

**SUB-RECIPIENT AGREEMENT BETWEEN  
THE CITY OF MISSOULA AND TROUT UNLIMITED**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the TROUT UNLIMITED (Contractor), and the CITY OF MISSOULA, (City).

WHEREAS, the City entered into a Memorandum of Agreement on February 11, 2021 with Montana Fish Wildlife and Parks, and Trout Unlimited outlining objectives, roles and responsibilities associated with removing or rehabilitating the dams on the mountain lakes and restoring Rattlesnake Creek; and

WHEREAS, the Memorandum of Agreement directs the City and the TU to work collaboratively to apply for grant funding and to act as the project manager and provide grant reporting services for any grants administered by the City; and

WHEREAS, the City applied for and was awarded by the Montana Department of Natural Resources and Conservation and is funded by the Montana Legislature in House Bill 6, is consistent with the policies, procedures and objectives of Montana Renewable Resource Grant and Loan program (MCA Title 85, Chapter1, Part6) for the enhancement of Montana’s renewable resource; and

WHEREAS, the City entered into a RRG-22-1839 Grant Agreement with Department of Natural Resources and Conservation (DNRC) for providing funding for the removal of the McKinley Lake dam and creek restoration project.

WHEREAS, Contractor can implement the projects as outlined in the grant application award and has the financial resources to meet Budget requirements listed in Attachment B-Budget of the grant agreement.

WHEREAS, the City desires to enter into this agreement with Contractor to provide the desired services in return for the compensation provided below.

NOW THEREFORE, the parties agree as follows:

1. Relationship of the Parties

City of Missoula is a political subdivision of the State of Montana. Contractor is a Montana Nonprofit with 501(c) (3) IRS Status.

This Agreement is not intended to constitute or create a joint venture, partnership or formal business organization of any kind whatsoever among and between the parties, and their respective rights and obligations will be only those expressly set forth herein. Neither party will have any authority to bind the other except to the extent authorized herein.

Each party will furnish to the other such cooperation and assistance as may be reasonably required and specified hereunder. However, at all times, each party shall remain independent with respect to the other. Employees and agents of each party will not be deemed to be employees or agents of the other party. Contractor will perform or provide its services free from the supervision, direction or control of the City.

The Contractor is required to comply with the provisions of the Montana Worker's Compensation Act and shall provide proof of compliance as provided in Paragraph 9.

2. Documents Incorporated by Reference

The City's application to DNRC for funding, the City's contract with DNRC dated June 2, 2022 (Attachment A-scope of work within the grant agreement) and all documents referenced therein are incorporated into this Sub-Recipient Agreement by this reference and are binding on the Contractor. Contractor has had full opportunity to review all incorporated documents.

3. Required Work or Product

The Contractor shall provide the specific services, tasks, or work products shown on the attached Attachment A, which lists the scope of work relating to this Agreement. By this reference, Attachment A of the grant agreement is made a part of the Agreement.

4. Performance Schedule and City Assistance

Contractor shall commence performance of services identified in Attachment- A within the grant agreement; work will begin summer of 2023 and work will be completed December 31, 2024.

The City may, by written change order, request changes within the general scope of this Agreement in the schedule, specifications, or quantity of work to be performed hereunder, and Contractor shall be entitled to a reasonable period of time to perform or provide said changes. Additional fees will be charged to the City for such changes as set out in Attachment- A of the grant agreement.

City's Responsibilities - The City shall be responsible for assisting with the performance of this Agreement by doing or providing the following:

- a) The City, through the Department of Natural Resources and Conservation shall act as administrative and fiscal agent for the grant.

5. Place where service will be rendered

Contractor will perform most services in accordance with this Agreement in the location of the McKinley Lake dam, Rattlesnake Wilderness near Missoula MT. In addition, Contractor will perform services via the telephone, electronic mail, or at such other places as necessary to perform these services in accordance with this Agreement.

6. Compensation for Services

For the satisfactory completion of services to be performed under Exhibit A, the City will pay Contractor for the Montana renewable resource project grant RRG-20-1741, a sum not to exceed \$125,000 (One Hundred Twenty Five Thousand Dollars). Any modifications must be approved by the City of Missoula through the change order process and will be compensated according to the Budget contained on Attachment B. Request for payments must be submitted to the Principal Contact for the City identified in Paragraph 10 of this Agreement with complete supporting documentation.

7. Insurance and Workers' Compensation

Contractor will be required to maintain general liability insurance in the amount of one million dollars (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate. Contractor will be required to provide professional liability insurance.

In accordance with §§ 39-71-401 and 39-71-405 MCA, Contractor agrees to provide workers' compensation insurance for its employees while performing work under this Agreement. Contractor shall provide proof of compliance in the form of workers' compensation insurance or documentation of corporate officer status and maintain such insurance or corporate officer status for the duration of the contract.

All insurance policies required must be from an insurance carrier licensed to do business in the State of Montana. Contractor agrees to furnish proof of required insurance to the City prior to commencing work under Agreement.

8. Nondiscrimination and Affirmative Action

As stated in award Section 12. Any hiring of employees under this Agreement shall be on the basis of merit and qualifications, and there shall be no discrimination on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, political belief, ancestry, physical or mental disability, familial status, sexual orientation, gender identity or gender expression. "Qualifications" means qualifications as are generally related to competent performance of the particular occupational task.

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, 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.

8. Records, Reports and Audits

Contractor shall maintain sufficient records and reports for the performance of this Agreement to enable the City to document the performance of the Agreement. Contractor shall allow access to those records by the City and the City Auditor, any independent auditor employed by the City and to representatives of the state or federal government. Records shall be retained for at least eight (8) years after completion of the Montana Renewable Resource Project Grant, in accordance with Section 8, Section 9 and Attachment C- Final Report Requirements of the grant agreement.

9. Principal Contact for the Contractor

Organization Name: Trout Unlimited  
Organization Type: Nonprofit with 501(c) (3) IRS Status  
Principal Contact: Rob Roberts  
Mailing Address: 312 N. Higgins Ave., Suite 200, Missoula, Montana 59802  
Telephone Number: (406)-540-2944  
E-mail Address of Principal Contact: Rob.Roberts@tu.org

10. Principal Contact for the City

The City official with whom the Contractor must communicate regarding this Agreement and who shall have the authority to accept completion of performance and to submit requests for payment to the City of Missoula:

Name: Logan McInnis  
Title: Deputy Director of Utilities  
Address: 1345 W. Broadway, Missoula, Montana 59802  
Telephone Number: (406) 552-6766  
Email Address: mcinnisl@ci.missoula.mt.us

11. Ownership and Publication of Materials

All reports, information, data, and other materials prepared by Contractor pursuant to this Agreement are the property of the City and State of Montana, which has the exclusive and unrestricted authority to produce, release, publish, or otherwise use, in whole or in part, information relating thereto. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the City.

12. Public Access to Information

Contractor acknowledges that the City is a local government unit and its records are public and subject to disclosure under Montana law. Certain information may be protected from disclosure. Protected information includes information concerning an individual privacy interest, legitimate trade secrets and other constitutionally protected proprietary information and certain information relating to individual or public safety. The parties agree to confer prior to disclosure of information relating to this Agreement and its performance which may include protected information.

13. Termination

This Agreement may be terminated at any time by mutual written and signed consent of both parties.

If the Agreement is terminated prior to completion, City shall be responsible for paying Contractor for completed and accepted work and billed to the City as provided in Paragraph 6 within thirty (30) days of termination.

#### 14. Failure to Perform

Upon any material default or substantial failure to perform this Agreement by either party, the other party shall be entitled to the following remedy:

- a) Stop performing or accepting performance of the contracted work until the matter is resolved;
- b) Within a reasonable time of discovery of the defect or failure to perform, mail a written description of the defect or failure to the other party, and:
  - 1) If the defect or failure to perform can be cured, demand specific remedial action within a reasonable time certain; or
  - 2) If the defect or failure to perform cannot be cured, specify any alternative performance which would be acceptable in lieu of the required performance and a time within which the alternative performance would be required; or
  - 3) If the defect or failure to perform cannot be cured and no reasonable alternative performance is acceptable, notify the other party of the termination of the Agreement as of a date certain and state therein whether an action for breach of Agreement will be brought.
  - 4) Where appropriate, obtain completion of the performance of the remaining balance of the Agreement with the original party.
- c) If the defect or failure to perform is not corrected or alternative performance completed within the time certain specified, the party alleging breach may initiate an action in the District Court of the Fourth Judicial District, County of Missoula. If an action is brought, the prevailing party shall be entitled to attorney's fees as well as other costs of suit.

In addition to the default and termination clauses herein, Contractor is subject to any default and repayment regulations imposed by DNRC that are applicable to the City grant.

#### 15. Indemnity and Liability

Contractor shall defend, indemnify and hold harmless the City, its employees and agents, from all claims, liabilities, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of Contractor, its employees or agents.

City shall defend, indemnify and hold harmless Contractor, its employees and agents, from all claims, liabilities, demands, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of the City, its employees or agents.

16. Entire Agreement, Modifications and Non-Assignment

This Agreement contains the entire Agreement between the parties. All preliminary negotiations and Agreements are merged herein. This Agreement cannot be changed or modified in any manner except by a written Agreement signed by both parties.

No obligation or right hereunder may be assigned, transferred, subcontracted or otherwise given to or imposed on any other party in the absence of a written Agreement signed by both parties.

17. Place of Performance and Venue

Contractor and City agree that performance of this Agreement is in City of Missoula, Montana. In the event of litigation concerning it, venue is in the 4<sup>th</sup> Judicial District, in County of Missoula, State of Montana. This Agreement will be construed under and governed by the laws of the State of Montana.

18. Severability

If any part of this Agreement is hereafter held to be void, illegal or unenforceable, the validity of the remaining portion or provisions will not be affected hereby.

19. Compliance with Statutes and Regulations

Contractor agrees to comply with all federal, state and local laws, rules and regulations.

20. Eligibility. The Contractor certifies that the Contractor's organization and its officers and employees are not debarred, suspended, voluntarily excluded, or otherwise ineligible for doing business with the Federal Government.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF MISSOULA  
Document Approval  
City of Missoula, Montana**

BY:

\_\_\_\_\_  
Mayor

DATE: \_\_\_\_\_

\_\_\_\_\_  
Attorney


DATE: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Marty Rehbein, City of Missoula Clerk

DATE: \_\_\_\_\_

**TROUT UNLIMITED**

BY:   
\_\_\_\_\_  
Warren Colyer, Program Director

DATE: September 2, 2022