

**BIG HORN COUNTY
BOARD OF COUNTY
COMMISSIONERS**

121 3rd St W
Room 301
Hardin, MT 59034



**BIG HORN COUNTY BOARD OF COUNTY
COMMISSIONERS MINUTES
January 16, 2025
9:30 AM**

Members
Lawrence Big Hair, Presiding Officer
George Real Bird III, Member
Larry Vandersloot, Member

1. Call to Order

Commissioner Real Bird, Pro Tempore calls meeting to order.

2. Roll Call

Commissioner Real Bird, Pro Tempore, Commissioner Vandersloot, member were both in attendance. Mike Opie, Accountant, Jeanne Torske, County Attorney, and Heather Ready, Deputy County Attorney were in attendance. Robie Culver, Kaia Tharp, and Allen Tharp were also in attendance.

3. Claim Approvals

Commissioner Vandersloot entertained a motion to approve Claims 1198 and 1200. The motion was seconded by Commissioner Real Bird and passed unanimously.

4. Approve Minutes and Supporting Documents

Commissioner Vandersloot entertained a motion to approve minutes from January 9, 2025. The motion was seconded by Commissioner Real Bird and passed unanimously.

5. Personnel/Legal

6. Old Business

7. New Business

Grant Administration Proposal (SS4A)

Robie Culver and Kaia Tharp, Stahly Engineering, present the administration proposal for the Safe Streets 4 All grant. Kaia explains the scope of work for this grant. County Attorney Torske brings up some changes she would like to make in the contract.

Commissioner Vandersloot entertained a motion to approve the SS4A Grant administration proposal pending the changes suggested by County Attorney. The motion was seconded by Commissioner Real Bird and passed unanimously.

Sawyer Loop Bridge Procurement Agreement

Commissioner Vandersloot entertained a motion to approve the Procurement Agreement with Contech Engineered Solution. The motion was seconded by Commissioner Real Bird and passed unanimously.

8. Public Comments

9. Discussion

Robie Culver discusses the growth policy and why it was denied by CBDG. It was however, funded by the coal board, so they will get with the County's Economic Development Director to get started on that project. They plan on finishing the growth policy by next summer early fall. Going forward they would like to do a yearly review of both the growth policy and CIP or Capital Improvements Plan. There are planning funds available from MCEP to update the CIP, so they will put in for that.

Discussion on the PASER gravel study ensues. Kaia suggests putting a winter stop on the project

due to the weather. She would like some guidance on which roads they'd like her to focus on.

10. Adjourn

There being no other business, the board adjourned.

Approved: _____

Lawrence Big Hair, Presiding Officer

Attest: _____

Peri Schenderline, Deputy Clerk & Recorder



January 8, 2025

Big Horn County Commissioners
121 W 3rd Street
PO Box 908
Hardin, MT 59034

Subject: Safe Streets and Roads for All (SS4A) Grant Administration for a Safety Action Plan

Dear Commissioners:

This letter and associated attachments are intended as a Scope of Work for Stahly Engineering & Associates, Inc. to provide professional services for the SS4A Grant awarded to Big Horn County. We propose to provide grant administration and assist in the development of a Comprehensive Safety Action Plan. Your approval of this Scope of Work is required per our term agreement dated June 2021. That agreement states that any projects assigned to our firm exceeding \$10,000 require a detailed Scope of Work, review, and approval by the commission.

The attached Professional Services Proposal identifies the activities associated with each task anticipated for our services. Big Horn County will reimburse Stahly Engineering for services based on the time and materials spent on the project, subject to all other conditions of the existing term contract.

Please review this Scope of Work and provide comments if necessary. If agreeable to the commission, please sign the attached Professional Services Agreement and return the original to our office. Thank you for the opportunity to provide services to Big Horn County.

Sincerely,

Kaia Tharp, P.E.
Stahly Engineering & Associates, Inc.
Transportation Department Manager
307-250-6722

Attachments:
Professional Services Proposal
Professional Services Agreement

CC: File

STAHLY ENGINEERING & ASSOCIATES, INC.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into on _____ by Big Horn County, a political subdivision of the State of Montana, (hereafter "CLIENT"), located at 121 W 3rd Street (P.O. Box 908), Hardin, MT 59034 and Stahly Engineering & Associates, Inc. (hereafter "CONSULTANT"), located at: 3530 Centennial Drive, Helena, MT 59601, is hereby described as follows:

A. Project Description (hereafter the "Project"):

U.S. Department of Transportation (DOT) Opportunities Grant Administration and Comprehensive Safety Action Plan development.

B. CONSULTANT will perform professional services for CLIENT as follows:

Safe Street and Roads for All

Big Horn County was awarded the SS4A grant and is awaiting the completion of a Signed Grant Agreement. Prior to the Signed Grant Agreement, Stahly Engineering & Associates will provide Pre-grant agreement coordination. Once the Signed Grant Agreement has been completed, Stahly Engineering & Associates will provide grant administration services and project Management Services according to the SS4A guidelines. Stahly will prepare a Comprehensive Safety Action Plan for the County as outlined in the SS4A Planning and Demonstration Grant requirements.

A detailed Scope of Work is attached.

C. CLIENT will compensate CONSULTANT for services as follows:

Pre-grant agreement coordination

Total unallowable grant costs (no contribution from SS4A Grant) \$11,000.00

Comprehensive Safety Action Plan

Grant Administration \$ 12,000.00

Project Management \$ 15,000.00

Comprehensive Action Plan Components

- Leadership and Goal Setting \$20,000.00*
- Planning Structure \$35,000.00*
- Safety Analysis \$90,000.00*
- Engagement and Collaboration \$50,000.00*
- Equity \$35,000.00*
- Policy and Process Change \$25,000.00*
- Strategy and Project Selection \$60,000.00*
- Progress and Transparency \$25,000.00*

Total SS4A Grant (County and Federal Matches) \$367,000.00

Total Estimated County Match For SS4A \$73,400.00

Total Pre-Grant Agreement Services Cost (NO FEDERAL MATCH) \$11,000.00

TOTAL COUNTY PORTION FOR SS4A GRANT \$84, 400.00

TOTAL PROFESSIONAL SERVICES AMOUNT \$378,000.00

NOTE: Invoices are due upon receipt. Invoices are sent out once a month (on or about the 10th) for work performed during the invoice period (basically the prior month). A late payment FINANCE CHARGE will be charged at the periodic rate of 1.5% per month (or the maximum allowed by law) on any balance remaining unpaid 30 days after the date of the invoice.

The signature below by CLIENT signifies CLIENT'S understanding, agreement and acceptance of this Agreement and that the signatory below is authorized to sign this Agreement.

CONSULTANT:

By: _____

Name: _____

Title: _____

Project Manager/Contact: _____

CLIENT:

By: Lawrence Big Hair

Name: L. B. Hair

Title: Presiding Officer

Email Address: lpbighair@big Horncounty.mt.gov

By signing this Agreement, Client assents to the terms and conditions set forth above and outlined on the following page.

TERMS AND CONDITIONS

1. Amendments. Client, without invalidating this Agreement, may request changes within the general scope of the Services required by this Agreement by amending or adding to the Services to be performed and any such changes in the Services shall be performed subject to this Agreement. Upon receiving Client's request, Consultant shall return to Client a proposal setting forth an adjustment to the Services and cost estimate or fee to represent the value of the requested changes. Consultant will perform additional services after receiving written approval from Client accepting the proposal.

2. Relationship of Parties. Consultant and its employees, agents, affiliates and subcontractors shall act solely as independent contractors in performing services under this Agreement. Except as specifically provided in this Agreement, Consultant shall have no right or authority to act for Client and will not enter into any contract or other agreement or incur any debt, liability or obligation of any nature in the place of, or on behalf of, Client. Consultant, its employees, agents, affiliates and subcontractors shall not be considered agents or employees of Client. Reliance upon the Services provided under this Agreement are limited to Client and any third party reliance that may be available is contingent upon written agreement executed by Consultant and upon the full execution by the third party of a letter of understanding provided by Consultant. Client acknowledges that the Services provided under this Agreement shall in no way be construed, designed, or intended to be relied upon as legal advice or interpretation.

3. Reuse of Documents. Consultant shall retain an ownership and property interest in Drawings and Technical Specifications provided or furnished by Consultant pursuant to this Agreement (including the right of reuse by and at the discretion of Consultant) whether or not the Project is completed. Further, such Drawings and Technical Specifications are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project and is prohibited. Drawings and Technical Specifications shall be clearly marked as "proprietary." Should Client request the use of these Drawings and Technical Specifications, Consultant will provide them if Client signs a release of liability.

However, Consultant does not retain an ownership, property interest, or proprietary right in any and all other documents or portions of documents generated by the Consultant for the Client. The Client may reuse, copy, or distribute any document or portion of any and all documents that have not previously been marked as "proprietary."

4. Standard of Care. The standard of care for all professional engineering and surveying and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of Consultants' profession practicing under similar conditions at the same time and in the same locality. Consultant makes no warranties or guarantees, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

5. Cost Estimates. Any opinion of probable costs prepared by the Consultant represents its judgment as a design professional and is supplied for general guidance of the Client. Because Consultant has no control over the cost of labor and materials, or over competitive bidding or market conditions, the Consultant does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the Client.

6. Insurance. In addition to any other insurance which Consultant may choose to carry, Consultant shall at its sole expense, maintain in effect during the performance of the Services under this Agreement insurance coverage's as follows: Workers Compensation, as required by state law; General Liability and Automobile Liability with a combined single limit of \$1,000,000 per occurrence; Professional Liability, \$1,000,000 for claims made against Consultant for negligent errors or omissions in performance of services hereunder. Consultant shall deliver to Client certificates of insurance, if requested by Client.

7. Indemnification. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client, Client's officers, directors, partners, employees and agents 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 or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Consultant or Consultant's officers, directors, partners, employees, agents in the performance and furnishing of Consultant's services under this Agreement. To the fullest extent permitted by law, Client shall indemnify and hold harmless Consultant, Consultant's officers, directors, partners, employees and agents 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 or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Client or Client's officers, directors, partners, employees, agents with respect to this Agreement or the Project.

8. Limitation of Liability. Client hereby agrees, to the fullest extent permitted by law, that Consultant's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project of this Agreement from any cause or causes, including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract, or otherwise, will not exceed (i) the total compensation received by Consultant under this Agreement, or (ii) \$50,000 whichever is the lesser amount.

9. Termination. This Agreement may be terminated by either party upon written notice in the event of failure by the other party to perform in accordance with the terms hereof. Unpaid invoice(s) 60 days outstanding shall be considered failure of performance by Client and grounds for termination by Consultant. Consultant may terminate the Agreement if Consultant believes that it is being requested by Client to furnish or perform services contrary to Consultant's responsibilities as a licensed professional; or if Consultant's services for engineering or surveying are delayed or suspended for more than sixty days for reasons beyond Consultant's control. The Client or Consultant may terminate this Agreement for convenience, effective upon receipt of written notice by either party. In the event of termination, Consultant shall be paid for services performed up to the termination notice date plus reasonable termination and project closeout expenses. Consultant shall have no liability to Client on account of termination. In the event Consultant is required to seek the services of an attorney with regard to default of client in performance of this agreement or in the event of Client's non payment of fees and costs, the prevailing party shall be entitled to recover from the losing party all costs and attorney's fees incurred.

10. Survival. All express representations, indemnifications, or limitations of liability made in or given in the Agreement will survive the completion of all services of Consultant under this Agreement or the termination of the Agreement for any reason.

11. Severability. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

12. Betterment. If Consultant mistakenly leaves out of the Construction Documents any component or item required for the Project,

Consultant 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 Consultant be responsible for any cost or expense that provides betterment, upgrades or enhances the value of the Project.

SS4A Grant Management Safety Action Plan

Big Horn County, MT

A proposal to:
Big Horn County

January 2025



Stahly Engineering & Associates Professional Services Proposal



An Employee-Owned Company

851 Bridger Dr, Ste 1
Bozeman, MT 59715
(406) 522-8594

2223 Montana Ave,
Ste 201
Billings MT 59101
(406) 601-4055

3530 Centennial Dr
Helena, MT 59601
(406) 442-8594

219 2nd Ave S
Ste 302
Great Falls, MT 59405
(406) 604-4644

1001 12th St
Cody, WY 82414
(307) 509-5541

Engineering Excellence for More Than 50 Years

INTRODUCTION

Stahly Engineering & Associates (Stahly) is pleased to submit a professional services proposal for the awarded SS4A (Safe Streets for All) Grant in Big Horn County, MT. Our estimate is based on proceeding on a time and materials basis with a not-to-exceed amount, with notification to you if budgets are exceeded. We have attempted to be complete in our scope, but additional items may be required. Additional out-of-scope changes will not be implemented without your prior authorization.

PROJECT OBJECTIVE

Big Horn County was awarded a Safe Streets and Roads for All (SS4A) grant to develop a Comprehensive Safety Action Plan for the county. Big Horn County has requested Stahly Engineering and Associates (Stahly) perform Grant Administration, Project Management and develop a Safety Action Plan per the SS4A grant guidelines based on the Vision Zero commitment to eliminate all traffic fatalities and severe injuries while increasing safe, healthy, equitable mobility for all.

SCOPE OF WORK

The scope of professional services includes the following:

I. PRE- SIGNED GRANT AGREEMENT SERVICES

This scope of services includes Pre-grant agreement coordination. This coordination will include evaluating the grant guidelines, developing a preliminary plan for administering the grant and preparing the Safety Action Plan based on Vision Zero, gathering information needed to assist the county in reaching a signed grant agreement, identifying and retaining the services of the sub-consultant necessary to complete the Safety Action Plan, and providing other services as required before the signed grant agreement is in place.

Pre-Grant Agreement Services	\$11,000	(non-reimbursable through grant, County funds only)
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II. LEADERSHIP AND COMMITMENT GOAL SETTING

Stahly will work with the County Commissioners to prepare an official commitment document outlining the goal of zero roadway fatalities and serious injuries based on Vision Zero. Stahly will engage the public to gather input toward this goal. Stahly will use the public input, Oversight Committee recommendations, and the County Commissioner's input to prepare an official commitment report. Anticipated activities to meet this goal will include determining the goals and time frames based on the Vision Zero commitment of zero roadway fatalities and serious injuries, a public meeting, a public survey, a meeting with commissioners, and preparing the official commitment report.

Leadership And Commitment Goal Setting:

County Match	\$4,000	Federal Match	\$16,000	Total	\$20,000
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III. PLANNING STRUCTURE

Stahly will establish the Oversight Committee to oversee the Action Plan's development, implementation, and monitoring. Select committee members will include representation from the county commissioners, public health, Sheriff, community groups, and tribes. Consideration for membership should be given to transportation departments, emergency services, and school districts. Members will be selected with input from and approval from the county commissioners. Stahly will attend each committee meeting as a member or advisor. Stahly will coordinate the meetings, create the agenda, take minutes, and distribute minutes to members for approval. Stahly will provide planning structure reports detailing the



committee's guidelines for developing, implementing, and monitoring the Action Plan.

Planning Structure:

County Match	\$7,000	Federal Match	\$28,000	Total	\$35,000
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IV. SAFETY ANALYSIS

With Commission approval, Stahly will enlist a sub-consultant to complete a Safety Analysis of the Big Horn County roads, regardless of ownership, as practical. Analysis of existing conditions and historical trends will provide baseline data for the Action Plan. Systemic and specific safety needs will be analyzed to identify high-risk road features, specific safety needs of road users, public health approaches, analysis of the built environment, demographic and structural issues, etc. The subconsultant will provide Stahly with a Safety Needs assessment, prioritizing resources based on evidence of the greatest needs and impact. A High-Injury Network with geospatial identification of higher-risk areas will be completed.

Safety Analysis:

County Match	\$18,000	Federal Match	\$72,000	Total	\$90,000
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V. ENGAGEMENT AND COLLABORATION

Stahly will involve the public and relevant stakeholders to allow for community representation and feedback, including input from online surveys and public meetings. Stahly will analyze the information received from engagement and collaboration with the stakeholders and any overlapping jurisdictions. Stahly will collaborate with other government entities to ensure the Action Plan coordinates and aligns with their plans and planning processes. Stahly will provide a Feedback analysis report before completing the Action Plan.

Engagement and Collaboration:

County Match	\$10,000	Federal Match	\$40,000	Total	\$50,000
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VI. EQUITY

Stahly will complete the action plan using an inclusive and representative approach based on Vision Zero. Stahly will identify underserved communities and use an equitable approach to ensure equitable outcomes and measurable benchmarks to provide a safe transportation system for all. Stahly will also complete an analysis of population characteristics and an Equity Impact Assessment of the proposed projects and strategies. This will be completed and included in the Action Plan.

Equity:

County Match	\$7,000	Federal Match	\$28,000	Total	\$35,000
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VII. POLICY AND PROCESS CHANGE

Stahly will assess current policies, plans, guidelines, and standards to identify opportunities to improve the process of prioritizing transportation safety, with an emphasis on Vision Zero Action Planning. Stahly will provide a Policy Implementation report recommending changes to or additions to policies, standards, plans, and guidelines.

Policy and Process Change:

County Match	\$5,000	Federal Match	\$20,000	Total	\$25,000
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VIII. STRATEGY AND PROJECT SELECTION

Stahly will prepare an Identification Report outlining a comprehensive set of projects and strategies to address the safety challenges detailed in the Action Plan. This report will leverage data analysis, stakeholder input, equity considerations, and best practices aligned with Vision Zero or the Safe System Approach. Stahly will use the Identification Report to develop a Project Prioritization Report to establish time frames for deploying the prioritized strategies and projects based on specific criteria. This report will also include interventions based on infrastructure, behavioral, and operational safety and provide the prioritization criteria and rationale

Strategy and Project Selection:

County Match	\$12,000	Federal Match	\$48,000	Total	\$60,000
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IX. PROGRESS AND TRANSPARENCY

Stahly will develop a plan to measure progress over time following the implementation of the Action Plan. This plan will include a framework for regular updates incorporating outcome data, a method to ensure ongoing transparency with stakeholders and residents, and a process for annually reporting progress toward reducing roadway fatalities and serious injuries. The annual reports will be publicly accessible online to maintain accountability and engagement.

Progress and Transparency:

County Match	\$5,000	Federal Match	\$20,000	Total	\$25,000
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EXPENSES

Project expenses, which include mileage, printing, survey supplies, etc., are billed at the actual expense.

FEES FOR PROFESSIONAL SERVICES

The fee for the scope of professional services described is estimated at \$378,00 and is broken down as follows:

<i>Stahly Engineering Tasks as outlined in the grant agreement</i>	<i>Estimated Federal Portion</i>	<i>Estimated County Portion</i>	<i>Total Estimated Cost per Task</i>
Pre-Grant Agreement Services		\$11,000	\$11,000
LEADERSHIP AND COMMITMENT GOAL SETTING	\$16,000	\$4,000	\$20,000
PLANNING STRUCTURE	\$28,000	\$7,000	\$35,000
SAFETY ANALYSIS	\$72,000	\$18,000	\$90,000
ENGAGEMENT AND COLLABORATION	\$40,000	\$10,000	\$50,000
EQUITY	\$28,000	\$7,000	\$35,000
POLICY AND PROCESS CHANGE	\$20,000	\$5,000	\$25,000

<i>Stahly Engineering Tasks as outlined in the grant agreement</i>	<i>Estimated Federal Portion</i>	<i>Estimated County Portion</i>	<i>Total Estimated Cost per Task</i>
STRATEGY AND PROJECT SELECTION	\$48,000	\$12,000	\$60,000
PROGRESS AND TRANSPARENCY	\$20,000	\$5,000	\$25,000
PROJECT MANAGEMENT	\$12,000	\$3,000	\$15,000
GRANT ADMINISTRATION	\$9,600	\$2,400	\$12,000
TOTAL BUDGET FOR COMPREHENSIVE SAFETY ACTION PLAN	\$293,600	\$84,400	\$378,000

Thank you for this opportunity. We look forward to providing quality professional services delivered on schedule. Please feel free to contact us if you have any questions or concerns.

Sincerely,
STAHLY ENGINEERING & ASSOCIATES



Kaia Tharp, P.E., Project Manager
Transportation Department Manager



AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

This Procurement Agreement is by and between Big Horn County, a Political Subdivision of the State of Montana ("Buyer") and Contech Engineered Solutions ("Seller").

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Contract and the Supplementary Conditions of the Procurement Contract.

Buyer and Seller hereby agree as follows:

ARTICLE 1—PROCUREMENT CONTRACT

1.01 Goods and Special Services

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Contract Documents. The Goods and Special Services are generally described as follows:

Prefabricated modular steel bridge superstructure with a pan deck for gravel surfacing.

1.02 The Project

- A. The Project, of which the Goods and Special Services are a part, is generally described as follows:

The Sawyer Loop Bridge, which is located where Sawyer Loop Road crosses Williams Coulee, is replacing existing culverts. The new bridge will be founded on a concrete cap and driven steel piles.

1.03 Engineer

- A. Buyer has retained Stahly Engineering ("Engineer"), to prepare Procurement Contract Documents and act as Buyer's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Contract Documents in connection with Seller's furnishing of Goods and Special Services.

1.04 Point of Destination

- A. The Point of Destination is designated as:

Where Sawyer Loop Road crosses Williams Coulee, approximately 2.4 miles south of Hardin, MT. The approximate GPS coordinates of the project site are:

45°42'19.00"N, 107°36'4.93"W

ARTICLE 2—PROCUREMENT CONTRACT TIMES

2.01 Time of the Essence

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Procurement Contract Documents, are of the essence of the Procurement Contract.

2.02 *Schedule of Procurement Contract Times*

A. The following schedule sets forth the Procurement Contract Times:

Milestone	Date or Days	Notes
Submit Shop Drawings	2/10/2025	
Deliver acceptable Goods to Point of Destination	6/20/2025	Delivery may be made in the 15-day period before delivery date

2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Procurement Contract Documents to Engineer for its review and approval.
- B. *Engineer's Review:* It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within **14** days after Seller's submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.

2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Contract. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer **\$500** for each day that expires after the time specified in Paragraph 2.02 for delivery of acceptable Goods.

ARTICLE 3—PROCUREMENT CONTRACT PRICE

3.01 *Procurement Contract Price and Total Price*

- A. The Procurement Contract Price is comprised of the Lump Sum and Unit Price amounts set forth in the following paragraphs.
- B. Buyer shall pay Seller a Lump Sum of **\$87,800.00** for furnishing the Goods and Special Services (other than any Unit Price Goods and Special Services) in accordance with the Procurement Contract Documents. Such Lump Sum amount accounts for the following Buyer-accepted alternates:

None

- C. For all Unit Price Goods and Special Services furnished by Seller in accordance with the Procurement Contract Documents, Buyer shall pay Seller an amount equal to the sum of the extended prices (established for each separately identified unit price item by multiplying the unit price times the actual quantity of that item).

Unit Price Goods and Special Services					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
-	-	-	-	\$ -	\$ -
Total of all Extended Prices for Unit Price items (subject to final adjustment based on actual quantities)					\$ -

1. The extended prices set forth as of the Effective Date of the Procurement Contract for unit price items are based on estimated quantities.
 2. The estimated quantities of items of Unit Price Goods and Special Services are not guaranteed and are solely for the purpose of determining an initial Procurement Contract Price. Payments to Seller for Unit Price Goods and Special Services will be based on actual quantities.
 3. Each unit price will be deemed to include an amount considered by Seller to be adequate to cover Seller's overhead and profit for each separately identified unit price item.
 4. Engineer will determine the actual quantities and classifications of unit price items furnished by Seller. Engineer will review with Seller the Engineer's preliminary determinations on such matters before rendering a written decision (by recommendation of an Application for Payment or otherwise). Engineer's written decision will be final and binding upon Buyer and Seller (except as modified by Engineer to reflect changed factual conditions or more accurate data), subject to the provisions of Article 12 of the General Conditions.
 5. The final adjustment of Procurement Contract Price with respect to Unit Price Goods and Special Services will be set forth in a Change Order.
- D. Buyer's Contingency Allowance is stipulated as **\$0.00**. If no amount is stated, the Buyer's Contingency Allowance is zero. Buyer's use of such allowance, including resulting compensation of Buyer, is governed by Paragraph 11.06 of the General Conditions.
- E. The Total Price is **\$87,800**. Such Total Price is comprised of the Lump Sum amount (taking into account any accepted alternates), Unit Price Goods and Special Services amount (if any) (subject to final adjustment), and Buyer's Contingency Allowance (if any) (subject to final adjustment).

3.02 Procurement Contract Price and Total Price—Based on Attached Bid

- A. For furnishing the Goods and Special Services in accordance with the Procurement Contract Documents, Buyer shall pay Seller the prices stated in Seller's Bid, attached hereto as an exhibit, subject to final adjustments for Unit Price Goods and Special Services and Buyer's Contingency Allowance, if any, and subject to the following Buyer-accepted alternates:

None

ARTICLE 4—PAYMENT PROCEDURES

4.01 *Submittal and Processing of Applications for Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.

4.02 *Progress Payments; Final Payment*

- A. Seller may submit an Application for Payment requesting the stated percentage of Procurement Contract Price upon attainment of each of the following Payment Line Items:

Payment Line Item (Lump Sum)	Percentage of Lump Sum
1. Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	95
2. Final Payment: Correction of non-conformities, submittal of warranties and other final documentation required by the Procurement Contract Documents	5
Total Procurement Contract Price (Lump Sum)	100

- B. For Unit Price Goods and Special Services, if any, or for payments owed to Seller as a result of authorizations by Buyer under the Buyer's Contingency Allowance (if any), Seller shall submit a separate Application for Payment, no more frequently than monthly, that states (1) the actual quantities of such Unit Price Goods and Special Services that have been furnished, and the applicable unit prices; and (2) the services or items performed or furnished under the Buyer's Contingency Allowance, and the amounts owed. If practical, and at Seller's option, Seller may apply for such unit price and Buyer's Contingency Allowance payments in a separate section of an Application for Payment submitted under Paragraph 4.02.A for lump sum items.
- C. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer's presentation to Buyer of the Application for Payment and Engineer's recommendation.

4.03 *Interest*

- A. All amounts not paid when due will bear interest at the rate allowed by law at the place of the Project.

ARTICLE 5—ASSIGNMENT OF PROCUREMENT CONTRACT

5.01 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Procurement Contract will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, Procurement Contract payments or other money that may become due, and Procurement Contract payments or other money that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or

discharge the assignor from any duty or responsibility under the Procurement Contract Documents.

ARTICLE 6—PROCUREMENT CONTRACT DOCUMENTS

6.01 *List of Procurement Contract Documents*

- A. The Procurement Contract Documents consist of the following:
 - 1. This Procurement Agreement.
 - 2. General Conditions of the Procurement Contract.
 - 3. Supplementary Conditions of the Procurement Contract.
 - 4. Procurement Specifications as listed in the Procurement Specifications table of contents.
 - 5. Procurement Drawings (not attached but incorporated by reference):
 - a. consisting of a cover sheet and sheets numbered T1 through 606-88, inclusive, with each sheet bearing the following general title: Sawyer Loop Bridge over Williams Coulee.
 - 6. Addenda (numbers 1 to 2, inclusive).
 - 7. Special Provisions with the title 'SAWYER LOOP BRIDGE OVER WILLIAMS COULEE SPECIAL PROVISIONS'.
 - 8. Exhibits to this Procurement Agreement (enumerated as follows):
 - a. Documentation submitted by Seller (if applicable); and
 - 9. The following which may be delivered or issued on or after the Effective Date of the Procurement Contract and are not attached hereto:
 - a. Change Orders;
 - b. Change Directives; and
 - c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Contract Documents other than those listed above.
- D. The Procurement Contract Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

ARTICLE 7—SELLER'S REPRESENTATIONS AND CERTIFICATIONS

7.01 *Seller's Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
 - 1. Seller has examined and carefully studied the Procurement Contract Documents.

2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.
3. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
7. Seller's entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods and Special Services as required by the Procurement Contract Documents.

7.02 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Contract. For the purposes of this Paragraph 7.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Procurement Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Contract to the detriment of Buyer, (b) to establish bid or contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Contract.

ARTICLE 8—RESERVED

8.01 *Reserved*

ARTICLE 9—MUTUAL WAIVER

9.01 *Mutual Waiver of Consequential Damages*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Contract. If Buyer (Project Owner) assigns this Procurement Contract to a construction contractor (Contractor/Assignee), then the terms of this Paragraph 9.01.A will be binding upon the Contractor/Assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Contract.

IN WITNESS WHEREOF, Buyer and Seller have signed this Procurement Agreement. Counterparts have been delivered to Buyer and Seller.

The Effective Date of the Procurement Contract is January 16, 2025.

Buyer

BIG HORN COUNTY MONTANA
(typed or printed name of organization)

By: [Signature]
(individual's signature)

Date: 01.16.2025
(date signed)

Name: GEORGE REAR BIRD JR
(typed or printed)

Title: COUNTY COMMISSIONER
(typed or printed)

Attest: [Signature]
(individual's signature)

Title: Administrative Assistant
(typed or printed)

Address for giving notices:

PO Box 908
HARDIN MT 59034

Designated Representative:

Name: AJ Espinoza
(typed or printed)

Title: Road Superintendent
(typed or printed)

Address:

PO Box 968
HARDIN, MT 59034

Phone: 406-665-9863

Email: aespinoza@bighorncountymt.gov

(If Buyer is a corporation, attach evidence of authority to sign. If Buyer is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Seller

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

(If Seller is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____