

Splash Montana 50m Pool Liner Replacement

CITY PROJECT 122150ML

CONTRACT DOCUMENTS



**CITY OF MISSOULA
Parks & Recreation Department
600 Cregg Lane
Missoula, MT 59801**



Prepared by:

City of Missoula Parks & Rec Department Aquatics Program
For further information, visit us or call

Eric Seagrave
Aquatics Manager

600 Cregg Lane
Missoula, Montana 59801
Phone (406) 552-6274
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I N D E X

PROJECT 122150ML
Splash Montana, 3001 Bancroft
50m Pool Liner Replacement

SUBJECT	PAGES
Index	i
Invitation to Bid	1
Instructions to Bidders.....	IB-1 to IB-5
Project Special Conditions	PSC-1 to PSC-6
Contract Agreement	C-1 to C-4
General Conditions of the Contract.....	GC-1 to GC-20
Notice of Award.....	2
Lien/Claim Waiver Form	3
State of Montana Prevailing Wage Rates (Building Construction effective 2022) located at the following website: http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates	

City of Missoula

END OF INDEX

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COMPETITIVE SEALED PROPOSALS (CSP) TO REPLACE 50m Pool Liner at SPLASH MONTANA, Project 122150ML

The City of Missoula (City) is requesting proposals from experienced professionals to design, provide and install a new pool liner for the 50m pool at Splash, Montana, **City project No. 122150ML**

The City will select one (1) Supplier to provide equipment, materials and labor for the pool as outlined in this request.

The full request is available on the City's website at City of Missoula website at www.ci.missoula.mt.us/bids.

1. Proceed to the City of Missoula web site www.ci.missoula.mt.us/bids, click on the "All Other Bids, RFPs & RFQs". You then will be directed to the City's
2. Select the project listed in this advertisement from the list of projects. Prospective bidders may view the Instructions to Bidders by clicking on 'related documents'.

The project generally consists of, but is not necessarily limited to, the following major items:

Splash Montana 50m Pool Liner Replacement

This project consists of construction services to remove and dispose of the existing pool liner and provide and install the replacement liner as well as associated site work located at Splash Montana, at Playfair Park in Missoula, Montana.

Proposals must be submitted via e-mail to Eric Seagrave, Missoula Parks and Recreation Department by 11:00 p.m. Mountain Time, January 25, 2022 , seagravee@ci.missoula.mt.us. The city will award a contract to the most qualified bidder.

Martha L. Rehbein, City Clerk
PUBLICATION NOTICE DATES:
January 9, 2022
January 16, 2022

END OF INVITATION TO BID

INSTRUCTIONS TO RESPONDERS

COMPETITIVE SEALED PROPOSALS (CSP) TO REPLACE 50m Pool Liner at SPLASH MONTANA, Project 122150ML

Proposals must include a specific time frame for demo and removal, product delivery and installation schedule once notified of award. Include product specifications, color choices and recommendations, estimated lifetime of materials including manufacturer's and installer's warranty and any other relevant descriptive information.

Questions concerning the proposal should be directed to: (email preferred)

Missoula Parks & Recreation
Attn: Eric Seagrave, Aquatics Supervisor
600 Cregg Ln
Missoula, Montana 59801
406.552.6274
eseagrave@ci.missoula.mt.us

The City of Missoula shall be exempt from any liability for costs incurred by unsuccessful Respondents in preparation of the proposal

ASSEMBLY/INSTALLATION AND INSPECTION

The selected Contractor must provide the direct supervision required to remove the old liner and materials and prepare the site and install the new liner per manufacturer recommendation. All tools, equipment, labor and materials required to remove the old liner and install the new liner shall be the responsibility of the selected supplier. **Preference is that all work must be completed prior to the date of April 20, 2022, however bids that have work being started and completed after Labor Day will be considered, provided work is completed by October 15, 2022.** Ordering and Prep work may begin as soon as the date specified in the Notice to Proceed, however water may not be available at the facility until late March or early April, 2022 (weather dependent). The selected Contractor will be required to certify that installation of the product is in accordance with all manufacturers' requirements including, but not limited to warranty requirements.

Warranty: Upon completion of installation, the Contractor must provide documentation attesting the product has been installed meeting all specifications thereby warranted by manufacturer. Additionally, it is the Supplier's responsibility to provide to the City the manufacturer's warranty of installed equipment.

COMPLIANCE

In accordance with MCA 49-3-207, Nondiscrimination Provision in All Public Contracts and the city of Missoula's affirmative action plan, the Contractor will ensure that hiring is made on the basis of merit and qualifications and that there will be no discrimination in employment on the basis race, ancestry, color, disability, religion, national origin, sex, age, marital status, creed, ex-offender status, physical

condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications. (Attachment A).

The Contractor and any persons doing work on this project will be required to obtain registration with the Montana Department of Labor and Industry (DLI) except as listed in MCA 39-9-211. Information on registration can be obtained from the Department of Labor and Industry by calling 1-406-444-7734. The Contractor is required to have registered with the DLI prior to submitting a proposal on this project. ("Bid Only" registration is available for out-of-state Contractors.) All laborers employed by Contractor in performance of this installation work shall be paid wages at rates as may be required by law.

The Contractor must possess a valid City of Missoula Business License at the time of award and contract signing (Not needed for submittal of proposal).

PROPOSAL SUBMITTAL AND CONTENT

Proposals must be submitted via email to Eric Seagrave, Missoula Parks and Recreation Department by **11pm, Jan 25, 2022**, seagravee@ci.missoula.mt.us. One (1) hard copy with pertinent information and items discussed below should accompany the electronic submittal and must be addressed as follows:

Proposal for Splash 50m Liner Replacement
Attn: Eric Seagrave
Currents Aquatic Center
600 Cregg Lane
Missoula, Montana 59801

PROPOSAL FORMAT

Proposals shall be submitted in the following format:

- Respondent Name
- Supplier Name (if not the same)
- Products Proposed - Description, photos, model numbers etc.
- Design Analysis and color samples that are available
- Warranty
- Any additional information relating to scoring criteria as listed below
- References
- Statement of understanding of Davis-Bacon and non-discrimination requirement
- Work completed schedule

Proposals must include a price for removal & preparation, material, and installation of the liner as per the Scope of Project. The City reserves the right to reject any and all proposals with or without cause, and to accept the proposal which it considers most favorable. Proposals should include minimum of

two references of installations similar to that proposed for Missoula. References shall include name of project, location, contact information including phone number and general cost of installation.

All delivery, installation, and supervision costs must be included in the proposal. Payment for the installation will be sent within thirty (30) days after all terms of the contract for procurement and installation of tile are completed.

All proposed cost amounts shall be guaranteed for not less than sixty (60) days after the proposal submittal deadline date.

Each proposal must be accompanied by a Certified Check, Cashier's Check, or Bid Bond payable to the City of Missoula, Montana, in an amount not less than ten percent (10%) of the total proposed amount. Workmen's Compensation, Comprehensive General Liability, and Transportation insurance and insurance certificates shall be provided by the successful Respondent. Successful Respondents are required to comply with City of Missoula Business Licensing requirements.

No proposal may be withdrawn within a period of sixty (60) days after the opening date.

The Respondent must submit One (1) hard copy of the proposal to the address listed above. An electronic copy of the entire proposal is required. All Proposals must comply with the specifications and guidelines provided in this document.

This solicitation is being offered in accordance with state statutes governing procurement and with MCA Ch. 18.4 Part 3 and relevant ARM. Accordingly, the City of Missoula reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate at the sole discretion of the City of Missoula.

The City of Missoula is an EEO/AA, M/F, and V/H Employer. Qualified women, veterans, minority and disabled individuals are strongly encouraged to submit proposals.

Interested Respondents/Suppliers are encouraged to sign up for automatic notifications and updates on this and other City projects by visiting www.ci.missoula.mt.us/bids. Click on the "Bid Notification" button in the upper right hand corner of the page to sign up.

EVALUATION AND SELECTION PROCESS

Please note the City of Missoula reserves the right to select the proposal that is in their opinion in the best interest of the City of Missoula. This may not be the lowest cost contract proposal.

Following the review and evaluation of all submittals, the Aquatics Manager will select the proposal that in his opinion is in the best interests of the City of Missoula. Once completed, the proposal will then be submitted to the Missoula City Council for their final approval. At that point, the City of Missoula will contract with the selected vendor for the completion of the project.

The award will be made to the qualified vendor, manufacturer, or supplier, whose proposal is deemed most advantageous to the City, all factors considered. Unsuccessful Respondents will be notified as soon

as possible. This Request for Proposals will be made available to vendors and manufacturers via the City website, www.ci.missoula.mt.us/bids starting January 7, 2022.

Any objections to published specifications must be filed in written form with the City Clerk prior to the Request for Proposals due date of January 25, 2022.

The City reserves the right to select or reject any and all proposals and if all proposals are rejected, to re-advertise under the same or new specifications, or to make such an award that in the judgment of its officials best meets the City's needs and requirements.

The City reserves the right to waive any minor technicality in the bidding, which is not of a substantial nature.

ATTACHMENT A

As a condition to approving any contract, the City of Missoula requires that the following non-discrimination language be located in all contract documents:

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, 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.

PROJECT SPECIAL CONDITIONS
FOR
COMPETITIVE SEALED PROPOSALS (CSP) TO REPLACE 50m Pool Liner at SPLASH MONTANA,
Project 122150ML

These Project Special Conditions are special provisions that modify and/or supplement in part the General Conditions or the Technical Specifications of the contract. In the event of a conflict, these Project Special Conditions shall take precedence. These Project Special Conditions are incorporated into this Contract Agreement.

The City of Missoula (City) is requesting proposals to procure and install a replacement pool liner on the 50m at Splash Montana and remove and dispose of the existing liner. The City will select one (1) Contractor from the respondents to provide equipment, materials and labor for the liner replacement as outlined in this request.

FACILITY DETAILS AND HISTORY

The subject of this CSP is the 50m Pool located in Bancroft Park, at Splash Montana. The facility is a municipal water park in Missoula Montana. This outdoor pool is an Astral Pool with cement bottom and partial cement wall in the deep end, and stainless panel buttressed walls around the entire pool basin. The pool was fabricated and installed in 2008 and has been in operation for 4 to 5 months of each year since that date.

The pool has a perimeter gutter that is at the same level as the surrounding deck and has white PVC grating covers. The main drains in the pool were originally installed with 8x8 drain sumps, however these were modified to suit the 2010 VGB laws by installing Neptune-Benson Aegis stainless steel shields sized 30x30, with a custom fabricated stainless frame to attach it safely to the pool bottom.

The pool originally had a 60 mil liner provided by the builder. Over the years, this liner has been damaged and stretched by water intruding under the liner and then facing a freeze/thaw cycle. The liner has also been found to be tearing away from the inlets which pin it in place, causing tears that required patching. These flaws in the liner have caused water loss while the pool was in operation.

The pool has a perimeter that is 50m x 25yd. The surface area (not including the verticals) is 12,600 feet². The pool has a volume of 475,000 gallons. The pool depth starts at 3.5 feet at the shallowest and 6.5 feet at the deepest.

There is a ramp for ADA and Wheel Chair accessibility that stretches from about ½ way down the length of the pool towards the shallow end. This ramp has a stainless rail the entire length of the ramp on both sides of the ramp. The ramp floor is also covered with the PVC liner. The ramp creates a short, narrow lane that is used during swim meets as an unofficial warm up lane. There is about 82 feet from the end of the ramp to the deep end wall.

The lane line anchors are simple stainless angles inserted into the inside of the perimeter gutter; there is a hole in the angle that can hold a ½ inch diameter hooked end bolt. The bolt has a spring on it so that the hooked end can be pulled up, to clear the PVC grating cover and allow a floating lane line to be hooked on. The pool currently has enough anchors on that it can hold 9 lengthwise (50m) floating lane cables and 8 widthwise (25 yards) floating lane cables.

SCOPE OF PROJECT

This project consists of the design, procurement and installation of a new high grade (60 mils) commercial swimming pool vinyl liner system for the 50m Astral pool at Splash Montana at 3001 Bancroft Street in Missoula, Montana. Work is to include:

1. **PREFERRED: All work to be completed and ready for pool fill by April 20th, 2022.**
2. A pre-installation site evaluation shall be completed by the Supplier to identify any site issues that may need to be addressed above and beyond the items in this contract.
3. Removal and disposal of the existing PVC liner up to the joint where the pool liner meets the gutter liner (about 3 inches into the gutter system). **(See Fig. 1).**
4. When removing the old pool liner, to remove all floor mounted plastic inlet diffusers and replace with new ones plus provide 30 extra diffusers to keep for when the new ones are damaged over the winters.
5. When removing the old pool liner, to save & reinstall with the new liner the (4) Neptune-Benson Aegis 30x30 VGB rated main drain covers and (4) metal drain grate adaptors – these drain grates are marked as eligible for use until 2025.
6. Broom clean pool basin floors and walls to remove dirt and debris. Prepare pool basin floors and walls as required to ensure a sanitary environment and watertight installation.
7. All pool penetrations shall be terminated with compression flanges or other parts necessary to make a complete watertight installation. Extra flanges and other parts necessary for maintaining the watertight installation shall be provided for future onsite repairs by the City.
8. Apply adhesive as required according to liner manufacturer's specifications.
9. Replacement liner shall be minimum of 60 mils (1.5 mm) thickness.
10. Complete additional perimeter caulking, details work, and finish work to make a complete watertight installation.
11. The liner used on the entry ramp surface, and the top edge of the pool basin shall be of an anti-slip version, with a textured finish to reduce slips. **(See fig. 2)**
12. The textured, anti-slip liner that is installed on the top edge of the pool basin shall meet the US Swimming requirement and extend no less than .8 meters (2 feet 7.5 inches) below the water surface.
13. The preferred color of the liner will be light blue, however white will be accepted.
14. The color of the lane line markers, targets, lane numbers, depth signs and other warnings will be black.
15. When replacing the pool liner to include lane line markers to provide and designate (8) length-wise (Long Course) 50m lanes and 10 width-wise (Short Course) 25 yard lanes.
16. The lane line anchors for the 8 Long Course lanes are already existing and located in the desired locations.
17. The lane line anchors for the 10 short course lanes do not already exist. There are anchors for 8 lanes, but they are not in the desired location. The City would like these anchors removed and replaced with anchors to allow for 10 short course lanes, each one being 8 feet wide.
18. When replacing the pool liner we are requesting that lane designation numbers be placed on the bottom of the pool in each of the (8) designated Long Course lap lanes, oriented so as to be readable from the end of the pool at the shallow and the deep ends.
19. Long Course Lane designations will be numbered from right to left (south to north) as the swimmers stand facing the course at the deep end wall.

20. When replacing the pool liner we are requesting that the pool bottom lane marker lines shall end with a distinctive cross line 1.0 meters (3 feet 4 inches) long and the same width as the bottom marker. The line, including the cross line, shall terminate 2.00 meters (6 feet 7 inches) from each end wall.
21. When replacing the pool liner we are requesting that the pool bottom lane line markers for the (8) 50m length lanes shall be no less than 10 inches wide, unbroken from shallow end to deep, be placed in the middle of each racing lane and shall be black in color.
22. For the (10) 25 yd width lanes we are requesting that they be broken lines and black in color.
23. When replacing the pool liner we are requesting that there be a cross on the wall of each of the (8) 50m Lanes and each of the (10) 25 yd lanes, at both ends for a total of (16) crosses for the 50m lanes and (20) crosses for the 25 yd lanes.
24. End Wall Targets shall be flush, non-slip targets in the shape of a cross and shall be the same width as the lane bottom markers. They shall be in the center of each lane on each end wall and shall extend at least 3 feet 4 inches below the level of the water surface.
25. The existing pool has hook attachments for 9 lane lines on the two short sides (9 x 2) and 8 lane lines on the two long sides (8 x 2). **(See Fig. 3)** The City would like these replaced with a better lane line attachment system designed for overflow gutters, such as the S.R Smith Lane Line Anchor Stainless Steel 8 Inch (prod #:17-61-200) or comparable and to add 3 additional lane attachments on the two long sides to enable a total of 11 width lanes.
26. Install Depth/No Diving markers and Pool safety markings as per Montana State Rule for Pools.
27. Replace the perimeter pvc pool gutter grating with a system similar to that already installed. **(See Fig. 4)** Provide spare pvc gutter grating pieces for future replacement of damaged pieces (minimum 30 feet of grating and 4 corner pieces).
28. Clean the site suitable for pool filling and perform final inspection.
29. Please declare the duration of the warranties for the Pool Membrane and any Welds.

Fig. 1



Fig. 2



Fig. 3



Fig. 4



I. PERMITS

Contractor is required to obtain all applicable permits upon monthly progress payments for this project. The permit fee will be calculated at a rate of 19% based on the actual construction cost of installed work for the project.

II. PREVAILING WAGE RATES

The contractor shall utilize the Montana Statewide Davis-Bacon Building Construction Wage Rates included in the Montana Prevailing Wage Rate Schedule which can be found at:

<http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>

IF THE TOTAL CONTRACT BID IS BELOW \$25,000, PREVAILING WAGE RATES WILL NOT APPLY.

III. COMPLIANCE

In accordance with MCA 49-3-207, Nondiscrimination Provision in All Public Contracts and the city of Missoula's affirmative action plan, the Contractor will ensure that hiring is made on the basis of merit and qualifications and that there will be no discrimination in employment on the basis race, ancestry, color, disability, religion, national origin, sex, age, marital status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

26. LIEN/CLAIM WAIVERS AND AFFIDAVIT OF BILLS PAID FOR RELEASE OF FINAL PAYMENT

Bidder's attention is invited to General Conditions, Section 2.6.02 which requires completion and submission of construction lien/claim waivers and an Affidavit of Bills Paid for Release of Final Payment. The new text is also copied below:

"Requests for Payment shall be accompanied by a City of Missoula Lien/Claim Waiver Form, with appropriate "Conditional" and "Unconditional" portions completed, from the Prime Contractor and from each vendor, subcontractor and sub-subcontractor. Prime Contractor shall submit an Affidavit of Bills Paid for Release of the Final Payment. For projects under \$50,000 a single Lien/Claim Waiver form may be submitted from each vendor, subcontractor and sub-subcontractor with the Request for Final Payment, accompanied by the Prime Contractor's Affidavit of Bills Paid for Release of the Final Payment."

Forms are provided near the end of this contract bidding document. Use of alternative form requires pre-approval of the Missoula City Attorney.

CONTRACT AGREEMENT

(Including all Contract Documents Made a Part Hereof by Reference)

THIS CONTRACT AGREEMENT, made and entered into this day of _____ by and between the City of Missoula, Party of the First Part and hereinafter called the "OWNER" and _____ Aquatic Renovation Systems, Inc. _____, Party of the Second Part, hereinafter called the "CONTRACTOR."

WITNESSETH:

Whereas, the OWNER has caused to be prepared, in accordance with law, specifications, plans and other documents and instruments herein referred to and for brevity called "Contract Documents, for **City Project: 122150ML REPLACE 50m Pool Liner at SPLASH MONTANA**, in Missoula, Montana and the OWNER has approved and adopted said Contract Documents, and has caused to be published in the manner and for the time required by law, an advertisement inviting sealed proposals for furnishing labor, equipment, and materials, as described in and required by such Contract Documents for completion of said **City Project: 122150ML REPLACE 50m Pool Liner at SPLASH MONTANA**, in Missoula, Montana.

CONTRACTOR, in response to the said advertisement/invitation has submitted to the OWNER in the manner and at the time specified its sealed proposal in accordance with the terms of said advertisement/invitation and this Contract Agreement; and

OWNER, in the manner prescribed by law, has publicly examined and canvassed all of the proposals submitted in response to such advertisement and as a result of such canvas has determined and declared Aquatic Renovations Systems, Inc, herein called CONTRACTOR, to be the lowest and best proposal for the construction of said **City Project: 122150ML REPLACE 50m Pool Liner at SPLASH MONTANA**, in Missoula, Montana, and has duly awarded to the said Contractor, Contract Agreement herein, for the sum or sums named in its proposal by reference herein made a part of such Contract Agreement, and the said Contract Agreement being evidenced by this writing and all of the said contract documents, hereinafter enumerated and identified, and by this reference made a part hereof.

NOW, THEREFORE, for and in consideration of the full and faithful performance by the Contractor of all of its obligations hereunder, and of the compensation to be paid by the OWNER to the CONTRACTOR as in this contract agreement contained and of the mutual agreements and covenants from each to the other the OWNER for itself, and its successors and assigns, and the Contractor for itself, its successors and assigns, hereby firmly agree and mutually undertake and promise each to the other, as follows:

ARTICLE I CONTRACTOR will furnish, at its own expense, all labor, all tools, all equipment and all materials required by OWNER and wholly complete in a good, first-class, and workmanlike manner the entire installation and construction of **City Project: 122150ML REPLACE 50m Pool Liner at SPLASH MONTANA**, in Missoula, Montana, as shown on the plans and as specified in the said specifications, and he shall also guarantee all materials and workmanship against defects, as specified under the General Conditions of the said specifications; also, such specified appurtenant works as designated, described, and required by the said plans, specifications, and proposal.

All in accordance with the said Plans and Specifications, advertisements/invitation, instructions to bidders, proposal from CONTRACTOR herein, and all other contract documents on file in the office of the OWNER, the City of Missoula, Montana, all of which contract documents are hereby referred to, and by this reference made a part of this contract between the parties hereto, and are as fully a part of this agreement, and of the whole contract herein between the parties hereto as if recited at length herein, all work to be done to the satisfaction of the Engineer for the OWNER in accordance with the Contract and the laws of the State of Montana.

ARTICLE II CONTRACT PRICE AND PAYMENT TERMS.

OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents and the contractor will accept in full compensation of said **City Project: 122150ML REPLACE 50m Pool Liner at SPLASH MONTANA**, the sum of \$237,920.00 total. This amount shall be paid in installments as follows: 25% upon Contract Execution, 50% upon arrival, and 25% upon substantial completion(2 days prior to full completion).

ARTICLE III CONTRACT TIME AND LIQUIDATED DAMAGES.

A. CONTRACTOR will commence work after September 5, 2022, the date specified in the written notice to commence work given to him by the Engineer, authorizing and directing construction work to start and CONTRACTOR will fully complete all of the work contemplated by the Contract within No Later Than October 30, 2022, the date specified in the Notice to Proceed.

B. OWNER and CONTRACTOR recognize that time is of the essence of this Contract and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph III.A above, plus any extensions thereof allowed in accordance with Article 2.5.07 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$25 dollars for each day that expired after the time specified in paragraph III.A for substantial completion until the Work is substantially complete.

ARTICLE IV The parties hereto agree that this Contract Agreement for the completion of the project herein referred to is evidenced by the following contract documents:

- (1) This writing, entitled "Contract Agreement" (Including all Contract Documents made Part Hereof by Reference); and
- (2) Advertisement/Request for Proposal
- (3) Instructions to Bidders
- (4) Contract Payment Bond and Performance Bond
- (5) Bid Proposal
- (6) General Conditions
- (7) Montana Prevailing Wage Rate
- (8) Project Special Conditions
- (9) Certificates of Insurance
- (10) Powers of Attorney
- (11) Notice of Award
- (12) Notice to Proceed
- (13) Addenda (list of any issued)

and OWNER and CONTRACTOR each acknowledged delivery to it, concurrently with the execution of this Contract Agreement of a full, true, complete and identical counterpart of each such Contract Documents. Any further or additional contract documents (if any) shall be identified by the signature of both parties hereto, and made a part hereof by clear, written reference appended hereto.

IN WITNESS WHEREOF, the City of Missoula, Montana, OWNER, has caused this contract agreement to be executed, attested by its Clerk, under the seal of said corporation hereon impressed, said officers being hereto specifically authorized and empowered and the said CONTRACTOR has hereunto caused its corporate name to be subscribed by its President and attested by its secretary, and its corporate seal to be hereon impressed; this contract agreement being executed in three (3) counterparts, each of identical force and effect, and each party hereto acknowledged delivery of it or one of said fully executed counterparts, on the day and year first above written.

Party of the First Part (OWNER)
City of Missoula, Montana

ATTEST:

By: _____
 John Engen
 Mayor

 Martha L. Rehbein, CMC
 Legislative Services Director/City Clerk

(Seal)

Party of the Second Part:
CONTRACTOR

Address _____

By: _____
(signature)

ATTEST:

Secretary

Title: _____

(Seal of Corporation)

The foregoing Contract, including all contract documents which are a part thereof, is in due form and content, according to law, and is hereby approved.

Jim Nugent Attorney for the City of Missoula

GENERAL CONDITIONS OF THE CONTRACT

CONTRACT DOCUMENTS

SECTION 2.1

2.1.01 **GENERAL.** The Contract Documents comprise the following general classifications of documents, including all additions, deletions and modifications incorporated therein before the execution of the Agreement:

- A. Bidding Documents
- B. Contractual Documents
- C. General Conditions of the Contract
- D. Project Special Provisions or Project Special Conditions
- E. Drawings and Specifications

2.1.02 **BIDDING DOCUMENTS** are issued by the Owner to assist bidders in preparing their proposals include:

- A. **Advertisement/Invitation to Bid/Invitation for Quotation Proposal**
- B. **Instructions to Bidders**
- C. **Proposal:** The offer of a Bidder to perform the work described by the Contract Documents made out and submitted on the prescribed Proposal Form, properly signed and guaranteed.
- D. **Proposal Guarantee:** A cashier's check, certified check, bank money order or bank draft drawn and issued by a national banking association located in the State of Montana or any banking corporation incorporated in the State of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the State of Montana shall accompany the Proposal submitted by the Bidder, as a guarantee that the Bidder will enter into an Agreement with the City of Missoula for construction of the work, if the contract is awarded to him.
- E. **Addenda to Contract Document:** Any addenda issued during the time of bidding, or forming a part of the Contract Document loaned to the Bidder for the preparation of his Proposal, shall be covered in the proposal, and shall be made a part of the Contract. Receipt of each Addendum shall be acknowledged in the Proposal.

2.1.03 **CONTRACTUAL DOCUMENTS.**

- A. **Agreement** covers the performance of the work described in the Contract Documents including all supplemental addenda thereto and all general and special provisions pertaining to the work or materials therefore.
- B. **Bond:** The Contractor shall, at the time of his execution of the Agreement, furnish bonds in a form prescribed by the Owner and with a Surety Company authorized to do business in the State where the work is located as follows:
 - 1. **Performance Bond** in an amount equal to 100% of the Contract Amount as a guarantee of good faith on the part of the Contractor to execute the work in accordance with the terms of the Contract.
 - 2. **Labor and Material Payment Bond** in an amount equal to 100% of the Contract Amount as a guarantee of good faith on the part of the Contractor to make all payments for labor and material in connection with the Contract.

2.1.04 **GENERAL CONDITIONS OF THE CONTRACT** outline certain general responsibilities of the City of Missoula, hereafter called the "Owner" and the Contractor and also responsibilities delegated by the Owner to the Missoula City Engineer who may act as the agent of the Owner. References to "Engineer" throughout the

contract documents refers generally to the Missoula City Engineer unless specific reference is elsewhere provided for a professional engineer contracted by the City of Missoula to consult on the project.

- A. **Modifications** of the General Conditions may be included so that these General Conditions may be exactly tailored to the specific project. Modifications shall be listed in the Project Special Conditions or Project Special Provisions and become a part of these contract documents.
- 2.1.05 **PROJECT SPECIAL CONDITIONS** or PROJECT SPECIAL PROVISIONS are conditions and provisions not included in the General Conditions of the Contract or modifications to the General Conditions which apply to this specific project.
- 2.1.06 **DRAWINGS AND SPECIFICATIONS.** The intent of the Drawings and Specifications is that the Contractor shall furnish all labor, materials, equipment and transportation necessary for the proper execution of the work, unless specifically noted otherwise. The Contractor shall do all the work outlined in the Contract Documents and all incidental work necessary to complete the project in a substantial and acceptable manner, and fully complete the work or improvement, ready for use, occupancy and operation by the Owner.
- A. **Discrepancies:** Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported to the Owner or Engineer, who shall promptly correct such inconsistencies or ambiguities in writing. Any work done by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.
 - B. **Adequacy:** Responsibility for adequacy of the design and for the Drawings and Specifications shall be borne by the owner. The complete requirements of the work to be performed under the Contract shall be set forth in Drawings and Specifications to be supplied by the Owner or by the Engineer as representative of the Owner. The Drawings and Specifications shall be considered inseparable documents and in considering them the Contractor shall rely upon both instruments in order to perform the work in accordance with their combined intent.
 - C. **Additional Instructions:** Further instructions may be issued by the Engineer during the progress of the work by means of Drawings, or otherwise to make more clear or specific the Drawings and Specifications or as may be necessary to explain or illustrate changes in the work to be done.
 - D. **Copies Furnished to Contractor:** Except as provided for otherwise, all required copies of Drawings and Specifications necessary for the execution of the work shall be furnished to the Contractor without charge.
 - E. **Dimensions:** Only figured dimensions on the Drawings will be used by the Contractor. Where the work of the Contractor is affected by finish dimensions, these shall be determined by the Contractor at the site, and he shall assume the responsibility therefore.

RIGHTS AND RESPONSIBILITIES

SECTION 2.2

2.2.01 OWNER'S RIGHTS AND RESPONSIBILITIES.

- A. **Lands by Owner:** The Owner will provide the lands shown on the Drawings or described in the Specifications upon which the work under the Contract is to be performed and to be used for right-of-way for access.
- B. **Base Lines and Bench Marks:** Unless otherwise specified, the Owner will establish base lines necessary for the location of the principal component parts of the work together with a suitable number of bench marks adjacent to the work.
- C. **Owner's Right to Correct Deficiencies:** upon failure to perform the work in accordance with the Contract Documents, including any requirements with respect to the Schedule of Completion, and after five days' written notice to the Contractor, the Owner, may without prejudice to any other remedy he may have, correct such deficiencies in work intended to become a permanent part of the project.
- D. **Suspension of Work by Engineer:** The Engineer shall have the authority to suspend the work, wholly or in part, for such period or periods as he may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable to carry out the provisions of the Contract, or to supply materials meeting the requirements of the Contract Documents.
 - 1. **Notice:** The work or any portion thereof may be suspended at any time by the Owner or Engineer provided that he gives the Contractor written notice of suspension which shall set forth the date on which work is to be resumed. The Contractor shall resume the work upon written notice from the Owner or Engineer and within ten days after the date set forth in the notice of suspension.
- E. **Owner's Right to Terminate Agreement and Complete the Work:** The Owner shall have the right to terminate his agreement with the Contractor after giving ten day's written notice of termination to the Contractor in the event of any default by the Contractor.
 - 1. **Default by Contractor:** It shall be considered a default by the Contractor whenever he shall:
 - a. Declare bankruptcy, become insolvent, or assign his assets for the benefit of his creditors.
 - b. Disregard or violate provisions of the Contract Documents or fail to prosecute the work according to the agreed Schedule of Completion, including extensions thereof.
 - c. Fail to provide a qualified superintendent, competent workmen or subcontractors, or proper materials, or fail to make prompt payment therefore.
 - 2. **Completion by the Owner:** In the event of termination of the Agreement by the Owner because of default by the Contractor, the Owner may take possession of the work and of all materials and equipment thereon and may finish the work by whatever method and means he may select.

- 2.2.02 CONTRACTOR'S RIGHTS AND RESPONSIBILITIES. All work shall be done in strict accordance with the Contract Documents. Observations, construction review, tests, recommendations or approvals by the Owner or Engineer or persons other than the Contractor, shall in no way relieve the Contractor of his obligation to complete all work in accordance with the Contract Documents. All work shall be done under the direct supervision of the Contractor. The Contractor shall be responsible for construction means, methods, techniques and procedures, and for providing a safe place for the performance of the work by

the Contractor, Subcontractors, suppliers and their employees and for access, use, work or occupancy by all authorized persons.

- A. **Lands by Contractor:** Any land or access thereto not specifically shown to be furnished by the Owner that may be required for temporary construction facilities or for storage of materials shall be provided by the Contractor with no liability to the Owner. The Contractor shall confine his apparatus and storage to such additional areas as he may provide at his expense.
1. **Private and Public Property:** The Contractor shall not enter upon private property for any purpose without obtaining permission, and he shall be responsible for the preservation of all public property, trees, monuments, structures and improvements, along and adjacent to the street and/or right-of-way, and shall use ever precaution necessary to prevent damage or injury thereto. He shall use suitable precautions to prevent damage to pipes, conduits, and other underground structures, and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.
- B. **Surveys:** Based upon the information provided by the Owner or Engineer, the Contractor shall observe and develop project per survey stakes. The Contractor shall carefully preserve bench marks, reference points and stakes, and, in the case of destruction thereof by the Contractor or resulting from his negligence, the Contractor shall be charged with the expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the loss or disturbance of such bench marks, reference points and stakes.
- C. **Public Utilities:** The elevation and location of all public utilities shown on the Drawings were taken from existing public records. It shall be the duty of the Contractor to make final and exact determination of the location and extent of all utilities and he will be liable for any expense resulting from damage to them. It will be the contractor's responsibility to contact Montana Rail Link Railroad when working near the railroad tracks and obtain any necessary clearances or permits.
- D. **Superintendent:** A qualified superintendent, who is acceptable to the Owner, shall be maintained on the work site and give efficient supervision to the work until its completion. The superintendent shall have full authority to act in behalf of the Contractor, and all instruction given to the superintendent shall be considered as given to the Contractor. It shall be the responsibility of this Contractor's superintendent to coordinate the work of all the Subcontractor's. The superintendent shall be present on the site at all time.
- E. **Subcontracts:** At the time set forth in the Contract Documents or when requested by the Owner or Engineer, the Contractor shall submit in writing for review of the Owner or Engineer the names of the Subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the approval of the Engineer. The Contractor is responsible to the Owner or Engineer for the acts and deficiencies of his Subcontractors, and of their direct and indirect employees, to the same extent as he is responsible for the acts and deficiencies of his employees. The Contract Documents shall not be construed as creating any contractual relation between any Subcontractor and the Owner. The Contractor shall bind every Subcontractor by the terms of the Contract Documents.
1. For the convenience of reference and to facilitate the letting of Contracts and Subcontracts, the Specifications are separated into titled sections. Such separation shall not, however, operate to make the Owner or the Engineer an arbiter to establish limits to the contracts between the Contractor and Subcontractor.
- F. **Contractor's Right to Suspend Work or Terminate Agreement:** Contractor may suspend work or terminate his Agreement with the Owner upon ten days' written notice to the Owner for any of the following reasons:

1. If an order of any court or other public authority caused the work to be stopped or suspended for a period of ninety days through no act or fault of the Contractor or his employees.
2. If the Owner should fail to act upon any request for payment within thirty days after it is present in accordance with the General Conditions of the Contract.
3. If the owner should fail to pay the Contractor any sum within thirty days after its award by arbitrators.

G. **Work During an Emergency:** The Contractor shall perform any work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property.

2.2.03 **RESPONSIBILITY OF THE OWNER OR ENGINEER.** The Owner or Engineer shall decide questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of work, interpretation of Drawings and Specifications and all questions as to the acceptable fulfillment of the Agreement on the part of the Contractor.

A. **Observation of the Work:** All materials and each part or detail of the work shall be subject at all times to the observation by the Owner, Engineer or their authorized agents, and the Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship, and the diligent execution of the Contract. Observations may be made at the site or at the source of material supply, whether mill, plant or shop. The Engineer and Construction Inspector shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make his observations and construction review.

B. **Acceptability of Work:** The Owner's or Engineer's decision as to the acceptability or adequacy of the work shall be final and binding upon the Contractor. The Contractor agrees to abide by the Owner's or Engineer's decision relative to the performance of the work.

C. **Engineer's Decisions:** All claims of the Owner or the Contractor may/shall be presented to the Engineer for decision which shall be final except in cases where time and/or financial considerations are involved, which shall be subject to arbitration.

2.2.04 **ORAL AGREEMENTS.** No oral order, objection, claim or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any action whatsoever, other than by a definitely agreed waiver or modification thereof in writing.

2.2.05 **OBSERVATION OF COMPLETED WORK.** The Contractor shall remove or uncover such portions of the completed work as may be directed by the Owner or Engineer at any time before acceptance of the work. After examination, the Contractor shall restore the work to the standard required by the Contract Documents. Should the work thus exposed or examined prove acceptable, the uncovering and the restoring of the work shall be paid for as Extra Work but, should the work exposed or examined prove unacceptable, the uncovering, removing and restoring of the work shall be at the Contractor's expense.

2.2.06 **WORK BY OWNER OR OTHER CONTRACTORS.**

A. **Separate Contracts:** The Owner may let other contracts in connection with the work of the Contractor. The Contractor shall cooperate with other contractors with regard to storage of materials and execution of their work. It shall be the Contractor's responsibility to inspect all work by other contractors affecting his work and to report to the Owner any irregularities which will not permit him to complete his work in a satisfactory manner. His failure to notify the Owner of such irregularities shall indicate the work of the other contractors has been satisfactorily complete to receive his work. The Contractor shall not be responsible for defects of which he could not have

known, which develop in the work of others after the work is completed. It shall be the responsibility of the Contractor to measure the completed work in place and report to the Owner immediately any difference between completed work by others and the provisions of the Contract Documents.

- B. **Written Agreement:** Whenever work being done by the Owner through his own employees or through other contractors is contiguous to work covered by the Contract Documents, the respective rights of the various interests involved shall be established by written agreement to secure the completion of the various portions of the work in general harmony.

2.2.07 **ARBITRATION.**

Should there be any dispute or any questioned decision of the Owner or Engineer, which is subject to arbitration, it shall be promptly submitted to arbitration upon demand by either party of the dispute. The Contractor shall not delay the work because arbitration proceedings are pending unless he shall have written permission from the Owner or Engineer to do so and such delay shall not extend beyond the time when the arbitrators shall have the opportunity to determine whether the work shall continue or be suspended pending decision by the arbitrators of such a dispute. Any demand for arbitration shall be in writing and shall be delivered to the Owner or Engineer and the adverse party by registered mail addressed to the last known address of each, within ten days of receipt of the Owner's or Engineer's decision, and in no event after final payment has been made and accepted. Should the Engineer fail within a reasonable period to make a decision regarding a claim of the owner or Contractor, a demand for arbitration may then be made as if the Engineer's decision has been rendered against the party demanding arbitration.

- A. **Arbitrators:** No one shall be qualified to act as arbitrator who has, directly or indirectly, any financial interest in the Contract or who has any business or family relationship with the Owner, the Contractor or the Engineer. Each arbitrator selected shall be qualified by experience and knowledge of the work involved in the matter to be submitted to arbitration.
- B. **Procedure:** Arbitration shall be in accordance with the procedure and standards of the American Arbitration Association.
- C. **Controlling Law:** This contract is to be governed by the law of the State of Montana. The District court of the Fourth Judicial District of the State of Montana shall have jurisdiction in all cases of arbitration.

MATERIALS, EQUIPMENT AND WORKMANSHIP

SECTION 2.3

2.3.01 **MATERIALS AND EQUIPMENT.** The materials and equipment installed in the work shall meet the requirements of the Contract Documents and no materials or equipment shall be ordered until reviewed by the Engineer. All materials and equipment not otherwise specifically indicated shall be furnished by the Contractor. The Contractor shall guarantee all materials and equipment he provides in accordance with Paragraph 2.3.08.

A. **Substitutions:** In order to establish standards of quality, the Owner or Engineer has, in the detailed Specifications, referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design.

1. The Contractor shall furnish the complete list of proposed desired substitutions prior to signing of the Contract, together with such engineering and catalog data as the Owner or Engineer may require.
2. The Contractor shall abide by the Engineer's recommendation when proposed substitute materials or items of equipment are not recommended for installation and shall furnish the specified material or item of equipment in such case. All proposals for substitutions shall be submitted in writing by the General Contractor and not by individual trades or material suppliers. The Owner or Engineer will review proposed substitutions and make his recommendations in writing within a period of ten calendar days.

B. **Space Requirements:** It shall be the responsibility of the Contractor to insure that materials and equipment to be furnished fit the space available. He shall make necessary field measurements to ascertain space requirements, including those for connections, and shall order such sizes, and shapes of equipment that the final installation shall suit the true intent and meaning of the Contract Documents.

C. **Arrangement:** Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment to operate properly, and in harmony with the intent of the Contract Documents, and to make all changes in work required by such arrangement.

D. **Unacceptable Materials and Equipment:** Materials and equipment which do not conform to the requirements of the Contract Documents, are not equal to samples reviewed by the Owner or Engineer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall not be furnished nor installed.

E. **Storage:** Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces, and not on the ground, and/or they shall be placed under cover. Stored materials and equipment shall be located so as to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the owner or lessee.

F. **Manufacturer's Directions:** Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

2.3.02 **SAMPLES.** All samples called for in the Specifications or required by the Owner or Engineer shall be furnished by the Contractor and shall be submitted to the Owner or Engineer for his review. Samples shall be furnished so as not to delay fabrication, allowing the Owner or Engineer reasonable time for the consideration of the samples submitted.

- A. **Samples for Tests:** The Contractor shall furnish such samples of materials as may be required for examination and test. All samples of materials for tests shall be taken according to standard methods or as provided in the Technical Specifications.
 - B. **Contractor's Guaranty:** All samples shall be submitted by the Contractor with a covering letter indicating that such samples are recommended by the Contractor for the service intended and that the Contractor's Guaranty will fully apply.
 - C. **All materials, equipment and workmanship** shall be of accordance with samples guaranteed by the Contractor and reviewed by the Owner or Engineer.
- 2.3.03 **SHOP DRAWINGS.** The Contractor shall provide shop drawings, setting schedules and such other drawings as may be necessary for the prosecution of the work in the shop and in the field as required by the Drawings, Specifications or the Owner's or Engineer's instructions. Deviations from the drawings and Specifications shall be called to the attention of the Owner or Engineer at the time of the first submission of shop drawings and other drawings for consideration. The Owner's or Engineer's review of any drawings shall not release the Contractor from responsibility for such deviations. Shop drawings shall be submitted according to a schedule prepared jointly by the Contractor and the Owner or Engineer.
- A. **Contractor's Certifications:** When submitted for the Owner's or Engineer's review, shop drawings shall bear the Contractor's certification that he has reviewed, checked and approved the shop drawings, that they are in harmony with the requirements of the Project and with the provisions of the Contract Documents, and that he has verified all field measurements and construction criteria, materials, catalog numbers and similar data. Contractor shall also certify that the work represented by the shop drawings is recommended by the Contractor and the Contractor's Guaranty will fully apply.
- 2.3.04 **EQUIPMENT DATA.** The Contractor shall submit for the Owner's or Engineer's review complete catalog data for every manufactured item of equipment and all components to be used in the work, including specific performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number and general type. This submission shall be compiled by the Contractor and reviewed by the Owner or Engineer before any of the equipment is ordered.
- A. **Index:** Each data sheet or catalog in the submission shall be indexed according to specification section and paragraph for easy reference.
 - B. **Relation to Contract Documents:** Catalog data for equipment reviewed by the Owner or Engineer shall not supersede the Owner's or Engineer's Contractor Documents. The review of the Engineer shall not relieve the Contractor from responsibility for deviations from Drawings or Specifications, unless he has in writing called the Engineer's attention to such deviations at the time of submissions, nor shall it relieve him from responsibility for errors of any sort in the items submitted. The Contractor shall check the work described by the catalog data with the Engineer's Contractor Documents for deviations and errors.
 - C. **Contractor's Certification:** Equipment data shall be submitted by the Contractor with a covering letter indicating that he has reviewed, checked and approved the data submitted, that they are in harmony with the requirements of the Project and with the provisions of the Contract Documents and that he has verified all field measurements and construction criteria, material, catalog numbers and similar data. Contractor shall also certify that the work represented by the shop drawings is recommended by the Contractor and that his Guaranty will fully apply.
- 2.3.05 **REJECTED WORK AND MATERIALS.** Any defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed within ten days after written notice is given by the Owner or Engineer, and the work shall be re-executed by the Contractor. The fact that the Owner or Engineer may have previously overlooked such defective work shall not constitute an acceptance of any part of it.

- A. **Should the Contractor fail** to remove rejected work or materials within ten days after written notice to do so, the Owner may remove them and may store the materials.
 - B. **Correction of faulty work** after final payment shall be in accordance with Paragraph 2.5.13
- 2.3.06 **CUTTING AND PATCHING.** The Contractor shall do all necessary cutting and patching of the work that may be required to properly receive the work of the various trades or as required by the Drawings and the Specifications to the various trades or as required by the Drawings and Specifications to complete the structure. Contractor shall restore all such cut or patched work as approved by the Owner or Engineer. Cutting of existing structure that may endanger the work, adjacent property, workmen or the public shall not be done.
- 2.3.07 **CHARACTER OF WORKMEN.** The Contractor shall at all times be responsible for the conduct and discipline of his employees and/or any Subcontractor or persons employed by Subcontractors. All workmen must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any foreman or workman employed by the Contractor or Subcontractor who does not perform his work in a skillful manner or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of the Owner or Engineer, be discharged immediately and shall not be employed again in any portion of the work without the approval of the Owner or Engineer.
- 2.3.08 **GUARANTY.** The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one year from the date of written acceptance of the work, except that any damage caused by settlement of trench excavation backfill, any defective pipe installed which causes said settlement, or any concrete curb and sidewalk, shall be guaranteed for a period of two years.
- A. **The performance bond** shall remain in full force and effect during the guaranty period.
 - B. **Correction of faulty work** after final payment shall be as provided in Paragraph 2.5.13.

INSURANCE, LEGAL RESPONSIBILITY AND SAFETY

SECTION 2.4

- 2.4.01 **TYPES OF INSURANCE.** The Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed, and as will protect the Contractor, the vicarious acts of subcontractors, the Owner, the Architect and Engineer, and the respective directors, officers, partners, agents, employees and other consultants and subcontractors of each and any of all such additional insureds from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:
- A. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - B. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - C. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - D. claims for damages insured by usually available personal injury liability coverage;
 - E. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
 - F. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
 - G. claims for bodily injury or property damage arising out of completed operations, and
 - H. claims involving contractual liability insurance applicable to the Contractor's Indemnification obligations under Paragraph 2.4.06 of the General Conditions.
- 2.4.02 **TERMS AND LIMITS.** Without limiting any of the other obligations or liabilities of the Contractor, Contractor shall obtain and maintain all required insurance from companies lawfully authorized to do business in the State of Montana with minimum "A.M. Best Rating" of A-,VI.
- A. **ADDITIONAL NAMED INSURED.** With respect to insurance required by subparagraphs 2.4.01.A through 2.4.01.H. inclusive, **include as additional insured the City of Missoula as Owner; the Architect, the Engineer and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby.**
 - B. **TERMS OF COVERAGE.** The insurance required by Paragraph 2.4.01 of these General Conditions shall be written for not less than the limits of liability specified or required by law, whichever coverage is greater. Coverage shall be maintained without interruption from date of commencement of the Work until date of final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 2.3.08 and Paragraph 2.5.13 of the General Conditions. With respect to completed operations insurance, and any insurance coverage written on a claims-made basis, such coverage shall remain in effect for at least two years after final payment. Any insurance bearing on adequacy of performance shall be maintained after

completion of the project for the full guaranty period. Should any policy be canceled before final payment by the Owner to the Contractor and the Contractor fails immediately to procure other insurance as specified, the Owner reserve the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under this Contract.

- C. ADVANCE NOTIFICATION OF CANCELLATION, MODIFICATION OR NON-RENEWAL. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 2.4.01 of these General Conditions shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 45 days prior written notice has been given to Owner and Contractor and to each other additional insured named in these General Conditions to whom a certificate of insurance has been issued. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 2.6.15 of the General Conditions.
- D. CERTIFICATES OF INSURANCE. Contractor shall not commence work until Contractor has delivered to Owner, with copies to each additional insured, certificates of insurance as evidence of specified insurance coverage in force for the specified period. Failure of Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor’s obligations to maintain such insurance.
- E. CONTRACTOR’S LIABILITY NOT LIMITED. By requiring such insurance and insurance limits as listed in this document, Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor’s liability under the indemnities granted to Owner in the Contract Documents.
- F. COVERAGE AMOUNTS. The limits of liability for the insurance required by Paragraph 2.4.01 of these General Conditions shall provide coverages for not less that the following amounts or greater where required by Law or Regulations:
 - 1. Workers’ Compensation and Related Coverages under subparagraphs 2.4.01.A and 2.4.01.B of these General Conditions:

a. State	<u>Statutory</u>
b. Applicable Federal	<u>Statutory</u>
c. Employer’s Liability	<u>\$1,000,000.00</u>
 - 2. General Liability: The General Aggregate Limit shall apply separately to each of the Contractor’s projects.

a. General Aggregate per project	<u>\$3,000,000.00</u>
b. Products- Completed Operations (Aggregate)	<u>\$3,000,000.00</u>
c. Personal and Advertising Injury	<u>\$1,000,000.00</u>
d. Bodily Injury and Property Damage (Each Occurrence)	<u>\$1,000,000.00</u>
e. Coverage will include:	

- (1) Premises - Operations
- (2) Operations of Independent Contractor
- (3) Contractual Liability
- (4) Personal Injury
- (5) Products and Completed Operations
- (6) Broad Form Property Damage (to include explosion, collapse, blasting and underground where applicable.
- (7) Per Project Aggregate Endorsement.

- f. Contractor's Liability Insurance under 2.4.01.C through 2.4.01.E and 2.4.01.G may be satisfied by primary insurance or a combination of primary and excess or umbrella insurance. Primary occurrence limit cannot be less than \$1,000,000.00. The deductible, if any, may not exceed \$5,000.00 per occurrence.
- g. If the General Aggregate Limit is diminished by an amount of \$500,000 or greater, Contractor shall provide notice to Owner of this fact, and shall again provide such notice on each subsequent occasion on which the General Aggregate Limit is again diminished by an amount of \$500,000 or greater.

3. Automobile Liability under Paragraph 2.4.01.F of the General Conditions:

- a. Combined Single Limit (bodily injury and property damage)

Each Accident	<u>\$1,000,000.00</u>
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- b. Coverage to Include:
 - (1) All Owned
 - (1) Hired
 - (2) Non-Owned
- c. Contractor's Automobile Liability Insurance under Paragraph 2.4.01.F must be satisfied by primary insurance of \$1,000,000.00. The deductible, if any, may not exceed \$5,000.00 per occurrence.

4. Contractor's Contractual Liability Coverage required by Paragraph 2.4.01.H and Paragraph 2.4.06 of these General Conditions shall provide coverage for not less than the amounts required by the contract for General Liability as follows:

- a. General Aggregate Per Project \$3,000,000.00
- b. Each Occurrence \$1,000,000.00
(Bodily Injury and Property Damage)

2.4.04 **PROPERTY INSURANCE - PURCHASED BY CONTRACTOR**

A. Before commencement of the work, the Contractor shall submit written evidence that he has obtained, from companies lawfully authorized to do business in the State of Montana with minimum "A.M. Best Rating" of A-,VI, for the period of the Contract, property insurance upon the work at the site in the amount of the original Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles.

B. This policy shall be written on an "All-Risk" or open peril or special causes of loss policy form and include Completed Value Insurance coverage upon the entire project which is the subject of this Contract and including completed work and work in progress. At a minimum this insurance shall cover physical loss and damage to the Work itself, to temporary buildings or structures, and to materials and equipment in care, custody, control or in transit before and during installation, from at least the following perils or causes of loss: fire (with extended coverage), lightning, theft, vandalism and malicious mischief, earthquake, flood, water damage, windstorm, collapse, testing and startup, and debris removal including demolition occasioned by enforcement of Laws and Regulations, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

C. Such insurance shall be maintained in effect until final payment is made or until no person or entity other than the Owner has an insurable interest in the property required by this paragraph to be covered, whichever is later, unless otherwise agreed to in writing by Owner. Such insurance shall include as Additional Named Insured: The Owner; the Contractor, Subcontractors and their subcontractors, the Architect, the Engineer and their consultants; and each of their officers; employees and agents; and any other persons with an insurable interest designated by the Owner as an Additional Named Insured.

D. The Owner will not carry separate insurance for this project. All required insurance coverage shall be purchased and maintained by the Contractor. Certificates of Insurance reflecting all required coverage shall be provided to Owner prior to issuance of the Notice to Proceed

2.4.05 **WAIVERS OF SUBROGATION.** Owner and Contractor waive all rights against each other and any subcontractor, Architect, Engineer, and any of their subcontractors, and agents and employees, each of the other, for damages or causes of loss to the extent covered by property insurance obtained pursuant to Article 2.4.03, or 2.4.04 of these General Conditions, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Contractor, or Owner as appropriate, shall require of subcontractors, separate contractors, Architect, Engineer or their subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise.

2.4.06 **INDEMNITY.** The Contractor shall hold harmless, indemnify and shall defend the Owner, the Architect, the Engineer and his consultants, and each of their officers and employees and agents, from any and all liability claims, demands, losses, costs, damages, expenses or liability to the extent arising or alleged to arise from the Contractor's performance of the work described herein, but not including the sole negligence of the Owner, the Architect, or the Engineer. Contractor shall procure and maintain in force, at its expense, the liability insurance required.

2.4.07 **PATENTS AND ROYALTIES.** If any design, device, material or process covered by letters, patent, or copyright is used by the Contractor, he shall provide for such use by legal agreement with the Owner of the patent or a duly authorized licensee of such owner, and shall save harmless the Owner and the Engineer from any and all loss or expense on account thereof, including its use by the Owner.

2.4.08 **PERMITS.** All permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor in advance of prosecution of work.

2.4.09 **LAWS TO BE OBSERVED.** The Contractor shall give all notices and comply with all Federal, State and local laws, ordinances and regulations in any manner affecting the conduct of the work, and all such orders and decrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the Owner and the Engineer against any claim or liability

arising from, or based on, the violation of any such law, ordinance, regulation, order or decrees, whether by himself or his employees.

A. Motor Vehicles. Contractor's attention is specifically invited to Montana Statutes regarding Motor Vehicle Registration requirements (MCA 61-3-701). Vehicles used in gainful occupation or business enterprise in Montana, including highway work, shall be registered with a County Treasurer, and Montana license plates or other identification markers shall be issued and displayed upon the vehicle when operated in Montana. Residents of Montana may not operate vehicles with a driver's license issued by any other state than Montana, may not operate motor vehicles without a valid Montana Driver's License (MCA 61-3-302).

- 2.4.10 **WRITTEN NOTICE.** Written notice shall be considered as served when delivered in person or sent by registered mail to the individual, firm or corporation or to the last business address of such known to him who serves the notice.
- A. **Change of Address:** It shall be the duty of each party to advise the other parties to the Contract as to any change in his business address until completion of the Contract.
- 2.4.11 **ASSIGNMENT OF CONTRACT.** Neither the Contractor nor the Owner shall sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations there under, without written consent of the other party.
- 2.4.12 **ORAL AGREEMENTS.** No oral order, objection, claim or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing, and no evidence shall be introduced in any proceeding of any other waiver or modification.
- 2.4.13 **WORK DURING AN EMERGENCY.** The Contractor shall perform any work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases he shall notify the Owner of the emergency as soon as practicable, but he shall not wait for instructions before proceeding to the properly protect both life and property.
- 2.4.14 **WARNING SIGNS AND BARRICADES.** The Contractor shall provide adequate signs, barricades, red lights and watchmen and take all necessary precautions for the protection of the work and the safety of the public. All barricades and obstructions shall be protected at night by suitable signal lights which shall be kept burning from sunset to sunrise. All traffic control devices shall meet the standards set forth in the manual on Uniform Traffic Control Devices. Suitable warning signs shall be so placed and illuminated at night as to show in advance where construction, barricades, or detours exist.
- 2.4.15 **PUBLIC CONVENIENCE.** The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Engineer. Fire hydrants on or adjacent to the work shall be kept accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches, and irrigation ditches, which shall not be obstructed.
- 2.4.16 **SAFETY.** In accordance with general accepted construction practices, the Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property affected directly or indirectly by his operations during the performance of the work. This requirement will apply continuously 24 hours per day until acceptance of the work by the Owner and shall not be limited to normal working hours.

- A. **The duty of the Engineer** to conduct construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the construction site.
- 2.4.17 **EXISTING CONSTRUCTION.** When new construction is adjacent to or crosses highways, railroads, streets or utilities under the jurisdiction of State, County, City or other public agency, public utility or private entity, the Contractor shall secure written permission from the proper authority before executing such new construction. A copy of this written permission must be filed with the owner before any work is done. The Contractor shall replace or repair all existing construction damaged in the execution of this Contract. The Contractor will be required to furnish a release from the proper authority before final acceptance of the work.
- 2.4.18 **SANITARY PROVISIONS.** The Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his Subcontractors as may be necessary to comply with the requirements and regulations of the local and state departments of Health.

PROGRESS AND COMPLETION OF WORK

SECTION 2.5

- 2.5.01 **NOTICE TO PROCEED.** Following the execution for the Contract by the Owner and the Contractor, written Notice to Proceed with the work shall be given by the Owner to the Contractor. The Contractor shall begin and prosecute the work regularly and uninterruptedly thereafter with such force as to secure the completion of the work within the Contract time.
- 2.5.02 **CONTRACT TIME.** The Contractor shall complete, in an acceptable manner, all of the work contracted for in the time stated herein. Computation of the Contract Time shall commence on the day following the date the Contractor's Acknowledgement of the Notice to Proceed and every calendar day following shall be counted as Contract Time.
- 2.5.03 **PRE-CONSTRUCTION MEETING.** A meeting with the Owner, City Engineer, Project Engineer, Construction Inspector, and Contractor as to review scope of work construction schedules, equipment data, labor force, materials, subcontractor work, prior to actual start of work.
- 2.5.04 **SCHEDULE OF COMPLETION.** The Contractor shall submit to the Owner or Engineer, schedules showing the order in which the Contractor proposes to carry on the work, with dates at which the Contractor will start the various parts of the work, and estimated date of completion of each part. These schedules are to be submitted at the Pre-Construction meeting, Section 2.5.03.
- 2.5.05 **CHANGES IN THE WORK.** The Owner reserves the right to make such alterations in the plans or in the quantities of work as may be considered necessary. Such alterations shall be in writing by the Owner or Engineer and shall not be considered as a waiver of any conditions of the contract nor to invalidate any of the provisions thereof; provided, however, that the execution of a supplemental agreement acceptable to both parties of the contract will be necessary before any alteration is made which involves (1) an extension or shortening of the length of the project by more than 25% (2) an increase or decrease of more than 25% of total cost of the work calculated from the original proposal quantities and the unit contract prices, or (3) an increase or decrease of more than 25% in the quantity of any one major contract item.

For condition (3) above, a major item is defined as any item, unless otherwise indicated on the plans or designated in the Special Provisions, the contract price for which amounts to 10% or more of the total contract price as determined by the original quantities and the unit contract prices.

When an alteration requires the execution of a supplemental agreement, the agreement shall be fully executed before any work on the alteration is started. Alterations involving an increase of more than 25% in the net of any one minor contract item will not require a supplemental agreement.

- 2.5.06 **EXTRA WORK.** New and unforeseen items of work found to be necessary, and which cannot be covered by any item or combination of items for which there is a Contract price, shall be classed as Extra Work and furnish such materials as may be required for the proper completion or construction of the whole work contemplated, upon written order from the Owner as approved by the Engineer. In the absence of such written order, no claim for Extra Work shall be considered. Extra Work shall be performed in accordance with these Contract Documents where applicable and work not covered by such shall be done in accordance with the best construction practice and in a workmanlike manner. Extra Work required in any emergency to protect life and property shall be performed by the Contractor as required by the Engineer.

- 2.5.07 **EXTENSION OF CONTRACT TIME.** A delay beyond the Contractor's control occasioned by an Act of God, by act or omission on the part of the Owner or by strikes, lockouts, fire, etc., may entitle the Contractor to an extension of time in which to complete the work as agreed by the Owner, provided, however, that the Contractor shall immediately give written notice to the Owner of the Cause of such delay.
- A. **Act of God shall** mean an earthquake, flood, cyclone or other cataclysmic phenomenon of nature. Hail, wind, flood or other natural phenomenon of normal intensity for the locality shall not be construed as an Act of God and no reparation shall be made to the Contractor for damages to the work resulting therefrom.
- 2.5.08 **USE OF COMPLETED PORTIONS.** The Owner shall have the right to take possession of and use any complete or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted work or causes refinishing of completed work, the Contractor shall be entitled to such extra compensation or extension of time or both, as agreed by the Owner.
- 2.5.09 **REMOVAL OF CONSTRUCTION EQUIPMENT, TOOLS AND SUPPLIES.** At the termination of this Contract, before acceptance of the work by the owner, the Contractor shall remove all of his equipment, tools and supplies from the property of the Owner. Should the Contractor fail to remove such equipment, tools and supplies, the Owner shall have the right to remove them at the expense of the Contractor.
- 2.5.10 **CLEANING UP.** The Contractor shall remove from all public and private property, all temporary structures, rubbish, and waste materials resulting from his operation or caused by his employees, and shall remove all surplus materials leaving the site smooth, clean and true to line and grade.
- 2.5.11 **ENGINEER'S CERTIFICATE OF SUBSTANTIAL COMPLETION.** When the work to be performed under this Contract is substantially completed in accordance with the Contract Documents, the Engineer shall prepare an Engineer's Certificate of Substantial Completion to be acknowledged and accepted by the Owner and the Contractor. The Certificate may list items to be completed or corrected but such Certificate shall not relieve the Contractor of his obligation to complete all work, whether listed or not, in accordance with the Contract Documents nor will it preclude any right the Owner may have for recourse in accordance with the Contract Documents.
- 2.5.12 **TERMINATION OF CONTRACTOR'S RESPONSIBILITY.** The Contract will be considered complete when all work has been finished, the final review made up by the Owner or Engineer, and the project accepted in writing by the Owner or Engineer. The Contractor's responsibility shall then cease, except as set forth in his Performance Bond, as provided in Paragraph 2.3.08 Guaranty, and as provided in Paragraph 2.5.13 Correction of Faulty Work After Final Payment.
- 2.5.13 **CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT.** The making of the final payment by the owner to the Contractor shall not relieve the Contractor of responsibility for faulty materials or workmanship. The Contractor shall promptly replace any such defects discovered within the guaranty period specified in these General Conditions.

PAYMENTS TO CONTRACTOR

SECTION 2.6

- 2.6.01 **DETAILED BREAKDOWN OF CONTRACT AMOUNT.** Except in cases where unit prices form the basis for payment under the Contract, the Contractor shall, within ten days of receipt of Notice to Proceed, submit a complete breakdown of the Contract Amount showing the value assigned to each part of the work, including an allowance for profit and overhead. Upon approval of the breakdown of the Contract Amount by the Owner or Engineer, it shall be used as the basis for all Requests for Payment.
- 2.6.02 **REQUESTS FOR PAYMENT.** The Contractor may submit to the Owner periodically, but not more than once each month a Request for Payment for work done and materials delivered to and stored on the site. The Contractor shall furnish the Owner all reasonable information required for obtaining the necessary data relative to the progress and execution of the work. Payment for materials stored on the site will be conditioned upon evidence submitted to establish the Owner's title to such materials. Each Request for Payment shall be computed on the basis of work completed on all items listed in the Detailed Breakdown of Contract, unit prices, less five percent to be retained until final completion and acceptance of the work and less previous payments. "Requests for Payment shall be accompanied by a City of Missoula Lien/Claim Waiver Form, with appropriate "Conditional" and "Unconditional" portions completed, from the Prime Contractor and from each vendor, subcontractor and sub-subcontractor. Prime Contractor shall submit an Affidavit of Bills Paid for Release of the Final Payment. For projects under \$50,000 a single Lien/Claim Waiver form may be submitted from each vendor, subcontractor and sub-subcontractor with the Request for Final Payment, accompanied by the Prime Contractor's Affidavit of Bills Paid for Release of the Final Payment."
- 2.6.03 **ENGINEER'S ACTION ON A CONTRACTOR'S REQUEST FOR PAYMENT.** All Contractor's Requests for Payment shall be referred to the Engineer for his review and, within a reasonable period, the Engineer shall:
- A. **Recommend payment** by the Owner of the Request for Payment as submitted.
 - B. **Recommend payment** by the Owner of such other amount as the Engineer shall consider is due the Contractor, informing the Owner and the Contractor in writing of his reasons for recommending the amended amount.
 - C. **Recommend to the Owner** that payment of the Request for Payment be withheld, informing the Contractor and the Owner in writing of his reasons for so recommending.
- 2.6.04 **OWNER'S ACTION ON REQUEST FOR PAYMENT.** Within thirty days after receipt of a Request for Payment from the Contractor, the Owner shall:
- A. **Pay the Request** for Payment as recommended by the Engineer.
 - B. **Pay such other amount**, in accordance with Paragraph 2.6.05 as he shall decide is due the Contractor, informing the Contractor and the Engineer in writing of his reasons for payment the amended amount.
 - C. **Withhold payment** in accordance with Paragraph 2.6.05, informing the Contractor and the Engineer of his reasons for withholding payment.
- 2.6.05 **OWNER'S RIGHT TO WITHHOLD PAYMENT OF A REQUEST FOR PAYMENT.** The Owner may withhold payment, in whole or in part, of a Request for Payment to the extent necessary to protect himself from loss on account of any of the following:
- A. **Defective work.**
 - B. **Evidence indicating** the probably filing of claims by other parties against the Contractor which may adversely affect the Owner.

- C. **Failure of the Contractor** to make payments due to Subcontractors, material suppliers or employees.
- 2.6.06 **INTEREST ON UNPAID REQUESTS FOR PAYMENT.** No interest will be paid on unpaid requests for payment.
- 2.6.07 **PAYMENT FOR UNCORRECTED WORK.** Should the Owner direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Amount shall be made to compensate the Owner for the uncorrected work.
- 2.6.08 **PAYMENT FOR REMOVAL OF REJECTED WORK AND MATERIALS.** The removal of work and materials rejected in accordance with paragraph 2.3.05 and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor, and he shall pay the cost of replacing the work and other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement of acceptable work.
- A. **Removal by owner:** Removal of rejected work or materials and storage of materials by the Owner, in accordance with Paragraph 2.3.05, shall be paid by the Contractor within thirty days after written notice to pay is given by the Owner. If the Contractor does not pay the expenses of such removal and after then days' written notice being given by the Owner of his intent to sell the materials at auction or at private sale and will pay to the Contractor the net proceeds therefrom after deducting all the costs and expenses that should have been born by the Contractor.
- 2.6.09 **PAYMENT FOR EXTRA WORK.** Written notice of claims for payment for Extra Work shall be given to the Contractor within ten days after receipt of instructions from the Owner to proceed with the Extra Work and also before any work is commenced, except in emergency endangering life or property. No claim shall be valid unless so made. In all cases, the Contractor's itemized estimate sheets showing all labor and materials shall be submitted to the Owner. The Owner's order for Extra Work shall specify any extension of the Contract Time and one of the following methods of payment:
- A. **Unit prices** or combinations of unit prices which formed the basis of the original Contract.
B. **A lump sum** based on the Contractor's estimate and accepted by the Owner.
C. **Actual cost** plus 15 percent for overhead and profit.
- Actual costs are defined as follows:
1. **Labor costs**, including time of foreman while engaged directly upon extra work.
 2. **Labor insurance** and taxes.
 3. **Materials** and supplies actually used on the work.
 4. **Equipment** used will be reimbursed at the rental rate listed for such equipment specified in the current edition of the "Rental Rate Blue Book" as published by Machinery Information Division of K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95110; Telephone (800) 669-3282. Individual pieces of equipment or tools having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.
- 2.6.10 **PAYMENT FOR WORK SUSPENDED BY THE OWNER.** If the work or any part thereof shall be suspended by the Owner and abandoned by the Contractor as provided in Paragraph 2.2.01, Suspension of Work by owner, the Contractor will then be entitled to payment for all work done.
- 2.6.11 **PAYMENT FOR WORK BY THE OWNER.** The cost of the work performed by the Owner, in removing construction equipment, tools and supplies in accordance with Paragraph 2.5.09, Removal of Construction

Equipment, Tools, and Supplies, and in correcting deficiencies in accordance with Paragraph 2.2.01e, Owner's Right to Terminate the Agreement and Complete the Work, shall be paid by the Contractor.

- 2.6.12 **PAYMENT FOR WORK BY THE OWNER FOLLOWING HIS TERMINATION OF THE CONTRACT.** Upon termination of the Contract by the owner in accordance with Paragraph 2.2.01, Owner's Right to Terminate Agreement and Complete the Work, no further payments shall be due the Contractor until the work is completed. If the unpaid balance of the Contract Amount shall exceed the cost of completing the work including all overhead costs, the excess shall be paid to the Contractor. If the cost of completing the work shall exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The cost incurred by the Owner, as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Owner.
- 2.6.13 **PAYMENT FOR WORK TERMINATED BY THE CONTRACTOR.** Upon suspension of the work or termination of the Contract by the Contractor in accordance with Paragraph 2.2.02f, Contractor's Right to Suspend Work or Terminate Agreement, the Contractor shall recover payment from the Owner for the work performed, plus loss on plant and materials, plus established profit and damages.
- 2.6.14 **PAYMENT FOR SAMPLES AND TESTING OF MATERIAL.** Samples furnished in accordance with Paragraph 2.3.02, Samples, shall be furnished by the Contractor at his expense and may be used in the work, after acceptance.
- A. **Testing of samples and materials** furnished in accordance with Paragraph 2.3.02, Samples shall be arranged and paid for by the Owner.
- 2.6.15 **ACCEPTANCE AND FINAL PAYMENT.** When the Contractor shall have completed the work in accordance with the terms of the Contract Documents, he shall certify completion of the work to the Owner and submit a final Request for Payment, which shall be the Contract Amount plus all approved additions, less all approved deductions and less previous payments made. The Contractor shall furnish evidence that he has fully paid all debts for labor, materials, and equipment incurred in connection with the work, and, upon acceptance by the owner, the Owner will release the Contractor except as to the conditions of the Performance Bond and the Labor and Material Payment Bond, any legal rights of the Owner, required guaranties, and Correction of Faulty Work after Final Payment, and will pay the Contractor's final Request for Payment. The Contractor shall allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the Owner or Engineer to assemble and check the necessary data.
- A. **Release of Liens:** The Contractor shall deliver to the Owner a complete release of all liens arising out of this Contract before the retained percentage or before the final Request for Payment is paid. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens including all costs and a reasonable attorney's fees.

City of Missoula

[DATE]

NOTICE OF AWARD

Re: _____
City Project No. 0x-0xx

The OWNER has considered the BID you submitted for the WORK described above in response to its Advertisement for Bids.

You are hereby notified that the Missoula City Council accepted your BID on _____ 20__ for the base bid of \$_____ and Bid Alternative Number One in the amount of \$_____ for a total contract award of \$_____.

You are required by the Instructions to Bidders to execute the Contract and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you. Enclosed are **three (3)** copies of the contract to be signed and returned with the requested bonds and certificate of insurance.

If you fail to execute said Contract and to furnish said BONDS within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Owner: City of Missoula Parks & Recreation Dept.

By: _____
Donna Gaukler – Director - CPRP

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by _____

this _____ day of _____, 20__.

By: _____ Title: _____

LIEN/CLAIM WAIVER CONDITIONAL / UNCONDITIONAL

FROM: _____ **PROJECT:** _____
Address _____ **Location** _____

Contact Person: _____ **Project Manager:** _____
Contact Telephone: _____ **Project Telephone:** _____

CONDITIONAL	UNCONDITIONAL RELEASE
<p>The undersigned does hereby acknowledge that upon receipt by the undersigned of a check from (Name of Firm writing check): _____ in the sum of _____ and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release pro tanto any and all claims and rights of lien which the undersigned has on the above referenced job. This release covers a progress payment for labor, services, equipment, materials furnished and/or claims thought (date): _____ only and does not cover any retention of items furnished after that date. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.</p> <p>I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF MONTANA THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.</p> <p>Signature: _____</p>	<p>The undersigned does hereby acknowledge that the undersigned has been paid and has received progress payments in the sum of _____ for labor, services, equipment or materials furnished to the above referenced job and does hereby release pro tanto any and all claims and rights of lien which the undersigned has on the above referenced job. This release covers all payments for labor, services, equipment, materials furnished and/or claims to the above referenced job through (date): _____ only and does not cover any retention or items furnished after that date.</p> <p>NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY LAND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE THE CONDITIONAL RELEASE FORM TO THE LEFT.</p> <p>I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF MONTANA THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.</p> <p>Signature: _____</p>
(Authorized /Corporate Officer/Partner/Owner)	(Authorized /Corporate Officer/Partner/Owner)
(Title)	(Title)
Dated this _____, 20__ at _____	Dated this _____, 20__ at _____
(City, State)	(City, State)

City of Missoula

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AFFIDAVIT OF BILLS PAID FOR RELEASE OF FINAL PAYMENT

STATE OF MONTANA)
)
COUNTY OF MISSOULA)

BEFORE ME, the undersigned authority, on this day personally

appeared _____, representing Contractor under the following Contract:

Owner: CITY OF MISSOULA, MONTANA

Contractor: _____

Date: _____

PROJECT: _____

The undersigned was by me duly sworn and now states upon oath:

1. The improvements required by the PROJECT Contract have been erected and completed in full compliance with the Contract and the agreed plans and specifications for the Contract.
2. All bills and claims for materials furnished and labor performed on the Contract have been paid. There are no outstanding unpaid bills or legal claims for labor performed or materials furnished upon the job.
3. This Affidavit is being made by the undersigned realizing that it is in reliance upon the truthfulness of the statements contained in this Affidavit that final and full settlement of the balance due on the Contract is being made, and in consideration of the disbursement of funds by the Owner, the undersigned expressly gives and releases all liens, claims and rights to assert a lien on said premises and agrees to indemnify and hold Owner safe and harmless from and against all losses, damages, costs, and expenses of any character whatsoever, specifically including court costs, bonding fees, and attorney’s fees, arising out of or in any way relating to, claims for unpaid labor or material used or associated with construction of improvements under the Contract.

By: _____
(SIGNATURE)

Name: _____

Title: _____

(SEAL)

Subscribed and sworn to before me, the undersigned authority,
on this the _____ day of _____, 20__

(SIGNATURE)

Notary Public in and for the State of Montana

My Commission Expires: _____

