

Section 1.5 Contract

THIS CONTRACT, made as of _____ by and between the City of Billings, hereinafter called the OWNER, and Hample Excavation, Inc. hereinafter called the CONTRACTOR.

WITNESSETH THAT, whereas the OWNER intends to construct improvements at Billings Logan International Airport consisting of:

2022 WEST TAXILANE UTILITIES **Schedule 1 – Utility Improvements**

hereinafter called the PROJECT, in accordance with Drawings, Specifications and other Contract Documents prepared by **Morrison-Maierle**, hereinafter called the ENGINEER, and as such designated by the parties hereto as an agent for the OWNER to protect the interests of the OWNER and to insure that the CONTRACTOR's work is done in full compliance with the terms of this CONTRACT.

NOW, THEREFORE, the OWNER and the CONTRACTOR, for the considerations herein set forth, agree as follows:

THE CONTRACTOR AGREES to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete, in a workmanlike manner, all work required for the construction of the Project included in the following units and items of the Proposal in strict compliance with the Contract Documents herein mentioned, which are hereby made a part of the Contract:

A. **CONTRACT TIME**: Work under this Contract shall be commenced upon written Notice To Proceed and shall be completed within the specified calendar days of the commencement of the Contract Time as specified in the Special Provisions.

B. **LIQUIDATED DAMAGES AND ACTUAL DAMAGES**: Subject to the provisions of the General and Special Provisions, the OWNER shall be entitled to be paid by the Contractor for liquidated damages, actual damages and damages for additional engineering services as specified in the Special Provisions and as referenced in the "Bid Proposal Packet". (See attached "Acknowledgement of Liquidated Damages" form.)

C. **LOBBY DISCLOSURE**: As a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code, the Contractor agrees to provide Certification of Disclosure of Lobbying activities and shall require that the language of this certification be included in the award of documents for all sub-awards at all tiers and that all sub-recipients shall certify and disclose accordingly. (See attached "Disclosure of Lobbying Activities" form.)

D. **SUBCONTRACTORS**: The CONTRACTOR agrees to bind every subcontractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating any contractual relation between subcontractor and the OWNER.

E. CONTRACT PRICE: THE OWNER AGREES to pay, and the CONTRACTOR agrees to accept, in full payment for the performance of this Contract, the Contract amount of five hundred thousand fifty-four and 00/100 Dollars (\$500,054.00) based on the prices stipulated in the Proposal and in accordance with the provisions of the Contract Documents.

F. PAYMENT PROCEDURES: Progress payments will be made in accordance with the General Conditions and Special Provisions.

G. CONTRACT DOCUMENTS: The term "CONTRACT DOCUMENTS" as used herein shall mean and include the "GENERAL CONDITIONS" hereto attached, all of which are by this reference incorporated into and made a part of this Contract. In the event any provision of one Contract Document conflicts with the provision of another Contract Document, the provision in that Contract Document first listed below shall govern, except as otherwise specifically stated:

- a. Contract (This Instrument)
- b. Performance and Payment Bonds
- c. Addenda to Contract Documents (List): One
- d. Legal and Procedural Documents:
 - 1. Proposal
 - 2. Proposal Guaranty
 - 3. Instructions to Bidders
 - 4. Invitation to Bid
- e. Special Provisions
- f. Drawings (List Sheet Numbers): 15
- g. Technical Provisions
- h. General Conditions

H. AUTHORITY AND RESPONSIBILITY OF THE ENGINEER: The ENGINEER shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of work, interpretation of drawings and specification, and all questions as to the acceptable fulfillment of the Contract on the part of the CONTRACTOR. In acting in this capacity under this Contract, the ENGINEER is acting as an agent for the OWNER to protect the interest of the OWNER. ENGINEER will endeavor for the benefit of the OWNER to determine, in general, if the work is proceeding in accordance with the contract documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. ENGINEER'S efforts will be directed toward providing for owner a greater degree of confidence that the completed work will conform generally to the contract documents. This service does not include direction or supervision of the CONTRACTOR'S employees, agents or subcontractors, or the inspection of any of the equipment, installations, temporary shoring, or any other of the CONTRACTOR'S operations or those of his subcontractor, to safeguard their agents or public employees or the general public, or to prevent damage to public or private property, these being the sole responsibility of the CONTRACTOR.

I. SAFETY PROVISIONS: It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the CONTRACTOR and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety, as determined under construction safety and health standards. Title 29 Code of Federal Regulations, Part 1518, 36 F.R., 7340, promulgated by the United States Secretary of Labor in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, 82 Stat. 96.

J. LABOR PROVISIONS: The labor provisions of Section 1.8 A10 Davis Bacon Requirements are hereby made a part of this contract.

K. SUCCESSORS AND ASSIGNS: This contract and all of the covenants hereof shall insure to the benefit of, be binding upon the OWNER and the CONTRACTOR respectively, and his partners, successors, assigns, and legal representatives. Neither the OWNER nor the CONTRACTOR shall have the right to assign or transfer his interests or obligations hereunder without written consent of the other party.

L. ATTORNEY'S FEES: In the event either party engages the services of an attorney to enforce any provisions hereof or to secure payments, the prevailing party shall receive from the other party all costs, charges and expenses, including reasonable attorney's fees.

M. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: (Applies to all Construction Contracts in excess of \$10,000): During the performance of this contract, the contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

N. AFFIDAVIT OF AMOUNTS PAID DBE PARTICIPANTS: Upon completion of the project, the Bidder agrees to complete the attached "Affidavit of Amounts Paid DBE Participants" indicating actual DBE firms used, a description of utilization, and the amount paid each DBE firm. (See Forms Appendix, make copies as needed, complete and provide to project engineer.) IN WITNESS WHEREOF, the parties have made and executed this Contract this day and year first above written.

CITY OF BILLINGS, MONTANA
OWNER

Hample Excavation, Inc.
CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

P.O. Box 1178
Business Address

5219 US Hwy 312
Business Address

Billings MT 59103
City State Zip

Billings MT 59105
City State Zip

The foregoing Contract, including all Contract Documents which are a part thereof, is in due form according to the law and is hereby approved.

APPROVED AS TO FORM

City Attorney's Office

ATTEST

Billings City Clerk

See attached forms:

- A. CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS (Requires Signature)
- B. DISCLOSURE OF LOBBYING ACTIVITIES (Requires Disclosure)
- C. ACKNOWLEDGEMENT OF LIQUIDATED DAMAGES (Requires Signature)

Attachment "A"
**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,
AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to 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 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.

2. If any funds other than Federal appropriated funds have been paid or will be paid to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed: _____
Contractor's Authorized Representative

Dated: _____

Attachment "B"
DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Contract <input type="checkbox"/> b. Grant <input type="checkbox"/> c. Cooperative Agreement <input type="checkbox"/> d. Loan <input type="checkbox"/> e. Loan Guarantee <input type="checkbox"/> f. Loan Insurance 	<p>2. Status of Federal Action</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. bid/Offer/Application <input type="checkbox"/> b. Initial Award <input type="checkbox"/> c. Post-award 	<p>3. Report Type:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. Material change <p>For Material Change Only: Year _____ Quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable:</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> <p>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>	
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Retainer <input type="checkbox"/> b. One-time fee <input type="checkbox"/> c. Commission <input type="checkbox"/> d. Contingent fee <input type="checkbox"/> e. Deferred <input type="checkbox"/> f. Other; specify: 	
<p>12. Form of Payment (check all that apply):</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Cash <input type="checkbox"/> b. In-kind: specify: nature _____ value _____ 		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</p> <p>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____ Date: _____</p>	
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form - LLL</p>

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Reporting Entity: _____

Page _____ of _____

Attachment "C"
ACKNOWLEDGEMENT OF LIQUIDATED DAMAGES

This acknowledgment dated this _____ day of _____, 2022 by wherein Hample Excavation, Inc. acknowledges and agrees that the public improvement contract contains a liquidated damages clause. Hample Excavation, Inc. acknowledges and agrees that because the project involves the construction of public improvements said liquidated damages clause is necessary. Hample Excavation, Inc. acknowledges and agrees that the City of Billings is damaged in the amount of \$ 300.00 (Three Hundred and no/100 Dollars) for each day past the contract's completion date that this project is not completed.

Hample Excavation, Inc. acknowledges and agrees that because this is a public improvement project, it is extremely difficult to calculate the City of Billings' actual damages for delay in completing the project but that this mutually agreed upon figure for liquidated damages of \$ 300.00 (Three Hundred and no/100 Dollars) is the best approximation possible, is reasonable and is not a penalty. This mutually agreed upon liquidated damages amount has been specifically taken into account in arriving at the dollar amount of Hample Excavation, Inc.'s submitted bid. This liquidated damages amount shall be included in the public improvement project contract and Hample Excavation, Inc. acknowledges and agrees to be bound by this amount should Hample Excavation, Inc. be awarded the public improvement contract.

This mutually agreed upon amount may be deducted from money due or to become due Hample Excavation, Inc. should Hample Excavation, Inc. be awarded the public improvement contract and should Hample Excavation, Inc. fail to complete the work within the time specified in the contract.

By: _____
(Contractor)

Its: _____
(Title)

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