**STATE OF MISSISSIPPI**

 **DEPARTMENT OF WILDLIFE, FISHERIES and PARKS**

 **CONTRACT**

1. **Parties.** This contract is made and entered into by and between the Mississippi Department of Wildlife Fisheries and Parks (MDWFP), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Independent Contractor).

2. **Purpose.** MDWFP hereby engages the services of the Independent Contractor, and the Independent Contractor hereby agrees to render those certain services described in Paragraph 3, "Scope of Services", below.

3. **Scope of Services.** The contractor will provide professional consulting services to MDWFP as specified in “Attachment 2” of the Request for Proposals, here in after referred to as Exhibit “A”.

4. **Period of Performance.** The period of performance of services under this Contract shall begin on \_\_\_\_\_\_\_\_\_\_\_\_\_, and end on October 31, 2019.

5. **Consideration and Method of Payment.**

A. As consideration for the performance of this Contract, the Independent Contractor shall be paid a fee in an amount \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. Independent Contractor shall submit an invoice to MDWFP, with the appropriate documentation, on the last working day of the month, with the final invoice to be submitted within five (5) working days after the Contract ending date.

6. **Relationship of Parties.** It is expressly understood and agreed that MDWFP enters into this Contract with Independent Contractor based on the purchase of services and not based on an employer-employee relationship. For all purposes under this Contract:

A. Independent Contractor represents that it has, or will secure, at its own expense, personnel qualified to perform the duties required to be performed under this Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be employees of MDWFP.

B. Any person employed by Independent Contractor to perform the services hereunder shall be the employee of Independent Contractor, who shall have the sole right to hire and discharge its employee.

C. It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Independent Contractor shall be paid as a gross sum with no withholdings or deductions being made by MDWFP for any purpose from said Contract sum.

D. Independent Contractor shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of Federal Income Tax, State Income Tax, Social Security, Unemployment Compensation and any other withholdings that may be required.

7. **Termination.** Either MDWFP or Independent Contractor may terminate this Contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination.

 **Termination for Convenience**

 (1) *Termination.* The procurement officer may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

 (2) *Contractor's Obligations.* The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the PSCRB Rules and Regulations Manual Page 162 Effective Date 1/01/2013 terminated work. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

 **Termination for Default**

 (1) *Default*. If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the procurement officer may notify the contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the procurement officer, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the procurement officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the procurement officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

 (2) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the State has an interest.

 (3) Compensation. Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due the contractor such sums as the procurement officer deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

 (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the contractor has notified the procurement officer within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and PSCRB Rules and Regulations Manual Page 163 Effective Date 1/01/2013 performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

 (5) *Erroneous Termination for Default.* If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

 (6) *Additional Rights and Remedies. The* rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

8. **Ownership of Documents and Work Product.** All documents, notes, programs, books, data bases (and all applications thereof), files, reports, studies, unfinished documents and/or other materials collected or prepared by Independent Contractor specifically at the request and solely for the use of MDWFP, which information is not of the sort that would be compiled in the ordinary course and scope of Independent Contractor's regular business activities, shall be owned by MDWFP upon completion or termination of this agreement. MDWFP reserves the rights to any and all information and/or materials collected on its behalf.

9. **Record Retention and Access to Records.** Independent Contractor shall maintain, and shall make available to MDWFP or any state agency authorized to audit MDWFP, financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Contract. These records shall be maintained for at least three (3) years; however, if any litigation or other legal action, by or on behalf of the State or Federal Government has begun that is not completed at the end of the three (3) year period, or if audit findings, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

10. **Modification or Amendment.** Modifications, changes or amendments to this Contract may be made upon mutual agreement of the parties, in writing and signed by the parties hereto.

11. **Assignment.** The Independent Contractor may not assign or otherwise transfer its obligations or duties under this Contract without the prior written consent of MDWFP. Any attempt to assign or transfer the obligations and duties hereunder without such consent shall be void.

12. **Waiver.** Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power thereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Contract.

13. **Availability of Funds.** It is expressly understood that the obligation of the MDWFP to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi, to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDWFP, the MDWFP shall have the right upon ten (10) working days written notice to the Independent Contractor, to terminate this agreement without damage, penalty, cost or expenses to the MDWFP of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

14. **Indemnification.** Independent Contractor agrees to indemnify, defend, save and hold harmless MDWFP from and against all claims, demands, liabilities, suits, damages and costs of every kind and nature whatsoever, including court costs and attorney's fees, arising out of or caused by Independent Contractor, its agents or employees in the performance of this Contract.

15. **Insurance.** Where applicable, Independent Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Independent Contractor's personnel provided hereunder, comprehensive general liability, and, where applicable, employee fidelity bond insurance. Independent Contractor will furnish MDWFP with a certificate of insurance providing the aforesaid coverage(s).

16. **Governing Law and Legal Remedies.** This Contract shall be construed and governed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. The Independent Contractor shall comply with applicable Federal, State and local laws and regulations. The Independent Contractor expressly agrees that under no circumstances shall MDWFP be obligated to pay an attorney's fee or the cost of legal action to the Independent Contractor.

17. **Severability.** If any term or provision of this Contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

18. **Disputes.** Any dispute concerning a question of fact arising under this Contract shall be disposed of by good faith negotiation between a duly authorized representative of MDWFP and the Independent Contractor. Should such negotiation fail to resolve any differences or disputes, the issue shall be submitted to litigation before a court of competent jurisdiction in Hinds County, State of Mississippi. Pending final decision of a dispute hereunder, the Independent Contractor shall proceed diligently with the performance of the duties and obligations of this Contract.

19. **Compliance with Laws.** Independent Contractor understands that the MDWFP is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, creed, color, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state or local laws. All such discrimination is unlawful and the Independent Contractor agrees during the term of the agreement that the contractor will strictly adhere to this policy in its employment practices and provision of services. The Independent Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable laws, regulations, policies and procedures of the United States of America or any agency thereof, the State of Mississippi or any agency thereof and any local governments or political subdivisions, as now existing or as may be amended or modified.

Further, this agreement shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, MS or downloadable at <http://www.mspb.gov>.

20. **E-Verify.** Contractor/Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor/Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

21. **REPRESENTATION REGARDING CONTINGENT FEES**

The contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the contractor’s bid or proposal.

22. **REPRESENTATION REGARDING GRATUITIES**

The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Rules and Regulations.

23. **STOP WORK ORDER**

**(1) Order to Stop Work:** The procurement officer, may, by written order to the contractor at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the procurement officer shall either:

 **(a)** cancel the stop work order; or,

**(b)** terminate the work covered by such order as provided in the Termination for Default Clause or the Termination for Convenience Clause of this contract.

**(2)** Cancellation or Expiration of the Order: If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contractor price, or both, and the contract shall be modified in writing accordingly, if:

**(a)** the stop work order results in an increase in the time required for, or in the contractor’s cost properly allocable to, the performance of any part of this contract; and,

**(b)** the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(**3) Termination of Stopped Work**: If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

(**4) Adjustments of Price:** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

24. **Transparency**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,”codified as section 25-61-1 et seq., MississippiCode Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated(1972, as amended). In addition, this contract is subject to the provisions of the MississippiAccountability and Transparency Act of 2008 (MATA), codified as Section 31-7-13 of theMississippi Code Annotated (1972, as amended). Unless exempted from disclosure due to acourt-issued protective order, this contract is required to be posted to the Department of Financeand Administration’s independent agency contract website for public access. Prior to posting thecontract to the website, any information identified by the Contractor as trade secrets, or otherproprietary information including confidential vendor information, or any other informationwhich is required confidential by state or federal law or outside the applicable freedom ofinformation statutes will be redacted.

25. **PAYMODE**

Payments by state agencies using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor’s choice. The State may at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

26. **E-PAYMENT**

Contractor agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” Mississippi Code Annotated § 31-7-301, et seq., which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice.

27. **Notices.**

 All notices required or permitted to be given under this Contract shall be in writing and sent by United States Certified Mail, Postage Prepaid, Return Receipt Requested, to the party to whom the notice should be given at the address set forth below. Notice shall not be deemed given when actually received or refused. The parties agree to promptly notify each in writing of any changed address.

MDWFP: Sam Polles, Ph.D., Executive Director

**Mississippi Department of Wildlife, Fisheries and Parks**

P.O. Box 451

Jackson, Mississippi 39205-0451

INDEPENDENT

CONTRACTOR:

28. **Entire Agreement.** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

IN WITNESS WHEREOF, this contract has been entered into and executed by the parties hereto in duplicate originals.

This \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

**Mississippi Department of Wildlife, Fisheries and Parks**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sam Polles, Ph.D.

Executive Director

**Independent Contractor**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_