

**CONTRACT FOR PUBLIC WORKS CONSTRUCTION  
SEWER MAIN EXTENSION (FIVE MILE TRUNK  
RELIEF) E. BROADWAY NE 3<sup>rd</sup> TO NE 6<sup>th</sup>  
PROJECT # 10671.b**

**THIS CONTRACT FOR PUBLIC WORKS CONSTRUCTION** is made this 13<sup>th</sup> day of September, 2022, and entered into by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "CITY", 33 East Broadway Avenue, Meridian, Idaho 83642, MOUNTAIN COMPANIES, LLC hereinafter referred to as "CONTRACTOR", whose business address is P.O. Box 191285, Boise, ID 83919 and whose Public Works Contractor License # is 053533.

**INTRODUCTION**

Whereas, the City has a need for services involving Sewer Main Extension Construction; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties agree as follows:

**TERMS AND CONDITIONS**

**1. Scope of Work:**

1.1 CONTRACTOR shall perform and furnish to the City upon execution of this Contract and receipt of the City's written notice to proceed, all services and work, and comply in all respects, as specified in the document titled "Scope of Work" a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, together with any amendments that may be agreed to in writing by the parties.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the City shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the City reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish and use such work, or any part thereof, and to authorize others to do so.

1.3 The Contractor shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and city laws, ordinances, regulations and resolutions. The Contractor represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Contractor and any reports or opinions prepared or issued as part of the work performed by the Contractor under this Agreement, Contractor makes no other warranties, either express or implied, as part of this Agreement.

1.4 Services and work provided by the Contractor at the City's request under this Agreement will be performed in a timely manner in accordance with a Schedule of Work, which the parties hereto shall agree to. The Schedule of Work may be revised from time to time upon mutual written consent of the parties.

## **2. Consideration**

2.1 The Contractor shall be compensated on a Not-To-Exceed basis as provided in Exhibit B "Payment Schedule" attached hereto and by reference made a part hereof for the Not-To-Exceed amount of **\$795,220.00**.

2.2 The Contractor shall provide the City with a monthly statement and supporting invoices, as the work warrants, of fees earned and costs incurred for services provided during the billing period, which the City will pay within 30 days of receipt of a correct invoice and approval by the City. The City will not withhold any Federal or State income taxes or Social Security Tax from any payment made by City to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor.

2.3 Except as expressly provided in this Agreement, Contractor shall not be entitled to receive from the City any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups or material escalations. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, paid holidays or other paid leaves of absence of any type or kind whatsoever.

## **3. Term:**

3.1 This agreement shall become effective upon execution by both parties, and shall expire upon (a) completion of the agreed upon work, (b) or unless sooner terminated as provided in Sections 3.2, 3.3, and Section 4 below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should Contractor default in the performance of this Agreement or materially breach any of its provisions, City, at City's option, may terminate this Agreement by giving written notification to Contractor.

3.3 Should City fail to pay Contractor all or any part of the compensation set forth in Exhibit B of this Agreement on the date due, Contractor, at the Contractor's option, may terminate this Agreement if the failure is not remedied by the City within thirty (30) days from the date payment is due.

#### **4. Liquidated Damages:**

Substantial Completion shall be accomplished within 120 (one hundred twenty) calendar days from Notice to Proceed. This project shall be considered Substantially Complete when the Owner has full and unrestricted use and benefit of the facilities, both from an operational and safety standpoint, and only minor incidental work, corrections or repairs remain for the physical completion of the total contract. Contractor shall be liable to the City for any delay beyond this time period in the amount of \$500 (five hundred dollars) per calendar day. Such payment shall be construed to be liquidated damages by the Contractor in lieu of any claim or damage because of such delay and not be construed as a penalty.

Upon receipt of a Notice to Proceed, the Contractor shall have 150 (one hundred fifty) calendar days to complete the work as described herein. Contractor shall be liable to the City for any delay beyond this time period in the amount of \$500 (five hundred dollars) per calendar day. Such payment shall be construed to be liquidated damages by the Contractor in lieu of any claim or damage because of such delay and not be construed as a penalty. See Milestones listed in the Payment Schedule for Substantial Completion.

#### **5. Termination:**

5.1 If, through any cause, CONTRACTOR, its officers, employees, or agents fails to fulfill in a timely and proper manner its obligations under this Agreement, violates any of the covenants, agreements, or stipulations of this Agreement, falsifies any record or document required to be prepared under this agreement, engages in fraud, dishonesty, or any other act of misconduct in the performance of this contract, or if City determines that termination of this Agreement is in the best interest of CITY, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to CONTRACTOR of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. CONTRACTOR may terminate this agreement at any time by giving at least sixty (60) days' notice to CITY.

In the event of any termination of this Agreement, all finished or unfinished documents, data, and reports prepared by CONTRACTOR under this Agreement shall, at the option of the CITY, become its property, and CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily

complete hereunder.

5.2 Notwithstanding the above, CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by CONTRACTOR, and the CITY may withhold any payments to CONTRACTOR for the purposes of set-off until such time as the exact amount of damages due the CITY from CONTRACTOR is determined. This provision shall survive the termination of this agreement and shall not relieve CONTRACTOR of its liability to the CITY for damages.

## **6. Independent Contractor:**

6.1 In all matters pertaining to this agreement, CONTRACTOR shall be acting as an independent contractor, and neither CONTRACTOR nor any officer, employee or agent of CONTRACTOR will be deemed an employee of CITY. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City and therefore has no authority to bind or incur any obligation on behalf of the City. The selection and designation of the personnel of the CITY in the performance of this agreement shall be made by the CITY.

6.2 Contractor, its agents, officers, and employees are and at all times during the term of this Agreement shall represent and conduct themselves as independent contractors and not as employees of the City.

6.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction and supervision and control of the Contractor.

## **7. Sub-Contractors:**

Contractor shall require that all of its sub-contractors be licensed per State of Idaho Statute # 54-1901.

## **8. Removal of Unsatisfactory Employees:**

The Contractor shall only furnish employees who are competent and skilled for work under this contract. If, in the opinion of the City, an employee of the Contractor is incompetent or disorderly, refuses to perform in accordance with the terms and conditions of the contract, threatens or uses abusive language while on City property, or is otherwise unsatisfactory, that employee shall be removed from all work under this contract.

## 9. Indemnification and Insurance:

9.1 CONTRACTOR shall indemnify and save and hold harmless CITY and its elected officials, officers, employees, agents, and volunteers from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, arising out of, resulting from, or in connection with the performance of this Agreement by the CONTRACTOR, its servants, agents, officers, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of CITY or its employees. CONTRACTOR shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the CITY shall be named an additional insured in the minimum amounts as follow: General Liability One Million Dollars (\$1,000,000) per incident or occurrence, Automobile Liability Insurance One Million Dollars (\$1,000,000) per incident or occurrence and Workers' Compensation Insurance, in the statutory limits as required by law. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if CITY becomes liable for an amount in excess of the insurance limits, herein provided, CONTRACTOR covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or injury to persons or property and other costs, including litigation costs and attorneys' fees, arising out of, resulting from , or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employs, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including use of. CONTRACTOR shall provide CITY with a Certificate of Insurance, or other proof of insurance evidencing CONTRACTOR'S compliance with the requirements of this paragraph and file such proof of insurance with the CITY at least ten (10) days prior to the date Contractor begins performance of its obligations under this Agreement. In the event the insurance minimums are changed, CONTRACTOR shall immediately submit proof of compliance with the changed limits. Evidence of all insurance shall be submitted to the City Purchasing Agent with a copy to Meridian City Accounting, 33 East Broadway Avenue, Meridian, Idaho 83642.

9.2 Insurance is to be placed with an Idaho admitted insurer with a Best's rating of no less than A-.

9.3 Any deductibles, self-insured retention, or named insureds must be declared in writing and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds; or the Contractor shall provide a bond, cash or letter of credit guaranteeing payment of losses and related investigations, claim administration and defense expenses.

9.4 To the extent of the indemnity in this contract, Contractor's Insurance coverage shall be primary insurance regarding the City's elected officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City or the City's elected officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance except as to the extent of City's negligence.

9.5 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9.6 All insurance coverages for subcontractors shall be subject to all of the insurance and indemnity requirements stated herein.

9.7 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's agents, representatives, employees or subcontractors.

**10. Time is of the Essence:**

The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.

**11. Bonds:**

Payment and Performance Bonds are required on all Public Works Improvement Projects per the ISPWC and the City of Meridian Supplemental Specifications & Drawings to the ISPWC, which by this reference are made a part hereof. Contractor is required to furnish faithful performance and payment bonds in the amount of 100% of the contract price issued by surety licensed to do business in the State of Idaho with a Best's rating of no less than A-. In the event that the contract is subsequently terminated for failure to perform, the contractor and/or surety will be liable and assessed for any and all costs for the re-procurement of the contract services.

**12. Warranty:**

All construction and equipment provided under this agreement shall be warranted for 2 years from the date of the City of Meridian acceptance per the ISPWC and the Meridian Supplemental Specifications & Drawings to the ISPWC and any modifications, which by this reference are made a part hereof.

All items found to be defective during a warranty inspection and subsequently corrected will require an additional two (2) year warranty from the date of City's acceptance of the corrected work.

**13. Changes:**

The CITY may, from time to time, request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of CONTRACTOR'S compensation, which are mutually agreed upon by and between the CITY and CONTRACTOR, shall be incorporated in written amendments which shall be executed with the same formalities as this Agreement.

**14. Taxes:**

The City of Meridian is exempt from Federal and State taxes and will execute the required exemption certificates for items purchased and used by the City. Items purchased by the City and used by a contractor are subject to Use Tax. All other taxes are the responsibility of the Contractor and are to be included in the Contractor's Bid pricing.

**15. Meridian Stormwater Specifications:**

All construction projects require either a Storm Water Pollution Prevention Plan (SWPPP) or an erosion sediment control plan (ESCP) as specified in the City of Meridian Construction Stormwater Management Program (CSWMP) manual. The CSWMP manual containing the procedures and guidelines can be found at this address: <http://www.meridiancity.org/environmental.aspx?id=13618>.

Contractor shall retain all stormwater and erosion control documentation generated on site during construction including the SWPPP manual, field inspections and amendments. Prior to final acceptance of the job by the City the contractor shall return the field SWPPP manual and field inspection documents to the City for review. A completed Contractor Request to File Project N.O.T. with the EPA form shall be provided to the City with the documents. These documents shall be retained, reviewed and approved by the City prior to final acceptance of the project.

**16. ACHD:**

Contractor shall be responsible for coordinating with the City to obtain appropriate ACHD permit(s) and will reimburse the City for fees, fines, or penalties City incurs due to Contractor's violation of any ACHD policy. City shall certify to ACHD that Contractor is authorized to obtain a Temporary Highway and Right-of-Way Use Permit from ACHD on City's behalf. The parties acknowledge and agree that the scope of the agency granted by such certification is limited to, and conterminous with, the term and scope of this Agreement.

**17. Reports and Information:**

17.1 At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as

the CITY may request pertaining to matters covered by this Agreement.

17.2 Contractor shall maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this or Agreement. This includes any handwriting, typewriting, printing, photo static, photographic and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

**18. Audits and Inspections:**

At any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination all of CONTRACTOR'S records with respect to all matters covered by this Agreement. CONTRACTOR shall permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

**19. Publication, Reproduction and Use of Material:**

No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

**20. Equal Employment Opportunity:**

In performing the work herein, Contractor agrees to comply with the provisions of Title VI and VII of the Civil Rights Act, Revenue Sharing Act Title 31, U.S. Code Section 2176. Specifically, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. Contractor will take affirmative action during employment or training to ensure that employees are treated without regard to race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. In performing the Work required herein, CONTRACTOR shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability.

**21. Employment of Bona Fide Idaho Residents:**

Contractor must comply with Idaho State Statute 44-1002 which states that the Contractor employ ninety-five percent (95%) bona fide Idaho residents.

**22. Advice of Attorney:**



Each party warrants and represents that in executing this Agreement. It has received independent legal advice from its attorney's or the opportunity to seek such advice.

**23. Attorney Fees:**

Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

**24. Construction and Severability:**

If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

**25. Waiver of Default:**

Waiver of default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided above.

**26. Entire Agreement:**

This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

**27. Assignment:**

It is expressly agreed and understood by the parties hereto, that CONTRACTOR shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of CITY.

**28. Payment Request:**

Payment requests shall be submitted to City of Meridian through the City's project management software. The Project Manager will compare the invoice against the Payment Schedule in the Agreement for compliance. Upon approval that the work

has been done and is in compliance with the Agreement, the Project Manager will approve the pay request for processing. City of Meridian payment terms are Net 30 from the date City receives a correct invoice. Final payment will not be released until the City has received a tax release from the Tax Commission. Retainage of five percent (5%) of the current contract value will be withheld from the final pay application(s) until final completion has been met and releases from both the Idaho Tax Commission and Surety have been received by the City.

**29. Cleanup:**

Contractor shall keep the worksite clean and free from debris. At completion of work and prior to requesting final inspection, the Contractor shall remove all traces of waste materials and debris resulting from the work. Final payment will not be made if cleanup has not been performed.

**30. Order of Precedence:**

The order or precedence shall be the contract agreement, the Invitation for Bid document, then the winning bidders submitted bid document.

**31. Compliance with Laws:**

In performing the scope of work required hereunder, CONTRACTOR shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.

**32. Applicable Law:**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian.

**33. Notices:**

Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

**CITY**

City of Meridian  
Procurement Manager  
33 E Broadway Ave.  
Meridian, ID 83642  
208-489-0417

**CONTRACTOR**

Mountain Companies, LLC  
Attn: Zac O'Kelley  
P.O. Box 191285  
Boise, ID 83919  
Phone: 208-941-6805  
Email: zac.okelley@mtncompanies.com  
Idaho Public Works License #: 053533

Either party may change their address for the purpose of this paragraph by giving

written notice of such change to the other in the manner herein provided.

**34. Approval Required:**

This Agreement shall not become effective or binding until approved by the City of Meridian.

**CITY OF MERIDIAN**

BY: \_\_\_\_\_  
KEITH WATTS, Procurement Manger

DATED: \_\_\_\_\_

**MOUNTAIN COMPANIES, LLC**

BY: \_\_\_\_\_  
ZAC O'KELLEY

DATED: \_\_\_\_\_

Approved by Council Date:  
\_\_\_\_\_

**Project Manager**  
Jared Hale

# EXHIBIT A

## SCOPE OF WORK

**REFER TO INVITATION TO BID PW-2247-10671.b ALL ADDENDUMS, ATTACHMENTS, AND EXHIBITS included in the Invitation to Bid Package, are by this reference made a part hereof.**

### **SPECIFICATIONS / SCOPE OF WORK**

*All construction work shall be done in accordance with the current version of the Idaho Standards for Public Works Construction (ISPWC), the 2013 City of Meridian Supplemental Specifications to the ISPWC (and any Addendums).*

#### **See separate attached documents:**

- Construction Plans (6 pages) by Civil Survey Engineers dated 1/18/2022
- Special Provisions (59 pages) by Civil Survey Engineers dated 1/18/22

Exhibit B

**MILESTONE / PAYMENT SCHEDULE**

A. Total and complete compensation for this Agreement shall not exceed \$795,220.00.

<b>MILESTONE DATES/SCHEDULE</b>				
Milestone 1	Substantial Completion	(120) Days from Notice to Proceed		
Milestone 2	Final Completion	(150) Days from Notice to Proceed		
<b>PRICING SCHEDULE</b>				
Contract includes furnishing all labor, materials, equipment and incidentals as required per ITB #PW-2247-10671.B.				
<b>NOT-TO-EXCEED AMOUNT.....\$795,220</b>				
Contract is a not to exceed amount. Line item pricing below will be used for invoice verification and any additional increases or decreases in work requested by city. The City will pay the contractor based on actual quantities of each item of work in accordance with the contract documents.				
<b>Contract Pricing Schedule</b>				
<b>Item No.</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>
205.4.1.B.1.	DEWATERING	1	LS	\$40,000
306.4.1.C.1.	IMPORTED TRENCH BACKFILL, TYPE A (PREAPPROVAL REQUIRED)	500	CY	\$12
307.4.1.E.1.	TYPE C SURFACE RESTORATION	36	SY	\$37
307.4.1.G.1.	TYPE P SURFACE RESTORATION	908	SY	\$64
501.4.1.B.1.	18" PVC, ASTM F679, PS46,SANITARY SEWER PIPE	708	LF	\$205
502.4.1.A.1.	48" STANDARD SANITARY SEWER MANHOLE, TYPE A	3	EA	\$15,000
503.4.1.A.3.a	4" SEWER SERVICE CLEANOUT	19	EA	\$550
503.4.1.A.3.b	6" SEWER SERVICE CLEANOUT	5	EA	\$600
504.4.1.A.1.a	4" PVC, ASTM D3034, DR35, SEWER SERVICE PIPE	1,616	LF	\$130
504.4.1.A.1.b	6" PVC, ASTM D3034, DR35, SEWER SERVICE PIPE	350	LF	\$130
504.4.1.D.1.a	4" SEWER SERVICE CONNECTION TO MAIN	13	EA	\$1,000
504.4.1.D.1.b	6" SEWER SERVICE CONNECTION TO MAIN	2	EA	\$1,000
504.4.1.D.1.c	CONNECT EXISTING SEWER SERVICE	1	EA	\$8,300

.	TO NEW SEWER MAIN			
512.4.1.A.1.	SEWAGE BYPASS SYSTEM	1	LS	\$2,500
706.4.1.G.1.	CONCRETE REPAIR	37	SY	\$236
1001.4.1.A.1.	SEDIMENT CONTROL	1	LS	\$3,500
1003.4.1.G.1.	STRAW WATTLE	600	LF	\$2.6
1006.4.1.C.1.	INLET PROTECTION	7	EA	\$52
1103.4.1.A.1.	CONSTRUCTION TRAFFIC CONTROL	1	LS	\$15,000
2010.4.1.A.1.	MOBILIZATION	1	LS	\$85,200
SP-1	REMOVE EXISTING 18" SEWER MAIN	382	LF	\$25
SP-2	LAWN SOD RESTORATION	590	SF	\$10
SP-3	BORE SEWER SERVICE LINE IN TO AVOID TREE ROOTS	5	EA	\$15,000