

COMMITTEE OF THE WHOLE

OCTOBER 5, 2020

6:00 PM

1. Discussion on the Lewistown City Commission Rules of Procedure

MASKS AND SOCIAL DISTANCING REQUIRED IF ATTENDING IN PERSON

NOTICE FOR, AND AGENDA FOR, A REGULAR MEETING OF THE CITY COMMISSION, CITY OF LEWISTOWN, OCTOBER 5, 2020 AT 7:00 P.M. AT THE CENTRAL MONTANA COMMUNITY CENTER LOCATED AT 307 W WATSON

To join by zoom:

<https://zoom.us/j/8486275925?pwd=dTVGbndDK253ZUJLMjRuZXU5QVpMdz09>

Meeting ID: 848 627 5925 Passcode: 59457

To participate by phone: dial (253) 215-8782 Meeting ID: 848 627 5925 Passcode: 59457

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES – September 21, 2020

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non agenda items

CONSENT AGENDA

The acknowledgement of the claims that have been paid from September 17, 2020 to September 30, 2020 for a total of \$18,768.33

***REGULAR AGENDA – Resolutions, Ordinance & Other Action Items:**

1. Discussion and action on entering into an agreement with JGA Architects, Engineer, Planners, PC for a preliminary architectural report on Eagles Manor and authorize the City Manager to sign the agreement (**Action: approve, disapprove or amend entering into an agreement and authorizing the City Manager to sign the agreement**) City Manager Holly Phelps
2. Discussion and action on approving the purchase of a Broom Badger Sweeper for the Street Department (**Action: approve, disapprove or amend the purchase of a Broom Badger Sweeper**) City Manager Holly Phelps
3. City Manager Review – the meeting will be closed because the demands of individual privacy clearly exceed the merits of public disclosure in regards to the City Manager review.

CITIZENS' REQUESTS

COMMISSIONER'S MINUTE

ADJOURNMENT

* All citizens are invited to make comment on any agenda item prior to action being taken by the Commission

AIA Document B105™ – 2017

Standard Short Form of Agreement Between Owner and Architect

AGREEMENT made as of the 9th day of September in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Lewistown Montana
305 West Watson Street
Lewistown, Montana
59457

and the Architect:
(Name, legal status, address and other information)

JGA Architects, Engineer, Planners, PC
3333 2nd Avenue North, Suite 160
Billings, Montana
59101

for the following Project:
(Name, location and detailed description)

Eagles Manor – Preliminary Architectural Report PAR
211 West Janeaux Street, Lewistown, Montana
Capital Needs Assessment

The Owner and Architect agree as follows.

The Architect will complete the following tasks:

Phase 1 Services Data Gathering and Conceptual Design:

1. The Architect will visit the site and complete data collection steps for the renovation of the Eagles Manor Building. The steps as follows
 - a. Collect and review any existing building drawings
 - b. Observe the existing facilities and provide a condition assessment document.
 - c. Prepare base floorplan drawings of the existing facility in AutoCAD
 - d. The Architect will retain the services of a qualified Elevator Engineering Company to review the existing facility. A summary report will be provided to the owner
 - e. The Architect will retain the services of a qualified Mechanical and Electrical Engineering Consultant to provide a condition assessment of the existing building mechanical and electrical systems. A summary report with recommendations and projected costs will be provided to the owner.
 - f. The Architect will retain the services of a qualified Structural Engineer to provide a condition assessment of the existing building mechanical and electrical systems. A summary report with recommendations and projected costs will be provided to the owner.
2. The Architect will visit the site and complete visual base plan verifications of all floor areas.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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3. The Architect will meet with the Eagles Manor Board of Directors to develop a preliminary program for the spaces and functional needs of the residents and support groups.
4. The Architect will develop a conceptual floor plan to document the needs within the existing building footprint, including the Americans with Disabilities Act ADA requirements. The Architect will then review and refine the plans and provide for agency review and approval.
5. The Architect will refine the floor plan documents to provide the owner with a master plan of each floor level, and make recommendations for a phased re-development of the facility to accommodate the continued use of the facility.

Phase 2 Services Implementation Construction documents and Construction Observation

1. The Architect will assist the Owner in the implementation of the project design and documents and observe the Project construction. Professional Services for the Phase 2 activities will be negotiated and approved by both parties upon completion of the approved scope developed in Phase 1.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

Elevator Engineering Services
 Structural Engineering Services
 Mechanical and Electrical Engineering services as described above.

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining bids or proposals, and in awarding contracts for construction.

During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™-2017, Standard Short Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A105-2017, those modifications shall not affect the Architect's services under this Agreement, unless the Owner and Architect amend this Agreement.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

Phase 2 Environmental Assessments and Hazardous Building Materials identification and documentation

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are the Architect's Instruments of Service and are for the Owner's use solely with respect to constructing the Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the

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Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information or has permission from the copyright owner to transmit the information for its use on the Project.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

Phase 1 Services as outlined above:

1. Architectural review assessment and conceptual design -	\$33,680.00
2. Project Reimbursable Expenses	\$ 1,305.00
Phase 1 Services Total	\$34,985.00

Phase 2 Services as outlined above:

1. To be determined)

The Owner shall pay the Architect an initial payment of Zero (\$ 0.00) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus fifteen percent (15 %).

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid ninety (90) days after the invoice date shall bear interest from the date payment is due at the rate of eighteen percent (18 %) Annually , or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond six (6) months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

None

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Holly Phelps, City Manager
City of Lewistown, Montana
(Printed name and title)

ARCHITECT (Signature)

Terral D. Sukut, AIA President
JGA Architects, PC
(Printed name, title, and license number, if required)

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**MONTANA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONTRACT #MT-CDBG-PL-18-15**

This agreement ("Contract") is entered into by the City of Lewistown, Montana ("Grantee") [DUNS 182799528] and the Montana Department of Commerce ("Department").

The Grantee and the Department hereby agree to the following terms:

Section 1. PURPOSE

The purpose of this Contract is to provide funding to the Grantee for planning activities approved by the Department under the Community Development Block Grant Program ("CDBG" or "Program").

Section 2. AUTHORITY

This Contract is issued under authority of Title 90, Chapter 1, Part 1 of the Montana Code Annotated ("MCA"), Title 8, Chapter 94, Subchapter 37 of the Administrative Rules of Montana ("ARM").

Section 3. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for Program assistance, including any written modifications or reports resulting from the review of the application by the Department (collectively "Project"), is specifically incorporated into this Contract by this reference and the representations made therein are binding upon the Grantee.

Section 4. ACCEPTANCE OF PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable parts of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §§ 5301, *et seq.*; the applicable Department of Housing and Urban Development (HUD) regulations, including but not limited to 24 CFR Part 570 and Form HUD-4010, as now in effect or as amended during the term of this Contract. The Grantee will comply with all applicable local, state, and federal laws as well as all applicable regulations, ordinances, and resolutions now in effect or as may be amended during the term of this Contract. Grantee will comply with all administrative directives and procedures that may be established or amended by the Department for the Program, including the most current version of the *CDBG/NSP Grant Administration Manual* and *CDBG Application & Guidelines for Housing, Public Facilities, and Economic Development Planning Grants*, as amended.

- (b) The Grantee agrees that all contracts and subcontracts entered into for the completion of the activities described in Section 6 will require such contractors, subcontractors, and subrecipient entities to also comply with all requirements placed on the Grantee in paragraph (a) of this Section.
- (c) The Grantee agrees to repay to the Department any funds advanced under this Contract that the Grantee, its contractors, subcontractors, or subrecipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract, the statutes, and regulations governing the Program or any applicable local, state, or federal requirements.
- (d) The Grantee acknowledges and agrees that neither the funding of the Project under this Contract nor any review of the final deliverables by the Department constitutes the Department's approval or endorsement of the contents of such, and that such funding and/or review will have no influence on the Department's ranking of a subsequent application from the Grantee for any project grant.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

- (a) This Contract shall take effect upon execution by the parties and will terminate on May 31, 2021 or upon approval of Grantee's Project completion report by the Department, whichever is later, unless otherwise terminated in accordance with this Contract.
- (b) All authorized expenses to be reimbursed must be incurred by the Grantee between January 14, 2020 and February 28, 2021. All requests for reimbursement must be submitted to the Department within ninety (90) days after February 28, 2021.
- (c) The activities to be performed by the Grantee will be completed according to the implementation schedule set forth in Exhibit A. The Grantee may modify the implementation schedule set forth in Exhibit A only with prior written approval of the Department.
- (d) The Grantee will procure its engineer or other primary contractor within six (6) months of the execution of this Contract or the Contract will terminate unless the Department determines, in its sole discretion, that Grantee has demonstrated substantial progress towards procuring an engineer or contractor.
- (e) The Department may grant an extension to this Contract upon request by the Grantee if the Department determines, in its sole discretion, that the Grantee has demonstrated progress toward completion of the Project, has engaged in a good faith effort to comply with the duties, terms, and conditions of this Contract, and that the failure to comply with any of those services, duties, terms, or conditions

resulted from circumstances beyond the Grantee's control. A written request for an extension must be submitted at least sixty (60) days prior to May 31, 2021.

Section 6. SCOPE OF WORK

The Grantee will complete the Project and administer this Contract as set forth in the Grantee's application for Program assistance, including any amendments, approved by the Department. The Grantee will use Program funds for the following major components of the Project:

- Preliminary conference call with the Department prior to beginning the Project to confirm Project components and design;
- Professional Services to complete a Preliminary Architectural Report (PAR) and a Critical Needs Assessment (CNA); and
- Provide one (1) electronic copy of the final document.

Section 7. BUDGET

- (a) The total amount to be awarded to the Grantee under this Contract shall not exceed \$35,000.
- (b) A copy of the preliminary Project budget is attached as Exhibit B and specifically incorporated herein by this reference. After construction bids are awarded or other major Project activity cost elements are determined, the Grantee shall provide the Department with a final Project budget that will, upon receipt and approval by the Department, supersede the preliminary budget in Exhibit B and thereby be incorporated as part of this Contract, binding upon the Grantee.
- (c) Any authorized funds not expended under this grant by the later date referenced in Section 5(b) or otherwise accounted for in accordance with the provisions of this Section will revert to the Department and will be used to finance other Program projects.

Section 8. ACCESS TO AND RETENTION OF RECORDS

- (a) The Grantee agrees to create and maintain records supporting the services covered by this Contract, including but not limited to, financial records, supporting documents, and such other records as are required by law or other authority, for a period of five (5) years after either the termination date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Grantee's offices in City of Lewistown, Montana.
- (b) The Grantee shall provide the Department, HUD, Comptroller General of the

United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance.

- (c) The Grantee agrees to include in first-tier subcontracts under this Contract a clause substantially similar to Section 8, subsections (a) and (b).

Section 9. LIAISONS

All project management and coordination on behalf of the Department shall be through a single point of contact designated as the Department's liaison. Grantee shall designate a liaison that will provide the single point of contact for management and coordination of Grantee's work. All work performed pursuant to this Contract shall be coordinated between the Department's liaison and the Grantee's liaison. The liaisons for this Contract are:

For the Department:
Rebecca Shaw, MA (or successor)
Program Specialist, MDOC
301 S. Park Ave.
PO Box 200523
Helena, MT 59620-0523
406-841-2752
rebecca.shaw@mt.gov

For the Grantee:
Kathie Bailey (or successor)
Executive Director
Snowy Mountain Development Corp.
613 NE Main St
Lewistown, MT 59457
406-535-2591
bailey@snowymountaindevelopment.com

Section 10. PROJECT START-UP CONDITIONS

- (a) The Grantee will not obligate or use Program funds for any Project activities until:
- (i) The Grantee completes an Environmental Review Record and the Department issues a Notice of Release of Funds; however, upon receiving written authorization from the Department, the Grantee may incur administrative costs necessary for the preparation of the Environmental Review Record and for planning activities defined as exempt under 24 CFR Part 58.
 - (ii) The Grantee submits to the Department evidence of the firm commitment of the other financial resources necessary for the completion of the Project as defined in Section 3 and Exhibit B.
 - (iii) The Grantee submits to the Department and the Department approves an acceptable Project Budget and Implementation Schedule.
 - (iv) The Grantee completes the civil rights activities described in Chapter 5 "Civil Rights," of the current version of the Department's *CDBG/NSP Grant Administration Manual*. The Department may, in its sole discretion, defer

certain elements of this requirement.

- (v) Other conditions, as needed, including the Signature Certification and Designation of Depository Form.
- (b) Within six (6) months of the award date identified in Section 5(b), the Grantee must complete all necessary arrangements to ensure that the other financial resources necessary for Project completion are available for commitment and participation in order to guarantee timely Project completion. If the Grantee fails to secure the commitment of all other financial resources for the Project within this timeline, the Department will withdraw the tentative award and reallocate the funds, unless the Grantee can demonstrate the existence of unusual or extenuating circumstances that justify an extension of time.

Section 11. METHOD OF REIMBURSEMENT

- (a) The Department will use Program funds to fund housing, public facilities, and economic development planning awards to Grantees that have received a notice of award letter from the Department. Grantee acknowledges that its access to Program funds is subject to their availability.
- (b) The Department agrees that, if and when the funds described in paragraph (a) of this Section are available, the Department will authorize the Grantee to request reimbursement from funding awarded for the Project.
- (c) The Department agrees to reimburse the Grantee for eligible Project costs incurred on or after the award date identified in Section 5(b) upon the successful completion of activities set forth in Section 6. All reimbursements must be supported by adequate documentation provided by the Grantee, and require Department approval of the Grantee's request for reimbursement. In requesting reimbursement, the Grantee will follow the instructions supplied by the Department.
- (d) Payment to the Grantee for approved Project activities under this Contract will generally be in accordance with the disbursement schedule listed below:
 - (i) Payment #1 – 50% of the grant award amount will be available after the Department receives a draft of the Project deliverables in accordance with the preliminary conference call. This draft will also serve to document that the Grantee is adequately proceeding toward the preparation of a complete and acceptable final product.
 - (ii) Payment #2 – The remaining 50% of the grant award amount will be available after the Department receives a final copy of all required deliverables to be completed under the Contract, proof of matching funds, a Project completion report, and Grantee's final request for funds.

- (e) The Department will not reimburse the Grantee for any costs incurred prior to the date identified in Section 5(b), any expenses not included in Exhibit B or an approved adjustment thereto, any ineligible expenses as set forth in the most current version of the *CDBG Application & Guidelines for Housing, Public Facilities, and Economic Development Planning Grants*, as amended, and the *CDBG/NSP Grant Administration Manual*, or any expenses not adequately supported by the Grantee's records. Reimbursement for any Project expenses incurred is contingent on the Grantee's successful completion of Section 10.
- (f) As set forth in Section 17, if the Grantee fails to or is unable to comply with any of the terms and conditions of this Contract any costs incurred will be the Grantee's sole responsibility.
- (g) The Department may, at its discretion, withdraw from the Grantee the commitment of any CDBG funds that remain undispersed 24 months after the earlier date identified in Section 5(b).
- (h) The Department is allowed fifteen (15) working days to process a request for reimbursement once adequate supporting documentation has been received by the Department. The Grantee shall provide banking information before or at the time of Contract execution in order to facilitate electronic funds transfer payments.
- (i) If the Grantee changes one of its sources of funding or the cost of the Project increases after the Grantee has obtained the firm commitment of non-Program funds, the Department may, at its discretion, suspend the distribution of Program funds until the Grantee obtains a firm commitment of funds for the full Project budget.
- (j) The Department may reduce the Grantee's amount of Program funds provided by this Contract if actual Project expenses are lower than projected by the Grantee in Exhibit B or the Grantee obtains a greater amount of grant funds from other sources than as presented in the Project application.
- (k) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract or has breached the terms of this Contract, the Department may withhold reimbursement to the Grantee until such time as the Department and the Grantee agree on a plan to remedy the deficiency.
- (l) Requests for reimbursement for contracted or subcontracted services must include appropriate documentation demonstrating compliance with contract requirements.

- (m) The Grantee may not use monies provided through this Contract as payment for Project costs that are reimbursed from other sources. When applicable, the Grantee's travel expenses, meals, and lodging will be reimbursed at the prevailing state rate at the time such expense is incurred.
- (n) The Department, in its sole discretion, may allow the Grantee to amend Section 6. The Department will review the following: likelihood to expend all grant funds prior to the deadline in Section 5(b); progress toward completion of the Project; good faith effort to comply with any of the duties, terms, and conditions of this Contract; and the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control. A written request for an amendment to Section 6 must be submitted at least sixty (60) days prior to the termination date of this Contract.
- (o) If any obligations remain as of Project closeout and contract termination, the Department and the Grantee will prepare and execute a Closeout Agreement specifying the conditions and requirements governing the remaining obligations, in accordance with the requirements set forth in 24 CFR § 570.509(c).

Section 12. REPORTING REQUIREMENTS

- (a) Quarterly Update Report: During the term of this Contract, the Grantee will submit a quarterly update report, if requested by the Department. This report shall follow the report format specified in the most recent version of the *CDBG Application & Guidelines for Housing, Public Facilities, and Economic Development Planning Grants*, and must describe the status of the Project with respect to the activities set forth in Section 6, including, at a minimum, the percentage complete, costs incurred, funds remaining, and projected completion date. The report must also describe any significant problems encountered and any necessary scope, implementation or budget modifications requested.
- (b) Project Progress Reports: During the term of this Contract the Grantee will submit Project progress reports to the Department in conjunction with each request for reimbursement. These reports will describe the status of the activities set forth in Section 6, including, at a minimum, the percentage completed, costs incurred, funds remaining, and projected completion date. Additionally, the report must provide documentation supporting each claim for expenses to be reimbursed, describe any significant problems encountered in carrying out the Project, and the scope of any necessary modifications the Grantee is requesting in the Project scope of work, budget, or implementation schedule. The Department, at its sole discretion, may decline to honor any request for reimbursement if the required project progress report has not been submitted to or approved by the Department.
- (c) Status of Fund Reporting: During the term of this Contract, the Grantee will submit a Status of Funds Report with any request for funds.

- (d) Project Completion Report: Upon completion of the Project, the Grantee will submit a final Project completion report for Department approval. The Project completion report will describe the total costs incurred for the Project, identify the final completion date, and summarize any significant problems encountered in carrying out the Project. Upon approval of the Project completion report, the Department will issue a notice of Project close-out.

Section 13. PROJECT MONITORING

The Department or any of its authorized agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with Section 6 of this Contract, the proper use of funds, and other technical and administrative requirements of this Contract, including the adequacy of the Grantee's records and accounts. The Department may advise the Grantee of any specific areas of concern and provide the Grantee opportunity to propose corrective actions acceptable to the Department. Failure by the Grantee to proceed with reasonable promptness to take necessary corrective action(s) will be a default. If the Grantee's corrective action(s) remain unacceptable, the Department may terminate this Contract in whole or in part pursuant to Section 18.

Section 14. NOTICE

All notices required under the provisions of this Contract must be in writing and delivered to the parties' liaisons identified herein either by first class mail or personal service.

Section 15. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

Section 16. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

- (a) The Grantee may subcontract any portion of this Contract to accomplish the completion of the Project. However, Grantee accepts responsibility for the adherence to the terms of this Contract by such contractors, subcontractors, or subrecipient entities and by any public or private agents or agencies to which it delegates authority to carry out any portion(s) of this Contract. The Grantee may not otherwise assign or transfer any portion of this Contract without the express written consent of the Department.

- (b) The Grantee's assignment, transfer, or subcontract of this Contract or any portion thereof neither makes the Department a party to that agreement nor creates any right, claim, or interest in favor of any party to that agreement against the Department. No contractual relationships exist between any subcontractor, assignee, or transferee and the Department.
- (c) The Grantee must immediately notify the Department of any litigation concerning any assignment, transfer, or subcontract of this Contract or any portion thereof.

Section 17. CONTRACT AMENDMENT

This Contract may not be enlarged, modified, or altered without a written agreement signed by all parties to the Contract.

Section 18. TERMINATION OF CONTRACT

This Contract may only be terminated in whole or in part as follows:

- (a) Termination Due to Loss or Reduction of Funding: The Department, at its sole discretion, may terminate or reduce the scope of this Contract if any funding sources are eliminated or reduced for any reason. If a termination or modification is required, the Department may, if sufficient Program funds are available, compensate the Grantee for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Department will notify the Grantee of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, provide the Grantee with a modified Project budget.
- (b) Termination for Cause with Notice to Cure Requirement: The Department may terminate this Contract for failure of the Grantee, its contractors, subcontractors, or subrecipient entities to perform or comply with any of the services, duties, terms, or conditions contained in this Contract after giving the Grantee written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.
- (c) Effect of Termination: In the event of termination due to the Grantee's, its contractors', subcontractors', or subrecipient entities' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, any costs incurred will be the responsibility of the Grantee. However, at its sole discretion, the Department may approve requests by the Grantee for reimbursement of eligible expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a

good faith effort of the Grantee to comply with any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control.

Section 19. COMPLIANCE WITH APPLICABLE LAWS

- (a) The Grantee, in performance of work under the Contract, must fully comply with all applicable federal, state, or local laws, rules and regulations, including but not limited to, the Montana Human Rights Act, 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, the Patient Protection and Affordable Care Act ("ACA"), and Executive Order No. 12-2015, *Amending and Providing For Implementation of the Montana Sage Grouse Conservation Strategy*. Any subletting or subcontracting by the Grantee subjects subcontractors to the same requirements.
- (b) In accordance with Section 49-3-207, MCA and Executive Order No. 04-2016, the Grantee agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, sex, pregnancy, childbirth or medical conditions related to 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.
- (c) The ACA requires a Grantee, if Grantee is an applicable large employer under the ACA, to provide healthcare coverage for its employees, who provide services for the State and work for thirty (30) or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions of the ACA under Section 4980H, and otherwise satisfy the requirements of the ACA Section 4980 H if provided by the State.

Section 20. ACCOUNTING, COST PRINCIPLES, AND AUDITING

- (a) The Grantee, in accordance with Sections 2-7-503, MCA and other authorities, must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles ("GAAP").
- (b) The Department, any other legally authorized governmental entity, or their authorized agents may, at any time during or after the term of this Contract, conduct in accordance with Sections 2-7-503, 5-13-304, and 18-1-118, MCA and

other authorities, audits for the purposes of ensuring the appropriate administration, expenditure of monies, and delivery of services provided through this Contract.

Section 21. AVOIDANCE OF CONFLICT OF INTEREST

- (a) The Grantee will comply with the provisions of applicable HUD regulations (24 CFR § 570.489) and with applicable Sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, and any other applicable local, state, or federal law regarding the avoidance of conflict of interest.
- (b) The Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.
- (c) The Grantee shall promptly refer to the Department any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

Section 22. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Grantees are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with Sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Grantee nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and renewal documents must be sent to the Department within thirty (30) days of Contract execution.

Section 23. OWNERSHIP AND PUBLICATION OF MATERIALS

- (a) All reports, information, data, and other materials prepared by the Grantee or any of its contractors or subcontractors in furtherance of this Contract are the property of the Grantee and the Department. Both Grantee and the Department have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish, authorize others to use, and to otherwise use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of both the Department and the Grantee.

- (b) To the extent the funds awarded under this Contract will be used by any small business firm or nonprofit organization, as defined in 37 CFR § 401.2, such firm(s) or organization(s) are subject to the standard patent rights clause set forth in its entirety in 37 CFR § 401.14 and specifically incorporated herein by this reference.

Section 24. INSURANCE

- (a) General Requirements: Grantee must maintain and assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, liability insurance against claims for injuries to persons or damages to property, including contractual liability, that may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance must cover such claims as may be caused by any negligent act or omission. The State, its officers, officials, employees, and volunteers must be covered as additional insureds for all claims arising out of the use of grant proceeds provided by the State of Montana.
- (b) General Liability Insurance: At its sole cost and expense, Grantee must purchase occurrence coverage with minimum combined single limits of \$1 million per occurrence and \$2 million aggregate per year, or as established by statutory tort limits of \$750,000 per claim and \$1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.
- (c) Professional Liability Insurance: Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year. *Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are filed after the cancellation or expiration date of the policy.*
- (d) General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana and with a Best's rating of at least A-, or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements must be received by the Department prior to beginning any activity provided for under the Contract. Grantee must notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of Grantee's insurance policy, including endorsements, at any time.

Section 25. HOLD HARMLESS AND INDEMNIFICATION

The Grantee agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Grantee's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, omissions of services, or in any way resulting from the acts or omissions of the Grantee and/or its agents, employees, representatives, assigns, or subcontractors under this Contract.

Section 26. DEFAULT

Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract as set forth herein or as otherwise legally available, including but not limited to damages and specific performance.

Section 27. DEBARMENT

The Grantee certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency or otherwise ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

Section 28. FORCE MAJEURE

Neither party will be 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, bombs, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

Section 29. SEPARABILITY

A declaration by any court, or any other binding legal forum, 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 dependent.

Section 30. ARBITRATION

Unless otherwise agreed to in writing or provided for by law, arbitration is not available

to the parties as a method of resolving disputes that would arise under the Contract.

Section 31. NO WAIVER OF BREACH

No failure by the Department to enforce any provisions hereof after any event of breach will be deemed a waiver of its rights regarding that event, or any subsequent event. No express failure of any event of breach will be deemed a waiver of any provision hereof. No such failure or waiver will be deemed a waiver of the right of the Department to enforce each and all the provisions hereof upon any further or other breach on the part of the Grantee.

Section 32. JURISDICTION AND VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in Lewis and Clark County, State of Montana and each party must pay its own costs and attorney fees.

Section 33. INTEGRATION

The Contract contains the entire agreement between the parties. No statements, promises, or inducements of any kind made by either party or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties hereto have caused this Contract to be executed.

CITY OF LEWISTOWN:

DocuSigned by:
Holly Phelps 8/18/2020
Holly Phelps, City Manager Date

ATTEST:

DocuSigned by:
Nikki Brummond
Nikki Brummond, City Clerk/Treasurer

APPROVED AS TO FORM:

DocuSigned by:
Monte Boettger
Monte Boettger, Attorney

MONTANA DEPARTMENT OF COMMERCE:

DocuSigned by:
Tara Rice 8/18/2020
Tara Rice, Director Date
Community Development Division

EXHIBIT A Implementation Schedule

TASK

MONTH

PROJECT START UP

Preparation of MDOC Contract

March 2020

PROCUREMENT OF PROFESSIONAL ASSISTANCE

Submit Request for Proposals to DOC for approval, if required

Publish RFP

Select professional

Execute agreement with professional

**Complete
Complete
Complete
May 2020**

PROJECT IMPLEMENTATION

Prepare draft deliverables

Submit interim Request for Funds, Progress Report and draft deliverables

Public review and comment

Finalize deliverables

**September 2020
September 2020**

**November 2020
January 2021**

PROJECT CLOSE OUT

Submit final deliverables

Submit final Request for Funds and Completion Report

**February 2021
February 2021**

EXHIBIT B
Budget

	SOURCE: CDBG	SOURCE: SMDC Brownfields	SOURCE: SMDC	TOTAL
Professional Services	\$35,000	\$30,000	\$5,500	\$70,500

BID PROPOSAL

The undersigned hereby declares that they have carefully examined the requirements of the specifications contained herein, and propose to furnish and deliver to the City of Lewistown the apparatus listed below. The City of Lewistown, at its sole discretion, purchase such apparatus.

DEALER NAME:

Titan Machinery Inc.

ADDRESS:

1728 Old Hardin Road
Billings, MT 59101

PHONE:

ONE (1) Current Model New or Demo Unit Six Wheel Broom Street Sweeper with Squeegee Style Conveyor:

BODY MAKE: ELGIN

MODEL: Broom. Radar

CHASSIS MAKE: ISUZU

MODEL: NRR

PURCHASE PRICE: \$ 195,976.⁰⁰

TOTAL: \$ 186,976.⁰⁰ (After trade-in credit)

(In Words) One hundred ninety-five thousand nine hundred seventy-six dollars.

OPTIONAL ITEMS: \$ SEE Attached warranty options

OPTIONAL TRADE-IN: \$ 9,000.⁰⁰

(ALLOWANCE)

MACHINE WILL BE MADE AVAILABLE FOR DELIVERY 60 DAYS AFTER RECEIPT OF ORDER.

BIDDERS CERTIFICATION

WE HEREBY CERTIFY THAT THE FOREGOING IS A RESPONSIBLE BID. ANY VARIATIONS FROM THE SPECIFICATIONS ARE NOTED OR ATTACHED. COPIES OF MACHINE WARRANTY GUARANTEES ARE ATTACHED.

DATED THIS 25th DAY OF September, 2020.

DEALER NAME: Titan Machinery Inc.

REPRESENTATIVE SIGNATURE: [Signature]

09-25-2020

City of Lewistown

City officials,

We would like to thank you for the opportunity to quote you this new Elgin Broom Badger. Below are some extended warranty options for the unit we are bidding.

Standard warranty

1 year - Sweeper Body parts and labor

3 years – Chassis, engine, transmission

Optional Extentions

2 years- Sweeper Body parts and labor - \$7,045.00

3 years- Sweeper Body parts and labor - \$13,250.00

Thank you again for the opportunity to earn your business.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tyson Williams', with a stylized, cursive script.

Tyson Williams

Titan Machinery Inc.

ELGIN

Subsidiary of Federal Signal Corporation

Broom Badger®



