

# CONTRACT AGREEMENT

## City of Missoula Parks and Recreation Department

### SPORT COURT RESTORATION 2023 Marilyn Park & Franklin Park

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, in the City of Missoula, County of Missoula, State of Montana, by and between the City of Missoula, a municipal organization under the laws of the State of Montana (hereinafter referred to as "City") and Knife River, 4800 Wilkie Street, Missoula, Montana 59808 (hereinafter referred to as the Contractor).

#### WITNESSETH

For and in consideration of the mutual promises and agreements set forth herein, the City and Contractor a Montana Corporation, mutually stipulate and agree to the following provisions:

#### I. CONSTRUCTION SERVICES CONTRACT WITH CITY

The City hereby agrees to retain the construction services of Contractor pursuant to the terms and provisions of this Agreement. Work shall be accomplished with all reasonable care and minimal disruption or damage to other trees, grounds, driveways, streets, and curbs, sidewalks, structures and utilities on or adjacent to work site. Any damage shall be reported in writing to a property owner and the City's Project Representative at 100 Hickory St, on the day of occurrence, and such damage shall be repaired at the Contractor's expense within five days of the occurrence (unless demonstrable reason for a delay can be shown). Failure to do so may be cause for termination of the contract. Contractor agrees to perform the professional services identified pursuant to the terms and provisions of this Agreement in a competent, professional, and acceptable manner.

#### II. EFFECTIVE DATE

This agreement is effective upon the date of its execution and will terminate on the 31<sup>st</sup> day of October 2023. The parties may extend this Agreement in writing prior to its termination.

#### III. SCOPE OF CONSTRUCTION SERVICES

Contractor agrees to furnish all labor, supervision, equipment, materials, and expertise necessary for construction work in the City of Missoula identified in the Project Manual and on the Project Plans. The work is to be performed at two (2) sport courts at two separate work sites in Missoula, Montana:

<u>Park Name</u>	<u>Park Address</u>
<ul style="list-style-type: none"> <li>• Franklin Park <ul style="list-style-type: none"> <li>○ Geocode: 04-2200-29-2-48-31-0000</li> <li>○ Legal Description: Daly's Addition #2, S29, T13 N, R 19 W, BLOCK 7, LOT 1-32, FRANKLIN PARK</li> </ul> </li> </ul>	1100 Kemp St, Missoula, Montana 59801
<ul style="list-style-type: none"> <li>• Marilyn Park <ul style="list-style-type: none"> <li>○ Geocode: 04-2092-12-1-10-16-0000</li> <li>○ Legal Description: LINDA VISTA, S12, T 12 N, R20 W, COMMON MARILYN PARK</li> </ul> </li> </ul>	6000 Linda Vista Blvd. Missoula, Montana 59803

#### IV. MATERIALS AND WORKMANSHIP

All materials and equipment shall be installed in a neat and workmanlike manner. The City reserves the right to direct the removal and replacement of any items, which in their opinion shall present an orderly and reasonably neat or workmanlike appearance. Such removal and replacement shall be done, when directed in writing, at the Contractor's expense without additional cost to the City.

Whenever any material is specified by name and/or number thereof, such specifications shall be deemed to be used for the purpose of facilitating a description of the materials and establishing quality, and shall be deemed and construed to be followed by the words "or approved equal." No substitutions will be permitted which have not been submitted for prior approval to the Project Manager. All materials shall be new and without flaws or defects and shall be the best of their class and kind. Sufficient descriptive literature and/or samples must be furnished for any materials submitted as "equal" substitutes.

#### V. ADDITIONAL SERVICES

Any alteration or deviation from the described work that involves extra costs will be permitted only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree to any extra charges in writing.

#### VI. INDEPENDENT CONTRACTOR

The Contractor is an independent contractor and not a City of Missoula employee.

#### VII. NON-DISCRIMINATION

Contractor shall take affirmative action to ensure all hiring is done 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 or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

## VIII. AFFIRMATIVE ACTION POLICY

Contractors, subcontractors, subgrantees, and other firms doing business with the City of Missoula or any agency connected with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan and Title 49, M.C.A., or forfeit the right to continue such business dealings. See Attachment A.

## IX. EVIDENCE OF WORKERS' COMPENSATION COVERAGE

Contractor hereby certifies it is covered by a Workers' Compensation insurance program with either the State of Montana, a private insurance carrier, or an approved self-insurance plan in accordance with Montana State law and that the City has no liability for Contractor's workers' compensation insurance or claims. Contractor shall provide evidence of such coverage to the City Clerk prior to the City Clerk's validation of the agreement.

## X. LIABILITY INSURANCE

Contractor hereby certifies that it has and shall maintain during the time period of this Agreement, liability insurance in the minimum amount of \$1,000,000.00 per occurrence and \$3,000,000 in the aggregate that include liability for accidents occurring during contract or at the project site that are attributable to the Contractor or its agents' conduct.

## XI. INDEMNITY

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

## XII. CONTRACT PRICE

The parties hereto mutually agree that the total cost for acceptable performance of all construction services of Knife River a Montana Corporation, pursuant to this agreement shall not exceed **THREE HUNDRED FIFTY-THREE THOUSAND, EIGHT HUNDRED NINETY-EIGHT DOLLARS AND NO CENTS (\$353,898.00)** as shown on Exhibit A. The City may be billed monthly for all work completed in accordance with the terms of the contract. The Contractor may bill the City for advance purchase of products and materials necessary to complete the work.

No invoice shall include Federal excise tax, since the City is exempt therefrom and will furnish certificates of exemptions as needed. The Agency or Contractor must, in accordance with Section 15-50-206, Montana Code Annotated, withhold one percent (1%) of incremental payments due the Contractor or subcontractor. Amount withheld from the prime Contractor must be forwarded to the Department of Revenue.

This Agreement is conditioned upon the ability of the Contractor to complete the project at present material costs. The Contractor agrees to use best efforts to obtain the lowest possible prices from available material suppliers. If, during the performance of the lowest possible prices from the contract, the price of material significantly increases, through no fault of the Contractor, the contract unit price shall be adjusted.

### XIII. MODIFICATION AND WAIVER

This Agreement may not be modified, altered, or changed except pursuant to a written agreement signed by the parties hereto. A waiver of any term or condition of this Agreement or of any breach of this Agreement shall not be deemed a waiver of any other term or condition of this Agreement or any part hereof or of any later breach of the Agreement. Any waiver must be in writing.

### XIV. LICENSE TO DO BUSINESS

Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula or any agency connected with the City of Missoula must obtain or have a valid City of Missoula business license and must comply with applicable business regulation ordinances. No payments shall be made by the City pursuant to this Agreement until a valid City business license has been obtained. Contractor shall continue to retain a valid City business license during the term of this Agreement or the City has the right to withhold payments until such time as a valid City business license is acquired by Contractor.

### XV. 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.

### XVI. PREVAILING WAGE

For any contract let for City of Missoula construction, services, repair, or maintenance work under any law of the State of Montana that exceeds \$25,000, the Contractor is required to give preference to the employment of bona fide Montana residents in the performance of the work and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to Missoula County as defined in Section 18-2-401(11) MCA. Contractor is also required to comply with all requirements of Title 18 of the Montana Code Annotated.

### XVII. PAYMENT PROCEDURES

Submittal and Processing of Payments:

The Contractor shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the Project Manager as provided in the Contract Documents.

#### 1. Progress Payments

- A. The Owner shall make progress payments in accordance with the General Conditions on account of the Contract Price on the basis of the Contractor's Applications for Payment as recommended by the Project Manager, once each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the number of units of each bid item completed times the bid unit price in the Unit Price Schedule of the Bid Form for that item.

- B. Final Payment. Upon final completion and acceptance of the Work in accordance with the General Conditions, the Owner shall pay the remainder of the Contract Price as recommended by the Project Manager.

#### XVIII. INTEREST

Not used. (Interest not allowed on unpaid balance.)

#### XIX. CONTRACTOR'S REPRESENTATION

In order to induce the Owner to enter into this Agreement, the Contractor makes the following representations:

1. The Contractor has examined and carefully studied the Contract Documents (including all Addenda) and the other related data identified in the Bidding Documents.
  - A. The Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
  - B. The Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
  - C. The Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
  - D. The Contractor is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
  - E. The Contractor has given PROJECT MANAGER written notice of all conflicts, errors, ambiguities or discrepancies that The Contractor has discovered in the Contract Documents and the written resolution thereof by PROJECT MANAGER is acceptable to the Contractor.
  - F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
2. The Contractor certifies that Contractor has complied with the invitation to bid requirements, including:
  - A. Obtaining a Performance Bond in an amount equal to 100% of the Contract Amount as a guarantee of good faith on the part of the Contractor to execute the work in accordance with the terms of the Contract; and
  - B. Obtaining Labor and Material Payment Bond in an amount equal to 100% of the Contract amount as a guarantee of good faith on the part of the Contractor to make all payments for labor and material in connection with the Contract.

## XX. Contract Documents

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

- (1) This writing, entitled "Contract Agreement" (Including all Contract Documents made Part Hereof by Reference); and
- (2) Invitation to Bid
- (3) Bid Proposal
- (4) Project Special Conditions
- (5) General Conditions
- (6) Supplementary General Conditions
- (7) Project Plans and Specifications
- (8) 2023 Montana Prevailing Wage Rate for HEAVY CONSTRUCTION SERVICES
- (9) Certificates of Insurance
- (10) Performance Bond in an amount equal to 100% of the Contract Amount
- (11) Labor and Material Payment Bond in an amount equal to 100% of the Contract Amount
- (12) Addenda(s) – 3
  - Addenda 1: 2023 Montana Wage Rates
  - Addenda 2: Optional Prebid Meeting Summary
  - Addenda 3: Questions and Answers

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

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

## XXII. LIAISON

City's designated liaison with Contractor is **Garrick Swanson** and Contractor's designated liaison with City is **Michael Hughes**.

## XXIII. JURISDICTION AND VENUE

This Agreement and any extensions hereof shall be governed and constructed in accordance with the laws of the State of Montana, and the venue for any dispute shall be in Missoula County.

## XXIV. TERM OF AGREEMENT

This contract agreement will be in force and effect on the date signed by the Mayor of the City of Missoula and shall run until all work is satisfactorily completed or unless terminated in writing, provided hereinbefore. The work is to be completed on or before: October 31, 2023.

- Sport Court stripping or color coat – No sooner than 30 days after paving.

## XXV. MISCELLANEOUS

### 1. Assignment of Contract.

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may come due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 2. Successors and Assigns

The Owner and the Contractor each bind itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

### 3. Severability

Any provision or part of the Contract Documents held to be void or unenforceable under a Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and the Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## ATTACHMENT A

**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, 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/express, except where these criteria are reasonable bona fide occupational qualifications. 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.

### **Exhibits**

- A. Contractor's Bid Bond
- B. Contractor's Certificate of Insurance
- C. Contractor's City of Missoula Business License



IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year in this certificate first hereinabove written.

CONTRACTOR: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Owner

Date: \_\_\_\_\_

OWNER: City of Missoula  
435 Ryman  
Missoula, Montana 59802

\_\_\_\_\_  
Jordan Hess,  
Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Marty Rehbein, CMC  
Legislative Services  
Director/City Clerk

Date: \_\_\_\_\_

(STAMP)

Approved as to form:

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

Date: \_\_\_\_\_