

Standard Form of Agreement between Owner and Engineer on the Basis of A Stipulated Price

This agreement is dated as of the 30th day of May 2023, by and between Yellowstone County, Montana (hereinafter called Owner), and In Site Engineering, P.C. (hereinafter called Engineer).

Owner and Engineer, in consideration of the material covenants hereinafter set forth, agree as follows:

1. Scope of Work

Engineer shall provide engineering services needed for the design of road improvements for RSID 890C

See attached proposal

Should any additional work need to be performed, both parties – prior to the work being complete – must sign a written contract amendment.

2. Contract Times

This contract will be in effect from May 30, 2023, until June 30, 2024. Should any work, outside the Scope of Work need to be performed, both parties must agree in writing.

3. Contract Price

Owner shall pay the Engineer a total of \$12,900 upon completion and acceptance of the project by the Owner. Any contract amendments for the project must be approved in writing by the Owner prior to the work being started.

4. Engineers Representation

4.1 Engineer has examined and reviewed the Contract Documents and other related paperwork.

4.2 Engineer has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the work.

4.3 Engineer is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

4.4 Engineer has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that the Engineer has discovered in the Contract Documents and that the Contract Documents are generally sufficient to indicate and convey the understanding of all terms and conditions for performance and furnishings of the work.

5. Contract Documents

The Contract Documents, which comprise the entire agreement between Owner and Engineer, consist of the following:

- 5.1 This Agreement.
- 5.2 Engineer's proposal.
- 5.3 Engineer's current Certificate of Insurance and Workers Compensation coverage.

6. Miscellaneous

- 6.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without written consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will discharge the assignor from any duty or responsibility under the Contract Documents.

- 6.2 The successful bidder (herein after Engineer), shall maintain at its sole cost and expense, commercial general liability insurance naming Yellowstone County, as additional insured against liability for damages for bodily injury, including death and completed operations and property damages in a minimum amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for each claim and One Million Five Hundred Thousand Dollars , (\$1,500,000.00), in the aggregate arising from incidents which occur as the result of Engineers negligence while performing any work or service and for which Yellowstone County , sole basis of liability is vicarious liability for the acts or omissions of the Engineer or/and subcontractors. Engineer shall maintain at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with work or service by Engineer, agents, employees, representatives, assigns and sub-Consultants. This insurance shall cover claims as may be caused by any negligent act or omission. The policy of insurance shall be an occurrence policy with a Best Rating of A- or better and must be in force throughout the period.

Engineer shall name on the Certificate of liability insurance Yellowstone County, as additional insured for on-site work or Maintenance Service. In addition, Engineer will furnish to Yellowstone County a copy of the policy endorsement, CG 32 87 05 10, indicating that Yellowstone County, are named as an additional insured under the Engineers insurance policy.

Engineer agrees to furnish both the Certificate of insurance and policy endorsement at least ten (10) days prior to beginning work.

Engineer agrees to defend, indemnify, and hold harmless Yellowstone County / from and against any and all claims demands, obligations causes of action, lawsuits and all damages and liabilities fines, judgments, costs, (including settlement costs), and expenses associated therewith (including reasonable attorney's fees and disbursements), arising from incidents that occur the result of Engineers negligence. And for which Yellowstone County, sole basis of liability

is vicarious liability for the acts or omissions of Engineer. The defense and indemnification obligations under this paragraph of the Invitation to Bid shall not be limited by any assertions or finding that Yellowstone County, is liable for any damages by reason of a non-delegable duty.

- 6.3 Engineer is required to maintain workers compensation insurance, or an independent Contractor's exemption issued by the Montana Department of Labor covering Contractor and Contractor's employees. Engineer is not, nor is Engineer's workers, employees of Yellowstone County/Yellowstone County Public Works. Workers Compensation insurance, or the exemption from the workers compensation obligation must be valid for the entire period.
- 6.4 Owner and Engineer each binds itself, its partners, successors, assign and legal representative to the other party hereto, its partners, successors, assign and legal representative to respect to all covenants, agreements and obligations contained in the Contract Documents.
- 6.5 Engineer must give preference to the employment of bona fide residents of Montana in the performance of this work.
- 6.6 All work and materials must be warranted for a period of one year from date of installation.
- 6.7 The Parties agree that the laws of the State of Montana shall govern this contract, and that venue shall be in the Thirteenth Judicial District Court, Yellowstone County, Montana.
- 6.8 Engineer agrees to defend, indemnify and hold harmless the Owner against all claims for injuries to person or damages to property occurred from or in Connection with the Engineers performance under the Agreement.
- 6.9 In the event of litigation between Engineer and the Owner, the Prevailing party shall be entitled to reimbursement of Court costs and Reasonable Attorney fees by the non-prevailing party.

7. Performance

The Engineer must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations, including the Montana Human Rights Act, Civil Rights Act of 1964, The Age Discrimination Act of 1975 and the American with Disabilities Act of 1990. Any subletting or subcontracting by the Engineer subjects Engineers to the same provisions. In accordance with section 49-3-207, MCA, the Engineer agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualification and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person performing under the contract.

8. Termination

This Agreement shall terminate in its entirety in accordance with the terms found in paragraph 2. However, either party may terminate this contract on thirty (30) calendar days written notice, or if prior to such action, the other party materially breaches any of its representations or obligations under this Agreement. Except as may be otherwise provided in this Agreement, such breach by either party will result in the other party being responsible to reimburse the non-defaulting party for all costs incurred directly as a result of the breach of this Agreement and shall be subject to such damages as may be allowed by law including attorneys' fees and costs of enforcing this Agreement.

IN WITNESS WHEREOF, Owner and Engineer have signed this Agreement in duplicate. One counterpart each will be delivered to Owner and Engineer. All portions of the Contract Documents have been signed, initialed or identified by Owner and Engineer.

This Agreement will be effective May 30, 2023

OWNER:
Yellowstone County

Billings, MT 59101



Tim Miller
Public Works Director

ENGINEER:
Scott Worthington, PE, In Site Engineering, P.C.
4231 Creekwood Dr
Billings, MT 59106


Authorized Signature

In Site Engineering, P.C.

*4231 Creekwood Dr
Billings, MT 59106
(406) 591-4355 phone*

May 24, 2023

Mr. Mike Black, P.E.
Senior Yellowstone County Civil Engineer
Public Works Department
P.O. Box 35024
Billings, MT 59107-5024

Reference: RSIDc No. 890 – Engineering Proposal and Scope of Work

Dear Mr. Black:

The following is a proposal for In Site Engineering, P.C. to provide certain engineering and consulting services generally described as:

Engineering design for road improvements for Yellowstone County RSIDc No. 890, the construction of which is to grade, gravel, and pave 54th Street West from Neibauer Road to a point 1300 feet north thereof.

This proposal sets forth the scope of work to be completed by In Site Engineering, P.C. ("Engineer").

Overview

This project consists of Civil Engineering consulting, design, and construction administration for RSIDc No. 890. This includes preparation of plans, specifications, and other documents to be part of a bid package to be advertised by Yellowstone County for bidding contractors. The scope of work performed by the Engineer will include two parts:

- A. The work required to prepare the bid package (work prior to bid), and
- B. The work required to be completed after awarding of a construction contract by Yellowstone County to a successful bidding Contractor (work after bid)

Further details of the scope of each phase of work are provided below:

Scope of Work

In Site Engineering, P.C. will provide the following services as part of its basic services:

A. Work required to complete bid package

Specific tasks will include:

- Topographic survey of existing gravel road
- Set control points

- Prepare engineering design for subject road (1300 lineal feet in length) with plan and profile along road centerline alignment with existing ground profile, design finish grade centerline profile, gravel shoulders, and design cross-sections
- Meet with Yellowstone County Engineer after completion of topographic survey and plans at 50% complete.
- Meet with Yellowstone County Engineer at 75% plan completion
- Prepare construction contract bid documents including general provisions, special provisions, and a “complete-in-place” lump sum bid schedule for 2-3” of new roadbase gravel, paving, and construction of gravel shoulders and transitions from driveways into the new paving.

B. Work to be completed after Yellowstone County awards a Construction Contract to a successful bidding Contractor

Specific tasks will include:

Construction Administration

- Observation of proof roll to identify soft spots, if any
- Construction observation during gravel placement and paving
- QA testing of new gravel road base
- QA testing of asphalt pavement
- Management of contract including evaluation of change orders
- Final walk-through with Client and Contractor

Exclusions from Scope of Work / Items to be provided by Yellowstone County:

- Geotechnical engineering (existing gravel and sub-base are assumed to provide sufficient foundation for the proposed surface courses of gravel and asphalt)
- Construction staking (to be provided by contractor, or stake-less construction to be done)
- Local, State, or Federal taxes or permit fees
- SWPPP – not anticipated to be required due to only minimal changes to line and grade on an already stabilized surface and due to project size being under 1 acre
- Environmental studies, testing, or remediation
- Flood hazard evaluation
- Drainage Study
- Traffic Impact Study
- Title work or ALTA survey

Fees and Billing

In Site Engineering, P.C. will bill the following lump sum fees for the scope of work outlined above.

Task A:	\$10,000
Task B:	\$2,900
Total:	\$12,900

Invoices will be sent monthly for work completed in amounts according to the percentage of completion of the scope of work to date. The proposed fee does not include contingencies to cover significant modifications to the scope of Engineer’s work caused by other parties or factors beyond our control. If such changes arise, a discussion

will be initiated to revise the scope and fee, to be approved in writing prior to proceeding with any additional work.

Services not set forth above as basic services are specifically excluded from the scope of In Site Engineering's services. In Site Engineering assumes no responsibility to perform any services not specifically listed as basic services. If Yellowstone County and In Site Engineering agree in writing via an amendment to this agreement, In Site Engineering will provide the additional services requested.

Invoices are due and payable upon receipt and are subject to a 1.5% per month interest charge (18% annually) on unpaid amounts over 30 days past due.

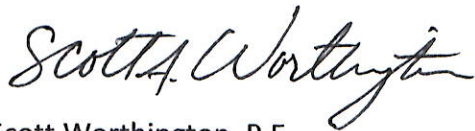
Project Schedule

This project will proceed on a schedule mutually agreed upon between In Site Engineering, P.C. and Client. The agreed upon schedule from the pre-contract meeting was to have engineering design complete by late June 2023 so that the bid can be advertised by late July 2023. This is with the goal of having the project paved by mid to late August. Anticipated construction schedule will be outlined in the Construction Bid Documents.

Conclusion

Thank you for the opportunity to prepare this proposal. I look forward to providing these services to you on this exciting project.

Sincerely,



Scott Worthington, P.E.

