

**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 18, 2024  
9:30 AM**

**Members**

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

1. Call to Order

Commissioner Vandersloot, Presiding Officer calls meeting to order.

2. Roll Call

Commissioner Vandersloot, the Presiding Officer, Commissioner Real Bird, member, were in attendance.

3. Claim Approvals

Commissioner Real Bird entertained a motion to approve claims 1164. The motion was seconded by Commissioner Big Hair and passed unanimously.

4. Approve Minutes and Supporting Documents

Commissioner Real Bird entertained a motion to approve the minutes from December 7th and 8th, 2023. The motion was seconded by Commissioner Vandersloot and passed unanimously.

5. Personnel/Legal

6. Old Business

7. New Business

**Randall Rd. Bridge Advertisement**

Adam Hagal, Stahly, joined via conference phone. He clarified the delivery date of the steel is on May 31, 2024. The Board authorizes Adam to put the bid advertisement out for the bridge. They will have a pre-bid meeting on January 26, 2024 at 1 p.m.

**Morrison Maierle PER Agreement**

Commissioner Real Bird entertained a motion to approve the Wyola Waste Water PER with Morrison-Maierle, INC. The motion was seconded by Commissioner Vandersloot and passed unanimously.

8. Public Comments

9. Discussion

10. Adjourn

There being no other business, the board adjourned.

Approved: \_\_\_\_\_

Larry Vandersloot, Presiding Officer

Attest: \_\_\_\_\_

Peri Schenderline, Deputy Clerk & Recorder



## STANDARD AGREEMENT BETWEEN CLIENT AND MORRISON-MAIERLE, INC.

Project Number 1674.030.00

Project Name Wyola WW Preliminary Engineering Report

This is an Agreement made as of January 18<sup>th</sup>, 2024 between MORRISON-MAIERLE, INC. (CONSULTANT) and Big Horn County, Montana, (CLIENT).

The Client intends to complete a Preliminary Engineering Report and sewer main cleaning and video inspection for the Wyola wastewater system (brief description of the project).

### CONSULTANT'S RESPONSIBILITIES

The Scope of Services shall consist of the following which shall be referred to as the Project: completion of a Preliminary Engineering Report and sewer main cleaning and video inspection for the Wyola wastewater system as described in Attachment A.

The Project Schedule is described in Attachment B.

CLIENT and CONSULTANT in consideration of their mutual covenants herein agree to the performance of professional services by CONSULTANT and the payment for those services by CLIENT as set forth below:

### METHOD OF PAYMENT

If unforeseen conditions are discovered during the Project, the CLIENT agrees that the desired work may be completed at an additional cost. This cost will be communicated with the CLIENT at the earliest convenience with details on the additional expense.

Payment is due upon receipt of CONSULTANT's statement(s). CLIENT agrees to pay interest at the maximum legal rate allowed by law for payments not received within 30 days after receipt of the statement. We reserve the right to withhold final documents until payment is made.

- ☐ Method 1 - HOURLY RATE - Hourly rates as specified in the Special Provisions or attachments hereto, plus an amount equal to CONSULTANT's actual reimbursable expenses related to the project times a factor of . The total compensation for services identified herein is estimated to be .
- ☒ Method 2 - LUMP SUM - A lump sum fee of \$90,000.
- ☐ Method 3 - RETAINER - Deposit with MMI a retainer fee in the amount of Dollars. It is understood that all invoices or charges will be charged against said retainer. If effort consumes the retainer and additional services are required, then the Owner shall replenish the retainer in the agreed upon amount within 5 business days. Failure to replenish retainer will be sufficient cause to immediately stop work and withhold delivery of the work product.
- ☐ Method 4 - SPECIFY -

### SPECIAL PROVISIONS AND ATTACHMENTS

The following Special Provisions and Attachments are integrated into and form a part of this Agreement.

- ☒ Scope of Services (Attachment A)
- ☒ Schedule (Attachment B)
- ☐ Budget Worksheet
- ☐ Hourly Rate Schedule
- ☐ Engineer's Fee Estimate
- ☐ Other Additional Information:



## GENERAL PROVISIONS OF STANDARD AGREEMENT

The following General Provisions of Standard Agreement are integrated into and form a part of this Agreement.

### SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 CONSULTANT shall perform the services as set forth in the Scope of Services as described on page one of this Agreement, or as further described in Attachments hereto.

1.2 Execution of this Agreement by the CLIENT constitutes written authorization for the CONSULTANT to proceed.

1.3 CONSULTANT shall serve as the CLIENT'S prime professional consultant representative for the Project and perform services as set forth in the Agreement.

1.4 CONSULTANT shall advise CLIENT as to the necessity of the CLIENT providing or obtaining data from others or services required for the Project which are not part of the CONSULTANT'S Scope of Services. The CONSULTANT shall not be responsible for any damages or consequences resulting from the CLIENT's failure to provide or obtain the data or services identified. If CONSULTANT recommends any services that the CLIENT declines to authorize, the CLIENT hereby agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless CONSULTANT, its officers, directors, employees and subconsultants from any damages, liabilities or costs arising out of or in any way connected with CONSULTANT not providing these services.

1.5 If the project requires the CONSULTANT'S services during the construction phase of the project, the scope of services shall be as set forth on page one or as described on attachments hereto. CONSULTANT will determine, in general, if the work is proceeding in a fashion such that, once complete, the work will substantially conform to the design intent of the Contract Documents. CONSULTANT will not perform exhaustive or detailed review of the Contractor's work. If the CONSULTANT is retained as the commissioning authority, then the Consultant will perform the review of the Contractor's work expressly written in the commissioning authority's scope of services. CONSULTANT shall not be responsible for Contractor's construction means, methods, sequence, safety program, techniques or procedures necessary for performing the work.

CONSULTANT shall not be responsible for the acts or omissions of any Contractor or Subcontractor or any other persons at the site or otherwise performing any of the Contractor's work. However, nothing contained herein shall be construed to release CONSULTANT from its responsibilities to properly perform duties undertaken by the Consultant as set forth in this Agreement.

1.6 In providing services under this Agreement, CONSULTANT will endeavor to perform in a manner consistent with that degree of care and skill ordinarily used by members of CONSULTANT'S profession practicing under similar conditions at the same time and in the same locality on the same or similar projects ("Standard of Care"). If the CONSULTANT'S scope of services includes design, CONSULTANT will perform the design services in compliance with existing codes and regulations in place and applicable at the time the design is prepared. CLIENT understands that the CONSULTANT cannot anticipate changes in applicable statutes, codes, or regulations, or the project site or environmental conditions. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's services. The CONSULTANT will be notified in writing of any alleged errors or omissions. Upon receipt of this notice, CONSULTANT will review the alleged error or omission. If CONSULTANT agrees its services have not met this standard, CONSULTANT will assist in determining corrective action.

1.7 The CLIENT, without invalidating this Agreement, may request a change in the scope of services and CONSULTANT shall issue to CLIENT a proposal setting forth an adjustment to the scope of services, budget, and schedule for the additional services provided by CONSULTANT. Any modification to this Agreement must be in the form of a written Amendment and executed by both CONSULTANT and CLIENT. If the CLIENT elects to reduce CONSULTANT'S scope of services, the CLIENT shall release, hold harmless, defend and indemnify CONSULTANT from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

1.8. If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the CONSULTANT are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of



risks or other material terms of this Agreement, the CONSULTANT may call for renegotiation of appropriate portions of this Agreement. The CONSULTANT shall notify the CLIENT of the changed conditions necessitating renegotiation, and the CONSULTANT and the CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement in accordance with Article 4.9.

1.9 If CONSULTANT'S scope of services includes review of submittals or other similar items, CONSULTANT shall review and accept or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The CONSULTANT'S review shall be conducted with reasonable promptness while allowing sufficient time in the CONSULTANT'S judgment to permit adequate review. Review of a specific item shall not indicate that the CONSULTANT has reviewed the entire assembly of which the item is a component. The CONSULTANT shall not be responsible for any deviations from the Construction Documents not brought to the attention of the CONSULTANT in writing by the Contractor. The CONSULTANT shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

1.10 The Americans with Disabilities Act, the Fair Housing Amendments Act, and related federal and state "accessibility" laws and regulations (collectively "Acts") are not detailed building codes. The requirements of the Acts are general in nature and open to differing interpretations. The CONSULTANT will provide services in a manner consistent with the intent of the Acts and shall comply with the Standard of Care in responding to the requirements of the Acts, but does not warrant or guarantee that the project will satisfy all possible interpretations or applications of the Acts. The CONSULTANT AND CLIENT each respectively understand that they are bound by applicable state and federal law and local ordinances. This includes, but is not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, PL 101-336, Section 504 of Rehabilitation Act of 1973, the Patient Protection and Affordable Care Act, [P.L. 111-48, 124 Stat. 119], if applicable, 18-5-401, MCA et seq. concerning the Blind Enterprise Program's vending facility rules, and Executive Order No. 12-2015 Amending and Providing For Implementation of the Montana Sage Grouse Conservation Strategy. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, the Parties agrees that (i) the hiring of persons, if any, to perform this Agreement will be made on the basis of merit and qualifications and (ii) there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, military service or veteran status, or marital status by the persons performing this Agreement.

## **SECTION 2 - CLIENT'S RESPONSIBILITIES**

2.1 CLIENT shall provide all previous documents relating to the Project, all criteria and full information as to CLIENT'S requirements for the Project and shall designate a person with the authority to act on CLIENT'S behalf on all aspects of the Project. CLIENT shall give prompt written notice to CONSULTANT whenever CLIENT observes or otherwise becomes aware of any defect in the work or any error or omission in the services provided by CONSULTANT.

2.2 CLIENT shall also be responsible for the following and pay all costs incident thereto:

1. Provide such legal, accounting and other counseling services as may be required for the project.
2. Obtain and pay all costs incidental to obtaining permits from governmental authorities having jurisdiction over the Project.
3. Obtain and furnish approvals from governmental authorities having jurisdiction over the Project.
4. Pay all costs incident to obtaining bids or proposals from Contractor(s).
5. Pay all permit, review and filing fees required by governmental agencies.
6. In the event that the regulations pertinent to this contract are modified by any governing entity that result in changes to the scope of services, CONSULTANT reserves the right to renegotiate the fee of this agreement.

2.3 The CLIENT and CONSULTANT acknowledge that changes in design and/or construction of the Project may be required for a variety of reasons during the design, permitting and construction phases of the Project. As a result, unforeseen



changes may cause the final costs of the Project to exceed the initial Project cost estimates for construction, commissioning, engineering, permitting, planning, and surveying. The CLIENT agrees to set aside sufficient funds as a contingency reserve to be used, as required, to cover any such increased Project Costs. The CLIENT also understands and acknowledges that although the CONSULTANT'S design documents shall be prepared within the Standard of Care, the Contractor may require additional information from the CONSULTANT to clarify, correct, supplement, and coordinate the design intent shown in the Construction Documents that result in increases in the Project Costs, Construction Costs, or Operational Costs, and that these costs may increase even if the CONSULTANT has complied with the Standard of Care.

2.4 CLIENT agrees to provide to CONSULTANT all available information necessary to perform CONSULTANT'S services under this Agreement. The CLIENT shall furnish, at CLIENT'S expense, all information, requirements, reports, data, surveys, and instructions required. CONSULTANT is entitled to rely on the accuracy and completeness of all such information provided.

2.5 CLIENT shall furnish right-of-way entry onto the project site for CONSULTANT to perform necessary field measurements, studies or other activities as required to provide the CONSULTANT'S services.

### **SECTION 3 - PAYMENT TO CONSULTANT**

The method for payment of services is specified on page one of this Agreement.

3.1 Method 1. The CONSULTANT will submit monthly statements requesting payment which shall be based on the amount of services provided and expenses incurred by CONSULTANT during the billing period. Payment is due CONSULTANT upon receipt of statement by CLIENT.

3.2 Method 2. The CONSULTANT will submit monthly statements requesting payment which shall be based on the percent complete. Payment is due CONSULTANT upon receipt of statement by CLIENT.

3.3 Method 3. Full payment of the Retainer is required prior to the start of work. If replenish of Retainer is required full payment of the agreed upon amount is required within 5 business days for continuation of the work.

3.4 Method 4.

3.5 Terms for All Methods:

Reimbursable expenses mean the actual expenses incurred by CONSULTANT or CONSULTANT'S associates or consultants in connection with the Project such as expenses for: transportation, subsistence (including items subject to deduction limitations), telephone calls, postage, and reproduction of documents, computer charges, equipment charges and similar project-related items.

If CLIENT fails to make any payment due CONSULTANT for services and expenses within thirty (30) days after receipt of CONSULTANT'S statement therefore, the amounts due CONSULTANT shall include an additional charge at the maximum legal rate allowed by law plus reasonable attorney fees, court costs and actual expenses incurred in connection with collection of any past due amount.

CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CLIENT for failure of payments when due or any other breach of this Agreement. CONSULTANT shall not have any liability whatsoever to the CLIENT for any costs or damages as a result of such suspension. If CONSULTANT resumes services after payment by CLIENT, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for CONSULTANT to resume performance. If an invoice remains unpaid for more than 90 days, CONSULTANT shall have the right, but not the obligation, to initiate collection procedures. If the CLIENT fails to make payment when due and CONSULTANT incurs any costs in order to collect sums from the CLIENT, the CLIENT agrees that all such collection costs incurred shall immediately become due and payable to CONSULTANT. This obligation of CLIENT to pay CONSULTANT'S collection costs shall survive the term of this Agreement or any termination by either party.

If the CLIENT fails to make payment to CONSULTANT in accordance with this Agreement, this failure shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by CONSULTANT



## SECTION 4 – OTHER TERMS AND CONDITIONS

4.1 All documents including reports, drawings, specifications and other deliverables, whether in printed or electronic media format, prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service of CONSULTANT and CONSULTANT shall be deemed the owner and author of such instruments of service. CONSULTANT shall retain all common law, statutory law and other rights, including, without limitation, all copyrights, in the instruments of service whether or not the Project is completed and regardless of whether the information is provided in paper or electronic format. CLIENT may make and retain copies for information and reference in connection with the use and occupancy of the project by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project.

The CLIENT shall not reuse or make any modification to the documents, drawings, data, or electronic files without the prior written consent of CONSULTANT. In the event the CLIENT, or the CLIENT's Contractors, subcontractors, or anyone else for whom the CLIENT is legally responsible, makes any changes to the information provided by CONSULTANT without CONSULTANT'S prior written consent, the CLIENT shall assume full responsibility for the results of such changes and agrees to waive any claim against CONSULTANT and release CONSULTANT from any liability arising directly or indirectly from such changes. In addition, the CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold CONSULTANT harmless from any claim, cause of action, damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from any changes made by anyone other than CONSULTANT or from any reuse of the drawings, data and electronic files without the prior written consent of CONSULTANT.

The CLIENT is aware that differences may exist between the electronic files delivered and any printed hard-copy documents. In the event of a conflict between any signed hard-copy documents by CONSULTANT and electronic files, the signed or sealed hard-copy documents shall govern. CONSULTANT makes no representation as to the compatibility of electronic files with any hardware, software, or system used by the CLIENT or any other party. The CLIENT assumes all risk and cost associated with the use of these files on the CLIENT'S system. Client assumes sole and exclusive responsibility for determining if any conflict exists. Nothing in the electronic files alters the requirements of the Contract Documents, including, and without limitation, the need to check, confirm and coordinate all dimensions and details, take field measurements, verify field conditions, and coordinate the recipient's work with that of other contractors or subcontractors for the various projects

Delivery of the electronic files shall not be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

4.2 Because CONSULTANT has no control over the cost of or availability of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, CONSULTANT'S opinions of probable costs including Project costs, construction costs ("Construction Costs"), or fuel, energy, or power costs ("Energy Costs") are made on the basis of CONSULTANT'S experience and qualifications and represent CONSULTANT'S judgment as an experienced and qualified professional CONSULTANT familiar with the construction industry. CONSULTANT cannot and does not warrant or guarantee that proposals, bids or actual costs including Project Costs, Construction Costs or Energy Costs will not vary from opinions of probable cost prepared by CONSULTANT.

4.3 In recognition of the relative risks and benefits of the Project to both the CLIENT and the CONSULTANT, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the CONSULTANT to the CLIENT, and anyone claiming by or through the CLIENT, for any and all claims, losses, costs, damages of any nature whatsoever, and claims expenses from any cause or causes (including attorneys' fees and costs and expert witness fees and costs), including those resulting from negligence, breach of contract, breach of statutory duty or otherwise (collectively "Claims") so that their total aggregate liability for and in connection with the entire Project, regardless of how limited in scope the services under this Agreement may be, shall not exceed an amount equal to the CONSULTANT'S total compensation under this Agreement ~~or the total amount of \$ \_\_\_\_\_, whichever is greater.~~ The CLIENT further agrees that the officers, principals, directors and employees of the CONSULTANT and its agents will not be individually liable in respect of any Claims, holds such individuals harmless from all Claims and covenants not to bring any Claims against such individuals. Claims by, through or under the CLIENT shall specifically include any claims by purchasers of the Project (both first purchasers and subsequent purchasers), subsequent purchasers of the entire Project (during or after completion), lenders of the CL



IENT and their assignees, any assignee of the CLIENT, and any invitee of the CLIENT. The parties agree that specific consideration has been given by the CONSULTANT for this limitation and that it is deemed adequate. The CLIENT acknowledges that it could obtain a higher liability limit from the CONSULTANT in return for increasing the CONSULTANT's fee, but has elected not to do so.

4.4 Changed or Unforeseen Conditions. The CLIENT recognizes that in the course of completing the services under this Agreement, the CONSULTANT may encounter changed or unforeseen conditions which are beyond the control of the CONSULTANT and thus creating potential for claims and additional costs to the CONSULTANT which are not covered in fees charged and/or earned for services provided. Should any such changed or unforeseen condition occur during the performance of this contract, the CLIENT hereby waives any claim against the CONSULTANT and agrees to defend, indemnify and hold the CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from the CONSULTANT'S encountering of changed or unforeseen conditions other than claims or liability arising from the sole negligence or willful misconduct of the CONSULTANT. The CLIENT agrees to compensate the CONSULTANT for any time spent and expenses incurred by the CONSULTANT in defense of any such claim involving changed or unforeseen conditions with such compensation based upon the CONSULTANT'S prevailing fee schedule and expense reimbursement policy.

4.5 In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement, the CLIENT and CONSULTANT agree that they shall first attempt to resolve the dispute through direct discussion by principals or representatives with full authority to reach a compromise. If the dispute is not resolved through direct discussion, the parties will then submit the matter to mediation by a mutually agreed upon mediator. The mediation shall be held in the city where the project is located, unless the parties mutually agree to hold the mediation in another location. CLIENT and CONSULTANT further agree to include a similar mediation agreement with all Contractors, subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties. The Mediator's fee shall be shared equally by the parties. If the dispute is not resolved by mediation, the matter may then be considered by other methods of dispute resolution.

4.6 If CONSULTANT has reason to believe that the total cost of services to the CLIENT for work under this Agreement shall exceed the budgeted amount, CONSULTANT shall inform CLIENT in writing of such and submit a revised estimated project cost for approval. CLIENT shall not be obligated to reimburse CONSULTANT for costs incurred in excess of the estimated cost set forth in this Agreement and CONSULTANT shall not be obligated to continue performance under the Agreement or to incur costs in excess of the estimated cost set forth in this Agreement unless and until CLIENT has notified CONSULTANT in writing that the amount has been amended and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of services under this Agreement.

4.7 Any litigation or other dispute arising out of or relating to this Agreement shall be governed by the law of the state in which the project is located regardless of conflict of law principles or any other choice of law provision. Unless otherwise precluded by the law of the state in which the project is located, venue and jurisdiction for any dispute shall either be in the state in which the project is located or, at Morrison-Maierle, Inc.'s sole option and discretion, may be in the First 22<sup>nd</sup> Judicial District Court, Lewis and Clark Big Horn County, Montana.

4.8 The CONSULTANT shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the CONSULTANT cannot ascertain.

4.9 Either party may terminate this Agreement for cause upon 10 calendar days' written notice for the following reasons:

1. Substantial failure by either party to perform in accordance with this Agreement;
2. Assignment of this Agreement without the written consent of the other party;
3. Suspension of the project or CONSULTANT'S services for more than 60 calendar days, consecutive or aggregate;
4. Material changes in the conditions under which this Agreement was executed, the Scope of Services, the nature of the project, or the failure of the parties to reach an agreement on compensation and/or schedule adjustments necessitated by such changes.

In the event of a termination not the fault of CONSULTANT, the CLIENT shall pay CONSULTANT, in addition to payment for services rendered and reimbursable expenses incurred, all expenses incurred by CONSULTANT in connection with the



orderly termination of this Agreement, including, but not limited to, demobilization, reassignment of personnel, associated overhead costs, and all other expenses resulting from the termination.

4.10 CLIENT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CLIENT and CONSULTANT. There are no intended third-party beneficiaries of this Agreement.

4.11 In accordance with the terms of this contract, the CONSULTANT will provide labor and materials for the improvement of the CLIENT's property or property for which the CLIENT acts as agent. The terms of this contract also provide for specific payment terms to the CONSULTANT for services rendered. Should the CLIENT not comply with these payment terms, the CLIENT's property or the agent-represented property may be subject to a lien against said property for all services and materials furnished for the project. The right to claim a lien is in compliance with the lien laws of the State under jurisdiction.

4.12 CONSULTANT and CLIENT agree that, without 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 this Agreement is terminated.

4.13 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.

4.14 CONSULTANT and CLIENT do not intend for this Agreement to benefit any third-party. No third-party may claim to be a third-party beneficiary of this Agreement.

4.15 During the term of this Agreement and following its expiration or termination for any reason, neither the CLIENT nor the CONSULTANT shall transfer, assign, convey or sublet any right, claims (including any causes of action or claims alleging breach, loss or damages arising out of this Agreement), duty or obligation under it, nor any other interest therein without the prior written consent of the other party. However, CONSULTANT may, where CONSULTANT deems necessary, hire subconsultants to provide services covered by this Agreement.

4.16 Neither the professional activities of CONSULTANT, nor the presence of CONSULTANT at the construction/project site, shall relieve the general Contractor and all subcontractors of any of their responsibilities and duties to perform the work in accordance with the contract documents and to comply with any health or safety precautions required by any regulatory agencies. CONSULTANT does not have authority to control any Contractor or its employees in connection with their work or any health or safety programs or procedures. The CLIENT agrees that the Contractor and subcontractors are solely responsible for job site safety. Accordingly, the CLIENT shall require the Contractor and all subcontractors to indemnify, and hold harmless the CONSULTANT from any and all claims, losses, suits, damages, and liabilities, including attorneys' fees and costs, arising in any way from such contractors' or subcontractors' services or work product, except to the extent caused by the sole negligence of the CONSULTANT.

4.17 CONSULTANT shall assist the CLIENT in applying for permits and approvals where required by law. In cases where the scope of services requires CONSULTANT to submit, on behalf of the CLIENT, a permit application and/or approval by a third party to this contract, CONSULTANT does not make any warranties, guarantees, or representations as to the success of CONSULTANT'S effort on behalf of the CLIENT. Payment for services rendered by CONSULTANT is not contingent upon the successful acquisition of these permits.

4.18 Notwithstanding any other provision in this Agreement, neither the CLIENT nor CONSULTANT, their respective officers, directors, shareholders, partners, employees, agents, members, subconsultants, or employees shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or in any way connected to the project or this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action.



4.19 This Agreement is the entire agreement between CONSULTANT and CLIENT. It supersedes all prior communications, understandings, and agreements, whether oral or written. Any Amendment or modification to this Agreement must be written and executed by both CONSULTANT and CLIENT.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

**CLIENT:**

Big Horn County, Montana

Signed: 

By: George Real Bird III

Title: District 1 Commissioner

Signed: 

By: Lawrence Pete Big Hair

Title: District 2 Commissioner

Signed: 

By: Larry Vandersloot

Title: District 3 Commissioner, Presiding Officer

Contact Information and Address for giving notices:

George Real Bird III Peri Schenderline

PO Box 908

Hardin, MT 59034

Email: ~~grealbird3@bighorncountymt.gov~~ PSchenderline@bighorncountymt.gov

Phone: (406) 665-9700

Address for Invoices (if different)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONSULTANT:**

Morrison-Maierle, Inc.

Signed: 

By: Jill A. Cook, PE

Title: Vice President

Contact Information and Address for giving notices:

Stephanie Seymanski, PE

315 N. 25<sup>th</sup> Street, Suite 102

Billings, MT 59101

Email: sseymanski@m-m.net

Phone: (406) 237-1243

Project Number: 1674.030.00

Project Name: Wyola Wastewater Preliminary Engineering Report



**ATTACHMENT A**  
**SCOPE OF SERVICES**  
**FOR**  
**WYLOA WASTEWATER PRELIMINARY ENGINEERING REPORT**

Background Information. Big Horn County is sponsoring the completion of a wastewater preliminary engineering report for the Wyola community. The County approved a request by the Apsaalooke Water and Wastewater Authority (AWWWA) to provide Minimum Allocation Grant (MAG) funds allocated to Big Horn County and matching funds from the County's Local Fiscal Recovery funds. These funds originated from the American Rescue Plan Act (ARPA).

The scope of services includes the completion of a Preliminary Engineering Report (PER) for the Wyola wastewater system which consists of collection and treatment facilities. The PER will be used for planning purposes and can be used in the submittal of grant applications for State and Federal funding for recommended improvement projects. Fieldwork will provide supporting information for the evaluation of the Wyola wastewater facilities. This project will be completed with guidance and input from Apsaalooke Water and Wastewater Authority (AWWWA) representatives and other stakeholders designated by AWWWA. Morrison-Maierle will communicate and coordinate regularly throughout the project with AWWWA, the designated Big Horn County representative, and other stakeholders. The scope of services to complete this work has been organized into seven individual tasks. The major elements of these tasks are as follows:

❑ **Task 1 – Initial Planning**

Task 1 will consist of the compilation and analysis of field and planning data that will be the basis for the PER. Elements of this task include:

- a. Kick-off Meeting: The project will be initiated with a virtual kick-off meeting with representatives from AWWWA, Big Horn County, and other stakeholders designated by AWWWA to discuss the schedule, scope of work, fieldwork, available information and data, financial data for the Wyola wastewater system (if any), and identification of the planning and services areas. It is anticipated that the meeting will be conducted by conference call. At the kick-off meeting, the planning and service areas will be identified with the aid of AWWWA and Tribal representatives. Morrison-Maierle has previously obtained as-built information, memorandum of agreements, transfer agreements, and sanitary surveys for the Wyola wastewater system from Indian Health Service and the Environmental Protection Agency. A list of these resources will be prepared and provided to all stakeholders to confirm that all wastewater system information and data has been obtained that is currently available. Any new information identified will be requested for use in the completion of the PER.
- b. Preliminary survey work to inventory the existing wastewater system: Fieldwork will provide manhole, lift station, and treatment facility location and configuration information that will facilitate the analysis, planning, and



development of recommendations for the Wyola wastewater system. Existing water system valves and fire hydrants will also be surveyed to evaluate separation distances between wastewater and water facilities. A drone survey will be completed to provide an aerial image to be used for PER figures. Morrison-Maierle will coordinate with AWWWA operators in the completion of this fieldwork.

- c. **Sewer Main Cleaning and Video Inspection:** Morrison-Maierle will contract with a subcontractor to complete sewer main cleaning and video inspection of the Wyola sewer mains. A Morrison-Maierle representative will be on-site with the subcontractor to coordinate this effort with the subcontractor and with AWWWA operators. While the Morrison-Maierle representative is on-site, they will also take and log photos of the wastewater system and obtain other field data required for the evaluation of the wastewater system. Morrison-Maierle will also coordinate with AWWWA operators in the completion of this work. This information will be used to evaluate the condition of the sewer mains.
- d. **Prepare Planning Figures:** Figures will be prepared to illustrate the Wyola planning and service areas, existing collection system, and existing treatment facility.
- e. **Wastewater Flows:** Average daily and peak hourly wastewater flows and loads will be calculated for the Wyola community. Wastewater flows and loads will be developed for a 20-year planning period in conjunction with development of population projections. Morrison-Maierle will work with the County, AWWWA, and Tribal representatives to project population growth and understand anticipated residential and non-residential growth.
- f. **System Evaluation:** The collection system and treatment systems will be evaluated for their condition, performance, and capacity. Needs and deficiencies will be identified as they relate to age of facilities, ability to convey and process the community's wastewater, and capacity to serve the current and future Wyola population.

## **□ Task 2 – Wastewater System Alternatives Development**

Task 2 will consist of development and evaluation of improvement alternatives that will address identified needs and the development of the recommended alternative. Specifically, Task 2 will include:

- a. **Summary of Federal Requirements:** Current and future Federal regulations pertaining to the wastewater system will be summarized.
- b. **Wastewater Collection System Improvements:** Based on the planning period and projected flow rates, collection system and treatment alternatives will be developed. Alternatives may include replacement or rehabilitation of sewer mains and needed improvements at the treatment facility and lift station. Conceptual figures will be prepared that summarize the alternatives. Figures will be prepared to summarize wastewater system alternatives.



- c. Development of Selected Alternatives: Preferred alternatives will be selected based on a comparison of costs as prepared in Task 3, as well as constructability, and general feasibility.

#### ❑ **Task 3 – Cost Estimates**

Estimated project costs, annual operating and maintenance costs, and a present worth analysis will be completed for the alternatives in Task 2. This will allow for comparison of the alternatives based on costs and assist in developing a funding strategy.

#### ❑ **Task 4 – Environmental Evaluation**

Task 4 will consist of an environmental evaluation including the following:

- a. Completion of the Uniform Environmental Checklist for the selected alternatives and the MCEP Environmental Review Form.
- b. Soliciting review comments from various local, State, and Federal agencies concerning environmental impacts of the selected projects.
- c. Completion of any additional Environmental reports or tasks is excluded from this scope. An Environmental Report or Assessment or completion of the Section 106 process required by USDA Rural Development is not included herein.

#### ❑ **Task 5 – Prepare Preliminary Engineering Report**

Task 5 will consist of the compilation of the above information for the preparation of the Wastewater Preliminary Engineering Report to meet the requirements of the funding agencies. Information developed in Tasks 1 through 4 above and obtained from the public meetings in Task 6 below will form the basis of the PER and will be incorporated into the report.

The PER will cover the following topics as prescribed by the Uniform Application: Executive Summary, Project Planning, Existing Facilities, Need for Project, Alternatives Considered, Selection of an Alternative, Proposed Project, and Conclusions and Recommendations. The following deliverables are anticipated:

- a. Up to five draft review copies of the Preliminary Engineering Report will be furnished to AWWWA and Big Horn County for review and comment.
- b. The PER will be revised in response to review comments, as appropriate. Up to five copies of the final PER will be furnished to AWWWA and Big Horn County.
- c. The draft and final PERs will be provided electronically as a pdf to AWWWA, Big Horn County, and stakeholders.



❑ **Task 6 - Presentations and Public Participation**

Morrison-Maierle will support AWWWA in delivering two public meetings to update the public, seek input, promote public support, and comply with State and Federal funding requirements. This scope of services and the corresponding fee do not include payment for any advertising costs for the public meetings. It is assumed that the public meetings will be held in Wyola. Morrison Maierle will develop and present information as described below for each meeting. It is assumed that representatives from AWWWA and Big Horn County will also be in attendance to facilitate, answer questions, and make meeting introductions. The following subtasks are anticipated as follows:

- a. Public Meeting No. 1 – The first public meeting will be used to inform the public of the proposed planning criteria for the wastewater system and present general and background information. This meeting will also be used to solicit input from the community on wastewater needs and public priorities. At this presentation, information developed in Task 1 will be presented.
- b. Public Meeting No. 2 – The second public meeting will be used to present the proposed wastewater system alternatives and project cost estimates, including preliminary recommendations.
- c. Both meetings will meet MCEP and RRGL requirements. The second meeting will include an environmental discussion to address MCEP environmental requirements. If AWWWA anticipates applying for CDBG funding, the meetings will be further customized to meet CDBG requirements. Morrison-Maierle will work with the County and AWWWA to ensure that proper notice is given for the public meetings. Public hearing documentation and comments will be incorporated into the final PER.

❑ **Task 7 – Grant Administration**

Morrison-Maierle will contract with Nittany Grantworks to provide grant administration. The scope of services for this task is summarized on the following page.





## **Proposal to Provide Grant Administration Services to the Wyola Wastewater PER Project**

### **SCOPE OF WORK**

ARPA MAG funds were awarded to Big Horn County for the Wyola Wastewater PER Project. The project entails cleaning and tv inspection of sewer mains and preparation of a wastewater PER. Nittany Grantworks proposes to provide grant administration services to Big Horn County as a subconsultant to Morrison Maierle, Inc.

The services proposed by Nittany Grantworks staff, in consultation with Big Horn County, Wyola CDP, and Morrison Maierle representatives, include but are not limited to:

- completing start-up tasks;
- preparing DNRC Vendor Invoice forms;
- tying invoices to the project budget;
- providing receipts and cancelled checks, as needed;
- preparing the Uniform Budget and Status of Funds Tracker Excel spreadsheets;
- preparing Request for Relief Letters, as needed; and,
- assisting with preparation of Progress Reports and Final Report, as needed.

### **TERM**

The term is nine (9) months.

### **COST**

Nittany Grantworks proposes to complete the scope of work in no more than 44.44 hours based on approximately 4.94 hours/month for nine (9) months. The hourly rate for services is \$90.00. **The total fee for services will not exceed \$4,000.**



## **ATTACHMENT B**

### **SCHEDULE**

#### **FOR**

#### **WYLOA WASTEWATER PRELIMINARY ENGINEERING REPORT**

The schedule for completion of the Wyola Wastewater Preliminary Engineering Report (PER) work is summarized below. Timeframes are estimated and are highly dependent on timely receipt of input from stakeholders. Delays in receiving information, input, or feedback will translate into delays in the schedule that are outside the control of the Engineer. Nittany Grantworks schedule shall be adjusted accordingly to coincide with the Engineer's schedule.

- Within 30 days of receipt of a signed engineering services agreement from Big Horn County: Complete MAG start-up tasks. Submit required start-up documents to Big Horn County for review and approval. Upon return of documents from the County, submit documents to the Montana Department of Natural Resources (DNRC). Once start-up conditions have been met, DNRC will issue an agreement to the County for the MAG funds. Engineering services will not commence until this contract is signed.
- Within 30 days of transmittal of the fully executed agreement between the Montana Department of Natural Resources and Big Horn County to the Engineer: Virtual kick-off meeting with AWWWA, County, and stakeholders. Gather all available data and define planning and service areas.
- Within 90 days of virtual kick-off meeting and receipt of data: Complete field work including survey and sewer main cleaning and video inspection. This work is weather dependent and is anticipated to be completed in the spring or summer of 2024.
- Within 60 days of completion of field work: Prepare Project Planning and Existing Facilities chapters. Submit Planning and Existing Facilities chapters to AWWWA, County, and stakeholders. AWWWA, Big Horn County, and stakeholders shall submit review comments within 21 days.
- Within 30 days of receipt of review comments: Address review comments and conduct the first public meeting. Continue with system analysis and evaluation.
- Within 90 days of first public meeting: Draft remaining PER chapters. Prepare Environmental Checklist. Submit draft PER to AWWWA, Big Horn County, and stakeholders. AWWWA, Big Horn County, and stakeholders shall submit review comments within 21 days.
- Within 30 days of receiving draft PER review comments: Address review comments and conduct second public meeting.
- Within 60 days of second public meeting: Finalize PER and submit to AWWWA, Big Horn County, and stakeholders.
- Within 45 days of submitting Final PER: Complete project closeout.