



**PROFESSIONAL SERVICES AGREEMENT**  
**FOREST HEALTH TREATMENTS – MOUNT JUMBO AND MARSHALL CANYON**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2021, by and between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman Street, Missoula, Montana 59802, hereinafter referred to as “City,” and **Watershed Consulting LLC**, 1301 Scott St. Suite C, Missoula, MT 59802 (Mailing address: PO Box 17287, Missoula, MT 59808), hereinafter referred to as “Contractor.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Contractor as an independent contractor to perform, on behalf of the City, services described in Exhibit “A” and by this reference made a part hereof (hereinafter referred to as the “Work”).
2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the 1st day of June, 2022. The parties may extend this Agreement in writing prior to its termination.
3. **Scope of Work:** Contractor will perform the Work and provide the scope of services in accordance with the project proposal and fee schedule (attached in Exhibit “A”).
4. **Payment:** City agrees to pay Contractor **FOURTY-FIVE THOUSAND, FIVE HUNDRED DOLLARS AND NO CENTS (\$45,500.00)** for forestry services performed on City Conservation Lands pursuant to the Scope of Work.
  - a. After the commencement of the Work, the Contractor may request monthly progress payments by submitting an invoice for payment to the City during each successive calendar month, with a copy to the project’s architect, engineer, or project manager as applicable. The invoice must be based upon the actual or estimated percentage of work completed and materials supplied for the Work prior to the date of the invoice and shall be filled out and signed by the Contractor. Only one invoice for payment may be submitted within a calendar month.
  - b. Beginning with the second invoice for payment, each invoice shall also include an affidavit signed by the Contractor stating that all previous monthly progress payments received have been applied on account to discharge Contractor’s obligations associated with the prior invoices for payment.



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- c. A progress payment or any portion may be disapproved upon a claim of: **(1)** unsatisfactory job progress given specified timeline; **(2)** failure of Contractor to follow listed forest health prescriptions upon inspection of work sites, **(3)** failure of Contractor to make timely payment for claims including, but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties; **(4)** damages to the City; **(5)** the existence of reasonable evidence that the Agreement cannot be completed for the unpaid balance of the Agreement's Payment; and **(6)** Contractor's non-compliance with applicable federal, state, and local laws, rules, and ordinances.
  - d. The City will furnish Contractor a written statement specifying a reason for disapproval that is listed in sub-section c. above for which approval of the Application for Payment or a portion thereof is being withheld. If the City disapproves only a portion of an application for payment, the remainder of the application for payment is considered approved.
5. **Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.
  6. **Liaison:** City's designated liaison with Contractor is Jeff Gicklhorn, Conservation Lands Program Manager, Parks and Recreation Department and Contractor's designated liaison with City is Marnie Criley, Managing Partner, Watershed Consulting LLC.
  7. **Retainage:** City shall retain twenty-five percent (25%) of the total amount of compensation to be paid to the Contractor to ensure compliance with the terms and conditions of this Agreement and the timely completion of the project and any and all "punch list" items ("Retainage Amount"). At all times the City will retain no less than One Thousand Dollars (\$1,000) until termination of this Agreement. The Retainage Amount shall be paid to Contractor upon the City's final approval of the project and agreement that all work required to be performed on the project is complete and satisfactory to the City. This provision does not prevent the Contractor from seeking withdrawals of the Retainage Amount in excess of One Thousand Dollars (\$1,000), pursuant to the requirements of §18-1-301, MCA.
  8. **Services:** Any alteration or deviation from the described work that involves extra costs will be permitted only upon written request by Contractor to the City. The parties must agree upon any extra charges in writing.
  9. **Indemnity:** The Contractor shall hold harmless, indemnify and shall defend the City, its employees, representatives, and agents from any and all liability claims, demands, losses,



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costs, damages, expenses or liability to the extent arising or alleged to arise from the Contractor's performance of the Work described herein, but not including the sole negligence of the City. Contractor shall procure and maintain in force, at its expense, the liability insurance required below to effectuate this provision.

- 10. Insurance:** The Contractor shall not commence any work until they obtain, at their own expense, all required insurance. Such insurance must have the approval of the Owner as to limit, form and amount. The Contractor will not permit any Subcontractor to commence work on this project until the same insurance requirements have been complied with by such Subcontractor.
- a. **Types:** The types of insurance the Contractor is required to obtain and maintain for the full period of the Contract will be: Workmen's Compensation Insurance and Comprehensive General Liability Insurance as detailed in the following portions of these specifications.
  - b. **Evidence:** As evidence of specified insurance coverage, the Owner may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without a Forty-five-day notice in writing to be delivered by registered mail to the Owner. Should any policy be canceled before final payment by the Owner to the Contractor and the Contractor fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under this Contract.
  - c. **Adequacy of Performance:** Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should such insurance be canceled before the end of the guaranty period and the Contractor fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to charge the cost thereof to the Contractor.
  - d. **Payment of Damages:** Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from the contractor's operations under this contract.

**WORKMEN'S COMPENSATION INSURANCE.** Before the Agreement between the City and the Contractor is entered into, the Contractor shall submit written evidence that he and all subcontractors have obtained, for the period of the Contract, full Workmen's Compensation Insurance coverage for all persons whom they employ or may employ in carrying out the work under this Contract. This insurance shall be in strict accordance with



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the requirements of the most current and applicable State Workmen's Compensation Insurance Laws.

**COMPREHENSIVE GENERAL LIABILITY INSURANCE.** Before commencement of the work, the Contractor shall submit written evidence that the Contractor and all its Subcontractors have obtained for the period of the Contract, full Comprehensive General Liability Insurance coverage. This coverage shall provide for both bodily injury and property damage. (The Comprehensive General Liability Insurance will include as Additional Named Insured: The Owner, the Engineer and consultants; and each of their officers' agents and employees).

- a. Bodily Injury portion shall include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with the performance of work under this Contract, and shall provide for a limit of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, sickness or disease to or death of one person, and a total limit of three million dollars (\$3,000,000) for damages arising out of bodily injury, sickness or disease and death of two or more persons in any one occurrence.
- b. Property Damage portion will provide for a limit of not less than that listed below for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of work under this Contract and in any one occurrence including explosion, collapse and underground exposure.
  - i. Automobile \$1,000,000 per accident
- c. Indemnity. The Contractor shall hold harmless, indemnify and defend the Owner, the Engineer and consultants, and each of their officers and employees and agents, from any and all liability claims, losses or damage arising or alleged to arise from the performance of the work described herein, but not including the sole negligence of the Owner or the Engineer.

**11. Compliance with Laws:** Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Contractor agrees to obtain and maintain a City business license.

**12. Non-Discrimination:** All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender



identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

- 13. Affirmative Action Policy:** Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

**The City's Affirmative Action Policy Statement is:**

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation or gender identity/express, except where these criteria are reasonable bona fide occupational qualifications. . In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

- 14. Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth



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the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

- 15. Modification and Assignability:** This document 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 this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Contractor may not subcontract or assign Contractor's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.
- 16. Jurisdiction and Venue:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana, and the venue for any dispute shall be in Missoula County.



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**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**CITY OF MISSOULA**

**Watershed Consulting LLC  
CONTRACTOR (Type Name Above)**

By \_\_\_\_\_  
**John Engen, Mayor**

By Marnie Criley  
**Print Name** Marnie Criley  
**Print Title** Managing Partner

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Jim Nugent, City Attorney**

By: \_\_\_\_\_  
**Martha L. Rehbein, CMC  
Legislative Services Director/City Clerk:**

**Exhibit A**

**Watershed Consulting – 2021 Jumbo / Marshall Forest Health Bid Packet**



Marnie Criley  
Managing Partner  
Watershed Consulting LLC  
P.O. Box 17287  
Missoula, MT 59808  
(406) 541-2565  
www.watershedconsulting.com  
May 10, 2021

To: City of Missoula Parks and Recreation  
Attn: Jeff Gicklhorn – Conservation Lands Manager  
100 Hickory Street, Missoula, MT 59801  
Email: [GicklhornJ@ci.missoula.mt.us](mailto:GicklhornJ@ci.missoula.mt.us) Phone: (406) 552-6691

Re: Jumbo/ Marshall Canyon Ecosystem Management and Fuels Treatment Bid Response

Dear City of Missoula,

**Watershed Consulting LLC** (Watershed) is pleased to present our bid for the 2021 Jumbo/ Marshall Tree Thinning solicitation. We are an Economically Disadvantaged Woman-Owned Small Business based in Missoula, Montana. We are a regional leader in ecological services, specializing in forest, wetland, and stream restoration consulting and contracting. Watershed has performed wildland restoration services in the region for 25 years, completing dozens of forest, stream and severe disturbance restoration projects for federal, state, county, city, non- profit, and private entities. We employ industry standard and our own innovative techniques and best management practices to restore ecological structure and function on degraded landscapes. Watershed's mission is to provide future generations with natural resources, ecosystems and watersheds that are healthier, more diverse and more resilient than those we inherited. Our focus, since our first project in 1994, has been to provide long-lasting solutions for public and private natural resources. Grounded in this commitment to the land, air and water that sustain us, we apply rigorous scientific analysis tools and innovative restoration techniques to the range of environmental services we provide.

Please find the following elements in our response:

- Contractor Experience Sheet
- Contractor's List of References
- Contractor's Workforce and Project Approach
- Unit #7 Bid Sheet
- Unit # 19 Bid Sheet
- Unit # 20 Bid Sheet
- Mt. Jumbo Fuel Breaks Bid Sheet
- Insurance Certificate

**Contractor Experience Sheet**

Contractor’s Company Name: Watershed Consulting LLC  
P.O. Box 17287  
Missoula, Montana, 59808

Primary Contact: Marnie Criley – Principal Partner  
(406) 531-3190  
[marnie@watershedconsulting.com](mailto:marnie@watershedconsulting.com)

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**Contractor’s List of References**

**Project 1**

Name of Project Owner: Moose on the Loose Lumber Company

Address of Project Owner: 9595 Gold Creek Road  
Bonner, Montana 59823

Contact Person: Elizabeth White  
Phone Number: (318) 451- 8818 or (406) 880-5541  
Email: [elizabeth@mooseonthelooselumbercompany.com](mailto:elizabeth@mooseonthelooselumbercompany.com)

Project Description: For the past seven years, Watershed has provided forestry services for Ms. White’s section on Gold Creek. First, we developed a management plan, then we provided on the ground services including fire hazard reduction. To date we have thinned and pruned approximately 125 acres of dense forest. In addition to fire hazard reduction, we emphasize appropriate diversity and ecologic trends and use a light-on-the-land approach. We employ several techniques to treat slash including lop and scatter and hand-pile and burn. Soon we will be producing biochar with these forest residues.

## **Project 2**

Name of Project Owner: Louisa Berky & Alex Horne  
Address of Project Owner: 2232 Rattlesnake Drive,  
Missoula, Montana 59802

Contact Person: Louisa Berky & Alex Horne  
Phone Number: (303) 859-7923 or (970) 379-0417  
[alex.c.horne@gmail.com](mailto:alex.c.horne@gmail.com) [louisaberky@gmail.com](mailto:louisaberky@gmail.com)

Project Description: During the Summer and Fall of 2020, Watershed provided Louisa and Alex with fire hazard reduction services. This ownership adjoins City of Missoula property, specifically the “Fuel Breaks” portion of the Jumbo/ Marshall project area. Our long-range goal for this ownership is to create forest conditions where we can safely apply prescribed fire. As we do with all our forest restoration projects, we emphasized appropriate diversity and ecologic trends. To treat slash, we hand-piled and burned.

## **Project 3**

Name of Project Owner: Missoula Parks and Recreation Operations Division  
Address of Project Owner: 100 Hickory Street  
Missoula, Montana 59801

Contact Person: Morgan Valliant  
Phone Number: (406) 552-6263  
Email: [mvalliant@ci.missoula.mt.us](mailto:mvalliant@ci.missoula.mt.us)

Project Description: In 2017 we provided forest restoration and fire hazard reduction services for the Mt. Sentinel Forest Management and Fuels Treatment Project. We thinned trees designated by employing a description / prescription approach. Trees were limbed to a designated height, and slash was treated with both lop and scatter and hand-pile and burn techniques.

## **Contractor's Workforce & Project Approach**

Our workforce stands out because for us, this work is not just a job, it is a fulfilling career that offers great satisfaction. This work is more than cutting trees, it is shaping forests and ecologic trends into the future. Please visit our website for more information:  
[www.watershedconsulting.com](http://www.watershedconsulting.com)

Our forestry team typically comprises four or more experienced sawyers and when needed, up to four dedicated swampers. Many of our team members have a degree in forestry or natural resources. Some of our sawyers have advanced degrees. We have two certified arborists on staff. Many of our crew members have extensive experience fighting wildland fire and often work on prescribed burns. All have been trained (in house) to promote appropriate ecologic trends and species diversity. In addition, Watershed provides a training budget of \$500.00 per person per year.

Safety is paramount on all our projects. PPE is always used and inspected daily. We carry personal and crew first-aid kits. We designate escape routes and make plans for quick evacuation. During hot and dry weather, we carry fire suppression equipment. Most of our team has first responder training and several have been through Montana Logging Association safety and first aid training. We attempt to limit a "saw day" to six hours to limit fatigue and associated accidents.

Upon arrival in a new unit, the crew leader investigates the boundary and relays the information to the crew. Directed by the crew leader, sawyers move through the forest in a coordinated and staggered fashion separated at a distance of at least two tree heights. The crew leader designates general drop zone recommendations. Swampers pile brush and sometimes limb trees. Sawyers also pile and limb. All limbing is done to the standards described in the solicitation. Piling is an art, and we are good at it. We protect slash piles from moisture using waterproof / combustible covers. When it comes time to burn the piles, the work goes quickly and smoothly.

## **Insurance Documents**

Please find our General Liability Insurance and Worker's Compensation Certificate at the end of this proposal. Our general liability policy exceeds the minimum requirements for City of Missoula contractors.

## UNIT #20 BID SHEET

### Project Scope of Work – Unit #20 Mid-Marshall Canyon

Supply all labor, equipment and materials to complete Unit #20 forest thinning project work as described. Size: 17.5 acres: First-time treatment, thin, lop & scatter, pile & burn. Work to include hand thin and prune. All thinning should leave random and variable spacing between leave trees (vs. even spacing between trees across the landscape). Reduce thickets of conifers across entire stand. Seek to mimic natural pre-fire suppression conditions by establishing patches of leave trees with a minimum of 15 ft. between tree trunks. Create full canopy separation of 20ft between patches of leave trees up to 100ft. in diameter. Pruning is not a part of this contract but if pruning is necessary it should be done at variable heights to maintain a natural appearance. Remove ladder fuels around all trees greater than 18" DBH. Remove all trees harboring live pine beetle larvae. Dead trees greater than 8" DBH, which are not adjacent to a road, should be left as habitat trees. Slash less than 2" diameter may be lopped and scattered on site (see specifications for Lop & Scatter in Section B). All other slash must be disposed of by pile and burning.

**Date of Service required:** All thinning must be complete by Dec. 1<sup>st</sup> 2021 with burning to be completed no later than May 1st, 2022

Item	Quantity	Units	Total
1. Mobilization (if applicable)	1	LS	\$ N/A
2. Thin/Pile and Burn	17.5	AC	\$21,000.00
<b>Total base bid</b>			<b>\$21,000.00</b>
Add – Calculate 1% of base bid for Montana Gross Receipts Sales Tax			<b>\$210.00</b>
<b>Grand Total Bid</b>			<b>\$21,210.00</b>
Written Grand Total: Twenty-One Thousand, Two-Hundred and Ten Dollars and Zero Cents.			

**Brief statement describing: work force size, timeline, project approach etc.**

For this work we will employ four sawyers, and four swampers. We can complete the work in the timeframe described - before December 1<sup>st</sup>, 2021, with pile burning to follow in the spring of 2022. Our approach considers safety and efficiency, while adhering to the treatment prescription

Authorized signature: Marnie Criley, Principal Partner



Date: May/9/ 2021

# Mt. JUMBO FUEL BREAKS BID SHEET

## Project Scope of Work – Mt. Jumbo fuels breaks

Supply all labor, equipment and materials to establish fuel breaks between forested units on Mt. Jumbo to protect critical elk winter range. Size: 20.75 acres: Removal of trees and downed woody debris, pile & burn. Work to include hand thinning and significant pile burning. All thinning should leave random and variable spacing between leave trees (vs. even spacing between trees across the landscape) and establish a minimum 20ft. between tree crowns of leave trees. Pruning of all leave trees should occur at a minimum 8ft height to between tip of branch and ground fuels. Remove ladder fuels around all trees greater than 20" DBH. Remove all trees harboring live pine beetle larvae. Dead trees greater than 8" DBH, which are not adjacent to a road, should be left as habitat trees. All cut material AND all downed woody material will be piled and burned on-site. No trees shall be removed inside the "No cut buffer", 50 feet from trail edge on either side of the backbone trail (see "Fuel Breaks Map"). Limited vehicle access will be allowed along the "access route" depicted in "Fuel Breaks Map" daily access to work site is walk-in from the "Jumbo Saddle Rd." or closest City trailhead.

**Date of Service required:** All thinning must be complete by Dec. 1<sup>st</sup> 2021 with burning to be completed no later than June 1<sup>st</sup>, 2022. Note that this unit is located in an area closed to all access from Dec. 1<sup>st</sup> to approximately April 15<sup>th</sup>.

Item	Quantity	Units	Total
1. Mobilization (if applicable)	1	LS	\$ N/A
2. Re-entry Thin/Lop and Scatter/Pile and Burn	20.75	AC	\$24,500
<b>Total base bid</b>			<b>\$24,500</b>
Add – Calculate 1% of base bid for Montana Gross Receipts Sales Tax			<b>\$245.00</b>
<b>Grand Total Bid</b>			<b>\$24,745.00</b>
Written Grand Total: Twenty-Four Thousand, Seven-Hundred and Forty-Five Dollars and Zero Cents.			

**Brief statement describing: work force size, timeline, project approach etc.**

Creating fuel breaks is an art that balances forest modification techniques with aesthetics and ecologic trends. For this work we will employ four sawyers and four swamper. We can complete the work in the timeframe described - before December 1<sup>st</sup>, 2021. Pile burning will follow in the spring of 2022. Our approach considers safety and efficiency, while adhering to the treatment prescription. The Jumbo Fuel Breaks are near private forest land that we have been managing for years. We have secured exclusive access through these private ownerships to the City project area. Knowing the City desires a fuel break in these locations, we can modify our thinning on private ground to make the fuel breaks more effective.

Authorized signature: Marnie Criley, Principal Partner



Date: May/9/2021

Thank you for considering our offer. We believe our light on the land approach fits well with the work you desire on City of Missoula conservation lands. We look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Marnie Criley".

Marnie Criley – Managing Partner

