

**Lewis and Clark County, Montana  
Invitation for Bids  
Rimini Water Distribution Services**

Notice is hereby given that the Board of County Commissioners of Lewis and Clark County, Montana are soliciting competitive bids from interested parties for distribution of potable drinking water to residents of Rimini, Montana.

The complete solicitation is available online at

<https://www.lccountymt.gov/Government/Grants-and-Purchasing/Bids-and-Proposals-Current>.

Questions related to this solicitation must be directed only to the designated point of contact for this solicitation: Casey Hayes, Purchasing Officer, [chayes@lccountymt.gov](mailto:chayes@lccountymt.gov). A cone of silence is established for this solicitation which prohibits any bidder, or entity with financial interest in the bid award, from communicating regarding the solicitation with any Lewis and Clark County elected official, employee, or agent other than the designated point of contact.

A pre-bid conference will be held on February 11, 2025 at 1:30 PM MST located at the City-County Administrative Building, 316 North Park Avenue, Room 309, Helena, MT. Interested bidders are encouraged to attend.

The deadline for bids to be delivered to the Lewis and Clark County Commissioner's Office, located at the City-County Administrative Building, 316 North Park Avenue, Room 345, Helena, MT is on or before 4:00 PM local time on February 24, 2025. The sealed envelope containing the bid must be labeled, "Rimini Water Distribution Services Bid Enclosed." Bids received by this deadline will be unsealed publicly on February 25, 2025 beginning at 9:00 AM local time in Room 330 of the City-County Administrative Building. Late bids are not accepted.

All bids must be accompanied by a bid bond or other form of security as specified in Montana Code Annotated 18-1-203, payable to Lewis and Clark County, in an amount of no less than ten percent (10%) of the total bid. Bids received without the required bid security will be deemed nonresponsive.

Small business enterprises (SBE), minority business enterprises (MBE), women business enterprises (WBE), veteran businesses enterprises (VBE), and disadvantaged business enterprises (DBE) are encouraged to participate in this solicitation.

The County reserves the right to reject any or all bids received, to waive informalities, to postpone the award of the contract for a period not to exceed 60 days, and to accept the bid that is in the best interest of the County. Bidders shall be bound to the terms and conditions listed in the solicitation.

This solicitation is being offered in accordance with federal and state statutes and county regulations governing procurement. Bids become the property of Lewis and Clark County. The County is not responsible for costs associated with preparing a bid.

Published in the Helena Independent Record on Saturday, February 1, 2025 and Saturday, February 8, 2025.

## **LEWIS AND CLARK COUNTY INVITATION FOR BIDS STANDARD TERMS AND CONDITIONS**

*By submitting a bid to this Invitation for Bids, the Bidder agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation.*

1. **Competition.** Lewis and Clark County encourages free and open competition among bidders. Whenever possible, specifications, bid invitations, and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the County's needs and accomplishment of a sound economical operation.

The bidder's signature on this proposal guarantees that the prices quoted have been established without collusion with other eligible bidders and without effort to preclude Lewis and Clark County from obtaining the lowest possible competitive price.

Prior to the Notice of Intent to Award, bids may be held by Lewis and Clark County for a period not to exceed 60 days from the date of the opening of bids for the purpose of reviewing bids and investigating the qualifications of the bidders.

2. **Preparation of Bids.** Bids will be written in ink and/or typewritten on the bid forms furnished herewith. Erasures and alterations must be initialed by the bidder in ink. No verbal bids shall be accepted. The bidder agrees that the bid shall be good and may not be withdrawn during the 60-day review period.
3. **Bid Items.** The bidder warrants articles offered to conform to the specifications herein requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect.
4. **Special Brands.** Brand name items or descriptions used in this proposal are specified solely for the purpose of indicating standards of quality, performance, and/or use desired. Any bid offering goods or sources which deviate from the specifications must be clearly indicated by the bidder. Substitutions must be identified by the manufacturer and stock number and complete descriptive literature must be included with the bid. Goods delivered which do not conform to the contract terms, conditions, or specifications may be rejected and

returned at the vendors' expense. Any bid for foreign produced products shall be so indicated and the source of supply noted for each item.

5. **Packaging.** Unless otherwise stipulated, no charges will be allowed for packing, wrapping, bags, containers, reels, etcetera. All items shall be packed in accordance with prevailing commercial practices and in such a manner as to ensure delivery in good condition and as specified herein.
6. **Delivery/Shipping.** Goods shall be prepaid, Free on Board (FOB) destination. In the event the contract terms specify FOB shipping point, shipping charges will be prepaid and itemized as a separate item on invoicing. Such shipments shall be via the least expensive common carrier unless otherwise stipulated. Lewis and Clark County reserves the right to reject Cash on Delivery (COD).
7. **Warranty.** Bidders agree to provide a warranty for product on offer and perform all warranty and maintenance services in a professional and timely manner and acknowledge that they will be liable for any breach of this warranty.
8. **Cash Discount.** Bidders may quote a cash discount, provided it is based on a period of 60 days or more. A shorter period will not be considered in determination of a low bid. Any cash discount as part of this contract will be computed from the date of receipt of a properly executed claim or the date of completion of delivery of all items in satisfactory condition, whichever is later.
9. **Excise Taxes.** Lewis and Clark County is exempt from federal excise taxes (FET). Exemption certificates will be furnished upon request.
10. **Acceptance/Rejection of Bids.** Lewis and Clark County reserves the right to accept or reject any or all bids, wholly or in part, and to make awards in any manner deemed in the best interest of the County.
11. **All-or-None Proposals.** Bidders may submit alternate proposals on an all-or-none basis but are required to submit a primary quotation on an item-by-item basis to be considered for either type of award.
12. **Bid Determination.** The basis of the award will be dependent on the most responsible bid submitted with consideration given to the following criteria:
  - a. Purchase price;
  - b. Warranty and/or maintenance agreement;
  - c. Delivery date; and
  - d. Analysis and comparison by the county with similar or related equipment.
13. **Tabulation.** In the event that a quotation is entered in which the unit price and extension do not agree, the unit price shall prevail.
14. **Bid Proposal Worksheet.** Bidders are required to complete all Bid Proposal Worksheets and must provide a detailed proposed specification packet with the bid. Any variance to

specifications the bidder wishes to seek consideration for must be clearly stated in the section provided on the Bid Proposal Worksheet.

15. **Nondiscrimination.** In accordance with federal and state laws, the bidder agrees not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, national origin, sex, or age with regard to, but not limited to, the following:
- a. Employment upgrading;
  - b. Demotion or transfer;
  - c. Recruitment or recruitment advertising;
  - d. Lay-offs or terminations;
    - i. Rates of pay or other forms of compensation;
    - ii. Selection for training; or
    - iii. Rendition of services.

Bidders and the awardee shall comply with all federal, state, and local laws, rules and regulations. Bidders and the awardee and any of the Bidders' and the awardee's subgrantees, contractors, subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract or agreement.

It is further understood that any vendor who is in violation of this clause shall be barred forthwith from receiving awards of any purchase from Lewis and Clark County unless a satisfactory showing is made that discriminatory practices have ceased, and the recurrence of such acts is unlikely.

16. **OSHA and EPA Requirements.** The equipment shall meet OSHA and EPA requirements and specifications on the date of the bid opening.
17. **Bid Consideration.** No bid will be considered unless accompanied by a bid bond, bank draft, money order, or certified check in the amount of not less than ten (10) percent of the total bid.
18. **Public Inspection of Bids.** Except as otherwise stated in these terms and conditions, all information received in response to this IFB is deemed public information and will be available for public viewing and copying after the Notice of Intent to Award is issued.

19. **Trade Secrets.** In order for a bidder to claim information is protected under Montana's Uniform Trade Secrets Act, a notarized Affidavit for Trade Secret Confidentiality shall be provided by the bidder's attorney acknowledging that material included in a bid is open to public inspection except for information that meets the provisions of Montana's Uniform Trade Secrets Act. Trade secrets contained in the bid must be clearly marked and separate from materials that are open for public inspection. Bidders must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a records request from another party.
20. **Claims of Confidentiality and Personal Safety.** In order for a Bidder to claim information is confidential and protected by law or a matter of personal safety, this information must be marked and separated from the materials that are open for public inspection. Clear reference to the laws that protect the information must be provided. No confidentiality material may be contained in the pricing or cost estimates. Contract provisions shall not be covered by claims of confidentiality or personal safety. Bidders will be solely responsible for all legal costs and fees associated with defending a claim for confidentiality and/or personal safety in the event of a records request from another party which the Bidder chooses to oppose. The Bidder will either totally assume all responsibility for the opposition of the request, and all liability and costs of any such defense, thereby defending, protecting, indemnifying, and saving harmless the County or the Bidder will immediately withdraw its opposition to the records request and permit the County to release the documents for examination. The County will inform the Bidder in writing of any open records request that is made, and the Bidder will have three working days from receipt of the notice to notify the County in writing whether the Bidder opposes the request or not. Failure to provide that notice in writing will waive the claim of confidentiality and allow the County to treat the documents as a public record.
21. **Cone of Silence.** A cone of silence shall be established on all Lewis and Clark County formal solicitation processes. The cone of silence prohibits any communication regarding a formal solicitation between any bidder (or its agents or representatives) or other entity with the potential for a financial interest in the award (or their respective agents or representatives) and any Lewis and Clark County elected official, employee, or agent other than the designated point of contact for the solicitation.

The cone of silence shall be in effect from the time of posting the formal solicitation on the County's website and until the County issues a Notice of Intent to Award, cancels the solicitation, or otherwise takes action to end the selection process.

Violations of the cone of silence may be grounds for disqualification from the selection process. The cone of silence shall not apply to communications at any public proceeding or meeting.

22. **Advanced Payments.** Except as provided in law, provisions requiring payment by the County, fully or in part, for goods or services before receipt of such shall not be authorized.

23. **Protest Procedure.** A bidder aggrieved in connection with the solicitation or bid award may protest in accordance with the procedure outlined in the Lewis and Clark County procurement policy.
  
24. **Nondiscrimination Against Firearm Entities/Trade Associations.** Per Montana Code Annotated 30-20-301, a Bidder whose company has at least ten full-time employees and is awarded a contract with a value of at least \$100,000 paid wholly or partly from public funds shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and the awarded Bidder shall not discriminate during the term of the contract against a firearm entity or firearm trade association.

## **SPECIAL TERMS AND CONDITIONS RELATED TO FUNDING SOURCE**

This project is funded through a cooperative agreement with the U.S. Environmental Protection Agency. The following terms and conditions are a result of this funding and will be included in the contract for these services.

1. Bidders shall provide information on its financial and business relations with all potentially responsible parties (PRPs) at the site and with the bidder's parent companies, subsidiaries, affiliates, subcontractors, or current clients at the site. This disclosure requirement encompasses past financial and business relations, including services related to any proposed or pending litigation, with such parties.
  
2. The selected bidder shall comply with the following federal requirements of the recipient:
  - a. **Accounting Standards:** The recipient's system must track expenses by site, activity, and operable unit, as applicable, according to object class. The system must also provide control, accountability, and an assurance that funds, property, and other assets are used only for their authorized purposes. The recipient must allow an EPA review of the adequacy of the financial management system as described in 2CFR §200.302. The recipient's system must comply with the appropriate allowable cost principles described in 2 CFR Part 200 Subpart E – Cost Principles. The accounting system must use the actual costs as the basis of all reports of direct site charges.
  - b. **Usage Rate:**
    - i. Usage rate approval. To Charge EPA a fee for use of equipment purchased with recipient funds or to allocate the cost of equipment purchased by site, activity, and operable unit, as applicable, the recipient must apply a usage rate. The recipient must submit documentation of the usage rate

- computation to EPA. The EPA-approved usage rate must be included in the Cooperative Agreement before the recipient incurs these equipment costs.
- ii. Usage rate application. The recipient must record the usage of the equipment by site, activity, and operable unit, as applicable, and must apply the usage rate to calculate equipment charges by site, activity, and operable unit, as applicable.
- c. Property Management Standards: The recipient must comply with the following property management standards for property purchased with CERCL funds. The recipient may use its own property management system if it meets the following standards.
- i. Property records for CERCLA-funded property which include the contents specified in Section D.1.b.
  - ii. A control system that ensures adequate safeguards for prevention of loss, damage, or theft of the property. The recipient must make provisions for the thorough investigation and documentation of any loss, damage, or theft.
  - iii. Procedures to ensure maintenance of the property are in good condition and periodic calibration of the instruments used for precision measurements.
  - iv. Sales procedures to ensure the highest possible return, if the recipient is authorized to sell the property.
  - v. Provisions for financial control and accounting in the financial management system of all equipment.
  - vi. Identification of all federally owned property.
- d. Project Records and Retention:
- i. Records Management.
    1. Project records. The lead agency for the response action must compile and maintain an administrative record consistent with CERCLA § 113, the National Contingency Plan, and relevant EPA policy and guidance. In addition, recipients of assistance (whether lead or support agency) are responsible for maintaining project files described as follows. The recipient must maintain project records by site, activity, and operable unit, as applicable.
    2. Financial records. The recipient must maintain records which support the following items:
      - a. Amount of funds received and expended; and
      - b. Direct and indirect project cost.
    3. Property records. The recipient must maintain records which support the following items:
      - a. Description of the property;
      - b. Manufacturer's serial number, model number, or other identification number;

- c. Source of the property, including the assistance identification number;
- d. Information regarding whether the title is vested in the recipient or EPA;
- e. Unit acquisition date and cost;
- f. Percentage of EPA's interest;
- g. Location, use and condition (by site, activity, and operable unit, as applicable) and the date this information was recorded; and
- h. Ultimate disposition data, including the sales price or the method used to determine the price, or the method used to determine the value of the EPA's interest for which the recipient compensates EPA in accordance with section H7.

## **Background Information**

The Upper Tenmile Creek Mining Area Superfund Site is comprised of 150 abandoned or inactive mining sites within or near the historic Rimini Mining District in the Upper Tenmile Creek Watershed. Most historic mining activity in the watershed took place within the Rimini Mining District and included hard rock mining for gold, lead, zinc, and copper. Mining activity began in the 1870's and continued on through the 1930's. Mining activity became intermittent during and after World War II. The last active commercial mining in the Rimini Mining District ended in 1953. The Upper Tenmile Superfund site also includes the properties of the defunct Basin Creek Mine (BCM), an open pit gold mine that operated under a DEQ permit until the mid-1990's. The BCM is being reclaimed by the bankruptcy trustee for the former operator of the mine using money from a reclamation bond forfeited by the operator to DEQ upon bankruptcy.

In October 1999, the Upper Tenmile Creek Mining Area Site was added to EPA's National Priorities List (NPL) for Superfund Cleanup. EPA conducted residential yard remediation up through 2016 and the main road was remediated in 2011. 67 yards have been remediated to date.

Lewis and Clark County maintains a Cooperative Agreement with the EPA to provide technical assistance at the Upper Tenmile Creek Mining Area. This award allows Lewis and Clark County to implement components of an institutional control program to reduce residents' use of water that is potentially contaminated.

One of the activities identified in the Cooperative Agreement is the County's administration and management of a potable water distribution program. This includes maintenance of a contact list for delivery, ensuring the timely payment of invoices for water delivery services, and



replacement of water dispensers as needed. The purpose of this solicitation is to establish a contract for water delivery services not to exceed a five-year term.

## **Specifications and Considerations**

Bidders should consider the following expectations when developing their bid proposal:

- 1. Access and Equipment:** The selected bidder must ensure reliable access to residential properties year-round, including during winter months. This will require vehicles that are equipped to handle winter conditions, such as snow and ice, to ensure safe and consistent delivery. Trucks used for delivery must be capable of navigating potentially difficult roads and driveways in all weather conditions.
- 2. Delivery Frequency and Quantity:** The selected bidder is expected to deliver drinking water every two weeks on Monday, with each household receiving an average of three 5-gallon water jugs per delivery. The exact quantity may vary based on individual household needs, but the general expectation is to maintain a consistent schedule and quantity. Empty containers are picked-up and exchanged upon delivery for full containers.
- 3. Delivery Schedule and Communication:** Deliveries must occur on a predictable and consistent schedule to approximately 35 residences located on Rimini Road and Landmark Road. The selected bidder is expected to notify residents of any changes to the delivery schedule, including potential delays due to weather or other unforeseen circumstances. Clear and timely communication is essential to ensure residents are aware of any issues that may affect their water delivery. Some residents may choose to pick their water up in Helena due to limited access to their property.
- 4. Water Quality and Safety:** All delivered water must meet appropriate safety and quality standards. The selected bidder will be required to provide documentation or certification that the water delivered is safe for drinking, in accordance with federal and state drinking water standards. Residents may request other types of water, such as distilled, that may be approved on a case-by-case basis.

By meeting these expectations, the selected bidder will help ensure that residents in the Upper Tenmile Superfund area receive reliable access to clean drinking water throughout the year.

## BID PROPOSAL WORKSHEET

Return To: Lewis and Clark County  
 Board of County Commissioners  
 316 N. Park Avenue, Room 345  
 Helena, MT 59623

**Bids must be submitted no later than February 24, 2025 at 4:00 PM local time.**

**THE UNDERSIGNED BIDDER** has become familiar with the material solicited by Lewis and Clark County through the bid specifications. The Bidder agrees to follow and abide by all laws required in the State of Montana and Lewis and Clark County. The Bidder, having satisfied themselves of the product specifications, does submit the offer as follows:

**THE BIDDER HEREBY PROPOSES AND AGREES**, if this bid is accepted, to enter into an Agreement, with a negotiated initial term and renewal periods not to exceed seven years, to provide the material and/or services, and assumes all obligations, duties, and responsibilities specified herein for the following price:

Description:	Unit:	Unit Price:	Deposit:	Annual Delivery Amount:	Extended Price:
Potable Drinking Water	5-gallon container	\$	\$	Approx. 2,730 units	\$
<b>Extended Price/Total Bid Amount: (written out in dollars and cents)</b>					

**UNIT PRICE:** The total cost of a single unit including all discounts, fees, and costs associated with labor, freight, delivery, collection, etcetera.

**DEPOSIT:** The cost of the container deposit that is subtracted from unit price upon exchange.

**EXTENDED PRICE:** The *Unit Price*, minus the *Deposit*, multiplied by the *Annual Delivery Amount*.

Bidders shall provide information on its financial and business relationships with all potentially responsible parties (PRPs) at the site and with the bidder’s parent companies, subsidiaries, affiliates, subcontractors, or current clients at the site. This disclosure requirement encompasses past financial and business relations, including services related to any proposed or pending litigation, with such parties.

The PRP identified for this solicitation is the Environmental Protection Agency (EPA). Such information as noted above, if applicable, shall be provided in a separate document to this bid proposal worksheet.

Bidder shall mark one of the following options:

- Disclosure enclosed
- Not applicable

**THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT:**

1. This offer is genuine and is not made in the interest of, or on the behalf of, any undisclosed person or firm, and is not submitted as a result of any agreement with any association, corporation, or group.
2. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham offer.
3. The Bidder has not solicited or induced any person or firm to refrain from bidding.
4. The Bidder has not sought by collusion to obtain any advantage over any other bidder or over Lewis and Clark County.
5. The Bidder has carefully examined the contract documents pertaining to the work covered by the Bid.
6. In submitting this Bid, Bidder represents that Bidder has examined and carefully studied the Bidding Documents and any data and reference items identified in the Bidding Documents and hereby acknowledges receipt of the following addenda:

Addendum Number:

Addendum Date:

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Bidder Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Signature of Authorized Company Official Approving the Bid as Submitted:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Company Official's Signature

**Notarial Acknowledgement:**

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_  
(date)

by \_\_\_\_\_ as \_\_\_\_\_  
(name of authorized company official) (title)

of \_\_\_\_\_.  
(name of company)

Notary Signature: \_\_\_\_\_

[Seal] →

**Enclosures:**

- Bid Bond enclosed
- Disclosure statement enclosed (if applicable)

## LEWIS AND CLARK COUNTY PROFESSIONAL SERVICES CONTRACT

This Contract is entered into by and between Lewis and Clark County, Montana, herein referred to as "COUNTY", and Company Name, herein referred to as "CONSULTANT", whose address is Street, City, State, Zip Code, phone number is (XXX) XXX-XXXX, and Federal Employee Identification Number is XX-XXXXXX.

THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES:** CONSULTANT agrees to complete and perform the work or services in accordance with the solicitation, plans, and specifications attached and hereby incorporated as **Exhibit X**.
2. **INDEPENDENT CONTRACTOR:** COUNTY hereby employs CONSULTANT as an independent contractor to complete and perform the scope of services. It is understood by the parties hereto that the CONSULTANT is an independent CONSULTANT and that neither its principals nor its employees, if any, are employees of COUNTY for purposes of tax, retirement system, or social security (FICA) withholding. COUNTY shall not have control over the performance of this Contract by CONSULTANT or its employees, except to specify the time and place of performance. COUNTY shall not be responsible for security or protection of CONSULTANT'S supplies or equipment.
3. **WARRANTY:** CONSULTANT warrants that all services shall be performed in a professional manner. CONSULTANT acknowledges that it shall be liable for any breach of this warranty for a period of one (1) year from the time services are completed.
4. **LIAISON:** COUNTY'S designated liaison with CONSULTANT is Officer's Name, Officer's Title or their designee. CONSULTANT'S designated liaison with COUNTY is Name of Individual in Company.
5. **EFFECTIVE DATE AND TIME OF PERFORMANCE:** CONSULTANT shall commence work [a] by Month Day, Year or [b] upon approval of this Contract by both parties and shall complete the described work by Month Day, Year.
6. **COMPENSATION:** For the satisfactory completion of the scope services, COUNTY shall pay CONSULTANT time and materials for a total sum not to exceed Amount of Dollars/Cents (\$X,XXX.XX). CONSULTANT shall submit [a] monthly [b] quarterly or [c] final invoices to COUNTY based on **Exhibit X**, Schedule of Billing Rates. The COUNTY shall pay invoices within 30 days of invoice date.
7. **CONFLICT OF INTEREST:** CONSULTANT covenants that it presently has no interest and shall

not acquire any interest, direct or indirect, in the project, which would conflict in any manner or degree with the performance of its services hereunder. CONSULTANT further covenants that in performing this Contract it shall employ no person who has any such interest.

8. MODIFICATION AND ASSIGNABILITY OF CONTRACT: This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. CONSULTANT may not subcontract or assign its rights, including the right to compensation, or duties arising hereunder without the prior written consent of COUNTY. Any subcontractor or assignee shall be bound by all of the terms and conditions of this Contract.
9. OWNERSHIP AND PUBLICATION OF MATERIALS: All reports, information, data, and other materials prepared by CONSULTANT pursuant to this Contract are the property of COUNTY which has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended shall be at COUNTY's sole risk and without liability or legal exposure to CONSULTANT. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of COUNTY.
10. INDEMNIFICATION: CONSULTANT waives all claims and recourse against COUNTY, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incidental to CONSULTANT's performance of this Contract except for liability arising out of concurrent or sole negligence of COUNTY or its officers, agents or employees. Further, CONSULTANT shall indemnify, hold harmless, and defend COUNTY against all claims, demands, damages, costs, expenses or liability arising out of CONSULTANT's negligent performance of this Contract except for liability arising out of the concurrent or sole negligence of COUNTY or its officers, agents or employees.
11. INSURANCE: CONSULTANT shall maintain general liability insurance from an insurance carrier licensed to do business in the State of Montana in the amount of one million dollars (\$1,000,000.00) for each occurrence (minimum) and two million dollars (\$2,000,000.00) aggregate. CONSULTANT also agrees to maintain workers compensation insurance from an insurance carrier licensed to do business in the State of Montana. Proof of general liability and workers compensation insurance shall be provided to COUNTY prior to commencing work under this Contract. COUNTY must be listed as an additional insured on the general liability insurance certificate for this Contract.
12. COMPLIANCE WITH LAWS: CONSULTANT shall comply with applicable federal, state, and local laws, rules and regulations. CONSULTANT or subcontractors doing work on this project shall be required to obtain registration with the Montana Secretary of State's Office and the

Montana Department of Labor and Industry. CONSULTANT is responsible for obtaining any and all permits required to perform the Contract.

13. NONDISCRIMINATION: CONSULTANT shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin, or sexual orientation.
14. PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE: Performance of this Contract is in Lewis and Clark County, Montana and venue for any litigation arising from performance of this Contract is the 1st Judicial District in and for the County of Lewis and Clark, State of Montana. This Contract shall be construed under and governed by the laws of the State of Montana.
15. ATTORNEY FEES: Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Contract, the prevailing party, whether plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees. If the court, arbitrator, or mediator awards relief to both parties, each party shall bear its own costs in their entirety.
16. FAILURE TO PERFORM: Upon any material default or substantial failure to perform this Contract by either party, the other party shall be entitled to the following remedy:
  - a. Stop performing or accepting performance of the work until the matter is resolved;
  - b. Within a reasonable time of discovery of the defect or failure to perform, provide the other party with a written description of the defect or failure, and:
    - i. If the defect or failure to perform can be cured, demand specific remedial action within a reasonable time certain; or
    - ii. If the defect or failure to perform cannot be cured, specify any alternative performance which would be acceptable in lieu of the required performance and a time within which the alternative performance shall be required; or
    - iii. If the defect or failure to perform cannot be cured and no reasonable alternative performance is acceptable, notify the other party of the termination of the Contract as of a date certain and state therein whether an action for breach of the Contract will be brought.
    - iv. Where appropriate, obtain completion of the performance of the remaining balance of the Contract within the original party.
  - c. If the defect or failure to perform is not corrected or alternative performance completed within the time certain specified, the party alleging breach may initiate an action in the 1st Judicial District in and for the County of Lewis and Clark, State of Montana. If an action is brought, the prevailing party shall be entitled to attorney's fees as well as other costs of suit.

17. TERMINATION: Either party may terminate this Contract upon thirty (30) days written notice to the other party. If this Contract is terminated prior to completion, COUNTY shall pay CONSULTANT for completed and accepted work within thirty (30) days of termination. CONSULTANT shall not be entitled to payment for incomplete or unacceptable work.