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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **FOR DNRC USE ONLY** | | | | | | | | |
| **Amount under this Agreement:** | | | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | **No.** |  |  |
|  |  | | |  |  | **Bureau Chief** |  |  |
| **SOURCE OF FUNDS** | | | | | | **Fin. Mgr.** |  |  |
|  |  | | |  |  | **F.S.O.** |  |  |
| **Fund Name** |  | | | **Fund No.** |  | **Legal** |  |  |
|  |  | | |  |  | **Div. Admin.** |  |  |
|  |  | | |  |  | **SPB** |  |  |
|  |  | | |  |  | **OBPP Approval** |  |  |
| **Subclass** | | **Org. No.** | | **Project Code** | **Amount** |  |  |  |
|  |  | | |  |  |  | **DNRC-Logo** |  |
|  |  | | |  |  |  |  |  |

**Water Resources Division**

**<Project Name>**

**THIS CONTRACT** is entered into by and between the State of Montana, Department of Natural Resources and Conservation, (hereinafter referred to as “the State”), whose address and phone number are 1424 9th Avenue, Helena, MT 59620, 406-444-1300 and <Full name of Firm> (Contractor), whose address and phone number are <address>, <phone number>.

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

**1.1 Contract Term.** The contract’s initial term is upon contract execution, through <date>, 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 executed it in Section 34.

**1.2 Contract Renewal.** N/A

**2. COST ADJUSTMENTS.** N/A

**3. SERVICES AND/OR SUPPLIES**

COMMENT, TO BE REMOVED IN ACTUAL CONTRACT: Section 3 is the only contract-specific section that has flexibility to be edited based on coordination between the State and Contractor, e.g., the specific wording for required deliverables. Any other edits to contract language, even for clarity, require extensive coordination, and explicit approval by the State would need to be documented with the contract. The State may consider revisions outside of Section 3, but they should only be revisions that would require Contractor to turn down the contract if the revisions are not made.

Contractor shall complete services and provide work products <Short Description>. These are described and detailed in **Exhibit A** (<title>). The activity costs and submittal schedule milestones are listed in **Exhibit B** (Task Budget & Schedule).

<Additional description as needed>

<Statement on contingency budget if applicable>

Certification, Standards, and Quality Review

**All processes and deliverables shall be completed in accordance with the Federal Emergency Management Agency (FEMA)’s Standards for Flood Risk Analysis and Mapping**, located on FEMA’s website at [www.fema.gov/guidelines-and-standards-flood-risk-analysis-and-mapping](http://www.fema.gov/guidelines-and-standards-flood-risk-analysis-and-mapping). These guidelines and standards ([www.fema.gov/media-library/assets/documents/35313](http://www.fema.gov/media-library/assets/documents/35313)) define the specific implementation of the statutory and regulatory requirements for NFIP flood risk analysis and mapping, and address the performance of flood risk projects, processing of letters of map change and related Risk MAP activities. Documentation of compliance, along with the required certifications (per Standards 41, 42 and 49) shall be included within the project report deliverables.

Contractor shall ensure that all FEMA and State of Montana requirements, standards, and guidelines are adhered to for the completion of all tasks under this Agreement. Any subsequent changes in applicable requirements, standards, and guidelines (including, but not limited to, new FEMA Procedure Memorandums or policy or standard changes) may constitute a change in the scope of work, with potential for adjustment in fee, time for completion, or both, in order for Contractor to provide the services and products as detailed in Exhibits A & B.

Contractor shall coordinate with the State and FEMA regarding preparation of project deliverables in order to satisfy FEMA Region 8 requirements for MIP (Mapping Information Platform) submittal formats, and FEMA QA/QC procedures. Contractor shall resolve all issues, deficiencies, and/or concerns raised by FEMA, FEMA’s Production Technical Services (PTS) Contractor, and the State to the satisfaction of FEMA and the State. As necessary to correct deficiencies, Contractor shall promptly incorporate revisions and re-submit deliverable products at no additional cost to the State.

Use of Proprietary Software: Prior to use of any proprietary software, the Contractor must receive approval to utilize the software from the State. Unless agreed otherwise, use and purchase of proprietary software shall not be funded by the State or fees under this project.

Project Coordination

The Contractor shall make the State’s Project Manager aware of any issues that arise regarding any aspect of the project, in a reasonable, timely, and clear manner. The Contractor shall provide a written memorandum or electronic mail (email), depending on severity of the issue, to the State’s Project Manager (and any other entities as directed by the Project Manager) that details the background regarding the issue, proposed solutions, and any necessary revisions in cost or schedule associated with those proposed solutions. If an issue has been caused by Contractor error, negligence, or oversight, then no additional funding will be provided to the Contractor to address that issue and the Contractor must remedy the issue under the current budget in compliance with the other sections of this Agreement.

The Contractor shall provide regular updates to the State’s Project Manager via phone and email as needed throughout the project, this is in addition to the percent complete reports filed monthly with the State’s Project Manager to update FEMA’s Mapping Information Platform (when applicable). This reporting shall include a project management timeline/schedule with indication as to where the project is on that timeline and at what stage of completion the current tasks are relative to the timeline. The Contractor shall also keep the State’s Project Manager clearly informed regarding the personnel responsible for coordination, oversight, and completion of individual tasks and if key staff are out of the office not working for more than several weeks, keep the State Project Manager informed of such information for coordination and communication purposes. If necessary to meet the project schedule the Contractor shall increase staffing levels either temporarily or permanently, at the Contractor’s discretion, or the Contractor shall utilize existing resources within the company to complete the work on this project. Project staffing changes for key roles, including the Contractor’s Project Manager, and Surveyor of record, require pre-approval from the State.

The State shall make available to the Contractor all relevant information or data pertinent to the project which Contractor requires to perform the services. The Contractor shall be entitled to reasonably rely upon the accuracy and completeness of all information and data the State furnishes.

**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. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration of the services to be provided, the State shall pay Contractor according to the following schedule: monthly invoices. The monthly invoices shall be accompanied by project status reports describing the percent completion of all project tasks, along with any issues or concerns. Additionally, documentation shall be included with all invoices which provide a detailed record of the costs by task. Contractor shall not exceed budget tasks, as detailed in **Exhibit B**, without prior approval from the State.

In No case shall the State’s total cumulative payment under this contract exceed<written contract amount> ($<numeric contract amount>)**.**

**5.2 Withholding of Payment.** In addition to its other remedies under this contract, at law, or in equity, the State may withhold payments to Contractor if Contractor has breached this contract. Such withholding may not be greater than, in the aggregate, 15% of the total value of the subject statement of work or applicable contract.

**5.3 Payment Terms.** Unless otherwise noted in the solicitation document, the State has thirty (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.

**5.5 Fuel Surcharge - NA**

**6. PREVAILING WAGES REQUIREMENTS – NA**

**7. ACCESS AND RETENTION OF RECORDS**

**7.1 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 21, without incurring liability, for the Contractor’s refusal to allow access as required by this section. (18-1-118, MCA.)

**7.2 Retention Period.** Contractor shall create and retain all records documenting the Technical Assistance to the State for a period of eight years after either the completion date of this contract or termination of the contract.

**8. 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. Contractor is responsible to ensure that any assignee, transferee or subcontractor is subject to all of the terms and conditions of this Contract as fully set forth. Consent of the State to assign, transfer or subcontract any portion of this Contract does not relieve the Contractor in any manner of its responsibilities under this Contract.

**9. HOLD HARMLESS/INDEMNIFICATION**

**9.1** Claims under this provision also include any claim arising out of or in any way connected with Contractor’s breach of this contract, including any claims asserting that any of the Contractor’s employees are actually employees of the state or common law employees of the state or any of its agencies or political subdivisions, including but not limited to excise taxes or penalties imposed on the State under Internal Revenue Code §§ 4980H, 6055 or 6056 and any subsequent amendments or additions to these Sections. Contractor shall be responsible for implementation of all aspects of the Affordable Care Act as this Act may apply to Contractor and shall be responsible for any violations including any sanction, penalty, fee or tax and shall indemnify the State and hold harmless and defend the State for any omission or failure of Contractor to meet its obligations under Sections 13 and 14.

**9.2** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless 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.

**10. CONTRACTOR REGISTRATION (for construction)** N/A

**11. CONTRACTOR WITHHOLDING (for construction)** N/A

**12. REQUIRED INSURANCE**

COMMENT, TO BE REMOVED IN ACTUAL CONTRACT: Not all sections are applicable for all contracts, e.g. Automobile Liability. The header will remain and be marked “N/A” as needed. Note that the dollar amounts for Automobile Liability are assumed fixed, General and Professional dollar amounts can be specific to the contract, with a recommended limit of $1,000,000 per occurrence /$2,000,000 per aggregate.

**12.1 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.

**12.2 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 in excess of Contractor's insurance and shall not contribute with it.

**12.3 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 <dollar amount> per occurrence and <dollar amount> 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.

**12.4 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, hired, or borrowed by Contractor.

**12.5 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of <dollar amount> per occurrence and <dollar amount> aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

**12.6 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 pertain to 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.

**12.7** **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, PO Box 201601, Helena, MT 59620-1601.

Contractor must notify the State immediately of any material change in insurance coverage, including but not limited to changes in limits, coverages, and status of policy. The Contractor must provide the State with copies of insurance policies upon request.

**13. 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, PO Box 201601, Helena, MT 59620-1601.

**14. COMPLIANCE WITH LAWS**

**14.1** **Federal, State, or Local laws, Rules, and Regulations.** 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. The State may audit or request from Contractor at any time a statement that it is fully compliant with all requirements of this Section.

**14.2** **Contractor as Employer under the** **Patient Protection and Affordable Care Act and this Contract.** The Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.l. 111-148, 124 Stat. 119]. Contractor represents and warrants that all individuals who perform services for an agency of the State for Contractor under this Contract are without exception Contractor’s common law employees at all times and that Contractor acknowledges that Contractor has the responsibility and retains the obligation to direct and control its employees providing services under this Contract for the term of this Contract. Contractor is responsible for providing healthcare benefits for its employees under the Patient Protection and Affordable Care Act.

**14.2.1** **State Benefits Plans**. Contractor acknowledges and agrees that it, its agents or employees are not employees of the State and that its agents or employees have no nexus with the State to participate in any of the State’s benefits plans or programs that the State offers its employees and maintains for its employees.

**14.2.2** **Contractor Provided Health Care Coverage**. Contractor shall, if required by the Patient Protection and Affordable Care Act, offer to all its agents or employees who perform services for the State under this contract for 30 or more hours a week and for employee’s or agent’s dependents under age 26 health care coverage under its health care plans. Such coverage must provide minimum essential coverage and minimum value, and be affordable for purposes of the employer responsibility provisions under Section 4980H of the Code and otherwise satisfy the requirements of Code 4980H if provided by the State. It shall be contractor’s sole responsibility to determine applicability and compliance requirements that may apply to Contractor under the Patient Protection and Affordable Care Act.

**14.2.3** **Contractor Reporting Requirements**. Contractor acknowledges that if it is subject to any reporting requirements under Code §§ 6055 and 6066 that Contractor will fully comply with any required reporting with respect to individuals who perform services for the State.

**14.3** Any partial or whole assignment, transfer or subletting or subcontracting by Contractor subjects subcontractors to the same provisions of this Section and it is the responsibility of the Contractor to ensure any agreement to assign, transfer, sublet or subcontract binds any successor to this Contract in whole or in part or binds any subcontractor to all the terms and conditions of this Contract as if a party to the Contract from inception.

**14.4** 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 of the persons performing this contract.

**14.5 Nondiscrimination Against Firearms Entities/Trade Associations.** Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate during the term of the contract against a firearm entity or firearm trade association. This section shall be construed in accordance with 30-20-301, MCA.

**15. 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.

**16. 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.

**17. INTELLECTUAL PROPERTY/OWNERSHIP** – **NA**

**18. PATENT AND COPYRIGHT PROTECTION – NA**

**19. CONTRACT PERFORMANCE ASSURANCE – NA**

**20. CONTRACT TERMINATION**

COMMENT, TO BE REMOVED IN ACTUAL CONTRACT: Section 20.1, verbatim, is required for contracts that contain federal funds.

**20.1 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.

**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 breaching Section 26.1, obligations; 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 Contractor’s material breach, the State may:

● Terminate this contract under section 20.1; 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 under Section 20.2 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.

**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 5 working days after the onset. If the notice is not provided within the 5 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 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. LIAISONS AND SERVICE OF NOTICES**

**25.1 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.

Doug Brugger is the State's liaison.

(Address): 1424 9th Avenue

(City, State, ZIP): Helena, MT 59620

Telephone: 406.444.1300

Cell Phone: N/A

Fax: N/A

E-mail: douglas.brugger@mt.gov

Name is Contractor's liaison.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone: (N/A is acceptable)

Fax: (N/A is acceptable)

E-mail:

**25.2 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 (3) business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

**25.3 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.

**26. MEETINGS**

**26.1 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 day 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. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the contract.

**26.2 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.

**26.3 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.

**26.4 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.

**27. 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.

**28. 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.)

**29.** **TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.l. 111-148, 124 Stat. 119].

**30. AUTHORITY**

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

**31. 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.

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

**32.1 Contract.** This contract consists of 13 numbered pages, Solicitation # DNRC-RFP/RFQ 2022-1087, as amended, and Contractor's response, as amended. In the case of a dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**32.2 Entire Agreement.** These documents, along with Exhibits A and B, 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 all the parties.

**33. 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.

**34. EXECUTION**

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

A scanned copy or facsimile copy of the original has the same force and effect as the original document.

|  |  |
| --- | --- |
| STATE OF MONTANA | Name of Firm |
| Department of Natural Resources and Conservation, Water Resources Division | Address Line 1-2 |
| 1424 9th Avenue | City, State Zip |
| Helena, MT 59620 | FEDERAL ID #:  CONTRACTOR REGISTRATION #: (N/A) |
|  |  |
|  |  |
| BY: | BY: |
| (Name/Title) | (Name/Title) |
|  |  |
|  |  |
|  |  |
| (Signature) | (Signature) |
|  |  |
| DATE: | DATE: |
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