

PROFESSIONAL SERVICES AGREEMENT – PROJECT 2019-013:
MULLAN ROAD RECONSTRUCTION ENGINEER SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2020, by and between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman, Missoula, MT. 59802, hereinafter referred to as “City,” and WGM Group, 1111 East Broadway, Missoula, MT. 59802 hereinafter referred to as “Consultant.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Consultant as an independent contractor to perform for City services described in the Scope of Services attached hereto as Exhibit “A” and by this reference made a part hereof.

2. **Effective Date:** This Agreement is effective upon the date of its execution.

3. **Scope of Work:** Consultant will perform the work and provide the services in accordance with the requirements of the Scope of Services (See Exhibit “A”).

4. **Payment:** City agrees to pay Consultant One Hundred Forty-Two Thousand One Hundred Forty-Seven and 00/100 Dollars (\$142,147.00) for services performed pursuant to the Scope of Services. Any alteration or deviation from the described work that involves extra costs will be performed by Consultant after written request by the City, and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

5. **Independent Contractor Status:** The parties agree that Consultant is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Consultant 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. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

Consultant 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. Consultant shall maintain workers’ compensation coverage for all members and employees of Consultant’s business, except for those members who are exempted by law.

Consultant 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.

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

For the professional services rendered, to the fullest extent permitted by law, Consultant 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 Consultant or Consultant's agents or employees.

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

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

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

7. Professional Service: Consultant agrees that all services and work performed hereunder will be accomplished in a professional manner.

8. Compliance with Laws: Consultant 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. Consultant agrees to purchase a City business license.

9. Nondiscrimination: Consultant agrees that all hiring by Consultant of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate 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.

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

11. 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 agreement signed by both parties hereto. The Consultant may not subcontract or assign Consultant's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

12. **Ownership and Publication of Materials:** All reports, information, data, and other materials prepared by the Consultant 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 Consultant for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Consultant. 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.

13. **Liaison:** City's designated liaison with Consultant is Troy Monroe and Consultant's designated liaison with City is Mark Bancale.

14. **Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

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

CITY OF MISSOULA, MONTANA

WGM Group
CONSULTANT (Type Name Above)

By _____
John Engen, Mayor

By _____ [M1]
Print Name: _____
Print Title: _____

Attest:

By _____
Martha L. Rehbein C.M.C, City Clerk

APPROVED AS TO FORM

By _____
JIM NUGENT, City Attorney