

CITY OF HELENA, MT
REQUEST FOR PROPOSALS (RFP) NO. TSD-26-16 TO
HIRE A CONTRACTOR FOR SIDEWALK IMPROVEMENT PROGRAM

I. PROJECT OVERVIEW

Sidewalk and ADA curb ramp construction, repair, and replacement namely to address trip hazards, missing sidewalk connections and bring all corner curb ramps up to ADA/PROWAG compliance. Site work is in various parts of the City and contracted with multiple homeowners through smaller individual projects.

II. AGREEMENT FOR SERVICES AND COMPENSATION

One respondent will be selected as the finalist and offered an opportunity to negotiate an agreement with the City. If an appropriate agreement cannot be reached with the highest-ranked respondent, the second-ranked respondent may be invited to negotiate an agreement with the City, and so on.

A sample agreement is provided as Attachment "A" hereto, however, the City reserves the right to change any terms prior to entering into an agreement with the successful respondent.

Evaluation criteria WILL include consideration of the proposed compensation schedule and responders are required to submit a compensation proposal as part of their response.

III. SCOPE OF WORK, DELIVERABLES, AND TIMELINE

The scope of work for the project includes:

1. Repair or replace sidewalks to bring into compliance per City work order(s).
2. Repair or replace ADA curb ramps to bring into compliance per City work order(s).
3. Some missing sidewalk infrastructure may be installed.
4. Some curb & gutter locations that may need to be removed and replaced for better asphalt overlay.
5. New sidewalk shall meet the existing sidewalk or concrete driveway with a clean, straight saw-cut and 1/2-inch expansion joint material.
6. New sidewalk shall meet adjacent structures with 1/2-inch expansion joint material and backer rod with a construction joint sealant.
7. Unit prices shown in Fee Schedule include furnishing all necessary labor, materials and equipment required to complete and protect the work performed.

8. All work shall be done in accordance with City of Helena Engineering Standards, Montana Public Works Standard Specifications (MPWSS) and comply with PROWAG guidelines.
9. The Contractor is responsible for furnishing, installing, maintaining, relocating, and removing traffic control devices for regulating, warning, or directing vehicle or pedestrian traffic during construction. A typical Traffic Control Plan must be submitted with executed contract. All traffic/pedestrian controls shall be placed in accordance with Manual on Uniform Traffic Control Devices (MUTCD) Standards. Traffic control is incidental to the sidewalk repair/replacement work, no other compensation will be allowed.
10. Any irrigation repairs will be incidental to sidewalk repair/replacement work, no other compensation will be allowed.
11. Wherever tree roots are encountered under or directly adjacent to the sidewalk, the City Arborist must be consulted and decide if the roots can be cut and removed. If removal is required, the cost for such work shall be considered incidental to the sidewalk installation, no other compensation will be allowed.
12. The contractor will complete all related work within 30 days of issuance of work orders. The contractor shall reach final completion of all work orders no later than 15th June, 2027.

IV. ATTACHMENTS

The following information is provided for informational purposes only:

Attachment "A" - Sample Project Agreement

Attachment "B" - Proposal Price Sheet

Attachment "C" – ADA Corner Scope

V. PROPOSAL SUBMISSION REQUIREMENTS

A. Proposal submission must:

- Be no more than 5 one-sided bound pages, inclusive of a cover page and back page.
- Be no smaller than 11-point font.
- Contain the information required by this RFP and address all required topics.
- Acknowledge that responder has reviewed any addenda issued for this RFP; and
- Be signed by an authorized agent.

B. Proposal submission must include all of the following:

1. Respondent's legal name, address, and contact information.

2. Brief description of the respondent firm, including but not limited to, identification of the principals, the approximate number of employees, how long the firm has been in business, and how long the respondent has been engaged in relevant types of work. Include information that demonstrates the respondent's experience in completing projects similar to that which is required by this RFP.
3. Identify individuals who will be assigned to this project, their role on the project team, a brief resume, and their experience and qualifications on similar projects.
4. Description of how the respondent will accomplish the tasks, goals, and objectives identified in section III of this RFP.
5. Provide anticipated project schedule including a description of how this project will fit with the firm's current workload.
6. If this project includes a public participation requirement, describe proposed public participation process.
7. Itemized unit cost prices.
8. All respondents shall, as bid security, accompany the bid with: The bid security shall be in the amount of ten percent (10%) of the amount of the bid. It shall be anticipated that the agreement value is \$500,000 for all bonding purposes. Each Bidder shall expressly covenant in the bid that if the Bidder is awarded the contract, the Bidder will, within 15 days after the bid is awarded, enter into a formal contract and give an approved performance bond and a labor and materials payment bond to secure the performance of the terms and conditions of the contract. Bid security must be provided in a form specified in §18-1-203, MCA, which includes, but is not limited to, certified check, cashier's check, bank draft, bid bond, guaranty bond, or surety bond. Bid security through a bid, guaranty or surety bond must be issued by a surety company authorized to do business in the State of Montana. The bid security protects and indemnifies the City against the failure or refusal of the successful Bidder to timely enter into the contract.

C. References

List three (3) recent professional references who can provide information regarding the respondent's ability to perform the services described herein. References must include the name of the person to be contacted, phone number, email, and the type of project the respondent completed for the reference.

VI. EVALUATION CRITERIA

Proposals will be evaluated by a selection committee, based on the following criteria:

	Criteria	Points
1	Qualifications (based on experience and references)	10

2	Proposed Unit Cost	10
3	Overall quality of the proposal	5
	TOTAL	25

The selection committee may select one or more respondents submitting proposals as finalists. Finalists may be interviewed to further establish qualifications. If the selection committee determines that interviews are appropriate, the finalists will be contacted to schedule the interviews.

VII. SOLICITATION SCHEDULE

Request for Proposals Released	March 10, 2026
Proposal Packets Due – Close date	April 2, 2026, 2:15 PM MST
Service Provider Selection and Negotiation	April 14, 2026
Agreement Approval	TBD
Work to Begin	May 01, 2026

VIII. CONTACT:

The city contact for the purposes of this RFP is:

Darren Ramos
 Senior Engineering Technician, Transportation
 3001 E Lyndale Avenue, Helena, MT 59623
 (406) 304-1873
 E-Mail: dramos@helenamt.gov

IX. QUESTIONS AND INQUIRIES

All inquiries, questions, or requests for interpretation, correction, or clarification must be submitted in writing to the city contact listed above. Whenever responses to inquiries would constitute a modification or addition to the original RFP, the reply will be made in the form of an addendum to this RFP, a copy of which will be posted on the city’s website.

X. SUBMITTAL INSTRUCTIONS

Proposals must be submitted in a sealed envelope clearly marked on the outside with the RFP number and project name.

One (1) hard copy and one electronic copy (PDF format) of the proposal must be submitted to:

City of Helena
Attn: City Clerk's Office
C/O: Darren Ramos
316 N Park Ave. Rm 322
Helena, MT 59623

PROPOSALS MUST BE RECEIVED NO LATER THAN: **April 2, 2026, at 2:00 p.m. (MST)**

Proposals may be withdrawn either personally or by written request at any time prior to the due date stated above for receiving proposals. No proposal may be withdrawn or modified after the due date and time, unless and until the award of the agreement is delayed for a period exceeding ninety (90) days.

The City is not responsible for costs associated with preparing proposals in response to this RFP.

XI. RESERVATION OF RIGHTS BY THE CITY

The City reserves the right to reject any or all proposals, readvertise, to waive any irregularities in the proposals, and to accept the proposal that best benefits the City. The City reserves the right to reject any and all responses deemed unqualified, unsatisfactory, or inappropriate.

XII. PUBLIC RECORDS DISCLOSURE

All proposals become the property of the City of Helena and may be subject to release to the public pursuant to Mont. Const. art. II, § 9 and Mont. Code Ann. § 2-6-1001 *et. seq.*

XIII. LOBBYING

Respondents are prohibited from lobbying the City Commission, the Mayor, or members of the selection committee relative to the respondent's proposal or response to this RFP.

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PROJECT AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY OF HELENA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 316 North Park Avenue, Helena, Montana 59623, hereinafter referred to as “City,” and **Insert Contractor Business Legal Name., Insert Contractor Address.** hereinafter referred to as “Contractor,” collectively referred to as “Parties.”

RECITALS

1. The City issued a Request for Bid for **Project No. Insert project number**, hereinafter referred to as “Project,” pursuant to the requirements of all applicable statutes, rules, regulations, and ordinances, to **insert brief project description**.
2. The City awarded the bid to Contractor on **Click or tap to enter a date**, on the condition that the Contractor enters into this Agreement.

AGREEMENT

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. **Effective Date and Term:** This Agreement is effective upon execution by both parties, and will terminate on: **Click here to enter a date or N/A if no termination date is needed. If the contract involves the provision of services over a discrete period of time, please enter a termination date. Examples of such contracts include, but are not limited to: (1) professional services wherein the professional agrees to provide consultation-type services unrelated to any specific project; and (2) general services that will be conducted during a certain time of year (e.g., snow removal over the winter months). Contracts that do not involve the provision of services over a discrete time period do not require a termination date. However, the contract should somewhere include a delivery date – most likely in the scope of work detail. Examples of such contracts include but are not limited to: (1) professional services wherein the professional is to deliver a finished product (e.g., drafting of engineering plans for new sewer mains or drafting specific legal documents); (2) professional services wherein the professional is going to provide those services until a project is completed (e.g., legal services related to a specific case or engineering or project management services for a specific project); and (3) the purchase and sale of tangible property like machinery, motor vehicles, or other equipment and supplies. If you are uncertain as to whether your contract should include a termination date, please contact the legal department. NO contract should be for a term of longer than 5 years. If you want a contract for longer than 5 years you must have permission to**

do so from the Attorney's Office first. ABSOLUTELY NO AUTOMATIC RENEWALS WILL BE PERMITTED UNDER ANY CIRCUMSTANCES. Any extension of the term of this Agreement must be set forth in writing and signed by both parties as specified in this Agreement.

2. **Contractor's Acknowledgment of Conditions:** Contractor hereby acknowledges that Contractor has examined all available records and made field examinations of the site of the Project. Contractor has knowledge of the field conditions to be encountered during the Project. Contractor has knowledge of the types and character of equipment necessary for the work, the types of materials needed and the sources of such materials, and the condition of the local labor market.
3. **Work to be Performed:**
 - a. A description of the Project and Contractor's duties is set forth in the City's Request For Bid, Bid Form, and City's Award (herein after "Bid Documents"), as awarded and accepted by City, and the drawings, plans, and Project specifications provided by the City and its architects and engineers. The Bid Documents are attached hereto as **Exhibit A**, Project Drawings and Plans are attached hereto as **Exhibit B**, and Project Specifications are attached hereto as **Exhibit C**, all of which are hereby incorporated into this Agreement by reference.
 - b. Prior to the commencement of any work on the Project, Contractor's representatives and City's representatives must hold a meeting to establish a working understanding among the parties as to the scope of the Project and duties of the Contractor. At this meeting, Contractor and City must resolve any outstanding issues related to the plans, designs, drawings, and specifications. If the parties are unable to resolve these issues and the City fails, refuses, or is unable to approve the same, no work must commence on the Project until such issues are resolved and the City approves the related plans, designs, drawings, and specifications.
 - c. Contractor's Project plans, methods of operation, materials used, and individuals and subcontractors employed (collectively "Contractor's Resources") are subject to the City's approval at all times during the term of this Agreement, and must be such as to ensure the completion of the work in compliance with the deadlines set in the Project Schedule section of this Agreement.
 - d. During work on the Project, and as part of the final completion of the Project, Contractor must clean up the Project site, including the removal and satisfactory disposal of all waste, garbage, excess materials, equipment, temporary buildings, the removal or grading of all embankments made for Project purposes, the filling in of all excavations, and the performance of any other work necessary to restore the site to at

least as good order and condition as at the commencement of the Project.

- e. Contractor must, at Contractor's sole expense, replace any material or correct any work found by the City or its agents to be defective or otherwise not in compliance with the terms and conditions of this Agreement. In the event Contractor fails to replace or correct any defective work or materials after reasonable written notice by the City to do so, the City may take such corrective action, either with its own materials and employees or by retaining any third party to do so, and deduct the cost and expense of such corrective action from the Contractor's compensation.
4. **Labor and Materials**: Except for the materials provided by City, Contractor must furnish all the labor, materials, equipment, tools, and services necessary to perform and complete the Project. City will supply the materials as set forth in City Supplied Materials attached hereto as **Exhibit D**. Contractor is responsible for any loss or damage to materials, tools, or other articles used or held for use in the completion of performance of the Project.
 5. **Project Management**:
 - a. Contractor must give its personal attention to the faithful completion of the Project. Contractor, or its duly authorized representative assigned to serve as the Project Manager, must be personally present at the site of the Project during working hours for the term of this Agreement until the completion of the Project.
 - b. Contractor must maintain an office at the site of the Project and must have a complete, accurate, and up-to-date set of Project plans, drawings, and specifications at that office at all times and available for inspection.
 - c. Contractor is responsible for the safety of the work and must maintain all lights, guards, signs, temporary passages, or other protections necessary for that purpose at all times.
 6. **Locating Underground Facilities**: Contractor is responsible for obtaining and determining the location of any underground facilities, including but not limited to, the location of any pipelines or utility supply, delivery, or service lines in accordance with the provisions of §69-4-501, et seq., MCA. Contractor must make every effort to avoid damage to underground facilities and shall be solely responsible for any damage that may occur. If City personnel assume responsibility for locating any underground facilities, this fact must be noted in writing prior to commencement of such location work.
 7. **Permits**: Contractor must provide all notices, comply with all applicable laws,

ordinances, rules, and regulations, obtain all necessary permits, licenses, and inspections from applicable governmental authorities, pay all fees and charges in connection therewith, and perform all surveys and locations necessary for the timely completion of the Project.

8. **Subcontractors:**

- a. Contractor may employ subcontractors for any work on the Project. Contractor must provide City with a list of all subcontractors employed.
- b. Contractor remains fully responsible for the acts and omissions of any subcontractor, just as Contractor is for its own acts and omissions, and Contractor shall remain fully responsible and liable for the timely completion of the Project.
- c. Contractor is solely liable for any and all payments to subcontractors. Contractor must hold all payments received from the City in trust for the benefit of subcontractors, and all such payments must be used to satisfy obligations of the Project before being used for any other purpose. Contractor must make any payments due to any subcontractor within seven (7) days of Contractor's receipt of payment, including a proportional part of the retainage Contractor has received from the City. In the event of a dispute regarding any subcontractor's invoice, Contractor must promptly pay the undisputed amount to the subcontractor and notify the subcontractor in writing of the amount in dispute and the reasons for the dispute. Any withholding of payment must comply with the requirements of §28-2-2103, MCA. In the event Contractor is unwilling or unable to make timely and proper payment to any subcontractor, City may elect to withhold any payment otherwise due to Contractor and upon seven (7) days' written notice to Contractor, may pay subcontractor by direct or joint payment.

9. **Apprenticeship Requirement:** Pursuant to City of Helena Resolution No. 20469, all agreements for services with an agreement cost of one-hundred fifty thousand dollars (\$150,000) or more require that at least fifteen percent (15%) of labor hours within each apprenticeable trade be performed by apprentices of that trade. If the cost of this Agreements meets the stated threshold, Contractor hereby acknowledges that Contractor is required to utilize apprentices to perform work for a minimum of stated amount of labor hours and agrees to provide verified payroll reports on at least a monthly basis to the City, certifying the names of all workers performing labor hours, their trade, hours worked, and designation as journey level worker or apprentice.

The City Manager has granted an adjustment from the requirements of this section of the Agreement as specified in **Exhibit ex “H”**, which is hereby incorporated by reference into this Agreement.

10. **Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. 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 must comply with the provisions of the Montana Workers’ Compensation Act. Proof of compliance must be in the form of workers’ compensation insurance, an independent contractor’s exemption, or documentation of corporate officer status. This insurance/exemption must be valid for the entire term of this Agreement and any renewal. Upon expiration, Contractor must send a proof of renewal to the City.

11. **Project Schedule:**

- a. *Complete by Date:* Contractor must complete the Project:

- within **number of days in words AND numbers. Ex. five (5) days** of the starting date stated in the Notice to Proceed.
- no later than **Click or tap to enter a date.**

- b. *Project Phases:* Project phases must be completed according to the following schedule:

If various Project Phases must be completed according to specific timelines specify those here. If no project phases need to be specified write “None noted for this Project.”

- c. Time is of the essence for completion of all work and each phase of the Project and liquidated damages may be assessed against the Contractor for failure to adhere to the Project Schedule as provided in this Agreement.
- d. In the event the City determines, at the sole discretion of the City, that Contractor’s Resources are inadequate to meet the approved Project Schedule, the City may order the Contractor, in writing, to accelerate Contractor’s performance to give reasonable assurances of timely completion and quality results. Acceleration ordered pursuant to

this Section will not be deemed a Change Order as provided for in this Agreement and the Contractor will not receive an equitable adjustment for such acceleration. Nothing in this Section relieves the Contractor of its duties and responsibilities to plan for and complete the work in a timely manner according to the Project Schedule.

12. Delays and Extensions of Time:

- a. If Contractor's performance of this Agreement is prevented or delayed by any unforeseen cause beyond the control of the Contractor, including acts or omissions of the City, Contractor must, within five (5) business days of the commencement of any such delay, give the City written notice thereof. Further, Contractor must, within five (5) business days of the termination of any such delay, give the City written notice of the total actual duration of the delay. If the City is provided with these required notices and if the City determines that the cause of the delay was not foreseeable, was beyond the control of the Contractor, and was not a result of the fault or negligence of the Contractor, then the City will determine the total duration of the delay and extend the time for performance of the Agreement accordingly.
- b. Unless the delay is caused by the intentional interference of the City with the Contractor's performance, Contractor is not entitled to make any claim for damages or any other claim other than for an extension of time as herein provided by reason of any delays.
- c. Contractor is not entitled to any extension of time as set forth in the Project Schedule with respect to any work performed by Contractor that is not required by the terms and conditions of the Agreement and is not contained in a duly executed Change Order.

13. Suspension:

- a. The City may, by written notice to the Contractor, and at its convenience, for any reason, suspend the performance of all or any portion of the work to be performed on the Project ("Notice of Suspension"). The Notice of Suspension must set forth the anticipated duration of the suspension, if then known to the City.
- b. During the period of suspension, Contractor must use all reasonable efforts to mitigate and minimize costs, to the Contractor and the City, associated with the suspension.
- c. Upon Contractor's receipt of the Notice of Suspension, unless the notice requires otherwise, Contractor must: **(1)** immediately discontinue work on the date and to the

- extent specified in the Notice of Suspension; **(2)** place no further orders or subcontracts for materials, services, or equipment; **(3)** promptly make every reasonable effort to obtain suspension upon terms satisfactory to City of all orders, subcontracts, and rental agreements to the extent that they relate to the performance of the work suspended; and **(4)** continue to protect and maintain the Project, including those portions on which work has been suspended.
- d. As compensation for the suspended work, Contractor will be reimbursed for the following costs, reasonably incurred, without duplication of any item, and to the extent that such costs directly resulted from the suspension: **(1)** a standby charge paid during the period of suspension which will be sufficient to compensate Contractor for keeping, to the extent required in the Notice of Suspension, Contractor's organization and equipment committed to the Project in standby status; **(2)** all reasonably incurred costs for the demobilization of Contractor's and subcontractor's crews and equipment; **(3)** an equitable amount to reimburse Contractor for the cost to protect and maintain the Project during the period of suspension; and **(4)** an equitable adjustment in the cost of performing the remaining portion of the work post-suspension if, as a direct result of the suspension, the cost to Contractor of subsequently performing the remaining work on the Project has increased or decreased.
- e. Upon receipt of written notice by the City to resume the suspended work ("Notice to Resume Work"), Contractor shall immediately resume performance of the suspended work as to the extent required in the Notice to Resume Work. Any claim by Contractor for time or compensation described in Section 11(c) shall be made within fifteen (15) days after receipt of the Notice to Resume Work and Contractor shall submit a revised Project Schedule for the City's review and approval. Contractor's failure to timely make such a claim shall result in a waiver of the claim.
- f. Contractor is not entitled to claims for compensation or extension of time to complete the Project if the suspension results from Contractor's non-compliance with or breach of the terms or requirements of this Agreement.

14. **Compensation:**

- a. *Agreement Amount:* City will pay to Contractor, and Contractor will accept as full payment for the performance of this Agreement and the Project, the amount **insert amount in words AND numbers. Ex. five (\$5)**. Both parties hereby acknowledge that this Agreement Amount has been calculated based upon the unit prices specified in the Bid Documents, attached hereto as **Exhibit A**, as submitted by the Contractor and accepted by the City.

- b. *Retainage Amount:* City will retain five percent (5%) of the total amount of compensation to be paid to the Contractor, including from Monthly Progress Payments, to ensure compliance with the terms and conditions of this Agreement and the timely completion of the Project and any and all “punch list” items. The Retainage Amount must be paid to Contractor within thirty (30) business days after the City’s final acceptance of the portion of work for which a separate price is stated in the specifications for the Project.
- c. *Contractors’ Gross Receipts Tax:* Contractor understands that all contractors or subcontractors working on a publicly funded construction project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is more than Eighty Thousand (\$80,000.00) Dollars in accordance with Title 15 Chapter 50 of the Montana Code Annotated. Contractor must withhold this tax from payments made to subcontractors by Contractor.
- d. If the City requires work to be performed that is outside of the work specified in this Agreement, any such additional work and the related compensation must be agreed upon in writing by both parties, as specified in this Agreement, prior to commencement of any additional work.
- e. Contractor is not entitled to any increase in Contractor’s compensation for any work performed by Contractor that is not required by the terms and conditions of this Agreement or a duly executed Change Order.
- f. *Monthly Progress Payments:*
 - i. After the commencement of work on the Project, the Contractor may request monthly progress payments by submitting an Application for Payment to the City during each successive calendar month, with a copy to the project architect or engineer. The Application for Payment must be based upon the actual or estimated percentage of work completed and materials supplied on the Project prior to the date of the Application and must be filled out and signed by the Contractor. Contractor must attach all supporting documentation to the Application, including certified payroll records and receipts, to verify that the work claimed in the Application has been completed. Only one Application for Payment may be submitted within a calendar month.
 - ii. Beginning with the second Application for Payment, each Application must also include an affidavit signed by the Contractor stating that all previous monthly progress payments received have been applied to the account to discharge City’s

obligations associated with the prior Applications for Payment.

- iii. City and its architect or engineer must promptly review all Applications for Payment and, within twenty-one (21) business days after receipt of each Application, determine whether a progress payment should be disapproved in whole or in part. An Application for Payment is considered to have been received when it is submitted to City's Representative and is considered approved unless prior to the expiration of the twenty-one (21) day period the City or its architect or engineer provides the Contractor with a written statement containing specific items that are being disapproved. A progress payment or any portion thereof may be disapproved upon a claim of: **(1)** unsatisfactory job progress; **(2)** failure to remedy defective Project work or materials; **(3)** disputed work or materials; **(4)** failure to comply with material provisions of this Agreement, drawings, plans, specifications for the Project, or other required documents, including but not limited to, payroll certifications, insurance coverage, bonding, lien releases, warranties, material certifications, and test data; **(5)** failure of Contractor to make timely payment for claims including, but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties; **(6)** damages to the City; **(7)** Contractor's non-compliance with applicable federal, state, and local laws, rules, and ordinances.
- iv. If the City disapproves only a portion of an Application for Payment and withholds an amount that is sufficient to pay the direct expenses that the City may reasonably expect will be necessary to correct any claim based on the reasons set out above, the remainder of the Application for Payment is considered approved. City must tender the balance of the approved monthly progress payment to Contractor within ten (10) business days following approval.
- v. City's approval of any progress payment shall not operate as City's acceptance of any portion of the Project as complete or free of defects or nonconformities, nor shall it operate as a waiver of Contractor's obligations under the Agreement including, but not limited to, Contractor's testing and warranty obligations.

g. *Final Payment:*

- i. Upon completion of the Project, Contractor must submit an Application for Final Payment to the City, with a copy to the project architect or engineer, seeking payment of the remaining balance of Contractor's compensation, including all retainage amounts. Contractor must attach all supporting documentation and receipts to the Application for Final Payment to verify that the Project has been fully and finally completed in compliance with all terms and conditions of the

Agreement, including complete and legally effective releases or waivers of all liens or encumbrances that have been filed against the Project, and a consent from all of Contractor's sureties to final payment. In addition, Contractor must include an affidavit signed by the Contractor stating that all previous monthly progress payments received have been applied to the account to discharge City's obligations associated with the Project and that the prior Applications for Payment and all claims asserted by any person arising from or related to the Project have been settled or satisfied. In the event any claims have not been settled or satisfied, the Affidavit must contain a complete listing of such claims, the name and address of each person making a claim, the facts and circumstances surrounding each claim, the amount of each claim, and the efforts made to date by Contractor to resolve, settle or satisfy each claim.

- ii. City and its architect or engineer shall promptly review the Application for Final Payment and, within twenty-one (21) business days after receipt of the request, determine whether it should be disapproved in whole or in part. An Application for Final Payment is considered to have been received when it is submitted to City's Representative and is considered approved unless the City or its architect or engineer provides the Contractor with a written statement containing specific items that are being disapproved prior to the expiration of the 21-day period. A final payment or any portion may be disapproved upon a claim of: **(1)** unsatisfactory job progress; **(2)** after City's final inspection of the Project, Contractor has not completed all punch list items and failed to remedy defective Project work or materials; **(3)** disputed work or materials; **(4)** failure to comply with material provisions of this Agreement, drawings, plans, specifications for the Project, or other required documents including, but not limited to, payroll certifications, insurance coverage, bonding, lien releases, warranties, material certifications, and test data; **(5)** failure of Contractor to make timely payment for claims including, but not limited to, claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties; **(6)** claims have been brought or liens have been filed against Contractor or the City related to the Project, or any such claims have not been properly documented in Contractor's Affidavit; **(7)** damage to the City; **(8)** Contractor has not delivered all maintenance and operating instructions, marked-up record documents, and any other documents relating to the Project as required by City; and **(9)** the Contractor is not in compliance with applicable federal, state, and local laws, rules, and ordinances and has not remedied the noncompliance.
- iii. If the City disapproves only a portion of an Application for Payment, the remainder of the Application for Payment is considered approved.

- iv. Final payment is due and payable within fourteen (14) business days of City's approval, but City may withhold an amount that is sufficient to pay the direct expenses that the City may reasonably expect will be necessary to correct any claim based on the items set out above and any tax withholding required by law.
 - h. Upon acceptance of final payment and for other good and valuable consideration, Contractor releases and forever discharges City, its officers, agents, and employees of and from any and all claims, demands, actions, causes of action, obligations, and liabilities of every kind and character whatsoever, in law and in equity, whether now known or in the future discovered, arising from or related to this Agreement or the Project that Contractor may have or assert against City, its officers, agents, and employees.
- 15. **Indebtedness and Liens**: Before City will make any final payment to Contractor, Contractor must furnish the City with satisfactory proof that there are no outstanding debts or liens in connection with the Project. If the Contractor allows any indebtedness to accrue to subcontractors or others during the progress of the work, and fails to pay or discharge the same within five (5) days after demand, then City may either withhold any money due to Contractor until such indebtedness is paid or apply the same towards the discharge of the indebtedness. If any lien or claim is filed or made by any subcontractor, material supplier, or any other person, the Contractor shall immediately notify the City and shall cause the same to be discharged of record within thirty (30) days after its filing.
- 16. **Liquidated Damages**: If the Project is not completed within the time provided by this Agreement, the City may deduct for each day the Project remains uncompleted the sum of **insert amount in words AND numbers. Ex. five (\$5)** from the compensation hereinafter specified and retain that sum as payment for liquidated damages sustained by reason of the Contractor's failure to complete the Project on time.
- 17. **Change Orders**
 - a. Except for minor modifications in the work, not involving an increase of costs or Contractor's compensation, and not inconsistent with the purposes of the work required by the Agreement, and except in an emergency situation which endangers life or property, no change to the work requirements can be made except pursuant to a written Change Order from the City's authorized representative.
 - b. City may, at any time, order changes, additions, deletions, or revisions to the work on the Project by submitting a written Change Order to Contractor. Upon receipt of any Change Order, Contractor must comply with the terms of the Change Order. The

terms of the Change Order supersede and replace any previously stated terms related to the Project including as specified in this Agreement.

- c. City and Contractor must negotiate in good faith for an agreement as to any increase or decrease in the Contractor's compensation that results from any Change Order. The increased or decreased Contractor's compensation must be set forth in the Change Order and both the City and the Contractor must sign the Change Order as an indication of their respective acceptance of the changes and modifications to the Agreement.
- d. In the event the City and Contractor are unable to agree upon the increase or decrease in Contractor's compensation the City will pay the Contractor on a force account basis for labor and materials used to perform the work specified by the Change Order and the previously agreed upon mark-up for Contractor's overhead and profit. The costs of the labor and materials will be determined as follows:
 - i. Contractor's actual, direct payroll expenses for the cost of labor. Payroll expenses can only include actual gross wages paid, without any deductions, withholding, or overhead.
 - ii. Contractor's previously agreed upon mark-up fee that covers Contractor's liability insurance, workers' compensation, and Social Security taxes applicable to wages, Contractor's reasonable profit, the costs for the use of small tools and equipment not otherwise classified under heavy equipment use, and Contractor's general overhead expenses.
 - iii. Contractor's actual cost of materials, including actual transportation costs, for all materials supplied by Contractor.
 - iv. Costs for the use of heavy equipment and the transportation of the same. Such costs will be the actual rental fees incurred for the use of the heavy equipment and the actual costs of transporting such heavy equipment to and from the site of the Project.
- e. Decreases to Contractor's compensation will be determined by the City's good faith estimate. If Contractor disagrees with such good faith estimate, Contractor can avail itself of the Dispute Resolution provisions set forth in the Agreement.

18. **Inspection and Testing**: City has the right to inspect and test any and all work performed by Contractor on the Project. Contractor must allow City and its officers, agents,

employees, and representatives, access to the Project at all times and must provide every reasonable facility for the purpose of such inspection and testing, including temporarily discontinuing portions of the work or uncovering or taking down portions of the finished work. Any inspection and testing performed by the City and its agents is for the sole benefit of the City and does not relieve the Contractor of its duty, responsibility, and obligation to ensure that the work strictly complies with the Agreement terms and conditions and all applicable federal, state, and local, laws, rules, and regulations, including building and safety codes. City's inspection and testing is not to be deemed or considered acceptance by the City of any portion of the Project. City's inspection and testing shall not serve to nullify, amend, or waive any warranties provided by the Contractor under this Agreement.

19. **Partial Utilization of Project:** City has the right to use or occupy any portion of the Project that City and Contractor mutually agree is substantially completed and constitutes a separately functioning and usable part of the Project for its intended purpose without significant interference with Contractor's performance of the remaining portions of the Project. In the event City takes possession of any portion of the Project, such possession shall not be deemed an acceptance of the Project, in whole or in part. Contractor will still be required to conduct any final testing of the portions in the possession of the City. City's use of any portion of the Project shall not be grounds for extensions of any Project deadlines or a change in the Contractor's compensation.
20. **Related Work at the Site:** Nothing in this Agreement shall prevent or preclude City, its employees, officials, or agents, from performing other work related to the Project at the Project site; provided such related work is not otherwise addressed in this Agreement and provided such related work does not otherwise interfere with Contractor's performance of this Agreement or the completion of the Project. Contractor must afford any City employee, agent, or representative, or any third party under contract with the City to perform the related work, proper and safe access to the Project site, a reasonable opportunity for the introduction and storage of materials and equipment, the opportunity to perform the related work, and must properly coordinate the Contractor's work on the Project with the related work.
21. **No Damage or Disruption:** Contractor's performance must be without damage or disruption to any other work or property of the City or of others and without interference with the operation of existing machinery or equipment. Contractor may be held financially responsible for any damage or disruption to City property or operations.
22. **Contractor's Warranties:** Contractor represents and warrants as follows:
 - a. Contractor's warranties shall run from the completion and acceptance of the total

Project by the City and not from the date the City may take possession of selected portions of the Project.

- b. Unless otherwise specified by the terms of this Agreement, all materials and equipment used by Contractor on the Project must be new and where not otherwise specified, of the most suitable grade for their intended uses.
- c. All workmanship and materials shall be of a kind and nature acceptable to the City.
- d. All equipment, materials, and labor provided to, on, or for the Project must be free of defects and nonconformities in design, materials, and workmanship for a minimum period beginning with the commencement of the work on the Project and ending one (1) year from the final completion and acceptance by the City of the Project, regardless of whether such equipment, materials, or labor were supplied directly by Contractor or indirectly by Contractor's subcontractors or suppliers. Other express warranties on materials that provide for a warranty period longer than one (1) year apply for the period of that express warranty and are not reduced by this provision. Upon receipt of City's written notice of a defective or nonconforming condition during the warranty period, Contractor must take all actions, including redesign and replacement, to correct the defective or nonconforming condition within a time frame acceptable to the City and at no additional cost to the City. Contractor must also, at its sole cost, perform any tests required by City to verify that such defective or nonconforming condition has been corrected. Contractor warrants the corrective action taken against defective and nonconforming conditions for a period of an additional one (1) year from the date of City's acceptance of the corrective action.
- e. Contractor and its sureties are liable for the satisfaction and full performance of all warranties.

23. **Contractor's Acceptance of Risk:** Contractor hereby acknowledges and accepts that all performed on the Project by the Contractor is at Contractor's own risk, and Contractor will promptly repair or replace all damage and loss at its sole cost and expense regardless of the reason or cause of the damage or loss. If the damage or loss is caused by an intentional or negligent act of the City, the risk of such loss will be placed on the City.

24. **Hold Harmless and Indemnification:** For all services rendered, Contractor agrees, to the fullest extent permitted by law, to protect, defend, hold harmless, and save the City, its elected and appointed officials, officers, agents, employees, and volunteers from any and all losses, damage, liability and causes of action of any kind or character, including the cost of defense thereof, occasioned by, growing out of, or in any way arising or resulting from any act or omission on the part of the Contractor or Contractor's agents,

employees, officers, representative, assignees, invitees, or subcontractors in connection with this Agreement.

25. **Insurance:**

a. *Required Coverage:* At the time of entry into this Agreement, Contractor must have in place the following insurance coverage (check all that apply) :

<input type="checkbox"/>	Commercial General Liability (bodily injury and property damage)	\$ 2,000,000 per occurrence \$ 4,000,000 aggregate
<input type="checkbox"/>	Products and Completed Operations	\$ 3,000,000
<input type="checkbox"/>	Automobile Liability (all owned, hired, non-owned)	\$1,500,000 per accident
<input type="checkbox"/>	Workers' Compensation	Not less than statutory limits
<input type="checkbox"/>	Employers' Liability	\$1,500,000
<input type="checkbox"/>	Professional Liability (E&O)	\$1,500,000
<input type="checkbox"/>	Builder's Risk/Property Insurance	Equal to greater of Contractor's compensation or full replacement (covering all work, buildings, materials and equipment, whether on site or in transit, loss due to fire, lightening, theft, vandalism, malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of laws, water damage, flood if site within a flood plain, repair or replacement costs, testing and start-up costs)
<input type="checkbox"/>	Owner's and Contractor's Protective Liability	\$ 1,000,000 per occurrence \$ 3,000,000 aggregate
<input type="checkbox"/>	On-Hook Coverage	Enter amount of coverage or hit space to delete this text.
<input type="checkbox"/>	Transit Coverage	\$ 1,000,000

This coverage must be maintained through the termination of this Agreement and for a minimum of one (1) year following the date of expiration of Contractor's warranties.

All insurance policies must contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least forty-five (45) days prior written notice has been given to Contractor, City, and all other additional insured to whom a certificate of insurance has been issued.

- b. *Required Documentation:* The insurance must be in a form suitable to City. Certificates must be provided to the City and included as part of this Agreement as **Exhibit E**. Contractor must notify City thirty (30) days prior to the expiration of any such required insurance coverage and must ensure such required insurance coverage is timely renewed during the term of this Agreement so that there is no lapse in coverage during Contractor's performance of this Agreement. Contractor must further notify City within two (2) business days of Contractor's receipt of notice that any required insurance coverage will be terminated or Contractor's decision to terminate any required insurance coverage for any reason.
 - c. *City as Additional Insured:* Each required insurance coverage must name the City as an additional insured.
 - d. *Coverage to be Primary:* The Contractor's insurance coverage is to be primary insurance with respect to City, its elected and appointed officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, agents, employees, and volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
26. **Bonds:** Contractor must make, execute, purchase, maintain, deliver to City, and include as part of this Agreement as **Exhibit F** the bonds specified in this Section in an amount at least equal to the Contractor's compensation under this Agreement, conditioned that the Contractor must faithfully perform all of Contractor's obligations under this Agreement and pay all laborers, mechanics, subcontractors, material suppliers and all persons who supply the Contractor or Contractor's subcontractors with provisions, provender, material, or supplies for performing work on the Construction Project. All bonds must be obtained with a surety company that is duly licensed and authorized to transact business within the state of Montana and to issue bonds for the limits so required. The surety company must have a Best's Financial Strength Rating of A, as rated by the A. M. Best Co., or an equivalent rating from a similar rating service. All bonds must remain in effect throughout the life of this Agreement and for a minimum of one (1) year following the date of expiration of Contractor's warranties. A certified copy of the agent's authority to act must accompany all bonds signed by an agent. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business within the State of Montana is terminated, Contractor must promptly notify City and shall within twenty (20) days after the event giving rise to such notification, provide another bond

with another surety company, both of which shall comply with all requirements set forth herein.

The following bonds are required:

Performance Bond	Equal to Contractor's compensation amount
Payment Bond	Equal to Contractor's compensation amount

27. **No Assignment or Transfer:** Contractor may not assign or transfer this Agreement or any of its rights, duties, or obligations hereunder without prior express written consent of the City or as otherwise provided for in this Agreement.
28. **Compliance with Laws:** Contractor agrees to comply with all applicable federal, state and local laws, ordinances, rules, and regulations, including but not limited to: all workers' compensation laws; all environmental laws including, but not limited to, the generation and disposal of hazardous waste, the Occupational Safety and Health Act (OSHA); the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA; all applicable City, County, and State building and electrical codes; and utilization of minority and small business statutes and regulations. Contractor must have a valid City business license.
29. **Hazard Communication:** Contractor must comply with all hazard communication requirements dictated by the Environmental Protection Agency, the Montana Department of Agriculture, OSHA, Hazard Communications Standard, 29 CFR 1910.1200, and applicable City ordinances. Contractor shall supply a chemical list, the associated material safety data sheets (MSDS), and other pertinent health exposure data for chemicals that the Contractor's, subcontractor's, City's elected and appointed officials, officers, agents, employees, and volunteers, or members of the public, may be exposed to while working on City property during the course of the Project. One copy of this documentation must be delivered to City to the attention of the City's Representative. This documentation must be delivered before work involving these chemicals may commence.
30. **Labor Preferences and Prevailing Wages:**
- a. For purposes of Montana's prevailing wage requirements, this Project is classified as **HIGHWAY CONSTRUCTION**. The Montana Prevailing Wage Rates for this type of project are attached hereto as **Exhibit G** which is incorporated herein by this reference.
 - b. Contractor shall post a legible statement of all wages and fringe benefits to be paid to

the Contractor's employees and the frequency of such payments (i.e., hourly wage employees shall be paid weekly). Such posting shall be made in a prominent and accessible location at the site of the project and shall be made no later than the first day of work. Such posting shall be removed only upon the final completion of the Project and the termination of this Agreement.

- c. In performing the terms and conditions of this Agreement and the work on the Project, Contractor shall give preference to the employment of bona fide residents of Montana as required by §18-2-403, MCA, and as such term is defined by §18-2-401(1), MCA. When making assignments of work, Contractor shall use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned.
- d. Contractor must pay all hourly wage employees on a weekly basis. Violation of the requirements may subject the Contractor to the penalties set forth in §18-2-407, MCA. Contractor must maintain payroll records and provide certified copies to the City upon request. Contractor must maintain such payroll records during the term of this Agreement, the course of the work on the Project, and for a period of three (3) years following the date of final completion of the Project and termination of this Agreement.

- 31. **Taxes and Withholdings:** Contractor is obligated to pay all taxes of any kind or nature and make all appropriate employee withholdings.
- 32. **Nondiscrimination:** Contractor agrees that it will not discriminate based on any protected class in any of its activities or provision of services regardless of whether or not those activities or services are provided in connection with this Agreement. Contractor agrees that all hiring of persons in connection with this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, creed, religion, color, national origin, age, physical or mental disability, marital status, sex, pregnancy, childbirth or medical condition related to pregnancy or childbirth, sexual orientation or expression, political beliefs or affiliation, genetic information, veteran status, culture, social origin or condition, or ancestry.
- 33. **Intoxicants; DOT Drug and Alcohol Regulations:** Contractor shall not permit or suffer the introduction or use of any intoxicants, including alcohol or illegal drugs, upon the site of the Project. Contractor acknowledges it is aware of and shall comply with its responsibilities and obligations under the U.S. Department of Transportation (DOT) regulations governing anti-drug and alcohol misuse prevention plans and related testing. City shall have the right to request proof of such compliance and Contractor shall be obligated to furnish such proof.

34. **Website Privacy Policy:** If Contractor collects any data electronically as part of performance of this Agreement, Contractor agrees to comply with and follow the City's Website Privacy Policy in order to ensure the data security and data quality of personally identifiable information that is collected during the course and scope of this project.
35. **Records Access and Retention:** Contractor agrees to create and retain records, including but not limited to, books, correspondence, instructions, drawings, specifications, field and site notes, receipts, invoices, bills, contracts, or other documents supporting the services rendered or goods delivered in connection with this Agreement. Contractor agrees, to the extent permitted by law, to provide the City, or the City's authorized agent, access to any such records at the City's request. The City may terminate this Agreement without incurring liability if the Contractor refuses to allow access to records as provided in this section. Contractor agrees to retain any records concerning this Agreement for eight (8) years after the Agreement termination date. The obligation to maintain records required by this section survives the termination or the expiration of this Agreement.

36. **Ownership and Publication of Materials:**

All plans, designs, drawings, specifications, documents, sample results and data, in whatever medium or format, originated or prepared by or for Contractor in contemplation of, or in the course of, or as a result of this Agreement or work on the Project, must be promptly furnished to the City ("City Documents and Information"). All City Documents and Information become the exclusive property of the City and are deemed to be works-for-hire. Contractor hereby assigns to the City all rights, title, and interest in and to the City Documents and Information, including but not limited to, all copyright and patent rights. Neither party grants to the other any express or implied licenses under any patents, copyrights, trademarks, or other intellectual property rights, except to the extent necessary to complete its obligations to the other under this Agreement.

Title to all work, materials, and equipment covered by any payment of Contractor's compensation by City, whether directly incorporated into the Project or not, passes to City at the time of payment, free and clear of all liens and encumbrances.

37. **Representatives and Notice Protocol:** Any notice or demand required or permitted to be given under the terms of this Agreement must be in writing. Written notice must be deemed given when hand-delivered, or when mailed by first class mail, postage prepaid, to the addresses specified in this section, or by e-mail with confirmation of delivery. If either party changes address or contact person, it must notify the other party in writing at the address provided in this section.

a. The City's Representative for purposes associated with this Agreement is:

Name: [Insert Name and Title.](#)
Address: [Insert Mailing Address.](#)
Phone: [Insert Phone number.](#)
E-Mail: [Insert City Contact email.](#)

The City may designate any other individual as the City's Representative so long as notice of such designation is provided to the Contractor in writing. Whenever approval or authorization from or communication or submission to City is required by this Agreement, such communication or submission shall be directed to City's Representative and approvals or authorizations must be issued only by such Representative; provided, however, that in exigent circumstances when City's Representative is not available, Contractor may direct its communication or submission to other designated City personnel or agents and may receive approvals or authorization from such persons.

b. The Contractor's Representative for purposes associated with this Agreement is:

Name: [Insert Name and Title.](#)
Address: [Insert Mailing Address.](#)
Phone: [Insert Phone number.](#)
E-Mail: [Insert Email Address.](#)

The Contractor may designate any other individual as the Contractor's Representative so long as notice of such designation is provided to the City in writing. Whenever direction to or communication with Contractor is required by this Agreement, such direction or communication must be directed to Contractor's Representative; provided, however, that in exigent circumstances when Contractor's Representative is not available, City may direct its direction or communication to other designated Contractor personnel or agents.

38. Dispute Resolution:

a. Any claim, controversy, or dispute between the parties, their agents, employees, or representatives shall be resolved first by negotiation between senior-level personnel from each party duly authorized to execute settlement agreements. Upon mutual agreement of the parties, the parties may invite an independent, disinterested mediator to assist in the negotiated settlement discussions. Both parties will share equally in cost of hiring a mediator.

- b. If the parties are unable to resolve the dispute within a reasonable time from the date the dispute was first raised, then such dispute must be resolved in a court of competent jurisdiction in compliance with the Applicable Law provisions of this Agreement.

39. Termination for Contractor's Fault:

- a. If Contractor refuses or fails to timely do the work, or any part thereof, or fails to perform any of its obligations under this Agreement, or otherwise breaches any terms or conditions of this Agreement, the City may, by written notice, terminate this Agreement and the Contractor's right to proceed with all or any part of the Project ("Termination Notice Due to Contractor's Fault"). The City may then take over the Project and complete it, either with its own resources or by re-letting the contract to any other third party, and may immediately take possession of and use such materials, appliances, tools, and equipment as may be on the site and which may be necessary for the completion of the Project.
- b. In the event of a termination pursuant to this Section, Contractor is entitled to payment only for those services Contractor actually rendered. In the case of a lump sum or unit price Agreement, Contractor is not entitled to any further payment until the Project has been completed. Upon completion of the Project, if the unpaid balance of the Contractor's compensation exceeds the cost to the City of completing the work, including all costs paid to any subcontractors or third parties retained by the City to complete the Project and all administrative costs resulting from the termination ("City's Cost for Completion"), such excess must be paid to the Contractor. If the City's Cost for Completion exceeds the unpaid balance of the Contractor's compensation, then Contractor and its sureties shall be liable for and shall pay the difference, plus interest at the rate applicable to court judgments, to the City.
- c. Any remedies provided for by this Section are in addition to any other remedies to which the City may be entitled under the law or at equity.
- d. If the Agreement is terminated pursuant to this Section, Contractor is not entitled to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature arising, or claimed to have arisen, as a result of the termination.

40. Termination for City's Convenience:

- a. Should conditions arise which, in the sole opinion and discretion of the City, make it advisable to the City to cease work on the Project, City may terminate this Agreement

by written notice to Contractor (“Notice of Termination for City’s Convenience”). The termination will be effective in the manner specified in the Notice of Termination for City’s Convenience and must be without prejudice to any claims that the City may otherwise have against Contractor.

- b. Upon receipt of the Notice of Termination for City’s Convenience, unless otherwise directed in the Notice, the Contractor must immediately cease work on the Project, discontinue placing orders for materials, supplies, and equipment for the Project, and make every reasonable effort to cancel all existing orders or contracts upon terms satisfactory to the City. Contractor must do only such work as may be necessary to preserve, protect, and maintain work already completed, in progress, or in transit to the Project site.
- c. In the event of a termination pursuant to this Section, Contractor is entitled to payment only for those services Contractor actually rendered and materials actually purchased or which Contractor has made obligations to purchase on or before the receipt of the Notice of Termination for City’s Convenience, and reasonably incurred costs for demobilization of Contractor’s and any subcontractor’s crews. It is agreed that any materials that City is obligated to purchase from Contractor will remain the City’s sole property.
- d. The compensation described in this Section is the sole compensation due to Contractor for its performance of this Agreement. Contractor is not, under any circumstances, entitled to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature arising, or claimed to have arisen, as a result of the termination.

41. Limitation on Contractor’s Damages; Time for Asserting Claim:

- a. In the event of a claim for damages by Contractor under this Agreement, Contractor’s damages are limited to the Agreement Amount as stated in this Agreement, and Contractor hereby expressly waives any right to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature or kind.
- b. In the event Contractor wants to assert a claim for damages of any kind or nature, Contractor must provide City with written notice of its claim, the facts and circumstances surrounding and giving rise to the claim, and the total amount of damages sought by the claim, within ten (10) business days of the facts and

circumstances giving rise to the claim. In the event Contractor fails to provide such notice, Contractor waives all rights to assert any such claim.

42. **Authority**: Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.
43. **Survival**: Contractor's indemnification and warranty obligations survive the termination or expiration of this Agreement for the maximum period allowed under applicable law unless specifically stated otherwise elsewhere in this Agreement.
44. **Remedies Non-Exclusive**: Any remedies available under this Agreement are cumulative and non-exclusive. Use of one remedy does not preclude use of the others.
45. **Failure to Enforce Not a Waiver**: City's failure, at any time, to enforce or to seek strict compliance with any provision of this Agreement or to exercise any right or remedy arising from the breach thereof does not constitute a waiver of that provision or remedy or of any other provision of this Agreement or available remedy.
46. **Binding Effect**: This Agreement is binding upon and inures to the benefit of the heirs, legal representatives, successors, and assigns of the parties.
47. **No Third-Party Beneficiary**: This Agreement is for the exclusive benefit of the parties, does not constitute a third-party beneficiary agreement, and may not be relied upon or enforced by a third party.
48. **Full Integration**: This Agreement, together with its exhibits, if any, embodies the entire understanding between the parties relating to the subject matter contained herein and supersedes any prior statements, understandings, promises, or representations made by either party or their agents. No agent or representative of either party has authority to make any representations, statements, warranties, or agreements not herein expressed.

The following exhibits are made part of this Agreement by reference:

Exhibit A – Bid Documents (including Request for Bid, Bid Form, City's Award)

Exhibit B – Project Drawings and Plans

Exhibit C – Project Specifications

Exhibit D – City Supplied Materials

Exhibit E – Insurance Certificates

Exhibit F – Bond Certificates

Exhibit G – Applicable Prevailing Wages

List any additional Exhibits attached here or hit space to eliminate this text.

49. **Amendments in Writing:** All amendments to this Agreement must be in writing and executed by all parties to this Agreement.
50. **Governing Law and Venue:** This Agreement and any extensions hereof is governed and construed in accordance with the laws of the State of Montana. If a dispute arises, the proper venue for the hearing of the case is the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark.
51. **Headings:** The section headings contained in this Agreement are for reference purposes only and do not affect the meaning or interpretation of the Agreement.
52. **Severability:** If any term or provision of this Agreement is held to be illegal, void or in conflict with any Montana law, the validity of the remaining terms and conditions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term, condition, or provision held to be invalid.
53. **Counterparts:** This Agreement may be executed in counterparts, which together constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates stated below.

FOR THE CITY OF HELENA MONTANA

Signed: _____ Dated: _____
By: **Tim Burton, City Manager**

FOR THE CONTRACTOR

Signed: _____ Dated: _____
By: **Insert Name., Insert Title.**

APPROVED AS TO FORM:

Signed: _____ Dated: _____
By: **Rebecca Dockter, City Attorney**

Exhibit A
Bid Documents
(Request for Bid, Bid Form, City's Award)

Exhibit B
Project Drawings and Plans

Exhibit C
Project Specifications

Exhibit D
City Supplied Materials

Exhibit E
Insurance Certificates

Exhibit F
Bond Certificates

Exhibit G
Applicable Prevailing Wages

Attachment B



FY2026 Sidewalk Improvement Program
TSD-26-16

PROPOSAL PRICE SHEET-2026

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE
1	Concrete Removal (4" thickness or less)	SF	Any Quantity	
2	Concrete Removal (More than 4" thickness)	SF	Any Quantity	
3	Concrete Curb/Gutter Removal	LF	Any Quantity	
4	Asphalt Removal	SF	Any Quantity	
5	Standard Curb Cut	LF	Any Quantity	
6	4" Hot Mix Asphalt Pavement & Tack Coat (3/8" mix, PG 58-28)	SF	60 SQFT or Less	
7	4" Hot Mix Asphalt Pavement & Tack Coat (3/8" mix, PG 58-28)	SF	Greater than 51 SQFT	
8	6" Thickness of 1-1/2" Minus Crushed Base Course (Placed & compacted)	SF	Any Quantity	
9	6" Thickness of 3/4" Crushed Gravel (Placed & compacted)	SF	Any Quantity	
10	Combined Concrete Curb & Gutter	LF	50 LF or Less	
11	Combined Concrete Curb & Gutter	LF	51 LF or More	
12	4" Concrete Sidewalk	SF	100 SF or Less	
13	4" Concrete Sidewalk	SF	101 SF to 240 SF	
14	4" Concrete Sidewalk	SF	241 SF or More	
15	6" Concrete (Driveway Sidewalk & Aprons)	SF	Any Quantity	
16	6" Concrete Valley Gutter (6' Wide Typ.)	SF	Any Quantity	
17	4" Pedestrian Curbing	LF	Any Quantity	
18	Splitface Concrete Block Retaining Wall (up to 24" height)	SF	Any Quantity	
19	Concrete Walkway steps (Typical 7" Riser & 12" Tread)	LF	Any Quantity	
20	Detectible Warning Devices (CI Truncated Dome Panel 2' x 5' Typ.)	SF	Any Quantity	
21	Stamped Concrete	SF	any Quantity	
22	Concrete Trip Hazard Repair - Grinding	LF	Any Quantity	
23	Concrete Trip Hazard Repair - Slab Leveling	SF	Any Quantity	
24	Reset Existing Sign and Post	EA	Any Quantity	
25	Set New Sign Post	EA	Any Quantity	
26	4" PVC Irrigation Sidewalk Sleeve (1' past either side of sidewalk)	EA	Any Quantity	
27	Sodding	SF	Any Quantity	
28	Misc. Excavation (Vaulted sidewalk / coal chute)	CY	Any Quantity	
29	Misc. Backfill (Placement & compaction, 8" lifts)	CY	Any Quantity	
30	Remove and Reset Storm Drain Inlet	EA	Any Quantity	
31	Kessler Brick Removal and Palletization	SF	Any Quantity	
32	Top soil	CY	Any Quantity	
33	Single ADA Corner	EA	Any Quantity	
34	Double ADA Corner	EA	Any Quantity	
35	Single Blended Transition ADA Corner	EA	Any Quantity	
36	Double Blended Transition ADA Corner	EA	Any Quantity	

Proposal Unit Specifications – Attachment C

All work to comply with PROWAG standards.

A. A single ramp will include:

- demolition of existing corner, all concrete.
- saw cut asphalt corner for concrete fillet and demo asphalt.
- excavate and compact subgrade.
- install crushed aggregate and compact (6" compacted).
- install concrete fillet and curb & gutter (approx. 35' of curb & gutter).
- install ramp with pedestrian curbing on both sides of ramp with 5' x 5' landing.
- 2' x 5' cast iron truncated domes.
- one 5' x 5' transition panel in each direction to tie into existing sidewalks.

B. A double ramp will include:

- demolition of existing corner, all concrete.
- saw cut asphalt corner for concrete fillet and demo asphalt.
- excavate and compact subgrade.
- install crushed aggregate and compact (6" compacted).
- install concrete fillet and curb & gutter (approx. 40' of curb & gutter).
- install ramps with pedestrian curbing on both sides of each ramp with 5' x 5' landing.
- stamped concrete (random stone decorative concrete stamp) is to be applied to non-travel surface between ramps.
- 2' x 5' cast iron truncated domes on both ramps.
- 2 - 5' x 5' transition panels in each direction to tie into existing sidewalks.

C. Blended Transition* ramp (only when necessary and with prior approval by the City) will include:

- demolition of existing corner, all concrete.
- saw cut asphalt corner for concrete fillet and demo asphalt.
- excavate and compact subgrade.
- install crushed aggregate and compact (6" compacted).
- install concrete fillet and curb & gutter (approx. 40' of curb & gutter).
- install ramps with pedestrian curbing on back side of ramps, with landing between.
- 2' x 5' cast iron truncated domes.

Proposal Unit Specifications – Attachment C

*Blended transition corners will require prior written approval. Only in curbside applications.

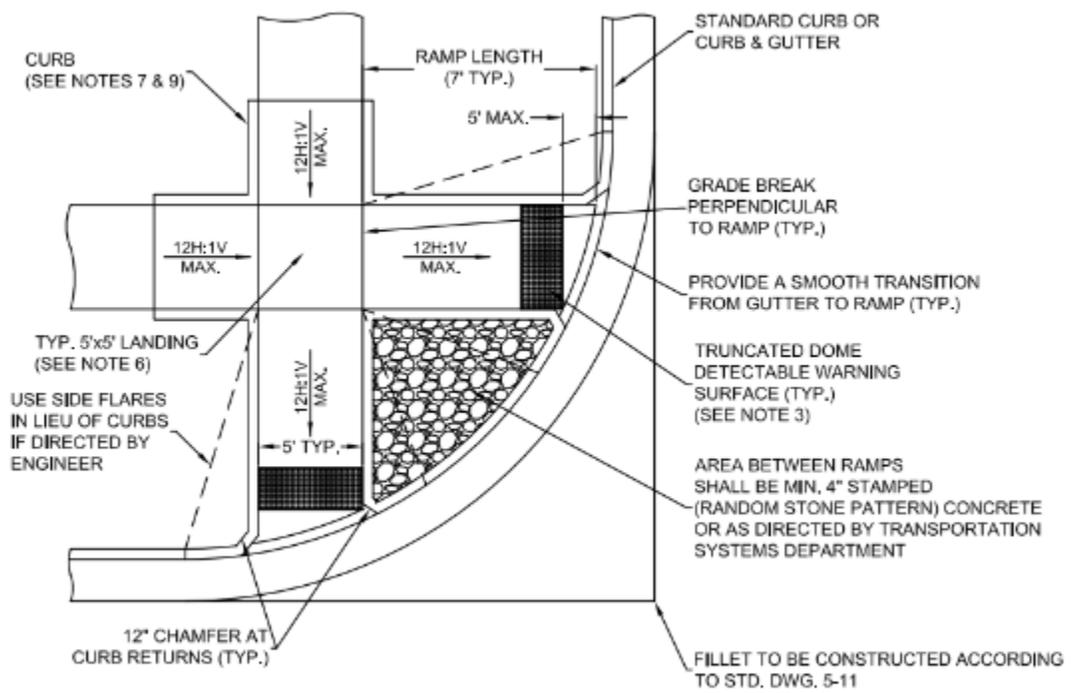
Materials specifications:

Concrete - 4500 psi @ 28-day break (per MPWSS 03310)

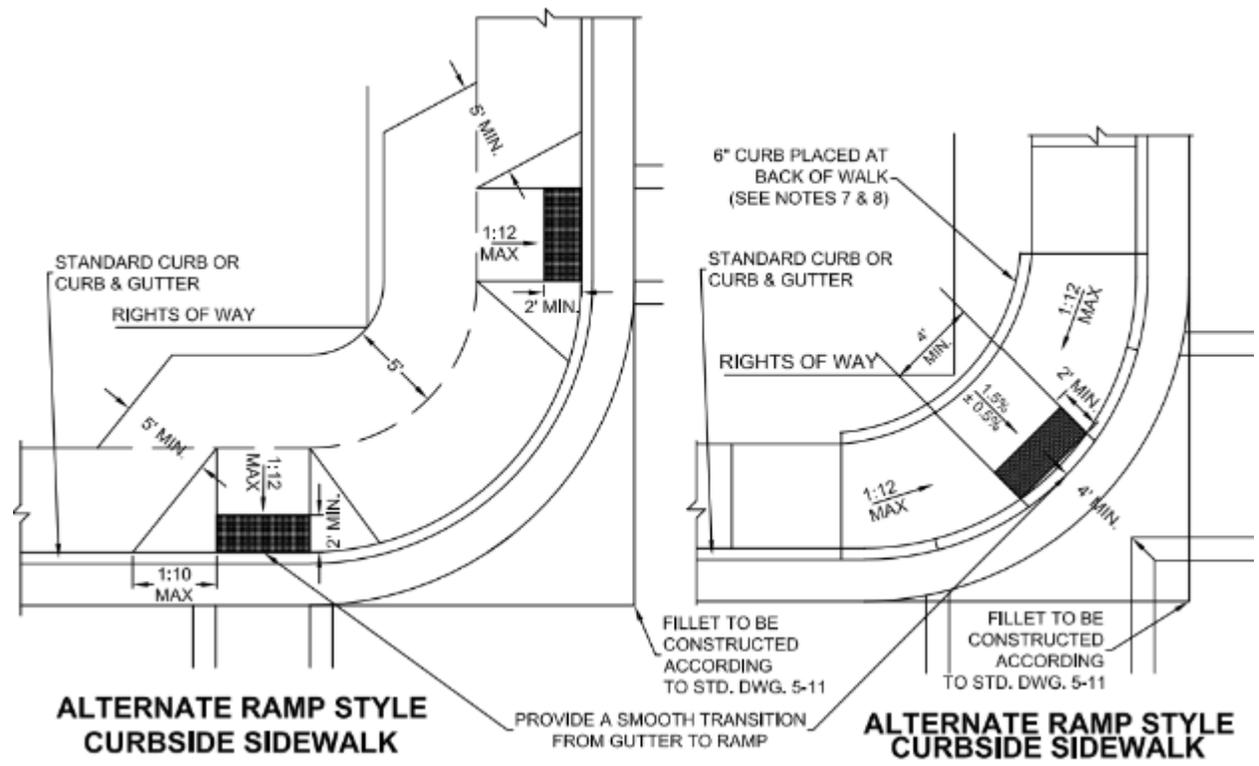
Sidewalk base - $\frac{3}{4}$ " crushed aggregate base (per MPWSS 02235)

Curb and gutter/Fillet base – $\frac{3}{4}$ " crushed base course (per MPWSS 02235)

In areas where the asphalt is failing and the City determines that it should be cut further to have a competent connection point, it will be filled back with 4" Asphalt Removal & Replacement (3/8" mix, PG 58-28), weather permitting.



PREFERRED RAMP STYLE



ALTERNATE RAMP STYLE CURBSIDE SIDEWALK

ALTERNATE RAMP STYLE CURBSIDE SIDEWALK