

# STATE OF MONTANA TERM CONTRACT

**Department of Administration**  
**State Procurement Bureau**  
**165 Mitchell Building**  
**PO Box 200135**  
**Helena, MT 59620-0135**  
**Phone: (406) 444-2575 Fax: (406) 444-2529**  
**TTY Users-Dial 711**  
<http://gsd.mt.gov/>

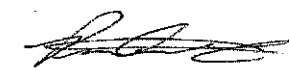
**T.C. #: SPB14-2755V-3**  
**Title: Native Plant Nursery, Seed Collection and Revegetation Services**  
**This is a non-exclusive contract.**

CONTRACT TERM	FROM	September 2, 2014	CONTRACT STATUS	NEW (x)
	TO	June 30, 2017		RENEW (    )
VENDOR ADDRESS	Native Yards Inc. 1023 Elm Street Missoula, MT 59802		ORDER ADDRESS	
ATTN:	Giles Cassidy Thelen		ATTN:	
PHONE:	(406) 543-2532		PHONE:	
FAX:			FAX:	
E-MAIL:	giles@nativeyards.com		E-MAIL:	

**PRICES:** Per Contract Agreement  
**DELIVERY:** Per Contract Agreement  
**F.O.B.:** Per Contract Agreement  
**TERMS:** Per Contract Agreement

REMARKS:

IFB/RFP No.: RFP14-2755V



Rick Dorvall, CONTRACTS OFFICER

DATE: 08/06/2014

**AUTHORIZED SIGNATURE**

**NATIVE PLANT NURSERY AND SEED COLLECTION SERVICES**  
**SPB14-2755V-3**

THIS CONTRACT is entered into by and between the State of Montana, Department of Administration, (State), whose address and phone number are 125 N. Roberts St., Helena, MT 59620, 406-444-2776 Native Yards, Inc., (Contractor), whose address and phone number are 1023 Elm Street, Missoula, MT 59802 and 406-543-2532

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The contract's initial term is upon contract execution through June 30, 2017, 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 seven years.

**2. COST ADJUSTMENTS**

**2.1 Cost Adjustments Negotiated Based on Changes in Contractor's Costs.** The parties may negotiate cost adjustments. 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.

Contractors may send updated rate sheets to State Procurement Bureau between April 15 and May 15 of each contract year but are not mandatory. Rates must be valid from July 1 to June 30. This will be the only change allowed per year. First rate increase will not be effective before July 1, 2015 if submitted between April 15 and May 15, 2015.

**3. SERVICES AND/OR SUPPLIES**

The purpose of this term contract is to establish a list of Environmental Services Providers in several service areas. Work will be assigned through task orders to this term contract in accordance with the task order template attached hereto. Each agency, at its discretion, may choose to use the attached task order template or a similar template provided it includes the required references to this term contract and incorporates the necessary terms and conditions of the term contract by reference. This is a multiple contractor term contract available for use by state agencies and other public procurement units. State makes no guarantee of use by any agency with authorized access to this term contract.

Contractor shall provide to State native plant nursery and seed collection services only, as outlined in RFP#14-2755V, associated with the revegetation of sites in the Upper Blackfoot Mining Complex (UBMC) and the Upper Clark Fork River Basin (UCFRB) being restored by State and other entities. The Natural Resource Damage Program (NRDP), other state agencies, and UCFRB Restoration Fund grant recipients may use Contractor for these services to assist with revegetation of restoration sites in the UCFRB.

#### **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.

These warranties are the state's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

#### **5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration of the native plant nursery and seed collection revegetation services to be provided, the State shall pay Contractor according to the schedule included in Contractor's response to RFP14-2755V.

**5.2 Withholding of Payment.** The State may withhold disputed payments to Contractor under the subject statement 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.

**5.3 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.

**5.4 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.

#### **6. 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.

#### **7. 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.

## 8. ON-SITE REQUIREMENTS/CLEANUP

Each potential contractor should visit the job site 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 successful contractor of its obligation to furnish all materials and labor necessary to carry out the provisions of the contract.

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

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

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

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

In terms of cleanup, Contractor shall:

- (a) keep the premises free from debris and accumulation of waste;
- (b) clean up any oil or fuel spills;
- (c) keep machinery clean and free of weeds;
- (d) perform finishing site preparation to limit the spread of noxious weeds before final payment by State; and
- (e) remove all construction equipment, tools and excess materials before final payment by State.

## 9. PREVAILING WAGE REQUIREMENTS

**9.1 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. Contractor shall abide by the requirements set out in 18-2-401 through 18-2-432, MCA, and all administrative rules adopted under these statutes.

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.

**9.2 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.

The standard prevailing rate of wages paid to workers under this contract must be adjusted 12 months after the date of the award of the public works contract per 18-2-417, MCA. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this contract will be allowed to fulfill this requirement.

Because this contract has an initial term of 12 months with optional renewals, this contract is subject to the 3% adjustment when the contract length becomes more than 30 months. The 3% rate increase becomes effective upon the second renewal, and the 3% is paid starting in the third year of the contract beginning with the 25th month. The adjustment must be made and applied every 12 months for the term of the contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this contract will be allowed to fulfill this requirement.

**9.3 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.

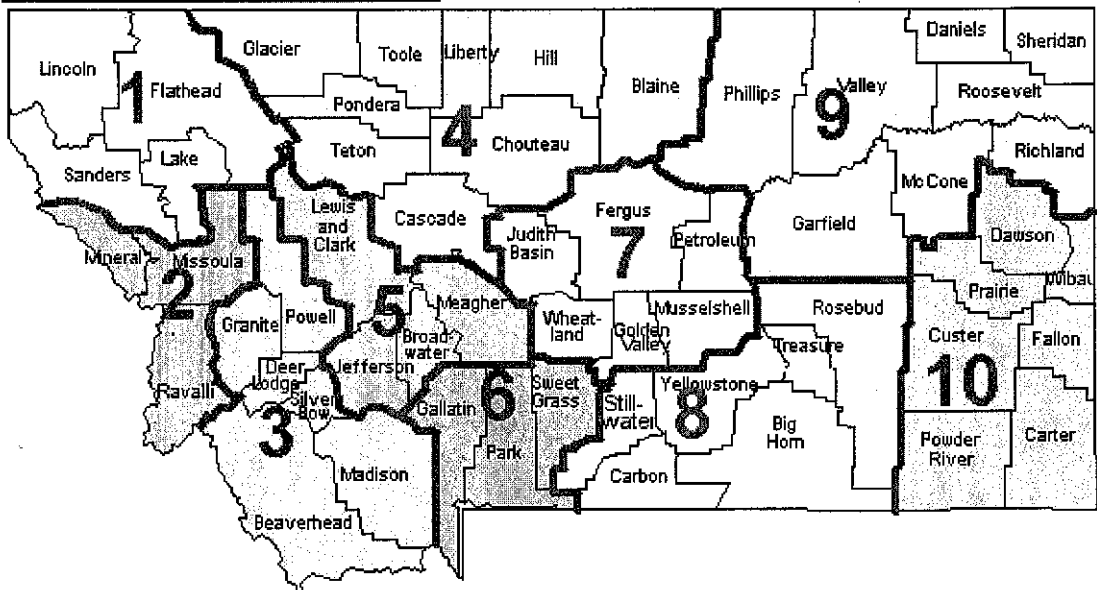
**9.4 Wage Rates, Pay Schedule, and Records.** 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer shall maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, 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.

Please see non-construction and heavy construction prevailing wage booklet at the following link for wage rates for work performed under this contract.

<http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>

### **Prevailing Wage District Map**



## **10. ACCESS AND RETENTION OF RECORDS**

**10.1 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.)

**10.2 Retention Period.** Contractor shall create and retain all records supporting the native plant nursery, seed collection, and planting services for a period of eight years after either the completion date of this contract or termination of the contract.

## **11. 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.

## **12. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, and save 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 Contractor's employees or third parties on account or allegations of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions or alleged acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State, under this contract.

## **13. REQUIRED INSURANCE**

**13.1 General Requirements.** Contractor shall maintain for the duration of the 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 or alleged negligent act or omission of Contractor or the agency.

**13.2 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.

**13.3 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.

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 or the insured's negligent acts or omissions or alleged negligent acts or omissions; products, and completed operations; and premises owned, leased, occupied, or used.

**13.4 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.

If at any time during the contract, Contractor offers to transport employees, volunteers, or members of other cooperative agencies, the following insurance requirement must be met.

Contractor shall obtain prior approval by submitting a copy of the above insurance certificate with endorsement to the assigned Contracts Officer at State Procurement Bureau and using Agency stating:

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.

**13.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State 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.

**13.6 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.

#### **14. 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.

#### **15. 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.

#### **16. 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.

## **17. 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>.

## **18. CONTRACT TERMINATION**

**18.1 Termination for Cause with Notice to Cure Requirement.** The State may 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 after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**18.2 Termination for Convenience.** The State may, by written notice to Contractor, terminate this contract without cause and without incurring liability to Contractor. The State shall give notice of termination to Contractor at least 30 days before the effective date of termination. The State shall pay Contractor only that amount, or prorated portion thereof, 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.

**18.3 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.

**18.4 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.

## **19. EVENT OF BREACH – REMEDIES**

**19.1 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 breaching Section 24.1 obligations; or
- voluntary or involuntary bankruptcy or receivership.

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

**19.3 Actions in Event of Breach.**

Upon Contractor's material breach, the State may:

- terminate this contract under Section 18.1 and pursue any of its remedies under this contract, at law, or in equity; 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, Contractor may:

- terminate this contract under Section 18.2 and pursue any of its remedies under this contract, at law, or in equity; 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.

**20. 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.

**21. 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.

**22. 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.

## **23. LIAISONS AND SERVICE OF NOTICES**

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

Gregory Mullen will be the liaison for State.  
1301 East Lockey  
Helena, MT 59602  
Telephone: 406-444-0228  
E-mail: [gmullen@mt.gov](mailto:gmullen@mt.gov)

Giles Cassidy Thelen will be the liaison for Contractor.  
1023 Elm Street  
Missoula, MT 59802  
Telephone: 406-543-2532  
E-mail: [giles@nativeyards.com](mailto:giles@nativeyards.com)

**23.2 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.

## **24. MEETINGS**

**24.1 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.

## **25. 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 current contract 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.

**26. CHOICE OF LAW AND VENUE**

Montana law governs this contract without reference to Montana's conflict of law principles. 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.

**27. TAX EXEMPTION**

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

**28. AUTHORITY**

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

**29. SEVERABILITY**

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

**30. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**30.1 Contract.** This contract consists of eleven numbered pages, any Attachments as required, Solicitation # 14-2755V, 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.

**30.2 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.

**31. 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.

32. EXECUTION

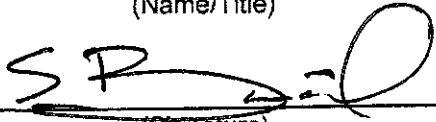
The parties through their authorized agents have executed this contract on the dates set out below.

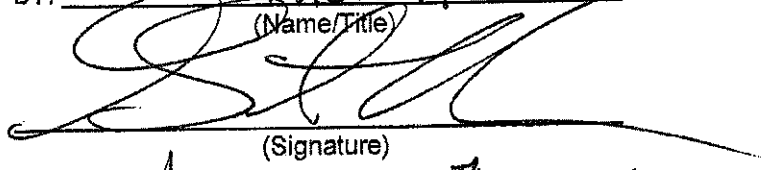
STATE OF MONTANA  
Department of Administration  
125 N. Roberts St., Rm 165  
Helena, MT 59620

Native Yards, Inc.  
1023 Elm Street  
Missoula, MT 59802  
FEDERAL ID # 20-2662858

BY: Steve Baramonte / Administrator  
(Name/Title)

BY: Giles Thelen, Owner  
(Name/Title)

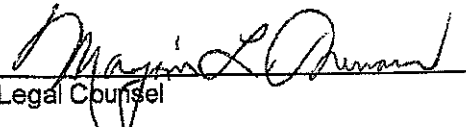
  
(Signature)

  
(Signature)

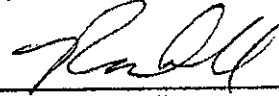
DATE: 2 SEPT 2014

DATE: August 25<sup>th</sup>, 2014

Approved as to Legal Content:

 8/5/14  
Legal Counsel (Date)

Approved as to Form:

 8/5/14  
Procurement Officer (Date)  
State Procurement Bureau