

August 16, 2019

Mr. Brent Brooks
Billings City Attorney
P.O. Box 1178
Billings, MT 59103

**Re: Billings Noise Ordinance Revision
Dayliss Stadium Sound Measurements
Scope of Work and Cost Estimate
BSA Project #19142**

Dear Brent:

Thank you for your interest in the services of Big Sky Acoustics (BSA) to measure and analyze the sounds around Dayliss Stadium in Billings. It is the understanding of BSA that the City of Billings is in the process of revising the City Noise Ordinance, and that noise complaints have been received from residents near Dayliss Stadium since a new sound system was installed approximately three years ago. BSA proposes the following scope of work to complete sound level measurements and provide recommendations for addressing the residents' concerns.

SCOPE OF WORK

1. BSA will conduct one round trip from Helena to Billings during the 2019 high school football season to evaluate the Dayliss Stadium sound system and the sound propagation to residential areas. BSA will meet with stadium personnel to discuss the sound system equipment, and will meet with residents to discuss their perceptions and complaints. The City of Billings will coordinate access to residential properties and the stadium.
2. During the site visit, BSA will conduct measurements to quantify the sound levels of the sound system while the system is being controlled by stadium personnel. The measurements will be conducted during the day when a game is not occurring, so the sound system can be manipulated to change the overall volume and frequency spectrum, if possible. Short-term measurements (up to 10-minutes in duration) at up to four locations in the nearby residential areas will be conducted to determine the overall sound levels and frequency spectra.

Sounds levels will be measured according to the procedures outlined in the American National Standard (ANSI) S12.18, *Procedures for Outdoor Measurement of Sound Pressure Level*. During each measurement, observations will be made noting audible sound sources, dominant

noise sources, weather conditions, etc. BSA will continuously monitor the sound level meter during the short-term noise level measurements.

Please note that to produce useful data, measurements must be conducted while the wind speed is less than 12 mph and there is no precipitation. If a measurement must be rescheduled after arriving at the site due to conditions beyond the control of BSA, such as the weather, property access, etc., the cost for additional labor and expenses required will be considered Additional Services.

3. During the same visit, BSA will also measure the noise at the same residential locations used for Item #2 during a football game at Dayliss Stadium.
4. Based on the measured sound level data and observations, BSA will develop recommendations to balance the use of the sound system for fans in the stadium and residents living nearby.
5. BSA will summarize the sound level measurements, observations and recommendations in a written report. The report will include 8-1/2"x11" sketches or details of the recommended constructions and configurations as required for clarity.

Additional Services

Tasks that are not covered in the Scope of Work Items listed above shall be considered Additional Services. Such services may include attendance at meetings, additional site visits or noise level measurements, etc. Additional services may be conducted for additional fees.

COMPENSATION

BSA proposes to complete the project on an hourly, not-to-exceed basis using BSA's 2019 billable rates of: Acoustical Consultant – \$158/hour and Senior Scientist – \$118/hour.

BSA will complete the project for fees not-to-exceed: \$ 7,800.00

Big Sky Acoustics, LLC shall provide detailed progress invoices once per month. A description of tasks completed shall be provided within the invoice. The City of Billings shall pay Big Sky Acoustics, LLC for services actually performed within thirty (30) days of receipt of the invoice.

In the event of any failure of payment by the City of Billings when due, Big Sky Acoustics, LLC shall have the right to suspend work on the project and may retain any and all work products whether prepared by Big Sky Acoustics, LLC or submitted to Big Sky Acoustics, LLC by others, until the City of Billings makes all outstanding payments current. In such event, Big Sky Acoustics, LLC shall have no liability for any damages or losses that may result from any delay associated with the suspension of work or for the withholding of work products.

In the event that the services provided by Big Sky Acoustics, LLC under the Scope of Work and this Agreement are terminated by the City of Billings for any reason, Big Sky Acoustics shall be paid for all services it has performed prior to receiving written notice of termination. The City of

Billings hereby agrees to pay Big Sky Acoustics, LLC such additional termination costs and expenses necessary to close out the project.

INDEPENDENT CONTRACTOR RELATIONSHIP

No agent or employee of Big Sky Acoustics, LLC or the City of Billings shall be deemed to be an employee or agent of the other. Big Sky Acoustics, LLC and the City of Billings agree and acknowledge that their relationship is one of independent contractor and not as employee or agent of the other. No other relationship is intended or created under this Agreement, and neither party to this contract shall have authority to make any statements, representations, or commitments of any kind or to take any action that will be binding on the other party, except as may be expressly provided for in this Agreement or otherwise authorized in writing.

LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the City of Billings and Big Sky Acoustics, LLC, the risks have been allocated such that the City of Billings agrees, to the fullest extent permitted by law, to limit the liability of Big Sky Acoustics, LLC to the City of Billings, or anyone claiming by or through the City of Billings, for any and all claims, losses, costs, attorney's fees, expenses of litigation or damages of any nature whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, so that the total aggregate liability of Big Sky Acoustics, LLC, will not exceed \$50,000.00, or Big Sky Acoustics, LLC's total fees for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

INDEMNIFICATION

Big Sky Acoustics, LLC shall indemnify and hold the City of Billings, its officers, directors, agents and employees harmless from and against any and all claims, damages, liabilities, fines, penalties, losses, defense costs, including without limitation, reasonable attorneys' fees and other liabilities (collectively "Losses") arising out of or resulting from the negligent performance of the services of Big Sky Acoustics, LLC, provided that:

(1) Any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, excluding the loss of use resulting there from, to the extent caused in whole or in any part by any negligent act or omission of Big Sky Acoustics, LLC, or anyone directly employed by Big Sky Acoustics, LLC.

(2) The obligation of Big Sky Acoustics, LLC under this paragraph shall not extend to the liability of Engineers or Architects, or their agents, arising out of preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications incorporating the acoustical design recommendations and work product provided by Big Sky Acoustics, LLC to the City of Billings.

The City of Billings, shall indemnify and hold Big Sky Acoustics, LLC, its officers, directors, agents and employees harmless from and against any and all claims, damages, liabilities, fines,

penalties, losses, defense costs, including without limitation, reasonable attorneys' fees and other liabilities (collectively "Losses") arising out of or resulting from the negligent acts of the City of Billings in connection with the Project, and the acts of its contractors, subcontractors or consultants or anyone for whom the City of Billings is legally liable.

CONSEQUENTIAL DAMAGES

Neither the City of Billings nor Big Sky Acoustics, LLC shall be liable for any economic losses to the other party including without limitation, claims of loss of profits or any other indirect, incidental, or consequential damages.

INSTRUMENTS OF SERVICE

The City of Billings will not reuse the documents prepared under this Agreement for any other projects without prior written authorization of Big Sky Acoustics, LLC. The City of Billings will hold harmless and indemnify Big Sky Acoustics, LLC from any damages, liabilities, costs or expenses arising from the unauthorized reuse of the final documents prepared under this Agreement by the City of Billings or any person or entity that acquires the documents from or through the City of Billings without the written authorization of Big Sky Acoustics, LLC.

STANDARD OF CARE

Big Sky Acoustics, LLC will perform its services under the Scope of Work and this Agreement consistent with the professional skill and care ordinarily provided by acoustical consultants practicing in similar markets and under similar project conditions. Big Sky Acoustics, LLC is fully experienced and properly qualified to perform acoustical consulting services. However, acoustical consulting services as offered and engaged in by Big Sky Acoustics, LLC does not include "engineering" or "practice of engineering" or the "practice or offer to practice engineering" as these phrases are defined under Montana law.

ASSIGNMENT

Neither Big Sky Acoustics, LLC nor the City of Billings may assign this Agreement, or any payment for services due or to become due under the Scope of Work and this Agreement, without prior written consent of the other. This Agreement is binding on and shall inure to the benefits of the successors and assigns of the parties hereto.

GOVERNING LAW

The parties agree this Agreement was entered into in the State of Montana. This Agreement is governed by, and must be interpreted under, the laws of the State of Montana. Any suit arising from or relating to this Agreement must be brought in Lewis and Clark County, Montana. The parties hereby waive the right to bring suit elsewhere. The parties waive any defense of personal or subject matter jurisdiction.

ENTIRE AGREEMENT

This Agreement, including the Scope of Work is intended by Big Sky Acoustics and the City of Billings as the final, complete, and exclusive expression of the terms and conditions of this Agreement. No prior dealings between the parties and no usage of the trade shall be relevant to supplement this Agreement. This Agreement shall supersede all prior written and/or oral agreements between the parties hereto.

CONCLUSION

Thank you again for your interest in the consulting services of BSA. If you have any questions regarding this agreement, please do not hesitate to call me at (406) 457-0407, or email me at sean@bigskyacoustics.com. Otherwise, please sign and return a copy of this letter to indicate your approval, so that the project can be scheduled.

Sincerely,



Sean Connolly, INCE Bd. Cert.
BIG SKY ACOUSTICS

Accepted by: The City of Billings

Signature

Date

Printed Name/Title