

PROFESSIONAL SERVICES AGREEMENT

MRL Triangle Remediation and Delisting

THIS AGREEMENT is made and entered into this _____ day of February, 2023, by and 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, referred to here as “City,” and **WGM Group, Inc.**, whose principal place of business is located at 1111 East Broadway, Missoula, MT 59802, hereinafter referred to as “Contractor.”

RECITALS

WHEREAS, City desires to utilize Contractor to furnish independent services in connection with the MRL Triangle, a city-owned property that is a low-priority State Superfund Site known to the Montana Department of Environmental Quality (DEQ) as Montana Rail Link 1930 South Avenue West; and

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

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

- 1. Purpose:** City desires to have Contractor provide qualified environmental services for the remediation and delisting of the MRL Triangle as a State Superfund Site, and other services related to compliance with all U.S. Environmental Protection Agency (EPA) cleanup grant requirements. This Agreement is meant to serve as the master agreement for the entire project, with individual Scopes of Services, Time Periods, Deliverables, and Compensation to be set out and agreed to in project-specific Work Orders of or similar to the format shown in **Exhibit A**. Contractor acknowledges that no expenditures in any amount are guaranteed to the Contractor.
- 2. Effective Date:** This Agreement is effective upon the date of its execution by both parties and will terminate on the 31st day of December 2025, or upon at least thirty days advance written notice of the desire to terminate from either Party to the other.
- 3. Scope of Work:** Contractor agrees to provide services found in **Exhibit B** for the City commencing as of the date of execution of this Agreement, with the Parties agreeing to project-specific Scopes of Services, Time Periods, Deliverables, and Compensation in individual Work Orders to be signed by the Parties.
- 4. Prices:** Contractor agrees to provide services at the rate specified in **Exhibit C**. However, annually, within one month prior to or following the anniversary of execution of this contract, Contractor may submit a revised rate sheet to the City which, in its sole discretion, will accept the rate sheet or meet and confer with the Contractor regarding rate revisions. In the event the Parties cannot come to an agreement on revised rates, this Agreement may be terminated pursuant to Section 11, below.

5. Payment: Contractor will be compensated for its services as set out in the Work Orders, with a total amount paid not to exceed \$200,000. Contractor shall submit invoices no more than once per month, and a final invoice within sixty days of submitting the final report identified in each Work Order. The City shall pay Contractor within thirty days of receipt of an invoice for services rendered pursuant to each Work Order or shall notify the Contractor of any dispute by the City concerning the performance of any services and the basis therefore and shall pay Contractor within thirty days for the services not in dispute. If any items are disputed by the City, Contractor and representatives of the City shall meet and confer regarding the disputed items within ten business days after the City notifies Contractor of the services in dispute. The City shall pay for any disputed services for which the dispute has been resolved to the satisfaction of the City within thirty days after such resolution.

6. 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.

7. 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, to the extent 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

- 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 Errors and Omissions Liability—\$1,000,000 per claim; \$2,000,000 annual aggregate

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

8. Professional Service: Contractor agrees that all services and work performed under this Agreement will be accomplished in a professional manner, with a level of care and skill in accordance with the accepted standards of Contractor’s profession.

9. 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. Contractor expressly agrees to abide by the following federal laws and regulations to this Agreement, including but not limited to those identified in **Exhibit D, Exhibit E, and Exhibit F** of this Agreement, as well as:

- a) Contractor agrees that, for any subcontracts for work performed under this agreement, Contractor will ensure that the Supplemental Conditions identified in **Exhibit G** are made a part of the contract to which they are appended.

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

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

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

The City’s Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor’s designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual

orientation, gender identity or expression, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

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

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

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

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

11. Default and Termination: If either party fails to comply with any condition of this agreement at the time or in the manner provided for, the other party, at its option, may terminate this agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in Section 14 of this Agreement.

Either party may terminate this Agreement for any reason by giving at least thirty days advanced written notice to the other Party of such termination and specifying the effective date thereof. If this Agreement is terminated as provided herein, Contractor shall be paid for all work performed pursuant to this Agreement until the date of termination.

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

13. Ownership and Publication of Materials: All reports, information, data, and other materials prepared by the Contractor pursuant to this Agreement are the property of the City. The City has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use without written verification or adaptation by the Contractor for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Contractor. 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.

14. Notice: All notices, demands, and consents provided for in this Agreement must be given in writing and shall be sent by U.S. Mail or hand-delivered to the following:

The City's contact for all administrative and technical matters concerning this Agreement is:

Tyler Walls, Brownfields Program Specialist
Community Planning, Development & Innovation
City of Missoula
435 Ryman St.
Missoula, MT 59802
406-552-6108
wallst@ci.missoula.mt.us

The Contractor's point of contact for all administrative and technical matters concerning this Agreement is:

Tyler Etzel, Senior Geologist/Project Manager
WGM Group, Inc.
1111 East Broadway
Missoula, MT 59802
406-728-4611
tetzel@wgmgroup.com

15. Previous Agreements: This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

16. Applicability: This Agreement and any extensions of it shall be governed and construed in accordance with the laws of the State of Montana. The venue for any legal action arising out of or relating to this Agreement shall be in any court of competent jurisdiction located in Missoula County, Montana.

17. Signing of Contract: This Agreement may be signed in counterparts and signed electronically by all parties.

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

CONSULTANT:
WGM Group, Inc.

MAYOR
City of Missoula, Montana

Melissa Matassa-Stone, P.E.
Principal Engineer/VP

Jordan Hess

ATTEST:

APPROVED AS TO FORM:

Martha L. Rehbein, CMC, City Clerk

Jim Nugent, City Attorney

(SEAL)

EXHIBIT A

Work Order No.: _____

Work Order Date: _____

Work Order

To: Tyler Walls
Brownfields Program
Community Development Division
City of Missoula

Scope of Services: Subject and pursuant to the terms and conditions of that certain Agreement dated _____ by and between _____ and its affiliates (Contractor), and the City of Missoula (the "Client"), _____ will perform the following Designated Services for Client during the time period set forth below, and for the compensation described below:

Task:

Deliverables:

Required:

Exclusions:

Additional Services:

Schedule:

Compensation: *(Include "not to exceed" amount, unless otherwise authorized in writing by the Client.)*

To accept this Work Order, please sign and date below, and return the signed Work Order to *(Contact person, Name of QEP Firm.)*; email is preferred, thank you.

Contractor

Date: _____

Name: _____

Title: _____

City of Missoula

Date: _____

Name: _____

Title: _____



EXHIBIT B

Scope of Work

The Contractor will manage the City's continued navigation of Montana Department of Environmental Quality's (DEQs) Voluntary Cleanup and Redevelopment Act (VCRA) process.

At the minimum, the Contractor is expected to complete the following project deliverables:

1. Work with the City, DEQ, and US Environmental Protection Agency (EPA) to draft a Voluntary Clean Plan – Remediation Proposal (VCP-RP) that permits residential redevelopment of the northern portion of the subject property and delists the entire property, and which is approved by DEQ for these purposes;
2. Oversee all aspects of VCP-RP implementation, including but not limited to:
 - a. VCP-RP draft, modifications, and approval;
 - b. Public comment period;
 - c. Cleanup permits and documentation;
3. Oversee all aspects of remediation or removal of soil above relevant DEQ standards, including but not limited to:
 - a. Soil remediation or removal;
 - b. Collect confirmation sampling;
4. Oversee all aspects of abatement of asbestos-containing materials in on-site structures to enable renovation and/or deconstruction;
 - a. Asbestos abatement and disposal;
 - b. Complete asbestos abatement air clearance report;
5. Assist the City in meeting all requirements of an EPA Brownfields Cleanup Grant, including but not limited to:
 - a. Development of a Site-Specific Sampling and Analysis Plan (SAP)
 - b. Development and implementation of a Community Relations Plan (CRP);
 - c. Completion of the Analysis of Brownfields Cleanup Alternatives (ABCA);
 - d. Incorporate Green and Sustainable Remediation (GSR) principles/techniques;
 - e. Consultation with other state and federal agencies as necessary, including the US Fish & Wildlife Service, the State Historic Preservation Office, and others;
 - f. Development of an Administrative Record;

6. Complete a Construction Completion Report (or equivalent) and provide all necessary documents resulting in a Letter of No Further Action from Montana DEQ and delisting as a low-priority State Superfund site.

All deliverables should be submitted to the City in electronic format. Progress reports and invoicing details will be determined on a per-project basis using individual work orders.

The Contractor will work closely with the City project lead, and collaboratively with DEQ and EPA. The City will provide assistance in the project as merited, e.g., working with the Contractor and DEQ to prepare and record any necessary covenants. The work will be subject to Federal regulations stemming from EPA Brownfields funding, such as Davis-Bacon, National Historic Preservation, and, in procurement, the six good-faith efforts for Disadvantaged Business Enterprises.

Exhibit C
Standard Rates - 2023



Staff Type		Rate	
210	Senior Principal Engineer	Hr	\$ 246.00
215	Senior Consultant	Hr	\$ 198.00
220	Principal Engineer	Hr	\$ 209.00
230	Senior Project Engineer	Hr	\$ 187.00
240	Project Engineer 2	Hr	\$ 163.00
245	Project Engineer 1	Hr	\$ 152.00
250	Senior Traffic Engineer	Hr	\$ 192.00
263	Senior Transportation Consultant	Hr	\$ 236.00
265	Senior Transportation Engineer 2	Hr	\$ 204.00
280	Staff Engineer/E.I. 3	Hr	\$ 143.00
281	Staff Engineer/E.I. 2	Hr	\$ 136.00
282	Staff Engineer/E.I. 1	Hr	\$ 113.00
283	Engineer Technician 3	Hr	\$ 136.00
284	Engineer Technician 2	Hr	\$ 116.00
285	Engineer Technician 1	Hr	\$ 107.00
290	Seasonal Intern	Hr	\$ 80.00
508	Senior Construction Project Manager	Hr	\$ 187.00
510	Construction Project Manager	Hr	\$ 175.00
507	QA/QC Representative	Hr	\$ 187.00
512	Project Representative	Hr	\$ 167.00
514	Resident Project Representative 1	Hr	\$ 147.00
310	Principal Planner	Hr	\$ 246.00
312	Senior Land Planner	Hr	\$ 166.00
314	Land Planner 2	Hr	\$ 149.00
316	Planning Technician	Hr	\$ 112.00
320	Senior Landscape Architect/Planner	Hr	\$ 180.00
330	Senior Landscape Architect	Hr	\$ 204.00
340	Landscape Architect 2	Hr	\$ 155.00
350	Landscape Architect 1	Hr	\$ 126.00
355	Landscape Designer	Hr	\$ 101.00
354	Landscape Intern	Hr	\$ 80.00
353	Graphic Designer	Hr	\$ 129.00
450	Senior Hydrologist	Hr	\$ 214.00
445	Hydrologist 2	Hr	\$ 137.00
451	Hydrologist 1	Hr	\$ 123.00
454	Senior Scientist	Hr	\$ 187.00
448	Scientist 2	Hr	\$ 137.00
447	Senior Environmental Engineer	Hr	\$ 187.00
452	Environmental Engineer	Hr	\$ 163.00
446	Environmental Field Technician	Hr	\$ 113.00
453	Senior Geologist	Hr	\$ 191.00
456	Geologist	Hr	\$ 147.00
460	Water Resource Specialist 3	Hr	\$ 175.00
465	Water Resource Specialist 2	Hr	\$ 167.00
466	Water Resource Specialist 1	Hr	\$ 147.00
469	Water Right Technician 3	Hr	\$ 143.00
470	Water Right Technician 2	Hr	\$ 137.00
471	Water Right Technician 1	Hr	\$ 113.00
475	GIS Specialist	Hr	\$ 118.00
520	Senior Land Surveyor	Hr	\$ 193.00
525	Land Surveyor 3	Hr	\$ 175.00
527	Land Surveyor 2	Hr	\$ 166.00
530	Land Surveyor 1	Hr	\$ 162.00
540	Staff Surveyor/ L.S.I	Hr	\$ 147.00
560	Survey Crew Chief	Hr	\$ 143.00
550	Survey Technician	Hr	\$ 131.00



Staff Type		Rate	
580	Two-Person Crew	Hr	\$ 209.00
590	Three-Person Crew	Hr	\$ 246.00
610	Senior CADD Drafter	Hr	\$ 137.00
605	CADD Drafter	Hr	\$ 116.00
600	CADD Technician	Hr	\$ 101.00
700	Project Coordinator 2	Hr	\$ 123.00
705	Project Coordinator 1	Hr	\$ 118.00
710	Project Assistant 2	Hr	\$ 118.00
715	Project Assistant 1	Hr	\$ 107.00
730	Admin. Assistant	Hr	\$ 92.00
790	Accountant	Hr	\$ 160.00
791	IT Specialist	Hr	\$ 160.00
792	Operations Manager	Hr	\$ 160.00

Expert Witness Rates

Staff Type		Rate	
950	Expert Witness Senior Consultant	Hr	\$ 475.00
955	Expert Witness Consultant	Hr	\$ 360.00
960	Expert Witness	Hr	\$ 260.00

Project Expenses

Consultants, Contractors	Cost +10%
Direct Expenses (Submittal fees, etc.)	Cost
Postage/Shipping	Cost

Copies & Prints

Sheet (no color)	Each	\$	0.20
Sheet (color, letter or legal)	Each	\$	1.10
Sheet (color, 11x17)	Each	\$	1.65
Paper Roll Stock (black/white)	Sq. Ft.	\$	0.35
Paper Roll Stock (color)	Sq.Ft.	\$	0.70
Mylar Roll Stock	Sq.Ft.	\$	3.50

Software

-	Software Tech Fee	Hr	\$	4.50
950C	Adobe Creative Cloud			
950G	ArcGIS			
950A	AutoCAD			
950L	Lumion 3D Rendering			
950M	MicroStation			
950S	SIDRA			
950U	SketchUp			
-	Software Tech Fee	Hr	\$	5.00
950T	AutoTURN			
950F	Land F/X			
950H	GeoHECRAS			
950I	InfoSWMM	Hr	\$	8.00
955	VG4D Smart LiDAR	Hr	\$	35.00
950P	Pix4D	Pjct	\$	275.00

Travel & Per Diem

Mileage - All Vehicles	Mile	\$0.655
Meals Full Day	Day	Federal Rate
Meals First & Last Day of Travel	Day	Federal Rate
Lodging		Cost

Survey

GNSS Rover	Day	\$ 145.00
GNSS Base & Rover	Day	\$ 270.00
Robotic Total Station	Day	\$ 230.00
Depth Sounder Only	Day	\$ 155.00
Depth Sounder with Boat	Day	\$ 350.00
HyDrone	Day	\$ 750.00

Other

USB Drive	Each	\$ 10.00
Garmin Handheld GPS	Day	\$ 10.00
Construction Camera	Day	\$ 100.00
Aerial Drone	Day	\$ 500.00
Trimble GPS R1	Day	\$ 75.00
Trimble GPS R1	Week	\$ 200.00
Traffic Counting Device	Day	\$ 30.00
Wildlife Camera	Month	\$ 100.00
Tubing	Ln Ft	\$ 0.60
Decontamination Kit	Kit	\$ 40.00
Water Level Meter	Day	\$ 35.00
Interface Probe	Day	\$ 70.00
Flow Meter	Day	\$ 75.00
Combo Meter	Day	\$ 80.00
Ultrasonic Flow Meter	Day	\$ 300.00
Shallow Groundwater Sampling Pump	Day	\$ 60.00
Deep Groundwater Sampling Pump	Day	\$ 100.00
Disposable Bailers	Unit	\$ 15.00
Water Level Data	Day	\$ 120.00
Logger/Cables/Accessories	Week	\$ 500.00
	Month	\$ 1,500.00



EXHIBIT D

General Federal Requirements

This attachment to the contract between CITY and CONTRACTOR, outlines some (but not all) federal regulations relevant to U.S. Environmental Protection Agency (EPA) brownfields projects, which the Contractor agrees to implement and comply with.

1. Disadvantaged Business Enterprises (DBEs) (40 CFR Part 33)

1.1 Good Faith Efforts (40 CFR 22.201)

Contractor shall make the following [good faith efforts](#) whenever procuring [construction](#), [equipment](#), [services](#) and [supplies](#) under this contract, even if the City has achieved its [fair share objectives](#) under [subpart D](#) of 40 CFR Part 33:

(a) Ensure [DBEs](#) [see 40 CFR 33.103] are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, [State](#) and Local and Government recipients (and , this will include placing [DBEs](#) on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to [DBEs](#) and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by [DBEs](#) in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, [State](#) and local Government recipients (and Contractor), this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by [DBEs](#) in the competitive process.

(d) Encourage contracting with a [consortium](#) of [DBEs](#) when a contract is too large for one of these firms to handle individually.

(e) Use the [services](#) and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

1.2 DBE Contract Administration (40 CFR 33.302)

Per 40 CFR 33.302, Contractor will:

(a) Pay its subcontractor(s) for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the City.

(b) The City must be notified in writing by its prime contractor prior to any termination of a [DBE](#) subcontractor for convenience by the prime contractor.

(c) If a [DBE](#) subcontractor fails to complete work under the subcontract for any reason, Contractor must employ the six [good faith efforts](#) described in [§ 33.301](#) if soliciting a replacement subcontractor.

(d) Contractor must employ the six [good faith efforts](#) described in [§ 33.301](#) even if the prime contractor has achieved its [fair share objectives](#) under [subpart D](#) of this 40 CFR Part 33.

... [note: Sections e through j not applicable]

(i) Contractor must ensure that each procurement contract it awards [contains](#) the term and condition specified in the appendix concerning compliance with the requirements of this part. Contractor must provide evidence of compliance to the City or EPA upon request.

1.3 Appendix A to 40 CFR Part 33

As required by 40 CFR Part 33:

Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

1.4 DBE Record Keeping (40 CFR, Section 33.501)

Contractor:

(a) must maintain all records documenting its compliance with the requirements of 40 CFR Part 33, including documentation of its [good faith efforts](#). Such records must be retained in accordance with applicable record retention requirements for three (3) years from completion of the project.

(b) Contractor must create, maintain, and provide to the City a bidders list. The purpose of a bidders list is to provide the City and contractor with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. The bidders list must only be kept until the grant project period has expired and the [City](#) is no longer receiving EPA funding under

the grant, and Contractor has provided a final bidders list to the City. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as an MBE/WBE or non-MBE/WBE.

1.5 DBE Reporting

Selected contractor shall provide to the City no later than October 7th completed EPA FORM 5700-52A (available electronically at http://www.epa.gov/osbp/pdfs/5700_52a.pdf) for the previous Federal fiscal year (October 1 through September 30).

2 Miscellaneous Cross-Cutting Laws Part 1

Contractor shall comply with and assist the City in maintaining compliance with all federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

3 Miscellaneous Cross-Cutting Laws Part 2

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 shall comply with and assist the City in maintaining compliance with all federal cross-cutting requirements. Contractor expressly agrees to abide by the following federal laws and regulations applicable to this Agreement, including but not limited to:

- a. The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." Failure by the Contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies

- b. By accepting an award of Brownfields funds, Contractor agrees to comply with all state and federal laws, rules, and regulations related to the Brownfields program. Contractor shall be in compliance with all applicable provisions of state and federal law pertaining to brownfields assessment grants, including CERCLA and the regulations contained in 40 CFR Part 300, 42 USCA 9601 et. seq., and all applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations), and shall aid the City in ensuring the adequacy of cleanup implementation in protecting human health and the environment. Contractor shall ensure project compliance with the Montana Comprehensive Environmental Cleanup Responsibility Act (CECRA) and other State regulations as applicable.
- c. Contractor agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally-funded Construction Projects,” as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects”.
- d. Contractor shall comply with all Federal cross-cutting requirements including, but not limited to, OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended; Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 3701-3708); the Anti-Kickback Act (40 USC 276c); the Federal Fair Labor Standards Act; the Hatch Act; and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.
- e. For any construction work Contractor will conduct work in accordance with the Davis-Bacon Act of 1931 (40 USC 276a-276a-5 and 42 U.S.C. 3222). (See **Exhibit E** to this contract.)
- f. Contractor shall comply with requirements found at 40 CFR Part 33 which require the Contractor undertake good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. Contractor shall, upon completion of any work order, complete and submit to the City Part II of EPA Form 5700-52A relevant to said work order. (See **Section 1** of this document.)

- g. Contractor agrees to comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons).”
- h. This Agreement is subject to 31 USC 1352; 15 CFR Part 28; and 40 CFR Part 34. These provisions prohibit Contractor from using federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this Loan. 40 CFR 34.100(a) states: “No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.” **Exhibit F** attesting to compliance with the referenced provisions must be signed by Contractor’s lead principal on behalf of Contractor and thereby be incorporated in this agreement.
- i. The Contractor affirmatively avers that the Contractor and all principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. The Contractor and all principals shall comply with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants’ responsibilities, 29 C.F.R. 98.510 (1990).
- j. Contractor shall not award any subcontracts or permit any award of a subcontract at any tier to any party which is debarred or suspended or is otherwise excluded from participation in federal assistance programs under Executive Order 12549, “Debarment and Suspension.” While evaluating potential subcontractors, the Contractor must consult the most current “List of Parties Excluded from Federal Procurement or Non procurement Programs” to ensure that the potential subcontractors and all principals are not prohibited from participation in assistance programs.
- k. Contractor agrees to use recycled paper to the extent required by the EPA Order No. 100.25 dated January 24, 1990. Contractor agrees to use recycled paper for all reports which are prepared as a part of this Loan Agreement and delivered to the City or EPA.
- l. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), Contractor shall consult with the City and, if so requested, the City’s EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist City and EPA in complying with any requirements of the NHPA and implementing regulations.

4 Qualified Environmental Professionals

Contractor asserts that qualified environmental professionals as defined in 40 CFR 312.10 will be utilized for all relevant aspects of projects, e.g., completion of All Appropriate Inquiries.

5 All Appropriate Inquires

5.1 AAI Best Practice

As required of the City by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the Contractor shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's all appropriate inquiries regulation (AAI). The CAR shall utilize the practices in ASTM standard E1527-21 "*Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*," or EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312). A suggested outline for an AAI final report is provided in "*All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content*" (Publication Number: EPA 560-F-14-003). This does not preclude the use of cooperative agreement funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable state standards.

5.2 AAI Reports

AAI final reports produced with funding from this agreement must comply with 40 CFR Part 312 and must, at a minimum, include the information below. All AAI reports submitted to the City as deliverables under this agreement must be accompanied by a completed "*All Appropriate Inquiries: Reporting Requirements Checklist for Assessment Grant Recipients*" (Publication Number: EPA 560-F-17-194) that the EPA Project Officer will provide to the recipient. The checklist is available to CARs on EPA's website at www.epa.gov/brownfields. The completed checklist must include:

- 5.2.1 An *opinion* as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.
- 5.2.2 An identification of "*significant*" *data gaps* (as defined in 40 CFR § 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.
- 5.2.3 *Qualifications* and *signature* of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document
 - "[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in 40 CFR § 312.10 of this part."

- “[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.’”

Note: Please use either “I/my” or “We/our.”

- 5.2.4 In compliance with 40 CFR § 312.31(b), the environmental professional must include in the final report an opinion regarding additional appropriate investigation, if the environmental professional has such an opinion.

6 Data Collection

6.1.1 Geospatial Data

All geospatial data created under this contract must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

6.1.2 QAPP

All sampling will be consistent with the City of Missoula Quality Assurance Project Plan (2022) (QAPP) or its successor, developed in accord with 2 CFR 1500.12.

6.1.3 SAP

Any sampling will be preceded by EPA approval of a Sampling and Analysis Plan (SAP).

6.1.4 Competency

Contractor asserts that Contractor has and will continue to demonstrate continuous competency to generate environmental data as specified EPA Agency Policy Directive FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, available at https://www.epa.gov/sites/production/files/2017-05/documents/policy_to_assure_the_competency_of_organizations.pdf.

7 EPA Acknowledgment

- 7.1.1 Contractor agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan, which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.
- 7.1.2 If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall include the following statement: "Though this project has been

funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of EPA.”

- 7.1.3 If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>.



EXHIBIT E

Davis Bacon Requirements

This attachment to the contract between the CITY and CONTRACTOR, outlines some (but not all) federal regulations relevant to U.S. Environmental Protection Agency (EPA) brownfields projects, which the Contractor agrees to implement and comply with.

Contractor understands that this project is subject to and agrees to abide by all relevant Davis Bacon (DB) Prevailing Wage Requirements as identified in Federal law and in the Cooperative Agreement between the Environmental Protection Agency (EPA) and the City of Missoula (City). In agreeing to this contract, Contractor understands and agrees:

1. Applicability of the Davis Bacon Prevailing Wage Requirements

EPA has determined that, relative to this contract and all work funded in part or in whole by EPA brownfields grants, all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB. If the Contractor encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Contractor must discuss the situation with the City and, at the City's discretion, EPA before authorizing work on that site.

2. Obtaining Wage Determinations

(a) Unless otherwise instructed by EPA on a project specific basis, Contractor shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. Contractors must obtain wage determinations for specific localities at <https://beta.sam.gov/>.

(i) When soliciting competitive contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for, the excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings Contractor shall use the "Heavy Construction" Classification.

(ii) When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height) Contractor shall use "Building Construction" classification.

(iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Contractor shall use “Residential Construction” classification. Note: Contractor must discuss unique situations that may not be covered by the General Wage Classifications described above with the City and, at the City’s discretion, EPA. If, based on discussions with a Contractor and City, EPA determines that DB applies to a unique situation the Agency will advise the Contractor and City which General Wage Classification to use based on the nature of the construction activity at the site.

(b) Contractor shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the Contractor shall monitor <https://beta.sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Contractor shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Contractor may, with the City’s consent, request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency’s finding to the City.

(ii) If the Contractor does not award the contract within 90 days of the closure of the solicitation, any modifications or determination contained in the solicitation shall be effective unless EPA, at the request of the City, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Contractor shall monitor <https://beta.sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the Contractor carries out Brownfield cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Contractor shall insert the appropriate DOL wage determination from <https://beta.sam.gov/> into the ordering instrument.

(c) Contractor shall provide to the City for review all subcontracts subject to DB entered into by the Contractor to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Contractor’s contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Contractor has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the

Contractor shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Contractor must compensate subcontractors for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

(a) This contract incorporates, and the Contractor shall insert in full in any subcontract in excess of \$2,000 which is entered into under this contract for the actual construction, alteration and/or repair, including painting and decorating, of the subject property, including excavation and other hazardous materials abatement and remediation, and which is subject to DB, the following labor standards provisions:

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the contractor obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act (DB) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Contractor shall include the name of the City employee or official responsible for monitoring compliance with DB on the poster.

- (ii)(A) The City, and the contractor, on behalf of EPA, agrees, and shall require that contracts and subcontracts entered into under this contract provide, that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is

to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the City agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the City to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the City do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The City, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or City, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each

covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the City.

(ii)(B) Each payroll submitted to the City shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, CAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(3) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor,

Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not

less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the CAR, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section are hereby incorporated in this contract and shall be included in full in any subcontract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above, or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, should this contract or any subcontract be subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Contractor and affected subcontractors shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The City shall periodically interview, and Contractor will facilitate, a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The City shall use Standard Form 1445 or equivalent documentation to memorialize the interviews. Contractor shall make employees available for such interviews with reasonable notice.

(b) The City shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices.

(c) The contractor must immediately report potential violations of the DB prevailing wage requirements to the City. City must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>

EXHIBIT F

Certification Regarding Lobbying

Appendix A to 40 CFR Part 34 - Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Date: _____

Name

Title

Company



EXHIBIT G

Supplemental Conditions

In entering into subcontracts for work performed for the Contractor, Contractor will ensure that the following Supplemental Conditions are made a part of the contract to which they are appended, thereby supplementing that contract and superseding any of its articles which are in conflict with the Conditions contained herein.

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts and subgrants in excess of \$100,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback Act” (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to EPA.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to EPA.

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a

standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under a Contract or Agreement—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by EPA.

6. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (Executive Orders 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

9. Minority and Women’s Business Enterprises (Executive Orders 11625, 12432, 12138, and 11246)—The Subcontractor will take affirmative steps to assure that minority and women-owned businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Subcontractor must document all affirmative steps taken to solicit the participation of minority and women-owned businesses, and will forward this documentation (along with the names of the minority subcontractors and suppliers) to Contractor.

10. Access to Records—It is expressly understood that the Subcontractor records relating to this Contract will be available during normal business hours for inspection by Contractor, City of Missoula, the U.S. Environmental Protection Agency, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor.