$85.00	$127.50
	Senior Communication Specialist	$134.00	$134.00
	Graphic Designer	$106.00	$106.00
	Health & Safety Administrator	$140.00	$140.00
Survey	Senior Survey Manager	$226.00	$226.00
	Survey Manager	$176.00	$176.00
	Land Surveyor IV	$170.00	$170.00
	Land Surveyor III	$164.00	$164.00
	Land Surveyor II	$148.00	$148.00
	Land Surveyor I	$134.00	$134.00
	Remote Sensing Specialist II	$149.00	$149.00
	Remote Sensing Specialist I	$139.00	$139.00
	Survey Technician IV	$129.00	$129.00
	Survey Technician III	$114.00	$171.00
	Survey Technician II	$98.00	$147.00
	Survey Technician I	$84.00	$126.00
Expert Witness	Recommended rate for expert witness services (depositions and/or time in court) is charged at an hourly rate of 150-200% of the standard billing rate.		

Morrison Maierle
engineers · surveyors · planners · scientists

Standard Billing Rate Schedule
Rates Effective Thru
December 31, 2024

EQUIPMENT RATES	
Company Vehicle: highway miles - Pickups	$1.060/mile
highway miles – Medium SUV	$.798/mile
highway miles - Small SUV	$.671/mile
highway miles - Sedan	$.737/mile
on-site mileage	$ .737/mile plus $5.00/hour
Private Vehicle	$.670/mile
ATV	$50.00/day
UTV	$100.00/day
Survey-Grade GNSS (1 Receiver)	$120.00/day
Survey-Grade GNSS (2 Receivers)	$30.00/hour, $240.00/day
Resource-Grade (GIS) GNSS Receivers	$65.00/day
Hovermap LiDAR Scanner	$50.00/hour, $400.00/day
Robotic Total Station	$30.00/hour, $240.00/day
Total Station	$80.00/day
Trimble SX10 Scanning Total Station	$40.00/hour, $300.00/day
Trimble SX12 Scanning Total Station	$40.00/hour, $300.00/day
FARO Focus 3D Laser Scanner	$50.00/hour, $400.00/day
Hydrolite – TM Echosounder Kit	$100.00/day
Raft-Hydro-Bathy Surveys	$100.00/day
sUAS Survey Drone	$50.00/hour, $400.00/day
Nuclear Density Meter	$15.00/hour, $50.00/day, $200.00/week
Airflow Balancing Hood	$75.00/day
Core Drill	$10.00/hole
Digital Level	$50.00/day
Hammer Drill	$30.00/day
HYDROLOGICAL EQUIPMENT	
Conductivity Meter	$15.00/day
Disposable Bailers	$10.00/each
Dissolved Oxygen Meter	$20.00/day
PH Meter	$15.00/day
PH/Temp/Conductivity Meter	$25.00/day
Water Sample Fee	$10.00/each
In Situ Level Troll 700	$63.00/day, $250.00/week
AquaCalc Pro	$60.00/day, $120.00/week
Marsh McBirney 2000 Flowmeter	$60.00/day, $120.00/week
Global Water FP 111 Flowmeter	$25.00/day, $75.00/week
Submersible Pump (Redi Flo 2)	$155.00/day
Water Level Meter, 300 Ft.	$25.00/day, $50.00/week
Water Level Meter, 500 Ft.	$35.00/day, $75.00/week
Oil/Water Interface Well Probe	$40.00/day, $120.00/week
Hach Flo-Dar (logger & sensor)	$400.00/week, $1,000.00/month
Rain Gauge Sensor	$15.00/week, $60.00/month
PRINTING EXPENSES	
Black & White Copies	$.10/8.5X11, $.13/8.5x14, $.20/11x17
Color Copies	$.20/8.5X11, $.20/8.5x14, $.40/11x17
Binding	$.25/each
Lamination	$1.00/each
Oversize Print Black & White	$5.00/each
Oversize Print Color	$6.00/each
Print & Basic Mount	$12.00/each
Print & Machine Mount	$20.00/each
Print, Machine & Laminate White Board	$32.00/each
MISCELLANEOUS EXPENSE	
Lodging	Current Rates
Meals	$54.00/day

Materials and other direct costs will be invoiced at current rates plus minimum 10% markup. The following are included as direct costs: approved employee meals, lodging, transportation, premium delivery services (UPS, Federal Express, etc.), testing and survey supplies, premiums for special insurance, performance bonds, and consultants. Cost of professional liabity insurance is included in the hourly rates of personnel.

Section 2. Materials and Other Direct Costs.

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

A. Approved Employee Meals, Lodging, Transportation

B. Premium Delivery Service (UPS, Federal Express, etc.)

C. Toll Communication Services (Telephone, Fax, etc.)

D. Supplies

E. Premiums for Special Insurance, Performance Bonds, etc.

F. Other Out-of-Pocket Expenses

G. Consultants

The cost of Professional Liability Insurance coverage is included in the hourly rates of personnel.

Appendix E

Project Schedule
City of Billings W.O. 25-01: Contract 3 – Rosemont Way Water Main Replacement

Based on a notice to proceed by Billings date no later than December 16, 2024, the completion date for the Engineer's work through final design shall be:

1. Preliminary Engineering Services (50% Design): January 2025
2. Preliminary Engineering Services (90% Design): February 2025
3. Final Engineering Services (100% Design): March 2025
4. Above schedule assumes DEQ review will be completed within three (3) weeks of the 90% Design submittal.
5. The schedule assumes bidding in March and Construction to be completed by the end of summer 2025.

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

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

Appendix F

Certificate(s) of Insurance
City of Billings W.O. 25-01: Contract 3 – Rosemont Way Water Main Replacement

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(Attach Certificate(s) of Insurance)

City Council Regular

Date:	12/16/2024
Title:	Billings Urban Fire Service Area Agreement with Yellowstone County
Presented by:	Andy Zoeller, Finance Director
Department:	Finance
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends City Council approve the agreement extending fire protection to the Billings Urban Fire Service Area (BUFSA) for another 5 years.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The City has provided fire protection service to the area in Yellowstone County immediately surrounding the City limits in an area called the BUFSA since 1988. This agreement between the City of Billings and the BUFSA requires the City of Billings to provide Fire and Emergency services to the area identified within the agreement, and Yellowstone County assesses property owners annually to cover the cost of providing these services. In FY25, the projected cost will be $2,603,460. The formula for assessing cost is based upon the ratio of the taxable value within the BUFSA compared to the taxable value of the City Limits. That ratio is applied to the prior year actual costs of running the Fire Department.

ALTERNATIVES

City Council may:

- Approve the BUFSA agreement; or,
- Amend the BUFSA agreement
- Not Approve the agreement.

FISCAL EFFECTS

This agreement will provide $2.6 million of funding for the Fire Department in FY25 and sets the funding formula for the next 5 years of the BUFSA agreement. The FY25 budget estimated the BUFSA reimbursement at $2.3 million. Any additional funds will go into the general fund cash reserve.

Attachments

Revised BUFSA agreement
Revised BUFSA agreement - redline

Billings Urban Fire Service
Agreement for Fire Services
City of Billings and Yellowstone County [Montana] Commissioners

THIS AGREEMENT is made and entered into this _____ day of _____, 2024, by and between the parties, CITY OF BILLINGS, MONTANA, a municipal corporation, hereinafter referred to as the "CITY" and the YELLOWSTONE COUNTY COMMISSIONERS - BILLINGS URBAN FIRE SERVICE AREA, hereinafter referred to as the "BUFSA".

WITNESSETH

WHEREAS, the CITY maintains a fire department and is willing to provide fire protection and investigation to properties within the BUFSA at the same level as such services are provided to properties within the corporate limits of the CITY, upon the terms and conditions hereinafter provided, and,

WHEREAS, the BUFSA has been duly and properly created by the Board of County Commissioners of Yellowstone County pursuant to the provisions of Sections 7-33-2401 through 7-33-2404, inclusive, of the Montana Code Annotated; and,

WHEREAS, inclusive of the agreement and attached hereto as **Exhibit A** is the BUFSA boundary description and map, and,

WHEREAS, the BUFSA desires to continue with the above-named fire services from the CITY and renew the contract with the CITY for such services, and

WHEREAS, the Board of County Commissioners for Yellowstone County have, pursuant to 7-33-2403 MCA and Resolution 01-33, appointed a Board of Trustees to govern and manage the affairs of the BUFSA; and

WHEREAS, in accordance with Section 7-33-2403 MCA, the Board of County Commissioners shall retain the right to transfer the management of the BUFSA back to the Board of County Commissioners, and written notice of such transfer shall be provided to the CITY thirty (30) days prior to the effective date of transfer.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. SERVICES

The CITY will furnish the following services to properties and residents within the BUFSA, at the same level as such services are provided to properties and residents within the corporate limits of the CITY:

a. fire protection and suppression;
b. fire investigation;
c. hazardous material response
d. medical emergency first responder
e. grass and timberland fire suppression

2. SERVICE AREA

Fire services will be provided to all properties located within the boundaries of the BUFSA (including MetraPark) as specified in **Exhibit A**, which is incorporated fully herein by reference ,

Any enlargement of the BUFSA will not receive fire services unless the CITY approves the enlargement in writing. Other than annexation, no property shall be deleted without the written consent of both parties.

3. REVIEW OF SERVICE

A summary of services will be completed by the Billings Fire Department and included in its reporting to the BUFSA Board, as outlined in Section 12 of this contract.

4. ANNEXATIONS

In the event that the CITY annexes any property located within the BUFSA, said property would automatically be excluded from the BUFSA, effective as of January 1 of the year following the year in which annexation occurred. Pursuant to this section, any properties within the BUFSA which are annexed to the CITY will continue to be responsible for payments of charges to BUFSA attributable to the full year during which the annexation occurs. On January 1 of the year following the annexation, said property will be subject to CITY property taxes and will no longer be required to pay charges for services provided through the BUFSA.

5. TERM

This Agreement shall be effective on July 1, 2024 and shall terminate on June 30, 2029, unless renewed by the parties as provided herein.

6. RENEWAL

This Agreement may be renewed for a period of five (5) years, with the terms and conditions of the renewal Agreement to be as mutually agreed upon by the parties. In the event BUFSA wishes to negotiate a renewal of this Agreement, it must deliver a written request to initiate renewal negotiations to the CITY on or before January 1, 2029. Any renewal contract must be agreed to and executed by the parties on or before June 30, 2029 and shall become effective on July 1, 2029.

The purpose of requiring the execution of a renewal agreement before expiration of the current Agreement is to allow the parties adequate time to make adjustments in the event that the parties cannot reach agreement on the terms of a renewal contract. The CITY will need to make adjustments in budgets, staffing and equipment. The BUFSA will need to make arrangements for obtaining fire services from a different fire service agency.

7. CHARGES AND PAYMENT

The fee for providing services for the first full year of this Agreement shall be $2,603,460. One-half of said fees shall be paid by Yellowstone County on behalf of the BUFSA on or before every December 31st. The remaining one-half shall be paid on or before every June 30th.

For purposes of determining the fee for providing services for years two through five, this Agreement adopts the methodology of proportionate share based on taxable value as supplied by the Montana Department of Revenue each August. BUFSA Taxable/ (City of Billings Taxable + BUFSA Taxable) x (Tot Fire Dept Costs-911/ Dispatch Costs). Payment of fees for years two through five by Yellowstone County on behalf of the BUFSA to the CITY will occur as follows: One-half of said fees shall be paid on or before every December 31st. The remaining one-half

shall be paid on or before every June 30th.

8. DISPUTE RESOLUTION

If a dispute arises concerning any provision or claim arising out of or relating to this Agreement, the parties shall follow this order of resolving the dispute:

(a) The parties shall first attempt to informally resolve the dispute.

(b) If the matter remains unresolved, the parties shall then attempt to resolve the dispute through non-binding mediation in accordance with Montana Code Annotated § 26-1-813. The mediation shall take place in Billings, Montana. The parties shall meet and endeavor to agree upon an individual to serve as mediator. If the parties are unable to agree upon a mediator, the American Arbitration Association shall be requested to supply the names of eleven (11) qualified and experienced arbitrators. The parties shall alternately strike the names of the proposed mediators until one remains. The person whose name remains shall be the mediator. The BUFSA shall strike the first name. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise.

(c) If mediation does not resolve the dispute, the parties may mutually agree to binding arbitration; however, the parties are not obligated or required to submit the dispute to binding arbitration and may proceed to d) below without such mutual agreement. The arbitration shall be conducted in Billings, Montana, in accordance with Montana's Uniform Arbitration Act, Montana Code Annotated §§ 27-5-101 through 27-5-324. The arbitrator shall apply the law of the State of Montana. The arbitration shall be held before a single arbitrator (unless otherwise agreed by the parties). If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Montana Rules of Civil Procedure, both in advance of and during recesses of the arbitration hearings.

It is specifically agreed that in the event of arbitration the parties shall meet and endeavor to agree upon an individual to serve as arbitrator. If the parties are unable to agree upon an arbitrator, the American Arbitration Association shall be requested to supply the names of eleven (11) qualified and experienced arbitrators. The parties shall alternately strike the names of the proposed arbitrators until one remains. The person whose name remains shall be the arbitrator. The CITY shall strike the first name.

The arbitrator shall not have any power to modify or add to the provisions of this Agreement. The expenses of the arbitrator shall be borne equally by the parties to the arbitration. Each party shall bear the expense incident to said party's presentation to the arbitrator, including any costs and expenses including reasonable attorney's fees. This Agreement to arbitrate shall be specifically enforceable in accordance with the applicable law in any court having jurisdiction hereof. The arbitrator shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty).

(d) The parties may unilaterally pursue other remedies including but not limited to litigation.

9. INDEPENDENT CONTRACTOR

For the purposes of this Agreement, the CITY shall be regarded as an independent contractor providing fire services, as described herein to the BUFSA.

All decisions as to the type and amount of equipment used, number of firefighters, firefighting techniques employed, and whether or not to respond to a particular call shall be made by the Fire Chief of the CITY or his designee. The Fire Chief or his designee shall use the same criteria to respond within the CITY and within BUFSA, such that the level of service shall be the same for the CITY and BUFSA. The BUFSA agrees that it will exercise no supervision, control or discretion over the CITY'S Fire Department pursuant to this Agreement.

10. STANDARD OF PERFORMANCE

The CITY agrees to provide the same level of service to the BUFSA as provided to City residents. The same level of service shall mean that all resources available to the fire department, to deliver all services offered to the residents of the City of Billings, shall be available to deliver the services to the residents of BUFSA.

In the event of passage of laws, by either the State Legislature or by the people through the Initiative process, which would require the CITY to make significant reductions in Fire Department staffing, equipment, stations or other facilities from current levels, then this Agreement shall be renegotiated. In the event that the parties cannot reach agreement, then this Agreement shall be terminated at the end of the next fiscal year.

11. INDEMNIFICATION

Each party shall indemnify, defend and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other party, or its employees, contractors or agents. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from the negligent acts of both parties, each party shall indemnify, defend, save, and hold the other harmless from and against only that portion of claims, lawsuits or liability, including reasonable attorneys' fees and costs, which result from the party's negligent acts occurring as a result from such party's performance under this Agreement.

12. REPORT

The CITY will furnish a quarterly written report to BUFSA, which will include the number, and type of incidents responded to within the BUFSA by CITY personnel.

Quarterly Reports shall include the following:

1. Station responding
2. Total run times
3. Number and type of incidents responded to in BUFSA.

In addition to the quarterly services reports, the CITY shall furnish to the BUFSA an annual

detailed budget and other financial information concerning charges to BUFSA under this Agreement.

13. MODIFICATION
This Agreement cannot be modified or amended except in writing executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BILLINGS URBAN FIRE SERVICE AREA
YELLOWSTONE COUNTY, MONTANA

_____
Mark Morse, Member

_____
Donald W. Jones, Member

_____
John Ostlund, Member

(SEAL)
ATTEST:

_____
Jeff Martin, Clerk & Recorder
Yellowstone County, Montana

CITY OF BILLINGS

_____
Mayor

ATTEST:

_____
City Clerk

Billings Fire Department
and Yellowstone County
Fire Service Areas - December 2024

City Limits and Fire Service Areas maintained by Yellowstone County.

Map Scale = 1:26,000

SHEPHERD VFD

MA SHEPHERD - BILLINGS

FUEGO VFD

MA FUEGO - BILLINGS

MOLT VFD

MA MOLT - BILLINGS

MA LOCKWOOD - BILLINGS

LOCKWOOD VFD

MA LAUREL - BILLINGS

LAUREL FD

MA MEADOW - BILLINGS MEADOW

BLUE CREEK FSA

BLUE CREEK GRASS

CROW WEST

MA BLUE - BILLINGS - LAUREL

BLUE CREEK VFD LAUREL A

Yellowstone River

Lake Elmo

Scale in Miles

0 0.5 1 2 3 4

Billings FIRE DEPARTMENT

Fire Station	Street	Creek or Slough	Billings Fire	Lockwood VFD	MA Shepherd - Billings
AMR Post Location	Ramp	Drain	Blue Creek FSA	MA Blue - Billings - Laurel	Meadow
FD Approved Dry Hydrant	Conoco Roads	Pipe	Blue Creek Grass	MA Fuego - Billings	Molt VFD
Interstate Highway	Railroad	Yellowstone River	Blue Creek VFD Laurel AMB	MA Laurel - Billings	Phillips 66
US & State Highway	Rims	City /County Boundary	Crow West	MA Lockwood - Billings	Shepherd VFD
Arterial	Canal or Ditch	BUFSA	Fuego VFD	MA Meadow - Billings	Refinery
Collector	Concrete Box Culvert	No Serve	Laurel FD	MA Molt - Billings	

Map Document: \\pwu-er12k07\GIS_Files\Mapping_Projects\Projects\Fire\2016\RFI_0094_BUFSA_Boundary_Map\BUFSA_Boundary_Map_Pro\BUFSA_Boundary_Map_Pro.aprx
Date: 12/3/2024

Billings Urban Fire Service
Agreement for Fire Services
City of Billings and Yellowstone County [Montana] Commissioners

THIS AGREEMENT is made and entered into this _____ day of _____, ~~2021~~2024, by and between the parties, CITY OF BILLINGS, MONTANA, a municipal corporation, hereinafter referred to as the "CITY" and the YELLOWSTONE COUNTY COMMISSIONERS - BILLINGS URBAN FIRE SERVICE AREA, hereinafter referred to as the "BUFSA".

WITNESSETH

WHEREAS, the CITY maintains a fire department and is willing to provide fire protection and investigation to properties within the BUFSA at the same level as such services are provided to properties within the corporate limits of the CITY, upon the terms and conditions hereinafter provided, and,

WHEREAS, the BUFSA has been duly and properly created by the Board of County Commissioners of Yellowstone County pursuant to the provisions of Sections 7-33-2401 through 7-33-2404, inclusive, of the Montana Code Annotated; and,

WHEREAS, inclusive of the agreement and attached hereto as **Exhibit A** is the BUFSA boundary description and map, and,

WHEREAS, the BUFSA desires to continue with the above-named fire services from the CITY and renew the contract with the CITY for such services, and

WHEREAS, the Board of County Commissioners for Yellowstone County have, pursuant to 7-33-2403 MCA and Resolution 01-33, appointed a Board of Trustees to govern and manage the affairs of the BUFSA; and

WHEREAS, in accordance with Section 7-33-2403 MCA, the Board of County Commissioners shall retain the right to transfer the management of the BUFSA back to the Board of County Commissioners, and written notice of such transfer shall be provided to the CITY thirty (30) days prior to the effective date of transfer.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. SERVICES

The CITY will furnish the following services to properties and residents within the BUFSA, at the same level as such services are provided to properties and residents within the corporate limits of the CITY:

a. fire protection and suppression;
b. fire investigation;
c. hazardous material response
d. medical emergency first responder
e. grass and timberland fire suppression

Billings Urban Fire Service
Agreement for Fire Services
City of Billings and Yellowstone County [Montana] Commissioners

2. SERVICE AREA

Fire services will be provided to all properties located within the boundaries of the BUFSA (including MetraPark) as specified in **Exhibit A**, which is incorporated fully herein by reference ~~the resolution of the Yellowstone County Commissioners creating said BUFSA~~, ~~and as amended from time to time by written agreement of the parties.~~ Any enlargement of the BUFSA will not receive fire services unless the CITY approves the

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enlargement in writing. Other than annexation, no property shall be deleted without the written consent of both parties.

3. REVIEW OF SERVICE
A summary of services will be completed by the Billings Fire Department and included in its reporting to the BUFSA Board, as outlined in Section 12 of this contract.

4. ANNEXATIONS
In the event that the CITY annexes any property located within the BUFSA, said property would automatically be excluded from the BUFSA, effective as of January 1 of the year following the year in which annexation occurred. Pursuant to this section, any properties within the BUFSA which are annexed to the CITY will continue to be responsible for payments of charges to BUFSA attributable to the full year during which the annexation occurs. On January 1 of the year following the annexation, said property will be subject to CITY property taxes and will no longer be required to pay charges for services provided through the BUFSA.

5. TERM
This Agreement shall be effective on July 1, ~~2020~~ 2024 and shall terminate on June 30, ~~2023~~2029, unless renewed by the parties as provided herein.

6. RENEWAL
This Agreement may be renewed for a period of five (5) years, with the terms and conditions of the renewal Agreement to be as mutually agreed upon by the parties. In the event BUFSA wishes to negotiate a renewal of this Agreement, it must deliver a written request to initiate renewal negotiations to the CITY on or before January 1, ~~2023~~2029. Any renewal contract must be agreed to and executed by the parties on or before June 30, ~~2023~~ 2029 and shall become effective on July 1, ~~2023~~2029.

The purpose of requiring the execution of a renewal agreement before expiration of the current Agreement is to allow the parties adequate time to make adjustments in the event that the parties cannot reach agreement on the terms of a renewal contract. The CITY will need to make adjustments in budgets, staffing and equipment. The BUFSA will need to make arrangements for obtaining fire services from a different fire service agency.

7. CHARGES AND PAYMENT
The fee for providing services for the first full year of this Agreement shall be $~~1,646,610~~2,603,460. One- half of said fees shall be paid by Yellowstone County on behalf of the BUFSA on or before every December 31st. The remaining one-half shall be paid on or before every June 30th.

For purposes of determining the fee for providing services for years two through five, ~~T~~this ~~3-year a~~Agreement adopts the methodology of proportionate share based on taxable value as

supplied by the Montana Department of Revenue each August. BUFSA Taxable/ (City of Billings Taxable + BUFSA Taxable) x (Tot Fire Dept Costs-911/ Dispatch Costs). ~~In the first year, the increase projected over last year would be 75% of the total mathematical difference. In the following years, not such adjustment would take place.~~ Payment of fees for years two through five by Yellowstone County on behalf of the BUFSA to the CITY will occur as follows: One-half of said fees shall be paid on or before every December 31st. The remaining one-half shall be paid on or before every June 30th.

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8. DISPUTE RESOLUTION

If a dispute arises concerning any provision or claim arising out of or relating to ~~in~~ this Agreement, the parties shall follow this order of resolving the dispute:

(a) The parties shall first attempt to informally resolve the dispute.

(b) If the matter remains unresolved, the parties shall then attempt to resolve the dispute through non-binding mediation in accordance with Montana Code Annotated § 26-1-813. ~~using an agreed-upon process.~~ The mediation shall take place in Billings, Montana. The parties shall meet and endeavor to agree upon an individual to serve as mediator. If the parties are unable to agree upon a mediator, the American Arbitration Association shall be requested to supply the names of eleven (11) qualified and experienced arbitrators. The parties shall alternately strike the names of the proposed mediators until one remains. The person whose name remains shall be the mediator. The BUFSA shall strike the first name. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise.

(c) If mediation does not resolve the dispute, the parties may mutually agree to binding arbitration ~~with an agreed upon process~~; however, the parties are not obligated or required to submit the dispute to binding arbitration and may proceed to d) below without such mutual agreement. The arbitration shall be conducted in Billings, Montana, in accordance with Montana's Uniform Arbitration Act, Montana Code Annotated §§ 27-5-101 through 27-5-324. The arbitrator shall apply the law of the State of Montana. The arbitration shall be held before a single arbitrator (unless otherwise agreed by the parties). If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Montana Rules of Civil Procedure, both in advance of and during recesses of the arbitration hearings.

It is specifically agreed that in the event of arbitration the parties shall meet and endeavor to agree upon an individual to serve as arbitrator. If the parties are unable to agree upon an arbitrator, the American Arbitration Association shall be requested to supply the names of eleven (11) qualified and experienced arbitrators. The parties shall alternately strike the names of the proposed arbitrators until one remains. The person whose name remains shall be the arbitrator. The CITY shall strike the first name.

The arbitrator shall not have any power to modify or add to the provisions of this Agreement. The expenses of the arbitrator shall be borne equally by the parties to the arbitration. Each party shall bear the expense incident to said party's presentation to the arbitrator, including any costs and expenses including reasonable attorney's fees. This Agreement to arbitrate shall be specifically enforceable in accordance with the applicable law in any court having jurisdiction hereof. The arbitrator shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty).

(d) The parties may unilaterally pursue other remedies including but not limited to litigation.

9. INDEPENDENT CONTRACTOR
For the purposes of this Agreement, the CITY shall be regarded as an independent contractor providing fire services, as described herein to the BUFSA.

All decisions as to the type and amount of equipment used, number of ~~men~~firefighters, firefighting techniques employed, and whether or not to respond to a particular call shall be made by the Fire Chief of the CITY or his designee. The Fire Chief or his designee shall use the same criteria to respond within the CITY and within BUFSA, such that the level of service shall be the same for the CITY and BUFSA. The BUFSA agrees that it will exercise no supervision, control or discretion over the CITY'S Fire Department pursuant to this Agreement.

10. STANDARD OF PERFORMANCE
The CITY agrees to provide the same level of service to the BUFSA as provided to City residents. The same level of service shall mean that all resources available to the fire department, to deliver all services offered to the residents of the City of Billings, shall be available to deliver the services to the residents of BUFSA.

In the event of passage of laws, by either the State Legislature or by the people through the Initiative process, which would require the CITY to make significant reductions in Fire Department staffing, equipment, stations or other facilities from current levels, then this Agreement shall be renegotiated. In the event that the parties cannot reach agreement, then this Agreement shall be terminated at the end of the next fiscal year.

11. INDEMNIFICATION
Each party shall indemnify, defend and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other party, or its employees, contractors or agents. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from the negligent acts of both parties, each party shall indemnify, defend, save, and hold the other harmless from and against only that portion of claims, lawsuits or liability, including reasonable attorneys' fees and costs, which result from the party's negligent acts occurring as a result from such party's performance under this Agreement.

12. REPORT
The CITY will furnish a quarterly written report to BUFSA, which will include the number, and type of incidents responded to within the BUFSA by CITY personnel.

Quarterly Reports shall include the following:
1. Station responding
2. Total run times
3. Number and type of incidents responded to in BUFSA.

In addition to the quarterly services reports, the CITY shall furnish to the BUFSA an annual detailed budget and other financial information concerning charges to BUFSA under this

Agreement.

13. MODIFICATION
This Agreement cannot be modified or amended except in writing executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

Billings Urban Fire Service
Agreement for Fire Services
City of Billings and Yellowstone County [Montana] Commissioners

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BILLINGS URBAN FIRE SERVICE AREA
YELLOWSTONE COUNTY, MONTANA

~~Denis Pitman~~Mark Morse, ~~Board of County Commission Chair~~Member

CITY OF BILLINGS

_____
Mayor

_____
Donald W. Jones, Member

_____
John Ostlund, Member

ATTEST:

_____
City Clerk

(SEAL)
ATTEST:

_____
Jeff Martin, Clerk & Recorder
Yellowstone County, Montana

Billings Fire Department
and Yellowstone County
Fire Service Areas - December 2024

City Limits and Fire Service Areas maintained by Yellowstone County.

Map Scale = 1:26,000

SHEPHERD VFD

MA SHEPHERD - BILLINGS

FUEGO VFD

MA FUEGO - BILLINGS

MOLT VFD

MA MOLT - BILLINGS

MA LOCKWOOD - BILLINGS

LOCKWOOD VFD

MA LAUREL - BILLINGS

LAUREL FD

MA MEADOW - BILLINGS MEADOW

BLUE CREEK FSA

BLUE CREEK GRASS

CROW WEST

MA BLUE - BILLINGS - LAUREL

BLUE CREEK VFD LAUREL A

Yellowstone River

Lake Elmo

Scale in Miles

0 0.5 1 2 3 4

Billings FIRE DEPARTMENT

Fire Station	Street	Creek or Slough	Billings Fire	Lockwood VFD	MA Shepherd - Billings
AMR Post Location	Ramp	Drain	Blue Creek FSA	MA Blue - Billings - Laurel	Meadow
FD Approved Dry Hydrant	Conoco Roads	Pipe	Blue Creek Grass	MA Fuego - Billings	Molt VFD
Interstate Highway	Railroad	Yellowstone River	Blue Creek VFD Laurel AMB	MA Laurel - Billings	Phillips 66
US & State Highway	Rims	City /County Boundary	Crow West	MA Lockwood - Billings	Shepherd VFD
Arterial	Canal or Ditch	BUFSA	Fuego VFD	MA Meadow - Billings	Refinery
Collector	Concrete Box Culvert	No Serve	Laurel FD	MA Molt - Billings	

Map Document: \\pwu-er12k07\GIS_Files\Mapping_Projects\Projects\Fire\2016\RFI_0094_BUFSA_Boundary_Map\BUFSA_Boundary_Map_Pro\BUFSA_Boundary_Map_Pro.aprx
Date: 12/3/2024

City Council Regular

Date:	12/16/2024
Title:	Amendment No. 3 to Automobile Parking Concession Agreement
Presented by:	Jeff Roach
Department:	Airport
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends the City Council approve Amendment No. 3 to the Automobile Parking Concession Agreement with SP Plus, adding 127 new parking stalls for revenue collection, setting the parking rates to accommodate the fifth lot, requiring SP Plus to deploy the new digital scan and pay platform and software upgrades, and adding one year to the Agreement term.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

SP Plus, formerly known as Standard Parking, has been the public parking lot concessionaire at the Airport for a number of years, with the most recent Agreement beginning in 2012. In Montana there are only two concessionaires that typically vie for and operate at the commercial service airports, SP Plus and Republic Parking. Over the years and multiple concession agreements with SP Plus, as parking needs increased, the Airport has worked with the company to upgrade both the parking lots and parking lot control equipment, bring additional parking spaces online, and introduce express credit card pay lanes.

With the upgrade project in 2015, the Airport reconstructed the Airport's old employee parking lot into a new 234 stall Long Term Premium Lot parking area. That project included a new entry merge lane, an entry plaza, an express credit card exit area, and a by-pass lane to the existing pay booth for those customers wanting to pay with cash. With this upgrade, SP Plus invested an additional $224,000 for: (a) the additional parking control equipment for the Premium Lot, and (b) upgrading the existing Long and Short Term Lots' revenue control system so that all ticket dispensing, credit card exit, and manual revenue control equipment would be compatible and current once the Premium Parking Lot was opened. In exchange for SP Plus' investment, the City approved a term extension on the concession agreement to expire on December 31, 2021.

In 2019, with the new air service provided by American Airlines and the return of Frontier Airlines, the demand for public parking spaces increased, with long-term parking frequently overflowing into a lot that was not part of the Concession Agreement and therefore not generating any revenue. Staff once again worked with SP Plus on a solution to add parking revenue control equipment to the North Overflow Lot. SP Plus invested $135,000 for the additional parking control equipment to incorporate the 223 stall North Overflow Parking Lot into revenue generation, as well as performed software updates for the parking control equipment in all the Airport's public parking lots. With the addition of the revenue control equipment for the added parking lot, the concessionaire received additional revenue from that lot. Staff also negotiated a new revenue percentage during the three-year term extension. Previously, SP Plus provided the Airport with 80.5% of gross revenues collected. Staff negotiated with SP Plus to increase the percentage rate for the three-year extension to 82.57% of gross revenues, adding approximately $62,000 per year to the Airport's revenues.

As enplanements are continuing to increase, the public parking lots are once again often full, especially during special events, holidays, peak seasonal travel, and frequently overflow beyond the four current paid surface lots. The frequent overflow requires use of the last overflow lot known as the South Overflow lot. This parking lot is not included in the Concession Agreement and results in lost parking revenue for both the concessionaire and the Airport. SP Plus has proposed an easy-to-deploy, digital scan and payment platform solution for the South Overflow lot and would also deploy this solution to the North Overflow lot that has been experiencing frequent equipment problems especially during cold weather. The solution can be deployed in time for the upcoming December holiday travel season. There would be no equipment, software, or construction costs for the City. Staff feel that with the increased revenue potential, this is a favorable deal for the City.

In order to incorporate the South Overflow Lot into the current Automobile Parking Concession Agreement, staff is requesting the City Council approve Amendment Three to the Automobile Parking Concession Agreement with SP Plus. The Amendment will (1) incorporate the new South Overflow Lot into the Agreement, adding 127 parking

spaces to the paid public lot inventory, (2) provide a digital scan and payment platform needed to operate the South Overflow Lot, (3) update all the revenue control software for the North Overflow Lot with the same digital scan and payment platform and (4) add one year to the existing Concession Agreement's term (to expire on December 31, 2025).

ALTERNATIVES

City Council may:

- Approve Amendment Three to the Automobile Parking Concession Agreement; or,
- Not Approve Amendment Three to the Automobile Parking Concession Agreement.

FISCAL EFFECTS

The Airport estimates that at 50% use of the South Overflow lot, this Amendment will add around $206,000 of annual revenue during the one-year extension. Total annual parking revenues are projected to be between $2,900,000 to $3,200,000 depending on passenger traffic. Additionally, the Airport will not be required to provide any capital outlay for new equipment or software updates and will benefit from the percent revenues generated from the additional parking spaces, estimated to be about $170,000 for the one-year extended period.

Attachments

Standard Parking_Amendment Three

AMENDMENT THREE

AUTOMOBILE PARKING CONCESSION AGREEMENT

THIS AMENDMENT THREE is made and entered into by and between the City of Billings, Montana (City) and SP Plus Corporation f/k/a Standard Parking Corporation (Concessionaire). Together, City and Concessionaire will be referred to as the "Parties."

W I T N E S S E T H

WHEREAS, the Parties entered into a certain Automobile Parking Concession Agreement dated December 19, 2011 for the purpose of providing paid parking at the Billings Logan International Airport, for a term commencing on the 1st day of January 2012 and terminating on the 31st day of December 2016, and

WHEREAS, during 2015 the City relocated an employee parking lot and finished construction of a third paid parking lot, adding over 200 parking stalls to the inventory for the Concessionaire's use reducing the reliance on the use of the free overflow parking area, and

WHEREAS, Concessionaire agreed to supply approximately $224,000 worth of additional parking control equipment to the 2015 additional parking facility and to provide/upgrade the entry device equipment to both existing parking lots, commonly known as Short Term and Long Term parking to reduce the City's construction costs in exchange for extending the term of the Automobile Parking Concession Agreement from December 31, 2016 to December 31, 2021, and

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WHEREAS, Amendment One authorizing the additional and upgraded equipment, extending the term, and adjusting the parking rates was approved by the City Council on April 27, 2015, and

WHEREAS, the City added two airlines providing air service from Billings Logan International Airport, resulting in additional flights and once again required the use of the free overflow parking area for additional parking needs, and

WHEREAS, Concessionaire agreed to supply approximately $135,000 worth of additional parking control equipment to the parking facility to outfit the free north overflow lot with parking control equipment and to upgrade existing parking control software to reduce the City's construction costs in exchange for extending the term of the Automobile Parking Concession Agreement from December 31, 2021 to December 31, 2024, and

WHEREAS, Amendment Two authorizing the additional equipment to outfit the north overflow lot for paid parking, and upgraded equipment , extending the term, and adjusting the fees and charges the Concessionaire pays to the City was approved by the City Council on October 15, 2019, and

WHEREAS, the Airport enplanements continue to increase creating additional public parking needs and requiring the use of the remaining free overflow lot, known as the south overflow lot, for additional parking needs, which are especially critical during special events and holidays, and

WHEREAS, Concessionaire has agreed to (1) equip the south overflow lot with a digital scan and payment platform to enable conversion of the free parking lot to a paid public lot and adding 127 additional paid parking spaces, (2) quickly deploy the revenue control solution in

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time for holiday use, and (3) reduce the City's construction cost and time, in exchange for extending the expiration of the term of the Agreement for one year from December 31, 2024 to December 31, 2025, and

WHEREAS, Concessionaire will simultaneously also deploy the wireless revenue control solution to the north overflow lot to replace and update the failing parking control equipment and software currently in use for that paid parking lot, and

WHEREAS, the Parties agree the fees and charges the Concessionaire pays to the City each year should be modified to include the additional year of the term.

NOW, THEREFORE, in consideration of the mutual promises contained in this Amendment Three, the Parties hereby agree as follows:

A. Extension of Term. ARTICLE II, TERM OF AGREEMENT, shall be amended so that the Agreement shall end at 11:59 p.m. local time, December 31, 2025.

B. Exhibit A. ARTICLE III, PREMISES AND FACILITIES, shall be amended to revise and update Exhibit A, to include the south overflow lot, attached and made a part hereof.

C. Amendment to Fees and Charges. ARTICLE IV, FEES AND CHARGES, Paragraph 1., shall be replaced in its entirety with the following new Paragraph 1.:

"1. For the privilege of operating the Automobile Parking Concession and the use of the Premises and Facilities, the Concessionaire shall pay to the City each year during the term of this Agreement the following net percentages of annual Gross Receipts:

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Percentage of Gross Receipts

Contract Year One (January 1-December 31, 2012):
87.5% of Gross Receipts up to $2,200,000
70.0% of Gross Receipts over $2,200,000

Contract Year Two (January 1 – December 31, 2013):
88.5% of Gross Receipts up to $2,200,000
70.0% of Gross Receipts over $2,200,000

Contract Year Three through Five (January 1, 2014 – December 31, 2016):
70.0% of Gross Receipts

Contract Years Six through Ten (January 1, 2017 – December 31, 2021):
80.5% of Gross Receipts

Contract Years Eleven through Fourteen (January 1, 2022 – December 31, 2025):
82.57% of Gross Receipts

Notwithstanding the "Revenue Sharing" provided by the allocation of revenues pursuant to the above percentage of Gross Receipts formula, Concessionaire guarantees the City the greater of either:

A. The above percentage Gross Receipts formula, or

B. A minimum annual guarantee equal to $1,400,000 for Contract Year One;

A minimum annual guarantee equal to $1,400,000 for Contract Year Two;

A minimum annual guarantee equal to $2,015,000 for Contract Year Three;

A minimum annual guarantee equal to $2,342,500 for Contract Years Four and Five;

A minimum annual guarantee equal to $2,100,000 for Contract Years Six through Ten;

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A minimum annual guarantee equal to $2,100,000 for Contract Years Eleven through Fourteen.

The minimum annual guarantee (MAG) is only applicable in the Contract Years in which the annual enplaned passenger numbers exceed 360,000. The annual enplaned passenger number will be calculated by the City using the information provided by the air carriers for all enplaned passengers during each Contract Year."

D. Amendment to Equipment. ARTICLE IX, PARKING CONTROL EQUIPMENT, Paragraph 3., shall be replaced in its entirety with the following new Paragraph 3.:

"3. Concessionaire agrees to replace/update the existing parking control equipment with new equipment during the first Contact Year. During the Spring of 2015, Concessionaire agrees to provide the additional equipment to operate the added parking lot, designated as "Express Parking Lot," providing an estimated 200 additional parking stalls to Concessionaire's parking inventory. Additionally, Concessionaire agrees to provide/upgrade the entry device equipment to both existing parking lots, commonly known as Short Term and Long Term parking. During 2019, Concessionaire agrees to provide the additional equipment to operate the added parking lot, designated as "North Overflow Lot," providing an estimated 223 additional parking stalls to Concessionaire's parking inventory and to update the existing parking control software. The inventory of equipment specifications and software updates added during the Term of the Agreement are described in Exhibit C, Exhibit C-1, and Exhibit C-2, attached and made a part hereof. All parking control equipment in place at the end of the term of this Agreement or any extension thereof, shall remain in place and become the property of the City. The cost of the original replacement parking control equipment at the beginning of the Agreement term

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as set forth in said Exhibit C is estimated to be $130,748. The cost of the new parking control equipment for the third parking lot installed during 2015 is estimated to be $224,000. The cost of the new parking control equipment for the North Overflow Lot and software update installed during 2019 is estimated to be $135,000. Said costs of the 2015 and 2019 equipment shall be amortized on a straight line basis over the remaining term of the Agreement. If this Agreement should be terminated for any reason prior to expiration of the term, then the unamortized cost of such equipment as of the date of such early termination shall be paid by the City to the Concessionaire. Payment shall be due within thirty (30) business days of the City's receipt of Concessionaire's statement of such cost, which statement shall be supported by commercially reasonable documentation. Upon receipt of such payment, title to the equipment shall be transferred to the City. Concessionaire will not charge the City for the addition and implementation of the digital scan and payment platform for the North and South Overflow lots. Concessionaire will retain the $1.99 transaction fee for use of the digital scan and payment platform; this transaction fee shall be excluded from reported Gross Receipts."

E. Amendment to Parking Rates. ARTICLE X, SCHEDULE OF PARKING RATES, Paragraph 1., shall be replaced in its entirety with the following new Paragraph 1.:

"1. The Concessionaire shall place in effect the following schedule of parking rates upon commencement of this Agreement.

Short Term Parking Lot	Years 1-3	Years 4-13	Year 14
0-1/2 Hour	$ 1.75	$ 2.00	Free
Each Additional 1/2 Hour	$ 1.25	$ 1.50	$2.00
Maximum Each 24 Hours	$14.00	$15.00	$15.00

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Long Term Premium Parking Lot	Years 1-3	Years 4-14
0-1/2 Hour		$ 2.00
Each Additional 1/2 Hour		$ 1.50
Maximum Each 24 Hours		$11.00

Long Term Parking Lot	Years 1-3	Years 4-14
0-1 Hour	$ 2.25	$ 2.50
Each Additional 1/2 Hour	$ 1.25	$ 1.50
Maximum Each 24 Hours	$ 8.50	$ 9.00

North Overflow Lot	Years 11-14
0-1 Hour	$ 2.50
Each Additional 1/2 Hour	$ 1.50
Maximum Each 24 Hours	$ 9.00

South Overflow Lot	Year 14
0-1 Hour	$ 2.50
Each Additional 1/2 Hour	$ 1.50
Maximum Each 24 Hours	$ 9.00

Parking patrons who exit any lot within the first ten (10) minutes after entering the lot shall be allowed to exit without a charge.

FURTHER, other than as expressly amended above, all other terms and conditions of the Concession Agreement by and between the Parties are hereby ratified, confirmed, and remain in full force and effect.

IN WITNESS WHEREOF, approved and dated _____.

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ATTEST:

BY _____
CITY CLERK

CITY OF BILLINGS

BY _____
MAYOR

APPROVED AS TO FORM

BY _____
CITY ATTORNEY

SP PLUS CORPORATION

BY _____
JASON FINCH, SR. VICE PRESIDENT

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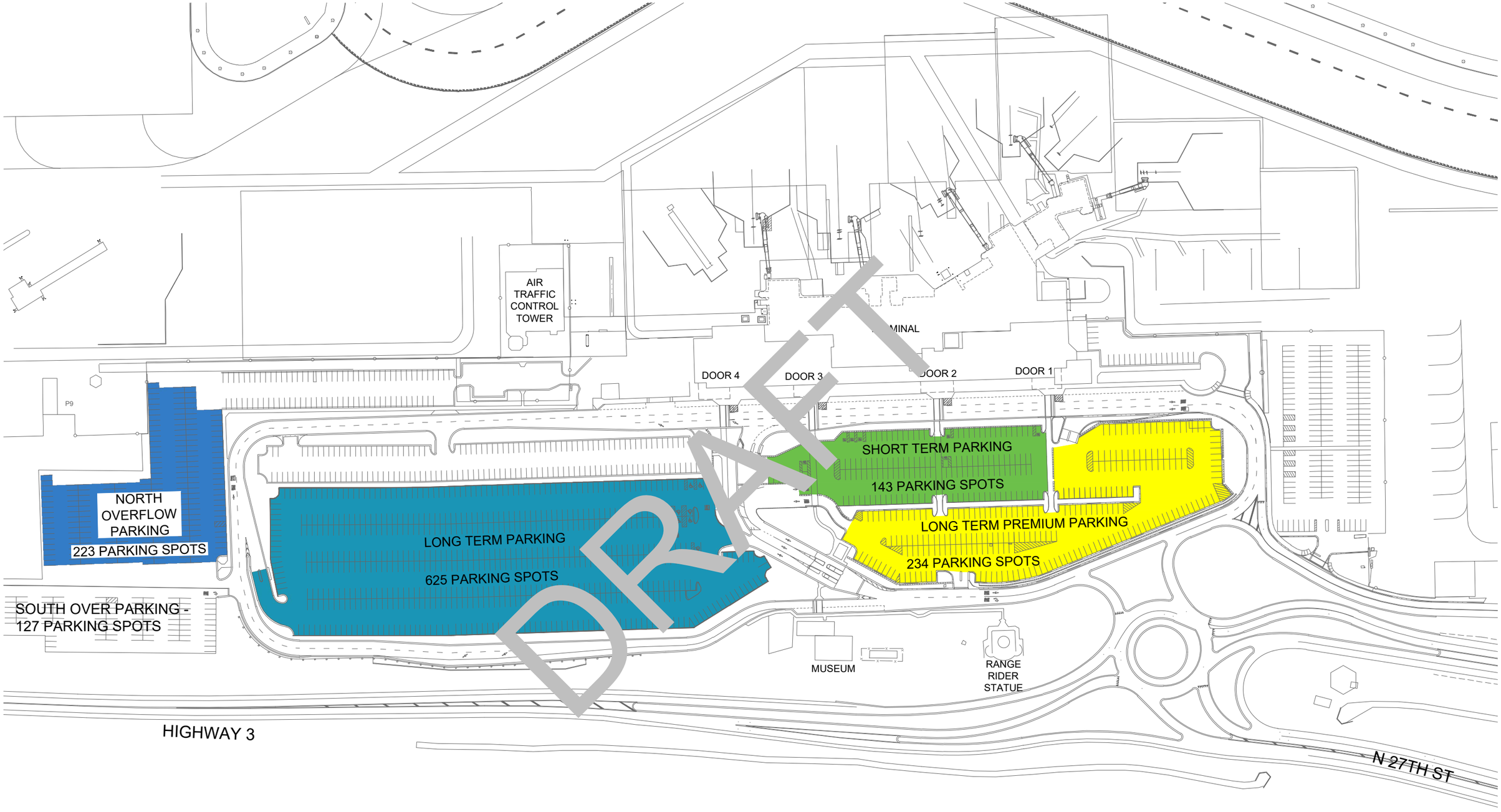
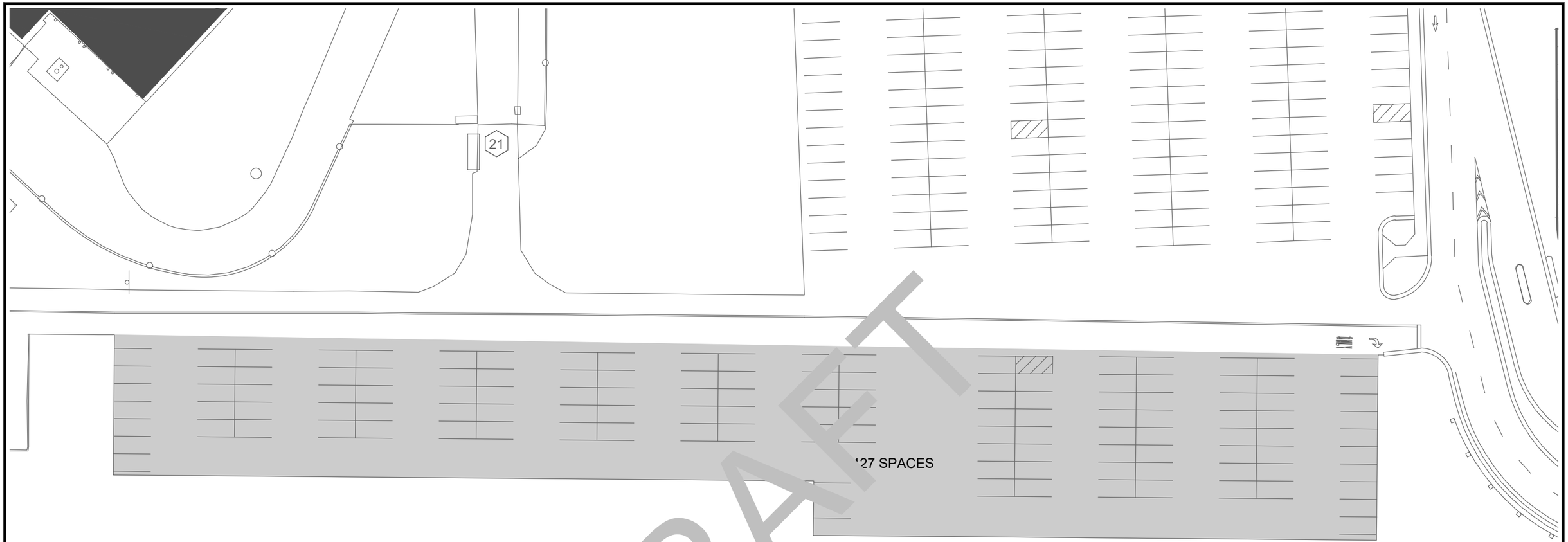


EXHIBIT A

REVISED DECEMBER 2024



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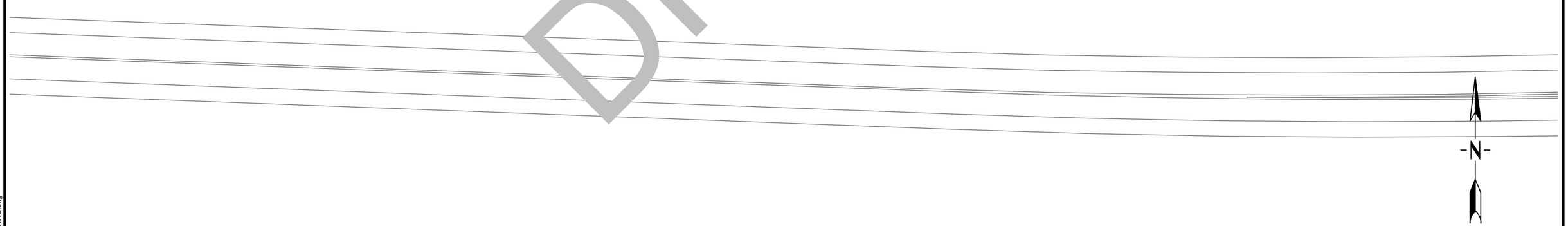

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SCALE IN FEET

EXHIBIT A

Morrison Maierle
engineers ▪ surveyors ▪ planners ▪ scientists
315 N. 25th Street, Suite 102
Billings, MT 59101
406.656.6000
www.m-m.net

COPYRIGHT © MORRISON-MAIERLE, 2024

Plotted by kent kuehn on Nov/18/2024

DRAWN BY:_____
DSGN. BY:_____
APPR. BY:_____
DATE:_____

BILLINGS LOGAN INTERNATIONAL AIRPORT

BILLINGS MONTANA

SOUTH OVERFLOW PARKING LOT

PROJECT NO.

FIGURE NUMBER

V:\24470000-MASTER\LEASE\SOUTH OVERFLOW PARKING.dwg

City Council Regular

Date:	12/16/2024
Title:	Amendment No. 3 to the Purchase and Sale Agreement on City Hall
Presented by:	Kevin Iffland, Assistant City Administrator
Department:	City Hall Administration
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends that the City Council approve the Third Amendment to the Purchase and Sale Agreement (PSA) between the City of Billings and Honaker Realty, LLC & JWT Capital, LLC. The amendment extends certain contingency deadlines and the wavier of the contingency for execution of suitable Franchise Agreements with the hotel company involved in Phase 1 of the project located on Parcel A. Approval will facilitate the ongoing transaction and ensure compliance with agreed timelines.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Initial Agreement: On March 18, 2024, the City of Billings entered into a PSA with Honaker Realty, LLC & JWT Capital, LLC for the sale of City Hall, Park 3, and adjacent parking lots located on North 27th Avenue. The transaction valued at $2.8 million was initiated to further economic growth within the Central Business District and includes terms for phased development of the properties with provisions for due diligence, contingency periods, and an overall goal to support revitalization efforts in downtown Billings.

First Amendment:The initial PSA contained contingency clauses which required extensions. Signed September 25, 2024, the first amendment to the PSA extended the contingency period for certain items until November 15, 2024. It allowed flexibility for the City to vacate the property by April 1, 2025, accommodating structural improvements and modifications to property use agreements.

Second Amendment: This Second Amendment, would further extend certain contingency deadlines to December 6, 2024, without additional consideration, focusing on the approval of the DBP for removal or use of the portable restroom, franchise agreements for hotel operations, providing for an agreement for management of the parking on Parcel A & B, and sky bridge encroachments. Additionally, it finalizes the loading area requirements for 2nd Avenue North, which were completed as of October 30, 2024.

Third Amendment:
Waives specific contingencies as of November 25, 2024, including execution of franchise agreements for Phase 1 hotel development.
Extends the remaining contingency deadlines to January 31, 2025, or beyond by mutual agreement, including:
Approval for the removal or use of a portable restroom on Parcel B.
Agreement on parking management for Parcels A and B.
Resolution of sky bridge encroachments.
Finalization of financing requirements for property acquisition and development.
Adjusted the closing date to May 15, 2025, with the City vacating the property by that date, ensuring no further extension to meet buyer's funding requirements.

STAKEHOLDERS

The key stakeholders involved in this project include:
City of Billings: Manages the transaction on behalf of the City, ensuring that the sale aligns with city goals and regulations.
Honaker Realty, LLC & JWT Capital, LLC: The purchasing entities responsible for the redevelopment of City Hall and adjacent properties. Their development plan aims to contribute to the economic and aesthetic revitalization of the downtown area.
Downtown Business Partners (DBP): Role in the portable restroom agreement
Local Businesses and Community Members: Potential beneficiaries of increased economic activity and aesthetic improvements in the Central Business District.

ALTERNATIVES

City Council may:
Approve the Third Amendment to the PSA, allowing the transaction to proceed with revised timelines and terms.
Not approve the amendment, which may affect the City's ability to meet obligations in the existing contract and delay the project schedule.

FISCAL EFFECTS

The fiscal impact remains aligned with the initial agreement, with no additional costs associated with the contingency extensions. The amendment does not alter the purchase price or financial terms of the PSA.

Attachments

PSA Agreement
First Amendment to PSA
2nd Amendment
3rd Amendment to PSA

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CONTRACT ROUTING FORM

(Contract must be signed by the non-City party before or within routing process)

PARTY TO THE CONTRACT: Honaker Realty, LLC & JWT Capital, LLC

PURPOSE OF CONTRACT: Sale of City Hall, Park 3, and Parking Lots on 27th Ave N

PROCUREMENT COMPETED BY:

- Written quotes
- Competitive bid
- x Request for proposals
- Cooperative contract _____ (Contract #)
- Sole source justification
- Other (please describe or N/A):

_____

Requestor:

Name: Jessica Fust

Dept: Facilities

Phone #: 406-657-8271

- x Competition documentation attached (i.e. signed quote form, legal ad, sole source form, cooperative contract, etc.)
- Insurance certificate(s) attached
- x Council memo attached 3/11/24 (Date of award)
- x Signed by vendor (also check if signing in DocuSign)

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Purchase and Sale Agreement

Seller: The City of Billings
Buyer: Honaker Realty, LLC & JWT Capital, LLC

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made effective as of the latest date set out below in the signature block ("Effective Date"), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns ("Buyer"), and the **City of Billings** ("Seller").

FOR VALUABLE CONSIDERATION, IT IS AGREED:

1. Description of Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on the terms and conditions stated in this Agreement, the following property (collectively, the "Property"):

(a) **Real Property**. That real estate in Yellowstone County, Montana (the "Property"):

Parcel A: (the "Parking Lots").

Lots 5-6 & 8, 9, & 10, Block 92, of the Original Town, Now City of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in office of the Clerk and Recorder of said County.

Together with all: (a) appurtenances, improvements and fixtures (except as may be excluded below); and (b) all mineral rights held by Seller, if any, which were not previously severed from the real property. Seller shall make no warranty or representation to Buyer regarding any, wind or solar rights appurtenant or related to the Property, but shall transfer and convey (without warranty or representation) any, solar and wind rights that Seller may have with respect to the Property, if any.

Parcel B: (which contains two buildings the "Old City Hall Building" on the northern portion of Parcel B and the "Garage Building" consisting of the parking garage and office building on the southern portion of Parcel B).

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 58 of the Original Town, Now City of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in office of the Clerk and Recorder of said County.

Together with all: (a) appurtenances, improvements and fixtures (except as may be excluded below); and (b) all mineral rights held by Seller, if any, which were not previously severed from the real property. Seller shall make no warranty or representation to Buyer regarding any, wind or solar rights appurtenant or related to the Property, but shall transfer and convey (without warranty or representation) any, solar and wind rights that Seller may have with respect to the Property, if any.

(b) **Personal Property**. The following personal property (the "Personal Property"), which is to be left upon the Real Property as part of the property purchased: (a) all

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fixtures; and (b) any Personal Property that the Parties agree shall be left on the Property pursuant to a subsequent agreement in writing.

Seller and Buyer recognize and agree that the legal descriptions stated herein are tentative and will be modified by the property description information contained within the preliminary title commitment provided by Seller as detailed below, but only as approved by Buyer in writing; provided, further, that Buyer must be satisfied as to the sufficiency of the legal description and the condition of title conveyed as a contingency up to, and for, each Closing.

2. **Purchase Price**. The purchase price for the Property ("Purchase Price") is as follows:

(a) The Purchase Price for the Property is Two Million Eight Hundred Thousand Dollars ($2,800,000.00). Payment of the Purchase Price shall be made as follows:

(1) $35,000.00 earnest money (Earnest Money"), payable upon complete execution of this Agreement, which shall be held by the Closing Agent defined below in accordance with terms of this Agreement; and

(2) $2,765,000.00 on the Closing Date in cash or certified funds.

(3) Buyer may extend the Closing Date by up to one hundred twenty days (120) days by giving Seller written notice that Buyer is extending the closing date and by paying the additional Earnest Money Deposits to the Closing Agent, as provided in Section 11(f) hereafter. The Extension Payments of additional Earnest Money shall be applied to reduce the Purchase Price. In the event that the sale does not close through no fault of Seller, then Seller shall retain the $100,000.00 deposit and shall retain all rights and remedies under this Agreement, as provided in Section 11(f).

3. **Closing**.

(a) Subject to the satisfaction of all contingencies herein, the closing ("Closing") shall be held subject to the following schedule at the office of First Montana Title ("Closing Agent"), unless otherwise mutually agreed by the parties. Seller shall pay for the cost of a standard ATLA Owner's Policy in the amount of the Purchase Price. Buyer shall pay and be solely responsible for any additional premiums or other costs in addition to the premium for standard coverage if Buyer elects to obtain ALTA extended coverage or any title endorsements to the title insurance policy. All other closing costs and fees, which do not include attorney fees and costs of the parties, shall be shared equally by Buyer and Seller. Provided that Buyer does not terminate this Agreement by reason of its due diligence during the Contingency Period or the failure of a contingency herein, the Closing of shall be held within thirty (30) days of the expiration of the Contingency Period, unless otherwise mutually agreed by the parties in accordance with the terms of this Agreement.

(b) It is Seller's intention to close the sale of the Property at one Closing through which Seller would transfer and convey Parcels "A" and "B" to Buyer. However, Buyer

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may, at Buyer's option, bifurcate the Closings of Parcels "A" and "B" and close on Parcel "A" earlier than closing on Parcel "B", on the following terms: (i) Buyer waives all contingencies to closing set forth in this Agreement for both Parcel "A" and *Parcel* "B"; and (ii) pays the Purchase Price for Parcel "A". The closings on both Parcels "A" and "B" must occur no later than the first anniversary of the Effective Date of this Agreement. For the purposes of this Agreement, the Purchase Price for Parcel "A" shall be Seven Hundred Thousand Dollars ($700,000.00) and the Purchase Price for Parcel "B" shall be Two Million One Hundred Thousand Dollars ($2,100,000.00).

4. **Conveyance Documents**. On the Closing Date for each sale, the Seller shall execute and deliver to the Closing Agent:

(a) A warranty deed conveying merchantable fee simple title to the Real Property to the Buyer free and clear of all liens and encumbrances, and subject only to: (i) reservations and exceptions in patents from the United States or the State of Montana; (ii) easements and rights-of-way of record; (iii) building, use and zoning restrictions, ordinances, and waivers of record, and sanitary and environmental restrictions; (iv) taxes and assessments prorated for the year of Closing and subsequent years which are not yet delinquent; (v) all mineral rights and prior conveyances, leases, transfers of any interest in minerals, including oil and gas and other hydrocarbons; (vi) all declarations, restrictions, covenants, and conditions of record; (vii) Permitted Exceptions as defined below;

(b) A bill of sale conveying valid title to the Personal Property (if any) to Buyer free and clear of all liens and encumbrances. All Personal Property shall be conveyed **AS IS** and **WHERE IS**. Seller shall make **NO WARRANTY** and **NO REPRESENTATION** as to the Personal Property;

(c) A Montana Realty Transfer Certificate(s) for the Property; and

(d) Any and all other documents reasonably necessary to convey the Property to Buyer (all of the foregoing documents are collectively referred to as the "Conveyance Documents").

5. **Right of Entry**. Seller grants to Buyer (and Buyer's employees, agents and representatives) the right to enter the Property with a minimum 24-hour notice to the City Facilities Manager, during regular business hours, in order to inspect and investigate the same. Buyer may, at Buyer's sole expense, conduct reasonable soils, engineering and other tests and studies on the Property. Buyer shall not cause or suffer any lien or other encumbrance to be recorded against the Property; and shall promptly cause any such lien or other encumbrance caused or suffered by Buyer (including construction liens arising out of Buyer's activities) to be immediately discharged or bonded over to Seller's reasonable satisfaction. Buyer hereby indemnifies, protects, agrees to defend with counsel chosen by Seller (and reasonably acceptable to Buyer), and hold Seller, and its officers, officials, insurance companies, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs and expenses, demands, causes of action, claims or judgments arising, claimed or incurred against or by Seller, or its officers, officials, insurance companies, employees or agents, from all investigations, inspections, tests, and other activities undertaken on or with regard to the Property by Buyer, or its officers, directors, employees, agents, licensees and invitees, prior to the Closing Date. The provisions of this Section shall survive any termination of this Agreement or the Closing of the transaction contemplated hereby and shall not

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be reduced or impaired by receipt by Seller or any sums and liquidated damages hereunder. Provided, however, that Buyer shall not indemnify Seller against any claim arising from Seller's negligence or for any claims, liabilities, penalties, damages, costs, expenses, demands, and causes of action, arising from any pre-existing conditions on the Property.

6. **Prorations**. Taxes and assessments on the Real Property for the current year shall be prorated between the parties as of the Closing Date. Buyer shall pay all taxes and assessments on the Real Property thereafter. Encumbrances to be discharged by Seller may, at Seller's option, be paid out of the Purchase Price at the Closing Date.

7. **Possession**. Buyer shall be entitled to possession of the Property on the Closing Date for each Parcel unless otherwise specified herein.

8. **Assignment**. Buyer may assign, in whole or in part, this Agreement in which Buyer, or its members, is a member or shareholder or partner, it being recognized that Buyer intends to form one or more entities to facilitate the development of the Property. In addition, in the event that Buyer's or its assignee's project funding or development requirements, or their IRC Section 1031 tax free exchange requirements, or their project development related credit or payment terms, require the assignment of their rights herein to another person or entity, in whole or in part, then Buyer and/or its assignee, with notice of such assignment to Seller, may assign their rights herein.

9. **Environmental**. Seller discloses to Buyer that the Property may contain lead paint and/or asbestos and/or other environmental contaminants. Additionally, Seller discloses that the Environmental Protection Agency declared a portion of downtown Billings to be a "Superfund Site" in connection with a chemical plume involving solvents from old dry-cleaning businesses. Seller has not determined whether or not the Property, or any portion of the Property, is located within the Superfund Site. Seller recommends additional environmental investigation and testing. Seller is unaware of the presence of any toxic or "hazardous material" (as defined under federal and Montana law) on or upon the Real Property in violation of or subject to remediation pursuant to any environmental law or regulation and Seller has not received any notice or communication of any alleged violation of any environmental law or regulation pertaining to the Real Property, except for the November 16, 2023 Notice from the United States Environmental Protection Agency regarding the presence of site contaminants of potential concern on Parcel B, the Old City Hall Building. During the Contingency Period, Buyer may inspect all of the Property for environmental matters at its cost. Seller will provide all environmental related information in its file to Buyer for inspection and Buyer may contact all persons or entities of its choosing, including employees of Seller, to determine and verify the extent of any environmental matters on the Property before the expiration of the applicable Contingency Period for each Parcel. To Seller's knowledge, no portion of the Real Property has ever been used for a dump or landfill. Seller is unaware of any underground storage tanks located on the Real Property, and to Seller's knowledge, no underground storage tanks have been removed from the Real Property except in compliance with applicable Montana and federal law. Seller shall provide to Buyer any environmental investigation reports that Seller may reasonably be able to locate in Seller's records. Buyer acknowledges that the Old City Hall Building was constructed on or around 1940. The age of the Old City Hall Building substantially exceeds the Seller's document retention policy. The Old City Hall Building predates the existence of computers. Over the decades, document retention policies and computer software programs have changed. As a result, the Seller may not be able to locate all environmental records related to the Old City Hall Building from 1940 to the present.

10. **Environmental Review**. Buyer shall have the right to enter onto the Real Property at reasonable times and in a reasonable manner, with minimum 24-hour notice to Seller, for the

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purpose of making such environmental tests and surveys as Buyer deems necessary in connection with this Agreement at its sole cost, risk, and expense. Without warranty by Seller, Seller agrees to provide Buyer with any information which it has relating to the potential presence of or disposal on the Real Property of toxic, dangerous, or hazardous substances. After making such tests, studies and inspections, Buyer shall restore the Real Property to its condition prior to such tests, studies, and inspections. Buyer shall have until the expiration of the Contingency Period below for each respective Parcel to review the environmental condition of the Property. Should Buyer's environmental review indicate that there are or may be toxic, dangerous, or hazardous substances located on or about the Real Property in any particular Parcel, or Parcels, Buyer may, by notice in writing to Seller on or before the expiration of the Contingency Period below for each respective Parcel, terminate this Agreement, in which event Buyer shall be entitled to the return of the Earnest Money as provided below. Buyer shall, however, furnish a copy of such environmental review to Seller. Buyer's failure to so notify Seller on or before the expiration of the Contingency Period below for each respective Parcel shall be deemed conclusive evidence that Buyer desires to proceed to closing and accepts the Property in its **AS IS** condition with respect to environmental matters. In the event that Buyer gives written notice to Seller that it must terminate the Agreement by reason of an environmental issue during the Contingency Period, then the Agreement, at the election of Buyer, shall be deemed to be terminated in whole without liability, damage, fee, penalty, payment, or cost to Seller by Buyer, with return to Buyer of any Earnest Money paid by Buyer to the Closing Agent for the benefit of Seller hereunder.

11. Buyer's Contingency Period and Title Review.

(a) **Buyer's Contingency Period**. The Buyer's "Contingency Period" shall commence on the Effective Date of this Agreement and shall terminate on the one hundred eightieth (180) day following the Effective Date. Notwithstanding the foregoing, so long as Buyer has approved or waived, or otherwise acknowledged satisfaction of all matters referred to in Sections 11(b) (title contingencies) during the timeframe described in Section 11(b), Buyer may extend the Contingency Period in thirty (30)-day increments on not more than four (4) occasions, upon Buyer's complying with the conditions of Section 11(f) and by Buyer giving written notice to Seller at least two (2) business days prior to the expiration of the Contingency Period, as then in effect, and by tendering the Extension Payment(s) referred to in Section 11(f) below.

(b) **Title Review**. Buyer's obligation to proceed with the purchase of the Property is subject to Buyer's review and approval, in Buyer's sole and absolute discretion, the condition of title ("title") to the Real Property. Seller shall provide Buyer with a standard ALTA Owner's Title Insurance Policy, as Seller's cost, with insurance in the amount of the Purchase Price.

(1) At Buyer's election, Buyer may obtain an ALTA survey of the Real Property in form and substance acceptable to Buyer. Any ALTA survey shall be prepared at Buyer's cost. Similarly, Buyer may order an ALTA Owner's Extended Coverage Policy of Title Insurance. Seller will pay for the cost of a Standard Owner's Title Insurance Policy. Any increase in cost for an Extended Coverage Policy shall be the responsibility of Buyer.

(2) Buyer shall have thirty (30) days from the delivery of the Preliminary Title Commitment to approve or disapprove, in Buyer's sole and absolute discretion, the condition of Title to the Property.

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(3) In the event Buyer disapproves of Title to the Real Property within the period specified above, Buyer shall identify, in a written notice to Seller, which exceptions and conditions Buyer deems unacceptable (whether revealed by Title Company's Preliminary report, any ALTA Survey obtained by Buyer, or otherwise), and Seller shall have ten (10) business days following Seller's receipt of Buyer's notice of objection to commit, in a separate written notice to Buyer, to deliver Title to the Real Property on or before the Latest Closing Date free and clear of the exceptions and other conditions objected to by Buyer. If Buyer has objected to Title as herein above provided, then unless Seller commits to remove all exceptions and other conditions objected to by Buyer with the time prescribed above, this Agreement shall be automatically terminated unless Buyer waives the exception and other objections to Title that Seller declined to remove on or before the tenth (10^{th}) business day following Buyer's receipt of Seller's written notice that Seller will not commit to removal of all exceptions objected to by Buyer. In the event that Buyer has not given Seller written notice of objection to Title within the time required above Title shall be deemed to be approved in its entirety. Buyer acknowledges that there are existing encroachments on Parcel A. Specifically, the Grand Building (to the south of Parcel A), encroaches upon Parcel A by approximately 6" and for two (2) sky bridges that are attached to the buildings on Parcel B. The Grand Building encroachment shall be a contingency for Closing until the Seller completes a lot line adjustment of the south property line, after which the Grand Building encroachment shall not be a contingency for Closing. The two sky bridges shall be a contingency for Closing until: (a) the Seller obtains encroachment agreements, encroachment permits, or similar approvals for the sky bridges; and (b) can confirm that Seller can convey to Buyer at closing, clear title to the sky bridges (except for the referenced encroachment agreements, encroachment permits, or similar approvals acceptable to Buyer) after which the sky bridges shall not be a contingency for Closing.

(4) All title exceptions and other conditions approved by Buyer pursuant to this Section together with all other exceptions and encumbrances created by Buyer, shall be referred to herein as the "Permitted Exceptions."

(c) **Buyer's Inspection and Due Diligence**. Buyer's obligation to proceed with the Purchase of the Property is further subject to fulfillment or waiver by Buyer, within the Contingency Period, of each of the contingencies set forth in Section 11 and as otherwise provided in this Agreement. It is understood and agreed that all Contingencies require Buyer's approval, which may be given or withheld in Buyer's sole and absolute judgment; consequently, Buyer's failure to waive or acknowledge satisfaction of any of the Contingencies, even if Buyer's failure to approve is unreasonable and even if Buyer fails to pursue all information relevant to an informed decision, shall not be a default by Buyer under this Agreement.

(1) Buyer must approve, in Buyer's sole and absolute discretion, all due diligence materials delivered by Seller for Buyer's review. In addition, Buyer may obtain (at Buyer's cost and expense) and approve (in Buyer's

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discretion) an engineering survey of the Property, Buyer's own Phase I and/or Phase II environmental site assessments, soils tests, structural and mechanical inspections and tests, and any other due diligence investigation, and any other investigation or test that Buyer deems prudent, in Buyer's sole and exclusive judgment.

(2) Buyer must be satisfied (in Buyer's sole discretion) with the results of Buyer's investigation into the physical condition of the Real Property.

(3) Without limiting the effect of any of the above, Buyer, in its absolute and sole discretion, and in the exercise of its due diligence during the Contingency Period, must be satisfied with any and all business, economic, structural, environmental, governmental, tax, transactional and financing matters for Buyer's intended development and project involving the Property, including being granted reasonable access to the improvements to the Parcel A and B Property, either personally or by its authorized agents, to inspect and investigate all aspects of the improvements thereon, including, without limitation, the roof, heating, cooling, structural, access, plumbing and electrical systems, and to examine any other matters relating to the status or the condition of the improvements to the Property.

(4) Execution of an acceptable Development Agreement between DBP and Buyer to develop Parcel A.

(5) Approval for Tax Increment Funds from DBP and Seller to Buyer for the reimbursement of up to $5,000,000.00 for qualified public expenditures for Phase One of the project referenced above.

(6) Execution of Franchise Agreements with the hotel company involved in Phase One of the project located on Parcel A.

(7) Seller agrees to vacate the Property identified as Parcel B, on or before February 1, 2025 or within thirty (30) days of Closing, whichever is later, unless otherwise mutually agreed by both parties.

(8) Seller shall provide suitable loading and unloading areas from 2nd Avenue North for hotel guests.

(9) An agreement with the City Parking Division to provide management of the parking on Parcels A and B until the start of construction of Phase One for an agreed-to fee.

(10) Buyer must obtain the approval of the DBP to remove the portable public rest room located on Parcel B and relocate the same to other property, not including any of the Property purchased herein, by the start of substantial construction of Buyer's Phase One improvements on Parcel A.

(11) The Seller shall determine if the Grand Building to the south encroaches on Parcel A and, if so, the Seller shall remedy that encroachment by re-platting Parcel A or by doing a lot line adjustment so that at the time of

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Closing of the sale of Parcel A, there shall be no encroachment by the Grand Building. Prior to the Closing, Seller shall confirm its ownership of the sky bridges, and obtain Buyer accepted encroachment agreements, permits, or other appropriate approvals for the sky bridges. At Closing, Seller shall convey fee title through the warranty deed to the sky bridges to Buyer free of liens and encumbrances except for the mutually agreed encroachment agreements, encroachment permits, or other approvals.

(d) **Time/Failure of Contingencies**. Buyer shall have until the expiration of the Contingency Period to approve, disapprove or waive the Contingencies, in Buyer's sole and absolute discretion. In the event the Contingencies are disapproved prior to the expiration of the Contingency Period (disapproval to be evidenced by a writing from Buyer to Seller received within the Contingency Period), or if the Contingency Period lapses without the Contingencies having been approved, fulfilled or waived by Buyer (approval to be evidenced by a writing from Buyer to Seller received within the Contingency Period), this Agreement shall be automatically terminated, whereupon all rights and obligations of Seller and Buyer to the other shall cease and terminate, subject to Buyer's limited indemnification obligations set forth in Section 9; provided, however, that in the event of unsatisfied Contingencies of Buyer, both Buyer and Seller shall meet and negotiate in good faith to attempt resolve such unsatisfied Contingencies, if possible, before the expiration of the Contingency Period. Effective upon the date of any such termination as provided above, the Closing Agent shall return to Buyer the Earnest Money Deposit (with accrued interest) in Escrow without liability, damage, fee, penalty, payment, or cost to Seller by Buyer.

(e) **Approval**. Upon approval, fulfillment or waiver of the Contingencies, Buyer shall thereafter proceed with this transaction on the terms and conditions set forth herein.

(f) **Extensions**. On or before two (2) business days prior to the end of the Contingency Period, as then in effect, Buyer may elect to extend the Contingency Period for up to four (4) periods of thirty (30) days each, exercisable upon written notice to Seller. Each such extension notice shall be accompanied by the payment of twenty-five thousand dollars ($25,000) to the Closing Agent, (each an "Extension Payment") for each thirty-day period of extension. Notwithstanding the foregoing, Buyer shall not be permitted to extend the Contingency Period unless Title has been approved in accordance with Section 11 with respect to all of the Property, both Parcels "A" and "B". Except as provided below, all Extension Payments shall be non-refundable, notwithstanding later termination of this Agreement or failure of the transaction contemplated hereby to close, for any reason; provided, however, that in the event that this transaction does not close because of a default by Seller, then Buyer shall be entitled to a full and immediate refund of all Extension Payments (without interest), and may, in addition, pursue any and all other legal or equitable remedies available to Buyer. In the event that this transaction closes, then all Extension Payments shall be applied to the Purchase Price.

12. Independent Investigation. Buyer and Seller agree that the representations and warranties, and any limitations thereof, contained in this paragraph shall survive closing. Buyer enters into this Agreement in full reliance upon Buyer's independent investigation and judgment, and neither Seller nor Seller's agents or attorneys make any warranties or representations to Buyer, whether express or implied, about the Property except as specifically stated herein. There are no

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verbal or other agreements which modify or affect this Agreement. By closing this transaction, Buyer acknowledges and agrees that: (a) Buyer has fully investigated the Property, including, but not limited to, zoning, environmental, structural, and construction conditions, and is satisfied that the Property and the condition of the Property are suitable for Buyer's intended use; (b) Buyer completed Buyer's due diligence investigation to Buyer's satisfaction; (c) Buyer's due diligence investigation has not been hampered or limited by Seller in any manner or respect; (d) Buyer is satisfied with the Property and its condition; (e) Buyer accepts the Property in its "**AS IS, WHERE IS**" condition; (f) Buyer acknowledges and agrees that Seller makes **NO WARRANTY OR REPRESENTATION,** of any kind or nature, except as may be provided under the warranties stated in the warranty deed, including but not limited to that the Property is fit for any particular purpose or that it is habitable; (g) Buyer will close this transaction in full reliance upon Buyer's independent investigation and judgment, and that any prior verbal representation (if any) by Seller (or anyone on behalf of Seller) will not modify or affect this Buy-Sell Agreement; (h) Buyer has not and shall not rely upon any statement or representation from Seller or anyone acting on behalf of Seller as to the condition of the property; and (i) Buyer is not relying and shall not rely upon any statement or representation of Seller except for the express written representation in this Buy-Sell Agreement and in Seller's Warranty Deed. Seller shall cooperate with and facilitate Buyer's investigation of the Property. Seller shall provide Buyer with any written reports relating to environmental and structural conditions of the Old City Hall Building that Seller may reasonably locate. Additionally, Seller shall provide any third-party entities with whom the Seller may have contracted with permission and authorization to communicate and share information with Buyer.

13. Buyer's Development Obligations. This section outlines the Buyer's responsibilities to redevelop and maintain Parcel B. Buyer shall maintain the Old City Hall Building, the Garage Building and the surrounding land, ensuring it remains aesthetically pleasing and free from blight. The Buyer commits to the ongoing care of the exterior of both buildings, landscaping, preventing the accumulation of trash, litter, graffiti, or any unsightly elements on Parcel B and to addressing any issues that may arise. Furthermore, the Buyer must refrain from boarding up windows and is obligated to promptly repair or replace any broken windows or doors to uphold the property's visual appeal. The Buyer is granted maximum flexibility in redeveloping the Parcel B Property, including the Old City Hall Building and the Garage Building, which may include options such as remodeling the existing buildings, partial or complete demolition of the buildings, or converting the buildings into condominiums, among other possibilities. The Seller's primary objective is to ensure the property's consistent maintenance with the explicit purpose of preventing blight and preserving the revitalization efforts of the downtown area. This paragraph is not intended to limit or restrict the Buyer's use or redevelopment of Parcel B. Buyer's obligations under this paragraph shall survive Closing. Buyer's continuing obligations to Seller under this Section shall terminate upon the earliest of the following to occur: (a) Buyer obtains a tenant for the Old City Hall Building on Parcel B; (b) Buyer demolishes some or all of the Old City Hall Building; or (c) Buyer opens a new hotel on Parcel A.

14. Exclusion of Old City Hall Building. It is the intention of the Parties to close the sale of Parcel A and Parcel B at the same time. Parcel B includes the Old City Hall Building on the north side of Parcel B. If, during Buyer's Contingency Period, Buyer's investigation and due diligence determines that there are Significant Environmental or Structural Problems or Material Economic Concerns (as defined herein) with the Old City Hall Building that make the use, development, and occupancy of the Old City Hall Building uneconomical, then Buyer shall make full disclosure of all investigations and reports on the Old City Hall Building to Seller, including but not limited to the projected costs of remediating or curing any environmental or structural or material economic issues with the Old City Hall Building. Thereafter, Buyer and Seller shall attempt to resolve and address the environmental, structural and/or material economic issues raised by Buyer prior to the

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expiration of the Contingency Period, unless such Period is extended by mutual agreement in writing. If Buyer and Seller reach an agreement on addressing any Significant Environmental or Structural Problems or Material Economic Concerns with the Old City Hall Building, then that Contingency shall be eliminated and the sale of both Parcels A & B of the Property, including the Old City Hall Building, shall proceed. If Seller and Buyer cannot reach an agreement on addressing the Significant Environmental or Structural Problems or Material Economic Concerns with the Building, then Buyer may, in Buyer's sole and exclusive discretion: (a) terminate this Agreement after which neither party shall have any duty or obligation to the other party except for return of the Earnest Money to Buyer; or (b) elect to exclude the Old City Hall Building from the Closing and sale, as provided hereinafter in Section 14(c).

(a) **Significant Environmental or Structural Problems or Material Economic Concerns**. For the purposes of this Agreement, the term "Significant Environmental or Structural Problems or Material Economic Concerns" shall mean the identification of unknown environmental or structural problems with the Old City Hall Building, or during the Contingency Period, a material economic concern develops for Buyer with respect to the reasonable development of the Old City Hall Building consistent with its overall development of the Property, and is a problem: (a) of such a scope or magnitude that the use, development, and/or occupancy of the Old City Hall Building would be uneconomical for any projected use of the Old City Hall Building in the development of the Property as a whole, with documentation of such hardship to be presented to the City; or (b) that would cost Buyer in excess of Three Hundred Thousand Dollars ($300,000.00) to remediate and/or cure. An "unknown" Significant Environmental or Structural Problem shall mean any environmental or structural problem that is either unknown as of the date of this Agreement or the serious magnitude of which is unknown as of the date of this Agreement. The following matters shall not be considered "unknown" Significant Environmental or Structural Problems: (a) the presence of asbestos that can be removed, encapsulated, or abated for a reasonable cost not to exceed $100,000.00; (b) the presence of lead paint that can be removed or abated at a reasonable cost not to exceed $100,000.00; (c) the Building being included in an EPA Superfund Site because of a chemical plume involving solvents from old dry-cleaning businesses; or (d) site contaminants of potential concern detected in subslab samples by the EPA in 2023 that can be addressed or abated at a reasonable cost not to exceed $100,000.00. A Material Economic Concern is one affecting the Old City Hall Building that is determined by Buyer in the course of its due diligence to be one that would adversely affect the economic development potential of the Old City Hall Building in an amount of at least Three Hundred Thousand Dollars ($300,000.00).

(b) **Joint Use Agreement**. If there are Significant Environmental or Structural Problems or Material Economic Concerns (as defined herein) with the Building and the Parties cannot agree on how to remediate or cure those problems, the Buyer may elect to exclude the Old City Hall Building from the Sale and the parties shall reasonably cooperate to put into place such joint use agreements as may be referenced below.

(c) **Notice to Seller**. Buyer shall provide written notice to Seller, at least two (2) business days prior to the expiration of Buyer's Contingency Period as provided in Section 11(a), that Buyer has elected to exclude the Old City Hall Building from the Sale. As part of the Notice, Buyer must either waive or accept as satisfied all other contingencies in connection with the sale of Parcel A and all of Parcel B, with the exception of the Old City Hall Building. Upon receiving such notice from Buyer, Seller shall prepare and submit to Buyer a draft Joint Use Agreement to govern the use and operation of (a) the Old City Hall Building to the north and (b) the Garage Building to the South. All costs associated with

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separating the Old City Hall Building from the Garage Building shall be the sole cost and expense of the Buyer. Buyer shall develop a plan to separate the systems within the Old City Hall Building from the remaining portion of Parcel B or for the joint use of some or all of the building systems. All costs and expenses associated with developing a Joint Use Agreement or with separating the Old City Hall Building and/or the building systems from the remainder of Parcel B shall be done at the cost and expense of Buyer, without any financial contribution from Seller. The Parties shall negotiate in good faith to agree upon a final Joint Use Agreement that would be subject to approval of both Buyer and Seller. The approval of the Seller will require formal approval of the Joint Use Agreement by the Billings City Council at a properly noticed public hearing. The Parties acknowledge that the Old City Hall Building and the Garage Building are separate buildings that are located on separate legal parcels, but share certain systems. Accordingly, the Parties must agree upon an equitable cost sharing agreement to address maintenance, replacement, and operating expenses of those systems as well as security and access issues. If Buyer and Seller cannot agree upon an acceptable Joint Use Agreement, then Buyer may elect to terminate this Agreement as its sole remedy, as provided above. If the Building is excluded from the Sale, the purchase price attributable to the southern portion of Parcel B will not be reduced. If Buyer elects to exclude the Old City Hall Building from the Closing because of Significant Environmental or Structural Problems or Material Economic Concerns, then the purchase price for the remaining portion of Parcel B (the Parking Garage) shall be Two Million One Hundred Thousand Dollars ($2,100,000.00).

15. Seller's Representations and Warranties. Seller represents and warrants to Buyer as follows as of the Effective Date (and it shall be a condition to Buyer's obligation to close that such representations and warranties remain true as of the Closing Date):

(a) **Authorization**. Seller has full power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. Seller has taken all action necessary to authorize its execution and performance of this Agreement, and the officer executing this Agreement on behalf of Seller has been duly authorized and directed to do so by Seller. Seller will provide to Buyer and the Closing Agent a certified copy of the resolution of the Seller's City Council and other governmental officers as may be required authorizing this transaction. This Agreement is, and Seller's other instruments when executed and delivered by Seller in accordance with the terms hereof will be, legal, valid, and binding obligations of the Seller and enforceable in accordance with their terms, except as the same may be affected by bankruptcy, insolvency, moratorium, or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(b) **No Liens**. To the knowledge of Seller, there are no unrecorded liens, financing statements, encumbrances or agreements affecting the Real Property that will survive the Closing on any Parcel, and Seller has committed no acts which would result in the creation of such liens, financing statements, encumbrances or agreements affecting the Real Property. No work has been done on, and no materials have been furnished to, the Property for which full payment has not been made and for which a lien could be filed against the Real Property.

(c) **Personal Property**. To the extent that Personal Property is ultimately included in the purchase herein, Seller has good and merchantable title to the Personal Property, free and clear of all pledges, claims, liens, restrictions, security interests,

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charges, and encumbrances. To the extent, if any, that tangible Personal Property is being conveyed hereunder, to the best of Seller's knowledge, but without warranty, all of the tangible Personal Property is in good repair and condition, and is adequate for continuation of the operation of the Property.

(d) **Encroachments**. To Seller's knowledge, there are no encroachments upon the Real Property nor does any improvement on the Real Property, including but not limited to alleys, adjacent buildings, or signage, encroach upon any property owned by others, except for the Grand Building with respect to Parcel A and the two (2) Skybridges attached to the buildings on Parcel B.

(e) **No Violation of Laws**. Seller has not received notice of any violation of any applicable regulation, law or order relating in any material respect to the Real Property, nor does Seller have knowledge of any notice from any governmental authority of any (i) pollution, health, safety, fire, environmental or building code violations with respect to the Real Property; or (ii) the construction of public improvements or the imposition of any special taxes or assessments upon all or any part of the Real Property.

(f) **Pending Claims**. To the knowledge of Seller, there are no claims, actions, proceedings or governmental investigations pending or threatened against or involving the Real Property or against or involving any of the Real Property; nor to the knowledge of Seller is there any reasonable basis for any claim, litigation, proceedings or other governmental investigation pertaining thereto. Provided, however, that the Property is located within an area designated by Environmental Protection Agency as a Superfund Site, generally known as the Billings, MT PCE Superfund Site. The EPA recently completed multiple indoor air and groundwater sampling in the area. The EPA is currently reviewing a focused feasibility study to address the indoor air exposure pathway and anticipates issuing a proposed plan in late spring 2024.

(g) **Existing Leases and Leases Subsequent to Execution Date**. Seller hereby warrants that no commercial or other lease or agreement that affects the Property currently exists on the Property longer than thirty-one (31) days in duration. In addition, Seller hereby agrees that Seller shall not execute or bind the Property after the latest date on the signature block below, without the written consent of Buyer.

Seller shall hold Buyer harmless from any damage, loss, claims, penalty, cost, fee, fine or liability arising out of any falsity, omission or misstatement of the matters set forth in this paragraph.

16. **Buyer's Representations and Warranties**. Buyer hereby represents and warrants to Seller, both as of the date hereof and as of the Closing Date, that:

(a) Buyer is duly organized, validly existing and in good standing under the laws of the State of Montana. Buyer has taken all action necessary to authorize its execution and performance of this Agreement, and the officer executing this Agreement on behalf of Buyer has been duly authorized and directed to do so by Buyer. Buyer has full power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. Buyer will provide to Seller and the Closing Agent a certified copy of the resolution of the Buyer's board of

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directors authorizing this transaction. This Agreement is, and Buyer's other instruments when executed and delivered by Buyer in accordance with the terms hereof will be, legal, valid and binding obligations of the Buyer and enforceable in accordance with their terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(b) There is no legal action, suit, arbitration, governmental investigation or other legal or administrative proceeding, nor any order, decree or judgment in progress, pending or in effect, or, to the knowledge of Buyer, threatened, against or relating to Buyer in connection or relating to the transaction contemplated by this Agreement, and Buyer does not know or have any reasons to be aware of any basis for the same;

(c) The performance by Buyer of Buyer's obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Buyer is a party or by which Buyer is bound and which would materially adversely affect the ability of Buyer to perform its obligations under this Agreement.

Buyer shall hold Seller harmless from any damage, loss, claims, penalty, cost, fee, fine or liability arising out of any falsity, omission or misstatement of the matters set forth in this Paragraph 16.

17. **Conditions to Closing**. Buyer shall have no obligation to close unless, at or prior to closing, together with all Contingencies stated herein, the following conditions are each satisfied or waived in writing by Buyer:

(a) The Closing Agent shall have on the Closing Date for each Parcel contracted with Buyer to issue to Buyer the title insurance policy required in this Agreement in form satisfactory to Buyer and in due course after the closing;

(b) Each of the agreements, covenants, warranties and representations of Seller shall be true and correct in all material respects at the time of closing and Seller shall not be in default of any provision of this Agreement; and

(c) Seller shall have executed and deposited with the Closing Agent all documents called for to be executed and deposited by Seller under this Agreement, including, without limitation, those items set forth in Section 4 hereof;

18. **Remedies on Default**.

(a) If Seller fails to consummate this Agreement in accordance with its terms for any reason within the control of the Seller, Buyer shall have as Buyer's sole remedy the option of either of the following:

(1) Rescinding this Agreement by giving written notice to Seller, in which event Buyer shall be entitled to a return of the Earnest Money, and any Extension Payment made, unless such Earnest Money is not refundable as provided in Sections 2(a)(3); or

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(2) Enforcing specific performance by Seller of Seller's obligations hereunder.

(b) If Buyer fails to consummate this Agreement in accordance with its terms for any reason within the control of Buyer, except for the exercise of its rights associated with the Contingency Period, Seller shall have as Seller's sole remedy against Buyer the option of either of the following:

(1) Retaining the Earnest Money, together with any interest and earnings thereon, as liquidated damages for Buyer's breach of this Agreement, it being understood and agreed by the parties that actual damages for such a breach are uncertain and would be difficult, if not impossible, to determine; or

(2) Enforcing specific performance by Buyer of Buyer's obligations hereunder.

19. **Attorney Fees**. If either party defaults in its performance hereunder and the other party employs an attorney because of such default, the defaulting party agrees to pay, on demand, all costs, charges and expenses, including reasonable attorney and paralegal fees, incurred at any time by the other party because of the default.

20. **Notice**. Any notice to be given hereunder shall be in writing and shall either be served upon a party personally, or served by registered or certified mail, return receipt requested, directed to the party to be served at the address of the party stated below. A party wishing to change his designated address shall do so by notice in writing to the other party. Notice served by mail shall be deemed complete when deposited in the United States mail, postage prepaid. The following Notice Addresses shall apply:

Seller:
City of Billings
City Administrator
City Hall
210 North 27th Street
Billings, MT 59101

With a copy to:
City Attorney
City of Billings
City Hall
210 North 27th Street
Billings, MT 59101

With a copy to:
Doug James and Bryce Burke
Moulton Bellingham PC
P.O. Box 2559
Billings, MT 59103

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Buyer:

With a copy to: Malcolm Goodrich
Goodrich & Reely, PLLC
P.O. Box 1899
2812 1st Avenue North, Suite 301
Billings, MT 59103

21. **Risk of Loss**. Risk of loss shall remain with Seller until closing.

22. **Copies and Counterparts**. A digital copy of this Agreement containing the actual or digital signature of either party shall be accepted as the original. This Agreement may be executed in one or more counterparts, which taken together shall constitute one and the same document.

23. **Time and Binding Effect**. Time shall be of the essence of this Agreement. The terms and conditions hereof shall inure to the benefit of, and be binding upon, the heirs, legal representatives, successors and permitted assigns of the parties hereto.

24. **Radon Disclosure Statement**. **RADON GAS: RADON GAS IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE HEALTH UNIT.**

Seller represents to Buyer that the Real Property:

_____ HAS been tested for Radon or Radon progeny.

_____X____HAS NOT been tested for Radon or Radon progeny.

If the Real Property has been tested for Radon or Radon progeny, Buyer hereby acknowledges that a copy of such test has been received along with evidence of any subsequent mitigation or treatment.

25. **Real Estate Brokers**. Buyer and Seller represent and warrant to one another that neither has engaged any brokers or real estate agents in connection with the sale who might claim a fee or commission by reason of the sale, except NAI Business Properties, which has been engaged as an agent of Seller exclusively and who shall be paid by Seller, if entitled to a fee or commission by reason of this sale. Notwithstanding, it is acknowledged that William Honaker is a licensed broker in the State of Montana representing the Buyer and shall be paid the buying brokerage fee of 2.5%.

26. **Marketing Rights**. Upon the execution of this Agreement, Buyer shall have the right to solicit prospects for the Property, but in no way bind Seller to any future commitments pertaining to said solicitation.

27. **Entire Agreement**. This Agreement embodies the entire Agreement between the parties, and supersedes all prior negotiations, representations (if any), understandings and agreements, if any, relating to the Property. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both parties hereto.

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28. **Noxious Weeds Disclosure**. Buyers of real property in the state of Montana should be aware that some properties contain noxious weeds. The laws of the state of Montana require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and obligations as an owner of property, Buyer may contact the Yellowstone County, Montana extension agent or Weed Control Board.

29. **Megan's Law Disclosure.** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If Buyer desires further information Buyer may contact the local County Sheriff's office, the Department of Justice in Helena, Montana, and the probation officers assigned to the area.

30. **Neutral Interpretation.** The language contained in this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against either party, regardless of whether one party or the other may have drafted this Agreement.

31. **Limitation on Damages**. The Buyer and Seller stipulate and agree that in the event of any dispute between the Parties, that only actual documented compensatory damages may be awarded if damages are otherwise recoverable under this Agreement. Punitive damages, consequential damages, and exemplary damages shall not be awarded to either party.

32. **Mold Disclosure Statement**. "MOLD DISCLOSURE: There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The seller, landlord, seller's agent, buyer's agent, or property manager cannot and does not represent or warrant the absence of mold. It is the buyer's or tenant's obligation to determine whether a mold problem is present. To do so, the buyer or tenant should hire a qualified inspector and make any contract to purchase, rent, or lease contingent upon the results of that inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent, or lease."

33. **Title Evidence After Closing**. Within fifteen (15) days following the Closing Date of a Parcel or Parcels, Seller shall cause, at Seller's expense, a Standard ALTA Owner's Title Insurance Policy for the Parcel or Parcels Closed to be issued to Buyer in accordance with the terms of this Agreement.

[Signature page to follow]

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IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

SELLER

The City of Billings

3/18/2024
Date

By: DocuSigned by: William A. Cole 2CA11D5423334EE...
William A. Cole
Mayor

By: DocuSigned by: Denise Bohlman D503C2218DC34F0...
Denise R. Bohlman
City Clerk

BUYER

Honaker Realty, LLC

3/15/2024
Date

By: DocuSigned by: Bill Honaker 1589C4765B87841...
Printed Name: Bill Honaker
Title: Managing Member

JWT Capital, LLC

3/16/2024
Date

By: DocuSigned by: Don Cape BB3D8E89523B469...
Printed Name: Don Cape
Title: Principal

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City Council Regular

Date:	03/11/2024
Title:	PUBLIC HEARING for Sale of City Hall, South Parking Lot, and North Parking Lot
Presented by:	John Caterino, Facilities Manager
Department:	City Hall Administration
Presentation:	Yes
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends approval of Purchase and Sale Agreement (PSA) and associated Development Agreement (DA) to sell City Hall/Park 3 parking structure (210 and 220 N 27th St.), South Parking Lot, and North Parking Lot on N 27th St., to Honaker Realty LLC for a combined total of $2,800,000.00 (City Hall $2,100,000.00, South Lot $280,000.00, North Lot $420,000.00).

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On 12/7/2022 Administration Department signed a contract with NAI Business Properties with Matt Robertson acting as supervising broker for these transactions.

On 11/04/2022 and 11/11/2022 staff published, per City of Billings Code of Ordinances 22-902, a public notice to all owners within 300 of subject Property of potential sale of Park 1 ground retail space.

On 11/24/2022 Council approved a resolution authorizing City staff to advertise the sale and disposal of City Hall/Park3, resolution 22-11082. City Hall/Park 3 is also described as BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 58, LOT 1-12, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

On 11/24/2022 Council approved a resolution authorizing City staff to advertise the sale and disposal of South Parking Lot, resolution 22-11084. South Parking Lot is also described as BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 92 Lot 5 -6, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

On 11/24/2022 Council approved a resolution authorizing City staff to advertise the sale and disposal of North Parking Lot, resolution 22-11085. North Parking Lot is also described as BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 92 Lot 8, 9, and 10, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

Administration advertised a Request for Proposal (RFP) for each Property on 06/14/2023 and 06/21/2023 in *Yellowstone County News* and on the City's website.

One (1) proposal was submitted by 06/16/2023 for City Hall.

Five (5) proposals were submitted by 06/16/2023 for South Parking Lot.

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Four (4) proposals were submitted by 06/16/2023 for North Parking Lot.

NAI and City Staff reviewed the proposals/offers and presented to City Council Operations Committee on 06/28/2023. After further discussion with City Council Operations Committee and NAI, City Staff recommends moving forward with the offer from Honaker Realty to purchase subject Properties due to a number of reasons:
- Quality of proposal
- Experience of proposer
- Financial capacity to complete transaction with pre-qualification letter from lender
- Proposed development and use of spaces
- Proposed development schedule
- Increased tax base and economic growth to Central Business District
- Total price competitiveness as Honaker Realty offered the highest price for the three Properties

On 02/23/2024 and 03/01/2024 staff published, per City of Billings Code of Ordinances 22-902, a public notice in the Yellowstone County News announcing a public hearing on whether to approve the sale of the city owned property.

The attached purchase and sale agreement has wording modifications for clarity from the latest draft that was presented to the City Council Operations Committee and sent to council members.

ALTERNATIVES
City Council may:

- Approve Purchase and Sale Agreement and Development Agreement; or,
- Not Approve

Approval would begin the due diligence period for the Buyer and all contingencies will stay in place until the sale of Property is complete.

FISCAL EFFECTS
The total combined funds of the sale of these Properties at $2,800,000.00 will be used to offset construction costs at New City Hall.

Attachments

Resolution 22-11082
Resolution 22-11084
Resolution 22-11085
Honaker Realty Submission
Honaker Realty PSA - Buyer Signed

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REQUEST FOR PROPOSALS: NOTICE

The City of Billings is requesting proposals for **DISPOSITION OF MUNICIPAL REAL ESTATE SALE AND DEVELOPMENT OF BILLINGS CITY HALL**, for FACILITIES DIVISION, Billings, Montana. Proposals shall be received addressed to MATT ROBERTSON SIOR, PRINCIPAL/SUPERVISING BROKER, NAI BUSINESS PROPERTIES, via mail at 3312 4TH AVE NORTH, BILLINGS, MT 59101, via email at MROBERTSON@NAIBUSINESSPROPERTIES.COM, or in-person at 3312 4TH AVE NORTH, BILLINGS, MT 59101 until 5:00 PM (MDT) on 16, JUNE, 2023.

More specific additional information regarding the **DISPOSITION OF MUNICIPAL REAL ESTATE SALE AND DEVELOPMENT OF BILLINGS CITY HALL** can be obtained by contacting MATT ROBERTSON SIOR, PRINCIPAL/SUPERVISING BROKER, NAI BUSINESS PROPERTIES, via telephone at (406) 294-6308 or email at MROBERTSON@NAIBUSINESSPROPERTIES.COM. The full Request for Proposals may also be found on the City's website at www.billingsmt.gov, by clicking on "Doing Business," and then on "Bids."

Proposers may withdraw their proposal by written request at any time prior to the due date set for receiving proposals. No proposal may be withdrawn or modified after the due date and time, unless and until the award of the contract is delayed for a period exceeding ninety (90) days.

The right is reserved to reject any or all proposals received, to waive irregularities, to postpone the award of the contract for a period of not to exceed ninety (90) days, and to accept that proposal which is in the best interests of the City of Billings, Montana. Award of any contract may be contingent upon approval by Billings City Council.

The City of Billings is an Equal Opportunity Employer. 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.

Published at Billings, Montana, APRIL 14 & APRIL 21, 2023.

Denise R. Bohlman
Billings City Clerk
P. O. Box 1178
Billings, MT 59103

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Publish: APRIL 14 & APRIL 21, 2023
Dept.: FACILITIES

DocuSign

Certificate Of Completion

Envelope Id: AA3B0616B25A4358A5F20DE408F281BC
Status: Completed
Subject: Contract for signatures: Purchase and Sale Agreement for City Hall and Parking Lots
Source Envelope:
Document Pages: 23
Signatures: 4
Envelope Originator:
Certificate Pages: 6
Initials: 0
Jessica Fust
AutoNav: Enabled
fustj@billingsmt.gov
EnvelopeId Stamping: Enabled
IP Address: 161.7.21.147
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Record Tracking

Status: Original
3/15/2024 9:14:45 AM
Holder: Jessica Fust
fustj@billingsmt.gov
Location: DocuSign

Signer Events	Signature	Timestamp
Liz Kampa kampal@billingsmt.gov Purchasing Agent City of Billings Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 161.7.21.49	Sent: 3/15/2024 9:28:19 AM Viewed: 3/15/2024 10:09:29 AM Signed: 3/15/2024 10:15:59 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Bill Honaker bill@honaker.us Managing Member Security Level: Email, Account Authentication (None)	DocuSigned by: Bill Honaker 1589C4765B87441... Signature Adoption: Pre-selected Style Using IP Address: 69.144.172.92	Sent: 3/15/2024 10:16:01 AM Viewed: 3/15/2024 12:24:53 PM Signed: 3/15/2024 2:04:09 PM
Electronic Record and Signature Disclosure: Accepted: 3/15/2024 12:24:53 PM ID: 0f7f3fec-355b-47bb-a97e-8b4c9b352571		
Don Cape dcape@jwtcompanies.com Principal JWT Capital, LLC Security Level: Email, Account Authentication (None)	DocuSigned by: Don Cape BB3D8E89523B468... Signature Adoption: Pre-selected Style Using IP Address: 205.204.26.162	Sent: 3/15/2024 2:04:11 PM Viewed: 3/16/2024 6:31:44 AM Signed: 3/16/2024 6:32:01 AM
Electronic Record and Signature Disclosure: Accepted: 3/16/2024 6:31:44 AM ID: 6e6665a4-e733-44bd-898a-b5eb8d73e8cb		
Todd Corne cornet@billingsmt.gov Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 161.7.21.127	Sent: 3/16/2024 6:32:03 AM Viewed: 3/18/2024 2:29:23 AM Signed: 3/18/2024 2:55:54 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Signer Events	Signature	Timestamp
William A. Cole coleb@billingsmt.gov Mayor Security Level: Email, Account Authentication (None)	DocuSigned by: William A. Cole 2CA11D5423334EE... Signature Adoption: Pre-selected Style Using IP Address: 72.175.160.94	Sent: 3/18/2024 2:55:56 AM Viewed: 3/18/2024 7:50:10 AM Signed: 3/18/2024 7:50:31 AM
Electronic Record and Signature Disclosure: Accepted: 12/3/2020 8:46:12 AM ID: 235dd76e-a3c9-4e23-89f5-aedaeb3b241a		
Denise Bohlman bohlmand@billingsmt.gov City Clerk City of Billings Security Level: Email, Account Authentication (None)	DocuSigned by: Denise Bohlman D503C2218DC34F0... Signature Adoption: Pre-selected Style Using IP Address: 161.7.21.138	Sent: 3/18/2024 8:05:08 AM Viewed: 3/18/2024 8:14:01 AM Signed: 3/18/2024 8:15:14 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp
Liz Kampa kampal@billingsmt.gov Purchasing Agent City of Billings Security Level: Email, Account Authentication (None)	VIEWED Using IP Address: 161.7.21.49	Sent: 3/18/2024 7:50:33 AM Viewed: 3/18/2024 8:05:07 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Carbon Copy Events	Status	Timestamp
Wynnette Maddox maddoxw@billingsmt.gov Security Level: Email, Account Authentication (None)	COPIED	Sent: 3/18/2024 8:15:16 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/15/2024 9:28:19 AM
Certified Delivered	Security Checked	3/18/2024 8:14:01 AM
Signing Complete	Security Checked	3/18/2024 8:15:14 AM
Completed	Security Checked	3/18/2024 8:15:16 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO City of Billings (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO City of Billings:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: kampal@billingsmt.gov

To advise Carahsoft OBO City of Billings of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at kampal@billingsmt.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Carahsoft OBO City of Billings

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to kampal@billingsmt.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Carahsoft OBO City of Billings

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to kampal@billingsmt.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO City of Billings as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO City of Billings during the course of your relationship with Carahsoft OBO City of Billings.

First Amendment to Purchase and Sale Agreement

Seller: The City of Billings
Buyer: Honaker Realty, LLC & JWT Capital, LLC

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT ("PSA Amendment") is made effective as of the latest date set out below in the signature block ("Effective Date"), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns ("Buyer"), and the **City of Billings** ("Seller").

RECITALS

A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein ("Agreement").

B. The Agreement provides certain matters for due diligence review by Buyer within the "Contingency Period" referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. While the parties recognize that the Agreement permits extensions of the Contingency Period upon the payment of additional money from Buyer to Seller, pursuant to Section 11(f), the parties agree that based both upon Buyer's ability to waive certain contingencies by September 18, 2024, as described below, and factors involving Contingencies outside of the control of Buyer, the agreement for the extension of the Contingency Period for certain matters defined below without additional consideration is warranted.

C. In addition, the Agreement provides at Section 3(a) for a Closing Date within thirty (30) days of the satisfaction of Buyer's Contingencies within the Contingency Period, provided, however, that such Section permits the parties to extend the Closing by mutual agreement. The parties agree that the Seller will not vacate the City Hall Property being purchased by the later of the potential Closing Date in Section 3(a) or February 1, 2025, as called for under the Agreement, Section 11(c)(7), and that it is beneficial to Seller that such Closing Date be extended to permit it additional time to vacate the City Hall Property, rather than create a lease structure for continued short term occupancy of the City Hall Property by Seller pending its vacating of such Property. Therefore, the parties believe that an extension of the Closing Date, as outlined below, to permit the orderly vacating of the City Hall Property by Seller, is warranted.

D. Consequently, the parties agree that the Agreement should be amended as provided below.

FOR VALUABLE CONSIDERATION, IT IS AGREED:

1. Contingency Period. Seller and Buyer agree that the following Contingencies set forth in the Agreement may be deemed to be waived by Buyer effective as of September 18, 2024:

(a) environmental inspection and testing concerns referenced in Sections 10 and 11(c)(1) and (3) of the Agreement;

(b) structural and mechanical inspections and testing referenced in Sections 11(c)(1) and (3) of the Agreement;

(c) physical condition of the Property referenced in Section 11(c)(2) of the Agreement, except for the parking structure located on Parcel B of the Property for which repair

improvements are to be made by Seller as previously disclosed to Buyer by Seller, with agreed completion of such repair improvements by Buyer and Seller remaining a contingency for Buyer until completion of the same prior to Closing;

(d) execution of an acceptable Development Agreement between DBP and Buyer to develop Parcel A referenced in Section 11(c)(4);

(e) approval of Tax Increment Funds from DBP and Seller to Buyer referenced in Section 11(c)(5) of the Agreement;

(f) satisfaction of the encroachment of the Grand Building to the south of Parcel A referenced in Section 11(c)(11) of the Agreement.

The following Contingencies within the Agreement will be extended until November 15, 2024, or later date by mutual agreement, without additional consideration:

(g) approval of DBP for removal or use of the portable rest room located on Parcel B referenced in Section 11(c)(10) of the Agreement;

(h) execution of suitable Franchise Agreements with the hotel company involved in Phase 1 of the project located on Parcel A as referenced in Section 11(c)(6);

(i) Seller will provide approvals for suitable loading and unloading areas from 2nd Ave. North for hotel guests, as referenced in Section 11(c)(8);

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter not specifically deemed to be waived by Buyer in subsections 1(a) through (f) above or in subsections below.

The following Contingency within the Agreement will be extended until the later of February 1, 2025, or Closing, as amended herein, without additional consideration:

(m) financing deemed suitable by Buyer, and completion of financing, including those requirements imposed by Buyer's lender or lenders;

The following Contingencies within the Agreement will be extended without additional consideration until the Closing, as amended herein:

(n) title review and Seller's compliance with the state of title for the Property to be conveyed by Seller to Buyer;

(o) Seller vacates the Property within the Permitted Time to Vacate set out in Section 2 below; and

(p) Seller is in compliance with its requirements, agreements and commitments under the Agreement and herein.

2. Seller's Date to Vacate Property. Seller and Buyer agree that the Seller will vacate the Property, together with removal of its personal property therefrom, no earlier than February 1, 2025, and no later than April 1, 2025 (the "Permitted Time to Vacate"). Seller will give Buyer not less than sixty (60) days notice in writing of the date within the Permitted Time to Vacate on which it will have completely vacated the Property. Once Seller has completely vacated the Property during the Permitted Time to Vacate it will give written notice to Buyer of the completion of the same ("Notice of Completion of the Vacating of the Property"). Provided that the Contingencies permitted to Buyer are satisfied, Buyer will Close on the purchase of all of the Property within sixty (60) days of the date of the Notice of Completion of the Vacating of the Property.

3. Full Force and Effect. Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

SELLER

The City of Billings

_____
Date

By: _____
William A. Cole
Mayor

By: _____
Denise R. Bohlman
City Clerk

BUYER

Honaker Realty, LLC

_____
Date

By: _____
Printed Name: _____
Title: _____

JWT Capital, LLC

_____
Date

By: _____
Printed Name: _____
Title: _____

Docusign Envelope ID: 0F63C383-02C8-496D-842D-C7A0D7686E00

Second Amendment to Purchase and Sale Agreement

Seller: The City of Billings
Buyer: Honaker Realty, LLC & JWT Capital, LLC

Docusign Envelope ID: 0F63C383-02C8-496D-842D-C7A0D7686E00

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT ("PSA Amendment") is made effective as of the latest date set out below in the signature block ("Effective Date"), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns ("Buyer"), and the **City of Billings** ("Seller").

RECITALS

A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein ("Agreement").

B. The Agreement provides certain matters for due diligence review by Buyer within the "Contingency Period" referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. The parties originally extended certain deadlines to November 15, 2024 through the First Amendment to Purchase and Sale Agreement. The parties again desire to extend the Contingency Period for certain contingency items, as more particularly described below.

C. Consequently, the parties agree that the Agreement should be amended as provided below.

FOR VALUABLE CONSIDERATION, IT IS AGREED:

1. Contingency Period. Seller and Buyer agree that the following Contingencies set forth in the Agreement may be deemed to be waived by Buyer effective as of October 30, 2024:

(i) Seller will provide approvals for suitable loading and unloading areas from 2nd Ave. North for hotel guests, as referenced in Section 11(c)(8).

The following Contingencies within the Agreement will be extended until December 6, 2024, or later date by mutual agreement, without additional consideration:

(g) approval of DBP for removal or use of the portable rest room located on Parcel B referenced in Section 11(c)(10) of the Agreement;

(h) execution of suitable Franchise Agreements with the hotel company involved in Phase 1 of the project located on Parcel A as referenced in Section 11(c)(6);

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter not specifically deemed to be waived by Buyer in subsections 1(i) above or in subsections below.

Docusign Envelope ID: 0F63C383-02C8-496D-842D-C7A0D7686E00

2. Full Force and Effect. Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

SELLER

The City of Billings

11/14/2024
Date

Signed by:
By: William A. Cole
2CA11D3...
William A. Cole
Mayor

Signed by:
By: Denise Bohlman
D503C21...
Denise R. Bohlman
City Clerk

BUYER

Honaker Realty, LLC

11/13/2024
Date

Signed by:
By: Bill Honaker
Printed Name: Bill Honaker
Title: Managing Member

JWT Capital, LLC

11/14/2024
Date

DocuSigned by:
By: Don Cape
Printed Name: Don Cape
Title: Principal

Third Amendment to Purchase and Sale Agreement

Seller: The City of Billings
Buyer: Honaker Realty, LLC & JWT Capital, LLC

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT ("PSA Amendment") is made effective as of the latest date set out below in the signature block ("Effective Date"), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns ("Buyer"), and the **City of Billings** ("Seller").

RECITALS

A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein ("Agreement").

B. The Agreement provides certain matters for due diligence review by Buyer within the "Contingency Period" referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. The parties originally extended certain deadlines to November 15, 2024 through the First Amendment to Purchase and Sale Agreement.

C. Following execution of the First Amendment to Purchase and Sale Agreement, the parties, on November 14, 2024, executed a Second Amendment to Purchase and Sale Agreement to extend the Contingency Period for certain matters until December 6, 2024.

D. The parties again desire to extend the Contingency Period for certain contingency items, as more particularly described below.

E. Consequently, the parties agree that the Agreement should be amended as provided below.

FOR VALUABLE CONSIDERATION, IT IS AGREED:

1. Contingency Period. Seller and Buyer agree that, in addition to any Contingencies previously waived specifically by Buyer in the First and Second Amendments to the Purchase and Sale Agreement, the following Contingencies set forth in the Agreement may be deemed to be waived by Buyer effective as of November, 25, 2024:

(h) execution of suitable Franchise Agreements with the hotel company involved in Phase 1 of the project located on Parcel A as referenced in Section 11(c)(6).

The following Contingencies within the Agreement will be extended until January 31, 2025, or later date by mutual agreement, without additional consideration:

(g) approval of DBP for removal or use of the portable rest room located on Parcel B referenced in Section 11(c)(10) of the Agreement;

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter either not specifically deemed to be waived by Buyer in subsection 1(h) above or any prior specifically waived item in the First and Second Amendments to the Purchase and Sale Agreement. Such due diligence matters not specifically waived as of the date hereof will include, but not be limited to, Buyer obtaining financing deemed satisfactory by it for the acquisition and development of the Property, and the parties agree that the financing requirements of Buyer and its lender may require the extension of the Contingency Period beyond January 31, 2025, in order to accommodate this contingency for final designs, bidding, appraisal and loan approval matters attendant to the loan for Buyer from lender, and that the parties will cooperate reasonably to reset and extend such Contingency Period for the same.

2. Closing Date/Vacating Date by Seller from Property. In order to facilitate the timing and acquisition of financing by Buyer, the Closing Date for Buyer's purchase of the Property will be on or before May 15, 2025 ("Closing Date"). Seller will vacate the Property by no later than the Closing Date. Seller will retain possession and risk of loss for the Property until the Closing Date, and Buyer will assume possession and risk of loss for the Property following the Closing Date. It is understood and agreed by Seller that, provided that its Contingencies are satisfied, Buyer must complete its purchase of the Property on or before June 1, 2025 in order to qualify for certain aspects of its funding for the project, thus Buyer will not be able to accord Seller any extension of the Closing Date beyond that set out herein.

3. Full Force and Effect. Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

SELLER

The City of Billings

_____
Date

By: _____
William A. Cole
Mayor

By: _____
Denise R. Bohlman
City Clerk

BUYER

Honaker Realty, LLC

_____
Date

By: _____
Printed Name: _____
Title: _____

JWT Capital, LLC

_____
Date

By: _____
Printed Name: _____
Title: _____

City Council Regular

Date:	12/16/2024
Title:	W.O. 19-12, West End Reservoir Project, GC/CM Contract Change Order No. 3, Dewatering & Site Improvements
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review:	Not Applicable
Project Number:	N/A

RECOMMENDATION

Staff recommends that the City Council approve Change Order No. 3 to the Standard Agreement and General Conditions Between Owner and General Contractor/Construction Manager (Construction Contract) with Dick Anderson Construction, Inc. for the W.O. 19-12: West End Reservoir Project in the amount of $165,070.04.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On December 11, 2023, City Council approved a Construction Contract with DAC for the West End Reservoir Project in the amount of $153,211.35. This initial contract Guaranteed Maximum Price (GMP) allowed the Project Team to begin dewatering the reservoir site through rental of temporary pumping equipment and purchase of permanent dewatering equipment.

Change Order No. 1 for the procurement of an electrical equipment substation for the Raw Water Pump Station (RWPS) for a GMP of $408,352.64 was approved by City Council on August 26, 2024. Early procurement of this equipment ahead of construction was necessary to maintain overall project schedule due to the 40-week lead time in delivering the project site.

On November 25, 2024, City Council approved Change Order No. 2 for the construction of the BBWA Raw Water Delivery (RWD) Facilities in a GMP amount of $13,553,020.76. Work includes construction of a BBWA Unloader Structure, Screen Structure, Diversion Channel, Raw Water Pump Station (RWPS), a Canyon Creek Diversion Structure, gravel access roads, and 36, 42, and 60-inch connecting piping.

Change Order No. 3 now under consideration includes: Cleaning accumulated organics and other materials out of the current pumping area, installing a deep pump well, extending 2 perforated pipes for future dewatering, adding electrical improvements, and placing 500 cubic yards of rock around the pump well.

Area improvements and installation of a deep-well submersible pump will allow for continuous and more efficient winter dewatering and contribute to the longer-term dewatering strategy for the north cell site. Groundwater in the area has been substantially reduced and freezing is an issue, so this implementation will allow for continued winter dewatering. In order that construction on the BBWA RWD project (Change Order No. 2) can start in the south cell area in December, 2024 the SWPP permit and BMPs are also included in this change order.

ALTERNATIVES

City Council may:

- Approve Change Order No. 3 to the Standard Agreement and General Conditions Between Owner and General Contractor/Construction Manager (Construction Contract) with Dick Anderson Construction, Inc., or,
- Not approve Change Order No. 3. If Council does not approve this change order, progress gained on dewatering the north cell site over the last year will be lost due to freezing problems that will be encountered with the existing skid-mounted pump.

FISCAL EFFECTS

The W.O. 19-12: West End Reservoir Project was budgeted in FY25 using Water Funds in the amount of $72,878,045. Considering previously encumbered funds of $2,122,887.10, Change Order No. 1 in August in the amount of $408,352.64, Change Order No. 2 on November 25 in the amount of $13,553,020.76, and this change order in the amount of 165,070.04, there is $56,628,714.46 remaining in the budget. The remainder of the budget will be used for construction of the reservoir portion of the project and will be added by change order when the design is complete.

Attachments

WO1912 WER GC/CM Contract CO#3

W.O. 19-12, West End Reservoir Project

Standard Agreement and General Conditions Between Owner and General Contractor/Construction Manager (GC/CM)

Change Order No. 3

OWNER: City of Billings

CONTRACTOR: Dick Anderson Construction, LLC

DATE: November 26, 2024

In accordance with the terms of this Contract, the following changes are approved:

CHANGE IN CONTRACT PRICE:

Original Contract Price:	$153,211.35
Net Increase from Previous Change Orders:	$13,961,373.40
Contract Price Prior to this Change Order:	$14,114,584.75
Net Increase of this Change Order:	**$165,070.04**
Contract Price with all Approved Change Orders:	$14,279,654.79

CHANGE IN CONTRACT TIME:

Original Contract Time:	N/A
Net Change from Previous Change Orders:	577
Contract Time Prior to this Change Order:	577
Net Increase of this Change Order:	0
Contract Time with all Approved Change Orders:	577

DESCRIPTION:

Dick Anderson Construction is directed to make the following changes in the Contract Documents:

- Improve north reservoir site dewatering operations and obtain a SWPPP permit for the north and south reservoir cells. Work includes: cleaning out accumulated organics and other materials in the current pumping area, installing a deep pump well, extending 2 perforated pipes for future dewatering, adding electrical improvements, and placing 500CY of rock around the pump well. Work is for a Guaranteed Maximum Price to be paid on a time and materials basis *($165,070.04 increase)*.

REASON FOR CHANGE ORDER:

Area improvements and installation of a deep-well submersible pump will allow for continuous and more efficient winter dewatering and contribute to the longer-term dewatering strategy for the north cell site. Groundwater in the area has been substantially reduced and freezing is an issue, so the existing skid-mounted pump is less effective. The pump's speed can only be turned-down to 60% resulting in intermittent pumping, operational and maintenance issues. Lead-time on the purchase of a submersible pump is 16 weeks, but Xylem will rent the same pump for half price until the new pump is delivered. In order that construction on the BBWA RWD project (Change Order No. 2) can start in in the south cell area in December, the SWPP permit and BMPs are also included in this change order.

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ATTACHMENTS:

- Dewatering Pump & Site Improvements, Change Order No. 3 (11pp., 11/26/24)

In consideration of the terms and performance contained herein, or attached and incorporated herein, the Owner and Contractor also agree to the following modifications to the Standard Agreement and General Conditions Between Owner and General Contractor/Construction Manager dated December 13, 2023:

1. ARTICLE 2 GENERAL PROVISIONS, Section 2.6 DEFINITIONS, 2.6.1.1. Add the following to the list of exhibits that are part of this Agreement:

    - EXHIBIT G: W.O. 19-12 Billings West End Reservoir Project, Dewatering Pump & Site Improvements, Change Order No. 3 (11pp., 11/26/24)

2. ARTICLE 16 SCOPE OF WORK, Add the following:

    - 16.4 SCOPE OF WORK – CHANGE ORDER NO. 3. Pursuant to Section 3.4 and ARTICLE 7, the Owner and CG/CM desire to establish an additional Guaranteed Maximum Price (GMP) for performance of the portion of Work in accordance with the exhibits listed below, which are part of this Agreement:

        a) EXHIBIT G: W.O. 19-12 Billings West End Reservoir Project, Dewatering Pump & Site Improvements, Change Order No. 3 (11pp., 11/26/24)

The said Contract as hereby amended shall remain in full force and effect.

IN WITNESS WHEREOF the said Parties have caused this agreement to be executed as of the day and year signed below.

GENERAL CONTRACTOR/CONSTRUCTION MANAGER

Name: _____

By: _____

Title: _____

Date: _____

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Date: _____

END OF DOCUMENT.

ConsensusDocs™ 525 - Change Order (Construction Manager Fee Adjustment) - © 2007, Revised 2011. THIS DOCUMENT MAY HAVE BEEN MODIFIED. The ConsensusDocs technology platform creates a redline comparison to the standard language which the purchaser of this contract is authorized to share for review purposes. Consultation with legal and insurance counsel are strongly encouraged. You may only make copies of finalized documents for distribution to parties in direct connection with this contract. Any other uses are strictly prohibited.

City Council Regular

Date:	12/16/2024
Title:	Partners for Parks Donation for Patriot Run Expenses
Presented by:	Brandon Schmidt
Department:	Parks/Rec/Public Lands
Presentation:	No
Legal Review:	Not Applicable
Project Number:	N/A

RECOMMENDATION

Staff recommends a motion to approve Partners for Parks donation to reimburse the city for Patriot Run expenses.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On November 10th, PRPL hosted the second annual Patriot Run at Mountview Cemetery. One hundred and twenty community members participated. The event was held to raise funding for the maintenance of Mountview's Veteran sections and assist families in paying for the cost of interments in the veteran section. Partners for Parks is donating $4105.88 to reimburse the city for the Patriot Run operating expenses.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

Not approving the donation would cause the City to cover the Patriot Run operating expenses.

City Council Regular

Date:	12/16/2024
Title:	Arnold Drain Trail Repairs FWP Grant
Presented by:	Brad Wright
Department:	Parks/Rec/Public Lands
Presentation:	No
Legal Review:	Not Applicable
Project Number:	N/A

RECOMMENDATION

PRPL seeks City Council consent to accept $100,000 from an FWP Recreational Trails Program grant. Additionally, PRPL requests approval to utilize these funds, alongside $25,000 in matching resources (in-kind labor and cash), to repair and improve the Arnold Drain Trail in Lillis Park, as described in the grant application.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Arnold Drain Trail, located in the east-west portion of Lillis Park, is a critical community asset serving pedestrians, cyclists, wheelchair users, and families. Years of wear have resulted in large cracks and surface deterioration, posing safety risks and limiting accessibility. This project will restore approximately 1,700 feet of the asphalt trail, addressing hazards and upgrading features to meet ADA standards, in the section between 24th street and the bridge over the Big Ditch.

Improvements include:
Repaving the trail and repairing cracks.
Removing bollards on the bridge for safe wheelchair and stroller access.
Adding ADA-compliant ramps, curb cuts, and an accessible picnic table with a concrete pad.
Installing wayfinding signage to improve connectivity with surrounding trail networks.

This project aligns with community plans, including the Billings Trail Asset Management Plan, Billings Bike and Trails Plan, and federal Healthy People 2030 objectives.

STAKEHOLDERS

Key stakeholders for this project include:
Billings TrailNet: Non-profit organization that submitted the grant application.

Living Independently For Today and Tomorrow (LIFTT): Advocates for accessibility and ADA compliance.

Local Schools: Meadowlark Elementary, Trinity Lutheran, Burlington Elementary, and Will James Middle, whose students and families utilize the trail.

Community Organizations: AARP Billings, Adult Resource Alliance, Team Red, White, and Blue, and Eagle Mount, which support trail usage for recreation and physical health.

Nearby Residential Facilities: Grandview Apartments and the Springs at Grand Park, whose residents include individuals with mobility impairments and older adults.

City of Billings Parks, Recreation, and Public Lands Department: Responsible for the trail's construction and long-term maintenance.

ALTERNATIVES

City Council may:

- Approve the grant acceptance and authorize the trail repair project.
- Not Approve the funding, resulting in continued trail deterioration and safety risks.

FISCAL EFFECTS

The project budget of $125,000 will be funded through:
$100,000 from the RTP grant.

$25,000 in matching contributions from PRPL, including:

In-kind labor: Estimated at $10,000-$13,000 for tasks such as tree removal, bollard removal, irrigation adjustments, and project management.

Cash contributions: Approximately $12,000-$15,000 from PRPL project accounts.

Attachments

RTP/FWP Grant application Lillis

Montana Grants and Loans

Application

I235515 - FWP Recreational Trails Program Grant Cycle 2023 - Final Application

134828 - Revitalize and Restore Arnold Drain Trail for Multipurpose Use by the Billings Community, especially Users and Health Conditions and Impairments
FWP RTP Recreational Trails Program

Status:	Submitted	Original Submitted Date:	01/30/2023 5:21 PM	Submitted By:	Elizabeth Cairns
		Last Updated Date:	01/30/2023 7:21 PM	Last Updated By:	Elizabeth Cairns

Applicant Information

Primary Contact

Prefix:	Dr.	First Name:	Elizabeth	Middle Name:	L.	Last Name:	Cairns
Title:		Suffix:		Nickname:			
Email:							
Alternate Email:	scairns@gmail.com						
Address:	1071 Poyn Ln, Billings						
	Billings	Montana		59102			
Phone:	406-281-3272			Ext.			
Alternate Phone:							
Fax:							

Organization Information

Name:	Billings Trailfest
Organization Type:	Non-Profit Organization
Organization Website:	www.billingsalliance.org
Address:	PO Box 2418
	Billings	Montana	59103
Phone:	406-281-1244
Fax:	
Alternate Phone:	
Email:	
Email address:	
Alternate Email:	
Vendor #:	

Grant History

Project Overview

Provide a short project title:	Revitalize and Restore Arnold Drain Trail for Multipurpose Use
Provide a brief description of your project:	Repair the Arnold Drain Trail including large cracks and removing bollards on bridge approaches.
Are trailwork and/or equipment operation a part of this project?	Yes
What trail work and/or equipment will be used?	Powered Use (hiking, running, walking, wheelchair use, nature observation) Select from: Hike and bike trails, Nature trails, Skate parks, Skateboarding, Trail maintenance, Urban trails, Water trails
Other:	
What other trail users will benefit from your project?	Bicycling Select from: Bicycling (road and off-road), Dog sledding, Equestrian (horseback riding), Hiking, running, walking, Motorized (dirt bikes, ATVs, 4x4s), Motorized (snowmobiles), Nordic skiing, Paddling, Skiing (downhill), Snowshoeing, Wheelchair use, Other
Other:	
Will it follow be shown on the project map you submit with this application?	

Project Location

County/s in which project will occur:	Yellowstone Select from: Type "1" to start a search for a county.
Latitude or town/s, if project will occur in one specific community:	45.814503 Enter latitude and longitude in decimal degrees (for example, 45.814503, -108.542601) if your project will occur in one specific community.
Longitude:	-108.542601
Land Jurisdiction/s:	Municipal (Town/City) Select from: Bureau of Land Management (BLM), Municipal (Town/City), National Park Service (NPS), State Parks, U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (USFWS)
List all landowner/s and managers:	City of Billings, Billings Bench Water Association
Do you anticipate using any of the proposed project funds with state pass-through?	Not Applicable Select from: Not Applicable, Yes, No Not Applicable: Project does not include federal funds. Yes: Subrecipients will receive federal funds. No: Subrecipients will not receive federal funds.
Approximate Project Start Date:	5/15/2023 Enter the approximate date you anticipate your project will begin. Note: Project sponsors must wait for a written notice to proceed before beginning work. Work completed before the project start date will not be reimbursed.
Project Area Map:	

Please provide a map of your project location. We have many options available for you to choose from, or you may upload your own. If you are developing a project, consider using a trail name that will be permanent and FWP friendly. Be sure to check out the Project Area Map Guidance Document for more information. Project Area Map Guidance Document

Project Map 1	Arnold Drain Trail report.png
Project Map 2	Arnold Drain project area map.jpg
Project Map 3	

Project Readiness

Have you secured appointments to make agreements here, if the proposed project is an easement, or public land and coordinated with the land management agency, if the proposed project is on public land? Have you secured all the permits you will need to complete the project? Have you completed all of the environmental compliance? If you have questions, please contact your Grant Administrator. If you have more than three attachments, please upload them as one document and label it "Miscellaneous."

Legal Easement/Agreement	
Legal Easement/Agreement	
Legal Easement/Agreement	

Other Considerations

Is any part of this application currently under consideration by another FWP program?	No
Does this project require consideration with cultural resources (SHPO, BRO, etc.)?	No
Does the project require consideration with the Montana Natural Heritage Program (MNHP)?	No
Does the project involve any activities that may require a Montana Department of Natural Resources and Conservation (DNRC) water management agency?	Yes

1. Project Description

1.A. Describe, in detail, the proposed activities and any tasks of the project for which funding is being requested. Please be sure to include the project's location, including the name of the trail, if applicable. If you are requesting funds for construction or maintenance activities, please include dates of proposed work. Limit your response to 2,500 characters.

Your response is limited to 2,500 characters.

We are requesting funding to revitalize and restore the Arnold Drain Trail. The trail has will restore a 1.5 mile section of the Arnold Drain Trail, which is a 3.5 mile trail that runs from Zimmerman Trail to the eastern end of 27th street. We are the section between 29th street and the bridge over the Interstate 90 at the eastern end of the trail. The trail is a multi-use trail that is used by walkers, runners, bicyclists, and equestrians. The trail is stroller friendly and is the playground number down the trail, and by bicyclists, skateboarders, and rollerbladers. In the winter, the trail is used by cross-country skiers. The trail is also used by dog walkers, and by people walking their dogs.

We will repave the trail, thereby repairing the large cracks on the trail that prevent its use for the physical challenged. We will also remove the bollards on the bridge approaches and replace them with gates that will allow safe passage by pedestrians, bicyclists, equestrians, and other non-motorized users. We will also add signage to the trail, including mile markers, directional signage, and signage to inform trail users of the trail rules. We will also paint stripes, lane, and post along the trail. We will also add signs that indicate mileage and direction to destinations such as Zimmerman Trail and Shiloh Road.

This project is a partnership between Living Independence for Everyone (LIFE), the Billings Parks Department, the Billings Bench Water Association, and the Billings Trailfest. Other partners include the Montana Association of Ground Fish Independent, equestrian, and memory care living, Meadowlark Memory Care, Montana Association of Ground Fish Independent, Billings Parks Department, and the Billings Trailfest Association. Team Rod, White, and Blue, and Eagle Mount. Bus attended Letters of Support from several of these entities.

1.B. Describe the degree to which project meets a goal and/or requirement a strategy described within a local, regional, or statewide plan. Please be sure to include the name of the plan(s) you reference. Limit your response to 2,500 characters. Project Guidance: Strategic Plans Statewide Comprehensive Outdoor Recreational Plan

Your response is limited to 2,500 characters.

This project meets many trail strategies/plans:

- Billings Trail Asset Management Plan actions that surface repairs, especially when deemed a hazard
- Billings Trail Asset Management Plan actions that add signage to inform trail users of directional access, and by challenging for hikers to navigate. Several cracks spanning the width of the trail affect the ability to use the trail.
- Billings Trail Asset Management Plan actions that add signage to inform trail users of rules, and to inform trail users of the trail's connectivity to other trails and destinations.
- Billings Wayfinding Signage Plan recommends that signage be included in trail and trailhead.
- Billings Trail Asset Management Plan calls for a comprehensive trail count. We will do a trail count.
- Billings Long Range Transportation Plan calls for a comprehensive trail and trail network. It includes the Arnold Drain Trail as a recommended trail. The Arnold Drain Trail is also mentioned in the 2035 plan.
- Billings Parks Department Plan calls for a comprehensive trail and trail network. It includes the Arnold Drain Trail as a recommended trail. The Arnold Drain Trail is also mentioned in the 2035 plan.

Per the federal level, the U.S. Department of Health & Human Services' Healthy People 2030 includes three physical activity objectives which this project will help achieve:

- Increase the proportion of adults who walk or bike to get places. (PA-15)
- Reduce the proportion of adults who do not participate in any leisure-time physical activity. (PA-01)
- Reduce the proportion of adults who do no physical activity in their free time. (PA-01)
- Increase the proportion of adults who do enough aerobic physical activity for substantial health benefits. (PA-02)
- Increase the proportion of adults who do enough muscle-strengthening activity for substantial health benefits. (PA-03)

1.C. Please select any of the following priority activities that your project addresses. For OHV Motorized Recreation Plan, add your project number to the end of the activity that you are addressing. Refer to the Project Guidance for more information.

Select from: Type "1" to start a search for a priority activity.

2. Project Implementation

2.A. Describe the estimated project timeline and associated tasks & milestones. Please be as specific as possible when describing your tasks. Be sure to include any permitting, planning, or environmental compliance tasks as well as contractor solicitation requirements and timelines.

Use a bulleted/numbered list to summarize all project milestones specific to the RTP project. Your response is limited to 2,500 characters.

The high-level schedule, with a spring 2024 alternative:

- Summer 2023 (August 2023): Project scoping and planning
- Fall 2023 (September 15, 2023 – October 31, 2023): Project bidding
- Fall 2023 (September 15, 2023 – October 31, 2023): Project completion
- All work will be completed by June 1, 2024

Project Milestones:

- Project Management to submit bidding kits to the CTEIGN budget: June 2023
- City Council review and approval: August 2023
- Project bidding: September 15, 2023 – October 31, 2023
- Project completion: October 31, 2023 (we may start and finish work and provide last specifications by October 31, 2023, but will complete by June 1, 2024)
- Bid specifications approved by Parks Department engineer: August 2023 (April 2024 alt.)
- Bid kits sent to bidders: September 2023 (May 2024 alt.)
- Once the bid is awarded, notice to proceed will be issued by Parks Dept. Bid 2023 (May 2024 alt.)
- Work to begin: October 2023 (June 2024 alt.)
- Work completed: October 2023 (June 2024 alt.)

Planning will depend on the Public Works Engineering schedule together with the Contractor's schedule.

2.B. List the individuals who will carry out the work identified in the project proposal and their qualifications for the work they will be doing. Be sure to list any local or regional partners have been engaged in your project and how will they participate in the project.

Your response is limited to 2,500 characters.

Will a qualified state-licensed contractor or local youth crew be used to complete the project?

If yes, a letter of commitment or support must be attached.

2.C. Describe how you will involve the public aware of trail opportunities, etiquette and rules, outdoor education, or trail safety. Please be as specific as possible in describing the trail program.

Your response is limited to 2,500 characters.

3. Recreational Benefits

3.A. Describe who the identified user groups are and why interest user exist. What are the intended recreational benefits to the trail users? Benefits may include economic benefits, health benefits, trail safety, connectivity, etc.

Your response is limited to 2,500 characters.

The recreational benefits of the project are vast and varied. The trail is used by:

- pedestrians for walking, jogging, running, or walking the business park on Grand Avenue.
- individuals who use wheelchairs as the trail is adjacent to the Rehabilitation Institute of Montana.
- individuals who use strollers as the trail is stroller friendly and has playgrounds down the trail.
- older adults from the Springs at Grand Park, an independent, assisted, and memory care living facility
- bicyclists, including those who use the trail to commute to work.
- students and families from a school, Wheatland Elementary (Lockwood) students, Trinity Lutheran (4-H) students, and Lockwood Elementary students, and Lockwood Middle School students. The trail is used by bicyclist commuting to work, visiting the business park on Grand Avenue, or visiting the Rehabilitation Institute of Montana, Springs at Grand Park, or Eagle Mount.
- snowbird visitors accessing the Lockwood resorts in the area.
- equestrians who use the trail to access the Yellowstone River.
- Individuals and families accessing the Billings Parks and Recreation Parkland Designs Project trail that will be built on the Lockwood Elementary property. The trail will connect to the Arnold Drain Trail.

The trail also connects the 29th Street pond with Pioneer Park to the Alkali Creek Trail to the Kingsbury Trail. The trail also connects to the Yellowstone River Trail. The trail is also a part of the Billings Urban Trail System. It is an important part of the overall trail system, with average annual ridership of 1,000.

3.B. Describe the ways in which the project facilitates the access and use of trails by persons with disabilities, older citizens, economically disadvantaged, and other non-traditional populations.

Your response is limited to 2,500 characters.

This project specifically addresses and use of trails by persons with disabilities, older citizens, and the economically disadvantaged. The trail is adjacent to Grandview Apartments, accessible housing for individuals with disabilities. The trail is also adjacent to the Springs at Grand Park, a 55+ living facility with assisted living, memory care, and a skilled nursery. Meadowlark Memory Care is another 55+ living facility that is adjacent to the trail. The trail is also adjacent to the Rehabilitation Institute of Montana, a rehabilitation facility for individuals with disabilities. The trail is also adjacent to the Eagle Mount facility. The Project was formed in 2018 to make recreational activities more affordable housing for the physically challenged. Eagle Mount is a non-profit organization that provides therapeutic activities for people with disabilities. Its mission includes improving the lives of disabled, underserved, and low-income residents by providing recreational activities in a dignified, professional, accessible, free community-minded environment.

3.C. Does the project provide a benefit to, or promote mitigation of impacts to, the natural environment or habitat? If yes, please describe in detail. If no, please provide an explanation.

Your response is limited to 2,500 characters.

This project does mitigate and minimize the impact on the natural environment by providing a way for individuals to access the trail by walking, bicycling, equestrian, and other non-motorized means, thereby reducing vehicle miles. Trees, and the rest of pedestrian access to address, will preserve the natural environment. The project will also provide a way for individuals to access the natural environment. The project will also provide a way for individuals to access the natural environment as well as environmental education by providing signage to inform trail users of the natural environment.

3.D. Describe any specific, ongoing trail or motorized maintenance needs, staffing needs, or financial needs to maintain the proposed project after it is built. Please be as specific as possible when describing your plan for maintenance. How is the organization planning to address any identified gaps in funding?

Your response is limited to 2,500 characters.

The City Parks Department maintains the trail system once the trail is complete. Asphalt construction has changed dramatically since the trail was originally constructed 25 years ago and has a longer life expectancy. The Parks Department has a trail maintenance budget that includes crack sealing and repaving. The Parks Department will also start crack sealing the surface every 10 to 12 years along with normal daily maintenance like plowing snow and cleaning debris like leaves.

RTP Project Budget

Category	RTP Request	Cash Match (Applicant Contribution)	Value of In-Kind (Applicant Contribution)	Total Match (Cash and In-Kind)	Total Project Cost (RTP Request + Total Match)
Design and Engineering					
Labor (Trail Design, Engineering, Surveying)	$0.00	$0.00	$0.00	$0.00	$0.00
Construction					
Construction Labor	$0.00	$400.00	$0.00	$400.00	$400.00
Materials					
Asphalt	$120,000.00	$120,000.00	$0.00	$120,000.00	$240,000.00
Concrete	$22,000.00	$7,500.00	$0.00	$7,500.00	$29,500.00
Gravel	$0.00	$0.00	$0.00	$0.00	$0.00
Construction Equipment Rental	$0.00	$0.00	$0.00	$0.00	$0.00
Signage	$0.00	$0.00	$0.00	$0.00	$0.00
Restroom	$0.00	$0.00	$0.00	$0.00	$0.00
Trailhead and Parking	$0.00	$2,000.00	$0.00	$2,000.00	$2,000.00
Trestle					
Trestle/Trestle Decking	$0.00	$0.00	$0.00	$0.00	$0.00
Other Trestle Refurbishment	$0.00	$0.00	$0.00	$0.00	$0.00
Contractor Mobilization	$0.00	$0.00	$0.00	$0.00	$0.00
Other					
Other Expenses					
Training	$0.00	$0.00	$0.00	$0.00	$0.00
Project Management	$0.00	$0.00	$0.00	$0.00	$0.00
Miscellaneous	$0.00	$0.00	$0.00	$0.00	$0.00
Total	$142,000.00	$129,900.00	$0.00	$129,900.00	$271,900.00

Budget Narrative

Detail each budget line item you entered under "RTP Request":

Your response is limited to 1,000 characters.

Billings Parks and Rec rehabilitated Pioneer Park trail in 2022, almost exactly the same length as Arnold Drain Trail. The Parks Department provided the work order and cost information as a good cost estimate for this project.

Design & Engineering/ 24-300 Billings Engineering Dept's work for the Pioneer Park trail, which they estimated would be 10% of the total cost.

Materials - $60,000 - 2000 sq ft of asphalt at $30 (1/2 DOL Asphalt Mix) 20 Contract Labor= $22,000)

Construction Contractor $30,000 -2000 lbs (ref match of $7,500- Mobilization @1,625, Shoulder grading & sandfill @2,400, Incidentals/ excavation & fill @1,500 Equipment operation @6,000, Sand, Gravel & Excavation @1,000)

Misc Purchases & Services = $4,000 ADA parts for picnic table. The estimated cost is ~$4,000.

Personnel costs and benefits should be entered in the Budget Narrative section.

Provide detail on each budget line item you entered under "Cash Match":

Cash match received from our grant organization has to spend on the project deliverables, and not. Your response is limited to 1,000 characters.

Geared Parkrith $500 - Billings Parks Department will remove the bollards on either side of the bridge and do the concrete work. Their employees' part-time work for this will be approximately $400, which is listed as a $400 Cash Match.

Materials- Billings Parks and Recreation will provide a $12,000 cash match

Construction Contractor Billings Parks and Recreation will provide a $7,500 cash match

Misc Purchases & Services= $2000 - Billings Parks and Recreation Department's Trestle Rohrock Park Crews will provide $2,000 in cash match for the picnic table. The estimated cost is ~$4,000. Therefore, we are showing with a cash.

Provide detail on each budget line item you entered under "In-Kind Contribution":

All in-kind cash/contributions must relate directly to the RTP project. If you are using volunteer labor as match, you must show the RTP's hourly rate for volunteer labor. Please see the Project Guidance for more information. Your response is limited to 1,000 characters.

In-kind is labor additional documentation detailing activities you submit budget expenses and match. This is not necessary if budget for the project is entirely cash match. Your response is limited to 1,000 characters.

There are no in-kind labor/contributions. The total budget is covered by the direct RTP request and the cash match.

If this request involves the purchase of equipment, as defined within the application guidance document, a cost benefit analysis is required. Instead of leasing or leasing equipment would provide a cost advantage and justify the purchase. Please attach a cost benefit analysis here.

Equipment is not expected to be purchased for the requested amount. Alternatives: grooming attachments, lawn mowers, etc.), will also approach the need for snow removal.

Indirect Cost Rate

"N/A" - Federally approved indirect Cost Rate" - Negotiated Indirect Cost Rate" or "No Indirect Rate". Please check the Application Guidance. If you claim 10% Indirect Cost Rate, documentation of federally approved or negotiated rate is not necessary.

If requesting an indirect cost rate, please enter the rate and the name of the cognizant federal agency that approved the rate.

Your response is limited to 2,500 characters.

If claiming a de minimis indirect cost rate, please enter "de minimis" in the box.

Partial Funding

If not selected for full funding, would you accept partial funding for this project?	No
If partial, specific project elements you are willing to accept funding for. Be clear in describing what you can complete with partial funding. If considering partial funding, please consider the minimum project that is acceptable to you.	The project brings the trail and amenities up to ADA standards. Partial funding would mean that we would not complete the project and would not be able to bring the trail up to ADA project. We cannot risk the safety of people with health conditions and impairments by not bringing the trail up to standards. We will not be able to complete the project with partial funding with the scope and enhancements of the project. Therefore, we strongly encourage the committee to fully fund the project.
If partial, is there a minimum award amount you are willing to accept for this project?	
If partial, please describe how you will obtain funding to complete the project.	

Environmental Documents

Environmental Document 1	2022 RTP Arnold Drain Trail Categorical Exclusion Form signed by Billings Parks & Rec.pdf
Environmental Document 2	
Environmental Document 3	
Additional supporting documents (Optional)	After discussing with Stephanie Clarman, we decided that only the categorical exclusion form was needed for this project. Should additional forms be required, we are happy to provide.

Attachments

Clears list of attachments

Attachment1	Combined 11.1230 Trailfest.pdf
Attachment2	Project Area Map.jpg
Attachment3	Arnold Drain Trail report.png
Attachment4	attachment_yes_no1_to_yes_or_yes2p.mp4
Attachment5	Cracked Arnold Drain Trail.jpg
Attachment6	Rehr_Jan_Bike Arnold_Drain_Trail.mp4
Attachment7	
Attachment 8	

Applicant Acknowledgements

I have reviewed the current RTP Guidelines.	Yes
I understand that my application, including attachments, must be complete, and that all information must be accurate.	Yes
All of the Environmental Documents listed above have been completed, submitted and are still valid.	Yes
I understand that, if awarded, I cannot begin project work and expenses until the RTP Grant Agreement is signed by all parties.	Yes
I understand, if awarded, I will be required to submit a cost reimbursement request using a State TEIP grant?	Yes
Does the application contain confidential information that may qualify for a State TEIP grant?	

Certification

To the best of my knowledge and belief, the information provided in this application and in the attachments is true, complete, and correct.	Yes
Name of Representative:	Elizabeth Cairns
Title:	Billings Trailfest Board of Directors
Date:	01/30/2023

City Council Regular

Date:	12/16/2024
Title:	Adaptive Reuse and Mixed-Use Montana Main Street Grant City of Billings and Downtown Billings
Presented by:	Chris Kukulski, City Administrator
Department:	City Hall Administration
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends Council accept the $300,000 Adaptive Reuse and Mixed-Use Montana Main Street Grant on behalf of the Downtown Billings Partnership (DBP) and City of Billings.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Montana Main Street Adaptive Reuse and Mixed-Use Grant was awarded to the City of Billings and Downtown Billings Partnership on October 22, 2024, in the amount of $300,000. The Adaptive Reuse and Mixed-Use Montana Main Street Grant is intended to support Montana Main Street communities' need for implementation dollars for projects to activate spaces and execute concrete ideas for downtown revitalization. The grant objectives, project planning and management, and fiscal reporting will be managed by the BDP, in partnership with the City of Billings as required by the grant contract documents.

The Downtown Billings staff applied for the funds to redevelop the Billings Masonic Lodge, located in the heart of downtown Billings, on the corner of N Broadway and 3rd Avenue N. Built in 1910, the building was added to the National Register of Historic Places in 1986. Having been the home of several businesses in the last century, the building has been largely vacant since 2019, is currently boarded up and in an increasingly declining state of disrepair. Located adjacent to the newly renovated Alberta Bair Theater, located on N Broadway, and centrally located in the business and retail core, this property is uniquely positioned to be a lively and dynamic downtown asset. The property has been identified by the City of Billings as an abandoned building and is the recipient of numerous code violations. Several attempts have been made to encourage the property owners to redevelop the historic building with no success. Mr. Steve Widmyer, Partner and Owner of the Widmyer Corporation and 1319 Ash, LLC, a developer who has demonstrated success in several mixed-use development projects in downtown Billings, is currently under contract to purchase the Masonic Building and redevelop this beautiful, historic building in partnership with the Downtown Billings Alliance (DBA). This community-minded partnership will redevelop the building to be a vibrant and active space that will include a retail incubator on the first floor, Downtown Billings Alliance offices and community space on the third floor, and workforce housing on the second floor.

STAKEHOLDERS

Mr. Steve Widmyer, Partner and Owner of the Widmyer Corporation and 1319 Ash, LLC, a developer who has demonstrated success in several mixed-use development projects in downtown Billings, is currently under contract to purchase the Masonic Building and redevelop this beautiful, historic building in partnership with the Downtown Billings Alliance (DBA).

ALTERNATIVES

City Council may:

- Accept the grant funds; or
- Not Accept the grant funds. The project will be delayed to secure funding.

FISCAL EFFECTS

There is no local match required from the city for the $300,000.

SUMMARY

The Montana Main Street Adaptive Reuse and Mixed-Use Grant was awarded to the City of Billings and DBP on October 22, 2024, in the amount of $300,000. The Grant is intended to contribute to the redevelopment of the Billings Masonic Lodge, located on the corner of N. Broadway and 3rd Avenue N. Activation of this building will create a benefit to the entire

community and visitors to downtown Billings with new retail opportunities, 24-hour activation with new residential units, and intentional and focused programming by the DBA staff and programs.

Attachments

Adaptive Reuse and Mixed-Use MT Dept of Commerce Main Street Grant

Docusign Envelope ID: B4EA72B8-5798-496D-BF10-28A1525B680F

MONTANA DEPARTMENT OF COMMERCE
MAIN STREET PROGRAM
ADAPTIVE REUSE & MIXED-USE DEVELOPMENT
CONTRACT #MT-MMS-CG-25-001

This agreement ("Contract") is entered into by the City of Billings Montana ("Grantee") and the Montana Department of Commerce ("Department").

The Grantee and the Department hereby agree to the following terms:

Section 1. PURPOSE

The purpose of this Contract is to provide funding authorized through 90-1-122(e) of the Montana Code Annotated ("MCA") to the Grantee for main street activities approved by the Department under the Montana Main Street Adaptive Reuse and Mixed-Use Development Program ("MMS ARMU" or "Program").

Section 2. AUTHORITY

This Contract is issued under authority of Title 90, Chapter 1, Part 1, MCA.

Section 3. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for Program assistance, including any written modifications or reports resulting from the review of the application by the Department (collectively "Project"), is specifically incorporated into this Contract by reference and the representations made therein are binding upon the Grantee.

Section 4. ACCEPTANCE OF PROGRAM REQUIREMENTS

(a) The Grantee will comply with all applicable local, state, and federal laws as well as all applicable regulations, ordinances, and resolutions now in effect or as may be amended during the term of this Contract. Grantee will comply with all administrative directives and procedures that may be established or amended by the Department for the Program, including the most current version of the *MMS Program Guidelines* and the most current version of the *Montana Main Street Adaptive Reuse and Mixed-Use Development Grant Application,* maintained by the Department.

(b) The Grantee agrees that all contracts and subcontracts it enters into for the completion of the activities described in Section 6 will require such contractors, subcontractors, and subrecipient entities to also comply with all requirements placed on the Grantee in paragraph (a) of this Section.

(c) The Grantee agrees to repay to the Department any funds advanced under this

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Contract that the Grantee, its contractors, subcontractors, or subrecipient entities, or any public or private agent or agency to which it delegates authority to carry out any portion of this Contract expends in violation of: (i) the terms of this Contract; (ii) the statutes, and regulations governing the Program; (iii) or any applicable local, state, or federal requirements.

(d) The Grantee agrees that the Project will adhere to all applicable design standards required by the Department of Environmental Quality ("DEQ"), and Grantee shall obtain all applicable federal, state, and local permits required for the Project. If no DEQ standards are applicable to the Project, the Grantee agrees that the Project will adhere to generally accepted industry standards, such as *Recommended Standards for Wastewater Facilities* or *Recommended Standards for Water Works*, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) This Contract shall take effect upon execution by the parties and will terminate on September 30, 2026 or upon approval of Grantee's Project completion report by the Department, whichever is later, unless otherwise terminated in accordance with this Contract.

(b) All authorized expenses to be reimbursed must be incurred by the Grantee between October 22, 2024 and June 30, 2026. All requests for reimbursement must be submitted to the Department within ninety (90) days after June 30, 2026.

(c) The activities to be performed by the Grantee will be completed according to the implementation schedule set forth in Exhibit A. Grantee must begin Project no later than six (6) months from October 22, 2024. The Grantee may modify the implementation schedule only with prior written approval of the Department.

(d) The Department may grant an extension to this Contract upon request by the Grantee if the Department determines, in its sole discretion, that the Grantee has demonstrated progress toward completion of the Project, has engaged in a good faith effort to comply with the duties, terms, and conditions of this Contract, and that the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control. A written request for an extension must be submitted at least sixty (60) days prior to September 30, 2026.

Section 6. SCOPE OF WORK

The Grantee will complete the Project and administer this Contract as set forth in the Grantee's application for Program assistance, including any amendments, approved by

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the Department. The Grantee will use Program funds for the following major components of the Project:

- Develop the Billings Masonic Temple Building as a retail incubator on the first floor, Downtown Billings Alliance offices and community space on the second floor, and workforce housing on the third floor.

Section 7. BUDGET

(a) The total amount to be awarded to the Grantee under this Contract shall not exceed $300,000.

(b) A copy of the preliminary Project budget is attached as Exhibit B and specifically incorporated herein by reference. After construction bids are awarded or other major Project activity cost elements are determined, the Grantee shall provide the Department with a final Project budget that will, upon receipt and approval by the Department, supersede the preliminary budget in Exhibit B and thereby be incorporated as part of this Contract, binding upon the Grantee.

(c) For cumulative budget adjustments of $5,000 or less between line items of the Program portion of Exhibit B, Department approval of the request for reimbursement form shall constitute approval of the budget adjustment. Grantee shall describe the rationale for any budget adjustment and note the adjustment(s) in the request for reimbursement submitted to the Department. Budget adjustments in excess of $5,000 between any line item of Exhibit B must be approved in advance by the Department.

(d) Any authorized funds not expended under this grant by the later date referenced in Section 5(b), or otherwise accounted for in accordance with the provisions of this Section, will revert to the Department and will be used to finance other Program projects.

Section 8. ACCESS TO AND RETENTION OF RECORDS

(a) The Grantee agrees to create and maintain records supporting the services covered by this Contract, including but not limited to, financial records, supporting documents, and such other records as are required by law or other authority, for a period of five (5) years after either the termination date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Grantee's offices.

(b) The Grantee shall provide the Department, Montana Legislative Auditor, or their authorized agents access to any records related to the Project or otherwise necessary to determine contract compliance, at no cost to the Department, the

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Montana Legislative Auditor, or their authorized agents.

Section 9. LIAISONS

All project management and coordination on behalf of the Department shall be through a single point of contact designated as the Department's liaison. Grantee shall designate a liaison that will provide the single point of contact for management and coordination of Grantee's work. All work performed pursuant to this Contract shall be coordinated between the Department's liaison and the Grantee's liaison. The liaisons for this Contract are:

For the Department:
Micky Zurcher (or successor)
Program Specialist, MDOC
301 S. Park Ave.
P.O. Box 200523
Helena, MT 59620-0523
406-841-2863
micky.zurcher@mt.gov

For the Grantee:
Katy Schreiner (or successor)
Downtown Billings
102 N. 29th St
Billings, MT 59101
406-294-5060
katy@downtownbillings.com

Section 10. METHOD OF REIMBURSEMENT

(a) The Department will not release any Program funds to the Grantee until the Grantee has obtained firm commitments for all other financial resources to be involved in the Project, as defined in Section 6 and Exhibit B. The Grantee may not expend or obligate any Program funds, other than for administrative purposes, until the Department determines that this condition has been satisfied.

(b) The Department agrees that, if and when the funds described in paragraph (a) of this Section are available, the Department will authorize the Grantee to request reimbursement from funding awarded for the Project.

(c) The Department agrees to reimburse the Grantee for eligible Project costs incurred on or after the date identified in Section 5(b) upon the successful completion of activities set forth in Section 6. All reimbursements must be supported by adequate documentation requested by the Department, and provided by the Grantee, and require Department approval of the Grantee's request for reimbursement. In requesting reimbursement, the Grantee will follow the instructions supplied by the Department.

(d) Unless previously agreed to in writing by the Department, the Department will not reimburse Grantee for any costs related to the land acquisition, construction, construction inspection, or contingency line items in Exhibit B until Grantee demonstrates all applicable permits for the project have been obtained as required

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in Section 4(c). In requesting reimbursement, the Grantee will follow the instructions supplied by the Department.

(e) The Department will not reimburse the Grantee for any costs incurred prior to the date identified in Section 5(b), any expenses not included in Exhibit B or an approved adjustment thereto, any ineligible expenses as set forth in the most current version of the *MMS Program Guidelines* and the most current version of the *Montana Main Street Adaptive Reuse & Mixed-Use Development Grant Application*, or any expenses not adequately supported in writing by the Grantee's records.

(f) As set forth in Section 17, if the Grantee fails to or is unable to comply with any of the terms and conditions of this Contract any costs incurred will be the Grantee's sole responsibility.

(g) The Department is allowed fifteen (15) business days to process a request for reimbursement once adequate supporting documentation has been received by the Department. The Grantee shall provide banking information before or at the time of Contract execution in order to facilitate electronic funds transfer payments.

(h) If the Grantee changes one of its sources of funding or the cost of the Project increases after the Grantee has obtained the firm commitment of non-Program funds, the Department may, at its discretion, suspend the distribution of Program funds until the Grantee obtains a firm commitment of funds for the full Project budget.

(i) The Department may reduce the Grantee's amount of Program funds provided by this Contract if actual Project expenses are lower than projected by the Grantee in Exhibit B or the Grantee obtains a greater amount of grant funds from other sources than as presented in the Project application.

(j) If the Department, in its sole discretion, determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract or has breached the terms of this Contract, the Department may withhold reimbursement to the Grantee until such time as the Department and the Grantee agree on a plan to remedy the deficiency.

(k) Requests for reimbursement for contracted or subcontracted services must include appropriate documentation demonstrating compliance with contract requirements.

(l) The Grantee may not use monies provided through this Contract as payment for Project costs that are reimbursed from other sources.

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Section 11. REPORTING REQUIREMENTS

(a) Project Progress Reports: During the term of this Contract the Grantee will submit Project progress reports to the Department in conjunction with each request for reimbursement. These reports will describe the status of the activities set forth in Section 6, including, at a minimum, the percentage completed, costs incurred, funds remaining, and projected completion date. Additionally, the report must provide documentation supporting each claim for expenses to be reimbursed, describe any significant problems encountered in carrying out the Project, and the scope of any necessary modifications the Grantee is requesting in the Project scope of work, budget, or implementation schedule. The Department, at its sole discretion, may decline to honor any request for reimbursement if the required project progress report has not been submitted to or approved by the Department.

(b) Project Completion Report: Within ninety (90) days of Project completion, the Grantee will submit a final Project completion report for Department approval. The Project completion report will describe the total costs incurred for the Project, identify the final completion date, and summarize any significant problems encountered in carrying out the Project. Upon approval of the Project completion report, the Department will issue a notice of Project close-out. If the Grantee fails to submit a Project completion report within ninety (90) days, the Department may reallocate any remaining Project funds for other Program activities.

Section 12. PROJECT MONITORING

The Department or any of its authorized agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with Section 6 of this Contract, the proper use of funds, and other technical and administrative requirements of this Contract, including the adequacy of the Grantee's records and accounts. The Department may advise the Grantee of any specific areas of concern and provide the Grantee opportunity to propose corrective actions acceptable to the Department.

Section 13. NOTICE

All notices required under the provisions of this Contract must be in writing and delivered to the parties' liaisons identified herein either by first class mail, electronic mail, or personal service.

Section 14. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract. If the number is not provided, the Department is not obligated to pay the invoice.

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Section 15. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Grantee may not assign, transfer, or subcontract any portion of this Contract without the Department's prior written consent. (§ 18-4-141, MCA). The Grantee is responsible to the Department for the acts and omissions of all Grantee's subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Grantee. No contractual relationships exist between any subcontractor the Department under this Contract.

Section 16. CONTRACT AMENDMENT

This Contract may not be enlarged, modified, or altered without a written agreement signed by all parties to the Contract.

Section 17. TERMINATION OF CONTRACT

This Contract may only be terminated in whole or in part as follows:

(a) Termination Due to Loss or Reduction of Funding: The Department, at its sole discretion, may terminate or reduce the scope of this Contract if any funding sources are eliminated or reduced for any reason, including as permitted by Montana Code Annotated § 18-4-313(4). If a termination or modification is required, the Department may, if sufficient Program funds are available, compensate the Grantee for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Department will notify the Grantee of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, provide the Grantee with a modified Project budget amount.

(b) Termination for Cause with Notice to Cure Requirement: The Department may terminate this Contract for failure of the Grantee, its contractors, subcontractors, or subrecipient entities to perform or comply with any of the services, duties, terms, or conditions contained in this Contract after giving the Grantee written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time not less than thirty (30) calendar days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

(c) Effect of Termination: In the event of termination due to the Grantee's, its contractors', subcontractors', or subrecipient entities' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, any costs incurred will be the sole responsibility of the Grantee. However, at its sole discretion, the Department may approve written requests by the Grantee for reimbursement of eligible expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended Program funds

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will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control.

Section 18. COMPLIANCE WITH APPLICABLE LAWS

Grantee shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Grantee is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Grantee subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and Executive Order No. 04-2016. Grantee agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, vaccination status, or marital status by the persons performing this Contract.

Section 19. ACCOUNTING, COST PRINCIPLES, AND AUDITING

(a) The Grantee, in accordance with §§ 2-7-503, 2-7-504, MCA, implementing administrative rules, and other authorities, must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles ("GAAP").

(b) The Department, any other legally authorized governmental entity, or their authorized agents may, at any time during or after the term of this Contract, conduct in accordance with §§ 2-7-503, 5-13-304, and 18-1-118, MCA and other authorities, audits for the purposes of ensuring the appropriate administration, expenditure of monies, and delivery of services provided through this Contract, at no cost to the Department.

Section 20. AVOIDANCE OF CONFLICT OF INTEREST

(a) The Grantee will comply with §§ 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, as applicable, and any other applicable local, state, or federal law regarding the avoidance of conflict of interest.

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(b) The Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

(c) The Grantee shall promptly refer to the Department any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

Section 21. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Grantees shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with §§ 39-71-401, 39-71-405, and 39-71-417, MCA. The Grantee accepts responsibility for supplying, and requiring all subcontractors to supply, the Department proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. The Grantee agrees that neither the Grantee nor its employees are employees of the State. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Grantee nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and renewal documents must be sent to the Department within thirty (30) days of Contract execution.

Section 22. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by the Grantee or any of its contractors or subcontractors in furtherance of this Contract are the property of the Grantee and the Department. Both Grantee and the Department have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish, authorize others to use, and to otherwise use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of both the Department and the Grantee.

Section 23. INSURANCE

(a) General Requirements: Grantee must maintain and assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, liability insurance against claims for injuries to persons or damages to property, including contractual liability, that may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance must cover such claims as may be caused by any negligent act or

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omission. The State, its officers, officials, employees, and volunteers must be covered as additional insureds for all claims arising out of the use of grant proceeds provided by the State of Montana.

(b) General Liability Insurance: At its sole cost and expense, Grantee must purchase and maintain occurrence coverage with minimum combined single limits of $1 million per occurrence and $2 million aggregate per year, or as established by statutory tort limits of $750,000 per claim and $1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under § 2-9-211, MCA.

(c) Professional Liability Insurance: Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of $1,000,000 per occurrence and $2,000,000 aggregate per year. *Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are filed after the cancellation or expiration date of the policy.*

(d) General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana and with a Best's rating of at least A-, or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements must be received by the Department prior to beginning any activity provided for under the Contract. Grantee must notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of Grantee's insurance policy, including endorsements, at any time.

(e) Property Insurance: At its sole cost and expense, Grantee must maintain property and hazard insurance, including course of construction coverage and earthquake insurance, for loss or damage to any building and related improvements and contents therein on a replacement cost basis throughout the term of the Contract. *Note: earthquake insurance is required when working in areas where the shaking level is above 10g.*
(Ref: http://rmtd.mt.gov/Portals/62/aboutus/publications/files/NEHRP.pdf).

Section 24. HOLD HARMLESS AND INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify and hold harmless State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense

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thereof, to the extent caused by or arising out of the Grantee's negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any subcontractor or anyone directly or indirectly employed by any subcontractor for whose acts subcontractor may be liable.

Claims under this provision also include those arising out of or in any way connected with the Grantee's breach of this contract, including any Claims asserting that any of the Grantee's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under Internal Revenue Code ("Code") §§ 4980H, 6055 or 6056.

Section 25. DEFAULT

Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract as set forth herein or as otherwise legally available, including but not limited to damages and specific performance.

Section 26. DEBARMENT

The Grantee certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency.

Section 27. FORCE MAJEURE

Neither party will be liable for any failure or delay in performing its duties in this agreement due to Force Majeure Events. "Force Majeure Event" means an event or circumstance beyond a party's reasonable control, such as natural catastrophes and acts of terrorism or war, and the consequences of that event or circumstance. Force Majeure Event does not include a strike or other labor unrest that affects only that party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstance that results in that Party's not having sufficient funds to comply with an obligation to pay. If a Force Majeure Event continues for thirty (30) days, the other party may terminate this agreement or suspend payments while the event continues.

Section 28. SEPARABILITY

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal or void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

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Section 29. ARBITRATION

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

Section 30. NO WAIVER OF BREACH

No failure by the Department to enforce any provisions hereof after any event of breach will be deemed a waiver of its rights regarding that event, or any subsequent event. No express failure of any event of breach will be deemed a waiver of any provision hereof. No such failure or waiver will be deemed a waiver of the right of the Department to enforce each and all the provisions hereof upon any further or other breach on the part of the Grantee.

Section 31. JURISDICTION AND VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in Lewis and Clark County, State of Montana and each party must pay its own costs and attorney fees, except as provided in Section 24, Hold Harmless and Indemnification.

Remainder of page intentionally left blank.

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Section 32. INTEGRATION

The Contract contains the entire agreement between the parties. No statements, promises, or inducements of any kind made by either party or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding. This Contract supersedes all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by all Parties.

The parties through their authorized agents have executed this Contract on the dates set out below.

GRANTEE:

Bill Cole, Mayor — Date
City of Billings

ATTEST:

Gina Dahl, Attorney — Date

APPROVED AS TO FORM:

Signed by:
Chris A. Kukulski — 12/2/2024
33A3EAF6D5384F6...

Chris Kukulski, City Administrator — Date

DEPARTMENT:

Mandy Rambo, Deputy Director — Date

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EXHIBIT A
Implementation Schedule

Activity	Quarters 2024				Quarters 2025				Quarters 2026			
	1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	3rd	4th
Project Start-up				x								
Contract with Commerce				x								
Construction					x	x	x	x	x			
Project Closeout											x	

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EXHIBIT B
Budget

Activity	Source: MMS ARMU	Source: DBP	Source: Owner	Source: TIF	Total
Grant Administration					
Professional Services (Engineering Architecture)	50,000.00		200,000.00		
Total Admin Costs	$ 50,000.00	$ -	$ 200,000.00	$ -	$ 250,000.00
Construction Costs	250,000.00	300,000.00	4,300,000.00	800,000.00	
Total Construction Costs	250,000.00	300,000.00	4,300,000.00	800,000.00	5,650,000.00
Total Project Costs	$300,000.00	$300,000.00	$4,500,000.00	$800,000.00	$5,900,000.00

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Contract Information Sheet

Division staff are required to complete the items in blue print. *Last Revised September 2024*

Contract Number:	MT-MMS-CG-25-001	Original Contract Amount:	300,000.00
Contractor's Name:	City of Billings	Amount of Prior Amendments:	N/A
Contractor Liaison:	Katy Schreiner, CEO	Current Amendment Amount:	N/A
Contractor's Liaison Email:	katy@downtownbillings.com	Total Contract Value:	300,000.00
Approved to Form Name:	Chris Kukulski, City Administrator		
Approved to Form Email:	kukulskic@billingsmt.gov	Funding Source:	State
Contractor (signee) Name:	Bill Cole, Mayor		
Contractor's Email:	coleb@billingsmt.gov	Program Number/Division:	60 - Community MT
Contractor's Address:	210 N 27th St	Org Number:	522710
Contractor's Address 2:	Billings, MT 59103	Vendor Number:	23436
Attest Name:	Gina Dahl, City Attorney	Project Name (optional):	
Attest Email:	dahlg@billingsmt.gov		
		Start Date:	Upon Execution
Delegation:	Commerce	End Date:	9/30/2026
Procurement Method:	Exempt*	Absolute End Date:	
Contract Type:	Grant		
Contract Usage:	As Needed		

Purpose of this contract/amendment:	Delegation Agreement Section 5.1 * Grants with governments; The purpose of this Contract is to provide funding to the Grantee for main street activities approved by the Department under the Montana Main Street Program ("MMS" or "Program").
Scope & duties of this contract:	Develop the Billings Masonic Temple Building as a retail incubator on the first floor, Downtown Billings Alliance offices and community space on the second floor, and workforce housing on the third floor.

Liaison:	Micky Zurcher	Program Manager:	jordan.conley@mt.gov
Liaison Email:	micky.zurcher@mt.gov	Bureau Chief:	galen.steffens@mt.gov
Liaison Phone:	406-841-2863	Additional Email:	

Signatures:			Copies To:	
Division Administrator	Signed by: Galen Steffens 6FD699DDCF9F443...	11/30/2024	Liaison	☑
Fiscal Review	Signed by: Kassie Clement 6CC757840FAD439...	12/2/2024	Director (> $200K)	☐
Legal Counsel	DocuSigned by: Tori Koch 1FCC8B103A9F4A3...	12/2/2024	Deputy Director (<$25K)	☐
Deputy Director	DocuSigned by: Mandy Rambo C42BDB421CA4E2...	12/2/2024	Perceptive	☑
OBPP	Signed by: Amy Sassano 69EF9753C19A4B3...	12/2/2024		
Information Technology				
SITSD				

DocuSign

Certificate Of Completion

Envelope Id: B4EA72B85798496DBF1028A1525B680F
Status: Sent
Subject: Montana Department of Commerce Contract #MT-MMS-CG-25-001 for Signature
Source Envelope:
Document Pages: 16
Signatures: 6
Certificate Pages: 6
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-07:00) Mountain Time (US & Canada)

Envelope Originator:
Contracts Admin
PO Box 200501
301 S. Park Ave
Helena, MT 596200501
doccontracts@mt.gov
IP Address: 161.7.43.62

Record Tracking

Status: Original
11/29/2024 1:27:10 PM
Holder: Contracts Admin
doccontracts@mt.gov
Location: DocuSign

Signer Events	Signature	Timestamp
Galen Steffens galen.steffens@mt.gov Division Administrator Security Level: Email, Account Authentication (None)	Signed by: Galen Steffens 6BD699DDCF9F443... Signature Adoption: Pre-selected Style Using IP Address: 161.7.94.157	Sent: 11/29/2024 1:30:21 PM Viewed: 11/30/2024 7:44:27 AM Signed: 11/30/2024 7:44:41 AM
Electronic Record and Signature Disclosure: Accepted: 11/30/2024 7:44:27 AM ID: e4fc3744-561d-46a3-ab1c-7167fd9a827a		
Kassie Clement Kassie.clement@mt.gov Security Level: Email, Account Authentication (None)	Signed by: Kassie Clement 6CC757840FAD439... Signature Adoption: Pre-selected Style Using IP Address: 161.7.39.7	Sent: 11/30/2024 7:44:43 AM Viewed: 12/2/2024 8:40:14 AM Signed: 12/2/2024 8:40:20 AM
Electronic Record and Signature Disclosure: Accepted: 6/6/2024 2:21:18 PM ID: c1112cf0-effe-420e-a815-f23e77516ad1		
Tori Koch torikoch@mt.gov Security Level: Email, Account Authentication (None)	DocuSigned by: Tori Koch 1FCC8B103A9E4A3... Signature Adoption: Pre-selected Style Using IP Address: 161.7.39.7	Sent: 12/2/2024 8:40:22 AM Viewed: 12/2/2024 8:48:32 AM Signed: 12/2/2024 8:48:39 AM
Electronic Record and Signature Disclosure: Accepted: 5/7/2024 2:13:59 PM ID: 7d24f445-fce3-4826-bbb5-9dddcd7d240d		
Mandy Rambo Mandy.rambo@mt.gov Deputy Director Security Level: Email, Account Authentication (None)	DocuSigned by: Mandy Rambo C1288DD421CA4E2... Signature Adoption: Pre-selected Style Using IP Address: 161.7.97.90	Sent: 12/2/2024 8:48:41 AM Viewed: 12/2/2024 8:50:52 AM Signed: 12/2/2024 8:50:55 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Signer Events	Signature	Timestamp
Amy Sassano asassano@mt.gov Deputy Budget Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/2/2024 11:53:56 AM ID: 7d8db193-6d65-47c1-9aa5-a39ee6dcc741	Signed by: Amy Sassano 69EF9753C19A4B3... Signature Adoption: Pre-selected Style Using IP Address: 161.7.39.7	Sent: 12/2/2024 8:50:57 AM Viewed: 12/2/2024 11:53:56 AM Signed: 12/2/2024 11:54:10 AM
Chris Kukulski, City Administrator kukulskic@billingsmt.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/2/2024 2:31:40 PM ID: 77dd7424-68ad-4afb-815d-5436980681fd	Signed by: Chris A. Kukulski 33A3E4F6D5384F5... Signature Adoption: Drawn on Device Using IP Address: 69.145.98.35 Signed using mobile	Sent: 12/2/2024 11:54:13 AM Viewed: 12/2/2024 2:31:40 PM Signed: 12/2/2024 2:33:13 PM
Bill Cole, Mayor coleb@billingsmt.gov Mayor Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/2/2024 3:03:56 PM ID: 8be2dfdd-f963-438c-a07c-b26bf8dab3e0		Sent: 12/2/2024 2:33:17 PM Viewed: 12/2/2024 3:03:56 PM
Gina Dahl, City Attorney dahlg@billingsmt.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 9/23/2024 9:01:21 AM ID: 853ebf2f-f84e-4095-b8e0-7b93bdf1e294		
Mandy Rambo Mandy.rambo@mt.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Micky Zurcher Micky.zurcher@mt.gov Security Level: Email, Account Authentication (None)	COPIED	Sent: 11/29/2024 1:30:21 PM Viewed: 12/2/2024 6:29:30 AM

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Accepted: 11/26/2024 5:31:09 PM ID: cf7225be-51c7-4668-b8d0-717bfc578724		
Jordan Conley Jordan.Conley@mt.gov CEV Programs Supervisor Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/2/2024 9:36:22 AM ID: 097da6ed-a132-46d7-95bb-7b0ee69ad092	COPIED	Sent: 11/30/2024 7:44:43 AM Viewed: 12/2/2024 9:38:48 AM
Katy Schreiner, CEO katy@downtownbillings.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	11/29/2024 1:30:22 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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ii. send us an e-mail to doccontracts@mt.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

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City Council Regular

Date:	12/16/2024
Title:	Payment of Claims for week of November 18th, 2024
Presented by:	Erin Watterud
Department:	Finance
Presentation:	No
Legal Review:	Not Applicable
Project Number:	N/A

RECOMMENDATION

Staff recommends Council approve the Payment of Claims

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Claims in the amount of $4,168,008.09 have been reviewed and are presented for City Council payment approval. A complete listing of the claims for the week are available in the Finance Department. Payment Approval Process Every invoice for payment is entered into the City's accounting system and the backup documentation is scanned in and attached (physical invoices, additional e-mails explaining payments, bids, contracts, etc.). Each invoice goes through a multi-step approval process depending upon the amount of the payment. First, invoices are entered by the department requesting the payment and the department director or designee must perform an initial review and approval of the purchase. The number of approvals within the department can vary based upon the size of the department, but no less than one approver within each department must verify the payment. Second, all payments, regardless of size, must be approved by the Purchasing Agent or designee. The Purchasing Agent will review the payment to ensure purchasing procedures are followed and appropriate documentation is attached. If the payment is greater than $1,000, then it must be approved by the Finance Director or designee. If that payment is greater than $10,000, then it must be approved by the City Administrator or Assistant City Administrator. Once all approvals are completed, the payment is able to be made and the Accounts Payable Clerk can print the check. After all checks are printed, a list of all checks in excess of $2,500 is generated and placed on the next City Council meeting for review.

ALTERNATIVES

No other alternatives were analyzed.

FISCAL EFFECTS

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

Attachments

CouncilMemo wk of 11182024

Check Date	Check #	Name	Fund Name	Amount	Item Desc
11/18/2024	875794	Ace Electric	Public Safety	$ 622.37	Add circuit in captain's office at Fire Station 3
11/18/2024	875794	Ace Electric	Public Safety	$ 3,653.88	new surface receptacles at Fire Station 3
11/18/2024	875794	Ace Electric	Public Safety	$ 555.65	outlets/remove old ethernet phone connections at FS 1
11/18/2024	875799	Angel Armor	Fire Grants	$ 9,006.23	TRUTH SNAP, PLATE BACKER - RTF
11/18/2024	875800	AT & T Corp	Airport	$ 859.80	Airport -
11/18/2024	875800	AT & T Corp	Building	$ 45.26	Building Manager
11/18/2024	875800	AT & T Corp	Building	$ 603.90	PW-Building Cell Phones
11/18/2024	875800	AT & T Corp	Building	$ 426.24	PW-Building Surfaces
11/18/2024	875800	AT & T Corp	CDBG	$ 112.23	Comm Dev
11/18/2024	875800	AT & T Corp	Court Grants	$ 90.52	Muni Court DC
11/18/2024	875800	AT & T Corp	Engineering	$ 601.70	Engineering Tablets
11/18/2024	875800	AT & T Corp	Engineering	$ 141.31	PW-Engineering Cell Phones and MiFi
11/18/2024	875800	AT & T Corp	Facilities	$ 45.26	Facilities BOC
11/18/2024	875800	AT & T Corp	Facilities	$ 31.68	Facilities BOC
11/18/2024	875800	AT & T Corp	Facilities	$ 13.58	Facilities BOC
11/18/2024	875800	AT & T Corp	Facilities	$ 45.26	Facilities BOC
11/18/2024	875800	AT & T Corp	Facilities	$ 86.52	Facilities BOC/CH
11/18/2024	875800	AT & T Corp	Facilities	$ 28.84	Facilities BOC/CH
11/18/2024	875800	AT & T Corp	Facilities	$ 45.26	Facilities City Hall
11/18/2024	875800	AT & T Corp	Facilities	$ 45.26	Facilities City Hall
11/18/2024	875800	AT & T Corp	Facilities	$ 45.26	Facilities City Hall
11/18/2024	875800	AT & T Corp	Facilities	$ 90.52	Facilities Managers
11/18/2024	875800	AT & T Corp	Fleet	$ 90.89	Motor Pool
11/18/2024	875800	AT & T Corp	General	$ 417.22	Code Enforcement
11/18/2024	875800	AT & T Corp	General	$ 45.26	Purchasing Agent
11/18/2024	875800	AT & T Corp	General	$ 45.26	Human Resources
11/18/2024	875800	AT & T Corp	General	$ 255.39	Legal Dept -Domestic Violence
11/18/2024	875800	AT & T Corp	General	$ 21.21	Legal
11/18/2024	875800	AT & T Corp	IT Resources	$ 119.99	IT Department
11/18/2024	875800	AT & T Corp	Library	$ 416.88	Library
11/18/2024	875800	AT & T Corp	Library	$ 107.46	Library Out Reach
11/18/2024	875800	AT & T Corp	P.W. Admin	$ 32.67	PWBLKNP OFFICE -50/50
11/18/2024	875800	AT & T Corp	P.W. Admin	$ 32.68	PWBLKNP OFFICE -50/50

Check Date	Check #	Name	Fund Name	Amount	Item Desc
11/18/2024	875800	AT & T Corp	Park Dist 1	$ 584.41	Parks Dept.
11/18/2024	875800	AT & T Corp	Park Dist 1	$ 11.92	Parks Seasonal
11/18/2024	875800	AT & T Corp	Park Dist 1	$ 214.84	PRPL - Recreation Division
11/18/2024	875800	AT & T Corp	Park Dist 1	$ 487.26	PRPL Parks Tablets
11/18/2024	875800	AT & T Corp	Park Dist 1	$ 88.20	REC Seasonal
11/18/2024	875800	AT & T Corp	Park Dist 1	$ 69.52	Rec Tablets
11/18/2024	875800	AT & T Corp	Parking	$ -	Parking Division Meter Maintenance
11/18/2024	875800	AT & T Corp	Parking	$ 410.90	Parking Phones and scanner
11/18/2024	875800	AT & T Corp	Parking	$ 447.74	Parking Phones and scanner
11/18/2024	875800	AT & T Corp	PD Program	$ 160.56	CCSIU Toughbook
11/18/2024	875800	AT & T Corp	PD Program	$ 45.58	Domestic Violence
11/18/2024	875800	AT & T Corp	Phone System	$ (0.80)	IT Department -On call Phone
11/18/2024	875800	AT & T Corp	Phone System	$ 65.02	IT iPads
11/18/2024	875800	AT & T Corp	Phone System	$ 45.26	TeleComm Manager
11/18/2024	875800	AT & T Corp	Planning	$ 67.95	PLANNING
11/18/2024	875800	AT & T Corp	Public Safety	$ 273.16	Animal Control Cell Phones
11/18/2024	875800	AT & T Corp	Public Safety	$ 321.12	Animal Control -MDT
11/18/2024	875800	AT & T Corp	Public Safety	$ 120.42	Assistant chiefs new iPads
11/18/2024	875800	AT & T Corp	Public Safety	$ 334.46	Comm. Center 9-1-1
11/18/2024	875800	AT & T Corp	Public Safety	$ 40.14	Detective Chartier -Toughbook
11/18/2024	875800	AT & T Corp	Public Safety	$ 127.46	FIRE CRADLEPOINT AND DRONES
11/18/2024	875800	AT & T Corp	Public Safety	$ 444.13	FIRE CRADLEPOINT AND DRONES
11/18/2024	875800	AT & T Corp	Public Safety	$ 1,318.61	Fire Department Cell Phones
11/18/2024	875800	AT & T Corp	Public Safety	$ 324.90	FIRE EMS
11/18/2024	875800	AT & T Corp	Public Safety	$ 181.04	Fire EMS Cell Phone
11/18/2024	875800	AT & T Corp	Public Safety	$ 198.72	FIRE INSPECTIONS
11/18/2024	875800	AT & T Corp	Public Safety	$ 222.06	Fire iPads
11/18/2024	875800	AT & T Corp	Public Safety	$ 40.14	Fire iPads
11/18/2024	875800	AT & T Corp	Public Safety	$ 269.46	Fire iPads
11/18/2024	875800	AT & T Corp	Public Safety	$ 802.80	Fire Station iPads
11/18/2024	875800	AT & T Corp	Public Safety	$ 85.72	ICAC -Campbell and Spare
11/18/2024	875800	AT & T Corp	Public Safety	$ 481.68	MDT Fire
11/18/2024	875800	AT & T Corp	Public Safety	$ 83.39	POLICE CRADLEPOINT

Check Date	Check #	Name	Fund Name	Amount	Item Desc
11/18/2024	875800	AT & T Corp	Public Safety	$ 126.44	POLICE CSO
11/18/2024	875800	AT & T Corp	Public Safety	$ 3,898.41	Police Department Cell Phone
11/18/2024	875800	AT & T Corp	Public Safety	$ 50.31	Police -Drone
11/18/2024	875800	AT & T Corp	Public Safety	$ 5,228.37	Police MDT Toughbooks and Loaner MDT's
11/18/2024	875800	AT & T Corp	Public Safety	$ 200.70	Police MDT Toughbooks and Loaner MDT's
11/18/2024	875800	AT & T Corp	Public Safety	$ 287.20	Ylwstne Co Cellular Charges -Three cradlepoints -Fire Dept
11/18/2024	875800	AT & T Corp	Solid Waste	$ 331.70	SOLID WASTE Cell and iPads
11/18/2024	875800	AT & T Corp	Solid Waste	$ 139.36	SOLID WASTE Cell and iPads
11/18/2024	875800	AT & T Corp	Street/Traffic	$ 55.35	School Flashers
11/18/2024	875800	AT & T Corp	Street/Traffic	$ 614.66	Street Traffic iPads
11/18/2024	875800	AT & T Corp	Transit	$ 50.27	MET
11/18/2024	875800	AT & T Corp	Transit	$ 50.27	MET
11/18/2024	875800	AT & T Corp	Transit	$ 50.27	MET
11/18/2024	875800	AT & T Corp	Transit	$ 22.61	MET
11/18/2024	875800	AT & T Corp	Transit	$ 50.27	MET
11/18/2024	875800	AT & T Corp	Transit	$ 50.27	MET
11/18/2024	875800	AT & T Corp	Transit	$ 29.50	MET
11/18/2024	875800	AT & T Corp	Transit	$ 30.76	MET
11/18/2024	875800	AT & T Corp	Transit	$ 22.61	MET
11/18/2024	875800	AT & T Corp	Transit	$ 20.50	MET
11/18/2024	875800	AT & T Corp	Transit	$ 50.27	MET
11/18/2024	875800	AT & T Corp	Transit	$ 45.22	MET
11/18/2024	875800	AT & T Corp	Transit	$ 6.79	MET
11/18/2024	875800	AT & T Corp	Transit	$ 31.61	MET Transit Tablets
11/18/2024	875800	AT & T Corp	Transit	$ 645.35	MET Transit Tablets
11/18/2024	875800	AT & T Corp	Transit	$ 339.59	MET Transit Tablets
11/18/2024	875800	AT & T Corp	Wastewater	$ 181.04	PW Environmental
11/18/2024	875800	AT & T Corp	Wastewater	$ 354.24	PWBELKNAP-DIST COLL CELL PHONES 50/50
11/18/2024	875800	AT & T Corp	Wastewater	$ 473.57	PWBLKNP Electricians -Phones
11/18/2024	875800	AT & T Corp	Wastewater	$ 28.16	PWBLKNP STORES -75/25
11/18/2024	875800	AT & T Corp	Wastewater	$ 1,007.76	Wastewater Treatment Plant and iPads
11/18/2024	875800	AT & T Corp	Wastewater	$ 104.52	Wastewater Treatment Plant and iPads
11/18/2024	875800	AT & T Corp	Wastewater	$ 3.50	PW-Distribution Collection Tablets 50/50

Check Date	Check #	Name	Fund Name	Amount	Item Desc
11/18/2024	875800	AT & T Corp	Wastewater	$ 385.50	PW-Distribution Collection Tablets 50/50
11/18/2024	875800	AT & T Corp	Wastewater	$ 80.28	PW-Environmental
11/18/2024	875800	AT & T Corp	Water	$ 354.24	PWBELKNAP-DIST COLL CELL PHONES 50/50
11/18/2024	875800	AT & T Corp	Water	$ 947.46	PWBELKNAP-WT Water Treatment
11/18/2024	875800	AT & T Corp	Water	$ 469.53	PWBLKNP COMM-METER CityWorks/Neptune
11/18/2024	875800	AT & T Corp	Water	$ 288.40	PWBLKNP MTRSHOP CELL PHONE AND IPADS
11/18/2024	875800	AT & T Corp	Water	$ 412.71	PWBLKNP MTRSHOP CELL PHONE AND IPADS
11/18/2024	875800	AT & T Corp	Water	$ 84.47	PWBLKNP STORES -75/25
11/18/2024	875800	AT & T Corp	Water	$ 3.51	PW-Distribution Collection Tablets 50/50
11/18/2024	875800	AT & T Corp	Water	$ 385.50	PW-Distribution Collection Tablets 50/50
11/18/2024	875801	Automatic Doors Of MT	Airport	$ 5,940.00	Retainage Release
11/18/2024	875803	Baker Tilly US	SID Fund	$ 3,100.00	Special Improvement District Bonds Arbitrage Compliance
11/18/2024	875803	Baker Tilly US	Sidewalk Debt Svc	$ 310.00	Special Improvement District Bonds Arbitrage Compliance
11/18/2024	875803	Baker Tilly US	Sidewalk Debt Svc	$ 403.00	Special Improvement District Bonds Arbitrage Compliance
11/18/2024	875803	Baker Tilly US	Sidewalk Debt Svc	$ 496.00	Special Improvement District Bonds Arbitrage Compliance
11/18/2024	875803	Baker Tilly US	Sidewalk Debt Svc	$ 1,891.00	Special Improvement District Bonds Arbitrage Compliance
11/18/2024	875811	Carahsoft Technology	General	$ 19,642.00	DocuSign Yearly Renewal; FY 2025
11/18/2024	875812	Cengage Learning	Library	$ 4,637.50	85899627 Chilton Library
11/18/2024	875823	Cop Construction	Wastewater	$ 568,530.23	WO 24-01 Contract 2.. 2024 Sewer Replacement Project
11/18/2024	875830	Dakota Supply Group	Water	$ 7,271.15	6' 6" FIRE HYDRANT - PUSH ON
11/18/2024	875831	Dell Computer L P	Public Safety	$ 8,795.94	Qty.3 Precision 5860 Towers -higher end for Police Analysts
11/18/2024	875831	Dell Computer L P	Public Safety	$ 6,270.32	Qty.5 Dell OptiPlex 7020+, Qt.3 24" regular monitors -Police
11/18/2024	875831	Dell Computer L P	Public Safety	$ 9,405.98	Qty.6 Mobile Precision Laptops and Qty. 7 Dock stations -PD
11/18/2024	875832	Desert Mountain	Street/Traffic	$ 5,051.80	ice slicer to fill airport facility
11/18/2024	875832	Desert Mountain	Street/Traffic	$ 4,928.30	ice slicer to fill airport facility
11/18/2024	875832	Desert Mountain	Street/Traffic	$ 4,917.74	ice slicer to fill airport facility
11/18/2024	875832	Desert Mountain	Street/Traffic	$ 4,753.57	ice slicer to fill airport facility
11/18/2024	875833	Dick Anderson	Water	$ 2,169,549.08	WO 19-42 West End WTP Project - Construction
11/18/2024	875836	DOWL	St Maint Dist	$ 2,675.84	WO 23-11 Downtown 2-Way Street Conversion
11/18/2024	875836	DOWL	Tax Incrmnt N27	$ 21,650.01	WO 23-11 Downtown 2-Way Street Conversion
11/18/2024	ACH	Eldorado National CA	Transit	$ 14.03	90876800_Shipping
11/18/2024	ACH	Eldorado National CA	Transit	$ 132.96	90876800_Washer Spring Front Suspension
11/18/2024	ACH	Eldorado National CA	Transit	$ 117.84	90876800_Washer Spring Rear Suspension

Check Date	Check #	Name	Fund Name	Amount	Item Desc
11/18/2024	ACH	Eldorado National CA	Transit	$ 4,124.76	90876844_Leaf Springs- Rear- ENC
11/18/2024	ACH	Eldorado National CA	Transit	$ 350.49	90876844_Shipping
11/18/2024	ACH	Eldorado National CA	Transit	$ 9,000.00	90876878_DEF Tanks
11/18/2024	ACH	Eldorado National CA	Transit	$ 174.20	90876878_Shipping
11/18/2024	875839	ESRI Inc	IT Resources	$ 85,000.00	Annual ESRI renewal 1/1/2025-12/31/2025
11/18/2024	875840	Executive Cleaning	Library	$ 1,296.00	79139
11/18/2024	875840	Executive Cleaning	Library	$ 729.00	79174
11/18/2024	875840	Executive Cleaning	Library	$ 270.00	79223
11/18/2024	875840	Executive Cleaning	Public Safety	$ 1,276.43	911 CLEANING SERVICES
11/18/2024	875849	Iaff	Payroll Clearing	$ 5,463.66	Payroll Summary
11/18/2024	875850	Infax	Airport	$ 3,034.18	Flight Information Display (FIDS) Maintenance
11/18/2024	875851	Ingram Library	Library	$ 0.08	84406367
11/18/2024	875851	Ingram Library	Library	$ 24.56	84406367
11/18/2024	875851	Ingram Library	Library	$ 0.03	84406368
11/18/2024	875851	Ingram Library	Library	$ 9.59	84406368
11/18/2024	875851	Ingram Library	Library	$ 0.04	84406369
11/18/2024	875851	Ingram Library	Library	$ 33.00	84406369
11/18/2024	875851	Ingram Library	Library	$ 10.77	84406370
11/18/2024	875851	Ingram Library	Library	$ 0.03	84406370
11/18/2024	875851	Ingram Library	Library	$ 17.96	84406371
11/18/2024	875851	Ingram Library	Library	$ 0.03	84406371
11/18/2024	875851	Ingram Library	Library	$ 0.45	84406372
11/18/2024	875851	Ingram Library	Library	$ 224.60	84406372
11/18/2024	875851	Ingram Library	Library	$ 815.94	84406373 OBB
11/18/2024	875851	Ingram Library	Library	$ 0.05	84410953
11/18/2024	875851	Ingram Library	Library	$ 17.10	84410953
11/18/2024	875851	Ingram Library	Library	$ 18.74	84410953
11/18/2024	875851	Ingram Library	Library	$ 446.14	84410954
11/18/2024	875851	Ingram Library	Library	$ 47.65	84410954
11/18/2024	875851	Ingram Library	Library	$ 2.89	84410954
11/18/2024	875851	Ingram Library	Library	$ 6.49	84410954
11/18/2024	875851	Ingram Library	Library	$ 1,974.53	84410954
11/18/2024	875851	Ingram Library	Library	$ 592.65	84410954

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11/18/2024	875851	Ingram Library	Library	$ 16.52	84410955
11/18/2024	875851	Ingram Library	Library	$ 0.01	84410955
11/18/2024	875851	Ingram Library	Library	$ 0.05	84410956
11/18/2024	875851	Ingram Library	Library	$ 11.03	84410956
11/18/2024	875851	Ingram Library	Library	$ 17.10	84410956
11/18/2024	875851	Ingram Library	Library	$ 22.78	84410957
11/18/2024	875851	Ingram Library	Library	$ 18.88	84410958
11/18/2024	875851	Ingram Library	Library	$ 17.11	84437240
11/18/2024	875851	Ingram Library	Library	$ 0.72	84437240
11/18/2024	875851	Ingram Library	Library	$ 0.97	84437241
11/18/2024	875851	Ingram Library	Library	$ 11.39	84437241
11/18/2024	875851	Ingram Library	Library	$ 11.20	84437241
11/18/2024	875851	Ingram Library	Library	$ 11.99	84437242
11/18/2024	875851	Ingram Library	Library	$ 19.64	84437242
11/18/2024	875851	Ingram Library	Library	$ 1.31	84437242
11/18/2024	875851	Ingram Library	Library	$ 21.99	84457266
11/18/2024	875851	Ingram Library	Library	$ 0.07	84457266
11/18/2024	875851	Ingram Library	Library	$ 154.86	84457267
11/18/2024	875851	Ingram Library	Library	$ 2.93	84457267
11/18/2024	875851	Ingram Library	Library	$ 10.79	84457267
11/18/2024	875851	Ingram Library	Library	$ 79.61	84457267
11/18/2024	875851	Ingram Library	Library	$ 11.39	84514949
11/18/2024	875851	Ingram Library	Library	$ 0.01	84514949
11/18/2024	875851	Ingram Library	Library	$ 34.22	84514950
11/18/2024	875851	Ingram Library	Library	$ 12.98	84514950
11/18/2024	875851	Ingram Library	Library	$ 0.08	84514950
11/18/2024	875851	Ingram Library	Library	$ 10.17	84514950
11/18/2024	875851	Ingram Library	Library	$ 541.43	84514951
11/18/2024	875851	Ingram Library	Library	$ 828.27	84514951
11/18/2024	875851	Ingram Library	Library	$ 226.89	84514951
11/18/2024	875851	Ingram Library	Library	$ 2.91	84514951
11/18/2024	875851	Ingram Library	Library	$ 512.04	84514951
11/18/2024	875851	Ingram Library	Library	$ 10.19	84514952

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11/18/2024	875853	Interstate Power Systems	Transit	$ 1,762.99	R007061497:02_Unit#1834_Transmission Fixed
11/18/2024	875853	Interstate Power Systems	Transit	$ 5,475.66	R007061613:01_Unit#1830_Transmission Repair
11/18/2024	875854	Jares Fence	Wastewater	$ 14,285.00	WO23-23 Briarwood H2S Mitigation; Pmt 1 Final
11/18/2024	875861	Knife River	Airport	$ 76,237.08	Cargo Ramp Slot 5 - Eligible for Reimbursement
11/18/2024	875861	Knife River	Airport	$ 8,470.79	Cargo Ramp Slot 5 - Ineligible Costs
11/18/2024	875861	Knife River	Airport	$ 198,261.47	Retainage Release
11/18/2024	875861	Knife River	Airport	$ 22,029.05	Retainage Release
11/18/2024	875861	Knife River	Street/Traffic	$ 3,437.98	1 1/2" crushed base
11/18/2024	875861	Knife River	Street/Traffic	$ 3,370.99	1 1/2" crushed base
11/18/2024	875861	Knife River	Water	$ 2,185.47	3/4 " BEDDING ROCK - (102) P/N: 333-005-00040
11/18/2024	875861	Knife River	Water	$ 1,003.97	FUEL AND DELIVERY SURCHARGE
11/18/2024	ACH	Kois Brothers	Fleet	$ 2,103.45	133739
11/18/2024	ACH	Kois Brothers	Fleet	$ 1,230.18	133744
11/18/2024	ACH	Kois Brothers	Fleet	$ 161.19	133848
11/18/2024	ACH	Kois Brothers	Fleet	$ 717.47	58838
11/18/2024	ACH	Kois Brothers	Transit	$ 8,070.00	58711_Unit#1860_Lighting for Plow
11/18/2024	875864	Local 521	Public Safety	$ 6,900.00	RECRUIT CLOTHING ALLOWANCE 2024
11/18/2024	875865	Madison Agency	Airport	$ 14,348.00	Marketing & Creative for Advertising & Support for FY25
11/18/2024	875868	Max Fab Consulting	General	$ 4,000.00	Vet-Ready Program. Initial payment prior to December 4th
11/18/2024	875875	Montana CSED	Payroll Clearing	$ 5,544.90	Payroll Summary
11/18/2024	875879	MFPE	Payroll Clearing	$ 3,083.12	Payroll Summary
11/18/2024	875881	Montana Peterbilt	Fleet	$ 101.94	100833BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 480.82	103146BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 461.58	103264BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 88.00	103269BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 781.08	103269BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 781.08	103270BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 434.12	103447BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 17.75	103449BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 26.28	103454BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 65.44	103594BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 569.70	103706BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 278.86	103957BL

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11/18/2024	875881	Montana Peterbilt	Fleet	$ 2,321.26	103969BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 60.82	105300BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 353.67	105300BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 96.12	105300BL
11/18/2024	875881	Montana Peterbilt	Fleet	$ 212.20	105300BL
11/18/2024	875881	Montana Peterbilt	Solid Waste	$ 516.86	103618BL
11/18/2024	875881	Montana Peterbilt	Transit	$ 76.20	104989BL_Gasket
11/18/2024	875881	Montana Peterbilt	Transit	$ 72.12	104989BL_Washer-Teflon
11/18/2024	875881	Montana Peterbilt	Transit	$ 124.26	105349BL_Fuel Filters
11/18/2024	875881	Montana Peterbilt	Transit	$ 142.66	105519BL_Unit#1841_E-6 Brake Valve
11/18/2024	875881	Montana Peterbilt	Transit	$ 213.18	105677BL_Water Pump
11/18/2024	875881	Montana Peterbilt	Transit	$ 26.59	105678BL_Unit#1826_Oil Fill Cap
11/18/2024	875881	Montana Peterbilt	Transit	$ 4.10	105679BL_Seal, Rectangular
11/18/2024	875881	Montana Peterbilt	Transit	$ 20.87	105679BL_Tube, Oil Filler
11/18/2024	875882	MSFA	Payroll Clearing	$ 5,896.64	Payroll Summary
11/18/2024	875883	Montana Terrazzo	Park Dist 1	$ 13,930.00	12 PLANTERS FOR MOUNTVIEW CEMETERY - INVOICE 1019
11/18/2024	875885	Morgan	Public Safety	$ 2,900.75	NTC Reimbursement
11/18/2024	875886	Morrison Maierle	Airport	$ 3,710.39	AIP-73 Terminal Expansion - Eligible for Reimbursement
11/18/2024	875886	Morrison Maierle	Airport	$ 412.27	AIP-73 Terminal Expansion - Ineligible for Reimbursement
11/18/2024	875886	Morrison Maierle	Airport	$ 348.77	AIP-76 Terminal Expansion - eligible for local
11/18/2024	875886	Morrison Maierle	Airport	$ 11,999.99	Airport Master Plan Update - Federal Share
11/18/2024	875886	Morrison Maierle	Airport	$ 1,333.33	Airport Master Plan Update - Local Share
11/18/2024	875886	Morrison Maierle	Airport	$ 8,430.53	Amendment #13 Terminal Expansion Project - Federal
11/18/2024	875886	Morrison Maierle	Airport	$ 792.46	Amendment #13 Terminal Expansion Project - Ineligible
11/18/2024	875886	Morrison Maierle	Airport	$ 936.72	Amendment #13 Terminal Expansion Project - Local
11/18/2024	875886	Morrison Maierle	Airport	$ 18,945.35	Cargo Slot 5 Ramp Construction - Federal Share
11/18/2024	875886	Morrison Maierle	Airport	$ 2,105.04	Cargo Slot 5 Ramp Construction - Local Share
11/18/2024	875886	Morrison Maierle	Airport	$ 205.21	FY25 Miscellaneous Services
11/18/2024	875886	Morrison Maierle	Airport	$ 7,247.50	West End Sewer and Water Expansion Project
11/18/2024	875886	Morrison Maierle	Transit	$ 8,789.21	Amendment 10 MET Transit Remodel Project
11/18/2024	875888	MPPA	Payroll Clearing	$ 4,079.81	Payroll Summary
11/18/2024	875889	MT Dept of Rev-CGR2	Airport	$ 770.07	Cargo Ramp Slot 5 - Eligible for Reimbursement
11/18/2024	875889	MT Dept of Rev-CGR2	Airport	$ 85.56	Cargo Ramp Slot 5 - Ineligible Costs

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11/18/2024	875889	MT Dept of Rev-CGR2	Airport	$ 60.00	Retainage Release
11/18/2024	875889	MT Dept of Rev-CGR2	Airport	$ 222.51	Retainage Release
11/18/2024	875889	MT Dept of Rev-CGR2	Airport	$ 2,002.64	Retainage Release
11/18/2024	875889	MT Dept of Rev-CGR2	Gas Tax	$ 631.78	WO 22-22 & WO 24-10 2024 Annual Street Reconstruction
11/18/2024	875889	MT Dept of Rev-CGR2	Park Dist 1	$ 89.43	business tax Wovek for renovations to castlerock restroom
11/18/2024	875889	MT Dept of Rev-CGR2	Sidewalk Const	$ 227.52	WO 22-22 & WO 24-10 2024 Annual Street Reconstruction
11/18/2024	875889	MT Dept of Rev-CGR2	St Maint Dist	$ 97.73	WO 22-22 & WO 24-10 2024 Annual Street Reconstruction
11/18/2024	875889	MT Dept of Rev-CGR2	St Maint Dist	$ 599.64	WO 22-22 & WO 24-10 2024 Annual Street Reconstruction
11/18/2024	875889	MT Dept of Rev-CGR2	Transit	$ 1,871.32	MET Transit Addition & Remodel - Federal
11/18/2024	875889	MT Dept of Rev-CGR2	Transit	$ 1,470.32	MET Transit Addition & Remodel - Local
11/18/2024	875889	MT Dept of Rev-CGR2	Wastewater	$ 5,742.73	WO 24-01 Contract 2 - 2024 Sewer Replacement Project
11/18/2024	875889	MT Dept of Rev-CGR2	Water	$ 21,914.64	WO 19-42 West End WTP Construction; Pmt 10
11/18/2024	875889	MT Dept of Rev-CGR2	Water	$ 113.98	WO 24-27 2024 Water Service Repairs; Pmt 7
11/18/2024	875893	NorthWestern Energy	Airport	$ 13.19	0712534-7. Gate 16 Light. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 142.43	0712535-4. Employee Parking. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 18.98	0712791-3. Gate 16. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 17.12	0712795-4. Gate 17. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 17.26	0712797-0. Gate 9. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 11.21	0712805-1. IP-10. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 7.82	0712813-5. Burn Pit. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 17.39	0719759-3. Gate 12. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 64.47	0719760-1. Gate 14. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 19.81	0719761-9. Gate 15. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 18.25	0719762-7. Gate 13. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 18.10	0720296-3. Gate 29. October 2024
11/18/2024	875893	NorthWestern Energy	Airport	$ 19.87	2114868-9. Runway Weather System. October 2024
11/18/2024	875893	NorthWestern Energy	Building	$ 16.80	1569631-3
11/18/2024	875893	NorthWestern Energy	CDBG	$ 15.71	1709 Saint Johns / Account #4150071-1
11/18/2024	875893	NorthWestern Energy	Facilities	$ 10.35	3866815-8
11/18/2024	875893	NorthWestern Energy	Facilities	$ 252.94	3922089-2
11/18/2024	875893	NorthWestern Energy	Library	$ 8,966.52	3039007-4 Library electricity Nov 2024
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 808.61	0712538-8
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 48.80	0813489-2

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11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 28.39	0978917-3
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 138.83	1191404-1
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 6.00	1588262-4
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 10.98	1849408-8
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 17.94	1904944-4
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 37.16	1941243-6
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 6.00	3178260-0
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 22.98	3241436-9
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ -	4086220-3
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 48.52	4148708-3
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ 80.70	4177819-2
11/18/2024	875893	NorthWestern Energy	Park Dist 1	$ -	4204010-5
11/18/2024	875893	NorthWestern Energy	Parking	$ 107.66	3835890-9
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 427.52	0723879-3
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 6.98	0881455-0
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 0.64	1029192-0
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 4.27	1045813-1
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 0.63	1265177-4
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 0.50	1425364-5
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 6.56	1514388-6
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 0.76	1948667-9
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 4.73	2055817-7
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 1.26	3707234-5
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 2.14	3707235-2
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 4.19	3707236-0
11/18/2024	875893	NorthWestern Energy	Parks Maint	$ 7.82	4103439-8
11/18/2024	875893	NorthWestern Energy	Public Safety	$ 9.79	0712532-1
11/18/2024	875893	NorthWestern Energy	Public Safety	$ 361.53	0720817-6
11/18/2024	875893	NorthWestern Energy	Public Safety	$ 1,631.58	1183483-5
11/18/2024	875893	NorthWestern Energy	Public Safety	$ 520.15	STATION 6 SERVICES
11/18/2024	875893	NorthWestern Energy	Street/Traffic	$ 7.70	0855404-0
11/18/2024	875893	NorthWestern Energy	Street/Traffic	$ 0.78	1045820-6
11/18/2024	875893	NorthWestern Energy	Street/Traffic	$ 2.51	3088038-9

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11/18/2024	875893	NorthWestern Energy	Street/Traffic	$ 0.88	3590004-2
11/18/2024	875893	NorthWestern Energy	Street/Traffic	$ 30.23	3648861-7
11/18/2024	875893	NorthWestern Energy	Transit	$ 2,659.22	0100473-8. Monad Road. November 2024 Utilities
11/18/2024	875893	NorthWestern Energy	Transit	$ 322.48	0719225-5
11/18/2024	875893	NorthWestern Energy	Water	$ 142.23	1142253-2
11/18/2024	875893	NorthWestern Energy	Water	$ 20.56	1160807-2
11/18/2024	875893	NorthWestern Energy	Water	$ 16.53	1346673-5
11/18/2024	875893	NorthWestern Energy	Water	$ 11.06	1867265-9
11/18/2024	875898	Reliable Mech & Cntrls	Facilities	$ 3,556.25	Replace chiller condenser bypass valves install actuators
11/18/2024	875903	Routeware	Solid Waste	$ 2,430.00	Routeware Professional svcs for June 202
11/18/2024	875903	Routeware	Solid Waste	$ 219.37	Routeware Svcs for August 2024
11/18/2024	875903	Routeware	Solid Waste	$ 56.25	Routeware Svcs September 2024
11/18/2024	875903	Routeware	Wastewater	$ 2,430.00	Routeware Professional svcs for June 202
11/18/2024	875903	Routeware	Wastewater	$ 219.38	Routeware Svcs for August 2024
11/18/2024	875903	Routeware	Wastewater	$ 56.25	Routeware Svcs September 2024
11/18/2024	875903	Routeware	Water	$ 3,240.00	Routeware Professional svcs for June 202
11/18/2024	875903	Routeware	Water	$ 292.50	Routeware Svcs for August 2024
11/18/2024	875903	Routeware	Water	$ 112.50	Routeware Svcs September 2024
11/18/2024	875906	Sanderson Stewart	Arterial Streets	$ 5,781.50	WO 09-12 Inner Belt Loop - Sch 1 - NW Billings Connector
11/18/2024	875906	Sanderson Stewart	Gas Tax	$ -	WO 09-12 Inner Belt Loop - Sch 1 - NW Billings Connector
11/18/2024	875906	Sanderson Stewart	Trl Donate	$ 7,077.50	WO 21-38 Skyline Trail (Marathon Loop)
11/18/2024	875905	S-Bar-S Supply	General	$ 7,600.00	turned girt pole building in mountview cemetery
11/18/2024	875907	SHI International	IT Resources	$ 9,560.80	136 Police Email Only licenses
11/18/2024	875907	SHI International	IT Resources	$ 59.87	Azure AD Premium P1 license -10/1/2024-9/30/2025
11/18/2024	875908	SIGNAL 88	Library	$ 20,977.18	3772603 Security Guard Service October 2024
11/18/2024	875917	Sunset Excavation	Water	$ 11,284.02	WO 24-27 2024 Water Service Repairs; Pmt 7
11/18/2024	875920	Swank Enterprises	Transit	$ 185,260.52	MET Transit Addition & Remodel - Federal
11/18/2024	875920	Swank Enterprises	Transit	$ 145,561.84	MET Transit Addition & Remodel - Local
11/18/2024	875925	TK Elevator	Facilities	$ 3,536.91	3008194452 Gold Maintenance for elevators at Stillwater
11/18/2024	875925	TK Elevator	Facilities	$ 4,349.40	5002629917 Replace blown power supply
11/18/2024	ACH	Town & Country Supply	Park Dist 1	$ 691.49	dyed diesel fuel - 444285
11/18/2024	ACH	Town & Country Supply	Public Safety	$ 2,893.14	FUEL AND DIESEL - ST 1, ST 3, ST 5
11/18/2024	875928	TrueNorth Steel	Street/Traffic	$ 6,911.30	geogrid for COB back parking lot

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11/18/2024	875929	Uniforms2gear	Fire Grants	$ 2,912.56	RTF Helmets
11/18/2024	875929	Uniforms2gear	Public Safety	$ 891.96	2024070508, class A pants
11/18/2024	875929	Uniforms2gear	Public Safety	$ 4,884.90	2024080603, duty jackets
11/18/2024	875929	Uniforms2gear	Public Safety	$ 295.74	2024090682, duty jackets
11/18/2024	875929	Uniforms2gear	Public Safety	$ 393.60	2024090683, class B pants
11/18/2024	875929	Uniforms2gear	Public Safety	$ 629.76	2024090684, class B pants
11/18/2024	875929	Uniforms2gear	Public Safety	$ 1,542.60	2024090763, duty jackets
11/18/2024	875936	Vermont Systems	Park Dist 1	$ 4,600.00	webtrac app for registrations - 14822
11/18/2024	875939	Warren Transport	Gas Tax	$ 62,545.93	WO 22-22 & WO 24-10 2024 Annual Street Reconstructs
11/18/2024	875939	Warren Transport	Sidewalk Const	$ 22,523.78	WO 22-22 & WO 24-10 2024 Annual Street Reconstructs
11/18/2024	875939	Warren Transport	St Maint Dist	$ 9,675.27	WO 22-22 & WO 24-10 2024 Annual Street Reconstructs
11/18/2024	875939	Warren Transport	St Maint Dist	$ 59,365.44	WO 22-22 & WO 24-10 2024 Annual Street Reconstructs
11/18/2024	875944	Wovek	Park Dist 1	$ 8,853.77	Castlerock restroom renovations
11/18/2024	875947	Yellowstone Co Treasurer	CDBG	$ 1,415.25	Community Development
11/18/2024	875947	Yellowstone Co Treasurer	CDBG	$ 1,169.23	Community Development
11/18/2024	875947	Yellowstone Co Treasurer	Gas Tax	$ 30.00	PW / ENG / PUD
11/18/2024	875947	Yellowstone Co Treasurer	General	$ 61.89	Finance
11/18/2024	875947	Yellowstone Co Treasurer	Park Dist 1	$ 155.07	Parks
11/18/2024	875947	Yellowstone Co Treasurer	Parking	$ 74.14	Parking
11/18/2024	875947	Yellowstone Co Treasurer	Parking	$ 204.41	Parking
11/18/2024	875947	Yellowstone Co Treasurer	Parks Maint	$ 30.00	Parks
11/18/2024	875947	Yellowstone Co Treasurer	Public Safety	$ 372.33	Police
11/18/2024	875947	Yellowstone Co Treasurer	Storm Sewer	$ 47.37	PW / ENG / PUD
11/18/2024	875947	Yellowstone Co Treasurer	Wastewater	$ 10.00	PW / ENG / PUD
11/18/2024	875947	Yellowstone Co Treasurer	Water	$ 1,180.84	PW / ENG / PUD
11/18/2024	875948	Yellowstone Electric	Airport	$ 4,979.02	Lighting new storage B Concourse Terminal Expansion
11/18/2024	875948	Yellowstone Electric	Airport	$ 1,986.52	Repairs to Elec Panel Damaged During Terminal Expansion
11/18/2024	875948	Yellowstone Electric	Airport	$ 3,622.44	Work old bathrooms B Conc. to Update Lighting Terminal Exp

City Council Regular

Date:	12/16/2024
Title:	Contract to Design Amend Recreation Center and Site Plan with A&E
Presented by:	Pigg Michael, Parks Director
Department:	Parks/Rec/Public Lands
Presentation:	Yes
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends the approval of the Professional Services Contract with A&E Design, Inc. for the design services for the Amend Recreation Campus.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The 2017 City Council approved Parks and Recreation Comprehensive Plan identified the need for increased indoor recreation space to expand recreational opportunities for the Billings Community. Subsequently, a study from Victus, commissioned by the Billings Chamber of Commerce in 2018 indicated that Billings has a strong potential for sports tourism, namely for indoor youth sports tournaments. In 2019, a South Billings Aquatic and Recreation Center Masterplan and Feasibility Study from A&E Design confirmed the need for expanded indoor recreation facilities. This feasibility study examined suitable locations and Amend Park was identified as the best option.City Council approved the 2022 conceptual design and masterplan for a multi-generational recreational center located at Amend Park that had gone through a rigorous public process. A general obligation bond issue in November of 2023 for funding the facility was not successful.Early in 2024, the South Billings Urban Renewal Association allocated funding to examine a different means of developing indoor recreation facilities at Amend Park. The study from Collaborative Design identified a campus layout at Amend to separate indoor facilities to allow for potential public/private partnerships to enhance opportunities for our growing community. In the FY24 Capital Improvement Plan, City Council approved $1 million for design of the Amend Park Recreation Campus. The design components include a site plan to incorporate pad sites for potential public private partnership opportunities for organizations like hockey, swimming, tennis, etc. Also included in the design are architectural drawings for a sport court facility which includes at least four (4) full-sized and eight (8) middle school-sized basketball courts.A Request for Proposals was issued and advertised on September 27th and October 4th. A total of four proposals were submitted and accepted before the closing date of October 9th. The submitted proposals were from Second Nature Consulting, A&E Design, Cushing Terrell, and Collaborative Design. The RFP included a Master Q & A Form (Attachment D) for proposer to submit any questions or concerns related to the RFP. No questions were submitted.The Selection Committee, with representatives from the Parks and Recreation Department, Finance Department, Facilities Division, South Billings Urban Renewal Association, Tourism and Business Improvement District, and the Parks Advisory Board reviewed the proposals on October 21st and recommended interviewing the top three firms, Cushing Terrell, A&E Design, and Collaborative Design on October 31st. After careful consideration, the selection committee unanimously recommended A&E Design as the top-rated firm based on their Recent Recreation Center Planning and Design Experience, the proposed Work Plan, Key Project Personnel, Past Project Performance, and their proposed Pricing. During contract negotiations with A&E Design, and in an effort to maximize the aggressive timeline outlined in the RFP, a Letter of Intent, signed by the City Administrator, was developed to allow A & E the opportunity to get the design process started. The LOI was important due to having a site plan designed and developed as soon as possible to allow the Yellowstone Ice Foundation to benefit from the 2024 $3 million dollar grant from Signal Peak Mine. After negotiations with A&E, a final scope and fee were agreed upon and reflected within the contract.

After negotiations with A&E, a final scope and fee were agreed upon. The total cost of the project is not to exceed $21,000,000 for all phases of design and construction of the Sports Court Facility.

The operations of the recreation center will be determined after the Proforma has been completed by the professional team hired to provide the data necessary to make an informed decision about how to effectively manage a recreation center of this design.

ALTERNATIVES

City Council may:

- Approve award of a Professional Services Contract to A&E Design, Inc; or,
- Not Approve a contract with A&E Design Inc. If this is not approved, the site plan and Sports Court Facility design will be delayed, which would result in delaying the Yellowstone Ice Foundation's ability to secure the additional $3,000,000 grant from Signal Peak mine, which could jeopardize the public/private partnership and the

construction of the ice facility at the Amend Recreation Campus.

FISCAL EFFECTS

The Amend Recreation Campus design is being fully funded using South Billings Urban Renewal Association funding which was approved in the FY25 CIP.

SUMMARY

In order to move this project along and stay within the tight timeline established to meet all users' needs, A&E Design, Inc. needs to get moving on this design. The pad site selection committee chose the Yellowstone Ice Foundation during a separate RFP process. The Yellowstone Ice Foundation has six million dollars committed to developing the ice facility, but they have a narrow window to get the project started. The site design is a crucial step in the process. A lease agreement is currently being negotiated with the Yellowstone Ice Foundation.

Attachments

Insurance Certificate
Project Schedule Exhibit B
Fee Proposal Exhibit A
A&E Design Sport Court and Campus Facilty - Final
A&E Design Sport Court and Campus Facilty - Red Line Contract

A&EARCH-02 SMCNULTY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/15/2024

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	CONTACT NAME:	
Billings Office Marsh McLennan Agency LLC P.O. Box 30638 Billings, MT 59107-0638	PHONE (A/C, No, Ext): (406) 238-1900	FAX (A/C, No): (406) 245-9887
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
A&E Design Inc. 124 N 29th St; Ste 100 Billings, MT 59101	INSURER A : Hartford Underwriters Insurance Company	30104
	INSURER B : Nutmeg Insurance Company	39608
	INSURER C : Employers Assurance Company	25402
	INSURER D : Continental Casualty Company	20443
	INSURER E :	
	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	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X	X	41SBABC7E8B	2/13/2024	2/13/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY X Hired/Non Owned	X	X	41UECAE0618	2/13/2024	2/13/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000	X	X	41SBABC7E8B	2/13/2024	2/13/2025	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		EIG123652114	2/13/2024	2/13/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
D	Pro Liability			591917073	2/13/2024	2/13/2025	Each Occurrence	5,000,000
D	Pro Liability			591917073	2/13/2024	2/13/2025	Aggregate	5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Amend Park Recreation Campus project
Cincinnati Cyber Liability Limit of Insurance $1,000,000 Aggregate $2,000,000

Additional Insured & Waiver of Subrogation General Liability Form SL3032 SL0000
Additional Insured & Waiver of Subrogation Auto Liability Form HA9916
Umbrella is Follow Form SU0000 SU3008
30 Days Notice of Cancellation

CERTIFICATE HOLDER

City of Billings
PO Box 1178
Billings, MT 59103

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

Susan McNulty

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THE HARTFORD

FOLLOWING FORM ENDORSEMENT - AUTOMOBILE LIABILITY

This endorsement modifies insurance provided under the following:

UMBRELLA LIABILITY SUPPLEMENTAL POLICY

Except as otherwise stated in this endorsement, the terms and conditions of the Supplemental Policy apply.

A. The following is added to Paragraph **A.2.**, **Exclusions**:

Automobile Liability

(1) This Supplemental Policy does not apply to liability arising out of the:

(a) Ownership;

(b) Operation;

(c) Maintenance;

(d) Use;

(e) Entrustment to others; or

(f) "Loading or unloading";

Of any "auto" or "customer's auto".

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that "insured", if the "occurrence" which caused the injury or "damage" involved the ownership, maintenance, use, entrustment to others, or "loading or unloading", of any "auto" or "customer's auto".

(2) EXCEPTION

However, this exclusion does not apply to the extent that the “underlying insurance” provides coverage for such “auto” or “customer’s auto” described in the Schedule of Underlying Insurance.

Any coverage restored by this **EXCEPTION** applies:

(a) Only to the extent of the coverage provided by the “underlying insurance” and in no event shall this umbrella coverage apply to any claim or “suit” not covered by the “underlying insurance”.

(b) Only to the extent that such coverage provided by the "underlying insurance" is maintained having limits as set forth in the Extension Schedule of Underlying Insurance; and

(c) Only to the extent that any claim or “suit” is otherwise covered by the terms and conditions of this Supplemental Policy.

B. The following is added to Section **F.**, **DEFINITIONS**:

"Customer's auto" means a customer's land motor vehicle, trailer or semitrailer while left with you for service, maintenance, repair, storage, parking or safekeeping. "Customer's auto" does not include a customer's land motor vehicle, trailer or semitrailer owned by or rented or loaned to any "insured".

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UMBRELLA LIABILITY SUPPLEMENTAL POLICY

In this Supplemental Policy the words "you" and "your" refer to the Named Insured first shown in the Supplemental Policy Declarations and any other person or organization qualifying as a Named Insured under this Supplemental Policy. The words "we", "us" and "our" refer to the insurance company shown in the Supplemental Policy Declarations.

Other words and phrases that appear in quotation marks also have special meanings. Refer to Section F. DEFINITIONS.

IN RETURN FOR THE PAYMENT OF THE PREMIUM and in reliance upon the statements in the Supplemental Policy Declarations made a part hereof, and subject to all of the terms of this Supplemental Policy we agree with you as follows:

A. COVERAGES

1. Umbrella Liability Insurance

Insuring Agreement

a. We will pay those sums that the "insured" becomes legally obligated to pay as "damages" in excess of the "underlying insurance" or of the "self-insured retention" when no "underlying insurance" applies, because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies caused by an "occurrence". But, the amount we will pay as "damages" is limited as described in Section D. LIMITS OF INSURANCE.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section B. INVESTIGATION, DEFENSE, SETTLEMENT.

b. This insurance applies to "bodily injury", "property damage" or "personal and advertising injury" only if:

(1) The "bodily injury" or "property damage" occurs during the "policy period", or the “personal and advertising injury” is caused by an offense committed during the “policy period”; and

(2) Prior to the "policy period", no "insured" listed under Paragraph 1. of Section C. WHO IS AN INSURED and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed "insured" or authorized "employee" knew, prior to the "policy period", that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the "policy period" will be deemed to have been known prior to the "policy period".

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "insured" listed under Paragraph 1. of Section C. WHO IS AN INSURED or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for "damages" because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

2. Exclusions

This Supplemental Policy does not apply to:

a. Pollution

Any obligation:

(1) To pay for the cost of investigation, defense or settlement of any claim or “suit” against any "insured" alleging actual or threatened injury or damage of any nature or kind to persons or property which arises out of or would not have occurred but for the “pollution hazard”; or

(2) To pay any "damages", judgments, settlements, loss, costs or expenses that may be awarded or incurred:

(a) By reason of any such claim or “suit” or any such injury or damage; or

(b) In complying with any action authorized by law and relating to such injury or damage.

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EXCEPTION

This exclusion does not apply:

(a) To "bodily injury" to any of your "employees" arising out of and in the course of their employment by you; or

(b) To injury or damage as to which valid and collectible "underlying insurance" with at least the minimum limits shown in the Extension Schedule Of Underlying Insurance is in force and applicable to the "occurrence". In such event, any coverage afforded by this Supplemental Policy for the "occurrence" will be subject to the pollution exclusions of the "underlying insurance" and to the conditions, limits and other provisions of this Supplemental Policy. But, in the event that such valid and collectable "underlying insurance" is not maintained with limits of liability as set forth in the Extension Schedule Of Underlying Insurance, this Exception (b) does not apply.

(c) Exception (b) also does not apply to “bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(i) That are, or that are contained in any property that is:

(aa) Being transported or towed by, or handled for movement into, onto or from, any "auto";

(bb) Otherwise in the course of transit by or on behalf of the "insured"; or

(cc) Being stored, disposed of, treated or processed in or upon any "auto";

(ii) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto any "auto"; or

(iii) After the "pollutants" or any property in which the "pollutants" are contained are moved from any "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

(d) Paragraph (i) above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto", covered by the "underlying insurance" or its parts, if:

(i) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

(ii) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs f.(2) or f.(3). of the definition of "mobile equipment".

(e) Paragraphs (c)(ii) and (c)(iii) above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon an "auto" covered by the "underlying insurance" if:

(i) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of the "auto"; and

(ii) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

b. Workers' Compensation And Similar Laws

Any obligation of the "insured" under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

c. Contractual Liability

Liability assumed by the "insured" under any contract or agreement with respect to an "occurrence" taking place before the contract or agreement is executed.

d. Personal And Advertising Injury

"Personal and advertising injury".

(1) EXCEPTION

This exclusion does not apply to the extent that coverage for such "personal and advertising injury" is provided by "underlying insurance", but in no event shall any "personal and advertising injury" coverage

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provided under this Supplemental Policy apply to any claim or "suit" to which "underlying insurance" does not apply. This EXCEPTION applies only to the extent that such coverage provided by the "underlying insurance" is maintained having limits as set forth in the Schedule Of Underlying Insurance.

When this EXCEPTION applies, the insurance provided under this Supplemental Policy for “personal and advertising injury” will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

This EXCEPTION does not apply to:

(a) Aircraft (Unmanned Aircraft)

"Personal and advertising injury" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that "insured", if the "personal and advertising injury" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

However, this Paragraph (a) does not apply if the only allegation in the claim or "suit" involves an intellectual property right which is limited to:

(i) Infringement, in your "advertisement", of:

(aa) Copyright;

(bb) Slogan; or

(cc) Title of any literary or artistic work; or

(ii) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or

(b) Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

e. Underlying Insurance

The amount of any injury or damage:

(1) Covered by "underlying insurance" but for any defense which any underlying insurer may assert because of the "insured's" failure to comply with any condition of its coverage part, policy, or endorsement; or

(2) For which damages would have been payable by "underlying insurance" but for the actual or alleged insolvency or financial impairment of an underlying insurer.

f. Aircraft (Other Than Unmanned Aircraft)

(1) "Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, or "loading or unloading" of any aircraft (other than "unmanned aircraft"):

(a) Owned by any "insured"; or

(b) Chartered or loaned to any "insured".

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an "insured", if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft") that is owned or operated by or rented or loaned to any "insured".

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(2) This exclusion does not apply to aircraft (other than "unmanned aircraft") that is:

(a) Hired, chartered or loaned with a paid crew; but

(b) Not owned by any "insured".

(3) This exclusion does not apply to "bodily injury" to any of your "employees" arising out of and in the course of their employment by you.

g. Aircraft (Unmanned Aircraft)

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that "insured", if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

h. Watercraft

"Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, "loading or unloading" of any watercraft.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an "insured", if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others, of any watercraft that is owned or operated by or rented or loaned to, any "insured".

This exclusion does not apply to:

(1) Watercraft you do not own that is:

(a) Less than 51 feet long; and

(b) Not being used to carry persons or property for a charge;

(2) "Bodily injury" to any of your "employees" arising out of and in the course of their employment by you; or

(3) Any watercraft while ashore on premises owned by, rented to or controlled by you.

i. War

Any injury or damage, however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to property you own.

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Expected Or Intended

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

p. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the "insured" arising out of and in the course of:

(a) Employment by the "insured"; or

(b) Performing duties related to the conduct

of the "insured's" business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the "insured" may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

EXCEPTIONS:

This exclusion does not apply to liability assumed by the "insured" under an "insured contract".

With respect to injury arising out of an "auto" covered under the applicable "underlying insurance," this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits. For the purposes of this exclusion, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

This exclusion does not apply to the extent that valid "underlying insurance" for the employer's liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury".

To the extent this exclusion does not apply, the insurance provided under this Supplemental Policy for the employer's liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

q. Property Damage To Employee's Property

With respect to coverage afforded any of your "employees", "property damage" to property owned or occupied by or rented or loaned to:

(1) That "employee";

(2) Any of your other "employees";

(3) Any of your partners or members (if you are a partnership or joint venture); or

(4) Any of your members (if you are a limited liability company).

r. First–Party Auto Or Mobile Equipment Coverages

Any claim arising out of or relating to an "auto" or "mobile equipment" for:

(1) Uninsured or underinsured motorists coverage;

(2) Personal injury protection;

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(3) Auto medical payments coverage;

(4) First-party physical damage coverage; or

(5) Any similar no-fault coverage by whatever name called;

unless this Supplemental Policy is endorsed to provide such coverage.

s. Employment Practices Liability

Any injury or damage to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, malicious prosecution or false arrest directed at that person; or

(2) The spouse, child, parent, brother or sister of that person, as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (1)(a), (1)(b) or (1)(c) above is directed.

(3) This exclusion applies:

(a) Whether the injury-causing event described in Paragraphs (1)(a), (1)(b) or (1)(c) above occurs before employment, during employment or after employment of that person;

(b) Whether the "insured" may be liable as an employer or in any other capacity; and

(c) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

t. Employee Retirement Income Security Act

Any liability arising out of intentional or unintentional violation of any provision of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (commonly referred to as the Revision Act of 1974), or any amendments to them.

u. Asbestos

Any injury, damages, loss, cost or expense, including but not limited to "bodily injury", "property damage" or "personal and advertising injury" arising out of, or relating to, in whole or in part, the "asbestos hazard" that:

(1) May be awarded or incurred by reason of any claim or "suit" alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard"; or

(2) Arise out of any request, demand, order, or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of any "asbestos hazard"; or

(3) Arise out of any claim or "suit" for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

v. Racing And Stunting Activities

"Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, or "loading or unloading" of an "auto" or "mobile equipment" while being used in any:

(1) Prearranged or organized racing, speed or demolition contest;

(2) Stunting activity; or

(3) Preparation for any such contest or activity.

w. Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability

(1) Damages because of "bodily injury" or "property damage" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets,

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processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate “electronic data”.

This exclusion applies even if such damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to “damages” because of "bodily injury".

x. Limited Underlying Coverage

Any injury, damage, loss, costs or expense, including but not limited to "bodily injury", "property damage" or "personal and advertising injury" for which:

(1) "Underlying insurance" provides coverage; but that

(2) Because of a provision within the "underlying insurance", such coverage is provided at a limit or limits of insurance that are less than the limit(s) for the "underlying insurance" shown on the Extension Schedule Of Underlying Insurance.

y. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or

(4) Any federal, state, or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

z. Nuclear Energy Liability Exclusion (Broad Form)

(1) "Bodily injury" or "property damage":

(a) With respect to which an "insured" under this Supplemental Policy is also an "insured" under a Nuclear Energy Liability Policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an "insured" under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

(i) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or

(ii) The "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

(2) "Bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material" if:

(a) The "nuclear material":

(i) Is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured"; or

(ii) Has been discharged or dispersed therefrom;

(b) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured"; or

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(c) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to "property damage" to such "nuclear facility" and any property thereat.

(3) As used in this exclusion:

"Property damage" includes all forms of radioactive contamination of property.

B. INVESTIGATION, DEFENSE, SETTLEMENT

1. With respect to "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies (whether or not the "self-insured retention" applies) and for which no coverage is provided under any "underlying insurance" or for which the underlying limits of any "underlying insurance" have been exhausted solely by payments of damages because of "occurrences" during the "policy period"; we:

a. Will have the right and the duty to defend any "suit" against the "insured" seeking "damages" on account thereof, even if such "suit" is groundless, false or fraudulent; but our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under coverages afforded by this Supplemental Policy;

b. May make such investigation and settlement of any claim or "suit" as we deem expedient;

c. Will pay:

(1) All expenses incurred by us;

(2) All court costs taxed against the "insured" in any "suit" defended by us. However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed against the "insured"; and

(3) All interest on the entire amount of any judgment therein which accrues after the entry of the judgment and before we have paid or tendered or deposited in court that part of the judgment which does not exceed the applicable limit of insurance;

(4) All premiums on appeal bonds required in any such "suit", premiums on bonds to release attachments in any such "suit" for an amount not in excess of the applicable limit of insurance, and the cost of bail bonds required of the "insured" because of an "accident" or traffic law violation arising out of the operation of any vehicle to which this Supplemental Policy applies, but we will have no obligation to apply for, furnish, finance, arrange for, guarantee, or collateralize, these bonds, whether the collateralization is characterized as premium or not;

(5) All reasonable expenses incurred by the "insured" at our request in assisting us in the investigation or defense of any claim or "suit", including actual loss of earnings not to exceed $500 per day per "insured";

and the amounts incurred in Paragraph c. above, are not subject to the "self-insured retention" and are payable in addition to any applicable limit of insurance.

We may pay any part or all of the "self insured retention" to pay a judgment or to effect settlement of a claim or "suit", and upon notification of the action taken, the "insured" shall promptly reimburse us for such amounts paid.

2. You agree to arrange for the investigation, defense or settlement of any claim or "suit" in any country where we may be prevented by law from carrying out this agreement. We will pay defense expenses incurred with our written consent in connection with any such claim or "suit" in addition to any applicable limit of insurance. We will also promptly reimburse you for our proper share, but subject to the applicable limit of insurance, of any settlement above the "self-insured retention" or "underlying insurance" made with our written consent.

3. We will have the right to associate at our expense with the "insured" or any underlying insurer in the investigation, defense or settlement of any claim or "suit" which in our opinion may require payment hereunder. In no event, however, will we contribute to the cost or expenses incurred by any underlying insurer.

C. WHO IS AN INSURED

1. If you are designated in the Supplemental Policy Declarations as:

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a. An individual, you and your spouse are "insureds", but only with respect to the conduct of a business, other than that described in b. through e. below, of which you are the sole owner.

b. A partnership or joint venture, you are an "insured". Your members, your partners, and their spouses are also "insureds", but only with respect to the conduct of your business.

c. A limited liability company, you are an "insured". Your members are also "insureds", but only with respect to the conduct of your business. Your managers are "insureds", but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an "insured". Your "executive officers" and directors are "insureds", but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.

e. A trust, you are an "insured". Your trustees are also "insureds", but only with respect to their duties as trustees.

2. Each of the following is also an "insured":

   a. Your "volunteer workers" only while performing duties related to the conduct of your business or your "employees" other than your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts:

      (1) Within the scope of their employment by you or while performing duties related to the conduct of your business; and

      (2) Only if such "volunteer workers" or "employees" are "insureds" in the "underlying insurance" with limits of liability at least as high as set forth in the Extension Schedule Of Underlying Insurance, subject to all the limitations upon coverage and all other policy terms and conditions of such "underlying insurance" and this Supplemental Policy.

   b. Any person or organization having proper temporary custody of your property if you die, but only:

      (1) With respect to liability arising out of the maintenance or use of that property; and

      (2) Until your legal representative has been appointed.

   c. Your legal representative if you die, but only with respect to his or her duties as such. That representative will have all your rights and duties under this insurance.

3. With respect to any "auto", any person or entity that qualifies as an insured under the "underlying insurance" is an "insured" under this Supplemental Policy, subject to all the limitations of such "underlying insurance".

4. With respect to "mobile equipment", any person is an "insured" while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an "insured", but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an "insured" with respect to:

   a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

   b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an "insured" under this provision.

5. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as an "insured" if there is no other similar insurance available to that organization.

   However:

   a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the "policy period", whichever is earlier;

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

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

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6. Each person or organization, not included as an "insured" in Paragraphs 1., 2., 3., 4., or 5., who is an insured in the "underlying insurance" is an "insured" under this Supplemental Policy subject to all the terms, conditions and limitations of such "underlying insurance".

   With respect to any person or organization who is not an insured under "underlying insurance" but qualifies as an “insured” under this Supplemental Policy, coverage under this Supplemental Policy shall apply only to loss in excess of the amount of the "underlying insurance" or "self-insured retention" applicable to you.

   However, coverage afforded by reason of the provisions set forth above applies only to the extent:

   a. Of the scope of coverage provided by the applicable "underlying insurance" but in no event shall coverage be broader than the scope of coverage provided by this Supplemental Policy and any endorsements attached hereto; and

   b. That such coverage provided by the applicable "underlying insurance" is maintained having limits as set forth in the Extension Schedule Of Underlying Insurance.

7. No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Supplemental Policy Declarations.

D. LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Supplemental Policy Declarations and the rules below fix the most we will pay regardless of the number of:
   a. "Insureds";
   b. Claims made or "suits" brought;
   c. Persons or organizations making claims or bringing "suits"; or
   d. Coverages under which "damages" are covered under this Supplemental Policy.
2. The Limit of Insurance stated as the General Aggregate Limit is the most we will pay for the sum of "damages", other than "damages":
   a. Because of injury or damage included within the "products-completed operations hazard";
   b. Because of "bodily injury" by disease to your "employees" arising out of and in the course of their employment by you; and
   c. Because of "bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, or "loading or unloading" of any "auto".
3. The Limit of Insurance stated as the Products Completed Operations Aggregate Limit is the most we will pay for "damages" included within the "products-completed operations hazard".
4. The Limit of Insurance stated as the Bodily Injury By Disease Aggregate Limit is the most we will pay for "damages" because of "bodily injury" by disease to your "employees" arising out of and in the course of their employment by you.
5. Subject to Paragraphs 2., 3., or 4. above, whichever applies, the Each Occurrence Limit is the most we will pay for "damages" because of all "bodily injury", "property damage", and "personal and advertising injury" arising out of any one "occurrence".
6. If coverage provided to an additional insured under this Supplemental Policy is required by a written contract, written agreement or permit, the most we will pay on behalf of the additional insured is the amount of insurance:
   a. Required by the written contract, written agreement or permit, less any amounts payable by any "underlying insurance"; or
   b. Available under the applicable Limits of Insurance shown in the Supplemental Policy Declarations, whichever is less.

   Such additional insured coverage provided by this Supplemental Policy will not be broader than coverage provided by the "underlying insurance".

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7. Our obligations under this insurance, except for our obligations under the Cancellation and Nonrenewal Conditions, end when the applicable Limit of Insurance available is used up. If we pay any amounts for "damages" in excess of that Limit of Insurance, you agree to reimburse us for such amounts.
8. The limits of this Supplemental Policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the "policy period" shown in the Supplemental Policy Declarations. However, if the "policy period" is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for the purpose of determining the Limits of Insurance.

E. CONDITIONS

1. Premium

   All premiums for this Supplemental Policy shall be computed in accordance with the Premium Section of the Supplemental Policy Declarations. The premium stated as such in the Supplemental Policy Declarations is a deposit premium only which shall be credited to the amount of any earned premium. At the end of the "policy period", the earned premium may be recomputed for such period, and upon notice thereof to the Named Insured first shown in the Supplemental Policy Declarations, shall become due and payable by such Named Insured. If the total earned premium for the "policy period" is less than the premium previously paid and more than the minimum premium, we shall return to such Named Insured the unearned portion paid by such Named Insured.

   The Named Insured first shown in the Supplemental Policy Declarations shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to us upon our request.

2. Inspection And Audit

   We shall be permitted but not obligated to inspect your property and operations at any time. Neither our right to make inspections, nor the making thereof, nor any report thereon, shall constitute an undertaking on your behalf or for your benefit or that of others to determine or warrant that such property or operations are:

   a. Safe;
   b. Healthful; or
   c. In compliance with any law, rule or regulation.

   We may examine and audit your books and records at any time during the "policy period" and extensions thereof and within three years after the final termination of this Supplemental Policy, insofar as they relate to the subject matter of this Supplemental Policy.

3. Duties In The Event Of Occurrence, Claim Or Suit

   a. You, or any other “insured” under this Supplemental Policy must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim under this Supplemental Policy.

      (1) This requirement applies only when such "occurrence" is known to any of the following:

         (a) You, or any other “insured” under this Supplemental Policy that is an individual;
         (b) Any partner, if you or any other “insured” under this Supplemental Policy is a partnership;
         (c) Any manager, if you or any other “insured” under this Supplemental Policy is a limited liability company;
         (d) Any "executive officer" or insurance manager, if you or any other “insured” under this Supplemental Policy is a corporation.
         (e) Any trustee, if you or any other “insured” under this Supplemental Policy is a trust; or
         (f) Any elected or appointed official, if you or any other “insured” under this Supplemental Policy is a political subdivision or public entity.

         This duty applies separately to you and any other “insured” under this Supplemental Policy.

      (2) To the extent possible, notice should include:

         (a) How, when and where the "occurrence" took place;
         (b) The names and addresses of any injured persons and witnesses; and

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(c) The nature and location of any injury or damage arising out of the "occurrence".

b. If a claim is made or "suit" is brought against any "insured", you or any other “insured” under this Supplemental Policy must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us in writing as soon as practicable if the claim or “suit” is likely to exceed the amount of the "self-insured retention" or "underlying insurance", whichever applies.

c. You or any other "insured" under this Supplemental Policy must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit" involving or likely to involve a sum in excess of any "self-insured retention" or "underlying insurance", whichever applies;

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request in the enforcement of any right against any person or organization that may be liable to any "insured" because of injury or damage to which this Supplemental Policy or any "underlying insurance" or "self-insured retention" may also apply.

d. No "insured" will, except at that "insured's" own cost, make or agree to any settlement for a sum in excess of:

(1) The total limits of "underlying insurance"; or

(2) The "self-insured retention" if no "underlying insurance" applies,

without our consent.

e. No "insured" will, except at that "insured's" own cost, make a payment, assume any obligation, or incur any expenses, other than first aid, without our consent.

4. Assistance And Cooperation Of The Insured

The "insured" shall:

a. Cooperate with us and comply with all the terms and conditions of this Supplemental Policy; and

b. Cooperate with any of the underlying insurers as required by the terms and conditions of the "underlying insurance" and comply with all the terms and conditions thereof.

The "insured" shall enforce any right of contribution or indemnity against any person or organization who may be liable to the "insured" because of "bodily injury", "property damage" or "personal and advertising injury" with respect to this Supplemental Policy or any "underlying insurance".

5. Legal Action Against Us

No person or organization has a right under this Supplemental Policy:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an "insured"; or

b. To sue us on this Supplemental Policy unless all of its terms and those of the "underlying insurance" have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an "insured"; but, we will not be liable for damages that are not payable under the terms of this Supplemental Policy or that are in excess of the applicable Limits of Insurance. An agreed settlement means a settlement and release of liability signed by us, the "insured" and the claimant or the claimant's legal representative.

6. Appeals

a. In the event the "insured", or any insurers providing coverage to which this Supplemental Policy is excess, elects to appeal a judgment in excess of such “underlying insurance”, any applicable self-insured retention, and any other valid and collectible insurance, we shall be liable, in addition to the applicable Limit of Insurance, to pay the premium on appeal bonds for that portion of the judgment in excess of the “underlying insurance”, self-insured retention, and any other valid and collectible insurance and within the applicable limit of insurance under this Supplemental Policy, but we will have no obligation to apply for, furnish, finance, arrange for, guarantee, or collateralize, those bonds, whether the collateralization is characterized as premium or not.

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However, if we have paid, offered to pay, or deposited in court that part of the judgment that is within the applicable limit of this Supplemental Policy, then we will have no obligation to pay any premium on an appeal bond, and the “insured” or the “insured’s” underlying insurers or both will bear:

(1) The full cost and duty of obtaining any appeal bond; and

(2) The taxable costs, disbursements and additional interest incidental to such appeal.

If the claim is settled for less than the judgment amount, we shall only be liable for that portion of the settlement that is in excess of any applicable “underlying insurance”, self-insured retention, and any other valid and collectible insurance and within the applicable limit of this Supplemental Policy.

b. If the “insured”, or any insurers providing coverage to which this Supplemental Policy is excess, elect not to appeal a judgment in excess of such “underlying insurance”, applicable self-insured retention, and any other valid and collectible insurance, then we shall have the right to pursue such appeal. In that case, if the “insured” or the “insured’s” underlying insurers have paid, offered to pay, or deposited in court that part of the judgment that is within the applicable limit of such “underlying insurance”, self- insured retention, and any other valid and collectible insurance, then we shall be liable, in addition to the applicable limit of insurance, for:

(1) All expenses incurred by us;

(2) All court costs taxed against the "insured" in connection with such appeal. However, such costs do not include attorneys’ fees, attorneys’ expenses, witness or expert fees, or any other expenses of a party taxed against the “insured”;

(3) All interest on the entire amount of the judgment which accrues after the “insured” or the “insured’s” underlying insurers have paid, offered to pay, or deposited in court that part of the judgment which is within the limits of the “underlying insurance” self-insured retention, and any other valid and collectible insurance; and

(4) All premiums on appeal bonds for the amount of the judgment that is within the limits of any self-insured retention, “underlying insurance”, and this Supplemental Policy, but we will have no obligation to apply for, furnish, finance, arrange for, guarantee, or collateralize, those bonds, whether the collateralization is characterized as premium or not;

7. Other Insurance

This Supplemental Policy shall apply in excess of all "underlying insurance" whether or not valid and collectible. It shall also apply in excess of other valid and collectible insurance (except other insurance purchased specifically to apply in excess of this insurance) which also applies to any loss for which insurance is provided by this Supplemental Policy.

These excess provisions apply, whether such other insurance is stated to be:

a. Primary;

b. Contributing;

c. Excess; or

d. Contingent;

Provided that if such other insurance provides umbrella coverage in excess of "underlying insurance" or a self-insured retention, this Supplemental Policy shall contribute therewith with respect to "damages".

However, in the event that there is such other umbrella coverage available to cover such excess loss on an excess basis, we will pay only our share of the amount of such excess loss payable under this Supplemental Policy.

8. Transfer Of Rights Of Recovery Against Others To Us

a. If the "insured" has rights to recover all or a part of any payment we have made under this Supplemental Policy, those rights are transferred to us. The "insured" must do nothing after a loss to impair them. At our request, the "insured" will bring "suit" or transfer those rights to us and help us enforce them.

b. Recoveries shall be applied to reimburse:

(1) First, any interest (including the Named Insured) that paid any amount in excess of our limit of liability;

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(2) Second, us, along with any other insurers with whom we participate in a loss on a quota share basis at the same layer;

(3) Third, such interests (including the Named Insured) of whom this insurance is excess.

However, a different apportionment may be made to effect settlement of a claim by agreement signed by all interests.

c. Reasonable expenses incurred in the exercise of rights of recovery shall be apportioned among all interests in the ratio of their respective losses for which recovery is sought.

9. Changes

This Supplemental Policy contains all the agreements between you and us concerning the insurance afforded. Notice to any agent, or knowledge possessed by any agent or any other person shall not effect a waiver or a change in any part of this Supplemental Policy, or stop us from asserting any rights under the terms of this Supplemental Policy.

The Named Insured first shown in the Supplemental Policy Declarations is authorized on behalf of all "insureds" to agree with us on changes in the terms of this Supplemental Policy.

If the terms are changed, the changes will be shown in an endorsement issued by us and made a part of this Supplemental Policy.

10. Separation Of Insureds

Except with respect to the Limits of Liability, and any rights or duties specifically assigned in this Supplemental Policy to the Named Insured first shown in the Supplemental Policy Declarations, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each "insured" against whom claim is made or "suit" is brought.

11. Maintenance Of Underlying Insurance

Policies, endorsements, and coverage parts affording in total the coverage and limits stated in the Extension Schedule Of Underlying Insurance shall be maintained in full effect during the currency of this Supplemental Policy. Your failure to comply with the foregoing shall not invalidate this Supplemental Policy, but in the event of such failure, we shall be liable only to the extent that we would have been liable had you complied with this Paragraph 11.

The Named Insured first shown in the Supplemental Policy Declarations shall give us written notice as soon as practicable of any of the following:

a. Any change in the coverage or in the limits of any "underlying insurance", including but not limited to a change from occurrence coverage to claims made coverage;

b. Termination of part or all of one or more of the policies, endorsements, or coverage parts of "underlying insurance";

c. Reduction or exhaustion of an aggregate limit of liability of any "underlying insurance".

The "self-insured retention" shall not apply should the "underlying insurance" be exhausted by the payment of claims or "suits" which are also covered by this Supplemental Policy.

12. Cancellation

a. The Named Insured first shown in the Supplemental Policy Declarations may cancel this Supplemental Policy by mailing or delivering to us or to any of our authorized agents advance written notice of cancellation.

b. We may cancel this Supplemental Policy by mailing or delivering to the Named Insured first shown in the Supplemental Policy Declarations at the address shown in the Supplemental Policy Declarations, written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if such Named Insured fails to pay the premium or any installment when due; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

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c. If notice is mailed, proof of mailing will be sufficient proof of notice. Notice will state the effective date of cancellation. The "policy period" will end on that date. Delivery of such notice by the Named Insured first shown in the Supplemental Policy Declarations or by us will be equivalent to mailing.

d. If the Named Insured first shown in the Supplemental Policy Declarations cancels, the refund may be less than pro rata, but we will retain any minimum premium stated as such in the Supplemental Policy Declarations. If we cancel, the refund will be pro rata. The cancellation will be effective even if we have not made or offered a refund.

13. Nonrenewal

a. If we decide not to renew, we will mail or deliver to the Named Insured first shown in the Supplemental Policy Declarations, at the address shown in the Supplemental Policy Declarations, written notice of nonrenewal at least 30 days before the end of the "policy period".

b. If notice is mailed, proof of mailing will be sufficient proof of notice.

c. If we offer to renew but such Named Insured does not accept, this Supplemental Policy will not be renewed at the end of the current "policy period".

14. Workers' Compensation Agreement

With respect to "bodily injury" to any officer or other "employee" arising out of and in the course of employment by you, you represent and agree that you have not abrogated and will not abrogate your defenses under any Workers' Compensation Law by rejection of such law or otherwise. If at any time during the "policy period" you abrogate such defenses, the insurance for "bodily injury" to such officer or other "employee" automatically terminates at the same time.

15. Bankruptcy Or Insolvency Of Insured

In the event of the bankruptcy or insolvency of the "insured" or any entity comprising the "insured", we shall not be relieved of any of our obligations under this Supplemental Policy.

16. Representations Or Fraud

By accepting this Supplemental Policy, you agree:

a. The statements in the Supplemental Policy Declarations are accurate and complete;

b. The statements in the Extension Schedule Of Underlying Insurance are accurate and complete;

c. The statements in a. and b. are based upon representations you made to us;

d. We have issued this Supplemental Policy in reliance upon your representations; and

e. This Supplemental Policy is void in any case of fraud by you as it relates to this Supplemental Policy or any claim under this Supplemental Policy.

F. DEFINITIONS

Except as otherwise provided in this Section or amended by endorsement, the words or phrases that appear in quotation marks within this Supplemental Policy shall follow the definitions of the applicable "underlying insurance".

1. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

2. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Covered pollution cost or expense":

a. Means any cost or expense arising out of:

(1) Any request, demand or order; or

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(2) Any claim or "suit" by or on behalf of a governmental authority demanding

that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

b. Does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(1) That are, or that are contained in any property that is:

(a) Being transported or towed by, handled, or handled for movement into, onto or from, any "auto";

(b) Otherwise in the course of transit by or on behalf of the "insured"; or

(c) Being stored, disposed of, treated or processed in or upon any "auto"; or

(2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto any "auto"; or

(3) After the "pollutants" or any property in which the "pollutants" are contained are moved from any "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

c. Paragraph (1)(a) above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto", covered by the "underlying insurance" or its parts, if:

(1) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

(2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs f.(2) or f.(3) of the definition of "mobile equipment".

d. Paragraphs b.(1)(b) and b.(1)(c) above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon an "auto" covered by the "underlying insurance" if:

(1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of the "auto"; and

(2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

4. "Damages" means a monetary award, monetary settlement or monetary judgment. "Damages" include prejudgment interest awarded against the "insured" on that part of the judgment we pay.

a. The following are not considered "damages" and are not covered by this Supplemental Policy:

(1) Fines, penalties, sanctions or taxes;

(2) Attorney's fees and costs associated with any non-monetary relief awarded against the "insured"; or

(3) Any monetary award, monetary settlement or monetary judgment for which insurance is prohibited by the law(s) applicable to the construction of this Supplemental Policy.

5. "Hazardous properties" include radioactive, toxic or explosive properties.

6. "Insured" means any person or organization qualifying as an "insured" in the applicable Who Is An Insured provision of this Supplemental Policy, including any additional insured added by endorsement. The insurance afforded applies separately to each "insured" against whom claim is made or "suit" is brought, except with respect to the limit of our liability under Section D. LIMITS OF INSURANCE.

7. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, on which are permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

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(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, “mobile equipment” does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law or motor vehicle registration law are considered “autos”.

8. "Nuclear facility" means:

a. Any "nuclear reactor";

b. Any equipment or device designed or used for:

(1) Separating the isotopes of uranium or plutonium;

(2) Processing or utilizing "spent fuel"; or

(3) Handling, processing or packaging "waste";

c. Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or

d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste"; and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

9. "Nuclear material" means source material, special nuclear material or by-product material.

Source material, special nuclear material and by-product material have the meanings given to them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

10. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

11. "Occurrence" means:

a. With respect to "bodily injury" or "property damage", an "accident", including continuous or repeated exposure to substantially the same general harmful conditions; and

b. With respect to "personal and advertising injury", an offense described in the definition of “personal and advertising injury” in the "underlying insurance".

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12. "Policy period" as used in this Supplemental Policy means the period beginning with the effective date stated as such in the Supplemental Policy Declarations and ending with the earlier of:
    a. The date of cancellation of this Supplemental Policy; or
    b. The expiration date stated as such in the Supplemental Policy Declarations.
13. “Pollution hazard” means an actual exposure or threat of exposure to the corrosive, toxic or other harmful properties of any solid, liquid, gaseous or thermal:
    a. Pollutants;
    b. Contaminants;
    c. Irritants; or
    d. Toxic substances;

    including smoke, vapors, soot, fumes, acids, alkalis, chemicals, or waste materials consisting of or containing any of the foregoing. Waste includes materials to be recycled, reconditioned, or reclaimed.
14. "Self-insured retention" means the amount stated as such in the Supplemental Policy Declarations which is retained and payable by the "insured" with respect to each "occurrence".
15. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".
16. "Underlying insurance" means the insurance policies, coverage parts, and endorsements listed in the Extension Schedule Of Underlying Insurance, including any renewals or replacements thereof, which provide the underlying coverages and limits stated in the Schedule Of Underlying Insurance.

    The limits of "underlying insurance" include:

    (1) Any applicable deductible amount;

    (2) Any participation of any "insured"; and

    (3) Any applicable self-insured retention;

    Less the amount, if any, by which the aggregate limit of such insurance has been reduced by any payment relating to any act, error, omission, injury, damage or offense for which insurance is provided by this Supplemental Policy. The coverages and limits of such policies, coverage parts, and endorsements and any such deductible amount, participation or "self-insured retention" shall be deemed to be applicable regardless of:

    (1) Any defense which any underlying insurer may assert because of the "insured's" failure to comply with any condition of its policy, coverage part, or endorsement; or

    (2) The actual or alleged insolvency or financial impairment of any underlying insurer or any "insured".

    The risk of insolvency or financial impairment of any underlying insurer or any "insured" is borne by you and not by us.
17. "Waste" means any waste material:
    a. Containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and
    b. Resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

Paragraph .1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add the following:

d. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

(1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.

(2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:

(a) That is a partnership or joint venture,

(b) That is an "insured" under any other policy,

(c) That has exhausted its Limit of Insurance under any other policy, or

(d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

e. Employees as Insureds

(1). Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

f. Lessors as Insureds

(1). The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:

(a) The agreement requires you to provide direct primary insurance for the lessor and

(b) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

g. Additional Insured if Required by Contract

(1) When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

(a) During the policy period, and

(b) Subsequent to the execution of such written contract, and

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(c) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

(a) The limits of insurance specified in the written contract or written agreement; or

(b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM , SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

2. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in A.1.g. - Additional Insured If Required by Contract, the following provisions apply:

(1) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(2) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(1)** and **(2)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in SECTION IV- Business Auto Conditions, B. General Conditions, Other Insurance 5.d.

3. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The SECTION IV- Business Auto Conditions, B. General Conditions, 5. OTHER INSURANCE Condition is amended by adding the following:

e. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

4. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

5. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

(1) $100,000;

(2) The actual cash value of the damaged or stolen property at the time of the "loss"; or

(3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of $1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

6. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of $50 per day and a maximum limit of $1,000.

7. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

8. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

9. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

(1) Permanently installed in or upon the covered "auto";

(2) Removable from a housing unit which is permanently installed in or upon the covered "auto";

(3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

(4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III, Physical Damage Coverage, Limit of Insurance, Paragraph C.2. is amended to add the following:

$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

(1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

(2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or

(3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or $250, whichever deductible is less.

10. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

11. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

12. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

(1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;

(2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

13. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) A member, if you are a limited liability company; or

(4) An executive officer or insurance manager, if you are a corporation.

14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

15. HIRED AUTO - COVERAGE TERRITORY

SECTION IV, BUSINESS AUTO CONDITIONS, PARAGRAPH B. GENERAL CONDITIONS, 7. - POLICY PERIOD, COVERAGE TERRITORY - is added to include the following:

(6) For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

16. WAIVER OF SUBROGATION

Paragraph 5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS A. Loss Conditions is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

17. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS, C. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

18. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

19. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of $2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,

b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is $10,000.

For the purposes of the coverage provision,

a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

20. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to $1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is $5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

BUSINESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the insurance company shown in the Declarations.

"Policy period", as used in this Coverage Part, means the period from the effective date of this Coverage Part to the expiration date of the Coverage Part as stated in the Declarations or the date of cancellation, whichever is earlier.

The word "insured" means any person or organization qualifying as such under Section C. Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Liability And Medical Expenses Definitions.

A. COVERAGES

1. Business Liability Coverage (Bodily Injury, Property Damage, Personal And Advertising Injury) Insuring Agreement

   a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

      We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

      (1) The amount we will pay for damages is limited as described in Section D. Liability And Medical Expenses Limits Of Insurance; and

      (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

      No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

   b. This insurance applies:

      (1) To "bodily injury" and "property damage" only if:

         (a) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;

         (b) The "bodily injury" or "property damage" occurs during the policy period; and

         (c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

      (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

   c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

      (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

      (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

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(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

(2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. Medical Expenses

Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

(2) The expenses are incurred and reported to us within three years of the date of the accident; and

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

3. Coverage Extension - Supplementary Payments

a. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

(1) All expenses we incur.

(2) Up to $1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish, finance, arrange for, guarantee, or collateralize these bonds, whether the collateralization is characterized as premium or not.

(4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

(5) All court costs taxed against the insured in the "suit". However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed against the insured.

(6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

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(7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the Limits of Insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

(1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

(2) This insurance applies to such liability assumed by the insured;

(3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

(4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;

(5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

(6) The indemnitee:

(a) Agrees in writing to:

(i) Cooperate with us in the investigation, settlement or defense of the "suit";

(ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(iii) Notify any other insurer whose coverage is available to the indemnitee; and

(iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(b) Provides us with written authorization to:

(i) Obtain records and other information related to the "suit"; and

(ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

(1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or

(2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

(1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or

(2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

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b. Contractual Liability

(1) "Bodily injury" or "property damage"; or

(2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

(a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

(i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;

(3) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol; or

(4) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury" or "property damage" involved that which is described in Paragraph (1), (2), (3) or (4) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving, or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

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This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this paragraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this paragraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or “suit” by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

(1) Unmanned Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This Exclusion g.(1) applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

(2) Aircraft (Other Than Unmanned Aircraft), Auto or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Exclusion g.(2) applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This Exclusion g.(2) does not apply to:

(a) A watercraft while ashore on premises you own or rent;

(b) A watercraft you do not own that is:

(i) Less than 51 feet long; and

(ii) Not being used to carry persons or property for a charge;

(c) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(d) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft (other than "unmanned aircraft") or watercraft;

(e) "Bodily injury" or "property damage" arising out of:

(i) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or

(ii) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or

(f) An aircraft (other than "unmanned aircraft") that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

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i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

(1) Legal, accounting or advertising services;

(2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;

(3) Supervisory, inspection, architectural or engineering activities;

(4) Medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;

(5) Any health or therapeutic service treatment, advice or instruction;

(6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;

(7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

(8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;

(9) Any:

(a) Body piercing (not including ear piercing);

(b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and

(c) Similar services;

(10) Pharmaceutical services including but not limited to:

(a) The administering, prescribing, preparing, distributing or compounding of pharmaceutical drugs, vaccinations, immunizations or any of their component parts;

(b) The providing of or failure to provide home health care or home infusion products or services; and

(c) Advising and consulting customers;

(11) Computer consulting, design or programming services, including web site design.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the “bodily injury”, “property damage”, or “personal and advertising injury” arises out of the rendering of or the failure to render any professional service.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. Coverages.

k. Damage To Property

"Property damage" to:

(1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

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(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section D. Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

(1) Arising out of oral, written, electronic, or any other manner of publication of material, if done by or at the direction of the insured with knowledge of its falsity;

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(2) Arising out of oral, written, electronic, or any other manner of publication of material whose first publication took place before the beginning of the policy period;

(3) Arising out of a criminal act committed by or at the direction of the insured;

(4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";

(5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";

(6) Arising out of the wrong description of the price of goods, products or services;

(7) Arising out of:

(a) Any actual or alleged infringement or violation of any intellectual property rights, such as copyright, patent, right of publicity, trademark, trade dress, trade name, trade secret, service mark or other designation of origin or authenticity; or

(b) Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made against you, or by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

(i) Infringement, in your "advertisement", of:

a. Copyright;

b. Slogan; unless the slogan is also a trademark, trade dress, trade name, service mark or other designation of origin or authenticity; or

c. Title of any literary or artistic work; or

(ii) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

Paragraph (7)(b)ii above shall not apply to claims or "suits" alleging infringement or violation of trademark, trade dress, trade name, service mark or other designation of origin or authenticity.

(8) Arising out of an offense committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section F. Liability And Medical Expenses Definitions.

For the purposes of this exclusion, the placing of frames, borders, or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting;

(9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;

(10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;

(11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

(a) Advertising content for others on your web site;

(b) Placing a link to a web site of others on your web site;

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(c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or

(d) Computer code, software or programming used to enable:

(i) Your web site; or

(ii) The presentation or functionality of an "advertisement" or other content on your web site;

(13) Arising out of a violation of any anti-trust law;

(14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities;

(15) Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information; or

(16) Arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "personal and advertising injury" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

However, this exclusion does not apply if the only allegation in the claim or "suit" involves an intellectual property right which is limited to:

(a) Infringement, in your "advertisement", of:

(i) Copyright;

(ii) Slogan; or

(iii) Title of any literary or artistic work; or

(b) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

q. Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability

(1) Damages because of “bodily injury” or “property damage” arising out of any access to or disclosure of any person’s or organization’s confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

This exclusion applies even if such damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraphs (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of “bodily injury”.

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

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(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, malicious prosecution or false arrest directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".

(2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or “suit” alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or “suit” for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or

(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section D. Liability And Medical Expenses Limits Of Insurance.

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

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c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:
   a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business, other than that described in b. through e. below, of which you are the sole owner.
   b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
   c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
   d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
   e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
   a. Employees And Volunteer Workers

      Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

      However, none of these "employees" or "volunteer workers" are insureds for:

      (1) "Bodily injury" or "personal and advertising injury":
         (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" 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 co-"employee" or that "volunteer worker" 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 Paragraphs (1)(a) or (b) above; or
         (d) Arising out of his or her providing or failing to provide professional health care services.

         If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

      (2) "Property damage" to property:

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(a) Owned, occupied or used by:

(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 "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, 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 until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

(1) "Bodily injury" or "property damage" that occurred; or

(2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator Of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons or property for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

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a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.

b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

a. The limits of insurance required in a written contract, written agreement or permit; or

b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this Policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this Policy and the endorsements is the single highest limit of liability of all

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coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

   Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

   a. Notice Of Occurrence Or Offense

      You or any additional insured under this Coverage Part must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

      (1) How, when and where the "occurrence" or offense took place;

      (2) The names and addresses of any injured persons and witnesses; and

      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

   b. Notice Of Claim

      If a claim is made or "suit" is brought against any insured, you or any additional insured under this Coverage Part must:

      (1) Immediately record the specifics of the claim or "suit" and the date received; and

      (2) Notify us as soon as practicable.

      You or any additional insured under this Coverage Part must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

   c. Assistance And Cooperation Of The Insured

      You and any other involved insured must:

      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or “suit”;

      (2) Authorize us to obtain records and other information;

      (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and

      (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

   d. Obligations At The Insured's Own Cost

      No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

   e. Additional Insured's Other Insurance

      If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured under this Coverage Part, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

      However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with such additional insured's own insurance.

   f. Knowledge Of An Occurrence, Offense, Claim Or Suit

      Paragraphs a. and b. apply to you or to any additional insured under this Coverage Part only when such "occurrence", offense, claim or "suit" is known to:

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(1) You or any additional insured under this Coverage Part that is an individual;

(2) Any partner, if you or an additional insured under this Coverage Part is a partnership;

(3) Any manager, if you or an additional insured under this Coverage Part is a limited liability company;

(4) Any "executive officer" or insurance manager, if you or an additional insured under this Coverage Part is a corporation;

(5) Any trustee, if you or an additional insured under this Coverage Part is a trust; or

(6) Any elected or appointed official, if you or an additional insured under this Coverage Part is a political subdivision or public entity.

This Paragraph f. applies separately to you and any additional insured under this Coverage Part.

3. Legal action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Policy to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom a claim is made or "suit" is brought.

5. Representations

a. When You Accept This Policy

By accepting this Policy, you agree:

(1) The statements in the Declarations are accurate and complete;

(2) Those statements are based upon representations you made to us; and

(3) We have issued this Policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

6. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk, Owner Controlled Insurance Program or OCIP, Contractor Controlled Insurance Program or CCIP, Wrap Up Insurance or similar coverage for "your work";

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(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section B. Exclusions.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section B. Exclusions.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

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If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

7. Transfer Of Rights Of Recovery Against Others To Us

   a. Transfer Of Rights Of Recovery

      If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

   b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

      If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:
   a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
   b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purpose of attracting customers or supporters is considered an advertisement.
2. "Advertising idea" means any idea for an "advertisement".
3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.
4. "Auto" means:
   a. A land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
   b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.

   However, "auto" does not include "mobile equipment".
5. "Bodily injury" means physical:
   a. Injury;
   b. Sickness; or
   c. Disease

   sustained by a person and, if arising out of the above, mental anguish or death at any time.
6. "Coverage territory" means:
   a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
   b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
   c. All other parts of the world if the injury or damage arises out of:
      (1) Goods or products made or sold by you in the territory described in a. above;
      (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or

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(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication.

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

7. "Electronic data" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of “electronic data”, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
    a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
    b. You have failed to fulfill the terms of a contract or agreement;

    if such property can be restored to use by:
    a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
    b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
    a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. Liability And Medical Expenses Limits Of Insurance.
    b. A sidetrack agreement;
    c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
    d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
    e. An elevator maintenance agreement; or
    f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

       Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

       However, Paragraph f. does not include that part of any contract or agreement:

       (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
           (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
           (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

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(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
    a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
    b. While it is in or on an aircraft, watercraft or "auto"; or
    c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

    but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
    a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
    b. Vehicles maintained for use solely on or next to premises you own or rent;
    c. Vehicles that travel on crawler treads;
    d. Vehicles, whether self-propelled or not, on which are permanently mounted:
        (1) Power cranes, shovels, loaders, diggers or drills; or
        (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
    e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
        (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
        (2) Cherry pickers and similar devices used to raise or lower workers;
    f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

        However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
        (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
            (a) Snow removal;
            (b) Road maintenance, but not construction or resurfacing; or
            (c) Street cleaning;
        (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
        (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

    However, “mobile equipment” does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law or motor vehicle registration law are considered “autos”.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

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a. False arrest, detention or imprisonment;
b. Malicious prosecution;
c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor;
d. Oral, written, electronic, or any other manner of publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
e. Oral, written, electronic, or any other manner of publication of material that violates a person's right of privacy;
f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or
g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement".

18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard";
    a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
        (1) Products that are still in your physical possession; or
        (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
            (a) When all of the work called for in your contract has been completed.
            (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
            (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

        Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

        The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
    b. Does not include "bodily injury" or "property damage" arising out of:
        (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
        (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
20. "Property damage" means:
    a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
    b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

    As used in this definition, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
    a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
    b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Unmanned aircraft" means an aircraft that is not:
    a. Designed;
    b. Manufactured; or
    c. Modified after manufacture;

    to be controlled directly by a person from within or on the aircraft.
24. "Volunteer worker" means a person who:
    a. Is not your "employee";
    b. Donates his or her work;
    c. Acts at the direction of and within the scope of duties determined by you; and
    d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
25. "Your product":
    a. Means:
        (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
            (a) You;
            (b) Others trading under your name; or
            (c) A person or organization whose business or assets you have acquired; and
        (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
    b. Includes:
        (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
        (2) The providing of or failure to provide warnings or instructions.
    c. Does not include vending machines or other property rented to or located for the use of others but not sold.
26. "Your work":
    a. Means:
        (1) Work or operations performed by you or on your behalf; and
        (2) Materials, parts or equipment furnished in connection with such work or operations.
    b. Includes:
        (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
        (2) The providing of or failure to provide warnings or instructions.

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THE HARTFORD

BLANKET ADDITIONAL INSURED BY CONTRACT

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

Except as otherwise stated in this endorsement, the terms and conditions of the Policy apply.

A. The following is added to Section **C. WHO IS AN INSURED**:

Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs **a.** through **f.** below are additional insureds when you have agreed, in a written contract or written agreement, or when required by a written permit issued by a state or governmental agency or subdivision or political subdivision that such person or organization be added as an additional insured on your Coverage Part, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by any other endorsement issued by us and made a part of this Coverage Part.

The insurance afforded to such additional insured will not be broader than that which you are required by the contract, agreement, or permit to provide for such additional insured.

The insurance afforded to such additional insured only applies to the extent permitted by law.

The limits of insurance that apply to additional insureds are described in Section **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**. How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

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(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Paragraphs **(d)** or **(f)**; or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

(1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or

(b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

(1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In connection with your premises;

(b) In the performance of your ongoing operations performed by you or on your behalf; or

(c) In connection with "your work" and included within the "products-completed operations hazard", but only if:

(i) The written contract, written agreement or permit requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:

(i) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(ii) Supervisory, surveying, inspection, architectural or engineering activities.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the “bodily injury”, “property

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damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service.

e. State Or Governmental Agency Or Subdivision Or Political Subdivision Issuing Permit

(1) Any state or governmental agency or subdivision or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or

(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

(1) Any other person or organization who is not in one of the categories or classes listed above in Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations performed by you or on your behalf;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products-completed operations hazard", but only if:

(i) The written contract, written agreement or permit requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, surveying, inspection, architectural or engineering activities.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service described in Paragraphs **f.(2)(a)** or **f.(2)(b)** above.

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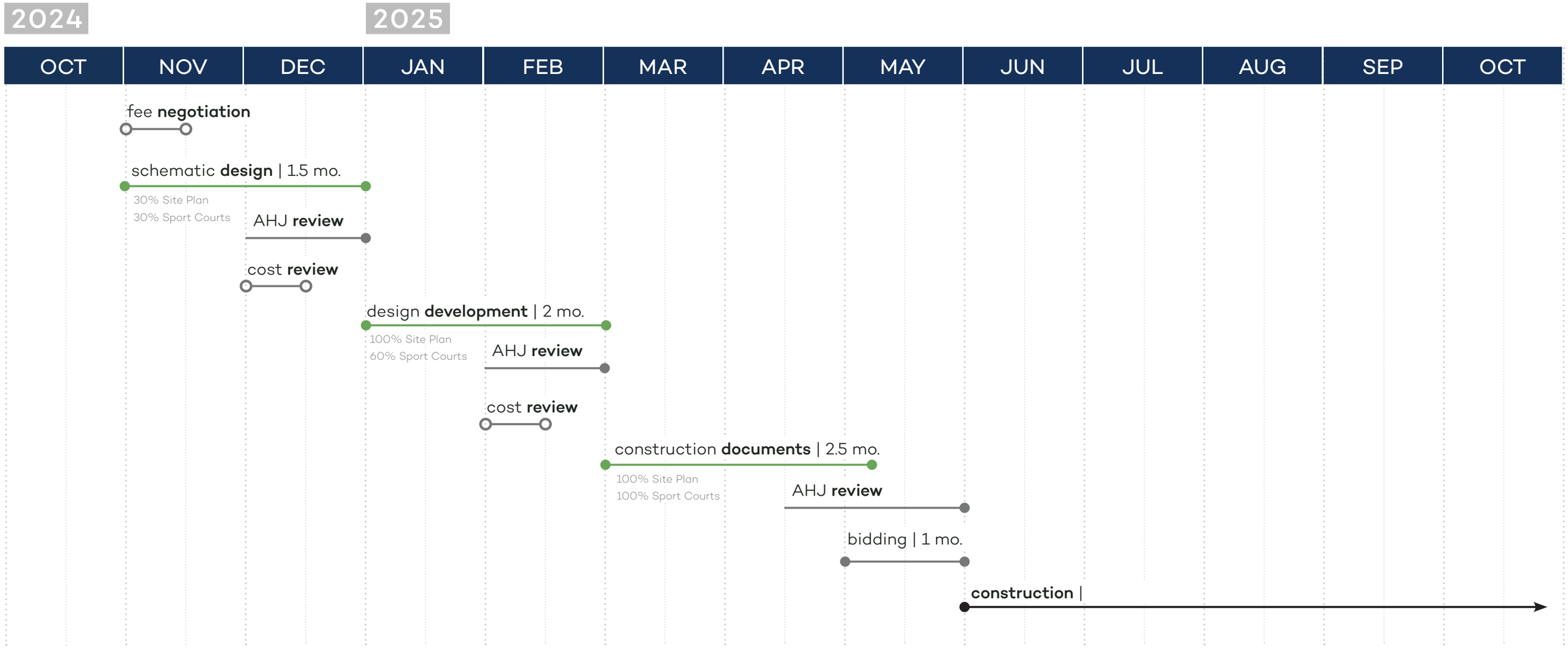
Exhibit B


2024
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60% Sport Courts
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cost **review**
construction **documents** | 2.5 mo.
100% Site Plan
100% Sport Courts
AHJ **review**
bidding | 1 mo.
construction |

Exhibit A
Design Services Proposal
12/6/2024

Amend Park Recreation Campus & Courts Facility
Billings, MT

Design Services	Team	Phase 1 Schematic Design	Phase 1 Design Development	Phase 1 Construction Documents	Phase 2 Bidding & Negotiation	Phase 2 Construction Administration	Total	Remarks
Basic Services								
Architecture | Mechanical | Electrical | Structural	A&E Design | IMEG | Krivonen	$ 150,000	$ 283,870	$ 385,000	$ -	$ -	**$ 818,870**	

Additional Services & Reimbursable Expenses								
Proforma Modeling - Johnson Consulting	Johnson Consulting						$ 38,000	
Civil Engineering | Utilities	Sanbell	$ 14,110	$ 26,530	$ 58,490	$ -	$ -	$ 99,130	
Landscape Architecture | Site Design	A&E Design	$ 13,800	$ 15,200	$ 15,000	$ -	$ -	$ 44,000	

Total Project Design and Engineering Cost - Phase 1 (Basic Services, Additional Services, and Reimbursables):	**$1,000,000**

AIA® Document B133® – 2019

Standard Form of Agreement Between Owner and Architect, *Construction Manager as Constructor Edition*

AGREEMENT made as of the 16th day of December in the year Two Thousand Twenty Four
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of Billings
PO Box 1178
Billings, MT 59103

and the Architect:
(Name, legal status, address, and other information)

A&E Design, Inc
124 N. 29th St Suite 100
Billings, MT 59101

for the following Project:
(Name, location, and detailed description)

24194.00 Amend Park Recreation Campus

The Construction Manager (if known):
(Name, legal status, address, and other information)

TBD

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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5 OWNER'S RESPONSIBILITIES

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13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

This project includes the design of an indoor Courts Facility on the site parcels noted in Section 1.1.2. The project will include full-size basketball courts (94'x50') that can convert to middle-school sized courts. The courts will also be striped for pickle ball, volleyball, and possibly additional sports as determined with the owner through design. The courts will be separated by divider curtains with the ability to partition areas off and run multiple events simultaneously. The courts building will also include an entry area with reception desk, concessions area, restrooms, adequate storage, and other support spaces.

The project will include the development of the site area referred to as the Amend Park Recreation Campus. This scope of work includes the site area to support the Courts Facility and Yellowstone Ice Facility (YIF) building. The site development will include the utilities, code-required parking, sidewalks, plaza, and storm water management infrastructure. The total site area developed under this contract will be prioritized to supporting the Courts Facility and YIF buildings only. The YIF building is being designed by another architect, but this contract will include identifying a building location and designing the surrounding site development for the YIF facility.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

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Site Parcels:
Amend Park (Tract 1 of Certificate of Survey No 2783)
Lots 3A-1A, 3A-4, and 3A-5, Block 1 of Popelka Commerce Center Subdivision, Second Filing)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

Total project budget is 21million. The Architectural and Engineering services are separated into Phase 1 and Phase 2 per the Owner's RFQ. The Phase 1 services are included in this contract and include design of the Courts building and the campus site plan through Construction Documents and permitting. Phase 2 work is to include bidding and and Construction Administration services. Final Scope and Fee for the Phase 2 work will be negotiated prior to the start of Phase 2 work. The fees for Phase 2 will come from within the total project budget, as no additional funds from the City of Billings are available.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

See Exhibit B – Project Schedule

.2 Construction commencement date:

Summer 2025. Final date to be determined in conjunction with the General Contractor/Construction Manager

.3 Substantial Completion date or dates:

TBD in consultation with Owner. Substantial Completion date will be defined in a future contract amendment

.4 Other milestone dates:

N/A

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

[**X**] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[ ] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

Not Applicable

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Responsible practices to provide overall sustainable design strategies within the budget.

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§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Kevin Iffland, Assistant City Administrator
City of Billings
PO Box 1178
Billings, MT 59103
ifflandk@billingsmt.gov

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

John Caterino, Facilities Manager
City of Billings
PO Box 1178
Billings, MT 59103
caterinoj@billingsmt.gov

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:
(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

TBD

.2 Land Surveyor:

Sanbell
1300 N Transtech Way
Billings, MT 59102

.3 Geotechnical Engineer:

Rimrock Engineering
5440 Holiday Ave
Billings, MT 59101

.4 Civil Engineer:

.5 Other consultants and contractors:
(List any other consultants and contractors retained by the Owner.)

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§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Dusty Eaton, AIA, CEO, Principal
A&E Design, Inc
124 N. 29th St Suite 100
Billings, MT 59101

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Krivonen & Associates
1004 Division St. 3rd Floor
Billings, MT 59101

.2 Mechanical Engineer:

IMEG
175 N 27th St Suite 1312
Billings, MT 59101

.3 Electrical Engineer:

IMEG
175 N 27th St Suite 1312
Billings, MT 59101

4. Recreation Planning Architect

BRS Architecture
990 South Broadway Suite 222
Denver, CO 80209

§ 1.1.12.2 Consultants retained under Supplemental Services:

1. Civil Engineer:
Sanbell
1300 N Transtech Way
Billings, MT 59102

2. Operations Consultant

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Johnson Consulting
6 East Monroe Suite 500
Chicago, IL 60603

§ 1.1.13 Other Initial Information on which the Agreement is based:

No additional information required

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars ($ 1,000,000.00) for each occurrence and Two Million Dollars ($ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars ($ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than

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the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars ($ 1,000,000.00) each accident, One Million Dollars ($ 1,000,000.00) each employee, and One Million Dollars ($ 1,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Two Million Dollars ($ 2,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00) in the aggregate.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

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§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

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§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

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§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 At the request of the Owner, the Construction Phase Services have been identified as a separate phase and scope. The owner must provide written approval prior to the Architect providing any services under the Bidding (procurement) or Construction Phase of the project. The provisions set forth below will apply to the Construction Phase Services once the Owner provides such written approval and has agreed to the Architect's fee.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

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§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

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§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

.2 issue Certificates of Substantial Completion;

.3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and

.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

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Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	Architect/Owner
§ 4.1.1.2 Programming	Architect
§ 4.1.1.3 Multiple Preliminary Designs	Not Provided
§ 4.1.1.4 Measured drawings	Not Provided
§ 4.1.1.5 Existing facilities surveys	Not Provided
§ 4.1.1.6 Site evaluation and planning	Architect
§ 4.1.1.7 Building Information Model management responsibilities	Not Provided
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Architect
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Not Provided
§ 4.1.1.13 Cost estimating	General Contractor / Construction Manager
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Not Provided
§ 4.1.1.16 As-designed record drawings	Not Provided
§ 4.1.1.17 As-constructed record drawings	General Contractor / Construction Manager
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22 Telecommunications/data design	Architect
§ 4.1.1.23 Security evaluation and planning	Not Provided
§ 4.1.1.24 Commissioning	Owner
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	Not Provided
	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

4.1.l.1 – The Owner will lead the process of selecting the GC/CM and the architect will assist as needed.
4.1.1.2 – The Architect will lead the Programming effort with the Owner to identify the needs of the facility and align those spaces and overall building size to the budget.
4.1.1.6 – The Architect and consultant team will lead the site design for the project. This includes master planning the area for the YIF and Courts building to efficiently locate buildings, parking, sidewalks, and plazas.
4.1.1.9 – The Architect's consultant, Sanbell, will lead the standard civil engineering requirements for the project.

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4.1.1.10 – The Architect's landscape team will lead the standard landscape design and architectural requirements for the project.
4.1.1.11 – The Architect's team will lead the interior design of the facility for selection of materials, colors, and finishes appropriate for this building.
4.1.1.22 – The Architect's team will lead the design of the basic telecommunications requirements for the facility.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.
(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

4.1.1.1 – The Owner will lead the process of selecting the GC/CM and the architect will assist as needed.
4.1.1.24 – The Owner will contract directly with the commissioning agent for code-required commissioning.
4.1.1.27 – The Owner will procure any required FF&E for the project.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services
The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;

.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;

.3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;

.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;

.8 Deleted.

.9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

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.11 Assistance to the Initial Decision Maker, if other than the Architect;

.12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;

.13 Services necessitated by the Owner's delay in engaging the Construction Manager;

.14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and

.15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

.1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;

.2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or

.5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager

.2 One weekly (1) visits to the site by the Architect during construction

.3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 One (1) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

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§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** terminate in accordance with Section 9.5;
- **.3** in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- **.4** implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section

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6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work.. If the Owner requires the Architect to modify the Construction Documents because the cost exceeds the Owner's budget due to market conditions the Architect could not reasonably anticipate, the Owner and Architect shall negotiate a reasonable path forward to bring the project into budget, which may include Additional Services pursuant to Section 11.3.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they

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may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify, defend, save, and hold the Owner and the Owner's officers, employees, and agents harmless from any and all claims, causes of action, lawsuits, damages, losses, judgments, and litigation costs and expenses arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, arising from any wrongful or negligent acts, errors, or omissions of the Architect, its agents, employees, and its consultants in the performance of professional services under this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 Owner and Architect agree that they shall, in good faith, first attempt to informally resolve any claim, dispute or issue through discussions with the executives of each party at a mutually acceptable time, manner, and place. If informal discussions fail to resolve the claim, dispute, or issue, the Parties agree to, in a timely and expeditious manner, no later than sixty (60) days after the Parties agree in writing that informal discussions failed, to mediate the claim, dispute, or issue with a mutually selected mediator, splitting the cost of the mediation equally. If mediation does not resolve the claim, dispute, or issue within ninety (90) days of the first session of mediation with the mutually selected mediator, the Owner and Architect agree to resolve the claim, dispute, or issue through litigation before a court of competent jurisdiction in -Billings, Montana

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[**X**] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

LITIGATION AND VENUE: The parties agree that this AGREEMENT shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the AGREEMENT or the performance of its terms.

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement, unless such payments are the subject of a good faith dispute. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending

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services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any reasonable direct expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules may be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules may be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

n/a

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

n/a

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the

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other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 Section removed.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
Reference Exhibit A – Project Fees

.2 Percentage Basis
(Insert percentage value)
N/A

(Paragraph deleted)

.3 Other
(Describe the method of compensation)

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N/A

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Reference Exhibit A for all project fees

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Reference Exhibit A for all project fees.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

Reference Exhibit A for all project fees

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Reference Exhibit A for all project fees

(Table deleted)
The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Project does not include hourly billing. Reference Exhibit A for all project fees

Employee or Category	Rate ($0.00)

§ 11.8 Compensation for Reimbursable Expenses
§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;

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.3 Permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
.5 Postage, handling, and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Deleted
.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
.9 All taxes levied on professional services and on reimbursable expenses;
.10 Site office expenses;
.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
.12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

Not Applicable

§ 11.10 Payments to the Architect
§ 11.10.1 Initial Payments
§ 11.10.1.1 An initial payment of zero dollars ($ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ($) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments
§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. If the invoice is disputed, the Owner shall provide written notice with the reason for the dispute to Architect within seven (7) calendar days. Architect may then correct the deficiency and resubmit the invoice for approval. However, the Owner shall pay all amounts not in dispute in accordance with the terms of this Agreement.
(Insert rate of monthly or annual interest agreed upon.)

12 % annum

§ 11.10.2.2 The Owner may withhold amounts from the Architect's compensation to offset sums requested by or paid to contractors for the cost of changes in the Work resulting from the Architect's errors or omissions. The Architect shall retain the right to challenge any withholding in binding dispute resolution.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:

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(Include other terms and conditions applicable to this Agreement.)

§ 12.1 Nondiscrimination

§ 12.1.1 The Architect 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 Architect 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 Architect agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

§ 12.1.2 The Architect shall state, in all solicitations or advertisements for employees to Work on Project 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.

§ 12.1.3 The Architect shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.

§ 12.1.4 The Architect shall include the provisions of Subsections 12.1.1 through 12.1.3 of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of the Architect under this Agreement.

§ 12.1.5 The Architect shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

§ 12.1.6 The Architect and any 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.

§ 12.1.7 The Architect and any subcontractor shall abide by the requirements of 41 CRF 60-1.4, which states employees or applicants may not be discharged 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.

§ 12.2 Notice Any notice required under this Agreement shall be sent by email or first class registered or certified mail, return receipt requested. For notice to the Owner, notices shall be sent to the Owner's representatives listed in 1.1.8 **and** 1.1.9 or for notice to the Architect, to the Architect's representative listed in 1.1.11. Notices are effective upon the earlier of receipt, or five (5) days after proof of proper postmark.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

.2 Building Information Modeling Exhibit, if completed:

N/A

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.3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

[X] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Project Fees
Exhibit B – Project Schedule

.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

N/A

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**ARCHITECT** *(Signature)*
William A. Cole, Mayor, City of Billings	Dusty Eaton, AIA, CEO, Principal
(Printed name and title)	*(Printed name, title, and license number, if required)*

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Additions and Deletions Report for

AIA® Document B133® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:03:02 MT on 12/12/2024.

PAGE 1

AGREEMENT made as of the 16th day of December in the year Two Thousand Twenty Four

...

City of Billings
PO Box 1178
Billings, MT 59103

...

A&E Design, Inc
124 N. 29th St Suite 100
Billings, MT 59101

...

24194.00 Amend Park Recreation Campus

...

TBD

PAGE 2

This project includes the design of an indoor Courts Facility on the site parcels noted in Section 1.1.2. The project will include full-size basketball courts (94'x50') that can convert to middle-school sized courts. The courts will also be striped for pickle ball, volleyball, and possibly additional sports as determined with the owner through design. The courts will be separated by divider curtains with the ability to partition areas off and run multiple events simultaneously. The courts building will also include an entry area with reception desk, concessions area, restrooms, adequate storage, and other support spaces.

The project will include the development of the site area referred to as the Amend Park Recreation Campus. This scope of work includes the site area to support the Courts Facility and Yellowstone Ice Facility (YIF) building. The site development will include the utilities, code-required parking, sidewalks, plaza, and storm water management infrastructure. The total site area developed under this contract will be prioritized to supporting the Courts Facility and YIF buildings only. The YIF building is being designed by another architect, but this contract will include identifying a building location and designing the surrounding site development for the YIF facility.

PAGE 3

Site Parcels:
Amend Park (Tract 1 of Certificate of Survey No 2783)
Lots 3A-1A, 3A-4, and 3A-5, Block 1 of Popelka Commerce Center Subdivision, Second Filing)

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...

Total project budget is 21million. The Architectural and Engineering services are separated into Phase 1 and Phase 2 per the Owner's RFQ. The Phase 1 services are included in this contract and include design of the Courts building and the campus site plan through Construction Documents and permitting. Phase 2 work is to include bidding and and Construction Administration services. Final Scope and Fee for the Phase 2 work will be negotiated prior to the start of Phase 2 work. The fees for Phase 2 will come from within the total project budget, as no additional funds from the City of Billings are available.

...

See Exhibit B – Project Schedule

...

Summer 2025. Final date to be determined in conjunction with the General Contractor/Construction Manager

...

TBD in consultation with Owner. Substantial Completion date will be defined in a future contract amendment

...

N/A

...

[**X**] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

...

Not Applicable

...

Responsible practices to provide overall sustainable design strategies within the budget.

PAGE 4

Kevin Iffland, Assistant City Administrator
City of Billings
PO Box 1178
Billings, MT 59103
ifflandk@billingsmt.gov

...

John Caterino, Facilities Manager
City of Billings
PO Box 1178
Billings, MT 59103
caterinoj@billingsmt.gov

...

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TBD

...

Sanbell
1300 N Transtech Way
Billings, MT 59102

...

Rimrock Engineering
5440 Holiday Ave
Billings, MT 59101

PAGE 5

Dusty Eaton, AIA, CEO, Principal
A&E Design, Inc
124 N. 29th St Suite 100
Billings, MT 59101

...

Krivonen & Associates
1004 Division St. 3rd Floor
Billings, MT 59101

...

IMEG
175 N 27th St Suite 1312
Billings, MT 59101

...

IMEG
175 N 27th St Suite 1312
Billings, MT 59101

4. Recreation Planning Architect

BRS Architecture
990 South Broadway Suite 222
Denver, CO 80209

...

1. Civil Engineer:
   Sanbell
   1300 N Transtech Way
   Billings, MT 59102

2. Operations Consultant
   Johnson Consulting
   6 East Monroe Suite 500

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Chicago, IL 60603

PAGE 6

No additional information required

...

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars ($ 1,000,000.00) for each occurrence and Two Million Dollars ($ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars ($ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

PAGE 7

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars ($ 1,000,000.00) each accident, One Million Dollars ($ 1,000,000.00) each employee, and One Million Dollars ($ 1,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Two Million Dollars ($ 2,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00) in the aggregate.

PAGE 10

§ 3.6.1.1 ~~The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.~~At the request of the Owner, the Construction Phase Services have been identified as a separate phase and scope. The owner must provide written approval prior to the Architect providing any services under the Bidding (procurement) or Construction Phase of the project. The provisions set forth below will apply to the Construction Phase Services once the Owner provides such written approval and has agreed to the Architect's fee.

PAGE 13

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§ 4.1.1.1 Assistance with Selection of Construction Manager	Architect/Owner
§ 4.1.1.2 Programming	Architect
§ 4.1.1.3 Multiple Preliminary Designs	Not Provided
§ 4.1.1.4 Measured drawings	Not Provided
§ 4.1.1.5 Existing facilities surveys	Not Provided
§ 4.1.1.6 Site evaluation and planning	Architect
§ 4.1.1.7 Building Information Model management responsibilities	Not Provided
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Architect
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Not Provided
§ 4.1.1.13 Cost estimating	General Contractor / Construction Manager
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Not Provided
§ 4.1.1.16 As-designed record drawings	Not Provided
§ 4.1.1.17 As-constructed record drawings	General Contractor / Construction Manager
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22 Telecommunications/data design	Architect
§ 4.1.1.23 Security evaluation and planning	Not Provided
§ 4.1.1.24 Commissioning	Owner
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	Not Provided
	Not Provided

...

4.1.l.1 – The Owner will lead the process of selecting the GC/CM and the architect will assist as needed.
4.1.1.2 – The Architect will lead the Programming effort with the Owner to identify the needs of the facility and align those spaces and overall building size to the budget.
4.1.1.6 – The Architect and consultant team will lead the site design for the project. This includes master planning the area for the YIF and Courts building to efficiently locate buildings, parking, sidewalks, and plazas.
4.1.1.9 – The Architect's consultant, Sanbell, will lead the standard civil engineering requirements for the project.
4.1.1.10 – The Architect's landscape team will lead the standard landscape design and architectural requirements for the project.
4.1.1.11 – The Architect's team will lead the interior design of the facility for selection of materials, colors, and finishes appropriate for this building.
4.1.1.22 – The Architect's team will lead the design of the basic telecommunications requirements for the facility.
PAGE 14

4.1.l.1 – The Owner will lead the process of selecting the GC/CM and the architect will assist as needed.
4.1.1.24 – The Owner will contract directly with the commissioning agent for code-required commissioning.

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4.1.1.27 – The Owner will procure any required FF&E for the project.

...

.8 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~Deleted.

PAGE 15

.1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager

.2 One weekly (1) visits to the site by the Architect during construction

.3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 One (1) inspections for any portion of the Work to determine final completion

...

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 18

§ 6.7 After incorporation of modifications under Section 6.6, the Architect ~~shall, as an Additional Service,~~ shall make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the ~~Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.~~Work.. If the Owner requires the Architect to modify the Construction Documents because the cost exceeds the Owner's budget due to market conditions the Architect could not reasonably anticipate, the Owner and Architect shall negotiate a reasonable path forward to bring the project into budget, which may include Additional Services pursuant to Section 11.3.

PAGE 19

§ 8.1.3 The Architect shall ~~indemnify~~ indemnify, defend, save, and hold the Owner and the Owner's ~~officers and employees harmless from and against damages, losses and judgments~~ officers, employees, and agents harmless from any and all claims, causes of action, lawsuits, damages, losses, judgments, and litigation costs and expenses arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, ~~but only to the extent they are caused by the negligent acts~~ arising from any wrongful or negligent acts, errors, or omissions of the Architect, its ~~employees~~ agents, employees, and its consultants in the performance of professional services under ~~this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by~~ this Agreement.

...

§ 8.2.2 ~~The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~Owner and Architect agree that they shall, in good faith, first attempt to informally resolve any claim, dispute or issue through discussions with the executives of each party at a mutually acceptable time, manner, and place. If informal discussions fail to resolve the claim, dispute, or issue, the Parties agree to, in a timely and expeditious manner, no later than sixty (60) days after the Parties agree in writing that informal discussions failed, to mediate the claim, dispute, or issue with a mutually selected mediator, splitting the cost of the

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mediation equally. If mediation does not resolve the claim, dispute, or issue within ninety (90) days of the first session of mediation with the mutually selected mediator, the Owner and Architect agree to resolve the claim, dispute, or issue through litigation before a court of competent jurisdiction in -Billings, Montana

...

[X] Litigation in a court of competent jurisdiction

...

LITIGATION AND VENUE: The parties agree that this AGREEMENT shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the AGREEMENT or the performance of its terms.

...

~~**§ 8.3 Arbitration**~~

~~**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.4 Consolidation or Joinder**~~

~~**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

~~**§ 8.4** The provisions of this Article 8 shall survive the termination of this Agreement.~~

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§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this ~~Agreement.~~ Agreement, unless such payments are the subject of a good faith dispute. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any reasonable direct expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules ~~shall~~ may be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules ~~shall~~ may be equitably adjusted.

PAGE 20

n/a

...

n/a

PAGE 21

§ 10.8 ~~If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.~~Section removed.

...

~~*(Insert amount)*~~Reference Exhibit A – Project Fees

...

N/A

~~(–) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

PAGE 22

N/A

...

Reference Exhibit A for all project fees

...

Reference Exhibit A for all project fees.

...

Reference Exhibit A for all project fees

...

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Reference Exhibit A for all project fees				
~~Schematic Design Phase~~		~~percent (~~		~~%)~~
~~Design Development Phase~~		~~percent (~~		~~%)~~
~~Construction Documents Phase~~		~~percent (~~		~~%)~~
~~Construction Phase~~		~~percent (~~		~~%)~~
~~Total Basic Compensation~~	~~one hundred~~	~~percent (~~	~~100~~	~~%)~~

...

Project does not include hourly billing. Reference Exhibit A for all project fees

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.7 ~~Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~Deleted

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

...

Not Applicable

...

§ 11.10.1.1 An initial payment of zero dollars ($ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. If the invoice is disputed, the Owner shall provide written notice with the reason for the dispute to Architect within seven (7) calendar days. Architect may then correct the deficiency and resubmit the invoice for approval. However, the Owner shall pay all amounts not in dispute in accordance with the terms of this Agreement.

...

12 % annum

§ 11.10.2.2 The Owner ~~shall not~~ may withhold amounts from the Architect's compensation ~~to impose a penalty or liquidated damages on the Architect, or~~ to offset sums requested by or paid to contractors for the cost of changes in the ~~Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~Work resulting from the Architect's errors or omissions. The Architect shall retain the right to challenge any withholding in binding dispute resolution.

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§ 12.1 Nondiscrimination

§ 12.1.1 The Architect 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 Architect will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color,

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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 Architect agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

§ 12.1.2 The Architect shall state, in all solicitations or advertisements for employees to Work on Project 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.

§ 12.1.3 The Architect shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.

§ 12.1.4 The Architect shall include the provisions of Subsections 12.1.1 through 12.1.3 of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of the Architect under this Agreement.

§ 12.1.5 The Architect shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

§ 12.1.6 The Architect and any 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.

§ 12.1.7 The Architect and any subcontractor shall abide by the requirements of 41 CRF 60-1.4, which states employees or applicants may not be discharged 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.

§ 12.2 Notice Any notice required under this Agreement shall be sent by email or first class registered or certified mail, return receipt requested. For notice to the Owner, notices shall be sent to the Owner's representatives listed in 1.1.8 **and** 1.1.9 or for notice to the Architect, to the Architect's representative listed in 1.1.11. Notices are effective upon the earlier of receipt, or five (5) days after proof of proper postmark.

...

N/A

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[**X**] Other Exhibits incorporated into this Agreement:

...

Exhibit A – Project Fees
Exhibit B – Project Schedule

...

N/A

...

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William A. Cole, Mayor, City of Billings	Dusty Eaton, AIA, CEO, Principal

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:03:02 MT on 12/12/2024 under Order No. 4104250045 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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DRAFT

AIA® Document B133® – 2019

Standard Form of Agreement Between Owner and Architect,
Construction Manager as Constructor Edition

AGREEMENT made as of the « ~~Seventh~~ ~~Eleventh~~16th» day of «December ~~November~~ » in the year « Two Thousand Twenty Four »
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

«City of Billings »« »
«PO Box 1178 »
«Billings, MT 59103 »
« »

and the Architect:
(Name, legal status, address, and other information)

«A&E Design, Inc
124 N. 29th St Suite 100
Billings, MT 59101 »« »
« »
« »
« »

for the following Project:
(Name, location, and detailed description)

«24194.00 Amend Park Recreation Campus»
« »
« »

The Construction Manager (if known):
(Name, legal status, address, and other information)

«TBD»« »
« »
« »
« »

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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DRAFT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« ~~As developed in coordination with and approved by the owner upon.~~»This project includes the design of an indoor Courts Facility on the site parcels noted in Section 1.1.2. The project will include full-size basketball courts (94'x50') that can convert to middle-school sized courts. The courts will also be striped for pickle ball, volleyball, and possibly additional sports as determined with the owner through design. The courts will be separated by divider curtains with the ability to partition areas off and run multiple events simultaneously. The courts building will also include an entry area with reception desk, concessions area, restrooms, adequate storage, and other support spaces.

The project will include the development of the site area referred to as the Amend Park Recreation Campus. This scope of work includes the site area to support the Courts Facility and Yellowstone Ice Facility (YIF) building. The site development will include the utilities, code-required parking, sidewalks, plaza, and storm water management infrastructure. The total site area developed under this contract will be prioritized to supporting the Courts Facility and YIF buildings only. The YIF building is being designed by another architect, but this contract will include identifying a building location and designing the surrounding site development for the YIF facility. »

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

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«~~Construction of recreation campus adjacent to the existing Amend Park. This project includes the site design for the campus as well as the design and construction documents for the Recreation Building. The campus design will include an identified location for the Yellowstone Ice Foundation (YIF) rink building. The YIF building is being designed by another architect, but this contract will include identifying a site location for the YIF building and designing the surrounding site development.~~

Site Parcels:
Amend Park (Tract 1 of Certificate of Survey No 2783)
Lots 3A-1A, 3A-4, and 3A-5, Block 1 of Popelka Commerce Center Subdivision, Second Filing) »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

« ~~T~~Total project budget is ~~18.2~~ ~~20~~ 21million. The Architectural and Engineering services are separated into Phase 1 and Phase 2 per the Owner's RFQ. The Phase 1 services are included in this contract and include design of the Courts building and the campus site plan through Construction Documents and permitting. Phase 2 work is to include bidding and ~~negotiation~~ and Construction Administration services. Final Scope and Fee for the Phase 2 work will be negotiated ~~at the conclusion of Phase 1~~prior to the start of Phase 2 work. The fees for Phase 2 will come from within the total project budget, as no additional funds from the City of Billings are available.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

~~12/20/24 – 100% Schematic Design~~

~~03/03/25 – 100% Design Development for the Courts Building; 100% Construction Documents for the Site Plan and Campus Master Plan to facilitate design and construction coordination with Yellowstone Ice Foundation building.~~

~~05/05/25 – 100% Construction Documents for the Courts Building.~~
See Exhibit B – Project Schedule

.2 Construction commencement date:

«Summer 2025. Final date to be determined in conjunction with the General Contractor/Construction Manager »

.3 Substantial Completion date or dates:

« TBD in consultation with Owner. Substantial Completion date will be defined in a future contract amendment»

.4 Other milestone dates:

«N/A »

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

[**« X »**] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[**« »**] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

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§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

«Not Applicable »

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

«Responsible practices to provide overall sustainable design strategies within the budget.
~~Not Applicable~~ »

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

«~~Mike Pigg, Parks Director~~Kevin Iffland, Assistant City ~~»~~Administrator »
«City of Billings »
«PO Box 1178 »
«Billings, MT 59103 »
«~~pigg~~mifflandk@billingsmt.gov~~»~~
« »

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

«John Caterino, Facilities Manager
City of Billings
PO Box 1178
Billings, MT 59103
~~caterinoj@billingsmt.gov~~caterinoj@billingsmt.gov »

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:
(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

«TBD~~»~~

.2 Land Surveyor:

«Sanbell
1300 N Transtech Way
Billings, MT 59102 ~~»«~~»
~~«»~~
~~«»~~
~~«»~~

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«»

.3 Geotechnical Engineer:

«Rimrock Engineering »« »
«5440 Holiday Ave
Billings, MT 59101 »
«»
«»
«»

.4 Civil Engineer:

« »« »
«»
«»
«»
«»

.5 Other consultants and contractors:
(List any other consultants and contractors retained by the Owner.)

« »

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

«Dusty Eaton, AIA, CEO, Principal
A&E Design, Inc
124 N. 29th St Suite 100
Billings, MT 59101 »
« »
« »
« »
« »
« »

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

«Krivonen & Associates »« »
«1004 Division St. 3rd Floor »
«Billings, MT 59101 »
« »
«»

.2 Mechanical Engineer:

«IMEG »« »
«175 N 27th St Suite 1312
Billings, MT 59101 »
« »
«»
«»

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.3 Electrical Engineer:

«IMEG »« »
«175 N 27th St Suite 1312
Billings, MT 59101 »
«

4. Recreation Planning Architect

«BRS Architecture »
«990 South Broadway Suite 222
Denver, CO 80209 »

§ 1.1.12.2 Consultants retained under Supplemental Services:

1. «Civil Engineer:
Sanbell
1300 N Transtech Way
Billings, MT 59102

2. Operations Consultant
Johnson Consulting
6 East Monroe Suite 500
Chicago, IL 60603»

§ 1.1.13 Other Initial Information on which the Agreement is based:

«No additional information required- »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than « One Million Dollars » ($ « 1,000,000.00 ») for each occurrence and « Two Million Dollars » ($ « 2,000,000.00 ») in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than «One Million Dollars » ($ « 1,000,000.00 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than « One Million Dollars » ($ « 1,000,000.00 ») each accident, «One Million Dollars » ($ «1,000,000.00 ») each employee, and « One Million Dollars » ($ «1,000,000.00 ») policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « Two Million Dollars » ($ «2,000,000.00 ») per claim and « Two Million Dollars » ($ « 2,000,000.00 ») in the aggregate.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

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§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the

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Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

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§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 At the request of the Owner, the Construction Phase Services have been identified as a separate phase and scope. The owner must provide written approval prior to the Architect providing any services under the Bidding (procurement) or Construction Phase of the project. The provisions set forth below will apply to the Construction Phase Services once the Owner provides such written approval and has agreed to the Architect's fee.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work

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completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means,

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methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- **.1** conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- **.2** issue Certificates of Substantial Completion;
- **.3** forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- **.4** issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

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§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

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Supplemental Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Assistance with Selection of Construction Manager	Architect/Owner
§ 4.1.1.2 Programming	Architect
§ 4.1.1.3 Multiple Preliminary Designs	~~Architect~~ Not Provided
§ 4.1.1.4 Measured drawings	Not Provided
§ 4.1.1.5 Existing facilities surveys	Not Provided
§ 4.1.1.6 Site evaluation and planning	Architect
§ 4.1.1.7 Building Information Model management responsibilities	Not Provided
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Architect
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Not Provided
§ 4.1.1.13 Cost estimating	General Contractor / Construction Manager
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Not Provided
§ 4.1.1.16 As-designed record drawings	Not Provided
§ 4.1.1.17 As-constructed record drawings	General Contractor / Construction Manager~~Contractor~~
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22 Telecommunications/data design	Architect
§ 4.1.1.23 Security evaluation and planning	Not Provided
§ 4.1.1.24 Commissioning	Owner
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	~~Owner~~
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	Not Provided
	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

« ~~4.1.1.1~~ – The Owner will lead the process of selecting the GC/CM and the architect will assist as needed.
4.1.1.2 – The Architect will lead the Programming effort with the Owner to identify the needs of the facility and align those spaces and overall building size to the budget.
4.1.1.6 – The Architect and consultant team will lead the site design for the project. This includes master planning the area for the YIF and Courts building to efficiently locate buildings, parking, sidewalks, and plazas.
4.1.1.9 – The Architect's consultant, Sanbell, will lead the standard civil engineering requirements for the project.
4.1.1.10 – The Architect's landscape team will lead the standard landscape design and architectural requirements for the project.

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4.1.1.11 – The Architect's team will lead the interior design of the facility for selection of materials, colors, and finishes appropriate for this building.
4.1.1.22 – The Architect's team will lead the design of the basic telecommunications requirements for the facility.
»

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.
(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« 4.1.1.1 – The Owner will lead the process of selecting the GC/CM and the architect will assist as needed.
4.1.1.24 – The Owner will contract directly with the commissioning agent for code-required commissioning.
4.1.1.27 – The Owner will procure any required FF&E for the project.
–»

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;

.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;

.3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;

.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;

.8 Deleted. ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~

.9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

.11 Assistance to the Initial Decision Maker, if other than the Architect;

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.12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;

.13 Services necessitated by the Owner's delay in engaging the Construction Manager;

.14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and

.15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

.1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;

.2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or

.5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 «~~Two~~ Two » («22») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager

.2 «~~One weekly~~ One weekly » («1 ») visits to the site by the Architect during construction

.3 «~~One~~ One » («1 ») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 «~~One~~One » («~~1~~1») inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within «Twelve » («12 ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The

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Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** terminate in accordance with Section 9.5;
- **.3** in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- **.4** implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

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§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall~~, as an Additional Service,~~ make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work~~., except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.~~ If the Owner requires the Architect to modify the Construction Documents because the cost exceeds the Owner's budget due to market conditions the Architect could not reasonably anticipate, the Owner and Architect shall negotiate a reasonable path forward to bring the project into budget, which may include Additional Services pursuant to Section 11.3.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the

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Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify, defend, save, and hold the Owner and the Owner's officers, ~~and~~ employees, and agents harmless from any and all claims, causes of action, lawsuits, ~~and against~~ damages, losses, ~~and~~ judgments, and litigation costs and expenses arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, arising from any wrongful or ~~but only to the extent they are caused by the~~ negligent acts, errors, or omissions of the Architect, its agents, employees, and its consultants in the performance of professional services under this Agreement. ~~The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.~~

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 Owner and Architect agree that they shall, in good faith, first attempt to informally resolve any claim, dispute or issue through discussions with the executives of each party at a mutually acceptable time, manner, and place. If informal discussions fail to resolve the claim, dispute, or issue, the Parties agree to, in a timely and expeditious manner, no later than sixty (60) days after the Parties agree in writing that informal discussions failed, to mediate the claim, dispute, or issue with a mutually selected mediator, splitting the cost of the mediation equally. If mediation does not resolve the claim, dispute, or issue within ninety (90) days of the first session of mediation with the mutually selected mediator, the Owner and Architect agree to resolve the claim, dispute, or issue through litigation before a court of competent jurisdiction in -Billings, Montana

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[« »] Arbitration pursuant to Section 8.3 of this Agreement

[«X »] Litigation in a court of competent jurisdiction

[«X »] Other: *(Specify)*

« LITIGATION AND VENUE: The parties agree that this AGREEMENT shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the AGREEMENT or the performance of its terms.
»

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

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ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement, unless such payments are the subject of a good faith dispute. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any reasonable direct expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules ~~shall~~ may be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules ~~shall~~ may be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

«n/a »

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

«n/a »

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

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§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8- Section removed.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum

Reference Exhibit A – Project Fees

~~The total design fee through Construction Documents is $1,000,000. This includes the following:~~

~~Basic Services: Architecture, Mechanical, Electrical, Engineering.~~

~~Supplemental Services: Civil Engineering, Pro Forma Business Modeling, Landscape Design, and Site Survey.~~

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« »

.2 Percentage Basis
(Insert percentage value)

N/A

.3 Other
(Describe the method of compensation)

« N/A »

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

« Reference Exhibit A for all project fees »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

« Reference Exhibit A for all project fees. ~~As Negotiated with Owner and Architect~~ »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus « » percent (« » %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

« Reference Exhibit A for all project fees»
~~« »~~

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:
Reference Exhibit A for all project fees

~~Schematic Design Phase~~	~~« »~~	~~percent (~~	~~« »~~	~~%)~~
~~Design Development Phase~~	~~« »~~	~~percent (~~	~~« »~~	~~%)~~
~~Construction Documents Phase~~	~~« »~~	~~percent (~~	~~« »~~	~~%)~~
~~Construction Phase~~	~~« »~~	~~percent (~~	~~« »~~	~~%)~~
~~Total Basic Compensation~~	~~one hundred~~	~~percent (~~	~~100~~	~~%)~~

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«Project does not include hourly billing. Reference Exhibit A for all project fees–»

Employee or Category	Rate ($0.00)

§ 11.8 Compensation for Reimbursable Expenses
§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
.5 Postage, handling, and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 DeletedRenderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
.9 All taxes levied on professional services and on reimbursable expenses;
.10 Site office expenses;
.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
.12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus « zero » percent (« 0 » %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

«Not Applicable–»

§ 11.10 Payments to the Architect
§ 11.10.1 Initial Payments
§ 11.10.1.1 An initial payment of «zero dollars » ($ «0.00 ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of « » ($ « ») shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments
§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid «–thirty» (« 30 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. If the invoice is disputed, the Owner shall provide

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written notice with the reason for the dispute to Architect within seven (7) calendar days. Architect may then correct the deficiency and resubmit the invoice for approval. However, the Owner shall pay all amounts not in dispute in accordance with the terms of this Agreement.
(Insert rate of monthly or annual interest agreed upon.)

« 12 » % « annum »

§ 11.10.2.2 The Owner ~~shall not~~may withhold amounts from the Architect's compensation ~~to impose a penalty or liquidated damages on the Architect, or~~ to offset sums requested by or paid to contractors for the cost of changes in the Work resulting from the Architect's errors or omissions. The Architect shall retain the right to challenge any withholding in binding dispute resolution~~, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding~~.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

~~§ c~~12.1 Nondiscrimination~~« »~~

§ 12.1.1 The Architect 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 Architect 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 Architect ~~agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.~~ce

§ 12.1.2 The Architect shall state, in all solicitations or advertisements for employees to Work on Project 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.

§ 12.1.3 The Architect shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.

§ 12.1.4 The Architect ~~shall include the provisions of Subsections c~~12.1.1 through 12.1.3 of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of the Architect under this Agreement.~~c~~

§ 12.1.5 The Architect shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

§ 12.1.6 The Architect and any 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.

§ 12.1.7 The Architect ~~and c~~any subcontractor shall abide by the requirements of 41 CRF 60-1.4, which states employees or applicants may not be discharged 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.

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§ 12.2 Notice Any notice required under this Agreement shall be sent by email or first class registered or certified mail, return receipt requested. For notice to the Owner, notices shall be sent to the Owner's representatives listed in 1.1.8 **and** 1.1.9 or for notice to the Architect, to the Architect's representative listed in 1.1.11. Notices are effective upon the earlier of receipt, or five (5) days after proof of proper postmark.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

.2 Building Information Modeling Exhibit, if completed:

«N/A–»

.3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[« »] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

« »

[«X »] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

« Exhibit A – Project Fees
Exhibit B – Project Schedule

.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

« N/A »

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**ARCHITECT** *(Signature)*
«William A. Cole, Mayor, City of Billings »« »	«Dusty Eaton, AIA, CEO, Principal »« »
(Printed name and title)	*(Printed name, title, and license number, if required)*

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City Council Regular

Date:	12/16/2024
Title:	Memorandum of Agreement between the City and Yellowstone Ice Foundation
Presented by:	Chris Kukulski, City Administrator
Department:	City Hall Administration
Presentation:	Yes
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends the City Council approve the enclosed Memorandum of Understanding (MOU) between the City and Yellowstone Ice Foundation which establishes the parties' commitment to enter a public-private partnership to build an ice facility and necessary infrastructure at Amend Park.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

In September 2024, the City solicited proposals for a proposed recreation campus at Amend Park that includes an overall site plan and architectural design of an indoor recreation/sport court facility that incorporates a minimum of four full-sized or eight middle school-sized basketball courts. A&E Design submitted a proposal that was selected and Council awarded the professional services contract on December 9, 2024.

The City concurrently solicited proposals for an indoor recreation facility located at the Amend Park recreation campus. Yellowstone Ice Foundation (YIF), a local non-profit organization, submitted a proposal that was selected to build an ice facility that would be owned by YIF but located on City-owned property at Amend Park. Due to the unique and complex nature of drafting a ground lease to address the multitude of issues involved with such a partnership, the City is consulting with Chris Johnson of Worden Thane P.C. who has significant experience in this area to assist with drafting the lease.

YIF's proposal includes a financial commitment from Signal Peak Mine to donate $6 million ($3 million cash and $3 million debt) to fund the construction of the ice facility. It is the City's understanding that the first $3 million must be encumbered before the end of the year. Therefore, the proposed MOU provides assurance from the City that we are working in good faith to partner on the project. This will allow YIF to encumber the funds while a more detailed lease is negotiated. Because much of the detail necessary for the lease agreement is dependent on the design of the recreation campus, the parties will not be able to finalize a lease until around March 2025.

The MOU outlines the general understanding of the parties' roles and responsibilities in the partnership and indicates a commitment to work together in good faith to reach a more detailed agreement defining the specific responsibilities and obligations of each party. It does not comprise every issue because there are many "unknowns" at this point. However, paragraphs 5 and 6 identify the majority of the issues that will be described more specifically in an agreement.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

Cost estimates are not available, since the site development and ice facility are in the early stages of design. The cost of infrastructure and parking necessary to support the ice facility will be paid by the city through the sale of SBURA TIF bonds. Yellowstone Ice Foundation will raise all funds necessary to build, maintain and operate the indoor ice facility. It is also anticipated that YIF will cover their proportional cost of off-site operational expenses.

Attachments

MOU

MEMORANDUM OF UNDERSTANDING

This memorandum of understanding ("MOU") is made and entered into this _____ day of _____, 2024, between the City of Billings ("City"), a municipality as defined and described in Chapter 1, Part 41 of Title 7 of the Montana Code, and the Yellowstone Ice Foundation ("Yellowstone Ice"), a non-profit corporation, together described as "the Parties".

1. An MOU between the parties is necessary because Yellowstone Ice desires to utilize property owned by the City for construction of a recreational indoor ice facility ("facility") at Amend Park.

2. The City issued a request for proposals ("RFP") for a proposed indoor recreation facility located at the Amend Park Recreation Campus through a Public/Private Partnership.

3. The City selected Yellowstone Ice pursuant to the RFP process, and this MOU describes responsibilities of the parties to effectuate the development of a pad site for the facility in advance of and in anticipation of the execution of a lease between the parties for use of the City's property.

4. The Parties enter into this MOU to advance the City's goals for further development of the Amend Park Recreational Campus ("Campus"). Yellowstone Ice shares the City's goals to expand recreational opportunities in Billings and derives the ability to collaborate with the City to construct a facility through support from private sector and non-profit partners. In the absence of this partnership between the Parties, there is no prospect for development of the facility with taxpayer dollars in the coming years.

5. It is the Parties intention to negotiate their ongoing relationship and scope of work through a lease between them. Among other things, a lease would need to (a) identify a start date that would include the period of time in which construction of the facility would occur, and a lease end date (presumed to include renewal periods); (b) identify responsibilities of the parties and ownership of improvements following the end of the lease term; (c) include a division of the responsibility for costs of the operation and maintenance of the facility and the surrounding grounds/appurtenances; (d) discuss responsibility for premises liability and insurance coverage, inclusive of coverage during the facility construction phase, and inclusive of obligations for repair and restoration of damaged premises; (e) provide

assurances regarding access to the facility by the public and user groups, which would be illustrated on a proposed site plan for the whole Campus; (f) describe parking to be provided on the Campus, inclusive of allocation, if desired, of maintenance obligations for such parking; (g) describe utilities to be brought to the pad location by City, again being part of a proposed site plan for the whole Campus; (h) identify obligations regarding maintenance of the facility and establish maintenance standards, which provisions may include the creation of and funding for a sinking fund for long term capital replacement projects; (i) identify the site pad size requirements and the actual leased premises; (j) outline anticipated timelines for the construction of the facility, and installation and development of parking facilities and infrastructure; (k) identify lease payments under the lease, if any; (l) address rights and limitations associated with assignment or subleasing under the lease; (m) address financing of facility improvements and subordination, attornment, and estoppel certificate issues associated with such financing; and (n) include as an exhibit to the lease the plans and specifications for the proposed facility, which would include a construction schedule.

6. As of the date of this MOU, the City is operating with the following understandings: (a) a Site Plan for the leased premises and the remainder of Campus (inclusive of parking and utilities) is expected to be completed on or before March 3, 2025; (b) the total number of parking stalls expected to be developed is approximately 500, which may be developed or installed in phases, to better coordinate with completion of the facility; (c) the City represents it has or will have sufficient resources to complete planning of the Campus, install utilities sufficient to serve the facility by the time of beginning of construction, and develop sufficient parking to serve the facility by the time of its completion; (d) the City represents that regardless of the time line for development of other facilities at Amend Park Recreation Campus, Yellowstone Ice would have sufficient access to the leased premises to allow construction of improvements at the leased premises in the absence of other development.

7. The construction of a recreational indoor ice facility will serve an important public purpose by allowing the City to facilitate a wide variety of recreation not otherwise available to its residents. It will also allow for competitions that will bring visitors to Billings and support local businesses.

8. Yellowstone Ice pledges to communicate with the Billings Amateur Hockey League on the scope and operations of the proposed recreational indoor ice

facility. To the extent other individuals or entities wish to confer with Yellowstone Ice on the scope and operations of the proposed recreational indoor ice facility, it pledges to confer with them if contacted.

9. The Parties believe that it is possible to initiate construction after the Site Plan completion in the Spring of 2025. To facilitate this goal, the City agrees that it will accept applications for permits required for construction from Yellowstone Ice and act upon them before a lease is executed. Yellowstone Ice understands that any permit issued before execution of a lease would be conditioned upon the Parties agreement on a lease.

10. The Parties will endeavor to execute a lease by March 15, 2025. This MOU is not meant to be an enforceable agreement and nothing in this MOU requires the Parties to enter into a lease agreement, or enter into a lease agreement of any particular terms.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their duly authorized representatives as the date first above written.

SIGNED:

By:

_____
William A. Cole, Mayor of the City of Billings

By:

_____
[INSERT NAME AND TITLE]