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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



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DOCUMENTS COMMITTEE

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This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____, 2011 ("Effective Date") between

City of Missoula ("Owner") and

Morrison-Maierle, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Design and Construction of the Airport Interceptor Sewer – City Project No. 10-011 ("Project").

Engineer's services under this Agreement are generally identified as follows:

Field survey and base map preparation, geotechnical investigation (by Subconsultant), preliminary engineering, flow monitoring, right-of-way permitting, assistance with easement acquisition, final design, Engineer's opinions of probable cost, and preparation of construction drawings and specifications and bid documents.

Owner and Engineer agree that, if project continues beyond Phase I – Preliminary Design, Engineer will provide Phase II – Final Design and Plans/Specifications, and Phase III – Bidding and Construction Administration Services for the Project which are not included in this Agreement. These services are anticipated to include right-of-way permitting, assistance with easement acquisition, final design, opinions of probable cost, preparation of construction documents, pre-construction, construction management, construction observation, and post-construction services. A detailed scope of work and budget for these services will be developed later, and incorporated into this Agreement by execution of an Amendment.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering Phase I services as of the Effective Date. Engineer shall not begin rendering Phase II services until receipt of written authorization from Owner.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer’s performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C and in a form agreeable to

Owner. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which no markup shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement. No Construction Cost limit is established for this Project.

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

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

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Subconsultants:* Engineer may employ such Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Subconsultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and regulations.
2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any

dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

G. The general conditions for any construction contract documents prepared hereunder are to be the “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor’s furnishing and performing of its work.

I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents.

J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer’s own agents, employees, and Subconsultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, “Engineer’s Services”. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, “Engineer’s Services.”

6.03 *Use of Documents*

A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Subconsultants.

B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Subconsultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Subconsultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Subconsultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Subconsultants, or any insureds, additional insureds, or loss payees thereunder.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.

G. At any time, Owner may request that Engineer or its Subconsultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. Suspension:

1. By Owner: Owner may suspend the Project for an indefinite period of time upon seven days written notice to Engineer.
2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the

limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors,

members, partners, agents, employees, or Subconsultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."

B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.

C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, consultants, and Subconsultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which 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.

D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals, consultants, and Subconsultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the

Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
9. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
10. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
11. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
12. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
13. *Engineer* – The individual or entity named as such in this Agreement.
14. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
15. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
16. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
17. *PCBs* – Polychlorinated biphenyls.

18. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
19. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
20. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
21. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
22. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
23. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
24. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
25. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
26. *Site* – Lands or areas to be indicated in the Contract Documents upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands which are designated for the use of Contractor.
27. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

- 28. *Subconsultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
- 29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
- 30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer with concurrence of Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
- 31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
- 32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
- 33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. **NOT INCLUDED**

- E. Exhibit E, Notice of Acceptability of Work. **NOT INCLUDED**
- F. Exhibit F, Construction Cost Limit. **NOT INCLUDED**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement. **NOT INCLUDED**

8.02 *Total Agreement:*

A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written amendment.

8.03 *Designated Representatives:*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: _____
City of Missoula

By: John Engen

Title: Mayor

Date: _____

Signed: _____

Attest: _____

Martha L. Rehbein, CMC
City Clerk

Address for giving notices:

City of Missoula

435 Ryman Street

Missoula, MT 59802

Designated Representative (Paragraph 8.03.A):

Steve King, P.E.

Title: Director of Public Works

Phone Number: (406) 552-6345

Facsimile Number: (406) 327-2125

E-Mail Address: sking@ci.missoula.mt.us

Engineer: _____
Morrison-Maierle, Inc.

By: Deborah Johnston, P.E.

Title: Vice President, Missoula Office Manager

Date: 1/31/2011

Signed: Deborah Johnston

Engineer License or Firm's

Certificate No.: _____ License No. 42

State of: Montana

Address for giving notices:

Morrison-Maierle, Inc.

3011 Palmer Street

Missoula, MT 59808

Designated Representative (Paragraph 8.03.A):

Deborah Johnston, P.E.

Title: Vice President, Missoula Office Manager

Phone Number: (406) 542-8880

Facsimile Number: (406) 542-4801

E-Mail Address: djohnston@m-m.net

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

BACKGROUND

The City of Missoula (City) plans to design and construct the Airport Interceptor Sewer Project which will provide relief to the existing Airport Industrial Park interceptor sewer and improve the capacity of sewer service to the Wye area. The City identified the Airport Interceptor Sewer as a recommended project in the 2000 City Wastewater Facilities Plan. At the request of Public Works Staff, the City Council approved a budget that provides for preliminary design and preparation of construction documents to commence in 2011 with construction activities to commence at a time to be determined later. This is City Project No. 10-011.

PROJECT DESCRIPTION

The Airport Interceptor Sewer Project includes approximately 12,000 feet of new gravity sewer located along Highway 10 West. The west end will connect to the existing 12-inch Futurity lift station force main at Butler Creek Road and the east end to an existing 24-inch gravity sewer near Dougherty Drive. Three additional gravity sewers are included which will connect to the Airport Interceptor Sewer from the Momont No. 1, Momont No. 2, and Grant Creek lift stations, respectively. Depending on the final alignment, these three sewers could range up to 1,800 feet each in length. Two or three highway crossings and one to three railroad crossings will be required. An existing 15-inch branch sewer located on the south side of Highway 10 is intended to receive the new gravity sewer from the Grant Creek lift station.

Basic Services included in this Agreement consist of Phase I – Preliminary Design, and Phase II – Final Design and Plans/Specifications as described below. This scope of work assumes that a single prime construction contract will be completed and executed.

PHASE I – PRELIMINARY DESIGN

TASK 100 – PROJECT MANAGEMENT

- 101 Project Kickoff Meeting.** Engineer's team will meet with City staff in a kickoff meeting for the purpose of discussing overall project direction and consensus building on major issues and approach. Preparation for this meeting is included in this subtask. This meeting will be held at the Wastewater Treatment Plant, Public Works Office, or Morrison-Maierle's office depending on City preference. Meeting notes will be prepared and distributed to all participants.

102-I Project Management and Coordination. This task includes the work related to quality control, managing activities within task budgets and monitoring project progress, included work completed, work remaining, budget expended, schedule and estimated cost of work remaining and estimated cost at completion. All work activities and project deliverables will be reviewed for conformance with quality control requirements and project standards. Project activities will be monitored for potential changes, with an emphasis on anticipating changes whenever possible, and with the City's approval, project tasks and approach will be modified to keep the overall project within budget and on schedule.

Following the kickoff meeting, project progress meetings will be held with the City during the preliminary design phase and will address the progress of the design with a focus on sewer alignment, flow projections and pipe sizing, and estimated construction costs. It is assumed that two progress meetings will be held.

Project team internal coordination meetings will also be held during the preliminary design on a biweekly basis with our staff to review project progress, schedule and budget, and to coordinate technical aspects of the design. They will generally be conducted through conference calls.

103-I Progress Reports. MMI will prepare monthly progress reports summarizing project progress in general, and specifically addressing progress on each major task. These progress reports will be submitted along with monthly invoices for services rendered.

TASK 200 – DESIGN SERVICES

201 Field Survey and Base Map Preparation. MMI will perform a field survey and prepare a base map that will be used for the design of the interceptor sewer. This survey will be performed after the final sewer alignment has been determined. The survey crew will establish horizontal and vertical control in the area and gather topographic, boundary, and utility information needed to complete the design. Utility maps will be reviewed where available. Utility providers will be contacted to locate their respective utilities in the project area. The marked utilities will be incorporated into the field survey and base map.

MMI will use any pertinent existing survey and topographic data from recent past projects to the greatest extent practical to reduce surveying costs. It is anticipated that the City's 2-foot contour maps will be used, and this information will be checked during the survey. Critical hydraulic elevations will be surveyed. Borehole locations for the geotechnical evaluation will be surveyed. Control points for use during construction will be established.

During the course of the design, additional survey work may be required including subsurface utility exploration. If these services are required, they will be performed as a contract amendment.

202 Geotechnical Investigation. A geotechnical investigation will be completed by a Subconsultant to provide the information needed for design and construction of the project. Existing geotechnical studies for the area will be reviewed and this information used to guide the investigation. Two borings will be made at each highway and railroad crossing and additional borings will be made at appropriate locations along the pipeline alignment. Up to three highway and three railroad crossings are assumed. Up to nine borings along the pipeline alignment are assumed. Boring logs will be prepared and samples taken for laboratory analysis including gradations and Atterburg

limits. Small diameter piezometers may be installed at certain locations, if warranted, to provide groundwater data. If necessitated by the pipeline alignment, borings and a slope stability evaluation and recommendations will be made at the unstable slope adjacent to Broadway and the Great Homes property.

- 203 Preliminary Design and Engineering Report.** Prior to finalizing the preliminary design, MMI will produce a Preliminary Engineering Report that discusses and identifies the existing flows to the Momont No. 1 L.S., interceptor design flows, interceptor capacity, sewer design criteria, horizontal and vertical alignment, necessary ROW permitting and easement acquisition, constructability considerations, preliminary construction cost estimates, and project phasing. This task will also identify the requirements for lift station decommissioning and corrosion control. This task assumes that a working meeting and possibly a concurrent site visit will be held with City and MMI personnel early in the project (in addition to kickoff and progress meetings) to review and select the preferred sewer alignment. Senior design personnel will conduct a review of the preliminary design documents and will focus on opportunities for cost savings and constructability.

The alternative sewer alignments to be evaluated include: 1) Whether to locate the Airport Interceptor Sewer on the north side or on the south side of Highway 10; 2) Whether to align the new gravity sewers connecting the three lift stations to the Airport Interceptor Sewer as directly as possible so that the sewer lengths are minimized, or 3) To align the new gravity sewers for the Momont No. 1 and No. 2 lift stations such that these two sewers extend to Airway Boulevard and from there extend south along Airway Boulevard beneath the railroad trestle and connect to the Airport Interceptor Sewer.

This Preliminary Engineering Report will be submitted to the City for initial review and comment. After the City's approval, the Preliminary Engineering Report will be submitted to MDEQ for review and comment.

This task includes the installation of (2) temporary flowmeters in manholes just upstream of the Momont No. 1 L.S. One flowmeter will be installed in the main influent sewer; the other will be installed in the sewer coming from the airport. It is expected that the flowmeters will collect data for approximately 30 days at which time they will be removed, and the data downloaded and analyzed to determine average flow rate and peak flow rate.

PHASE II – FINAL DESIGN AND PLANS/SPECIFICATIONS

- 102-II Project Management and Coordination.** This task includes the work related to quality control, managing activities within task budgets and monitoring project progress, included work completed, work remaining, budget expended, schedule and estimated cost of work remaining and estimated cost at completion. All work activities and project deliverables will be reviewed for conformance with quality control requirements and project standards. Project activities will be monitored for potential changes, with an emphasis on anticipating changes whenever possible, and with the City's approval, project tasks and approach will be modified to keep the overall project within budget and on schedule.

Project progress meetings will be held with the City during the final design phase and will address the progress of the design with a focus on design details, right of way permitting and easement

acquisition, and estimated construction costs. It is assumed that two progress meetings will be held, one at the 50% stage and one at the 90% stage, as described in Task 205.

Project team internal coordination meetings will be held during the design on a biweekly basis with our staff to review project progress, schedule and budget, and to coordinate technical aspects of the design. They will generally be conducted through conference calls.

103-II Progress Reports. MMI will prepare monthly progress reports summarizing project progress in general, and specifically addressing progress on each major task. These progress reports will be submitted along with monthly invoices for services rendered.

204 Right-of-Way Permitting and Easement Acquisition. MMI will prepare the necessary applications, checklists, and exhibits as needed including the MDT Occupancy Permit and Environmental Checklist and the MRL Pipeline Application and submit these documents to the appropriate agencies for the selected pipeline route. MMI will maintain close communications and coordination with MDT and MRL throughout the project. MMI will keep the City informed of permitting and easement progress during this phase and inform the City of required insurance and any other agency requirements. MMI will use its best efforts to expedite the permits if necessary to meet the project schedule. MMI will pay for the cost of the review fee associated with the MRL Pipeline Application.

For private easements, MMI will identify property owners, prepare easement exhibits including descriptions and maps and will assist the City in obtaining the necessary private easements. This task assumes a maximum of eight individual private parcels might be involved and require easements. MMI will prepare a draft of the easement for review by City staff. MMI assumes that the level of effort to prepare exhibits, descriptions, and negotiate with individual private parcel owners for public utilities easements is twelve hours for each easement.

205 Prepare Final Plans and Specifications. MMI will prepare a complete set of construction documents (plans and specifications) for the bidding and construction of the interceptor sewer. The project manual will consist of front-end bidding and contract documents, technical specifications, and design drawings. The design will incorporate MMI's and the City's engineering standards to maintain consistency and compatibility with the City's facilities. The final bid documents will be submitted to the City and MDEQ for review. MMI will incorporate comments prior to advertisement for bidding. A construction cost estimate will be prepared.

The design will be developed to approximately 50 percent complete and submitted with a construction cost estimate to the City for review. It is anticipated that a review meeting will be conducted with the City to review the 50 percent design. The plans and specifications will be modified to incorporate the City's comments.

A set of 90 percent design documents will be prepared for bidding. The contract will include standard EJCDC documents and be consistent with Montana State Standards for Public Works Facilities. The 90 percent plans and specifications will be prepared in accordance with Montana Department of Environmental Quality guidelines and comply with Circular DEQ-2. It is anticipated that the design drawings will consist of approximately 34 sheets. An estimated drawing list is attached to this Exhibit A as Appendix 1.

Formal design QA/QC reviews will be conducted at the 50 percent and 90 percent design levels by MMI senior technical advisors.

The 90 percent bid documents will be submitted to the City and MDEQ for review. It is anticipated that a review meeting will be conducted with the City to review the 90 percent design. MMI will meet with MDEQ personnel if necessary to review the final design and respond to questions/comments. After review comments have been received from the City, MMI internal QA/QC review and the Montana DEQ the bid documents will be finalized for advertisement.

MMI will update the estimated project cost and will submit the final estimate of anticipated construction cost prior to the bid opening.

MMI will prepare and present a summary presentation of the project to the Public Works Committee and City Staff near the conclusion of Phase II at a time requested by City Staff.

PHASE III – BIDDING AND CONSTRUCTION ADMINISTRATION SERVICES

It is anticipated that MMI will provide Phase III – Bidding and Construction Administration Services for the Project which are not included in these Basic Services. Bidding services will include printing copies of the final construction documents and distribution to City and MMI staff, area plans exchanges, and bidders upon request and payment. Construction documents will be provided to bidders on an electronic plans exchange. MMI will prepare a project bid advertisement for the City (City to arrange for advertising), prepare for and conduct a pre-bid meeting at the MMI office, respond to questions from bidders during the bid period, issue addenda as necessary, attend the bid opening, review the bids and prepare a recommendation for award of the construction project. Construction Administration services will include pre-construction, construction management, construction observation, and post-construction services.

A detailed scope of work and budget for Phase III – Bidding and Construction Administration Services will be developed later, and incorporated into this Agreement by execution of an Amendment.

ENGINEER'S WORK PRODUCTS – BASIC SERVICES

PHASE I

- Meeting agendas and meeting notes
- Progress memoranda and invoices
- Geotechnical report
- Preliminary Engineering Report (draft and final) with cost estimates

PHASE II

- Preliminary and final design and bidding documents
- Cost estimate submittals at 50 and 100 percent design stages

SCHEDULE

Starting from the Notice to Proceed (NTP), the proposed schedule is as shown below. The schedule is based on a Notice to Proceed issued by January 26, 2011 and assumes the project consists of completion and execution of a single construction contract.

AIRPORT INTERCEPTOR SEWER PROJECT SCHEDULE		
PHASE I	Notice to Proceed	February 15, 2011
	Predesign Working Meeting	February 24, 2011
	Predesign Engineering Report	April 20, 2011
PHASE II	50 % Design Review	June 8, 2011
	90 % Design Review	July 20, 2011
	Submit to MDEQ/City for Review and Approval	August 3, 2011

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements not caused by Engineer including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 3. Services resulting from Owner's request to evaluate additional alternative solutions during Preliminary Design beyond those identified in Part 1 – Basic Services.
 4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 5. Providing renderings or models for Owner's use.

6. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
7. Furnishing services of Subconsultants for other than Basic Services.
8. Services attributable to more prime construction contracts than specified in Part 1 – Basic Services.
9. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
10. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
11. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
12. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
13. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
14. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
15. Overtime work requiring higher than regular rates.
16. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
 1. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

G = General	M = Mechanical
C = Civil	P = Process Mechanical
A = Architectural	I = Instrumentation and Controls
S = Structural	E = Electrical
D = Standard Detail	X = Demolition

Group	Drawing No.	Title	Description
General	G-01	COVER SHEET	
	G-02	DRAWING INDEX & DESIGN DATA SUMMARY	
	G-03	PROJECT LOCATION AND KEY MAP	
	G-04	STANDARD SYMBOLS	
	G-05	GENERAL ABBREVIATIONS AND NOTES	
	G-06	PROJECT CONTROL MAP	
	G-07	PROJECT CONTROL	
	G-08	MANHOLE SCHEDULE	
Civil	C-01	PLAN AND PROFILE - LINE A - STA 0+00 TO STA 12+00	Broadway/Highway 10
	C-02	PLAN AND PROFILE - LINE A - STA 12+00 TO STA 24+00	Broadway/Highway 10
	C-03	PLAN AND PROFILE - LINE A - STA 24+00 TO STA 36+00	Broadway/Highway 10
	C-04	PLAN AND PROFILE - LINE A - STA 36+00 TO STA 48+00	Broadway/Highway 10
	C-05	PLAN AND PROFILE - LINE A - STA 48+00 TO STA 60+00	Broadway/Highway 10
	C-06	PLAN AND PROFILE - LINE A - STA 60+00 TO STA 72+00	Broadway/Highway 10
	C-07	PLAN AND PROFILE - LINE A - STA 72+00 TO STA 84+00	Broadway/Highway 10
	C-08	PLAN AND PROFILE - LINE A - STA 84+00 TO STA 96+00	Broadway/Highway 10
	C-09	PLAN AND PROFILE - LINE A - STA 96+00 TO STA 108+00	Broadway/Highway 10
	C-10	PLAN AND PROFILE - LINE A - STA 108+00 TO STA 120+00	Broadway/Highway 10
	C-20	PLAN AND PROFILE - LINE B - STA 0+00 TO STA 12+00	Momont No. 2 L.S.
	C-21	PLAN AND PROFILE - LINE B - STA 12+00 TO STA 18+00	Momont No. 2 L.S.
	C-30	PLAN AND PROFILE - LINE C - STA 0+00 TO STA 12+00	Momont No. 1 L.S.
	C-31	PLAN AND PROFILE - LINE C - STA 12+00 TO STA 19+00	Momont No. 1 L.S.
	C-40	PLAN AND PROFILE - LINE D - STA 0+00 TO STA 12+00	Grant Creek L.S.
	C-41	PLAN AND PROFILE - LINE D - STA 12+00 TO STA 16+00	Grant Creek L.S.
	C-50	MOMONT NO. 2 LIFT STATION - EXISTING SITE PLAN	
	C-51	MOMONT NO. 1 LIFT STATION - EXISTING SITE PLAN	
	C-52	GRANT CREEK LIFT STATION - EXISTING SITE PLAN	
	C-53	TYPICAL PLAN AND SECTION - LIFT STATION DECOMMISSIONING	
	C-54	TYPICAL DETAILS - LIFT STATION DECOMMISSIONING	
	C-60	TYPICAL DETAILS 1	
	C-61	TYPICAL DETAILS 2	
	C-62	TYPICAL DETAILS 3	
	C-63	TYPICAL DETAILS 4	
	C-64	TYPICAL DETAILS 5	
Estimated No. of Drawings	34		

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2011.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies (paper or electronic as appropriate) of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and any Additional Services. Such additional information or data would generally include the following:
 - 1. Existing explorations and tests of subsurface conditions at or contiguous to the Site, existing drawings of physical conditions relating to existing surface or subsurface structures at the Site, with appropriate professional interpretation thereof.
 - 2. Existing environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 3. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services.
- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- M. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- N. *Jobsite Safety.* Neither the professional activities of the Engineer, nor the presence of the Engineer or the Engineer's employees and Subconsultants at the construction site, shall relieve the Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies.

Engineer's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

The Owner agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the Owner's agreement with the Contractor. The Owner also agrees that the Owner's agreement with the Contractor shall require the Contractor to indemnify the Owner, the Engineer and the Engineer's Subconsultants from and against all claims arising out of or resulting from the performance of the Work and shall also require the Contractor to provide a separate policy containing Owner's Protective Liability Coverage, which, in addition to the Contractor's general liability insurance policy, shall name the Owner, the Engineer, and the Engineer's Subconsultants as insureds and which shall indemnify the Owner, Engineer and the Engineer's Subconsultants against claims, demands or liability by any person or entity which may arise from the performance of the Contractor and his or her subcontractors on this project.

O. *No Hire.* Engineer and Owner agree that, without the prior consent of the other party, neither will offer employment to or discuss employment with any of the other party's associates or employees until one year after the work of this Agreement is completed or this Agreement is terminated.

P. Perform or provide the following additional services:

1. Participate in site visits.
2. Assist with establishing final design criteria and sewer alignments.
3. Provide information on existing lift station equipment.
4. Staff participation in meetings and review of deliverables.
5. Owner shall pay all agency fees and any landowner payments associated with right-of-way permitting and easement acquisition costs.
6. Participate in review meeting with MDEQ, MDT, or MRL (if needed).
7. Participate in summary project presentation to the City Council.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services (other than Resident Project Representative) – Standard Hourly Rates Plus Reimbursable Expenses Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Subconsultants' charges, if any.
 2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendix 1. The Engineering Fee Estimate is attached to this Exhibit C as Appendix 2.
 3. The total compensation for services under Paragraph C2.01 is estimated to be \$279,576.00 based on Appendix 2. The compensation for Phase I services is estimated to be \$130,255.00. The compensation for Phase II services is estimated to be \$149,322.00.
 4. Engineer may alter the distribution of compensation between individual tasks of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
 5. The total estimated compensation for Engineer’s services included in the breakdown by tasks as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Subconsultants' charges.
 6. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Subconsultants' charges.
 7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of April 15) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation For Reimbursable Expenses:

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. Expenses related to the Engineer's project support systems associated with telephone, fax equipment, computer equipment and related peripheral equipment shall be a reimbursable expense applied to the project as a Technology and Communications Charge rate per hour of project labor. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related and Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.05.
- D. The Reimbursable Expenses Schedule will be adjusted annually (as of April 15) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Compensation for Additional Services*

- A. Owner shall pay Engineer for Additional Services as follows:
 - 1. General. For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to a fee determined by the method of payment for Basic Services in Paragraph C2.01, negotiated between the Owner and Engineer for specific additional work tasks performed by the Engineer.
 - 2. Serving as a Witness. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.19, at the employee's Standard Hourly Rate (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C2.03.A.1). Compensation for Engineer's Subconsultants for such services will be on the basis provided in paragraph C2.04.

C2.04 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Subconsultants, those charges shall be the amounts billed by Engineer's Subconsultants to Engineer times a factor of 1.05.
- B. Factors. The external Reimbursable Expenses and Engineer's Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof prior to exceedance, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 3 pages (including this page), referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2011.

Reimbursable Expenses and Standard Hourly Rates Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are: Geotechnical Investigation and Report and Traffic Control for the purposes of topographic survey.

Attached to Appendix 1 is the Morrison-Maierle, Inc. Standard Billing Rates Schedule Q21 (consisting of 2 pages), effective through April 30, 2011.

MORRISON-MAIERLE, INC.
STANDARD BILLING RATES SCHEDULE Q21

RATES EFFECTIVE THROUGH APRIL 30, 2011

PROFESSIONAL SERVICES	STANDARD RATE	OVERTIME RATE
Principal:	\$186.00	\$186.00
Engineer:		
Supervising Engineer III	\$160.00	\$160.00
Supervising Engineer II	144.00	144.00
Supervising Engineer I	130.00	130.00
Senior Engineer II	123.00	123.00
Senior Engineer I	114.00	114.00
Design Engineer II	103.00	103.00
Design Engineer I	94.00	94.00
Engineer Intern II	87.00	87.00
Engineer Intern I	80.00	80.00
Planner		
Supervising Senior Planner	148.00	148.00
Senior Planner	126.00	126.00
Planner	107.00	107.00
Scientist:		
Senior Environmental Scientist	\$131.00	\$131.00
Environmental Scientist	97.00	97.00
Environmental Professional II	85.00	85.00
Environmental Professional I	70.00	70.00
Environmental Technician	61.00	91.50
Senior Geologist	143.00	143.00
Geologist II	123.00	123.00
Geologist I	98.00	98.00
Staff Geologist	77.00	77.00
Engineering Technician:		
Senior Engineering Technician	\$103.00	\$103.00
Engineering Technician II	93.00	93.00
Engineering Technician I	80.00	80.00
Technician III	68.00	102.00
Technician II	62.00	93.00
Technician	45.00	67.50
Resident Project Representative II	\$105.00	\$105.00
Resident Project Representative I	90.00	90.00
Expert Witness	Quote per Job	
Clerical, Graphics, and Reproduction:		
Administrative Manager	\$74.00	\$74.00
Administrative Coordinator	63.00	94.50
Administrative Specialist II	56.00	84.00
Administrative Specialist I	49.00	73.50
College Intern	43.00	64.50
College Intern II	50.00	75.00
IS Technician II	84.00	84.00
IS Technician I	78.00	78.00
SURVEYING SERVICES	STANDARD RATE	OVERTIME RATE
Senior Survey Manager	\$132.00	\$132.00
Survey Manager	116.00	116.00
Land Surveyor III	99.00	99.00
Land Surveyor II	90.00	90.00
Land Surveyor I	87.00	87.00
Survey Technician III	69.00	103.50
Survey Technician II	60.00	90.00
Survey Technician I	41.00	61.50
Survey Crew:		
3-Person Crew	Quote per Job	Quote per Job
2-Person Crew	Quote per Job	Quote per Job

MORRISON-MAIERLE, INC.
STANDARD BILLING RATES SCHEDULE Q21

RATES EFFECTIVE THROUGH APRIL 30, 2011

EQUIPMENT RATES	
Company Vehicle: highway miles - Pickups/SUV/4WD	\$.74/mile
highway miles - Sedans	\$.56/mile
on-site mileage	.55/mile plus 5.00/hour
Private Vehicle	Prevailing Federal Rate
ATV/Snowmobile	35.00/day
Total Station	10.00/hr, 55.00/day
Nuclear Densometer	10.00/hr, 35.00/day, 650.00/mo.
Traffic Counter	50.00/day
RTK/Static GPS Systems:	Quote per Job
HYDROLOGICAL EQUIPMENT	
Aquacalc Pro with Meter and Rod	125.00/day
Blue White Flow Meter	20.00/day, 50.00/wk
Checkvalve Pump (Brainard-Kilman)	10.00/day
Conductivity Meter	15.00/day
Disposable Bailers	10.00/each
Dissolved Oxygen Meter	20.00/day
Hach Test Kit for Hardness	6.00/test
Hach Test Kit for Sulfide	6.00/test
Hach Test Kit for Nitrate/Nitrate	6.00/test
Hach Test Kit for Iron/Magnese	6.00/test
Hermit Data Logger/Probe	100.00/day, 400.00/wk
In0Situ Level Troll 700	63.00day/, 250.00/wk
Open Channel Radar Flowmeter	50.00/day,300/wk/1,000/mo
Oil/Water Interface Well Probe	40.00/day, 150.00/wk
PH Meter	15.00/day
PH/Temp/Conductivity Meter	25.00/day
Rossum Sand Sampler	20.00/day,100.00/wk
Sinco Depth Meter	15.00/day
Stream Flow Meter	25.00/day
Submersible Pump (Redi Flo 2)	155.00/day
Turbidity Meter	25.00/day
Water Sample	10.00/each
Well Bailer 2" Stainless Steel	5.00/day
Well Bailer 4" PVC	5.00/day
Well Bailing Unit, Gas Powered	100.00/day
Well Probe, 300 Ft. with Temperature Sensor	25.00/day,75/wk
Well Probe, 500 Ft. with Temperature Sensor	50.00/day, 150.00/wk
BART Biodetector Test	11.50/each
MISCELLANEOUS EXPENSE	
Lodging	Current Rates
Meals	30.00/day
Technology and Communications	5.00 per labor hour
Copier Reproduction	.10/page
(Reduced rates for volume copying)	
Prints (Blue, Black, Brownline)	.10/sq.ft.

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

- * Approved employee meals, lodging, transportation
- * Premium delivery service (UPS, Federal Express, etc.)
- * Field and office supplies
- * Premiums for Special Insurance, Performance Bonds, etc.
- * Other out-of-pocket expenses
- * Consultants

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

CITY OF MISSOULA AIRPORT INTERCEPTOR SEWER PROJECT APPENDIX 2 to EXHIBIT C to OWNER-ENGINEER AGREEMENT ENGINEERING FEE ESTIMATE											REVISED JAN. 4, 2010	
PHASE AND TASK DESCRIPTION												
PRINCIPAL ENGINEER												
S'VISING ENGINEER II												
S'VISING ENGINEER I												
SENIOR ENGINEER I												
DESIGN ENGINEER II												
ENG. INTERN I												
ENG. TECH												
SURVEY CREW												
CLERICAL												
PRINTER												
TOTAL HOURS												
TOTAL COST												
PHASE I - PRELIMINARY DESIGN												
100 Project Management												
101 Project Kickoff Meeting												
102-1 Project Management and Coordination												
Project Management Activities												
Project Team Coordination Meetings & Work Sessions												
Invoicing												
103-1 Progress Reports												
Project Management Subtotal												
200 Design Services												
Field Investigation												
201 Field Survey and Base Map Preparation												
Establish Control												
Collect Survey Data												
Survey Borehole Locations												
Prepare Base Map												
202 Geotechnical Evaluation Coordination												
Field Investigation Subtotal												
Preliminary Design												
203 Preliminary Design and Engineering Report												
Identify Sewer Alignment Alternatives & Recommendation												
Flow Monitoring and Evaluation												
Identify Design Flows and Pipe Sizing												
Describe R-O-W Permitting and Easement Acquisition												
Identify Airport Planning Considerations												
Identify and Evaluate Potential MDT Projects												
Evaluate and Describe Corrosion Control Measures												
Describe Lift Station Decommissioning Requirements												
Identify & Describe Construction Considerations												
Prepare Construction Cost Estimate												
Identify and Describe Project Phasing Opportunities												
Preliminary Design Report Submittal												
Preliminary Design Subtotal												
PHASE I LABOR TOTALS												
PHASE I EXPENSES (SEE DETAIL BELOW)												
ESTIMATED TOTAL PHASE I COST												
PHASE II - FINAL DESIGN AND PLANS/SPECIFICATIONS												
Project Management												
102-II Project Management and Coordination												
Project Management Activities												
Project Team Coordination Meetings & Work Sessions												
Invoicing												
103-II Progress Reports												
Project Management Subtotal												
Final Design												
204 Right-of-Way Permitting and Easement Acquisition												
205 Prepare Construction Drawings and Specifications												
50% Design Documents												
Prepare 50% Drawings												
Prepare 50% Technical Specifications												
Prepare 50% Front-End Docs												
Update Construction Cost Estimate												
Final Project Bid Documents												
Prepare Final Drawings												
Prepare Final Technical Specifications												
Prepare Final Front-End Docs												
Update Construction Cost Estimate												
Design QA Reviews												
Regulatory Approval Submittals												
Project Presentation to Public Works Committee												
Final Design Subtotal												
PHASE II LABOR TOTALS												
PHASE II EXPENSES (SEE DETAIL BELOW)												
ESTIMATED TOTAL PHASE II COST												
PROJECT SUMMARY (PHASE I AND PHASE II)												
TOTAL HOURS												
HOURLY LABOR RATES												
TOTAL LABOR COST												
TOTAL EXPENSES (SEE DETAIL BELOW)												
ESTIMATED TOTAL ENGINEERING FEE												
EXPENSE DETAIL												
UNITS												
UNIT COST												
PHASE I QTY												
PHASE I COST												
PHASE II QTY												
PHASE II COST												
TOTAL PROJECT COST												
Subcontracted Services												
Geotechnical Investigation												
Traffic Control												
Utility Encroachment Review Fee (MRL)												
Temporary Occupancy Permit Fee (MRL)												
DEQ Plan Review Fee												
Flowmeter Rental												
Meals												
Automobile Travel												
General Printing												
Plan Printing												
Postage/Premium Delivery Services												
Tech Charge												
TOTAL EXPENSES												
PHASE I												
\$37,023												
PHASE II												
\$11,544												
\$48,566												

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2011.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

a.	Workers' Compensation:	Statutory
b.	General Liability:	
	General Aggregate:	\$2,000,000
	Each Occurrence (Bodily Injury and Property Damage):	\$1,000,000
c.	Excess Umbrella Liability:	
	Each Occurrence:	\$1,000,000
d.	Automobile Liability	
	Combined Single Limit	\$1,000,000
e.	Professional Liability (Aggregate)	\$1,000,000

Engineer shall deliver to Owner certificates of insurance evidencing the coverage indicated.

B. Owner shall not be required to provide certificates of insurance as evidence of coverage but shall maintain coverage as required by State and local law and ordinances.

C. Owner agrees to include in construction contracts resulting from design services under this Agreement, provisions for satisfactory protection to the Owner and Engineer during the construction phase of the project.

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2011.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by a mutually agreed upon mediator. After a written demand for non-binding mediation, which shall specify the nature of the dispute, and within thirty (30) days from the date of selection of the mediator, the matter shall be submitted to the mediator for consideration. The mediator will provide an informal opinion and advice, none of which shall be binding upon the parties. The mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter may then be considered by other methods of dispute resolution.
- B. The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

This is **EXHIBIT I**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2011.

Limitations of Liability

Paragraph 6.10 of the Agreement is amended and supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Subconsultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Subconsultants shall not exceed the Engineer's Professional Liability coverage equal to \$1,000,000 provided for under this Agreement.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10. the Engineer and Engineer's officers, directors, members, partners, agents, Subconsultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Subconsultants.

- B. Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of

Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

Paragraph 6.11 of the Agreement is amended and supplemented to include the following agreement of the parties:

I6.11.F *Conditions Beyond the Control of the Engineer*

1. The Owner recognizes that in the course of completing the services under this agreement, the Engineer may encounter conditions which are beyond the control of the Engineer and which create potential for claims against and additional costs to the Engineer which are not covered in fees earned for services provided. This category includes, but is not limited to the following:
 - Unknown underground utilities or other man-made objects not properly located underground.
 - Unavoidable contamination of subsurface areas, aquifers, etc. or the disturbance of natural underground resources during the design and construction of the project.
 - Changed codes or standards during the course of the work.
 - Information provided by others which is not accurate or complete.
 - Conditions that may arise and differ significantly from those existing at the beginning of the project.

Should any such condition occur during the performance of this Agreement, judged to be beyond the control of the Engineer, the Engineer will promptly notify the Owner, and the parties will renegotiate the Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement. The Owner agrees to compensate the Engineer for any time spent and expenses incurred by the Engineer in defense of any such claim with such compensation to be based upon the Engineer's prevailing fee schedule and expense reimbursement policy.

I6.11.G *Statutes of Limitations*

1. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run in any and all events not later than either the date of Substantial Completion of the project for acts or failures to act occurring prior to Substantial Completion or the date of Final Payment for acts or failures to act occurring after Substantial Completion.

I6.11.H *Betterment*

1. If Engineer mistakenly leaves out of the Construction Documents any component or item required for the Project, Engineer shall not be responsible for the cost or expense of constructing or adding the component or item to the extent such item or component would have been required and included in the original construction documents. In no event will the Engineer be responsible for any cost or expense that provides betterment, upgrades or enhances the value of the Project.

This is **EXHIBIT J**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2011.

Special Provisions

The following paragraphs of the Agreement are amended to include the following agreement(s) of the parties:

3.01A. Add: Short duration stop and go activities are anticipated in the performance of the Engineer's services for this project and will not be cause for adjustment of rates or fees of the Engineer. However, adjustments will be considered for long term delays, considered to be one year or more.

Add 3.02C. The Owner may suspend the work of the Engineer under this Agreement if the Engineer fails to begin the work promptly after the written authorization to proceed is issued by the Owner, or if any delays in the project are caused by actions or inactions of the Engineer. Delays in the project caused by the Engineer shall not be cause for claims of additional compensation by the Engineer.

6.04F. Add: The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer and Engineer's Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising from or in any way connected with the unauthorized reuse or modification of the documents by the Owner or any person or entity that acquires or obtains the documents from or through the Owner without the written authorization of the Engineer.

6.06. Add the following paragraphs:

d. If the Engineer is the defaulting party, it will thereafter be entitled to receive payment for those services satisfactorily performed to the date of termination less the amount of reasonable damages suffered by the Owner by reason of the Engineer's failure to comply with the Agreement's terms and conditions.

e. If the Owner is the defaulting party it will pay the Engineer for those services satisfactorily performed to the date of the termination plus the amount of reasonable damages suffered by the Engineer by reason of the Owner's failure to comply with the Agreement's terms and conditions.

f. If the Engineer is the defaulting party, the Owner may withhold any payments to the Engineer for purposes of setoff until the exact amount of damages due the Owner from Engineer is determined.

The Agreement is supplemented to include the following attachment:

ATTACHMENT A

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

AFFIRMATIVE ACTION POLICY. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

The Agreement is supplemented to include the following paragraphs:

1. Independent Engineering Contractor

It is understood by the parties hereto that the Engineer is an independent engineering contractor and that neither its principals nor its employees are employees of the Owner for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to Section 39-71-401, MCA, the Engineer has obtained and will maintain at its expense for the duration of this Contract, coverage in a Workers' Compensation insurance program with either the State of Montana, a private insurance carrier, or an approved self-insurance plan in accordance with Montana State law for its principals and employees for the services to be performed hereunder and that the Owner has no liability for vendors' Workers' Compensation insurance of claims. The Engineer shall provide evidence of such Workers' Compensation coverage to the City Clerk prior to the City Clerk's validation of this Agreement.

2. The Engineer shall conform to the requirements of 18-2-121 and 18-2-122 MCA and all other codes of the State of Montana applicable to providing professional engineering services.

3. Civil Rights Act of 1964

Engineer will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VI, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

4. Section 109 of the Housing and Community Development Act of 1974

The Engineer will comply with the following provision:

No person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to any otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

5. Minority Business Enterprise

Consistent with provisions of Executive Order 11246, the Engineer will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. A DBE goal of 0% is set for the work under this

Agreement. The Engineer will make all possible efforts to utilize the Department's currently certified DBE firms for applicable subcontracting services.