

CONTRACT (Design-Build)

This Agreement, made and entered into in duplicate, on «AwardDate», by and between the State of Montana, acting by and through the Department of Transportation Highways Division, hereinafter called the Department, and «Contractor», licensed to do business in Montana, its successors and assigns, hereinafter called the Firm.

SECTION I: The Firm, for and in consideration of the payment herein agreed to, promises and agrees to: (a) plan and accomplish the design of; and (b) furnish, deliver and pay for all of the materials, to furnish all tools, machinery and equipment, and to perform all work for; the «ProjectDescription» Design-Build Project in «CountyCounties» County, State of Montana, Federal-Aid Project No.«ProjectNumber»[CN«UPN»], herein referred to as "the project", according to this Contract. "Contract" includes all documents in that term's definition in the Standard Specifications, as well as the project's Request for Proposal dated DATE, the Firm's submitted Technical Proposal dated DATE and the Firm's submitted Bid Price Proposal dated DATE. "Standard Specifications" means the now current edition of the Department's Standard Specifications for Road and Bridge Construction as amended. The Firm agrees to complete the project for the lump sum of «SpellOutDollarAmt» dollars («BidAmount») in accordance with its original Technical Proposal and Bid Price Proposal, copies of which are not attached hereto due to their bulk, but which are made a part of this Contract by their specific reference. MDT has added a «SpellOutDollarAmt» («MiscWorkAmount») miscellaneous work fund to be utilized in the event additional work is added to this contract. If no additional work is added to the contract, the funds will be reverted to MDT and are not part of the lump sum bid price.

SECTION II: The Firm, for and in consideration of the payment herein specified, further agrees that all design, work and labor for the project shall be performed in strict compliance with the Contract.

It is expressly understood and agreed that no rules, customs or usages, either local or otherwise, shall in any way be considered, implied, or inferred into this Contract if they in any way conflict with the Contract. It is understood and agreed that it is the Firm's sole responsibility to obtain all Contract documents from the offices of the Department in its building at Helena, Montana. All project and cost records of Firm and any subcontractor and supplier are subject to review and audit at any time by the Department or the Federal Highway Administration, and as otherwise provided by law.

SECTION III: The Firm agrees that it will, except as herein provided, begin the actual performance of the work required and contemplated under this Contract, in accordance with the provisions set forth in the Contract, that the required design will be completed and that all of the materials shall be furnished and delivered and all labor shall be done and performed in every respect to the satisfaction and approval of the Department. The project completion date, established in the Technical Proposal and Bid Price Proposal, may not exceed DATE.

It is agreed by and between the parties that, on this project, it is impractical and extremely difficult to fix potential “actual” damages in the event that the project is not completed and finally accepted by the date specified. Therefore, it is expressly understood and agreed, that in case of failure on the part of the Firm, for any reason, except with the written consent of the Department, to complete the design of the project, and furnishing and delivery of the material and the doing and performance of said work within the times specified, the Department has the right to deduct from any moneys due the Firm, or if no moneys shall be due the Department, shall have the right to recover, the amount of «LiqDamagesSpellout» dollars («LiqDamagesAmt») [based on Table 108-5, Schedule of Liquidated Damages, included in Section 108.08 of the current version of the Standard Specifications], per day, as fixed, agreed and liquidated damages, and not as a penalty, for each calendar day elapsing between the date stipulated for completion and the actual date of completion and final acceptance.

SECTION IV: Construction problems or conflicts arising as a result of design or plan errors or omissions will be the Firm’s responsibility. The Firm will make necessary revisions or corrections resulting from errors and omissions in the design without additional compensation.

If any errors are made in any phase of the design work under this Agreement that may require additional field or office work, the Firm will be required to perform such additional work as may be necessary to correct these errors without undue delay and without additional cost to the Department. Acceptance of its work will not relieve the Firm of the responsibility for subsequent correction of any such errors and the clarification of any discovered ambiguities.

The Firm’s Design Professionals agree to provide proof of Professional Liability Insurance.

SECTION V: The Parties agree to all insurance and indemnity provisions as set forth in the RFP.

SECTION VI: The Firm agrees to receive the payment stated above as full compensation for completing the design of the project, and furnishing all of the materials and labor required for this project, and in all respects, to complete this Contract to the satisfaction of the Department.

SECTION VII: Attached hereto and incorporated herein as an integral part of this Contract are the RFP Questions and Answers Summary, Schedule of Participation by DBEs required for this Contract, Supplemental Specifications in effect on the RFP release date of DATE and other pertinent instruments.

SECTION VIII: In accordance with §49-3-207, MCA, the Firm agrees that the hiring of persons to perform work on this Contract will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the Contract.

SECTION IX: The Firm confirms that it had sufficient time to prepare its Proposal, was able to adequately review and investigate the work site and contract documents, and waives any claim for more time to adequately review and investigate them, review subcontractor's bids, and prepare its own Proposal. The Firm confirms its knowledge of the Department's claims procedure under Article 105.16, recognizes that full compliance with the procedure and its requirements are a condition precedent to the Firm's seeking relief under a claim, and expressly waives any potential claim for itself or any subcontractor or supplier that is not timely and completely submitted and completed in accordance with that procedure.

SECTION X: It is expressly understood and agreed between the parties that, as a condition precedent to the complete execution of this Contract, the Firm will furnish a good and sufficient surety bond to the Department in the sum first set forth above, to be conditioned upon its faithful and complete performance of this Contract, subject to the approval of the Department.

In Witness Whereof, the Director of Transportation, by authority vested by the Montana Transportation Commission, has hereunto signed on behalf of the State of Montana, and the Firm has hereunto attached its corporate seal duly attested by the signature of its duly authorized officer, on the date above written.

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

By _____

«Contractor»
Contractor

Authorized Agent Signature

Authorized Agent Printed Name

Authorized Agent Title

Reviewed By:

Attorney, Montana Department of Transportation

