

PROFESSIONAL SERVICES AGREEMENT
Brownfields Qualified Environmental Professional Services

THIS AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the CITY OF MISSOULA, a municipal corporation organized pursuant to the laws of the State of Montana, whose address is 435 Ryman Street, Missoula, MT 59802 (“**City**”), and Tetra Tech, whose principal place of business is located at 2525 Palmer Street, Suite 2, Missoula, MT 59808, (“**Consultant**”).

RECITALS

WHEREAS, the City desires to utilize Consultant to provide environmental consulting services related to brownfield assessment projects; and

WHEREAS, Consultant has represented to the City that Consultant has the necessary expertise to furnish said services and has available to Consultant 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: The City desires to have Consultant provide Phase I Environmental Site Assessments, Phase II Environmental Site Assessments, and other services related to the utilization of a U.S. Environmental Protection Agency Brownfields Assessment Grant. This Agreement is meant to serve as a 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 the format shown in Exhibit A. Consultant acknowledges that with this contract it enters a pre-qualified vendor pool to provide such services, but that no expenditures in any amount are guaranteed for either the pool as a whole or to the Consultant.

2. Effective Date: This Agreement is effective upon the date of its execution by both parties and will terminate on the 6th day of December, 2021, or upon 30 days’ notice by the City to Consultant of its desire to terminate the Agreement by giving such notice to Consultant designated liaison identified below.

3. Scope of Work: Consultant agrees to provide services for the City commencing as of the date of execution of the 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: Consultant agrees to provide services at the rates specified in the attached rate sheet. However, annually, within one month prior to or following the anniversary of execution of this contract, Consultant may submit a revised rate sheet to the City which, in its sole discretion, will accept the rate sheet or meet and confer with Consultant 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: Consultant will be compensated for its services as set out in the Work Orders, with a total amount paid not to exceed \$300,000. Consultant shall submit invoices no more frequently than once per month, and a final invoice within thirty days of submitting the final report identified in each Work Order. The City shall pay Consultant within 30 days of receipt of an invoice for the services rendered pursuant to each Work Order or shall notify Consultant of any dispute by the City concerning the performance of any services and the basis therefore and shall pay Consultant within thirty days for the services not in dispute. Invoices not in dispute and unpaid after 45 days shall accrue interest at an annual percentage rate of 6%. Consultant reserves the right to stop work for non-payment of invoices after 90 days.

If any items are disputed by the City, the undisputed portion shall be paid. Consultant and representatives of the City shall meet and confer regarding the disputed items within ten business days after the City notifies Consultant 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 Consultant Status: The parties agree that Consultant is an independent Consultant for purposes of this Agreement and is not 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 Consultants.

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 in the performance of Services.

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 in the performance of Services.

For this purpose, Consultant shall provide the 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 the City.

8. Waiver of Consequential Damages: Consultant shall not be liable to the City, the City's employees, consultants, contractors, subcontractors, agents, or any other third parties for special, incidental, consequential, or penal losses or damages (including but not limited to lost profits and/or loss of use of the project or site that is the subject of this Agreement) under any circumstances.

9. Professional Service: In the performance of professional services, Consultant will use that level of care and skill ordinarily exercised by reputable members of Consultant's profession currently practicing in the same locality under similar conditions.

10. 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 expressly agrees to abide by the following federal laws and regulations applicable to this Agreement, including but not limited to:

- a. The Consultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Consultant 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

Consultant 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, Consultant agrees to comply with all state and federal laws, rules, and regulations related to the Brownfields program. Consultant 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 that all projects protect public health and the environment.
- c. Consultant 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. Consultant 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).
- f. Consultant shall comply with requirements found at 40 CFR Part 33 which require the Consultant 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. Consultant 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.

- g. Consultant 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 Consultant 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 C attesting to compliance with the referenced provisions must be signed by Consultant’s lead principal on behalf of Consultant and thereby be incorporated in this agreement.
- i. The Consultant affirmatively avers that the Consultant 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 Consultant 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. Consultant 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 Consultant 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. Consultant agrees to clearly reference EPA investments in the project during any public outreach, which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.
- l. If any document, fact sheet, and/or web material are developed as part of this project, 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 the EPA.”
- m. If a sign is developed as part of this project, 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: <http://www.epa.gov/ogd/tc.htm>.

- n. The Consultant agrees to use recycled paper to the extent required by the EPA Order No. 100.25 dated January 24, 1990. Consultant 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.
- o. The Consultant agrees that, for any subcontracts for work performed under this agreement, Consultant will ensure that the Supplemental Conditions identified in Exhibit B are made a part of the contract to which they are appended.

11. Nondiscrimination: Consultant 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 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.

AFFIRMATIVE ACTION POLICY. Consultants, subConsultants, 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 is committed to implement affirmative action to provide all persons equal opportunity for employment without regard to race, ancestry, color, religion, national origin, sex, age, marital or familial status, creed, physical or mental disability, sexual orientation, gender identity or gender expression. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility of actively facilitating equal opportunity for 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 personnel actions are administered on the basis of job necessity.

Specific responsibility for development, implementation, monitoring and reporting will be assigned to the City Personnel staff under the supervision of the Mayor's Administrative Assistant.

It is the policy of the City of Missoula to take affirmative action to eliminate discrimination in personnel policies and procedures that have adverse impact on the “affected class” unless sex, ex-offenders status, and/or physical or mental handicap relates to a bona fide occupational qualification. Equal opportunities shall be provided for all City employees during their terms of employment. All applicants for City employment shall be recruited from the available labor market, and 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 exclusive. 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.

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, Consultant shall be paid for all work done including demobilization expenses pursuant to this Agreement until the date of termination.

13. Delays: Consultant shall not be held liable for any delay or failure in performance of any part of this Agreement by reason of any cause beyond its reasonable control, or any delays resulting from the City or any other third party’s actions or inactions.

14. Force Majeure: Consultant shall not be liable to the City for any loss, liability, cost, damage or expense arising out of the delay or failure to render Services under this Agreement where such delay or failure arises by reason of legislative, administrative or government prohibition, fire, weather conditions, earthquakes, or any other natural disasters, hostilities, civil disturbances, labor or industrial disputes, acts of God or any other event beyond the reasonable control of Consultant, in which event either party may terminate that portion of the Services under this Agreement not yet completed, and Consultant shall have no further liability to the City therefore. A work authorization extending the time to perform and stating an appropriate fee adjustment may be elected by mutual agreement of the parties hereto.

15. 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 the City. Any subConsultant or assignee will be bound by all of the terms and conditions of this Agreement.

16. Disputes: In the event of a dispute between the parties regarding performance of any obligation arising under this Agreement, the parties shall attempt in good faith to resolve the dispute through negotiation. If the dispute cannot be settled through negotiation within 14 days after written notice of the dispute is given by one party to the other, then upon service of a written demand by either party, the parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association.

17. 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.

18. 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:

John Adams, Grants Administrator
Missoula Office of Housing and Community Development
435 Ryman St.
Missoula, MT 59802
(406) 552-6397

Consultant's point of contact for all administrative and technical matters concerning this Agreement is _____.

19. 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.

The City of Missoula

Consultant

John Engen
Mayor

[Title]

Attest

Martha L. Rehbein
City Clerk