

**AGREEMENT**

This agreement is hereby made between the State of Montana, Department of Justice (DOJ) and (Consultant \_\_\_\_\_) for the purpose of \_\_\_\_\_.

**SECTION I: SERVICES**

The Consultant agrees to provide \_\_\_\_\_. These services shall detailed in future specific task orders.

**SECTION II: DATES TO COMMENCE AND COMPLETE SERVICES**

Performance under this Agreement shall begin on \_\_\_\_\_ and shall be in force until \_\_\_\_\_, unless this Agreement is terminated earlier pursuant to the provisions herein.

**SECTION III: DELIVERABLES**

Any specific deliverables will be detailed in writing to the Consultant.

**SECTION IV: CONSIDERATION**

- 1. In consideration of services rendered pursuant to this Agreement, DOJ agrees to compensate not to exceed \$\_\_\_\_\_ as detailed in Attachment B. It is understood that these rates are consistent with the provision of Montana’s prevailing wage law, MCA §18-2-404, *et seq.*
- 2. Travel expenses will be reimbursed at the current State reimbursement rates for meals, lodging, and mileage.
- 3. Consultant shall be reimbursed for any other reasonable and appropriate expenses incurred in performing this contract such as, telephone, copying, typing, drafting, computer programming and other computer costs.
- 4. Consultant will be paid and/or reimbursed as specified above after submission to DOJ of an invoice for the amount claimed. The invoice must identify the number of hours accrued, the time frame in which the hours were accrued, and a description of the work that was performed. If reimbursement for automobile travel is sought, the invoice must contain the dates of travel, the destination, and the mileage. If reimbursement for other expenses is sought, the invoice must sufficiently document the expense by attaching copies of receipts.
- 5. DOJ will not provide services or facilities to Consultant as part of this agreement.

**SECTION V: TERMINATION**

1. In addition to the provisions in this Section and Section IX, either party may terminate this Agreement for failure of the other party to perform any of the services, duties, or conditions contained in this Agreement after giving 30 days written notice to the other party.

2. Any termination of this Agreement remains subject to Section IX, relating to retention of and access to records, which will remain in effect for three years following termination.

3. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

## **SECTION VI: ASSIGNMENT AND SUBCONTRACTING**

The parties agree there will be no assignment or transfer of this Agreement, or of any interest in this Agreement, without the consent of both parties in writing. Except as provided in Section IV above, no services required under this Agreement may be performed under subcontract unless both parties agree in writing.

## **SECTION VII: EQUAL OPPORTUNITY**

Pursuant to Sections 49-2-303 and 49-3-207, Montana Code Annotated, no part of this contract shall be performed in a manner which discriminates against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the contract. Any hiring shall be on the basis of merit and qualifications directly related to the requirements of the particular position being filled.

## **SECTION VIII: VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning 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. (See Mont. Code Ann. § 18-1-401.)

## **SECTION IX: AUDITING, RECORD RETENTION, AND ACCESS TO RECORDS**

Consultant agrees to maintain the records, including financial records, of the activities covered by this Agreement for a period of three years, and to allow access to them by NRDP and the Legislative Auditor as may be deemed, in their discretion, necessary, including access for legislative audit and analysis purposes in determining compliance with the terms of this Agreement, as required by Section 5-13-304 and 18-1-118, MCA. Notwithstanding the provisions of Section IV, this Agreement may be terminated upon any refusal of Consultant to allow access to records referred to above.

## **SECTION X: SEVERABILITY**

If any term or provision of this contract is held by the courts to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected,

and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

### **SECTION XI: INDEMNIFICATION**

The Consultant agrees to protect, defend, and save the 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 the Consultant'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 Consultant and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

### **SECTION XII: COMPLIANCE WITH THE WORKERS' COMPENSATION ACT**

Consultants are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 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 contract period.

A renewal document must be sent to DOJ, P.O. Box 201425, Helena, MT 59620-1425, upon expiration.

### **SECTION XIII: INSURANCE**

**General Requirements:** The Consultant 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 Consultant, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

**Primary Insurance:** The Consultant'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 in excess of the Consultant's insurance and shall not contribute with it.

**Specific Requirements for Commercial General Liability:** The Consultant 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 Consultant or its officers, agents, representatives, assigns or subcontractors.

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

**Deductibles and Self-Insured Retentions:** Any deductible or self-insured retention must be declared to and approved by the DOJ. At the request of the agency either: (1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers; or (2) The Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**Certificate of Insurance/Endorsements:** Insurance must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the contract number. This insurance must be maintained for the duration of the contract. The NRDP, P.O. Box 201425, Helena, MT 59620-1425, must receive all required certificates and endorsements within 10 days from the date of the execution of the contract. Work may not commence until a contract is in place. The Consultant must notify the DOJ immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The DOJ reserves the right to require complete copies of insurance policies at all times.

#### **SECTION XIV: OWNERSHIP AND PUBLICATION OF MATERIALS**

The State retains ownership for all purposes of the working papers, work products, and end products resulting from performance under this contract. The Consultant may publish materials/findings related to this contract, if the DOJ provides permission and reviews the work before it is submitted for publication.

#### **SECTION XV: LIAISONS**

DOJ's contract liaisons to the Consultant for purposes of this Agreement are Doug Martin, 1301 East Lockey Avenue, P.O. Box 201425, Helena, MT 59620-1425, telephone (406) 444-0205 and Larry Peterman, telephone (406) 439-5605. Consultant will consult with the liaisons and keep them apprised of the status of the work.

#### **SECTION XVI: SCOPE, AMENDMENT AND INTERPRETATION**

1. This contract consists of ten numbered pages, including any Attachments as required. A copy of the original has the same force and effect for all purposes as the original.
2. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

#### **SECTION XVII: EXECUTION**

To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the dates set out below:

\_\_\_\_\_

ID# \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014

DEPARTMENT OF JUSTICE

\_\_\_\_\_  
Natural Resource Damage Program

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011

Approved for legal content by:

\_\_\_\_\_  
Natural Resource Damage Program

\_\_\_\_\_  
DATE