REVEGETATION CONSULTING SERVICES
SPB09-1634O-G

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (hereinafter referred to as "the State"), whose address and phone number are Room 165 Mitchell Building, 125 North Roberts, PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and Watershed Consulting, LLC, (hereinafter referred to as the "Contractor"), whose address and phone number are 902 Stoddard Street, Missoula, MT 59802 and (406) 541-2565.

THE PARTIES AGREE AS FOLLOWS:

2. PURPOSE/SCOPE

The purpose of this term contract is to provide on an as-needed basis revegetation consulting services. Work will be assigned through task orders issued through this term contract. The State makes no guarantee of use by any agency with authorized access to this term contract. This term contract covers revegetation consulting services projected to cost up to $499,999. Proposed projects for revegetation consulting services for which estimated costs exceed $500,000 will be advertised for competitive bid.

3. EFFECTIVE DATE, DURATION, AND RENEWAL

3.1 Contract Term. This contract shall take effect upon contract execution and terminate on **June 30, 2012**, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

3.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years. Contractors failing to respond to renewal notices within the time specified by the SPB will have their name placed in an inactive status on the State website, and this shall make that Contractor ineligible to receive task orders until such time as renewal information is received and accepted by the Contracts Officer.

4. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring 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 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.

5. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are 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.

6. TERM CONTRACT REPORTING

Term Contractors shall furnish annual reports of term contract usage. The annual reports shall be based on information for July 1 through June 30 each year. Minimum information required to be included in usage reports: name of the agency or governmental entity that contacted Contractor regarding a potential project; project title; agency contact person; if the project was not successfully negotiated, state the reason; number and title of contracts received; total dollar amounts for contracts received; the names of Contractor's personnel involved in the project; and project status as of usage report date. The first report for this term contract will be due **July 30, 2009**.

Reported usage 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.

7. SERVICES AND/OR SUPPLIES

Contractor will provide revegetation consulting services, including technical review services, to the NRDP, DEQ, and other entities that are funded by the State to conduct remediation and restoration activities. Work under this contract will primarily occur, but not be restricted to, revegetation activities in the UCFRB, including Silver Bow Creek, Anaconda Uplands, Clark Fork River, and Warm Springs Creek sites where remediation and restoration activities are being integrated.

Contractor agrees to provide expertise in revegetation of riparian and upland habitats primarily located in, but not restricted to, the UCFRB. Contractors will be asked but not limited to the following types of activities:

- assessment of existing vegetation and soil conditions;
- preparation of a revegetation plan/design that identifies the desired plant species and surface design based on desired future conditions;
- development and implementation of revegetation monitoring plans;
- interpretation of aerial photographs;
- oversight of planting Contractors, seed collectors, and nursery Contractors;
- development of revegetation bid packages; and

- the review of draft revegetation plans and grant applications involving revegetation efforts.

The specific tasks to be assigned will be designated in task orders executed subsequent to or concurrent with execution of a contractual agreement with selected Contractors. The entities seeking to use revegetation services pursuant to this contract will choose one of the pre-qualified Contractors on a project-specific basis based on the best match of the project needs and the expertise of the Contractors using the Tier Two process as described in Section 10. To avoid any conflicts of interest, selected Contractors will not be allowed to provide services on projects with which they have professional affiliation, financial involvement or other potential conflict of interest. The specific services to be provided, and the budgets for such services, shall be as developed for and mutually agreed to on a task order basis. Unless otherwise indicated in a task order, execution of task order by both parties shall constitute notice to and authorization for Contractor to proceed with the services required in the task order.

8. ENGINEERING ACCESS

Contractor may need to have access to engineering services depending on the nature of the project. The Contractor(s) will be expected to consult with the State and develop a recommendation as to whether engineering services are needed for a given project. However, engineering methodologies are not the emphasis of this RFP. Therefore, **NO** Architectural, Engineering and Land Surveying services are allowed under this term contract as defined under 37-67-101, MCA unless the procurement procedures of 18-8-204, MCA are followed.

8.1 Reuse of Documents. When the projects dictate a design or engineered approach, the State agrees that it will not apply the Contractor's designs to any other projects.

9. PROJECT SELECTION

9.1 Project Identification. The State will be responsible for identifying projects, selecting a Contractor, assigning a task order, and approving project payments.

9.2 Meetings. For revegetation consulting services, the Contractor may be required to meet with state personnel at the onset of the project and periodically thereafter to resolve technical or contractual problems that may occur during the term of a project. The Contractor may be required to attend meetings with other federal and state agencies and public meetings as directed by state personnel.

The Contractor may be required to meet with state personnel at the project site to conduct a site evaluation and discuss project issues.

The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. While face-to-face meetings are desirable, a conference call meeting may be substituted at the discretion of state personnel. Consistent failure to participate in meetings (two consecutive missed or rescheduled meetings) may result in termination of the task order and contract.

9.3 Approach Expectations. In the case of remediation/restoration activities, the agency will identify the preferred techniques. The selection of particular techniques by the State may define which Contractor(s) are contacted for project initiation. The State is always open to new and innovative approaches that accomplish project goals.

10. SELECTING A CONTRACTOR

The State may select a term contract Contractor listed in the revegetation consulting services contract as posted on the Environmental Services Contract-Home page as provided under the State's website address http://gsd.mt.gov/apps/termcontracts/default.aspx , taking into consideration such things as the Contractor's area of expertise, requirements and location of the project, the Contractor's availability and access to resources necessary to efficiently and effectively complete the project, demonstrated excellent past performance on state and public projects, identified subcontractors, and total project cost.

10.1 General. Ordering agencies shall use the procedures in this section when ordering services priced at hourly rates as established by each Term Contract (TC). The applicable rates and qualifications are identified in the TC along with the each Contractor's point of contact.

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10.2 Request for Quotation (RFQ) Procedures. The ordering agency must provide an RFQ, which includes a Statement of Work (SOW) and limited but specific evaluation criteria (*e.g.*, experience and past performance), 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.

10.3 Statement of Work (SOW). 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).

10.3.1 Ordering agency may select a Contractor from the pre-qualified list and directly negotiate a mutually acceptable project based on a sudden and unexpected happening or unforeseen occurrence or condition, which requires immediate action (*Exigency*).

10.3.2 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 Contractors.

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

- The ordering agency shall develop a SOW.
- The ordering agency shall provide the Request for Qualifications (including the SOW and evaluation criteria) to at least three listed TC Contractors 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.

10.3.4 For orders estimated to exceed $25,000. In addition to meeting the requirements of 10.3.3 above, the ordering agency shall:

- Provide the Request for Qualifications (including the SOW and the evaluation criteria) to all listed term contract Contractors.

10.4 Evaluation. The ordering agency shall evaluate all responses received using the evaluation criteria provided to the TC Contractors. The ordering agency is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. The agency will place the order with the Contractor that represents the best value. After award, ordering agencies will provide timely notification to unsuccessful TC Contractors. If an unsuccessful TC Contractor requests information on a task order award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

10.5 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;
- The evaluation methodology used in selecting the Contractor to receive the order;
- The rationale for making the selection;
- Determination of price fair and reasonableness.

The State reserves the right to cease negotiations with the Contractor if agreement cannot be reached on project approach and/or costs, and to begin negotiations with another Contractor from the list. The State will keep complete written documentation of any negotiation process in the project file.

Agency project task orders will be utilized to finalize the project. Only written addenda will be used for adjustments of the task orders and must be signed by both parties. All task orders must contain signatures from both parties and appropriate agency legal review as directed in their procurement policy.

The State will monitor Contractor selection by using the information provided in the annual term contract usage reports.

11. CONTRACTOR RESPONSIBILITIES

11.1 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.

11.2 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.

11.3 Work Acceptance. The Contractor is responsible for project oversight as needed. All work rejected as unsatisfactory shall be corrected prior to final acceptance. The State may also periodically provide personnel for administrative oversight from the initiation of the task order through project completion. All work will be inspected by the State or designated liaison prior to approval of any task order payments. All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance. Contractor shall respond within seven calendar days after notice of defects has been given by the State and proceed to immediately remedy all defects.

11.4 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. The Contractor will supply the State with photo documentation of methods of habitat restoration progress throughout project implementation. Contractor will maintain records for themselves and all subcontractors of supplies, materials, equipment and labor hours expended.

11.5 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.

11.6 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.

11.7 Subcontractors, Project Budget and Invoicing. All subcontractors to be used in any project must be approved by the agency initiating the project. 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 prime Contractor.

11.8 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:

(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) remove all construction smears and stains from finished surfaces;
(e) perform finishing site preparation to limit the spread of noxious weeds before final payment by the State; and
(f) remove all construction equipment, tools and excess materials before final payment by the State.

12. CONSIDERATION/PAYMENT

12.1 Payment Schedule. In consideration for the revegetation consulting services to be provided, the State shall pay according to the negotiated agreement for each task order. Hourly rates and miscellaneous charges as provided under the "contract rates" link as posted on the Environmental Services Contract-Home page as provided under the State's website address http://gsd.mt.gov/apps/termcontracts/default.aspx shall be the basis of any negotiations.

12.2 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

13. COST/PRICE ADJUSTMENTS

13.1 Cost Increase by Mutual Agreement. After the initial term of the contract, each renewal term may be subject to a cost increase by mutual agreement. The State retains the unilateral right to reject any cost increase not supported by verifiable evidence.

All requests for cost/price adjustment must be submitted between April 1st and April 30th along with written justification. Requests received after April 30th will not be considered unless written approval from the SPB Contracts Officer is given to submit at a later date. In no event will cost/price adjustments be allowed beyond May 15th. All requests that are

approved will be incorporated by contract amendment and made effective July 1st of the next approved renewal period.

13.2 Differing Site Conditions. If, during the term of this contract, circumstances or conditions are materially different than set out in the specifications, the Contractor may be entitled to an equitable adjustment in the total project price. The Contractor shall immediately cease work and notify the State in writing of any such conditions necessitating an adjustment as soon as they are suspected and prior to the changed conditions affecting the performance of this contract. Any adjustment shall be agreed upon in writing by both parties to the contract.

14. ACCESS AND RETENTION OF RECORDS

14.1 Access to Records. The Contractor agrees to provide the State, legislative auditor, or their authorized agents' access to any records necessary to determine contract compliance. (18-1-118,MCA)

14.2 Retention Period. The Contractor agrees to create and retain records supporting the Environmental Permit Preparation, Analysis and Assistance Services term contract for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

15. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

The Contractor shall not assign, transfer, or subcontract any portion of this contract without the express written consent of the State. (18-4-141, MCA) The Contractor shall be 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 the Contractor. No contractual relationships exist between any subcontractor and the State.

16. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, and its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account 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 of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

17. REQUIRED INSURANCE

17.1 General Requirements. The 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 the Contractor, agents, employees, representatives,

assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

17.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance as 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 the Contractor's insurance and shall not contribute with it.

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

17.4 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

17.5 Specific Requirements for Automobile Liability. The 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 the Contractor or its officers, agents, representatives, assigns or subcontractors.

17.6 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insured's for automobiles leased, hired, or borrowed by the Contractor.

17.7 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 the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

17.8 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 coverage has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

18. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with

2005 Montana Laws, chapter 448, Section 1, and Sections 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent Contractor's exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

19. COMPLIANCE WITH MONTANA PREVAILING WAGE REQUIREMENTS

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 non-construction services in accordance with Sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each Contractor shall ensure that at least 50% of the Contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with Sections 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.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with Sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in Section 18-2-401, MCA, in which the total cost of the contract is in excess of $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.

Furthermore, Section 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 Section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each Contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under Section 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.

Definition of Non-construction Services Occupations

For the purposes of Prevailing Wage, the Commissioner of Labor and Industry has determined that Non-construction Services means work performed by an individual, not including management, office or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets and alleys;
(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;
(d) the operation of public drinking water supply, waste collection and waste disposal systems;
(e) law enforcement, including janitors and prison guards;
(f) fire protection;
(g) public or school transportation driving;
(h) nursing, nurse's aide services, and medical laboratory technician services;
(i) material and mail handling;
(j) food service and cooking;
(k) motor vehicle and construction equipment repair and servicing; and
(l) appliance and office machine repair and servicing.

Definition of Heavy Construction

The Administrative Rules of Montana (ARM) 24.17.501 (4) – (4)(a), Public Works Contracts For Construction Services Subject to Prevailing Rates, states that "Heavy construction projects include, but are not limited to, those projects that are not properly classified as either 'building construction', or 'highway construction.'

Heavy construction projects include, but are not limited to, antenna towers, bridges (major bridges designed for commercial navigation), breakwaters, caissons (other than building or highway), canals, channels, channel cut-off s,
chemical complexes or facilities (other than buildings), cofferdams, coke ovens, dams, demolition (not incidental to construction), dikes, docks, drainage projects, dredging projects, electrification projects (outdoor), fish hatcheries,
flood control projects, industrial incinerators (other than building), irrigation projects, jetties, kilns, land drainage (not incidental to other construction), land leveling (not incidental to other construction), land reclamation, levees, locks and waterways, oil refineries (other than buildings), pipe lines, ponds, pumping stations (prefabricated drop-in units – not buildings), railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers (sanitary, storm, etc.), shoreline maintenance, ski tows, storage tanks, swimming pools (outdoor), subways (other than buildings), tipples, tunnels, unsheltered piers and wharves, viaducts (other than highway), water mains, waterway construction, water supply lines (not incidental to building), water and sewage treatment plants (other than buildings) and wells."

Federal Davis-Bacon wage rates as published in U.S. Department of Labor General Decision No. MT070001 Modification No. 7 have been adopted by the Montana Department of Labor and Industry for use in Heavy Construction projects and are included in this publication. These rates apply statewide or as shown in MT070001 Modification No. 7.

Definition of Public Works Projects

Contracts entered into for construction services (Heavy, Highway and Building) or Non-construction Services by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is $25,000 or more involving public funds.

Rates to use for Projects

Rates to be used on a public works projects are those that are in effect at the time the project and specifications are provided through RFQ or other notification methods.

For current prevailing wage information Contractor must visit the state website at: http://erd.dli.mt.gov/laborstandard/wagehrprevail.asp

20. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including 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 the Contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications, and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

21. INTELLECTUAL PROPERTY

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

22. OWNERSHIP AND PUBLICATION OF MATERIALS

The State (and the ordering agency) shall own working papers and end products, but the Contractor may keep a copy. The State and the Contractor agree that any interpretation of data or conclusions pertaining to this contract and task orders will be submitted for review to the State prior to release. It is further agreed that all public releases pertaining to this contract will be at the discretion of the State. The State must authorize the Contractor in writing to release any information. Unless stated otherwise in this contract, upon termination of this contract, all information and data will become the property of the State. A copy may be kept by the Contractor.

23. PATENT AND COPYRIGHT PROTECTION

23.1 Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

23.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

24. CONTRACT TERMINATION

24.1 Termination for Cause. The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract.

24.2 Reduction of Funding. The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

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) 444-366
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:

Mark Vander Meer
902 Stoddard Street
Missoula, MT 59802
Telephone #: (406) 541-2565
Fax #: (406) 541-2565
E-mail: mark@vanwild.com

27. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractor will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response, and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

28. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, 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. Such transition assistance will be deemed by the parties to be 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 the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

29. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal, or subsequent task order 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. SCOPE, AMENDMENT AND INTERPRETATION

30.1 Contract. This contract consists of **(insert number)** numbered pages, any Attachments as required, RFP #SPB09-1634O**,** as amended, and the Contractor's RFP response, as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor, the order of precedence of document interpretation is in the same order.

30.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration, or modification requires a written amendment signed by both parties.

31. EXECUTION

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

DEPARTMENT OF ADMINISTRATION **STATE PROCUREMENT BUREAU** **PO BOX 200135** **HELENA, MT 59620-0135**	**(INSERT CONTRACTOR'S NAME)** **(Insert Address)** **(Insert City, State, Zip)**
BY: _____ (Name/Title)	BY: _____ (Name/Title)
BY: _____ (Signature)	BY: _____ (Signature)
DATE: _____	DATE: _____

Approved as to Legal Content:

_____

Legal Counsel (Date)

Agency: _____

CONTRACTOR PROPOSAL INFORMATION