

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

Agreement made and entered into this 18th day of March, 2013, by and between the State of South Dakota, Department of Game, Fish and Parks, a state agency, of 523 East Capitol Avenue, Pierre, SD 57501, (the "State") and Wildlife Management Institute (Steven A. Williams, President), of 1440 Upper Bermudian Road, Gardners, PA 17324, (the "Consultant") and approved by the Office of Governor of the State of South Dakota.

WHEREAS, RFP # 2018 was issued on behalf of the Office of the Governor of the State of South Dakota to conduct an independent professional evaluation of processes associated with the management of big game animals by the South Dakota Department of Game, Fish and Parks and the South Dakota Game, Fish and Parks Commission; and

WHEREAS, following review of submitted proposals, the Office of the Governor recommended that a contract be awarded to Wildlife Management Services Institute-WMI, and the Game, Fish and Parks Commission amended its budget to provide the Department of Game, Fish and Parks with funding authority for entry into a professional services contract;

NOW, THEREFORE, the State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The purpose of this Agreement is for Consultant to provide an independent evaluation of the processes utilized by the Department of Game, Fish and Parks and Game, Fish and Parks Commission's in conjunction with the management of deer, elk, antelope, and mountain lion populations (hereafter referred to as "big game") in South Dakota. "Management" as used herein describes all of the components that go into the process of managing big game including research, surveys, internal procedures, internal/external communications, and the development of hunting seasons and the allocations of licenses for those hunting seasons.

2. The Consultant will perform the following described services:

The Consultant shall perform the services and provide the deliverables listed in the "Scope of Components and Deliverables" of Section 3.3 of RFP #2018. In performing the services and providing the deliverables, the Consultant shall identify strengths and weaknesses of current management systems used and provide recommendations for improvement of the system with particular attention paid to the development and adoption of hunting season structures and hunting license allocations. The Consultant shall review the process of development and promulgation of rules for big game hunting and big game hunting allocations in South Dakota. The Consultant shall also adhere to the "Goals/Objectives" set forth in Section 3.2 of RFP #2018.

In performing the services and providing the deliverables, to the extent not inconsistent with the provisions in this Agreement, Consultant will follow the "Revised 2013 Project Plan and Schedule" and the "Project Plan Narrative" set forth in Consultant's response to RFP #2018. The Consultant shall provide all drafts and final deliverables for review to the person named

in paragraph 23 of this Agreement. That person shall also determine whether the services and deliverables are satisfactory to the State for purposes of payment.

3. The Consultant agrees to perform professional services in connection with providing the deliverables as set forth herein. In the performance of these services, the Consultant, its employees and subcontractors shall exercise the degree of skill and care consistent with customarily accepted professional and technical practices and procedures for the performance of the type of services required under this Agreement, while providing services as expeditiously as possible. The Consultant shall be responsible to the State for deficiencies in the services provided which result from the failure to meet the standard given herein.

4. The Consultant's services under this Agreement shall commence on April 1, 2013, and shall be completed by no later than October 1, 2013. This Agreement shall terminate upon final delivery and acceptance of all deliverables and payment by the State or as otherwise provided in this Agreement.

5. The Consultant will not use State equipment, supplies or facilities. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

6. The State will make payment for services upon satisfactory completion of the services. The agreed upon hourly rate for services performed under this Agreement is set forth in the "Pricing Worksheet" of Consultant's "Revised Proposal Amount" set forth in Consultant's response to RFP #2018. The State will pay Consultant's reasonable expenses as a separate item. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$131,050.00. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26. The above amount includes all applicable state and municipal sales and use taxes on materials, and state and municipal excise taxes and all other state, local and federal taxes that would affect the amount of the contract.

7. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

8. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

C. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

9. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

10. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

11. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it

is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

12. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Game, Fish and Parks Commission for this purpose. If for any reason the Game, Fish and Parks Commission fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

13. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

16. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

17. The Consultant shall keep confidential all State Propriety Information. The Consultant shall also keep confidential all personal identification data of all individuals from whom information is received as part of its evaluation services, provided, however, that Consultant is not required to keep confidential the names and positions of state officers from whom information is received. "State Propriety Information" shall include all information disclosed to Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Propriety Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents, or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this

contract and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. Consultant agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses, and all other data about applicants, employers, or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under State law at SDCL 1-27-1.5 and federal regulation at 20CFR 603 and agrees to immediately notify the State if the information is disclosed, either intentionally, or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Permission is hereby granted to disclose State proprietary information, other than information about applicants, employers of clients, if reasonably necessary to carry out the purposes of this agreement. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

18. From time to time it may be necessary or desirable for either the State or the Consultant to propose changes in the Services provided. Such changes shall be effective only if they are in writing and contain the dated signatures of authorized representatives of both parties. Unless otherwise indicated, a change or amendment shall be effective on the date it is signed by both parties. Automatic upgrades to any software used by the Consultant to provide any services that simply improve the speed, efficiency, reliability, or availability of existing services and do not alter or add functionality, are not considered "changes to the Services" and such upgrades will be implemented by the Consultant on a schedule no less favorable than that provided by the Consultant to any other customer receiving comparable levels of services.

19. Notwithstanding anything in this Agreement to the contrary, Consultant shall not be liable for any delay or failure to provide the Services hereunder, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake, or any act of God, or other causes beyond Consultant's reasonable control. Provided, however, that in order to be excused from delay or failure to perform, the Consultant must act diligently to remedy the cause of such delay or failure.

20. Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Consultant in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

21. Except as otherwise expressly prohibited by law, the Consultant will:
- a. Immediately notify the State of any subpoenas, warrants, or other legal orders, demands, or requests received by the Consultant seeking State and/or End User Data maintained by the Consultant;
 - b. Consult with the State regarding its response;
 - c. Cooperate with the State's requests in connection with efforts by the State to intervene and quash or modify the legal order, demand, or request; and
 - d. Upon the State's request, provide the State with a copy of its response.

22. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

23. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Nathan Sanderson on behalf of the State, and by and to Steven A. Williams, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

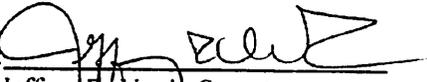
24. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

25. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

CONSULTANT

BY: 
Jeffrey R. Vonk, Secretary
Department of Game, Fish and Parks

BY: 
Steven A. Williams, President
Wildlife Management Institute-WMI

3/18/13
(DATE)

3/18/13
(DATE)

APPROVED BY: 
Office of the Governor

03-18-2013
(DATE)

- State Agency Coding (MSA Center) _____.
- State Agency MSA Company for which contract will be paid _____.
- Object/subobject MSA account to which voucher will be coded _____.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract _____.