

**BID SPECIFICATIONS AND CONTRACT DOCUMENTS FOR
THE ACQUISITION OF ONE 2021 OR NEWER MOTOR
GRADER**

May XX, 2021

Broadwater County, Montana
515 Broadway Street Townsend, MT 59644

BIDDER'S NAME: _____

INFORMATION FOR BIDDERS

Bids will be received by Broadwater County (herein called the "Owner"), at the Commissioners' office, 515 Broadway Street, Townsend, MT 59644 until 1:00 p.m., local time on Tuesday, October 13, 2020. The bids will be publicly opened and read aloud at the regularly scheduled County Commissioners Public Meeting to be held in the Flynn Building at the Broadwater County Broadway Annex, on Tuesday, October 13, 2020, at 1:00 p.m. The envelope shall be plainly marked on the outside with the words "Bid Response – Motor Grader Bid"

Each bid must be submitted in a sealed envelope, addressed to the Broadwater County Commissioners, at 515 Broadway Street, Townsend, MT 59644. Each sealed envelope containing a bid must be plainly marked on the outside as "Bid Response – One Grader – 2021" and the envelope shall bear on the outside the name of the Bidder and its address. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as above.

BOARD OF COUNTY COMMISSIONERS
Broadwater County Administrative Office Building
515 Broadway Street
Townsend, MT 59644

Notwithstanding the attached cover sheet/title page, all bids must be made on the required bid form. All blank spaces for bid prices must be filled-in in ink or typewritten, and the bid form must be fully completed and executed when submitted. Only one copy of the bid form is required.

The Owner may waive any informalities or minor defects or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No Bidder may withdraw a bid within thirty (30) days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the Bidder.

The Bid documents contain specifications of the goods to be furnished. Information obtained from an officer, agent, or employee of Owner or any other person shall not affect the risks or obligations assumed by the Bidder or relieve him from fulfilling any of the conditions of the Agreement.

The party to whom award is made will be required to contract with Owner within ten (10) calendar days from the date when Notice of Award is delivered to the Bidder. A Notice of Award shall be accompanied by the necessary agreement. In case of failure of the Bidder to contract with Owner, the Owner may at his option consider the Bidder in default, in which case the bid bond accompanying the proposal shall become the property of the Owner.

The Owner, within ten (10) days of receipt of any agreement, shall sign the agreement and return copy. Should the Owner not execute the agreement within such period, the Bidder may by written notice, withdraw his signed agreement. Such notice of withdrawal shall be effective upon receipt of the notice by Owner.

A Notice to Proceed shall be issued within ten (10) days of the execution of the agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Owner and the Supplier. If the notice to proceed has not been issued within the ten (10) day period or within the period mutually agreed upon, the Supplier may terminate the agreement without further liability on the part of either party.

The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that Bidder is properly qualified to carry out the obligations of the agreement and to complete the work contemplated therein.

A conditional or qualified bid will not be accepted. Award will be made to the lowest responsive and responsible Bidder.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over suppliers of equipment shall apply to the agreement throughout.

SUPPLEMENTARY INFORMATION FOR BIDDERS

1.1 GENERAL REQUIREMENTS: Each bid must be accompanied by Bidder's accurate and complete list of written specifications and standard options covering the goods which it is proposing to furnish and to which the goods delivered under the contract must conform.

1.1.2 It is the intent of these specifications to cover performance and delivery to the Owner complete goods equipped as specified. All specifications herein contained are considered as minimum. Some items have been specified by brand name or model number. These have been carefully selected because their reliability, compatibility with present equipment, and local availability of parts. Bids may be rejected which substitute less substantial materials and/or methods than those specified.

1.1.3 Bidder shall fully comply with Product Minimum Specification List. Bidder shall note its inability to meet the specification or propose an alternative. Failure to provide the required exception list with the bid proposal will be cause for rejection of the proposal.

1.1.4 Such details and other construction features not specifically covered herein or not at variance with these specifications should conform with standards legally recognized or developed in the trade of producing such goods.

1.2 RELIABILITY OF CONTRACTOR: Contractor shall furnish satisfactory evidence that he has the ability to construct the goods specified, and shall state in the bid proposal the location of the factory where goods were built.

1.2.1 Proposals will only be considered which are submitted using the latest technologies and governing standards.

1.2.2 All Bidders shall provide, upon request, the names of current owners where similar goods have been furnished. Bidders shall provide the name and telephone number of a contact person for each location listed.

1.3 INSURANCE REQUIREMENTS: Each Bidder must submit upon request a Certificate of Insurance listing the proposed manufacturer's product liability insurance coverage. The submitted Certificate shall name the goods manufacturer, insurance company, policy number, and effective dates of the insurance policy. Bids submitted without the required Certificate will be considered non responsive and may be automatically rejected.

1.3.1 The manufacturer shall maintain full insurance coverage on the goods from time of first possession by the bidder until the goods are delivered and accepted by the Owner. Owner reserves the right to require proof of insurance from the manufacturer's insurance carrier prior to entering into a contract for the goods.

1.4 REJECTIONS OF PROPOSALS: The right is reserved to reject any or all proposals or to accept such proposal as is in the best interest of the Owner.

- 1.4.1 Owner does not, in any way, obligate itself to accept the lowest Bid.
- 1.4.2 Proposals may be rejected for any alteration, erasures, or penciled entries.
- 1.4.3 Bidder's taking "total exception" to these specifications are hereby advised that any such statement will result in immediate rejection of the bid proposal.

1.5 ALTITUDE REQUIREMENTS: The goods shall be designed to meet the specified rating at Owner's destination altitude.

1.6 SERVICE REQUIREMENTS: To provide the Owner with a source of parts over the anticipated life of the goods, goods manufacturer shall have available for immediate shipment, a complete line of replacement parts for the goods. Bidder shall indicate in his bid the name and location of a factory backed service facility which would service the goods should the need arise.

1.7 CONTRACT AWARD: Contract will be awarded to the most "responsible bidder", provided that bid is in the best interest of the Owner.

- 1.7.1 When analyzing the bid proposals, and in recommending a successful Bidder, superior design, workmanship, materials, operating costs, past experience, length of incorporation and compliance to specifications will be taken into consideration.
- 1.7.2 Nationally recognized financial ratings will be used as a determining factor of the financial strength and stability of the manufacturing company being bid, and may be considered when selecting the successful Bidder.
- 1.7.3 Owner reserves the right to waive any formality in the bids received when such waiver is in the best interest of the Owner and, also, to accept any item in the Bid found to be of superior quality or otherwise preferred by the Owner.

1.8 RESERVED

1.9 Final delivery price shall not include any Local, State or Federal taxes. The Bidder shall not be liable for any State or Federal mandated tax or program after sale or delivery of the goods.

1.10 Bidder shall be responsible to assure all goods delivered **will meet all specifications and applications set forth in the attached Bid Specifications.**

1.11 Bidder will provide blank copies of any and all standard form documents it will propose as forming additional terms and condition of the contract for the lease/purchase of the goods. Bidder understands and acknowledges Owner may reject all or any portion of the standard form documents. Such acknowledgement by Bidder is made with complete understanding of the prospect of default under the provisions of these contract documents and, in addition, forfeiture of the Bid Bond.

1.12 As the bid is for the purchase of goods the Additional Bid Form is included for the Bidder to give additional information to Owner for evaluation. This includes the trade-in amount Bidder will

give for transfer of title for existing grader currently operated by Owner. In addition, the price bid shall be evaluated on the total price for one Motor Grader after trade in credit.

1.13 TRADE-IN

Each bidder will be expected to state a value of a used motor grader Broadwater County may wish to trade in, and which will reduce the purchase price. The motor grader is a used **2010 Caterpillar 160M AWD, Serial # D9T00157**. The value stated by the bidder for the machine must be stated separately on the Bid Form. In accepting the bid from the successful bidder, Broadwater County may elect to trade any, all or none of the used equipment, and if Broadwater County elects to trade in any such item or items, the successful bidder shall receive such equipment at the time of delivery of the motor grades. The successful bidder will be responsible for transporting any such equipment from Broadwater County. Any items to be traded in shall be accepted by the bidder "as is", with no warranties and/or representations whatsoever. Upon reasonable advance notice, any bidder may inspect any of the items proposed for trade-in by contacting Josh Obert. The transfer of any such item of equipment shall be by bill of sale delivered to the successful bidder at the time of delivery of the motor graders.

BROADWATER COUNTY, MONTANA
BID FORM AND SPECIFICATIONS

Proposal of _____,
hereinafter referred to as "Bidder", organized and existing under the laws of the State of _____,
doing business as: _____ * Broadwater County, Montana, hereinafter referred to as "Owner".

* Insert "a corporation", "a partnership", "an individual" or other legal entity as applicable.

In compliance with Owner's Advertisement for Bids, Bidder hereby proposes to deliver to the Owner, one or more Motor Grader (s) in strict accordance with the Contract documents, within the time set forth therein, and at the price stated below.

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party hereto certifies as to his own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees to provide the one Motor Grader, as specified under this contract, on or before a date to be specified by the Owner, and to fully comply with all requirements as set forth in the bid documents.

Bidder states that the prices listed herein shall include all labor materials, removal, overhead, profit, insurance and all other costs relating to the providing of the one or more Motor Grader(s).

Bidder understands that the Owner reserves the right to reject any or all bids for any reason, to waive any informalities in the bids received, and to accept the bid which best serves the interests of Owner.

Bidder states that he has thoroughly read all bid documents and submits his bid based upon the same, and agrees to fully comply with all requirements set forth therein. Bidder also represents that the person below signed has authority to make such bid.

Manufacturer: _____

Facility where goods manufactured: _____

Facility where replacement parts may be obtained: _____

“Exceptions to Specifications”: _____

Name of Bidder: _____

Mailing Address of Bidder: _____

Street Address of Bidder: _____

City, State, Zip Code of Bidder: _____

Seal

Signature: _____

Title: _____

Date: _____

Bid Specifications for one motor grader.

The Motor Grader shall be new, current year manufacture, that is of the manufacturer’s latest design and production, complete, serviced, and ready for work and includes all standard equipment. Additionally, all major machine components must be manufactured by the machine manufacturer (such as engine, transmission, etc.). Quoted machines must include a complete list of all standard manufacturer’s features and options. All features and specifications must be standard manufacturer installed (OEM). Machines quoted must be a NACD product made for the North American market. Absolutely no “gray market” machines are acceptable.

The vendor or manufacturer of the motor grader, which are seriously considered for award, shall, at the request of the customer, demonstrate said motor grader(s) at a location chosen by the customer and in the presence of an authorized customer representative(s) to prove out any features which may be in question. Failure of the demonstration machine(s) to meet customer requirements may be adjusted as nonconformance to these specifications.

The quoted Motor Grader(s) must meet the following specifications:

PRODUCT MINIMUM SPECIFICATIONS

- GENERAL:** Preapproved Models: Caterpillar 160M3AWD, John Deere 872GP, or Equivalent. Base machine weight shall not be less than 38,320 lbs.
- ENGINE:** Machine shall have a minimum of 9.0 L - 548 cu. in. displacement. Machine shall have no less than 272 hp.
- TRANSMISSION:** Auto-shift transmission with transmission solenoid valve guard
- WHEEL DRIVE:** 6 Wheel Drive.
- STEERING:** Full Hydraulic Power Steering on Front Wheels. Frame Articulation-Hydraulically Actuated. Steering wheel consideration Armrest/joystick controlled (electric over hydraulic). Must have secondary steering.
- BRAKES:** Service-Foot Operated, effective on all 4 Tandem Wheels. Parking-Hand Operated, effective on all 4 Tandem Wheels
- MOLDBOARD:** 14 Foot Long, 27 Inch High, 1” Inch (minimum) Thick with 5/8 inch or 3/4 inch bolt holes. Hydraulic Side Shift and Tilt.
- TIRES:** 17.5 X 25 inch Michelin X-Snow Plus
- CAB:** Fully enclosed ROPS Short Cab with opening FT/Side. Minimum 40,000 BTU/hr Heavy Duty Heater, Air Conditioner, Defroster and Floor Mat, AM/FM Stereo and 24 to 12 converter for phone and accessories.

Electronic Monitoring System on Console to monitor the following Functions:

1. Service Brake Pressure
2. Hydraulic Oil Temperature
3. Transmission Oil Temperature
4. Park Brake "On"
5. Engine Oil Pressure
6. Alternator Volts
7. Engine Air Filter Restriction
8. Transmission Oil Filter
9. Differential Lock
10. Service Code Warning
11. Saddle Lock Pin

Additional Equipment (Minimum Specs)

1. Differential Lock
2. High Output 130amp alternator
3. Articulation Indicator
4. Deluxe Driving Lights – with 2 additional cab roof lights, Stop and Tail with Turn Indicators and 4-way Flashing
5. Cross Slope System
6. Work Lights – 2 Front and 2 Rear
7. Blade Lights
8. Deluxe Suspension Seat
9. Engine Coolant Heater
10. Ether Start Aid
11. Toolbox
12. Transmission Bottom Guard
13. Engine Side Shields
14. Front Lift Group – Front mounted with float position that will fit county V- Plows
15. Hour Meter
16. 24 Volt Starting
17. Seat Belt
18. Strobe Beacon
19. Outside (heated/defrost capable) and Inside Rear View Mirror
20. Fully Adjustable Control Console
21. Heavy Duty Batteries 1300 CCA
22. Window Defroster Fans
23. Accumulators for protection from upward forces to blade
24. Blade Lift Protection and Blade Float
25. Front Scarifier Hydraulics for V-Plow
26. Upper and Lower front wipers and rear wiper and washers
27. Optional Circle Drive Relief Valve or slip clutch or accumulators
28. Rear Ripper with Float Control on Ripper Hydraulics or Accumulators
29. Horn
30. Back-Up Alarm
31. Floor Heater 20,000 BTU/hr or Vents on Floor
32. Hydraulics etc. for possible wing attachment
 - Option A: With Snow Removal Equipment installed – including 12' Postless

Hydraulic Wing and 14' Henke Hydraulic FVX14 Hydraulic VFLOW with Mechanical Float/Diverter Kit/Stucci Quick Couplers/Mushroom Shoes – Operational from Cab

- Option B: Without Snow Removal Equipment

Motor Grader manufacturer, year, and model number first machine:

Motor Grader manufacturer, year, and model number second machine:

Miscellaneous Specifications/Requirements

- Full machine warranty to include all parts and labor required for four (4) years or four thousand (4,000) hours of operation, whichever occurs first from date of delivery, or for the entire lease period. Warranty repairs will be provided during regular working hours.
- Bidder will provide two sets of all service manuals, parts books, and operator manuals.
- Quoting dealer must be a factory authorized servicing and warranty repair dealer with manufacturer trained service personnel on all aspects of any unit quoted/sold.
- Servicing/selling dealer must employ at least one factory authorized field mechanic living within 100 miles of Broadwater County. No travel time or mileage will be charged to Broadwater County Road Department while under warranty.
- Warranty work will be performed in a manner by agreement of owner.
- Every machine bid may be subject to a demonstration period of no less than 5 workdays and 40 hours prior to purchase decision at the convenience of the Broadwater County Road Department at no cost.
- Parts will be OEM and available within 24 hours if ordered by 4:00 pm MST. Dealer will have at least 92% over the counter availability on product quoted and will be asked to provide proof.
- Delivery of the machines shall be within 120 days or as approved by owner following receipt of completed contract.
- The successful bidder shall deliver quoted machine and provide a minimum 8 hours of operation, maintenance and safety training by a factory authorized Certified Trainer at the Broadwater County Road Department

shop. Refresher operation, maintenance and safety training will also be provided each year by the same or equal qualified trainer while under warranty at no additional cost.

- Bidder is to provide oil sample bottles for full sampling for four (4) years or four thousand (4,000) hours or for the entire lease period.
- Annual machine inspection and adjustments as prescribed in the maintenance guides shall be provided by the dealer, performed in the field, unless convenient prior arrangements are made.
- Machine transport costs to the repair facility and back to the county, or travel time and mileage, during the “Warranty” period will be provided by the dealer.
- 95% guaranteed machine availability (computed on a 2080 hour work year). After any continuous downtime greater than 40 work week hours, a replacement comparable machine shall be provided or an hourly assessment of \$60.00 per hour shall be charged to the dealer to cover a replacement rental machine. \$200.00 per hour shall be charged the dealer at the anniversary date for downtime in excess of 5%.
- Delivery shall be F.O.B. Broadwater County Road Department, Townsend, Montana.
- All replacement parts shall be original equipment parts or remanufactured parts recommended and warranted by bidder, and the parts shall be provided within forty-eight
- (48) hours of notification. The owner shall have the option of accepting or rejecting remanufactured components.
- Broadwater County reserves the right to void authorization if representative arrives late, impaired, without necessary tools, or is obviously unable to determine or repair the problem.
- In all cases, the dealer shall be the sole source of contact regarding service, major maintenance, periodic inspection, parts availability, and buy back requirements for the motor graders.
- If an additional Warranty, Guarantees, and/or Extended Coverage is offered, please attach a written statement.
- If there are other specifications that may be unique or standard concerning your equipment, please attach a written statement.

BID FORM:

No trade-in will be included in this purchase.

PURCHASE PRICE OF MOTOR GRADERS:

38,650lbs. motor grader

\$_____

OPTION:

Four (4) year lease with option to purchase No Balloon Payment

Included in Lease Description

- Annual Payment
- Interest Rate
- Monthly Amortization Schedule
- Year-End Payment Values

NOTICE OF AWARD

TO: _____

DESCRIPTION: PURCHASE OF ONE (1) or more MOTOR GRADER(s)

The OWNER has considered the BID submitted by you in response to its bidding requirements.

You are hereby notified that your Bid has been accepted for items in the amount of

\$_

You are required to execute the attached documents within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said documents within ten (10) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of you Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return this Notice of Award to the Owner, Broadwater County, Montana

By: _____

_____ Date

Title:

ACCEPTANCE OF AWARD

The undersigned states that he has read and fully understands the foregoing Notice of Award, and accepts the same.

DATED this _____ day of _____, 2021.

CONTRACTOR:

By: _____

Title: _____

NOTICE TO PROCEED

TO:

DESCRIPTION: Purchase of one new Motor Grader

You are hereby notified to commence performance in accordance with the contract documents dated _____, 2021, you are to deliver the goods within _____ days.

DATED this _____ day of _____, 2021.

BROADWATER COUNTY, MONTANA

By: _____
Title: _____

ACCEPTANCE OF NOTICE TO PROCEED

The undersigned states that he has read and fully understands the foregoing Notice to Proceed, and accepts the same.

DATED this _____ day of _____, 2021.

CONTRACTOR:

By: _____
Title: _____

CONTRACT

Agreement made on _____, 2021 between, Broadwater County, Montana, ("Owner"), and _____ ("Supplier").

Owner and Supplier, for the consideration set forth herein, agree as follows:

1. The Supplier will commence and complete the delivery of one new Motor Grader.
2. The Supplier will furnish all goods and other collateral items as set forth in the Agreement
3. The Supplier will commence the required work within ten (10) calendar days after the date of the Notice to Proceed and will complete the same within the period specified herein.
4. The Supplier agrees to furnish all of the goods described herein for the sum of \$ _____, or as shown in this Agreement.
5. This Agreement includes, by attachment, the following:

Motor Grader Bid Specifications
General Conditions

Agreement Form

Bid Form and Responses Call for Bids Information for Bidders Notice of Award

Notice to Proceed

Supplier provided lease/purchase contract forms

When interpreting this Agreement where language conflicts between any of the above documents such conflict shall be resolved in favor of the language in that document first listed above.

6. The Owner will pay to the Supplier in the manner and at such times and amounts as set forth herein.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

GENERAL CONDITIONS

1. DESCRIPTION

The contract is for the purchase of one new Motor Grader, F.O.B. Broadwater County Road Department, Townsend, MT.

2. MATERIAL

All goods must be furnished new in accordance with this Agreement.

3. PAYMENT

Within thirty (30) days of the receipt of all invoices, the Owner will pay to the Supplier in the manner and at such times and amounts set forth herein.

4. DELIVERY

Time is of the essence and delivery and performance must be effected within the time stated herein and the documents attached hereto. No acts of the Owner, including without limitation, acceptance of partial late deliveries shall operate as a waiver of this provision. In the event of any delay, the Owner shall have, in addition to other legal and equitable remedies, the option of placing this order elsewhere and holding the Supplier liable for damages. However, the Supplier shall not be liable for damages as a result of delays due to causes not reasonably foreseeable which are beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authorities, governmental priorities, fires, strikes, floods, epidemics, war or riot; provided that notice of the conditions causing this delay is given to the Owner within five days of the time when Supplier first receives knowledge thereof. In the event of any such delay, the date of delivery shall be extended for the period equal to the time actually lost by reason of the delay.

5. WARRANTY

Supplier warrants that all goods, articles, material and work covered by this agreement will conform with applicable drawings, specifications, samples and/or other descriptions given, will be fit for the purposes intended, of first class quality, and Supplier agrees to hold the Owner harmless from any loss, damage or expense which Owner may suffer or incur on account of Supplier's breach of warranty. Supplier shall replace, repair or make good without cost to the Owner any defects or faults arising within one year or within such longer period of time as may be prescribed by law or by terms of any applicable warranty provided the Supplier after date of acceptance of goods furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by Supplier. Acceptance or use of goods by the Owner shall not constitute a waiver of any claim under this warranty. Except as otherwise provided in this agreement, Supplier's liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees.

6. PATENTS

Whenever the Supplier is required to use any design, device, material or process covered by letters patent, trademark or copyright, the Supplier shall indemnify and hold harmless the Owner from any and all claims for infringement by reason of the use of such patented design, device, material or process in connections with the contract and shall indemnify the Owner for any costs, expenses and damages which it may be obliged to pay by reason of such infringement at any time during the prosecution or after the completion of the work. In case said equipment, or any part thereof, or the intended use of the goods, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Supplier shall, at its own, and at its option, either procure for the Owner the right to continue using said equipment or parts; or replace the same with substantially equal but non-infringing equipment, or modify it so it no longer infringes.

7. COMPLIANCE WITH LAW

Supplier warrants that all goods sold hereunder shall have been produced, sold, delivered and

furnished in strict compliance with all applicable laws and regulations to which the goods are subject. Supplier shall execute and deliver such documents as may be required to effect or evidence compliance. All laws and regulations required to be incorporated in agreements of this character are hereby incorporated herein by this reference. The Supplier agrees to indemnify and hold the Owner harmless from all costs and damages suffered by the Owner as a result of the Supplier's failure to comply with said law.

8. ASSIGNMENT

The Supplier shall not assign, transfer, or convey this order or any monies due to become due hereunder without the prior written consent of the Owner.

9. COMPLETE AGREEMENT

This agreement, including these terms and conditions, the specifications hereto and any additional terms and conditions incorporated into and attached hereto, constitutes the sole and entire agreement between the parties hereto. The Supplier's quotation is incorporated in and made a part of this agreement only to the extent of specifying the nature and description of the goods ordered, and then only to the extent that such items are consistent with the other terms of this agreement. No other terms or conditions shall be binding upon Owner unless accepted by it in writing.

10. NONWAIVER

Failure of Owner to insist upon strict performance of any of the terms and conditions hereof or failure or delay to exercise any rights or remedies provided herein or by law or to promptly notify Supplier in the event of breach, or the acceptance of or payment for any goods hereunder, or approval of design, shall not release Supplier of any of the warranties or obligations of this purchase order and shall not be deemed a waiver of any right of Owner to insist upon strict performance hereof or any of its rights or remedies as to any such goods, regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this lease/purchase order by Owner operate as a waiver of any of the terms thereof.

11. APPLICABLE LAW

The definitions of terms used, interpretation of this agreement and the rights of all parties hereunder shall be construed under and governed by the laws of the State of Montana.

12. OWNER'S PERFORMANCE OF SUPPLIER'S OBLIGATIONS

If the Owner directs the Supplier to correct nonconforming or defective goods by a date to be agreed upon by the Owner and the Supplier, and the Supplier thereafter indicates its inability or unwillingness to comply, Owner may cause the work to be performed by the most expeditious means available to it, and the Supplier shall pay all costs associated with such work.

Supplier shall release Owner and its contractors from all liability and claims of any nature resulting from the provision of such goods not caused by the negligence or acts of Owner.

Supplier's contractual, including warranty, obligations shall not be deemed to be reduced, in any way.

In Witness Whereof, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the date set forth above.

Owner:

Attest Owner:

By:
Title:

By:
Title:

Supplier:

Attest Supplier:

By:
Title:

By:
Title: