SURVEY AND CONTROL OF AQUATIC INVASIVE SPECIES AND PLANT
SPB13-2737V-1

THIS CONTRACT is entered into by and between the State of Montana, Department of Administration, (State), whose address and phone number are 125 North Roberts St., Mitchell Building, Rm 165, 406-444-2529 and AquaTechnex, LLC, (Contractor), whose address and phone number are PO Box 30824, Bellingham, WA 98228 and 360-527-1271.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The contract's initial term is upon contract execution through June 30, 2015, unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the State's authorized representative has signed it. The legal counsel signature approving legal content of the contract and the procurement officer signature approving the form of the contract do not constitute an authorized signature.

1.2 Contract Renewal. The State may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in two-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of five years.

2. COST ADJUSTMENTS

2.1 Cost Adjustments Negotiated Based on Changes in Contractor's Costs. ***After the contract's initial term and if the State agrees to a renewal***, the parties may negotiate cost adjustments at the time of contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. The State is not obligated to agree upon a renewal or a cost increase.

3. SERVICES AND/OR SUPPLIES

Contractor shall provide the State the following Aquatic Invasive Species Services for:

- Category 1-Surveys
- Category 2-Removal
- Category 3-Treatment.

3.1 Selecting a Contractor.

3.1.1 General. Ordering agencies shall use the procedures in this section when ordering services as established by each Term Contract (TC). The applicable service categories are identified in each term contract along with the contractor's price lists.

3.1.2 Request for Quotation (RFQ) Procedures. The ordering agency must provide an RFQ, which includes the Statement of Work (SOW) to TC contractors that offer services that will meet the agency's needs. The RFQ may be posted to the agency's state website to expedite responses.

3.1.3 Statement of Work. All SOWs shall include at a minimum a detailed description of the work to be performed, location of work, period of performance, deliverable schedule, applicable performance standards, and any special requirements (*e.g.*, security clearances, travel, special knowledge, budget constraints).

3.1.4 Ordering agency may select a contractor from the appropriate service category and directly negotiate a mutually acceptable project based on a sudden and unexpected happening or unforeseen occurrence or condition, which requires immediate action (Exigency).

3.1.5 Ordering agency may place orders at or below the $5,000 threshold with any term contract contractor that can meet the agency's needs. The ordering agency should attempt to distribute orders among all service category contractors.

3.1.6 For orders estimated to exceed $5,000 but less than $25,000:

- The ordering agency shall develop a SOW.
- The ordering agency shall provide the Request for Qualifications (including the SOW) to at least three TC contractors that offer services that will meet the agency's needs.
- The ordering agency shall request that contractors submit firm-fixed prices to perform the services identified in the SOW.

3.1.7 For orders estimated to exceed $25,000. In addition to meeting the requirements of Section 3.1.6 above, the ordering agency shall:

- Provide the Request for Qualifications (including the SOW) to all service category TC contractors listed in the specific category.

3.2 Evaluation. The ordering agency shall place the order with the contractor that represents the lowest cost and can perform the work in the specified timeframe. After award, ordering agencies will provide timely notification to unsuccessful TC contractors.

3.3 Minimum Documentation. The ordering agency shall document:

- The TC contractors considered, noting the contractor from which the service was purchased;
- A description of the service purchased;
- The amount paid;

4. WARRANTIES

4.1 Warranty of Services. Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the State may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

5. CONTRACTOR RESPONSIBILITIES

5.1 Supervision and Implementation. The Contractor for an individual project will be responsible for the supervision and implementation of the approach and will be responsible for oversight of work performed by all subcontractors.

5.2 Applicable Laws. The Contractor shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations, and orders of the city, county, state, federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The Contractor shall provide all necessary safeguards for safety and protection, as set forth by the Department of Labor, Occupational Safety and Health Administration.

5.3 Work Acceptance. The Contractor is responsible for project oversight as needed. All work rejected as unsatisfactory shall be corrected prior to final acceptance.

5.4 Records. The Contractor will supply the State with documentation, when requested, of methods used throughout project implementation. Contractor will maintain records, for itself and all subcontractors, of supplies, materials, equipment, and labor hours expended.

5.5 Communication. Remoteness of project sites may necessitate that the contractor have some form of field communication, such as a cellular phone. This communication is necessary to enable the State to respond to public questions or concerns related to the project, accidents, inspections, or other project issues that require immediate feedback. In addition, the State or cooperative purchaser may require scheduled communication at agreed upon intervals. The communication schedule will depend upon the project circumstances and requirements of the agency issuing a task order. In the case when a communication schedule is included in the scope of work, the schedule will commence when the Contractor initiates the project.

5.6 Collaboration. The State encourages collaboration between contractors to increase the scope of services offered. If the Contractor is not able to provide all services needed for the project, the State will expect the contractor to contact other contractors on the term contract list to negotiate subcontracts for these services before going elsewhere. Exceptions to this strategy will be evaluated on a case-by-case basis.

5.7 Subcontractors, Project Budget, and Invoicing. All subcontractors to be used in any project must be approved by the ordering agency. Project budgets will be negotiated for each individual project task order. However, all rates, terms, and conditions set forth in this term contract will be applied to individual task orders.

Contractor's billing will include the subcontractors' charges, and payment will be made to the Contractor.

5.8 On-Site Requirements/Cleanup. The Contractor should visit all job sites to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the contractor of their obligation to furnish all materials and labor necessary to carry out the provisions of the contract.

The Contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. The Contractor shall be responsible for all damages or injury due to their action or neglect.

The Contractor shall maintain access to all phases of the project pending inspection by the State or its representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The Contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the Contractor fail to respond to the notice or not remedy the defects, the State may have the work corrected at the expense of the contractor.

In terms of cleanup, the Contractor shall:

- Keep the premises free from debris and accumulation of waste.
- Clean up any oil or fuel spills.
- Keep machinery clean and free of weeds.
- Remove all construction smears and stains from finished surfaces.
- Perform finishing site preparation to limit the spread of noxious weeds before final payment by the State.
- Remove all construction equipment, tools and excess materials before final payment by the State.

6. CONSIDERATION/PAYMENT

6.1 Payment Schedule. In consideration of the services to be provided, the State shall pay Contractor according to the following schedule: Invoices for each task order shall be submitted together with a complete report detailing the work completed. The level of reporting required will depend on the work requested and is generally described in the SOW. Invoices must show days worked on the project, rates for mobilization and operations, and other materials charges. Payment will be made within thirty (30) days of delivery and approval of each invoice and report describing work completed.

6.2 Withholding of Payment. The State may withhold disputed payments to Contractor under the subject s6atement of work (or where no statement of work exists, the applicable contract). The withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, the State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld.

6.3 Payment Terms. Unless otherwise noted in the solicitation document, the State has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the State's electronic funds transfer payments.

6.4 Reference to Contract. The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the State is not obligated to pay the invoice.

7. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

8. TERM CONTRACT REPORTING

The Contractor will be required to submit annual electronic reports that provide, at a minimum, the following information:

- Contract usage by agency, including product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The annual usage report will be due July 31 of each contract year. Term contract holders(s) may be required to submit reports on the State's self-reporting website.

Reports can be submitted on line at www.vendor.mt.gov using the Vendor Reporting Service. Reported volumes and dollar totals may be checked by the State Procurement Bureau against state records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

9. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement

Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

10. PREVAILING WAGE REQUIREMENTS (Where applicable depending on service)

10.1 Montana Resident Preference. The nature of the work performed, or services provided, under this contract meets the statutory definition of a "public works contract" in 18-2-401, MCA. Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of $25,000 for construction or nonconstruction services in accordance with 18-2-401 through 18-2-432, MCA, and all administrative rules adopted under these statutes.

Unless superseded by federal law, Contractor shall ensure that at least 50% of the workers performing labor on this project are bona fide Montana residents.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

10.2 Standard Prevailing Rate of Wages. In addition, unless superseded by federal law, all employees working on a public works contract must be paid prevailing wage rates in accordance with 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in 18-2-401, MCA, in which the total cost of the contract is greater than $25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

10.3 Notice of Wages and Benefits. Furthermore, 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with 18-2-423, MCA.

10.4 Wage Rates, Pay Schedule, and Records. 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer shall maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

All contractors and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification, or type of employee established by the Commissioner of the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates for **(insert type of service) (insert year)**. Current prevailing wage information for the State of Montana is available via the following website: http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-information.html

11. ACCESS AND RETENTION OF RECORDS

11.1 Access to Records. Contractor shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. The State may terminate this contract under section 23, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

11.2 Retention Period. Contractor shall create and retain all records supporting the Aquatic Invasive Species Services for a period of eight years after either the completion date of this contract or termination of the contract.

12. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. (18-4-141, MCA.) Contractor is responsible to the State 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 the State under this contract.

13. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of Contractor's negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable.

14. REQUIRED INSURANCE

14.1 General Requirements. Contractor shall maintain for the duration of this contract, at its cost and expense, insurance 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.

14.2 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

14.3 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000.00 per occurrence and $2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

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.

14.4 Specific Requirements for Automobile Liability. Contractor shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

14.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

14.6 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

15. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 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 Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

16. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, 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. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, 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 upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. DISABILITY ACCOMMODATIONS

The State 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.

18. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://sos.mt.gov.

19. CONTRACT PERFORMANCE ASSURANCE (Optional Depending on Contract)

19.1 Milestone Payments. The State shall pay Contractor based on completion and acceptance of each milestone defined below.

19.2 Payment Holdbacks. **(insert %)**% will be withheld from each milestone payment. The total amount withheld will be paid to Contractor at the completion and acceptance of the final milestone.

Milestone/Deliverable	Hold Back	Payment % of Total
Milestone 1:	___% of approved invoice	%
Milestone 2:	___% of approved invoice	%
Milestone 3:	___% of approved invoice	%
Milestone 4:	___% of approved invoice	%
Milestone 5:	___% of approved invoice	%
Final Acceptance		100%

19.3 Contract Performance Security – Surety Bonds Only. Contractor shall provide contract performance security based upon 100% of the contract total. This security must be in the form of a surety bond licensed in Montana with a Best's rating of no less than A-. The surety bond must be supplied on the form designated by the State of Montana. The required form entitled "Contract Performance Bond" is available at http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx. THE ORIGINAL FORM MUST BE PROVIDED. FACSIMILE, ELECTRONIC, OR PHOTOCOPIES ARE NOT ACCEPTABLE.

The contract performance security must be provided to the State of Montana within 10 working days from the Request for Documents Notice. This security must remain in effect for the entire term of the contract. A new surety bond must be issued to the State of Montana if this contract is renewed.

The original surety bond form has been provided to the following address: State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

20. CONTRACT TERMINATION

20.1 Termination for Cause. The State may, by written notice to Contractor, immediately terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms or conditions contained in this contract.

20.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this contract for the State's failure to perform any of its duties under this contract after giving the State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

20.3 Reduction of Funding. The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in

a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State 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.

21. EVENT OF BREACH – REMEDIES

21.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- products or services furnished fail to conform to any requirement;
- failure to submit any report required by this contract;
- failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval; or
- voluntary or involuntary bankruptcy or receivership.

21.2 Event of Breach by State. The State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

21.3 Actions in Event of Breach.

Upon the Contractor's material breach, the State may:

- terminate this contract under Section 20; or
- treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the State's material breach, the Contractor may:

- terminate this contract after giving the State 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 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period; or
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

22. 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 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.

23. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

24. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

25. STATE PERSONNEL

25.1 State Contract Manager. The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the state. Written notices, requests, complaints or any other issues regarding the contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

Rick Dorvall, Contracts Officer
Room 165 Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3366
Fax #: (406) 444-2529
E-mail: rickdorvall@mt.gov

25.2 State Project Manager. Each using state agency or cooperative purchaser will identify a Project Manager in the project task order. The Project Manager will manage the day-to-day project activities on behalf of the State/Cooperative Purchaser.

26. CONTRACTOR PERSONNEL

26.1 Change Of Staffing. Since qualifications of personnel were key in determining which offeror's were selected to be on this term contract, a written notification to the State Agency requesting services of any contractor changes of key personnel must be made prior to entering into negotiations to perform any specific work scope. Contractor shall replace such employee(s) at its own expense with an employee of substantially equal abilities and qualifications without additional cost to the Agency. If these staffing changes cause the contractor to no longer meet the qualifications stated herein, that firm will be removed from the service area of this term contract. Failure to notify the State Agency of staffing changes could result in the contractor being removed from the term contract listing and possible suspension from bidding on other State projects.

26.2 Contractor Contract Manager. The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Terry McNabb
PO Box 30824

Bellingham, WA 98228
Telephone #: 360-527-1271 or 406-549-2257
Cell Phone #: 360-201-2612
Fax #: 360-671-5349
E-mail: tmcnabb@aquatechnex.com

26.3 Contractor Liaison. The Contractor Liason identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Liason for this contract is:
Same as above

26.4 Notifications. The State'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 facsimile. If notice is provided by personal service or facsimile, 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.

26.5 Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for the State 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. The State reserves the right to approve Contractor personnel assigned to work under this contract and any changes or substitutions to such personnel. The State'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. The State 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.

27. MEETINGS

27.1 Technical or Contractual Problems. Contractor shall meet with the State'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 the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State 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.

27.2 Progress Meetings. During the term of this contract, the State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and the State's progress in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of this contract as required. At each meeting, Contractor shall provide the State 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 the State 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.

27.3 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 the State,

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.

27.4 State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such 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 the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

28. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most contract current rates. If the State terminates a project or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

29. CHOICE OF LAW AND VENUE

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or 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. (18-1-401, MCA.)

30. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

31. AUTHORITY

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

32. SEVERABILITY CLAUSE

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.

33. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

33.1 Contract. This contract consists of 13 numbered pages, any Attachments as required, Solicitation # RFP13-2737V, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

33.2 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.

34. WAIVER

The State'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.

35. EXECUTION

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

STATE OF MONTANA
Department of Administration
125 N. Roberts St., Mitchell Bldg, Rm 165
Helena, MT 59620

BY: _____
Marvin Eicholtz, Division Administrator

_____
(Signature)

DATE: 8/7/13

AQUATECHNEX, LLC
PO Box 30824
Bellingham, WA 98228
FEDERAL ID # 75-3027667

BY: Terry McWebb
(Name/ Title)

_____
(Signature)

DATE: 7/29/2013

Approved as to Legal Content:

Mike Manion 8/5/13
Legal Counsel (Date)

Approved as to Form:

8/5/13
Procurement Officer (Date)
State Procurement Bureau

CONTRACT AMENDMENT NO. 1
CONTRACT FOR Survey and Control of Aquatic Invasive Weeds
CONTRACT #SPB13-2737V-1

This CONTRACT AMENDMENT #1 is to amend the above-referenced contract between the State of Montana, Department of Administration (STATE), whose address and phone number are 125 North Roberts St., Mitchell Building, Rm 165, Helena, MT 59620 and 406-444-2575 and AQUATECHNEX, LLC. (CONTRACTOR), whose address and phone number are P O Box 30824, Bellingham, WA 98228, (360) 527-1271. This Contract is amended for the following purpose(s):

1) In accordance with the section entitled Effective Date, Duration, and Renewal, both parties mutually agree to extend this Contract for the period **July 1, 2015**, through **June 30, 2016** per the terms, conditions, and prices agreed upon. This is the **first** renewal, **third** year of the Contract.

Except as modified above, all other terms and conditions of Contracts remain unchanged.

STATE OF MONTANA
Department of Administration
125 N Roberts St., Mitchell Bldg., Rm 165
Helena, MT 59620

BY: Cheryl Grey, SFSD Administrator
(Name/Title)

(Signature)

DATE: 10.23.2015

AQUATECHNEX, LLC
P O Box 30824
Bellingham, WA 98228
FEDERAL ID #75-3027667

BY: Terry McNabb
(Name/Title)

(Signature)

DATE: 10/7/2015

Approved as to Form:

06/12/2015

Procurement Officer (Date)
State Procurement Bureau

CONTRACT AMENDMENT NO. 2
CONTRACT FOR Survey and Control of Aquatic Invasive Weeds
CONTRACT #SPB13-2737V-5

This CONTRACT AMENDMENT #1 is to amend the above-referenced contract between the State of Montana, Department of Administration (STATE), whose address and phone number are 125 North Roberts St., Mitchell Building, Rm 165, Helena, MT 59620 and 406-444-2575 and Mountain Valley Plant Management, LLC (CONTRACTOR), whose address and phone number are 2567 Hiawatha Road, Missoula, MT 59808, (406) 544-6582. This Contract is amended for the following purpose(s):

1) In accordance with the section entitled Effective Date, Duration, and Renewal, both parties mutually agree to extend this Contract for the period **July 1, 2016** through **June 30, 2017** per the terms, conditions, and prices agreed upon. This is the **second** renewal, **fourth** year of the Contract.

Except as modified above, all other terms and conditions of Contracts remain unchanged.

STATE OF MONTANA
Department of Administration
125 N Roberts St., Mitchell Bldg., Rm 165
Helena, MT 59620

BY: Cheryl Grey SFSD Administrator
(Name/Title)

(Signature)

DATE: 6/30/16

Mountain Valley Plant Management, LLC
2567 Hiawatha Road
Missoula, MT 59808
FEDERAL ID #84-1672969

BY:
(Name/Title)

Nick Holden Owner/Member
(Signature)

DATE: 5/16/16

Approved as to Form:

05/10/2016

Procurement Officer (Date)
State Procurement Bureau