



INVITATION FOR BID (IFB)

Name of Good or Service Requested: City of Billings Fire Stations #1, 2, & 3 Driveways

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A. Summary of Invitation for Bid

This bid is for the purpose of entering into a contract for concrete demolition and flat earthwork at Fire Stations 1, 2, & 3 for the City of Billings. The successful bidder agrees to provide the City of Billings with an acceptable quality of equipment/service, performance and workmanship as determined by the City of Billings.

It is the purpose of this bid to obtain the best quality of equipment/service at the most favorable price to the City of Billings. Consideration will be given for the level of service offered and ability to meet stated specifications as outlined in the contract documents.

The lowest bid need not be accepted if it is documented that a specific supplier in the past has been a poor performer or has provided poor goods.

B. Instructions to Bidders

Sealed bids entitled **City of Billings Fire Stations #1, 2, & 3 Driveways** for the City of Billings Fire Department, Billings, Montana, will be received by the City Clerk up until 2:00 PM (MDT) on Tuesday, May 3, 2022.

All bids may be submitted to the Billings City Clerk, via email at bids@billingsmt.gov or via mail or delivery at 210 N. 27th Street, Billings, MT 59101 (P. O. Box 1178, Billings, MT 59103). Bids will be publicly opened and read aloud via Facebook Live on the City's Facebook page: <https://www.facebook.com/Billings-MT-City-Government-74352842013/>. Bid tabulations will be posted for public viewing after the bids have been opened.

More specific additional information regarding this project may be obtained by contacting John Caterino Facilities Superintendent via telephone at 406-855-8454, or via email at caterinoj@billingsmt.gov.

Each bid must be accompanied by a Certified Check, Cashier's Check, or Bid Bond payable to the City of Billings, Montana, in the amount not less than ten percent (10%) of the total amount of the bid. The bid security will be retained by the City Clerk until the successful bidder enters into a contract with the City of Billings. If no contract is entered into, by the successful bidder, within sixty (60) days the security may be forfeited to the City of Billings.

Successful bidders to furnish an approved Performance Bond, Labor and Materials Bond, or Payment Bond in the amount of one hundred percent (100%) of the contract amount.



No bids may be withdrawn after the scheduled time for the public opening of bids, which is 2:00 PM (MDT) on Tuesday, May 3, 2022.

The right is reserved to reject any or all bids received, to waive irregularities, to postpone the award of the contract for a period of not to exceed sixty (60) days, and to accept that bid which is in the best interests of the City of Billings, Montana.

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.

EXAMINATION OF DOCUMENTS

Before submitting a bid, the bidder shall:

- a. Carefully examine the Standards and Specifications as well as all other attached documents;
- b. Fully inform themselves of the existing conditions and limitations;
- c. Include with the bid sufficient information to cover all items required in the specifications.

BID COMPLIANCE

It shall be the responsibility of the bidder to see that all bids are submitted to the office of the City Clerk before 2:00 PM (MST) on Tuesday, May 3, 2022.

BID MODIFICATIONS

Bids shall be made on the forms provided herein; they shall not contain any recapitulation of the work to be done. Modifications, additions or changes to the terms and conditions of this Invitation for Bid may be cause for rejection of the bid. Bids submitted on other forms may be rejected.

INTERPRETATION PRIORITY

Should a bidder find discrepancies in, or omissions from, the specifications, or be in doubt as to their meaning, bidder shall notify John Caterino Facilities Superintendent, Facilities Division, at caterinoj@billingsmt.gov, who will send written instructions or addenda to all bidders. The City will not be responsible for oral interpretation. All addenda issued prior to bid opening shall be incorporated into and become a portion and part of the contract/agreement upon award.



Questions received less than ninety-six (96) hours before the bid opening cannot be answered.

WITHDRAWAL OF BIDS

Bidders may withdraw their bid either personally or by written request at any time prior to the time set for bid opening. No bid may be withdrawn or modified after the time set for opening, unless and until the award of the contract is delayed for a period exceeding sixty (60) days.

BID PRICE VALID

Bidder acknowledges that no contractual relationship with the Proposer exists until execution of the resulting contract following City Administration or City Council approval. Because contract approval can be delayed due to scheduling or unforeseen circumstances, the Bidder must honor their pricing and any other terms set forth in the proposal for at least ninety (90) days after the bid due date.

The prices established from this bid may be extended to other political subdivisions within the State of Montana solely at the vendor's discretion.

CERTIFICATION

The bidder certifies that the bid has been arrived at by the bidder independently and has been submitted without any collusion designed to limit independent bidding or competition. The bidder further certifies that the materials, products, services and/or goods offered herein meet all requirements of the stated specifications and are equal in quality, value and performance with highest quality, nationally advertised brand and/or trade names.

Manufacturer's trade names, if used in specifications, are for the express purpose of establishing a standard of quality and coordination of design, not for the purpose of limiting competition.

INSURANCE

The bidder certifies that it/they shall maintain in good standing the insurance outlined below"

1. Workers' compensation and employer's liability coverage as required by Montana law.
2. Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
3. Automobile liability -- \$1,500,000 per accident.



Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the CITY prior to cancellation.

The CITY shall be listed as an additional insured on all policies except Worker's Compensation Policies.

In addition, all policies except Worker's Compensation shall contain a waiver of subrogation against the CITY.

BIDDER shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Bidder shall maintain workers' compensation insurance coverage for all members and employees of Bidder's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

The certificate will be provided to the City prior to contract execution.

ELIGIBILITY

The successful bidder will be required to provide copies of the following, or the ability to obtain the following within 15 days of notification of contract award:

- Completed and signed the new vendor forms, if necessary (to be eligible for payment): <http://mtbillings3.civicplus.com/DocumentCenter/View/26004>
- City of Billings Business License: <http://ci.billings.mt.us/981/Business-Licenses>
- Montana Contractor's License: <http://erd.dli.mt.gov/work-comp-regulations/montana-contractor/construction-contractor-registration>
- Certificate of Workman's Compensation or Certificate of Exemption from Workman's Compensation: <http://erd.dli.mt.gov/work-comp-regulations>

EVIDENCE OF QUALIFICATION

Upon request of the City of Billings, a bidder whose bid is under consideration for award may be required to manifest satisfactory evidence of his financial resources, experience, the organization and equipment as well as service provisions bidder has available or will make available. In determining the lowest responsible bidder, in addition to price, the following considerations may be addressed:

- a) The ability, capacity and skill of the bidder to perform the contract or provide the service required.
- b) The character, integrity, reputation, judgment, experience and efficiency of the bidder.



- c) Whether the bidder can perform the contract within time specified.
- d) The quality of performance of previous contracts, agreements and/or performance.
- e) Previous and/or existing compliance by the bidder with laws relating to the contract or services.
- f) Such other information which may be secured having a bearing on the decision to award the contract.

CONTRACTORS' GROSS RECEIPTS TAX AND PREVAILING WAGE RATES

The bidder understands that, if applicable, all contractors or subcontractors working on a publicly funded construction project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

The bidder also understands that, if applicable and unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

C. Contract Requirements and Specifications

Locations: City of Billings Fire Station 1
2305 8th Ave N
Billings, MT 59101

City of Billings Fire Station 2
501 28th St
Billings, MT 59101

City of Billings Fire Station 3
1928 17th St W
Billings, MT 59102



Owner: City of Billings
PO Box 1178
Billings, MT 59103

Summary Scope of Work:

Fire Station 1 Base Bid:

1. Complete removal and replacement of west alley concrete driveway.
2. Driveway area is approximately 105' x 33', VIF.
3. Provide city approved traffic control measures as required for work in ROW.

Fire Station 1 Alternate 1:

1. Complete removal and replacement of west alley concrete sidewalk.
2. Sidewalk is approximately 3' x 15', VIF.

Fire Station 1 Alternate 2:

1. Complete removal of west alley asphalt approach and replace with concrete.
2. Approach is approximately 5' x 35', VIF.
3. Must pull permit with Engineering for this scope of work in the right of way.

Fire Station 2 Base Bid:

1. Complete removal and replacement of east concrete driveway.
2. Driveway area is approximately 30' x 20', VIF.
3. Match existing grading and retain existing French drain and grate.
4. Provide city approved traffic control measures as required for work in ROW.

Fire Station 3 Base Bid:

1. Complete removal and replacement of west concrete driveway.
2. Driveway area is approximately 19' x 30', VIF.
3. Match existing grading and retain existing French drain and grate.
4. Provide city approved traffic control measures as required for work in ROW.

Fire Station 3 Alternate 1:

1. Complete removal and replacement of asphalt adjacent to west driveway and replace with concrete.
2. Area is approximately 14'x14', VIF.

General Requirements:

1. Seal and finish all joints to existing slab and asphalt.
2. Coated rebar shall be used under all concrete slabs and anchoring into existing slab, as is required by appropriate and best methods.
3. All debris removed in this project shall be disposed of as required by all laws and regulations, including all local and state requirements.



4. The successful bidder agrees to provide the City of Billings with an acceptable quality as determined by the City of Billings, of specified product, removal, installation, performance, and workmanship.
5. Driveway approaches and sidewalks shall meet City of Billings engineering standards.
6. Pricing to include all necessary permits and supplies to assure a complete project completion. City requires a Performance Bond, Labor and Materials Bond, or Payment Bond in this Project.
7. Project will be constructed under a single prime Contract with the City of Billings.
8. Completion of work will occur with Ninety (90) days of Contract being executed, unless extended by signed agreement by both parties.
9. Any work around or near the fuel pump must be coordinate thru Larry Zieske at Marketing Specialties, Inc. Any damage sustained to fuel pump, product lines, wires, conduit, or other components of fuel island shall be repaired by the contractor at no cost to City.

Submittals

1. Product Data: for type of product indicated.
2. Design Mixtures: 4500 psi for concrete mixture(s).
3. Shop Drawing: for steel reinforcement and formwork.

Quality Assurance

1. Qualifications: A firm experienced in manufacturing ready-mixed concrete products that complies with ASTM C94/C C94M requirements for production facilities and equipment.
2. ACI Publications: Comply with the following unless modified by requirement in the Contract Documents:
 - **ACI 301**
 - **ACI 117**
3. Follow City Code and Guidelines for drive approaches and sidewalks.
4. Locate all underground utilities before demolition.
5. Pre-construction Meeting: Conduct pre-construction meeting at Project site with City of Billings representatives. Date and time to be determined during contract negotiations.

Forms

1. Forms shall provide straight, continuous, smooth edges.

Steel Reinforcement



1. #4 Coated Rebar at 24" oc. Tie reinforcement into existing slab where appropriate.

Preparation

It is assumed that the pavement subgrade soils are clay which means preparation shall include the following:

- Removal of existing concrete and any other unsuitable materials or debris.
- Subgrade areas to receive new concrete shall be:
 - o Scarified to a depth of 12 inches.
 - o Aggregate base compacted to a minimum of 95% of the maximum dry density per ASTM D698.
 - o Proof-rolled by standard tandem axle dump truck to capacity. Any areas that are unstable shall be excavated to a depth determined by the project management team and replaced with a dense graded gravel/sand mixture to stabilize subgrade.
- Provide geotextile fabric Mirafi RS580i, or equivalent.
- Provide 6" aggregate base course consisting of sand and gravel which meets Montana Public Works specifications for quality and gradation.
- Fill material loose lift thickness.
 - o 8 inches or less if heavy, self-propelled compaction is used
4 to 6 inches for hand-guided equipment.

Concrete Mix and Finish

Minimum 4500 psi concrete, slab thickness of 7 inches.

Aggregates shall be normal-weight, following ASTM C 33, graded, $\frac{3}{4}$ inch nominal maximum coarse aggregate size. Aggregate should be free of materials with reactivity to alkali in cement.

Air-Entraining Admixture, follow ASTM C 260. Do not use any admixtures containing calcium chloride.

It will be desirable to expedite curing in these areas, so a fast cure additive will be needed to minimize cure length to use. Cure time should not exceed 7 days to use.

Concrete should be deposited continuously in one layer, providing construction joints as needed. Provide joints in concrete; panels should be as square as possible. Eliminate any groover tool marks on concrete surfaces. For sawed joints, assure any cutting will not tear, abrade, or otherwise damage surface.

Comply with levelness tolerance for trowel finished surface. Assure surfaces match grade of adjacent pavement and assure proper positive drainage away from buildings. The concrete should be sloped a minimum of 1%, or 1/8 inch per foot.



Apply a broom finish to all new concrete.

In all locations where new concrete joins asphalt, joints shall be filled with asphalt and sealed with a pourable sealant to minimize any water intrusion. In all locations where new concrete joins existing concrete, fill joints with a pourable sealant to minimize water intrusion.

Construction Observations and Inspections

During the project, contractor is required to schedule visual inspections with city project management team or their designated representatives.

Inspection phases to include:

- Demolition/excavation
- Subgrade preparation
- Frame/rebar installation/Forms
- Final Finish work

Use of Facilities

Contractor will have access to the below services onsite:

- electrical power
- water

Contractor will not have access to the below service onsite:

- restroom facilities

Areas will be cleaned up daily, and no debris will be left on site.

Hours of work are negotiable with successful bidder, and access to site can be arranged. Normal hours of operation at site are Monday – Friday from 6:30am to 5:00 pm.

Pre-Bid Conference

A pre-bid conference will be held on Tuesday, April 26, 2022, at 10:00a.m. mountain time. Meeting will commence at Fire Station 2 and all three sites will be visited. The purpose of this meeting is to give bidders the opportunity to visually inspect project site, verify dimensions, determine means and methods, and ask any questions of project management team.



D. Pricing and Addendum

Please bid net prices at which you will agree to furnish required goods or services. Any combination of base bids and alternates may be selected.

FIRE STATION 1 TOTAL BASE BID PRICE -

_____ dollars
and _____ cents (\$ _____)
(words) (figures)

FIRE STATION 1 TOTAL BID PRICE ALTERNATE #1 -

_____ dollars
and _____ cents (\$ _____)
(words) (figures)

FIRE STATION 1 TOTAL BID PRICE ALTERNATE #2 -

_____ dollars
(words)
and _____ cents (\$_____)
(words) (figures)

FIRE STATION 2 TOTAL BASE BID PRICE -

and _____ dollars
and _____ cents (\$_____
(words) (figures)

FIRE STATION 3 TOTAL BASE BID PRICE -

FIRE STATION 3 TOTAL BID PRICE ALTERNATE #1 -

and _____ dollars
and _____ cents (\$_____)
and _____ (words) (figures)

DEDUCT IF ALL ALTERNATES ARE COMPLETED ALONG WITH BASE BID PROJECTS (AMOUNT TO BE SUBTRACTED FROM TOTAL BID, IF ALL WORK IS COMPLETED, IF APPLICABLE):



_____ dollars
and _____ cents (\$ _____)
(words) (figures)

I/We acknowledge _____ addendum.
#

Company Name

Date

Contact Name (please print)

Title

Signature of Contact Position

By signing the above, I certify that I am authorized by the Company named above to respond to this request.



E. Standard Terms and Conditions

In case of default by the successful bidder or failure to deliver the goods or services within the time specified, the City Purchasing Agent, after written notice, may procure them from other sources and hold contractor responsible for excess costs occasioned thereby.

The specifications attached to the instructions to bidders establish a standard of quality desired by the City of Billings. Any bidder may submit quotations on any article which substantially complies with these specifications as to quality, workmanship and service. The City of Billings reserves the right to make its selections of materials or services purchased, based on its best judgment as to which articles substantially comply with the requirements of the specifications.

No alteration in any of the terms, conditions, delivery, quality, or specifications will be effective without prior written consent of the City of Billings.

No exception to delivery or service dates shall be allowed unless prior written approval is first obtained from the City of Billings.

The contractor warrants all articles supplied under this contract to conform to specifications, herein. The contractor will deliver a warranty stating that all articles supplied under the contract are fit and sufficient for the purpose manufactured, merchantable, and free from defects.

In the event the City is entitled to a prompt payment or cash discount, the period of computation shall commence on the date of delivery, or receipt of correctly completed invoices, whichever is later. If an adjustment of payment is necessary, the discount period shall commence on the date final approval for payment is authorized.

The contractor agrees not to discriminate against any client, employee or applicant for employment or for services, because of race, creed, color, national origin, sex or age with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising; layoffs and termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any contractor who is in violation of this shall be barred forthwith from receiving awards of any purchase order for the City unless a satisfactory showing is made that discriminatory practices have terminated and that a reoccurrence of such acts are unlikely.

The City reserves the right to cancel and terminate this contract forthwith upon giving 30 days written notice to the contractor. (This provision does not apply to



the purchase of materials and equipment. A purchase order for materials and equipment is a binding contract.)

Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this contract, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorneys' fees, including fees for in-house attorneys, expended or incurred in connection therewith.

Where applicable, possible or required, bidder is required to submit descriptive literature, sample material, design sketches and detailed shop drawings. Failure to submit required items may result in rejection of the bid or termination of contract.

The successful bidder may not make any advertising or sale use of the fact that contract items are being used by purchaser and other approved agencies, under penalty of contract termination.

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

The contractor may not assign or subcontract the agreement, or the right to receive reasonable performance of any act called for by the contract, shall be deemed waived by a waiver by City of a breach thereof as to any particular transaction or occurrence.

Regardless of FOB point, contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein and such loss, injury, or destruction shall not release contractor from any obligation hereunder.

All materials submitted in response to this IFB become public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

Information provided in response to this IFB will be held in confidence and will not be revealed or discussed with competitors prior to award of Contract by Council. However, one copy of each bid submitted shall be retained for the official files of the Department and will become public record after award of the Contract.

Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section.



F. Intent to Respond Form

Email the following Intent to Respond form to John Caterino, Facilities Superintendent, caterinoj@billingsmt.gov within four (4) days of the Bid Opening date of May 3, 2022, even if your company chooses NOT to participate.

To: City of Billings – Facilities Division
Attn: John Caterino, Facilities Superintendent
Phone: 406-855-8454
Email: caterinoj@billingsmt.gov

From: _____ Contact Name

_____ Company Name

_____ Company Address

_____ Email Address

_____ Phone Number

_____ Fax Number

Please indicate whether or not you intend to submit a bid on: May 3, 2022, by checking Yes or No.

We intend to respond by the specified due date:

Yes _____ No _____

_____ Company Name

_____ Date

_____ Contact Name (please print)

_____ Title

_____ Signature of Contact Position

By signing the above, I certify that I am authorized by the Company named above to respond to this request.



G. Questions

Questions regarding this Invitation for Bids must be sent to the contact person listed in Section B no later than 5 business days prior to due date. The City will make every effort to provide a written response within 2 business days. Whenever responses to inquiries would constitute a modification or addition to the original IFB, the reply will be made in the form of an addendum to the IFB, a copy of which will be posted on the City's website and forwarded to all Suppliers who have submitted an "Intent to Respond" form (Section F).

Supplier must submit their questions via email using the "Master Q & A" form found below (Attachment A), and provide, at a minimum, the following:

- Supplier's name, requester, and appropriate contact information.
- The question, clearly stated.
- Specific reference to the applicable IFB section(s).

H. Protests

Any Bidder protest of award recommendations and/or bid specifications must be filed with the Purchasing Agent within seven (7) days of bid opening.

Upon receiving a written protest, the Purchasing Agent, with assistance from the Legal Department, determines if the protest has sufficient merit and if so, schedules an informal hearing with the protesting bidder and the user Department.

At this hearing, all parties discuss the basis of the protest and attempt to resolve the dispute based on fact. If the protesting party is not in agreement with the results of the informal hearing, they may appeal to the City Administrator.



ATTACHMENT A

MASTER Q & A FORM

IFB: CITY OF BILLINGS FIRE STATIONS 1, 2, & 3 DRIVEWAYS

Master Q&A	Any questions regarding this IFB should be submitted according to the process outlined below. The City will make every effort to answer within two (2) days of receiving the questions.
Q&A Process	<ol style="list-style-type: none">1. Prepare questions or concerns on the template provided.2. Complete the table in full, providing a date for each question and a section of the IFB to reference (if applicable).3. Submit the completed form via email to caterinoj@billingsmt.gov. Attach associated documents as necessary. <p>Please contact John Caterino, Facilities Superintendent with any questions regarding this process.</p>

Questions from: _____ **Company:** _____

Email Address: _____

#	Date	Reference Section	Question or Comment	City Response
1				
2				
3				
4				

FIRE STATION #1
2305 8TH AVE N

ATTACHMENT B



FIRE STATION #2
501 S 28TH ST



FIRE STATION #3
1928 17TH ST W





ATTACHMENT C

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into _____, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and _____, of _____, hereinafter referred to as "**CONTRACTOR**."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:** **CITY** agrees to hire **CONTRACTOR** as an independent contractor to perform the services of _____ described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.
2. **EFFECTIVE DATE:** This **AGREEMENT** is effective upon the date of its execution and will terminate on _____, 20_____. The parties may extend this **AGREEMENT**, by mutual concurrence, for _____, in writing prior to its termination.
3. **SCOPE OF WORK:** The **CONTRACTOR** shall perform the services outlined in Exhibit "A". In performing these services, the **CONTRACTOR** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.
4. **INCORPORATION BY REFERENCE:** All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.
5. **PAYMENT:** **CITY** agrees to pay **CONTRACTOR** _____ (\$_____) for the work described in the Scope of Work in Exhibit "A". Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the **CITY** to **CONTRACTOR** and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

Except as otherwise specified herein, the **CONTRACTOR** shall invoice the **CITY** monthly (or on such other basis as the Parties may mutually determine) for all services rendered pursuant to this **AGREEMENT**. Such invoices shall specify the



services provided to the **CITY** during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONTRACTOR** for said invoice within thirty (30) days after receipt.

If partial payment is requested by **CONTRACTOR**, it shall be made upon invoice and said estimate being proportioned to the work completed by the **CONTRACTOR**. **CITY** shall deduct five percent (5%) from each 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 invoice by the **CITY**, and determination has been made by the **CITY** that the scope of work has been satisfactorily completed.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **CONTRACTOR'S** discretion.

6. **LIQUIDATED DAMAGES:** If **CONTRACTOR** does not complete the work by the designated contract date(s), liquidated damages will be assessed in the form of a daily charge for each day, except Saturdays, Sundays, and legal holidays which exceed the contract date.

The daily charge(s) are stipulated to be reasonable quantifications of the damages incurred by the **CITY**:

- Liquidated damages for failure to complete project: \$150.00 per day.
- The charge(s) will be deducted from money due the **CONTRACTOR**.

7. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONTRACTOR** is an independent contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **CONTRACTOR** is not subject to the terms and provisions of the **CITY's** personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **CONTRACTOR** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONTRACTOR** and any third parties.

8. **INDEMNITY:**

The **CONTRACTOR** SHALL:



- A. Indemnify, defend, and save **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of **CONTRACTOR** or its agents or employees.
- B. Not indemnify, defend, save, and hold the **CITY** 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 **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CITY** and the **CONTRACTOR**, the **CONTRACTOR** shall indemnify, defend, save, and hold the **CITY** 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 **AGREEMENT**.

The **CITY** SHALL:

- D. Indemnify, defend and save **CONTRACTOR**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of **CITY** or its agents or employees.
- E. 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 **AGREEMENT**.
- F. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CONTRACTOR** and the **CITY**, the **CITY** shall indemnify, defend, save, and hold the **CONTRACTOR** 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 **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

9. INSURANCE: The **CONTRACTOR** shall maintain in good standing the insurance described in this Section. Before rendering any services under this



AGREEMENT, the **CONTRACTOR** shall furnish the **CITY** with proof of insurance in accordance with this Section.

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 -- \$750,000 per claim and \$1,500,000 per occurrence.
- 3) Automobile liability -- \$1,500,000 per accident.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.

The **CITY** shall be listed as an additional insured on all policies except Worker's Compensation Policies.

CONTRACTOR shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA.

CONTRACTOR shall maintain workers' compensation insurance coverage for all members and employees of **CONTRACTOR's** business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

CONTRACTOR shall furnish **CITY** with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

CONTRACTOR shall furnish an approved Performance Bond and a Labor and Materials Payment Bond, each in the amount of one hundred percent (100%) of the contract amount.

10. PERMITTING AND INSPECTIONS:

- A. **CONTRACTOR** to obtain all required permits before beginning construction. Cost of permits shall be billed to the **CITY** as a reimbursable expense with no mark-up.
- B. **CONTRACTOR** to obtain all required inspections during construction and at final completion.

11. EQUIPMENT AND MATERIALS CUSTODY:



- A. **CITY** shall not be responsible for any equipment or materials until it is installed and commissioned.
- B. If materials or equipment go missing for any reason before they are installed and commissioned, they shall be replaced at no cost to **CITY**.
- C. All equipment and materials shall be secured and stored by **CONTRACTOR** in a location approved by the **CITY** or offsite.
- D. If arrangements are made to store onsite **CITY** shall not be responsible for any missing items.
- E. **CITY** will not take delivery of any equipment or materials.
- F. All equipment and materials must be brought onsite by **CONTRACTOR**.

12. EQUIPMENT AND MATERIALS INVENTORY:

- A. A detailed inventory list shall be provided by **CONTRACTOR** to **CITY** upon **CONTRACTOR** mobilization or project commencement.
- B. Inventory list to include material information (make, model, etc.), and quantity.
- C. When an item is installed and commissioned it shall be deducted from the inventory list.

13. WARRANTY: **CONTRACTOR** warrants that all services and work will be performed in a good workman-like manner. **CONTRACTOR** acknowledges that it will be liable for any breach of this warranty for the lesser period of two (2) years from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

14. COMPLIANCE WITH LAWS: **CONTRACTOR** agrees to comply with all federal, state, and local laws, ordinances, rules, and regulations. **CONTRACTOR** agrees to purchase a **CITY** business license.

15. PREVAILING WAGE RATES: Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.



In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Furthermore, Section 18-2-417, requires allowance for a 3% annual increase in wages for a multiyear contract. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract. (2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. (3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA. The booklet is attached and may also be found at <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>.

- 16. CONTRACTORS' GROSS RECEIPTS TAX: CONTRACTOR** understands that all contractors or subcontractors working on a publicly funded construction project, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, are required to pay or have withheld from earnings one percent



(1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

17. NONDISCRIMINATION:

- A. **CONTRACTOR** shall, in performance of work under this **AGREEMENT**, 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. **CONTRACTOR** 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 **CONTRACTOR** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONTRACTOR** 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, or marital status by the persons performing this **AGREEMENT**.
- B. The **CONTRACTOR** shall state, in all solicitations or advertisements for employees to work on 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.

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.

The **CONTRACTOR** and any subcontractor shall abide by the requirements of 41 CFR 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.

- C. The **CONTRACTOR** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
- D. The **CONTRACTOR** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- E. The **CONTRACTOR** shall include the provisions of Subsections A through D 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 **CONTRACTOR** under this **AGREEMENT**.
- F. 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.

18. **CONTRACTOR PERSONNEL:** A list of personnel who will be onsite for project shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution, including:

- A. First and last name;
- B. Duration onsite; and,
- C. Personnel responsibilities.

19. **SAFETY PROGRAM:** **CONTRACTOR** to provide **CITY** with safety program within 10 business days of contract execution.

20. **MEETINGS:** **CONTRACTOR** shall attend a pre-construction meeting with **CITY** representatives, as well as progress meetings as requested by the **CITY**.

21. **PROJECT SCHEDULE TIMELINE:** A project schedule timeline shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution.

Accepted schedule formats are Gantt chart, network diagram, critical path diagram, or sequential flow chart.

A Phase-Based Work-Breakdown Structure (WBS) by resource shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution and shall include a decomposed project scope consisting of phases and deliverables, tasks, and component deadlines.

22. **DEFAULT AND TERMINATION:** If either party fails to comply with any condition of this **AGREEMENT** at the time or in the manner provided for, the other party may, at its option, terminate this **AGREEMENT** and be released from all obligations if the default is not cured within ten (10) calendar days after written



notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this **AGREEMENT**.

23. **LIAISON:** The **CITY's** designated liaison for this **AGREEMENT** is _____ and the **CONTRACTOR's** designated liaison for this **AGREEMENT** is _____.
24. **GOVERNING LAW AND VENUE:** This **AGREEMENT** shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this **AGREEMENT** shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.
25. **SEVERABILITY:** Any provision or part of the **AGREEMENT** held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the **CITY** and the **CONTRACTOR**, who agree that the **AGREEMENT** shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
26. **SUCCESSORS AND ASSIGNS:** Neither the **CITY** nor the **CONTRACTOR** shall assign, transfer or encumber any rights, duties or interests accruing from this **AGREEMENT** without the written consent of the other.
27. **OWNERSHIP OF DOCUMENTS:** All documents, data, drawings, specifications, software applications and other products or materials produced by the **CONTRACTOR** in connection with the services rendered under this **AGREEMENT** shall be the property of the **CITY** whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the **CITY** at its request and may be used by the **CITY** as it sees fit. The **CITY** agrees that if the documents, products, and materials prepared by the **CONTRACTOR** are used for purposes other than those intended by the **AGREEMENT**, the **CITY** does so at its sole risk and agrees to hold the **CONTRACTOR** harmless for such use. All or any portions of materials, products and documents produced under this **AGREEMENT** may be used by the **CONTRACTOR** upon confirmation from the **CITY** that they are subject to disclosure under the Public Disclosure Act. All services performed under this **AGREEMENT** will be conducted solely for the benefit of the **CITY** and will not be used for any other purpose without written consent of the **CITY**. Any information relating to the services will not be released without the written permission of the **CITY**. The **CONTRACTOR** shall preserve the confidentiality of all **CITY** documents and data accessed for use in **CONTRACTOR's** work product.



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

CITY OF BILLINGS, MONTANA

BUSINESS NAME (CONTRACTOR)

**WILLIAM A. COLE,
MAYOR**

SIGNATURE

APPROVED AS TO FORM:

PRINT NAME

CITY ATTORNEY'S OFFICE

PRINT TITLE

ATTEST:

DENISE BOHLMAN, CITY CLERK



EXHIBIT A

SCOPE OF WORK

DRAFT



INSURANCE CERTIFICATE(S)

DRAFT



PREVAILING WAGE RATE BOOKLET

DRAFT