

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

This agreement is dated as of the 12th day of August, 2025 by and between Yellowstone County, Montana (hereinafter called Owner), and Performance Engineering. (hereinafter called Consultant).

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

1. Scope of Work: On-call services related to right of restoration, remediation and inspection services.
2. Contract shall be effective immediately.
3. Contract Price

Owner shall pay the Consultant based on Time and Materials in an amount not to exceed \$60,000.00

The Consultant should submit their invoices directly to Yellowstone County Public Works upon satisfactory completion of services for the period being invoiced.

A fee schedule is attached.

4. Consultants Representation
 - 4.1 Consultant has examined and reviewed the Contract documents and other related paperwork.
 - 4.2 Consultant 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 Consultant has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that Consultant 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 Consultant, consist of the following:

- 5.1 This Agreement.
- 5.2 Consultants Fee Schedule
- 5.3 Consultant's 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 Consultant, 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 Consultants 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 Consultant or/and sub-Consultants. Consultant 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 Consultant, 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.

Consultant shall name on the Certificate of liability insurance Yellowstone County, as additional insured for on-site work or Maintenance Service. In addition, Consultant 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 Consultants insurance policy.

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

Consultant 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 Consultants negligence. And for which Yellowstone County, sole basis of liability is vicarious liability for the acts or omissions of Consultant. 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 Consultant is required to maintain workers compensation insurance, or an independent Consultant's exemption issued by the Montana Department of Labor covering Consultant and Consultant's employees. Consultant is not, nor is Consultant's workers, employees of Yellowstone County. Workers Compensation insurance or the exemption from the workers compensation obligation must be valid for the entire period.
- 6.4 Owner and Consultant 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 Consultant 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 Consultant agrees to defend, indemnify and hold harmless the County against all claims for injuries to person or damages to property occurred from or in Connection with the Consultants performance under the Agreement.
- 6.9 In the event of litigation between Consultant and the County, the Prevailing party shall be entitled to reimbursement of Court costs and Reasonable Attorney fees by the non-prevailing party.
- 7.0 The Consultant 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 Consultant subjects Consultants to the same provisions. In accordance with section 49-3-207, MCA, the Consultant 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.

8.0 SUSPENSION AND TERMINATION

- 8.1 Without terminating this Agreement, the COUNTY may suspend the CONSULTANT's Services following written notice to the CONSULTANT. On the suspension date specified in the notice, the CONSULTANT shall have ceased its Services in an orderly manner. The CONSULTANT shall be reimbursed for all reasonable costs incurred and unpaid for Services rendered through the suspension date specified in the notice, but in no case will the CONSULTANT be paid for Services rendered after the date of such suspension. If resumption of the CONSULTANT's Services requires any waiver or change in this Agreement, any such waiver or change shall require the written agreement of all parties, and the writing shall be attached as an addendum to this Agreement.
- 8.2 The COUNTY shall have the right to terminate this Agreement, in whole or in part, at any time during the course of performance by providing 30 days written notice to the CONSULTANT. On the termination date specified in the notice, the CONSULTANT shall have ceased its Services in an orderly manner. If a new Consultant is retained to, or the COUNTY will itself, complete the Services, the CONSULTANT will cooperate fully with the COUNTY in preparing the new Consultant or the COUNTY itself

to take over completion of the Services on the specified termination date. The CONSULTANT will be reimbursed for all reasonable costs incurred and unpaid for Services rendered in conformance with this Agreement through the date of termination specified in the COUNTY's notice to the CONSULTANT, but in no case will the CONSULTANT be paid for Services rendered after the date of such termination.

- 8.3 In the event of a material breach of this Agreement by the COUNTY, the CONSULTANT shall have the right to terminate this Agreement thirty (30) days after written notice to the COUNTY specifying such material breach, unless the COUNTY has cured such material breach within said period.
- 8.4 This Agreement may be terminated without cause by either party. In that event, the party seeking to terminate said Agreement must give ninety (90) days written notice to the other party of the intent to terminate the Agreement.

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

This Agreement will be effective August 12, 2025.

OWNER:

Yellowstone County
Billings, MT 59101

Mark Morse
Chair, Board of County Commissioners

CONSULTANT:

Performance Engineering
Billings, MT 59102



Scott Aspenlieder
Owner