

**Statement of Work
July 1, 2008**

**Southwest Montana Wetland Data
Development**

**Montana Land Information Act 2008 Grant
MLIA_2009_05**

**An Agreement between the MT Department
of Environmental Quality, the Montana
Natural Heritage Program and the Montana
Department of Administration**

Table of Contents

Project Title..... 1
Project Manager – Grantee 1
Grantee’s Contractor 1
Project Manager – Grantor..... 1
Project/Task Objectives and Requirements 1
Scope of Work, Deliverables, Acceptance Criteria and Reporting 3
Timeline and Period of Performance 5
Budget, Compensation and Payment 5
Grantee Staff, Roles and Responsibilities..... 6
Contractor Staff, Roles and Responsibilities 6
Agency Staff, Roles and Responsibilities 6
Additional Terms and Conditions Specific to this SOW 7
Execution/Signature Block 7
Appendix A..... 9

Project Title

MSDI Wetland Framework – Southwest Montana Wetland Data Development

This Statement of Work (SOW) is made and entered by and between the Montana Department of Administration, ITSD (Grantor) and MT Department of Environmental Quality/Planning Prevention and Assistance Division (Grantee) and the University of Montana (Contractor). This SOW also incorporates by reference the MT Department of Environmental Quality/Planning Prevention and Assistance Division response to the 2008 MLIA Grant Solicitation.

Project Manager – Grantee

The Grantee's Project Manager is:

Lynda A. Saul, Wetland Program Manager
Montana Dept of Environmental Quality
1520 East 6th Avenue
Helena MT 59620-0901
(406)444-6652 Phone
(406)444-6836 Fax
lsaul@mt.gov

Grantee's Contractor

The Grantee's Contract Manager is:

Linda Vance Ph.D., Senior Projects Manager
Spatial Analysis Lab Director
Montana Natural Heritage Program
P.O. Box 201800
1515 East Sixth Avenue
Helena, MT 59620-1800
(406) 444-3380 (office), (406)641-8367 (cell)
FAX: (406) 444-0581
livance@mt.gov

Project Manager – Grantor

The Agency's Project Manager is:

Name: Stewart Kirkpatrick
Address: Weinstein Bldg, Suite 2, 101 N. Rodney
City: Helena
State & Zip: MT, 59601
Phone: 406-444-9013
Cell: 406-202-2526
Fax: 406-444-1255
Email: skirkpatrick@mt.gov

Project/Task Objectives and Requirements

The purpose of this project is to develop digital wetlands maps in Southwest MT. Wetlands are one of Montana's priority MSDI framework layers. The wetland maps will be developed by the Montana Natural Heritage Program's Wetland and Riparian Mapping Center using 2005 NAIP imagery and US Fish and Wildlife Service (USFWS) standards. The maps will be maintained as part of the National Wetland Inventory and made publicly available. This is the second year of a two-year funding request from the MLIA grant program. Year one was funded by a MLIA FY 2008 grant and is being complete on schedule and on budget. The project relates to several goals, however, it is most relevant to Goal 1, Objective 1.1 of the 2009 Land Information Plan.

Goal 1 – A statewide set of MSDI framework layers that are consistently collected, accurately maintained, and made commonly available.

Objective 1.1 - Funding and administrative support for local, tribal, state and federal data collection efforts that will help develop and maintain multi-jurisdictional MSDI framework layers.

Wetland data is a MSDI theme for Montana that lags almost all other states; the National Wetland Inventory (NWI) was never completed here and large swathes of Montana have no wetland data available – even though wetlands are critical habitats of concern to economic development planners and resource managers. Southwest Montana is an area that almost completely lacks NWI data. The Montana Natural Heritage Program (MTNHP) has established a Wetland and Riparian Mapping Center that uses the national standard USFWS NWI protocols and procedures in *National Standards and Quality Components* (USFWS 2004) for data development, classification, and quality control. Spatial data is approved by USFWS NWI personnel and incorporated into the NWI national geodatabase for long-term maintenance. Wetlands will be classified according to USFWS national standard *Classification of Wetlands and Deepwater Habitats of the United States* (Cowardin et al. 1979). Riparian areas will be mapped and classified according to *A System for Mapping Riparian Areas in the Western United States* (USFWS 1997), the USFWS standard for our region.

The Governor and Director's of Montana DNRC, DFWP and DEQ endorsed the state's new wetland plan titled *Priceless Resources: A Strategic Framework for Wetland and Riparian Area Conservation and Restoration in Montana 2008-2012*. This *Strategic Framework* supports the MTNHP Wetland and Riparian Mapping Center as the standardized provider of wetland mapping in Montana, which provides consistency, accuracy and information availability to all citizens.

Past or present approaches that require change include the situation that Southwest Montana is an area that almost completely lacks NWI data, but has acute biologic and economic needs for wetland map data. For example, the Arctic grayling recovery plan is centered in these watersheds and wetlands are key to maintaining acceptable water levels in the Big Hole and other rivers, but the locations and types of wetlands in the area is unknown. A wide variety of state, federal, and local partners collaborate on this effort and need wetland data to guide conservation and management. Economic activities including energy corridors, residential and commercial building construction, and resource development can be planned better and be more environmentally sustainable if wetland locations are identified first.

There is no dedicated state or federal funding to advance the MSDI wetland data theme; the development of this theme depends on building broad funding partnerships and using MLIA

funds to support the needs of regional governments, conservation districts, watershed groups and other stakeholders.

Scope of Work, Deliverables, Acceptance Criteria and Reporting

Contractor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

DEQ intends to contract with the MTNHP, a program of the University of Montana, to develop digital wetland maps for 75 USGS 1:24,000 quads. This is part of a larger project totaling 200 quads. Under the guidance of MTNHP ecologists, a wetland digitizing technician will delineate, digitize and classify wetlands and riparian areas in an ArcGIS environment using the protocols and procedures in *National Standards and Quality Components* (USFWS 2004). The 2005 NAIP Color IR imagery for this area will be the image source for mapping. NRCS soil surveys, NHD high-resolution data, digital elevation models and other ancillary data sources will be used to increase mapping accuracy.

All map data will be produced using the standard protocols and conventions developed by the USFWS for image interpretation, cartography, and digitizing (USFWS 2004). Metadata will be produced using the ArcGIS metadata file structure in ArcCatalog. A personal geodatabase will be provided in Albers Equal Areas Conic projections with horizontal planar units in meters, using the NAD83 horizontal planar datum. All digital data will be provided in a geodatabase format consistent with that developed by the USFWS and will be incorporated into the national NWI master database.

Wetlands will be classified with the *Classification of Wetlands and Deepwater Habitats of the United States* (Cowardin et al. 1979). Riparian areas will be mapped and classified according to *A System for Mapping Riparian Areas in the Western United States* (USFWS 1997). Mapping also includes polygon attribution with hydrogeomorphic modifiers that link polygon types to wetland functions. Field reconnaissance trips will be conducted as necessary to determine whether polygons have been correctly classified, to review any questionable types, and to gather data on wetlands of particular ecological significance, which will be documented in the MTNHP site database. We will also identify wetlands areas suitable for restoration. Field data will be incorporated into the online MTNHP field guide to NWI types. QA/QC will follow *National Standards and Quality Components* (USFWS 2004) including final approval by the NWI regional coordinator.

b. Deliverables

Wetland and riparian area data will be digitized and classified by the MTNHP Wetland Mapping Center using USFWS standards (USFWS 2004) for at least 200 *USGS 1:24,000 quads in the Southwest Montana study area. This second year funding request is specifically for mapping and data development of 75 quads. The 50 quads not specifically funded as deliverables in Year 1 and 2 of this MLIA grant are funded through partner contributions and will also be completed by the end of FY 2009. Digitized and classified information will be field checked and the draft datasets will be submitted for QA/QC approval to the NWI regional coordinator. The approved dataset will be included in the MSDI Wetland Framework data layer and linked to the NRIS website for public dissemination. The dataset will be incorporated into USFWS national NWI database and made available on the National NWI Mapper service provided by USFWS. All map

and classification information will be documented in the MTNHP site database. Wetland areas suitable for restoration will also be identified. Field data will be incorporated into the online MTNHP wetland site database and online NWI field guide.

The Wetland Theme targets wetland mapping data collection and funding the continuance of the MTNHP Wetland and Riparian Mapping Center as priority tasks. This grant proposal directly addresses *Goal 1 – A statewide set of MSDI framework layers that are consistently collected, accurately maintained, and made commonly available. Objective 1.1 - Funding and administrative support for local, tribal, state and federal data collection efforts that will help develop and maintain multi-jurisdictional MSDI framework layers.* Significant partner funding and in-kind support have been obtained to further this data development effort, which addresses other Montana Land Information Plan goals.

The project has the capacity to accomplish the work in the required timeframe. As a second year project, the contractor is already geared up and working on schedule to complete the Year 1 MILA 2008 Grant Statement of Work. The MTNHP Wetland and Riparian Mapping Center has increased its staff to three full-time digitizers to accomplish this and other wetland and riparian mapping for the MSDI Wetland Theme. The contractor (MTNHP) now also administers the University of Montana Wildlife Spatial Analysis Laboratory, which gives them significant additional resources for wetland digitizing capacity, if necessary.

** (The total number of quads produced from this project will be 200, with 150 funded through MLIA funds, with a first year delivery of 75 quads and a second year delivery of 75 quads)*

Acceptance Criteria

Project success will be achieved when all mapping has been completed, approved by the USFWS NWI regional coordinator, and incorporated into the national geodatabase. Ongoing progress can be measured by the number of quads completed and approved by the NWI regional coordinator.

DEQ will review and approve all deliverables including draft, digitized, and classified wetland and riparian data by the MTNHP Wetland Mapping Center, and quality assurance and quality control (QA/QC). QA/QC will follow *National Standards and Quality Components* (USFWS 2004) including final approval by the National Wetland Inventory (NWI) regional coordinator.

After initial delineations are made by a digitizing technician, draft mapping is 100% reviewed by a MTNHP ecologist or a different digitizing technician. Specific comments are then addressed and the mapping corrected by the wetland digitizing technician or areas are marked for field review. A final review is made after corrections and any necessary field review. After internal MTNHP approval, the mapping is sent to the regional NWI coordinator for review. Specific comments are addressed by MTNHP if necessary and final approval is made by the NWI regional coordinator. If new FGDC wetland mapping standards are implemented during the term of this contract, the MTNHP will follow those standards.

Quarterly Progress Reports

The Grantee shall provide the Agency Project Manager quarterly progress reports due on October 10, 2008, January 10, 2009, April 10, 2009 and a final report due July 30, 2009. The

reports shall include a section on each deliverable including any deviations from the timeline and/or budget and any problems encountered.

Timeline and Period of Performance

FY 2009 1st Quarter – Continue mapping and begin field checking by MTNHP staff and partners (in-kind support from other organization biologists). Continue QAQC process on mapping. Submit blocks of mapped quads, totaling at least 15 quads (scheduled deliverables) that have passed internal QAQC to the Regional NWI Coordinator for final approval. ***Extra quads delivered in FY 2008 may be counted toward this delivery*

FY 2009 2nd Quarter – Continue mapping, field checking, and QAQC. Submit blocks of mapped quads, totaling at least 20 quads (scheduled deliverables) that have passed internal QAQC to the Regional NWI Coordinator for final approval.

FY 2009 3rd Quarter – Continue mapping, field checking, and QAQC. Submit blocks of mapped quads, totaling at least 20 quads (scheduled deliverables) that have passed internal QAQC to the Regional NWI Coordinator for final approval.

FY 2009 4th Quarter – Continue mapping, field checking, and QAQC. Submit blocks of mapped quads, totaling at least 20 quads (scheduled deliverables) that have passed internal QAQC to the Regional NWI Coordinator for final approval.

The total deliverables submitted at the end of this fiscal year will be at least 150 quads. Data will be entered on wetlands or riparian sites surveyed into the MTNHP database.

Budget, Compensation and Payment

The following budget will apply to this SOW:

2008 Grantee Budget

Category	Applicant Share (including in-kind)	MLIA Share	Other Share (Contractor in-kind)	Partner Share	Total
a. Personnel	\$ 1,340		\$ 17,013	\$ 18,577	\$ 36,930
b. Fringe Benefits	\$ 406		\$ 7,856	\$ 8,578	\$ 16,840
c. Travel				\$ 1,821	\$ 1,821
d. Equipment					
e. Supplies	\$ 55				\$ 55
f. Contractual		\$63,592	\$ 4,968		\$ 68,560
g. Other	\$ 100			\$ 165	\$ 265
h. Indirect	\$ 398	\$ 1,908	\$ 4,974	\$ 5,859	\$ 13,139
Totals	\$ 2,299	\$65,500	\$ 34,811	\$ 35,000	\$ 137,610

2008 Contractor Budget

Category	Applicant (MLIA request)	MTNHP subcontract (MLIA request)	Other Share	Total
a. Personnel		\$ 33,465		\$ 33,465
b. Fringe Benefits		\$ 15,453		\$ 15,453
c. Travel		\$ 3,532		\$ 3,532
d. Equipment				
e. Supplies				
f. Contractual				
g. Other		\$ 607		\$ 2,515
h. Indirect	\$1,908	\$ 10,535		\$ 10,535
Totals	\$1,908	\$ 63,592		\$ 65,500

The Contractor may submit quarterly invoices to the Grantee and the Grantee may submit quarterly invoices to the Department of Administration/ITSD, to be reimbursed within 30 days of receipt for an amount not to exceed \$65,500 for this agreement. With each quarterly progress report the Grantee will submit a quarterly financial report. Deviations from the approved budget will be noted in the quarterly progress report.

Grantee Staff, Roles and Responsibilities

Lynda Saul - Project Manager
Susan McEachern – Financial Administrator

Contractor Staff, Roles and Responsibilities

Technical Contact:
Linda Vance – Project Manager

Administrative Liaison:
Sheila Hoffland, Director of Compliance
The University of Montana
Office of Research, UH116
Missoula, MT 59812
Phone: (406)243-4762
Fax: (406)243-6330
sheila.hoffland@umontana.edu

Agency Staff, Roles and Responsibilities

Stewart Kirkpatrick will be the overall Agency Project Manager responsible for contract and compensation issues.

Additional Terms and Conditions Specific to this SOW

Grantee and Contractor agree that this contract is subject to the terms and conditions contained in Appendix A.

Execution/Signature Block

In Witness Whereof, the parties hereto, having read this SOW MLIA_2009_05 in its entirety, do agree thereto in each and every particular.

Approved – Grantor

Approved - Grantee

DOA, ITSD

DEQ

Signature

Signature

Robin Trenbeath

Vicki Woodrow

GIO

Contracts Officer

Title

Title

Date

Date

Approved – Contractor

Montana Natural Heritage Program

Signature

Sheila Hoffland

Director

Title

Date

An additional DOA signature block is required for all contractual work.

The contractor is notified that pursuant to 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

Reviewed and Approved by:
Information Technology Services Division
Montana Department of Administration,
per MCA 2-17-512:

CIO or authorized DOA representative

Date:

Appendix A

SECTION I: TERMINATION

Agreement may be terminated, in whole or in part, by either party if the other party substantially fails to fulfill its obligations under Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than 30 calendar days written notice of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination. In the event of such breach and termination, the parties shall have such rights and remedies at law or equity available to them. In the event of such breach and termination by Contractor, DEQ may take over the work and may award another party a contract to complete the work under Agreement.

DEQ may postpone or terminate Agreement, in whole or in part, when federal or state funding for Agreement becomes unavailable for any reason. Should such a contingency occur, DEQ shall set a new completion date or terminate the Agreement immediately, depending upon the funding remaining available for Agreement. Contractor shall be entitled to payment for services rendered and expenses incurred by Contractor during the period prior to the effective date of termination. (Section 18-4-313(3), MCA).

Any termination of Agreement is subject to the exception that Section VI relating to retention of access to records will remain in effect.

SECTION II: ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor shall not assign, transfer, or subcontract Agreement, or any interest in Agreement, without the express written consent of DEQ. (Section 18-4-141, MCA)

Any subcontractors required by Contractor under Agreement will be limited to those specifically authorized by DEQ. Written consent by DEQ will be given only after DEQ has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of Agreement. Written consent will be documented by the Contractor providing a signature block for DEQ on all subcontracts.

Contractor assumes the responsibility for the professional quality, technical accuracy, timely completion, and coordination of any work product of a subcontractor hired by Contractor, and agrees to indemnify and hold harmless DEQ with respect to any suit or action by any party to an assignment, transfer, or subcontract. No contractual relationships exist between any subcontractor and DEQ.

SECTION III: NON-DISCRIMINATION AND COMPLIANCE WITH LAWS

1. DEQ does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals needing 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 DEQ. Interested parties should provide as much advance notice as possible.
2. Contractor must, in performance of work under Agreement, fully comply with 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. All hiring necessary as a result of Agreement must

be on the basis of merit and qualifications; there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by Contractor. (Section 49-2-303, MCA).

SECTION IV: LAW AND VENUE

The laws of Montana govern Agreement. Any litigation concerning Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA).

SECTION V: MODIFICATION

This instrument contains the entire agreement between DEQ and Contractor, and no previous statements, promises, or inducements made by either party, or agents of either party, which are not contained in this Agreement are valid or binding. Agreement may not be enlarged, modified, or altered except by prior written consent signed by DEQ and Contractor. No change, addition, or erasure of any printed portion of Agreement is valid or binding upon either party.

SECTION VI: ACCOUNTING, AUDIT AND RETENTION OF RECORDS

Contractor shall maintain books, records, and reports documenting its performance under Agreement. Contractor shall provide DEQ, the Legislative Auditor, the Legislative Fiscal Analyst, EPA, the Comptroller General of the United States, or their authorized agents, access to any books, records, reports and other documents maintained by Contractor under Agreement at all reasonable times at its general offices to determine compliance with Agreement. Agreement may be terminated by DEQ upon any refusal of Contractor to allow access to such records. (Section 18-1-118, MCA).

Accounting for all funds received and expended by Contractor pursuant to Agreement must be maintained in accordance with generally accepted accounting principles. Contractor's accounting system must be able to allocate costs associated with Agreement in a manner that keeps these costs separate from the costs of other contracts. (Section 18-4-311, MCA). DEQ, the Legislative Auditor, the Legislative Fiscal Analyst, the EPA, and the Comptroller General of the United States, or their authorized agents, have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to Agreement.

All books, records, reports, accounting, and other documents maintained by Contractor under Agreement must be retained for a period of three years after either the completion date of Agreement, or the conclusion of any litigation, claim, audit or exception relating to Agreement taken by the State of Montana, DEQ, or a third party.

1. If Contractor receives a total of \$500,000 or more in federal funds from any and all sources of federal funding sources during any fiscal year during which Agreement is performed, it must comply with the accounting and audit requirements of the most current version of the Federal Office of Management and Budget (OMB) **Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"**, and the provisions of **OMB Circular A-87 "Cost Principles for State and Local Governments"**, including the "Compliance Supplement for Single Audits," concerning the use of the funds provided under Agreement.

2. Contractor must provide DEQ with a copy of its annual or biennial audit report covering the year in question within 30 days after the report's issuance. The audit report must include all of the following information:
 - i. Federal grantor/pass-through grantor program title;
 - ii. Federal CFDA number;
 - iii. Pass-through grantor's number or Agreement number;
 - iv. Program or award amount;
 - v. Cash accrued or deferred revenue at July 1 or the first day of Contractor's fiscal year;
 - vi. Receipts or revenue recognized during the period;
 - vii. Total disbursements/expenditures;
 - viii. Cash accrued or deferred revenue at June 30 or the last day of Contractor's fiscal year; and
 - ix. In a footnote to the schedule of federal financial awards, an indication of the basis accounting used in determining the above information.

6. If Contractor receives less than \$500,000 in total federal assistance during any fiscal year during which Agreement is performed, and therefore does not need to submit an audit report to DEQ, Contractor must notify DEQ in writing within 30 days after the end of that year.

7. In the event that an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under Agreement, including any grant-related income, Contractor agrees to correct the areas of non-compliance within six months after DEQ receives the audit report.

SECTION VII: FEDERAL REQUIREMENTS

The following provisions shall be incorporated into Agreement and shall be included by the Contractor in each subcontract or sub-tiered agreements under any subcontracts it enters into in connection with Agreement:

1. **SUPERSESSION.** This Section applies to the work eligible for EPA assistance to be performed under Agreement, and the provisions within it supersede any conflicting provisions of Agreement. Agreement is subject to the federal regulations in effect on the date of execution of Agreement.
2. **PRIVITY.** Agreement is funded in whole or in part with funds from the EPA. Neither the United States nor the EPA is, or will be, a party to Agreement, any lower tier subcontract of Agreement, or any solicitation or request for proposals. (40 CFR 35.6595(c)).
3. **COVENANT AGAINST CONTINGENT FEES.** Contractor certifies that no person or company, other than Contractor's bona fide employees or bona fide affiliate firms, has been employed or retained to solicit or secure Agreement, nor has any agreement been made to pay a person or company a commission, fee, or any form of compensation contingent upon award of Agreement. In the event of breach of this provision, Agreement may be terminated without liability or, at its discretion, the commission, fee or form of commission received, may be deducted from the Agreement price. (40 CFR 35.6595(c)).
4. **LOBBYING.** Contractor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence Congress or any federal agency in connection with the awarding of any federal/state contract, the making of any federal/state grant, the making of any federal/state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal/state contract, grant, loan or cooperative agreement. If any funds other than federal or state appropriated funds have been paid or will be paid to any person for influencing or attempting to influence Congress or any federal agency in connection with Agreement, grant, loan or cooperative agreement, Contractor shall

complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. (40 CFR 35.6105(a)(6); 40 CFR 34.100)

5. **DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.** Contractor certifies that it and its principals: (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by any federal department or agency; (2) have not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; been in violation of federal or state antitrust statutes, or been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2); and (3) have not within a 3-year period preceding this Agreement, had one or more contracts terminated for cause or default by any federal or state agency.
6. **USE OF RECYCLED PAPER.** Contractor certifies that recycled paper will be used for all reports, documents, or other submittals prepared by Contractor under the terms of Agreement. This requirement does not apply to reports that are prepared on forms supplied by EPA. This requirement does apply even when the cost of recycled paper is higher than that of virgin paper.
7. **COPYRIGHT AND RIGHT TO USE.** Any discovery or invention made, or data or text developed, or under development, as a result of work conducted under Agreement, is subject to EPA requirements and regulations pertaining to reporting and patent rights, and to those contained in 40 CFR 31.34 relating to copyrights and rights in data. In any event, DEQ and EPA shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, any patented or copyrightable property developed under Agreement.
8. **EQUIPMENT, SUPPLIES AND MATERIALS.**
 - a. Any equipment, supplies and materials not approved at the time of the signing of Agreement must be approved in advance and in writing by DEQ prior to purchase by Contractor.
 - b. The ownership of equipment, defined as having a purchase price of over \$5,000 and a useful life of more than one year, shall rest with DEQ. Contractor agrees to maintain the equipment in good working condition and provide accountability of the equipment per state law and rule concerning Asset Management.
 - c. At the conclusion of Agreement, equipment shall be returned in good working condition to DEQ unless otherwise authorized in writing by DEQ and the Surplus Property Program of the Property and Supply Bureau of the General Services Division of the Montana Department of Administration. Supplies and materials with a value of less than \$5,000, purchased for and used in completing the terms of Agreement shall be the property of Contractor.
9. **GRATUITIES.** Contractor certifies that it has not: (a) provided, attempted or offered to provide; (b) solicited, accepted or attempted to accept; or (c) included, directly or indirectly, any gratuities, to any official, employee, or agent of the DEQ or EPA in an attempt to secure this Agreement or favorable treatment under Agreement. (40 CFR 35.6595(c)).
10. **CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS.**
 - a. Contractor shall take all necessary affirmative steps required in 40 CFR 31.36(e)(2); and 40 CFR 35.6580, to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible by taking the following affirmative steps:

- i. Placing qualified small and minority businesses, and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - vi. In letting subcontracts, and ensuring any subcontractors letting subcontracts, to take the affirmative steps listed in paragraphs (a) through (e) above.
- b. Future procurements done by Contractor under Agreement shall, to the fullest extent possible, make available a "fair share" of at least 3% of funds for supplies, construction, equipment or services to "women business enterprises" (WBE), and 2% of funds to "minority business enterprises" (MBE). DEQ reserves the right to adjust the "fair share" percentages by providing written notice to Contractor.
 - c. EPA Form 5700-52A, entitled "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements", must be completed quarterly by recipients of federal grants, cooperative agreements, or other federal financial assistance that involve procurement of supplies, equipment, construction or services to accomplish federal assistance programs. EPA Form 5700-52A shall be submitted within 30 days of the end of each fiscal quarter to: Tom Ellerhoff or successor at the Department of Environmental Quality, P. O. Box 200901, Helena, MT 59620-0901.

SECTION VIII: SEPARABILITY

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

SECTION XI: INDEMNITY AND LIABILITY

Contractor agrees to indemnify and hold harmless the State of Montana, DEQ, its agents, principals, and employees, while acting within the scope of their duties, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided, or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, or subcontractors under Agreement, or from the failure to comply with the requirements of Agreement or with all federal, state, and local laws, regulations, rules, and ordinances applicable to the work to be done under Agreement, all to the extent of Contractor's negligence, except the sole negligence of DEQ.

SECTION X: INDEPENDENT CONTRACTOR

The parties agree that Contractor is an independent contractor, and no employee, agent, or servant of Contractor is or may be deemed to be the employee, agent, or servant of DEQ. Contractor is solely and entirely responsible for the acts of its employees, agents, servants, and subcontractors during the performance of Agreement. Contractor is responsible for providing benefits to its employees, agents, or servants, including, but not limited to, unemployment and workers' compensation insurance, and covenants that it will continue to provide legally required benefits during the term of Agreement.

SECTION XI: INSURANCE

The parties hereto understand and agree that the State of Montana, Contractor, its officials and employees are self-insured under the provisions of Title 2, Ch. 9, Montana Codes Annotated. Contractor will maintain insurance required for state agencies as provided under Title 2, Ch. 9, Montana Codes Annotated. The statutory limits of liability are \$750,000 for each claim and \$1.5 million for each occurrence. Contractor agrees to immediately provide a certificate of insurance upon request.