

# CONSTRUCTION AGREEMENT

BETWEEN

CITY OF BILLINGS (Grantee)

AND

MAJESTIC HOMES (Subrecipient / Contractor)

FOR

## FORECLOSURE ACQUISITION / REAHABILITATION PROGRAM

This Agreement entered this date \_\_\_\_\_, by and between **Majestic Homes** hereinafter referred to as the "Contractor" and the City of Billings hereinafter referred as the "City."

**WHEREAS**, the City has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

**WHEREAS**, the City desires to engage the Contractor to perform certain work on the premises commonly known as **930 Steffanich Drive, Billings, Montana 59105**, and legally described as:

*That part of Lot 6 described as Tract A, of Certificate of Survey No. 394 Plat of Subdivision of Lots 6 & 7 Steffanich Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of Said county, under Document #476049.*

**WHEREAS**, the City desires to have the Contractor site one (1) single-family modular home on a permanent foundation with an attached single garage on the aforesaid premises; and

**WHEREAS**, the City desires the home to be affordable to low-income households at or below eighty percent (80%) of the Area Median Income for Billings, Montana; and

**WHEREAS**, the City desires to utilize all services provided by the Foreclosure Acquisition / Rehabilitation Program in connection with the said project; and

**NOW THEREFORE**, the parties hereto do mutually agree as follows:

**Section 1. Contractor Engagement:** The City hereby engages Contractor to perform the services and supply the materials hereinafter set forth. The City and Contractor agree that the Contractor is an independent contractor for the purposes of this agreement and is not to be considered an employee of the City for any purpose. The Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered an employee for worker's compensation or any other purpose. The Contractor is not authorized to represent the City or otherwise bind the City in any dealings between the Contractor and any third parties.

**Section 2. National Objectives:** All activities funded with Community Development Block Grant (CDBG) funds must meet one of the CDBG program's National Objectives. This project will meet the national objective of benefiting low- and moderate-income persons.

The City and the Contractor certify that the activities carried out under this Agreement will benefit a low-income household. Following project completion, the property will be sold to a City-approved First-Time Home Buyer applicant.

**Section 3. Environmental Review:** The City has completed the Environmental Review Record for this activity.

**Section 4. Scope of Services:** The Contractor shall perform all of the services and furnish all the materials necessary to make the improvements described in this Agreement for the aforesaid premises. Improvements will be made in accordance with current and applicable building codes, zoning codes and setback requirements, and all other applicable federal, state, and local codes and ordinances. This will include all line items included within the **FINAL WORK LIST** and the **Modular Home Required Elements List**. The following main project activities eligible under the CDBG program are to be completed during this project:

- Activity #1 Order and delivery coordination of one (1) Schult Tempo Africa 23'8" x 52'0" modular home, including all features specified in the **Modular Home Required Element List**;
- Activity #2 Construction of a permanent foundation meeting current zoning code, setback requirements, and building codes (including backfilling the foundation);
- Activity #3 Set the modular home and secure it to the permanent foundation;
- Activity #4 Install accessible access to at least one exterior door;
- Activity #5 Construct a single-car attached garage;
- Activity #6 Hook up all utilities (water, sewer, electricity, natural gas);
- Activity #7 Provide hookup ready broadband internet and landline telephone; and
- Activity #8 Install steps to front and rear entry doors, concrete sidewalks, and concrete driveway as detailed in Contractor's bid.

**Section 5. Improvements:** The improvements to be made and/or constructed by the Contractor at the address indicated above are set forth in the plans and/or specifications referred to as the **FINAL WORK LIST**, the **Modular Home Required Elements List**, and the Contractor's bid documents and each are made a part hereof and incorporated as a part of this Agreement.

**Section 6. FINANCIAL MANAGEMENT**

- A. Budget:** The total amount of this Agreement will not exceed **\$249,890** (Two Hundred Forty-Nine Thousand Eight Hundred Ninety and 00/100 Dollars) and must be expended by the end of the agreement performance period as noted **Section 11. Time For Performance**.

A copy of the preliminary project budget is included within the following table and is made a part of this Agreement and binding upon the Contractor.

930 Steffanich Drive – Modular Home Project	Estimated Costs
Schult Tempo Africa Modular Home	\$155,890
Attached Garage	\$25,000
Foundation, Utility Connections, Steps, Sidewalks, Driveway, Air Conditioning, Permits & Inspections, Gross Tax Receipts	\$65,000
Landscaping allowance	\$4,000
<b>Total:</b>	<b>\$249,890.00</b>

Funding not expended by the end of the agreement performance period as noted **Section 11. Time For Performance** will be considered un-programmed funds and made available for allocation to new projects.

- B. Budget Modifications:** Adjustments between line items must be approved in advance by the City. In the event the Contractor is unable to comply with the terms and the conditions of this Agreement, any costs incurred will be the Contractor's sole responsibility.
- C. Award Reduction:** If the actual total cost of completing the project is less than has been projected by the Contractor in its budget, the City may, at its discretion, reduce the amount to be provided under this Agreement in proportion to the overall savings.
- D. Program Income:** If the use of CDBG funding results in revenues (fees paid, insurance payments, etc.), the revenue is also considered CDBG and referenced as "program income." The Contractor will expend any program income it receives on the activities described herein, before requesting additional CDBG funds. The City will deduct the amount of program income on hand, shown on the drawdown form, from the amount requested by the Contractor. This program income will be treated as additional CDBG funds and will be subject to all applicable requirements governing the use of CDBG funds.

The Contractor will record receipt and expenditure of program income as part of the financial transactions of the project. If the Contractor anticipates program income after project closeout, a program income plan must be developed and submitted for review and written approval by the City at the time of closeout. At the time of closeout, the City will specify the conditions and requirements that will apply to program income received by the Contractor after project closeout.

- E. Procurement:** The Contractor shall comply with the City's current purchasing policy; copies available upon request.
  1. The Contractor must properly document purchasing activities and decisions.

2. The Contractor must use local businesses and contract with small, minority and/or women-owned businesses to the maximum extent feasible.
3. The Contractor must not make any payments to organizations that were debarred or suspended or otherwise ineligible to receive federal funding. Contractor must check the SAM.gov exclusion record database prior to utilizing federal resources.
4. The Contractor shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

**OMB Standards:** Unless specified otherwise within this agreement, the Contractor shall procure all materials, property, or services in accordance with the requirements of [2 CFR 200](#).

**Section 7. Subcontracting:** Unless otherwise noted, a "subcontractor" means a person or entity with whom the Contractor has a verbal or written contract to perform any work contained within the **FINAL WORK LIST** or to supply any materials for the **FINAL WORK LIST**. Subcontractors shall be bound by the terms and conditions of this contract insofar as it applies to their work, but this applicability shall not relieve the Contractor. The Contractor agrees that they are fully responsible for the acts and omissions of their subcontractors, and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them. Nothing contained in the Agreement documents shall create any contractual relation between any subcontractor and the City. The City and/or the Contractor shall not be required to employ any subcontractor against whom they have a reasonable objection.

**Section 8. Contractor Requirements:**

- a) **Debarred:** The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under [Executive Order 12549](#), "Debarment and Suspension" ([2 CFR Part 2424](#)).
- b) **Workers' Compensation:** The Contractor certifies that workers' compensation insurance will be maintained as required by the Montana Workers' Compensation Act ([39-71-2101, MCA](#)). The Contractor further certifies that the Contractor will comply at all times with occupational disease and health and safety laws and regulations to the full extent applicable.
- c) **Business License:** The Contractor agrees to maintain a current City of Billings Business License for the duration of this Agreement.
- d) **Montana Contractor Registration Requirements:** [Title 39, Chapter 9, Part 2, MCA](#) provides that no Contractor may submit a bid unless properly registered with the Montana Department of Labor and Industry (DOLI).

MCA 39-9-201 through 39-9-211 sets out contractor registration requirements with the State of Montana. Contractors and any of the contractor's subcontractors doing work on a project are required to register with DOLI. Information and forms for registration are available from the DOLI and may be obtained by visiting their [website](#), calling 406.444.6543, or visiting their offices at 301 South Park Avenue, 5<sup>th</sup> Floor, Helena, MT 59601.

- e) **One Percent Gross Receipts Withholding Requirement:** Pursuant to Section [15-50-206\(2\)\(3\), MCA](#), the City is required to withhold one percent of all payments due the Contractor and is required to transmit such monies to the Montana Department of Revenue as part of the public contractor's license fee. In like fashion, the Contractor is required to withhold one percent from payments to subcontractors.
- f) **Pre-Construction Conference:** After the Agreement has been awarded, but before the start of construction, a conference will be held for the purpose of discussing requirements on such matters as project supervision, coordination with City officials, on-site inspections, progress schedules and reports, payments to contractors, change orders, insurance, safety and other items pertinent to the project. The Contractor shall arrange to have all supervisory personnel connected with the project on hand to meet with representatives of the City to discuss any problems anticipated.
- g) **Reports and Information:** The Contractor, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

- h) **Local, State and Federal Requirements:** During the duration of this Agreement, the Contractor will conform to current and future federal requirements as communicated by Community Development Division staff via regular mail, email and/or fax.

**Section 9. Contractor Compliance:** The Contractor will comply with any and all applicable state, federal, and local laws, ordinances, regulations and codes, including, but not limited to, the following:

- a) **Fair Labor Standards:** The Contractor will comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act ([40 U.S.C. 327-330](#)) as supplemented by the Department of Labor regulations ([29 CFR, Part 5](#)), the Copeland "Anti-Kickback" Act ([18 U.S.C. 874](#)) as supplemented in Department of Labor regulations ([29 CFR, Part 3](#)), Davis-Bacon Act ([40 U.S.C. 276a to a-7](#)) as supplemented by Department of Labor regulations ([29 CDF, Part 5](#)), and rules regarding conflict of interest as provided in [24 CFR 85.36](#).
- b) **Equal Employment Provisions:** This Agreement is subject to Executive Order 11246, Executive Order 11375, Executive Order 13672, Title VI, Title VII and Title VIII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the American with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, and Section 49-3-207, MCA, and their implementing regulations, as amended, which prohibit discrimination against any employee or applicant on the basis of race, color, creed, religion, national origin, age, disability, sex, familial/marital status, sexual orientation or gender identity. Non-compliance with equal employment provisions may result in cancellation, termination or suspension of this Agreement in whole, or in part, and the Contractor may be declared ineligible for federally funded contracts.

The Contractor will take affirmative action to ensure that individuals seeking employment, and employees are treated during employment, without regard to their race, color, creed, religion, national origin, age, disability, sex, familial/marital status, sexual orientation or gender identity. Such actions shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor or vendor.

- c) **Section 3 of the Housing and Urban Development Act of 1968:** The work performed under this Agreement is subject to the requirement of [Section 3](#) ensuring that the Contractor will, to the greatest extent feasible, extend opportunities for training and employment arising in connection with this federally-assisted project to low-income residents. Further, the Contractor will, to the greatest extent feasible, utilize Section 3 Business Concerns that meet at least one of the following criteria, documented within the last six month period:
- At least 51% owned and controlled by low-income person(s); or
  - Over 75 percent (75%) of the labor hours performed for the business over the prior three-month period were performed by Section 3 Workers; or
  - A business at least 51 percent (51%) owned and controlled by current public housing residents, residents who currently live in Section 8-assisted housing.
- d) **Minority Business Enterprise (MBE) / Women Business Enterprise (WBE):** Executive Orders 11625, 12432 and 12138 (Minority / Women Business Enterprises) as supplemented in [24 CFR 85.36\(3\)](#) require Contractors on federally funded projects to take affirmative steps to assure that minority- and women-owned businesses are used, when possible, as a sources of supplies, equipment, construction and services. Additionally, the Contractor must document all affirmative steps taken to solicit minority- and women-owned businesses and forward this documentation along with the names of the minority / women subcontractors and suppliers to the City upon request.
- e) **Clean Air Act:** Contracts must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (H)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15). The purpose of the Clean Air Act is to regulate air emissions from stationary and mobile sources to protect public health and welfare from hazardous air pollutants. The purpose of the Clean Water Act is to regulate pollution discharges into surface waters. Contractors will comply with both Acts in order to protect the public and environments from hazardous pollutants.
- f) **Lead Safe Work Methods Agreement / Non-lead Based Paint Agreement:** The Contractor agrees to comply with Federal regulations [24 CFR Part 35](#) with regard to Lead Based Paint. Specifically, the use of lead based paint in residential structures is prohibited. Contractors are required to comply with the

EPA Renovation, Repair and Painting (RRP) requirements described in 40 CFR 745.80 Subpart E effective April 22, 2010, affecting work on houses constructed prior to 1978 and containing lead based paint. If the Contractor has not attended and passed the Certified Renovator licensure, the Contractor will not be eligible to perform needed repairs until they achieve certification. Lead clearance testing with positive results will be remediated by the Contractor until negative results are achieved.

- g) The Contractor will include the provisions of paragraphs a) through f) above in every subcontract or purchase order unless exempted by rules, regulations, or order 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 subcontractor or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Section 10. Insurance:** The Contractor shall maintain, at its own cost and expense, such insurance as will protect it from claims under Worker's Compensation Acts and other employee benefits acts, from claims for damages to property which may arise both out of and during operations under this Agreement, whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. This insurance shall cover claims as may be caused by any negligent act or omission. At its sole cost and expense, the Contractor shall purchase the following insurance coverage:

- (a) Workers' compensation and employer's liability coverage as required by Montana law.
- (b) Commercial general liability, including contractual and personal injury coverage's — \$750,000 per claim and \$1,500,000 per occurrence.
- (b) Automobile Liability: \$1,500,000 per accident.
- (c) Builder's Risk Insurance: In the amount of the total value of the property: Land Value: **\$65,000**; Modular Home Bid: **\$249,890**; for a **TOTAL of \$314,890**.

The Contractor shall save the City harmless from damages arising out of the work set forth therein. Before commencing work, Contractor shall furnish the City with certificates showing that the above insurance is in force.

The Contractor's insurance certificates shall state that the City of Billings is listed as an additional insured and shall contain a waiver of subrogation against the City, except Worker's Compensation Policies. If any listed insurance certificate is due to expire during the construction period, the Contractor shall not permit the coverage to lapse and new certificates shall be furnished to the City.

**Section 11. Time For Performance:** The Contractor shall upon execution of this Agreement and submission of evidence of satisfactory insurance coverage, begin work no later than **10 days** after a Notice To Proceed is delivered to the Contractor and shall be satisfactorily completed by **June 30, 2023**. Notwithstanding the aforesaid, the Contractor is excused from performance or delay if at any time in the progress of the work Contractor is delayed by any act or neglect of the City, or of any employee of the City, or by any separate Contractor employed by the City, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Community Development Division, or by any cause which the Community Development Division shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Community Development Division may decide. When the work has been fully completed, approved by the Community Development Division, and all waivers and releases of liens required by the Community Development Division are submitted, final payment shall be made.

**Section 12. Monitoring:** The City will monitor Contractor performance against goals and performance standards as stated in this Agreement and the Contractor's bid documents. Monitoring will be conducted via desk reviews for progress reports and requests for reimbursements. City staff may also schedule on-site monitoring visits to assess performance and compliance. Substandard performance, as determined by the City, will constitute noncompliance with this Agreement.

**Section 13. Access To Records & Records Retention:** The general CDBG standard for record keeping is that records must be accurate, complete, and orderly:

- A. The Contractor will comply with CDBG record keeping regulations in 24 CFR Part 570, as now in effect or as they may be amended during the term of this Agreement; all requirements established by the City; applicable State and Federal laws, regulations, administrative directives and

procedures; and local ordinances and resolutions.

- B. The Awardee will maintain adequate and reasonable records of its performance under this Agreement for at least three (3) years following project closeout or until all findings have been resolved to the satisfaction of the City and/or the State of Montana. Contractor will allow access to these records at any time during normal business hours by the City, HUD, the Comptroller General and, when required by law, the Montana Legislative Auditor. These records will be kept in the Contractor's offices as noted in this Agreement.
- C. Any deficiencies noted in audit reports must be fully cleared by the Contractor within 30 days after receipt by the Contractor. Failure of the Contractor to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.
- D. The Contractor shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

**Section 14. Uniform Administrative and Program Management Standards:** Contractor will ensure compliance with 2 CFR Part 200. The Contractor's internal controls will consist of a combination of procedures:

- A. Organizational chart;
- B. Written definition of duties and key job responsibilities;
- C. Qualified personnel;
- D. Formal system of authorization and supervision;
- E. Separation of duties so no one individual has authority over an entire financial transaction;
- F. Control over access to assets, blank forms, and confidential documents;
- G. Periodic comparisons of financial records to actual assets and liabilities (reconciliation); and
- H. Records that together create accountability in the Awardee's financial system and safeguard its cash, property, and other assets.

**Section 15. Liquidated Damages:** In the event the Contractor fails to complete the work specified and required to be performed within the time limit set forth in this Agreement, after due allowance for any extension or extensions of time made in accordance with provisions hereinbefore and not as a penalty, the sum of Twenty-Five and 00/100 Dollars (\$25.00) for each and every calendar day (excluding all holidays) that the Contractor shall be in default of completion, as determined by the City. The City shall deduct said liquidated damages from any amount due, or that which may become due to the Contractor. Liquidated damages will not be imposed on the Contractor for justifiable delays beyond his/her control as described in **Section 11. Time For Performance**.

**Section 16. Changes in the Work:** No modifications of this Agreement shall be made except by a properly executed Change Order signed by the Contractor and approved by the City Administrator and/or the Billings City Council. A change order must be signed by said parties before the commencement of work addressed in the change order.

**Section 17. Release of Liens:** The Contractor shall submit to the City a release of all mechanics and material liens prior to final payment of the consideration set forth hereafter.

**Section 18. Compensation:** The City agrees to compensate the Contractor for labor, materials, overhead and other charges as stipulated within **Section 4. Scope of Services** above, which reference the **FINAL WORK LIST**, and **Modular Home Required Elements List**, for the services and the materials to be provided herein. The Final Work List was negotiated with the contractor after receiving the Contractor's response to a direct solicitation for bids for this Foreclosure, Acquisition / Rehabilitation Program project, which was submitted to the Community Development Division on September 27, 2022.

**Section 19. Payment for Completed Work:** The City shall retain five (5%) percent of every invoice until all work has been completed and will also pay the one percent (1%) of invoicing for Gross Receipts Tax. When the project is complete, and all inspections conducted and approved, the Contractor will be paid the full Agreement price, less the one percent (1%) Gross Receipts Tax. Payments may be made in one final lump-sum amount after the work is satisfactorily completed, or in regular progress payments after all appropriate inspections have been conducted and approved.

No advance or down-payments will be made to the Contractor or vendor unless the Contractor has a Performance Bond for the total project amount. Advance payment or a down-payment for the home unit will require approval from the City, and only when original invoices for the order have been provided to the City.

When work is complete, or significant progress is made, the Contractor shall seek appropriate building inspections, and after approval, submit invoice to Community Development Division. City staff may conduct on-site inspections. Following these inspections, City staff will process payment requests as quickly as possible, but it may take up to 30 days for payment to be issued.

No progress payment will be made prior to thirty (30) days after the date work began and at intervals of not less than thirty (30) days thereafter.

Should progress payments be deemed necessary, progress payments shall not exceed 80% of the value of the work satisfactorily completed less the five percent (5%) retainage withholding and one percent (1%) Gross Receipts Tax. Payments due the Contractor will be paid within thirty (30) days after the City receives the Contractor's invoice and transfers release of liens or claims for liens by subcontractors, laborers, and material suppliers for completed work or installed materials to the City. Checks payable to the Contractor will be delivered to the contractor after the contractor makes any desired work corrections; provides any necessary warranties; and signs the lien waiver.

The Contractor warrants that all services and work will be performed in a professional manner. The Contractor acknowledges that it will be liable for any breach of this warranty for a period of one year from the time the work is completed, inspected, and approved by the City as indicated by the date of approval for the last project payment.

**Section 20. Provisions for the City:** The City will cooperate with Contractor to facilitate the performance of the work.

**Section 21. Notice to the City:** The Contractor will notify the City 24-hours in advance of their readiness to begin the work. The Contractor will inform the City where and how the work will be done, so that the City will have ample time to clear the specific work area.

**Section 22. Occupancy Provision:** The premises are to be VACANT during the course of the construction work.

**Section 23. Condition of Premises:** The Contractor agrees to keep the premises neat and orderly during the course of the work, clean up, and remove all debris at the completion of the project.

**Section 24. Interest of the City Personnel and Local Public Officials:** No City staff members, who exercise any project functions or responsibilities, shall have any interest, direct or indirect, in this Agreement.

**Section 25. Disputes:** The City shall, within a reasonable time, make decisions on all claims by the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of this Agreement. The City's decisions, in matters relating to artistic effects, shall be final, within the terms of this Agreement.

**Section 26. Workmanship:** The work provided hereunder by the Contractor shall be executed as directed by the specifications contained within the **FINAL WORK LIST**, and **Modular Home Required Elements List**, and in the most sound, professional, and substantial manner, and all materials used in the construction, placement, and other improvements shall be new, unless otherwise expressly set forth in the specifications.

**Section 27. Engineering Surveys and Permits and Fees:** The City shall furnish all engineer surveys as required unless otherwise specified. The Contractor agrees to secure and pay for all necessary permits, licenses, and fees required for the Contractor's performance of the work associated with the **FINAL WORK LIST** and **Modular Home Required Elements List** and to adhere to applicable local, state and national codes and requirements whether or not covered by the specifications and drawings for the work, including any Contractor registration requirements.

**Section 28. Inspection of Work:** The Community Development Division, or agent acting on behalf of the Community Development Division, shall be provided access to inspect the work. If the specifications, plans, instructions, laws, ordinances, or any public authority requires any work to be specifically inspected, tested or approved, the Contractor shall give timely notice of readiness for inspection. Inspections by the Community Development Division, or third-party agent appointed by the Community Development Division, shall be promptly made. Inspections should be completed by Community Development Division staff, City of Billings' Building Division staff, or other procured inspectors, prior to work being covered up by other work. If any work should be covered up without completion of said inspections, it must be uncovered, if required, for examination at the Contractor's expense. If such work should be found not in accordance with this contracting, including incorporated plans and specifications and applicable building codes, the Contractor shall pay such costs; provided, however, if the Contractor can show that the defect

was not caused by him/her or his/her subcontractors, then in that event, the City shall pay the cost or remedy for such work.

The Contractor must correct any work that fails to conform to the requirements and specification of the **FINAL WORK LIST** and **Modular Home Required Elements List** and applicable building standards. Upon notice, while work is progressing, the Contractor must remedy defects due to faulty materials, equipment, or workmanship before payment shall be issued.

**Section 29. Defects after Completion:** Any defects that appear within twelve (12) months from the completion of the work and arise out of defective or improper materials or workmanship will, upon the direction of the City staff, be corrected and made good by the Contractor at the contractor's expense.

**Section 30. Approval by the City:** This Agreement must be approved by the City Administrator and/or the Billings City Council before it becomes effective.

**Section 31. Non-Liability of the City:** The parties hereby agree to indemnify and hold the City harmless from all claims and liability due to the undertaking and carrying out of this Agreement.

**Section 32. Default:** In case of default by the Contractor, the City may procure the articles or services from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

**Section 33. Termination:** Upon written notice to the Contractor, the City shall have the right to declare Contractor in default in the performance of its obligations under this Agreement in the following circumstances: 1) the Contractor fails to furnish materials or execute work in accordance with the provisions of this Agreement; 2) the Contractor fails to proceed with or complete the work within the time limit specified in this Contract; or 3) the provisions of this Agreement are otherwise violated by the Contractor therein. Said notice shall contain the reason for the City's declaring Contractor at fault.

Upon receipt of such notice, the Contractor shall cease and desist from further work activity associated with this Contract. This Agreement shall be considered null and void unless, within the (10) days from the date of said notice, Agreement is re-negotiated between the City and the Contractor.

In the event the Agreement is thus declared null and void, the City shall proceed to have any unfinished work completed and shall apply to the cost of having said work completed, any money due the Contractor under the Contract, and Contractor shall be responsible for any damages or additional costs resulting to the City by reason for said default.

**Section 34. Successors in Interest:** The covenants, agreements and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective Parties.

**Section 35. Attorney's Fees and Costs:** That in the event it becomes necessary for either Party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.

**Section 36. Notice:** Notices required by this Agreement shall be in writing and delivered via mail (postage paid), personal delivery, or sent by electronic mail (email), fax or other electronic means. Any notice delivered or sent as previously mentioned shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

City	Contractor
Tam Rodier, CD Program Coordinator City of Billings  PO Box 1178, Billings, MT 59103 Phone: 406.657.8284  Email: <a href="mailto:RodierT@billingsmt.gov">RodierT@billingsmt.gov</a>	Jeff Schauer, President Majestic Homes  5202 Laurel Road, Billings, MT 59101 Phone: 406.248.1412 / 800.349.30229  Email: <a href="mailto:majestichomes@bresnan.net">majestichomes@bresnan.net</a>

**Section 37. Condition for Validity of Agreement:** This Agreement is contingent upon the receipt by the City of federal funding in an amount sufficient to cover the cost of all agreed upon work. If the funding is not approved, this Agreement is null and void.

**Section 38. Governing Law and Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

**Section 39. Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City, whether the project for which they are made is executed or not.

All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use.

All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.

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

**ACCEPTANCE BY:**

**Majestic Homes**

**City of Billings, Montana**

  
\_\_\_\_\_  
Jeff Schauer, President

\_\_\_\_\_  
William A. Cole, Mayor

\_\_\_\_\_  
5202 Laurel Road, Billings, MT 59101

\_\_\_\_\_  
PO Box 1178, Billings, MT 59103

Address

Address

Date of Acceptance: 10-25-22

Date of Acceptance: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Gina Dahl, City Attorney