

## CONSTRUCTION SERVICES AGREEMENT

### Public Works Utilities Emergency Repair Services

**This Agreement** is made and entered into July 1, 2021 between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman St., Missoula, MT 59802-4297, referred to here as “City,” and **Western Excavating**, 4685 Mullan Road, Missoula, MT 59808, referred to here as “Contractor.”

WHEREAS, the City desires to utilize Contractor to furnish independent services in connection with constructions projects involving water facility infrastructure; and

WHEREAS, Contractor has represented to the City that Contractor has the necessary expertise to furnish said services and has available to Contractor the necessary staff and resources to perform the independent services in a timely manner consistent with the nature of the project.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

- 1. Purpose:** City agrees to hire Contractor as an independent contractor to perform emergency repair services on underground utility infrastructure for City.
- 2. Effective Date:** This agreement is effective on the date of its execution and will terminate on the 30<sup>th</sup> day of June, 2022, or upon 30 days’ notice by the City to Contractor of its desire to terminate the Agreement by giving such notice to Contractor’s designated liaison identified below.
- 3. Scope of Work/Task Deadlines:** Contractor will perform emergency public utility repair work on an as needed basis as directed by the City’s Public Works Director or the Deputy Public Works Director - Utilities.
- 4. Payment:** City agrees to pay Contractor for emergency repair services performed pursuant to the prices listed in Exhibit B. Any alteration or deviation from the described work that involves extra costs will be performed by Contractor after written request by the City and will become an extra charge over and above the agreement amount. The parties must agree in writing upon any extra charges. In no event shall the work performed or authorized under this contract exceed \$24,999 in total costs.
  - a.** City agrees to pay Contractor for services outlined in Exhibit A in accordance with the terms and conditions laid out in Exhibit B – Compensation, and Contractor shall be compensated for services authorized pursuant to Section 4 above, which have not been identified at the time of executing this Agreement as more particularly described in a fully approved and executed addendum to this Agreement. Payment for work beyond that described in Exhibit A or as contained in a fully approved and executed addendum to this Agreement is expressly denied without prior written authorization from the City. This authorization must include signature of the Public Works Director or the City’s Mayor.

b. Contractor shall submit monthly statements for basic and additional services rendered. City shall pay Contractor within 30 days of receipt of an itemized invoice for the services rendered or shall notify Contractor of any dispute by City concerning the performance of any services and the basis therefore and shall pay Contractor within thirty days for the services not in dispute. If any items are disputed by City, Contractor and representatives of the City shall meet and confer regarding the disputed items within ten business days after City notifies Contractor of the services in dispute. City shall pay for any disputed services for which the dispute has been resolved to the satisfaction of the City within thirty days after such resolution.

**5. Independent Contractor Status:** The parties agree that Contractor, is an independent contractor for purposes of this agreement and the parties agree that Contractor is and shall be an independent contractor when performing services pursuant to this agreement. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted by law.

Contractor shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

**6. Indemnity and Insurance:** To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or Contractor's agents or employees.

For this purpose, Contractor shall provide City with proof of Contractor's liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:

- Workers' Compensation—statutory
- Employers' Liability—\$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Commercial General Liability—\$1,000,000 per occurrence; \$2,000,000 annual aggregate

- Automobile Liability—\$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate
- Professional Liability—\$1,000,000 per claim; \$2,000,000 annual aggregate

City shall be included or named as an additional or named insured on the Commercial General and Automobile Liability policies. The insurance must be in a form suitable to City.

**7. Warranty:** Contractor warrants that all services and work will be performed in a good workman-like manner in accordance with applicable City standards, and in the absence of such standards in accordance with generally accepted industry standards and practices. Contractor acknowledges that he or she will be liable for any breach of this warranty for a period of two years from the time services are completed.

**8. Compliance with Laws:** Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Contractor agrees to obtain, and maintain for the duration of its work for the City pursuant to this Agreement, a City business license. Contractor acknowledges and agrees that the City will make no payment under this Agreement until a valid City business license has been obtained.

**9. Contractors' Gross Receipts Tax:** Contractor understands that all contractors or subcontractors working on a publicly funded project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

**10. Nondiscrimination and Affirmative Action:** Contractor agrees and shall comply with the following Non-Discrimination and Affirmative Action policies:

**NON-DISCRIMINATION.** All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation, or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

**AFFIRMATIVE ACTION POLICY.** Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

**The City's Affirmative Action Policy Statement is:**

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression, or marital status. In keeping with this commitment, we are assigning to all

department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an “affected” class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

**11. Default and Termination:** If either party fails to comply with any condition of this agreement at the time or in the manner provided for, the other party, at its option, may terminate this agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this agreement.

**12. Modification and Assignability:** This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written agreement, may be considered valid or binding. This agreement may not be enlarged, modified or altered except by written amendment signed by both parties hereto. The Contractor may not subcontract or assign Contractor’s rights, including the right to compensation or duties arising under this agreement, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this agreement.

**13. Liaison:** City’s designated liaisons with Contractor is Bobby Bordner for Missoula Water, Pat Brook for Wastewater, and Marie Noland for Storm Water and Contractor’s designated liaison with City is Eric Richards.

**14. Applicability:** This agreement and any extensions of it shall be governed and construed in accordance with the laws of the State of Montana.

**15. Signing of Contract:** The contract may be signed in counterparts and signed electronically by all parties.

**IN WITNESS WHEREOF,** the parties here have executed this instrument the day and year first above written.

**CONTRACTOR:**  
Knife River

**MAYOR**  
City of Missoula, Montana

\_\_\_\_\_

\_\_\_\_\_  
John Engen

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Martha L. Rehbein, CMC, City Clerk

\_\_\_\_\_  
Jim Nugent, City Attorney

(SEAL)

**EXHIBIT A**  
**Scope of Services**

Contractor, Western Excavating, will provide on-call excavation and earth-moving construction services as necessary to support emergency repair services on the City of Missoula's utility infrastructure. In the event of a need, City will contact Contractor and provide the details of the work needed, and the expected timeframe. Given the emergency nature of the repair work anticipated, Contractor is required to provide the services within hours of the call for services being made by the City.