

# CONSTRUCTION MANAGEMENT/GENERAL CONTRACTOR AGREEMENT

## Westside Park Phase II

**This Agreement** is made and entered into this \_\_\_ day of December, 2021, between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman St., Missoula, MT 59802-4297, referred to here as “Owner” or “City” and **Jackson Contractor Group, Inc.**, 5800 Highway 93 S, Missoula, MT 59806, referred to here as “Contractor” or “CM/GC”, for park construction to be done on property the City leases at 1100 Sherwood St. Missoula, Montana, the “Project”.

**Whereas**, Owner desires to hire Contractor to perform the services addressed in Section 2 below, which is defined in therein as the “Work”; and

**Whereas**, the City selected the Contractor through a public RFQ/RFP process; and

**Whereas**, Contractor has the experience, ability, and time available to perform the Work.

**Now therefore**, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of the same being acknowledged, the parties agree as follows:

**1. The Construction Team and Extent of Agreement.** The CM/GC accepts the relationship of trust and confidence established with the Owner by this Agreement. The CM/GC covenants with the Owner to furnish its best skill and judgment and to cooperate with the Landscape Architect in furthering the interests of the Owner. The CM/GC agrees to furnish efficient business administration and superintendence and to use its best efforts to perform the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

- a. The Construction Team. The CM/GC, the Owner, and the Landscape Architect, collectively referred to as the “Construction Team,” shall work from the beginning of design through construction completion. The CM/GC shall provide leadership to the Construction Team on all matters relating to construction.
- b. Extent of Agreement. This Agreement represents the entire agreement between the Owner and the CM/GC and supersedes all prior negotiations, representations, or agreements. When plans and specifications are complete, they shall be identified as part of the Contract Documents. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument executed by both the Owner and the CM/GC. Nothing contained herein shall be deemed to give any third party any claim or right of action against the Owner or the CM/GC that does not otherwise exist without regard to this Agreement.
- c. Contract Documents. The provisions of the General Conditions and all of the “Contract Documents” for the Project as that term is defined therein are incorporated by this reference into this Construction Management/General Contractor Agreement, to the

extent those documents and their provisions are not in conflict with the specific provisions herein.

2. **Construction Manager/General Contractor Services.** The CM/GC's basic services under this Agreement shall consist of the "Design Phase" and "Construction Phase", together referred to as the "Work", which is described further below:

- a. Design Phase. As part of the Design Phase services, the CM/GC shall do the following:
  - i. Consultation During Project Development. Attend regularly scheduled meetings with the Landscape Architect during the development of conceptual and preliminary design to advise on site use and improvements, selection of materials, building systems, and equipment. Provide recommendations on construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost including costs of alternative designs or materials, preliminary budgets, and possible economies.
  - ii. Scheduling. Develop a Project Time Schedule that coordinates and integrates the Landscape Architect's design efforts with construction schedules. Provide two (2) copies for the Owner's review and approval. Update the Project Time Schedule, at intervals required by the Owner, incorporating a detailed schedule for the construction operations of the Project, including realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products requiring long lead-time procurement. Include the Owner's occupancy requirements showing portions of the Project having occupancy priority. Provide two (2) copies of the updates for the Owner's review and approval.
  - iii. Project Construction Budget. Review the Owner's established Project budget as soon as major program requirements have been identified and update the budget, at intervals required by the Owner, for the Owner's approval. Prepare an estimate based on a quantity survey of drawings and specifications at the end of the Schematic Design Phase for approval by the Owner as the Project Construction Budget. Update and refine this estimate for Owner's approval as the development of the drawings and specifications proceeds. As a minimum, provide a complete estimate at the conclusion of Design Development and updates at fifty percent (50%). Advise the Owner and the Landscape Architect if it appears that the Project Construction Budget will not be met and, in that event, make recommendations for corrective action. The amount of money appropriated by the Owner for the Project shall be equal to or in excess of the Project Construction Budget.
  - iv. Value Engineering. Provide technical review and analysis of systems and materials being considered in the design as may be necessary to produce the greatest value for the least cost.
  - v. Coordination of Contract Documents. Review the drawings and specifications as they are being prepared, identifying conflicts, errors, and omissions and recommending

alternative solutions whenever design details affect construction feasibility or schedules. Forward all comments and recommendations in writing to the Landscape Architect for response/action. As a minimum, conduct a formal review at the conclusion of Design Development, fifty percent (50%) and ninety percent (90%) Construction Documents.

- vi. Construction Planning. Recommend for purchase and expedite the procurement of long-lead items to ensure their delivery by the required dates.
  - vii. Division of Work. Make recommendations to the Owner and the Landscape Architect regarding the division of the Work in the plans and specifications to facilitate the bidding and awarding of subcontractors and to allow for phased construction, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, and other matters.
  - viii. Permitting. Make recommendations to the Owner that will assist in obtaining any necessary construction permits. Attend meetings with City Building Department officials and coordinate with Landscape Architect to achieve compliance with all federal, state, and local regulations.
  - ix. Construction Document Review. Perform final review of plans and specifications with the Landscape Architect and Owner to eliminate areas of conflict or misinterpretation and to assure proper coordination, accuracy, and completeness.
  - x. Labor. Analyze the types, quantity, and availability of appropriate categories of labor required for various phases of the Project.
  - xi. Bidding. Develop and implement a subcontractor pre-qualification process with the cooperation and approval of the Owner. As working drawings and specifications are completed, establish bidding schedules and conduct pre-bid conferences to familiarize bidders with bidding documents, management techniques, and any special systems, materials, or methods. Receive competitive bids on the Work from various subcontractors, pursuant to bidding procedures acceptable to the Owner. Analyze all bids, review them with the Owner and Landscape Architect, make recommendations for contract awards, and award subcontractors.
  - xii. Conferences. Conduct pre-construction conferences with successful subcontractors.
- b. **Construction Phase**. As part of the Construction Phase services, the CM/GC shall do the following:
- i. Project Control. Supervise the Work of the subcontractors and coordinate the Work with the activities and responsibilities of the Owner and Landscape Architect in order to complete the Project in accordance with the Owner's objectives of cost, time, and quality.

- ii. Staffing. Maintain a competent full-time staff, approved by the Owner, at the Project site to coordinate, provide overall direction of the Work, and monitor progress of the subcontractors on the Project.
- iii. Organization. Establish, document, and communicate on-site organization and lines of authority in order to carry out the overall plans of the Construction Team.
- iv. Landscape Architect. The City plans to use in house staff to serve as the Landscape Architect for this Project. However, the City may decide to hire an outside firm to act as the City's Landscape Architect for this Project. Under either approach, the City shall identify the Landscape Architect for the CM/GC to work with.
- v. Coordination. Establish and implement procedures for coordination among the Owner, Landscape Architect, subcontractors, and the CM/GC with respect to all aspects of the Project.
- vi. Scheduling. Schedule and conduct weekly progress meetings at which subcontractors, the Owner, Landscape Architect, and the CM/GC can discuss jointly such matters as procedures, progress, problems, and scheduling. Within twenty-one (21) calendar days from acceptance of the Guaranteed Maximum Price, as defined below, submit two (2) copies of a detailed Construction Time Schedule for the operations of the CM/GC and subcontractors on the Project, including realistic activity sequences and durations, allocation of labor, materials, and costs, processing of shop drawings and samples, and delivery of products requiring long lead-time procurement for approval by the Owner. Include the Owner's occupancy requirements in all schedules showing portions of the Project having occupancy priority, if any. The contents and format of the Construction Time Schedule shall be per the requirements stated in Article 4.
- vii. Schedule Updating. Provide regular updates of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started or incomplete and recommend to the Owner and subcontractors adjustments in the schedule to meet the scheduled completion date. Provide two (2) copies of the monthly summary reports for the review and approval of the Owner of such updating activities and document all changes in the schedule.
- viii. Evaluation. Determine the adequacy of the subcontractors' personnel and equipment and the availability of materials and supplies to meet the schedule.
- ix. Cost Control. Develop and implement an effective system of Project cost control, showing actual costs for activities in process and estimates for uncompleted tasks. Revise and refine the initially approved Project Construction Budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed.
- x. Change Orders. Develop and implement a system for the expeditious review and processing of Change Orders as approved by the Owner. Initiate necessary or desirable changes to the Owner and the Landscape Architect, review requests for changes, submit

recommendations to the Owner and the Landscape Architect, and assist in negotiating Change Orders. The Owner shall not issue any change order or other directive that causes its payment obligations to exceed lawful appropriations to cover the cost thereof.

- xi. Permits. Secure and fund all necessary permits, licenses, and inspections for the proper completion and execution of the Work.
- xii. Owner's Consultants. If required, assist the Owner in selecting, retaining, and coordinating professional services of a surveyor, testing laboratories, and any special consultants.
- xiii. Superintendent. Keep on the Project, during the progress of the Work, a full-time competent superintendent and any necessary assistants, all satisfactory to the Landscape Architect and the Owner. The superintendent shall not be changed except with the consent of the Landscape Architect and the Owner, unless the superintendent proves to be unsatisfactory to the CM/GC and ceases to be in its employ. The superintendent shall represent the CM/GC in its absence and all directions given to the superintendent shall be as binding as if given to the CM/GC. The superintendent shall remain on the Project full-time until all Work is complete, including the punch list. The Landscape Architect and the Owner shall not be responsible for the acts or omissions of the superintendent or his/her assistants.
  - 1. The superintendent shall provide full-time, qualified and efficient supervision of the Work, using his/her best skill and attention. Carefully study and compare all drawings, specifications, and other instructions and immediately report to the Landscape Architect and the Owner any error, inconsistency, or omission that may be discovered. Inspect the Work of the subcontractors at all stages and at final completion and guard the Owner against defects and deficiencies in such Work. The CM/GC shall be responsible to the Owner for the acts and omissions of all its employees and of all subcontractors, their agents, and employees and all other persons performing any of the Work, for which the CM/GC has supervisory or inspection responsibility hereunder.
  - 2. The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a thorough and first-class manner in every respect. The CM/GC's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in subcontract work. The superintendent shall lay out the Work in a manner satisfactory to the Landscape Architect, making permanent records of all lines and levels required for excavation, grading, and foundations and for all other portions of the Work. The superintendent shall, together with the Landscape Architect, authorize the commencement and certify the proper completion of the various stages of construction. The CM/GC shall be responsible for construction means, methods, techniques, sequences, and procedures and for carrying out the Work in accordance with the Contract Documents.

- xiv. Safety Measures. Establish procedures and measures for the safety of persons and property at and around the site of the Work. Assure compliance with all federal, state, and local statutes, rules, regulations, and orders applicable to the conduct of the Work.
- xv. Contract Interpretations. Refer all questions relative to interpretation of design intent to the Landscape Architect. Develop and implement an effective system of tracking the status of questions and responses.
- xvi. Shop Drawings and Samples. In collaboration with the Landscape Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples.
- xvii. Reports and Project Site Documents. Record the daily progress of the Project in a daily log available to the Owner and the Landscape Architect. Submit on a weekly basis written progress reports and summaries of meetings to the Owner and the Landscape Architect, including information on the subcontractors' work, manpower levels by trade, and the percentage of completion.
- xviii. Record Sets. Maintain at the Project site, on a current basis, records of all necessary contracts, shop drawings, samples, purchases, materials, equipment, material safety data sheets, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the Agreement or the Work. Obtain data from subcontractors and maintain a current set of record drawings, specifications, operating manuals, warranties, and guarantees. At the completion of the Project, submit all such documents to the Landscape Architect for delivery to the Owner.
- xix. Completion. Determine completion of the Work or designated portions by subcontractors thereof and prepare for the Landscape Architect a list of incomplete or unsatisfactory items together with a schedule for their completion.
- xx. Start-Up and Training. With the Owner's maintenance personnel and the Landscape Architect, direct the checkout of utilities, operating systems, and equipment for readiness and assist in their initial start-up and testing by the subcontractors. Facilitate all training of Owner's personnel as required.
- xxi. Final Completion. Determine final completion by subcontractors and provide written notice to the Owner and Landscape Architect that the Work is ready for final inspection. Include with the written notice a copy of the Landscape Architect's punch list signed off by each responsible party. Secure and transmit to the Landscape Architect required guarantees, tax affidavits, certificates, releases, bonds, and waivers. Turn over to the Owner all keys and maintenance stocks.
- xxii. Warranty. During the one (1) year warranty period at no additional cost to the Owner, perform one (1) warranty inspections and ensure that Work which proves defective or deficient during such time is corrected either by the subcontractors or such other means as shall be required.

### **3. The Owner's Responsibilities.**

- a. Information. The Owner shall provide full information regarding its requirements for the Work.
- b. Owner's Representative. The Owner shall designate a representative who shall be acquainted with the scope of the Work; shall have authority to approve budgets and adjustments thereto as contemplated by Section 2.a.c within the Project Cost Estimate; shall render decisions; and shall otherwise furnish information.
- c. Professional Services. The Owner shall furnish such legal services as may be necessary for its benefit, and such auditing services as it may require.
- d. Documentation. The CM/GC shall be furnished, without charge, all copies of drawings and specifications reasonably necessary for the execution of the Work.
- e. Surveys and Special Testing. So far as the Project contemplated by this Agreement may require, the CM/GC shall be entitled to information giving a complete and accurate survey of the building site and the existing grades and lines of streets, pavements, and adjoining properties; information as to the rights, restrictions, easements, surface water courses, boundaries, and contours of the building site; and full information as to existing sanitary sewer, storm sewer, water, gas, and electrical services. The Owner, at its expense, shall furnish all such data, upon request. The Owner likewise shall pay for all borings or test pits and for any mechanical, chemical, or other tests as well as professional verifications and inspections incident to proper appraisal of the site for the contemplated structure. A copy of all reports of such tests and borings shall be filed with the Owner and shall be available to the CM/GC, upon request.
- f. Owner's Expenses. The services, information, surveys, and reports required by Section 3.c – 3.f shall be furnished at the Owner's expense.
- g. Defects. If the Owner becomes aware of any default or defect in the Project or non-conformance with the Contract Documents, it shall give prompt written notice thereof to the CM/GC. This provision shall not, however, charge the Owner with any obligation to make inspections and shall in no manner be construed to discharge or modify the CM/GC's obligations to supervise, inspect, and to otherwise complete the Project in accordance with the Contract Documents.

### **4. Contract Time Schedule.**

- a. Schedule. The services and Work to be performed under this Agreement shall be in general accordance with the Contract Time Schedule attached hereto as Schedule 1.
- b. Time of Completion. This date shall be established at the time a GMP is fixed.

- c. Revision. At the time a GMP is fixed, as provided for in Article 5, a new Contract Time Schedule shall also be established.
- d. Delays and Extension of Time. If the CM/GC is delayed at any time in the progress of the Work by any act or neglect of the Owner or by any employee of either; or by any separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in transportation, unavoidable casualties, or any causes beyond the CM/GC's control; or by delay authorized by the Owner, or by COVID/Pandemic delays including without limitation (i) transportation delays or material shortages not reasonable foreseeable; (ii) epidemics/pandemics that directly affect the commencement or progress of the work, (iii) declared state of emergency by a governmental entity that directly affects the commencement or progress of the work, (iv) changes in the law or new orders issued by a governmental authority after execution of the Agreement, including new safety measures or standards that directly affect the commencement or progress of the work; the Contract Time Schedule shall be extended by Change Order for such reasonable time as the Owner and Contractor mutually determine. All requests for extension of time or claims for extra costs occasioned by delays or neglect shall be subject to the Owner's approval and shall be made in writing to the Owner no more than seven (7) days after the occurrence of the delay or event causing the extra costs; otherwise they shall be waived and barred.

## **5. Guaranteed Maximum Price**

- a. Establishment. When the design, plans, and specifications are sufficiently complete to make the final cost estimates and after subcontract bids have been received, the CM/GC shall notify the Owner of the GMP proposal for Owner approval, guaranteeing the maximum cost to the Owner for the Cost of the Work and the CM/GC's Fees. Once approved by the Owner, such GMP shall be guaranteed by the CM/GC, subject only to modification for Changes in the Work as documented in written and signed Change Orders and for additional costs arising from delays caused by the Owner or the Landscape Architect.
- b. Subcontracts. When the CM/GC provides a GMP, the subcontracts shall contain the necessary provisions to allow the CM/GC to control the performance of the Work.
- c. Savings. To the extent that the final Cost of the Work, as herein defined, and the CM/GC's Fees are less than the GMP, the savings shall accrue to the Owner.
- d. GMP Proposal. A GMP Proposal to Owner shall include the following, unless the parties mutually agree otherwise:
  - i. A proposed GMP;
  - ii. A list of the Drawings and Specifications, including all addenda, used as the basis for the GMP proposal;



- iii. A list of the assumptions and clarifications made by CM/GC in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the Drawings and Specifications;
- iv. The Scheduled Final Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 2.b.xx hereof, and a schedule upon which the Scheduled Financial Completion Date is based;
- v. If applicable, a list of allowances and a statement of their basis and a statement that, to the best of CM/GC's knowledge, the cost pertaining to such allowance item is a reasonable estimate taking into account (i) the Project plans and other Contract Documents existing at the time the allowance estimate is made; (ii) the labor and material standards and construction means, methods and techniques prevailing in the industry for projects similar to the Project; and (iii) the level of labor and material costs generally prevailing in the locality of the Project at the time the allowance estimate is made.

## 6. Construction Manager/General Contractor's Fee

- a. Determination. In consideration of the performance of this Agreement, the Owner agrees to pay the CM/GC in current funds as compensation for services a CM/GC's Fee as set forth in this Article.
- b. Preconstruction Phase Fee. For the performance of the Design Phase services, as defined in Section 2.a, the fee is **NOT TO EXCEED SIX THOUSAND DOLLARS (\$6,000.00)**, which shall be paid in one lump sum with the first Request for Payment submitted during the Construction Phase.

If Required Rates are established below

Individual or Position	Rate
Division Manager	\$125.00/HR
Preconstruction Manager	\$125.00/HR
Senior Estimator	\$85.00/HR
Staff Estimators	\$70.00/HR
Project Superintendent	\$90.00/HR
Project Manager	\$90.00/HR
Project Engineer	\$70.00/HR

- c. Construction Phase Fee. For Work or services performed during the Construction Phase, as defined in Section 2.b, a fee of **Five and One Half percent (5.5 %)** will be added on all direct and indirect costs on the project. Each month Contractor will provide a pay application with all material receipts, subcontractor invoices, Lien waivers will also be provided monthly.

- i. The method of adjustment of the Construction Manager's Fee for changes in the Work shall be Zero percent (0% )fee on any changes to \$100,000. Cumulative changes above \$100,000 will be subject to a fee of 5.5%.
  - ii. Limitations on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall be Fifteen percent (15%).
  - iii. Rental Rates for construction Manager-owned vehicles, equipment, and tools shall not exceed One Hundred percent (100%) of the standard rental rate paid at the place of the project.
- d. Prevailing Wages. Contractor and Owner agree that either the Montana Prevailing Wage Act or the Federal Davis-Bacon Act shall apply to all labor required as part of the Project. Certified payroll records shall be required for all portions of the work that are funded in whole or part by the project's Land and Water Conservation Fund grant.

**7. General Conditions.**

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

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

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

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

For the professional services rendered, to the fullest extent permitted by law, Contractor agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by

the negligence or willful misconduct of the Contractor or Contractor's agents or employees.

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

- Workers' Compensation—statutory
- Employers' Liability—\$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Commercial General Liability—\$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Automobile Liability—\$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate
- Professional Liability—\$1,000,000 per claim; \$2,000,000 annual aggregate

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

- c. Warranty. Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that he or she will be liable for any breach of this warranty for the lesser of a period of one (1) year from the time services are completed or any warranty described in the Scope of Services.
- d. Compliance with Laws. Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Contractor agrees to obtain, and maintain for the duration of its work for the City pursuant to this Agreement, a City business license. Contractor acknowledges and agrees that the City will make no payment under this Agreement until a valid City business license has been obtained.
- e. Contractors' Gross Receipts Tax. Contractor understands that all contractors or subcontractors working on a publicly funded project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.
- f. Minimum Wage Rates. In accordance with Montana Law (Section 18-2-403, MCA), on contracts for state, county, municipal school construction, heavy highway, or municipal construction, repair, or maintenance work under any of the laws of the state, the Contractor shall give preference to the employment of bona fide Montana residents in the performance of said contract, and shall further pay the standard prevailing rate of wages including fringe benefits and travel allowances in effect as paid in the county or locality in which the work is being performed. The provisions of Section 18-2-409, MCA, requires 50 percent of the workers on the project to be Montana residents.

The minimum wages, if included as a part of the contract documents, are not controlling

except as to the minimum for the purpose of the Davis-Bacon Act; therefore, it is incumbent upon each employer to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. The prevailing wage rate schedule in effect at the time this project is first advertised shall be used throughout the duration of the contract as prescribed in Administrative Rules of Montana (ARM) 24.17.127(1)(c).

“Standard Prevailing Rate of Wages” is defined by Section 18-2-402, MCA, as including wages, fringe benefits for health and welfare and pension contributions, and travel allowance which are paid in the city or locality by other contractors for work of a similar character performed in the county or locality by each craft, classification, or type of worker needed to complete a contract.

In accordance with Montana Law (Section 18-2-422, MCA), each contractor and employer shall maintain payroll records in a manner readily capable of being certified for submission under MCA 18-2-423, for not less than three years after the Contractor’s completion of work on this project.

Travel allowance, if applicable, may or may not be all inclusive of “travel” and/or subsistence and travel time due employees. It is incumbent on the employer to determine the amounts due for each craft employed according to the method of computation outlined for each craft where applicable.

To comply with Section 18-2-406, MCA, the Contractor performing work or providing construction services shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.

Per Montana Law, (Section 18-2-407, MCA), any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected under this section must be deposited in the Montana general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

Copies of the current prevailing rate of wages may be obtained from the Montana State Department of Labor and Industry, Labor Standards Division, Helena, Montana.

Any infractions of the Laws of the State of Montana covering labor will be forwarded to the State of Montana, Department of Labor and Industry, Labor Standards Division.

The contractor performing work on a “public works contract” shall not pay less than the latest Montana Labor Standard Provisions minimum wage as determined by the U.S.

Secretary of Labor. The provisions of this part do not apply in those instances in which the standard prevailing rate of wages is determined by federal law. "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for non-construction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000.

Contractor shall utilize the Montana Statewide Davis-Bacon Heavy Construction Wage Rates included in the Montana Prevailing Wage Rate Schedule for the labor required as part of this Project.

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

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

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

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

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

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

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment.

All applicants for City employment shall be employed on the basis of their qualifications and abilities.

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

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

- h. Default and Termination. If either party fails to comply with any condition of this agreement at the time or in the manner provided for, the other party, at its option, may terminate this agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this agreement.
- i. Modification and Assignability. This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written agreement, may be considered valid or binding. This agreement may not be enlarged, modified or altered except by written amendment signed by both parties hereto. The Contractor may not subcontract or assign Contractor's rights, including the right to compensation or duties arising under this agreement, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this agreement.
- j. Liaison. City's designated liaison with Contractor is Nathan McLeod, and Contractor's designated liaison with City is Stephen Thomas.
- k. Applicability. This agreement and any extensions of it shall be governed and construed in accordance with the laws of the State of Montana.
- l. Signing of Contract. The contract may be signed in counterparts and signed electronically by all parties.

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

**CONTRACTOR:**

\_\_\_\_\_

**MAYOR**

City of Missoula, Montana

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

(SEAL)