

AGREEMENT

An Agreement is hereby entered into by and between the State of Montana, Department of Justice, Natural Resource Damage Program (hereinafter referred to as "NRDP"), whose address and phone number are 1720 9th Avenue, Helena, MT 59601 and (406) 444-0205, and the City of Billings (hereinafter referred to as "Contractor"), whose address and phone number are 390 North 23rd Street, Billings, MT 59101 and (406) 657-8371.

The purpose of this Agreement is for the Contractor to implement projects to restore, replace, rehabilitate, or acquire the equivalent of natural resources and services injured or lost due to the July 1, 2011 ExxonMobil Pipeline Company Yellowstone River Oil Spill, as proposed in the *Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Assessment for the ExxonMobil Pipeline Company July 1, 2011 Yellowstone River Oil Spill (Restoration Plan)*. The May 30, 2018 Yellowstone River recreation project priority plan was completed as part of the implementation of the Restoration Plan. The recreation project priority plan identifies preferred recreation projects and funding amounts to meet the restoration plan goal of providing additional recreational human use opportunities to offset those lost due to the July 1, 2011 ExxonMobil Pipeline Company Yellowstone River Oil Spill. The applications for these projects to the Recreation Advisory Committee are hereby incorporated by reference. These projects were approved by Governor Bullock on May 30, 2018 as part of the Yellowstone River recreation project priority plan. The City of Billings (Contractor) was awarded funding under the recreation project priority plan for up to eight recreation projects.

In consideration of the mutual covenants and stipulations described below, NRDP and Contractor agree as follows:

1. DATES TO COMMENCE AND COMPLETE SERVICES

As long as signed by both parties, the Contract's initial term is from the Effective Date of **July 1, 2018** through **June 30, 2022**, unless terminated earlier as provided in this Contract. In no event is this Contract binding on NRDP unless NRDP's authorized representative has signed it. The legal counsel signature approving legal content of the Contract does not constitute an authorized signature. This Contract may not be renewed.

2. SERVICES

The Contractor agrees to perform the services outlined in subsequent task orders under the terms of this Agreement. All work will be detailed in subsequent task orders which will contain a detailed scope of work, budget, and project schedule for implementation of certain City of Billings recreation projects. Projects for which task orders may be developed are listed in Attachment A. Contractor will initiate projects in the order listed in Attachment A or as otherwise approved by NRDP. City of Billings projects are subject to the individual project funding limits and conditions set forth in the recreation project priority plan.

3. CONSIDERATION/PAYMENT

In consideration of the services to be provided, NRDP shall pay Contractor an amount not to exceed \$1,402,453. The budget is included as **Attachment A, Budget**.

1. Travel expenses will be reimbursed at the current State reimbursement rates for meals, lodging, and mileage.
2. The Contractor shall be reimbursed for any other reasonable and appropriate expenses incurred in performing this contract such as telephone, copying, typing, drafting, computer programming, and other computer costs.
3. The contractor will be paid and/or reimbursed as specified above after submission to NRDP of an invoice for the amount claimed.
4. The invoice must identify the number of hours worked, the time frame in which the hours were worked, and a description of the work performed. If reimbursement for automobile travel is sought, the invoices must contain the dates of travel, the destination, and the mileage. If reimbursement for other expenses is sought, the invoice must sufficiently document the expenses and copies of receipts may be requested.
5. NRDP will not provide services or facilities to Contractor as part of this Agreement.
6. In addition to its other remedies under this Contract, at law, or in equity, NRDP may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, 10% of the total value of the subject statement of work or applicable contract.
7. NRDP has thirty (30) days to pay invoices, as allowed by Mont. Code Ann. § 17-8-242. Contractor shall provide banking information at the time of Contract execution in order to facilitate NRDP's electronic funds transfer payments. Invoices must be mailed to NRDP or e-mailed to DOJNRDPInvoice@mt.gov.
8. The Contract number **MUST** appear on all invoices, packages, and correspondence pertaining to the Contract. If the number is not provided, NRDP is not obligated to pay the invoice.

4. ACCESS AND RETENTION OF RECORDS

Contractor shall provide NRDP, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. NRDP may terminate this Contract under Section 14, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (Mont. Code Ann. § 18-1-118.) Contractor must consult with NRDP in conjunction with releasing information to the Legislative Auditor. Contractor shall not release any records except for in compliance with Section 13.

Contractor shall create and retain all records supporting the technical consulting services for a period of eight years after either the completion date of this Contract or termination of the Contract.

5. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this Contract without NRDP's prior written consent. (Mont. Code Ann. § 18-4-141.) Contractor is responsible to NRDP for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and NRDP under this Contract.

6. REQUIRED INSURANCE

The Contractor, as a political subdivision of the State of Montana, shall maintain for the duration of this Contract, at its cost and expense, all insurance required of a political subdivision under Mont. Code Ann. § 2-9, against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

7. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for NRDP in accordance with Mont. Code Ann. § 39-71-401, § 39-71-405 and § 39-71-417. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are NRDP employees. This insurance/exemption must be valid for the entire Contract term. Upon expiration, a renewal document must be sent to NRDP, P.O. Box 201425, Helena, MT 59620-1425.

8. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, NRDP, or local laws, rules, regulations, and executive orders including but not limited to the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees, and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with Mont. Code Ann. § 49-3-207 and Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical

conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

9. DISABILITY ACCOMMODATIONS

NRDP does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

10. OWNERSHIP AND PUBLICATION OF MATERIALS

NRDP and any other persons or entities authorized by NRDP shall have a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the materials resulting from the performance of this Agreement for any NRDP or public purpose. The Contractor may establish a claim to copyright of the materials resulting from the performance of this Agreement provided, that in such event, the Contractor shall affix the applicable copyright notices and acknowledgement of NRDP's sponsorship to such materials.

11. CONTRACT TERMINATION

Either party may terminate this Contract in whole or in part for the other party's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than ten (10) calendar days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

NRDP, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(4).) As stated above, NRDP shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date NRDP's termination takes effect. This is Contractor's sole remedy. NRDP shall not be liable to Contractor for any other payments or damages arising from termination under this section including but not limited to general, special, or consequential damages, such as lost profits or revenues.

12. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to

remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five (5) working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

13. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without both parties' prior written consent. Services provided that do not conform to the Contract terms, conditions, and specifications may be rejected at Contractor's expense.

14. LIAISONS AND SERVICE OF NOTICES

All project management and coordination on NRDP's behalf must be through a single point of contact designated as NRDP's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between NRDP's liaison and Contractor's liaison:

NRDP Liaison: Alicia Stickney
 1720 9th Avenue
 PO Box 201425
 Helena, MT 59620
 Telephone: (406) 444-1346
 E-mail: AliciaStickney@mt.gov

City of Billings Liaison: Mike Pigg, Superintendent of Parks
 390 North 23rd Street
 Billings, MT 59101
 Telephone: (406)657-8371
 E-mail: piggm@ci.billings.mt.us

NRDP's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or e-mail. If notice is provided by personal service, or e-mail, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

The personnel identified or described in Contractor's proposal shall perform the services provided for NRDP under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be

equally or better qualified than the personnel originally assigned. NRDP reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. NRDP's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this Contract. NRDP reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

15. MEETINGS

15.1 Technical or Contractual Problems. Contractor shall meet with NRDP's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and NRDP in the performance of their respective obligations, at no additional cost to the NRDP. NRDP may request the meetings as problems arise and the meetings will be coordinated by NRDP. NRDP shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

15.2 Progress Meetings. During the term of this Contract, NRDP's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and NRDP's progress in the performance of their respective obligations. These progress meetings will include NRDP's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide NRDP with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of NRDP to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

15.3 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by NRDP, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

15.4 NRDP's Failure or Delay. For a problem or circumstance identified in Contractor's status report, which Contractor claims was the result of NRDP's failure or delay in discharging any NRDP obligation, NRDP shall review and determine if such a problem or circumstance was in fact the result of such failure or delay. If NRDP agrees as to the cause of

such a problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If NRDP does not agree as to the cause of such a problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

16. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

17. TAX EXEMPTION

NRDP is exempt from Federal Excise Taxes (#81-0302402), except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

18. SEVERABILITY

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

19. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

19.1 Agreement. This Agreement consists of nine numbered pages, and any Attachments as required. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

19.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

20. WAIVER

NRDP's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

21. RESOLUTION OF DISAGREEMENTS. If a dispute arises between NRDP and Contractor over matters covered by the Agreement that cannot be resolved at the project officer/staff attorney level, the matter will be referred to the Parks, Recreation and Public Lands Director and the NRDP Restoration Program Chief for an informal dispute resolution process. To initiate this informal process, each party will identify and describe the disputed issues in writing and deliver this explanation to the other party. In the event that the dispute cannot be resolved within a reasonable time after discussions based upon the exchange of information, the matter will be referred to the City Attorney and the NRDP Lawyer/Program Manager for resolution. If

the dispute cannot be resolved within a reasonable time at this level, the matter will be referred to the Governor for resolution.


22. EXECUTION

The parties through their authorized agents have executed this Agreement on the dates set out below.

STATE OF MONTANA
Department of Justice
Natural Resource Damage Program
1720 9th Avenue
PO Box 201425
Helena, MT 59620

CITY OF BILLINGS, MONTANA
390 North 23rd Street
Billings, MT 59101
Federal Tax ID # 81-6001237

BY:



Doug H. Martin
Restoration Program Chief

BY:




William A. Cole
Mayor

DATE: Aug 21, 2018


DATE: 11-13-18

Approved as to Legal Content:

Approved as to Form:



Katherine Hausrath
Assistant Attorney General
Natural Resource Damage Program



Brent Brooks
City Attorney
City of Billings, Montana

DATE: 8/22/2018

DATE: 11/13/18

**ATTACHMENT A
BUDGET**

As funding is available under the recreation project priority plan, the NRDP and the Contractor will develop a budget associated with an individual task order for the completion of each of the following projects under the recreation project priority plan:

- 1- Coulson Park Master Plan \$45,000
- 2- Josephine Lake Fishing Habitat Improvement (Task 1) \$50,000
- 3- Coulson Park Infrastructure \$250,000
- 4- Norm's Island Latrines \$68,500
- 5- Coulson Park Improvement \$110,000
- 6- Riverfront Park Multi-Use Trail \$420,000
- 7- Josephine Lake (Tasks 2-4) \$100,000
- 8- William Clark Recreation Area Construction \$358,953

Budgets should be provided in an Excel spreadsheet, broken down by staff, hours, salary, and contracted services.

NRDP shall pay Contractor an amount not to exceed \$1,402,453. Projects are subject to the individual project funding limits and conditions set forth in the recreation project priority plan.