

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** is made and entered into this 18<sup>th</sup> day of May, 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, Montana 59802, hereinafter referred to as “City,” and WGM Group, Inc., 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 Request for Qualifications, City of Missoula Transportation Engineering Consultant Services Term Contract 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 for a period of up to 6 months and with an option to extend upon mutual agreement in writing.
3. **Scope of Services:** Consultant will perform the work and provide the services in accordance with the requirements in Exhibit “A”.
4. **Payment:** City agrees to pay Consultant an amount not to exceed Fifty Thousand Dollars (\$50,000.00) 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, WGM Group, Inc., 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. **Conflict of interest:** The Consultant shall comply with the terms and spirit of Section II.4.d. of the National Society of Professional Engineers’ Code of Ethics regarding conflicts of interest. In addition, when performing work for the City, Consultant shall not review drawings, plans, specifications, etc. for a project where those drawings, plans, specifications, etc. are being prepared by any member of the Consultant’s firm.

**7. 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.

**8. Professional Service:** Consultant agrees that all services and work performed hereunder will be accomplished in a professional manner in accordance with the accepted standards of their profession. City reserves the sole right to assign work to the Consultant to be performed under this Agreement. For those services rendered, Consultant will invoice the City on a monthly basis. Each invoice submitted shall document time period of services rendered, employee name, rate, and hours worked, description of work conducted, and total hours worked and total amount requested as well as detailed timecard summaries from WGM personnel who performed work under this Agreement. WGM employees working on behalf of the City of Missoula under this contract shall be paid at the rates agreed upon and included in and attached hereto as Exhibit "B" and by this reference made a part thereof. If by mutual agreement, an extension is desired, then Consultant may submit revised rates to the City. The City in its sole discretion shall choose to accept the revised rates or meet and confer with Consultant regarding revised rates.

**9. 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.

**10. 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.

**11. 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.

**12. 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.

This Agreement is to terminate 6 months after the execution date (above), but may be extended for another period of time up to 6 additional months upon mutual agreement. The City has absolute discretion to delegate work to Consultant under this Agreement. The City makes no representation of a specific and/or set number of hours, to be delegated to the Consultant, on a weekly, monthly, under the term of this Agreement, or under any extension of this Agreement basis.

**13. 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.

**14. 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.

**15. Liaison:** City's designated liaison with Consultant is Stephen McDaniel and Consultant's designated liaison with City is Kevin Slovarp.

**16. 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, Inc.

**CONSULTANT (Type Name Above)**

By \_\_\_\_\_

By \_\_\_\_\_

**John Engen, Mayor**

**Print Name:** \_\_\_\_\_

**Print Title:** \_\_\_\_\_

**Attest:**

By \_\_\_\_\_

**Martha L. Rehbein C.M.C, City Clerk**

**APPROVED AS TO FORM**

By \_\_\_\_\_

**JIM NUGENT, City Attorney**