

THIS CONTRACT is entered into by and between the State of Montana, Department of Environmental Quality (State), and **insert name of contractor** (Contractor), for the purpose of **insert purpose**. This Contract is entered into in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1. Contract Term. The Contract's initial term is from the date of contract execution, with the effective date being the date of the latter of the two signatures, through **insert date**, unless terminated earlier as provided in this Contract. In no event is this Contract binding on the State unless the State's authorized representative has signed it. The State's authorized signatory for this Contract is the Contracts Officer for the Department of Environmental Quality.

1.2. Contract Renewal. The State may renew this Contract under its then-existing terms and conditions, subject to potential cost adjustments described below in Section 2, in **insert number**-year intervals, or any interval that is advantageous to the State. The term of this Contract, including any renewals, may not exceed a total of 7 years.

2. COST ADJUSTMENTS

2.1. Cost Increase by Mutual Agreement. After the Contract's initial term and if the State agrees to a renewal, the parties may agree to a cost increase. The State is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

3. SERVICES AND/OR SUPPLIES

3.1. Contractor shall provide the State the services described in Attachment **xx** Scope of Work, attached hereto and incorporated herein by reference. **Attachment A Scope of Work to be developed based on Application.**

3.2. As part of the reporting requirements under the Federal Grant Award, Contractors and any subcontractors must have a Dun & Bradstreet Universal Number System (DUNS) number (www.dnb.com) and maintain active and current contractor profiles in the System for Award Management (www.sam.gov) for the duration of this Contract.

3.3. When requesting reimbursement of funds on the schedule specified in Section 5 (CONSIDERATION/PAYMENT) of this Contract, Contractor shall include a written status report that provides a detailed description of activities undertaken. The status report must justify the expenditure of requested funds.

3.4. Within 30 days after the end of each quarter during which the services required by Contract are performed, Contractor shall submit to the State a written progress report giving a detailed description of the status of the project that is the subject of this Contract. Contractor shall include, at a minimum, in the quarterly progress report:

- 3.4.1.** A short narrative of the original project (this would remain the same for each report submitted);
- 3.4.2.** Project progress during the reporting period (activities carried out, accomplishments, highlights, problems, corrective actions, etc., must be discussed);
- 3.4.3.** Status of expenditure of funds (federal funds and 40% non-federal matching funds); and
- 3.4.4.** Planned activities for the next reporting period.

3.5. Within 45 days after the project is completed, Contractor shall submit a final report to the State that must include, at a minimum:

- 3.5.1.** A summary of activities performed;
- 3.5.2.** The overall project accomplishments;
- 3.5.3.** Successes and failures, including significant problems or unique situations encountered, and corrective actions taken;
- 3.5.4.** Extent to which the project goals and objectives were met; and
- 3.5.5.** Summarization of expenditures of project funds (federal and the 40% non-federal match).

3.6. Contractor shall provide the State with an itemized billing statement when it submits quarterly progress or final reports required by Section 5 (CONSIDERATION/PAYMENT).

3.7. Contractor shall include the Contract number on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, the State is not obligated to pay the invoice.

4. WARRANTIES

4.1. Warranty of Services. Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1. In consideration of services rendered pursuant to the Contract, the State agrees to reimburse Contractor up to a maximum of \$xxx,xxx.xx for the actual, reasonable, and necessary expenditures allowed in section 5.2.1 below; according to the budget amounts identified in Attachment A.

5.1.1. The allowable expense categories that may be reimbursed under this Contract for the performance of the services required are as follows (credit card receipts not acceptable):

- 5.1.1.1.** Actual salaries, wages and benefits of Contractor personnel in performance of the services required under this Contract;
- 5.1.1.2.** Meals/lodging and other travel expenses directly related to performance of the Contract to be reimbursed in accordance with rates set forth in Title 2, Chapter 18, Part 5, Montana Code Annotated.
- 5.1.1.3.** Supplies and materials that are necessary in performance of the Contract, including newsletter/articles and display boards, and the cost of developing the supplies and materials;
- 5.1.1.4.** Communications and reproduction expenses, that are necessary in performance of the Contract, including telephone, postage, facsimiles and photocopying;
- 5.1.1.5.** Equipment purchases including all computer hardware and software that are necessary in performance of the Contract, must be approved by the State in advance to qualify for reimbursement under the Contract;

5.1.1.6. Subcontractor expenses, including landowner agreements (subcontractor expenses must be documented in the detail required of Contractor to qualify for payment under this Contract);

5.1.1.7. The cost of tours as long as the costs billed the State are allowable under the federal funding requirements; and

5.1.2. Contractor shall bill the State no more frequently than monthly and no less frequently than quarterly, using the format and documentation detail required on Attachment B entitled *Billing Statement*, attached hereto and incorporated herein by reference, or in a mutually agreed upon format for the actual time and expenses incurred in the performance of the Contract.

5.1.3. In accordance with §17-8-242, MCA, the State shall reimburse Contractor within 30 days after receipt of each billing statement, contingent upon the following:

5.1.3.1. Payment for questioned costs may be withheld pending resolution and may require rebilling by Contractor or submittal of additional documentation, including any records required to be kept by Contractor;

5.1.3.2. For any period in which a progress report may be due, the payment for that period may be withheld pending receipt of the progress report, and acceptance and approval of any such report by the State; and

5.1.3.3. The State may withhold payment if Contractor has not performed in accordance with the Contract. Such withholding cannot be greater than the additional costs to the State caused by Contractor's lack of performance.

5.1.3.4. Contractor shall submit to the State no later than June 10 of each fiscal year, a final billing statement or estimate of expenses through June 30 of that year to allow the state to accrue funding into the next fiscal year if necessary.

5.2. Contractor shall submit to the State a final billing statement that must be received by the State within 45 days after the completion date of the Contract, as stated in Section 1, or a new termination date as provided under this Contract, whichever occurs first.

5.3. Contractor may not use the funds received under this Contract to supplant other Contractor budgeted expenses or funds.

5.4. This Contract is funded in whole or in part by a portion of a federal grant from the U. S. Department of Energy (DOE); in the amount of \$475,000.000 (Grant No. EE0007672 / Federal Catalog No. 81.117).

6. ACCOUNTING, AUDIT AND RETENTION OF RECORDS

6.1. Contractor shall maintain books, records, documents, other evidence directly pertinent to performance of work under this Contract and current accounting for all funds received and expended pursuant to this Contract in accordance with generally accepted accounting principles. Contractor's accounting system must be able to allocate costs associated with this Contract in a manner that keeps these costs separate from the costs of other contracts.

6.2. The State, the Legislative Auditor, the Legislative Fiscal Analyst, the U.S. Department of Energy (DOE), and the Comptroller General of the United States, or their authorized representatives, have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Contractor shall maintain the records at the address of its liaison in Section 17 and allow the entities in the preceding sentence to have access to them for review and copying during normal business hours for as long as the Contractor retains the records under paragraph 6.5. This Contract may be terminated by the State upon any refusal of Contractor to allow access to such records.

6.3. Contractor shall disclose all information and reports resulting from access to the records maintained in paragraph 6.1 to any of the agencies referred to in paragraph 6.2.

6.4. Audits conducted under this section must be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency.

6.5. All books, records, reports, accounting, and other documents maintained by Contractor under this Contract must be retained for a period of eight years after either the completion date of this Contract, or the conclusion of any litigation, claim, audit or exception relating to this Contract taken by the State or a third party, whichever is later. Contractor may not destroy any records without first offering the records to the State.

6.6. In the event that an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under this Contract, including any grant-related income, Contractor must correct the areas of non-compliance within six months after DEQ receives the audit report.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

In accordance with §18-4-141, MCA, Contractor may not assign, transfer, or subcontract any portion of this Contract without the State's prior written consent. Any subcontracting of services under this Contract must be done in a competitive manner and ensure that subcontractor rates are justified and documented in accordance of Level IV of the Executive Schedule (<http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages>) Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this Contract.

8. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of Contractor's negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable.

THE ABOVE CLAUSE WILL BE REPLACED WITH THE FOLLOWING IF ENTITY IS SELF-INSURED AND THE SECTION HEADER WILL READ: HOLD HARLMESS, INDEMINIFICATION AND INSURANCE REQUIREMENTS.

8.1. Each party shall be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent required by law, and shall indemnify and hold the other party harmless from any such liability.

8.2. Each party shall maintain reasonable coverage for such liabilities, either through commercial insurance or a reasonable self-insurance mechanism under the provisions of Title 2, Chapter 9, MCA, at the minimums prescribed by law.

8.3. Each party shall provide the other party with a certificate of insurance upon request.

9. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its

employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to the Montana Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

10. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

11. RETIRED STATE EMPLOYEE REQUIRED EMPLOYER REPORTING

In accordance with ARM 2.43.2114, state agencies are required to file employee reports with the Montana Public Employee Retirement Administration (MPERA). The employee reports required under ARM 2.43.2114 include a working retiree report covering Montana's Public Employees' Retirement System (PERS) retirees performing work in a PERS-covered position as an employee, an independent contractor, or through an employee leasing arrangement, or a temporary service contractor. ARM 2.43.2114(6)(a) requires DEQ to include the social security number of employees and workers in the employer report. Contractor's staff assigned to perform work under this Contract will be asked to provide a social security number.

The purpose of collecting the social security number of an individual hired as an independent contractor or through a professional employer arrangement, an employee leasing agreement, or a temporary service contractor is to determine whether the individual is a retiree. Determining an individual's status as a retiree will determine whether DEQ must make employer contributions into the public employee retirement system for retirees who return to work in a PERS-covered position as required by Section 19-3-1113, MCA.

12. REQUIRED INSURANCE (STANDARD CLAUSES FOR ENTITIES INSURED THROUGH A PRIVATE COMPANY)

12.1. General Requirements. Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

12.2. Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

12.3. Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate per year to cover such claims

as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the State's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

12.4. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention is not effective unless it is declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

12.5. Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

STANDARD CLAUSES FOR ENTITIES INSURED THROUGH MONTANA ASSOCIATION OF COUNTIES (MACO)

12.6. General Requirements. The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, and/or its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission by Contractor, and/or its agents, employees, assigns, or subcontractors.

12.7. Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain for bodily injury, personal injury, and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, representatives, assigns or subcontractors.

12.8. Specific Requirements for Automobile Liability. The Contractor shall purchase and maintain coverage for bodily injury and property damage of \$750,000 per claim and \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, representatives, assigns or subcontractors.

12.9. Certificate of Insurance/Endorsements. A certificate of insurance was received by the State prior to execution of this Contract. The certificate must indicate compliance with the insurance coverages and the required limits set forth in this Section of the Contract. The required insurance must be maintained in force and effect by Contractor for the duration of the Contract. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. Failure to comply with this requirement may result in termination per Section 20 (CONTRACT TERMINATION) of this Contract.

12.10. Participation by a local government in a risk-sharing pool authorized by § 2-9-211, MCA, that offers the required coverages shall meet the insurance requirements of this Contract.

STANDARD CLAUSES FOR ENTITIES INSURED THROUGH MONTANA MUNICIPAL INTERLOCAL AUTHORITY (MMIA)

12.11. General Requirements. Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

12.12. Primary Insurance. Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

12.13. Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$750,000 per claim, \$1,500,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, and employees are to be covered and listed as additional insureds in Contractor's insurance policy for: liability arising out of activities performed by or on behalf of Contractor; products and completed operations; vehicles used, and premises owned, leased, occupied, or used.

12.14. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

12.15. Certificate of Insurance/Endorsements. A certificate of insurance was received by the State prior to execution of this Contract. The certificate must indicate compliance with the insurance coverages and the required limits set forth in this Section of the Contract. The required insurance must be maintained in force and effect by Contractor for the duration of the Contract. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. Failure to comply with this requirement may result in termination per Section 20 (CONTRACT TERMINATION) of this Contract.

13. DISABILITY ACCOMMODATIONS

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to the State's Contract Liaison, identified herein. Interested parties should provide as much advance notice as possible.

14. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired (§18-5-603, MCA.). Contact the State at 406-444-2575 for more information concerning nonvisual access standards.

15. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are formed in another state or country that are conducting activity in Montana must determine whether they are transacting business in Montana in accordance with §35-1-1026 and §35-

8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov/Business/index.asp>.

16. INTELLECTUAL PROPERTY/OWNERSHIP

16.1. Mutual Use. Contractor shall make available to the State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part under this Contract, if such availability is necessary for the State to receive the benefits of this Contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this Contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for the State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

16.2. Title and Ownership Rights. The State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

16.3. Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

16.4. Copy of Work Product. Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.

16.5. Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to the State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to the State before its use and to prove its ownership. If, however, Contractor fails to disclose to the State such Contractor Pre-Existing Materials, Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section xx.3 above, or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

17. FEDERAL REQUIREMENTS

Contractor agrees to comply with the following terms and conditions as defined by the United States Code (<http://uscode.house.gov/search/criteria.shtml>), the Code of Federal Regulations

(<http://www.ecfr.gov/>) applicable to the U.S. Department of Energy, and Presidential Executive Orders (<http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>) as they apply to the federal grant from the U.S. Department of Energy for the Community-Scale Solar Strategy Project (SEEDS). Citations to the relevant portions of the U.S. Code, Code of Federal Regulations, and Executive Orders may be obtained at (<https://www.cfr.gov/> using the CFDA number(s) referenced in Section 5. The following provisions are incorporated into this Contract and shall be included by the Contractor in each subcontract or sub-tiered agreement under any subcontract it enters into in connection with this Contract:

17.1. Supersession (CFR). The provisions of this Section apply to contracted services funded by a federal grant award, and the provisions within it supersede any conflicting provisions of this Contract.

17.2. Drug Free Workplace (CFR). Contractor agrees to maintain a drug-free workplace. Contractor certifies, by signing this Contract that its employees and subcontractors will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this Contract.

17.3. Lobbying and Litigation (CFR). Contractor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence Congress or any federal agency in connection with the awarding of any federal/state contract, the making of any federal/state grant, the making of any federal/state loan, the entering into of any cooperative agreement, the extension, continuation, renewal, amendment, or modification of any federal/state contract, grant, loan or cooperative agreement, or any litigation against the United States, unless authorized under existing law. If any funds other than federal or state appropriated funds have been paid or will be paid to any person for influencing or attempting to influence Congress or any federal agency in connection with this Contract, grant, loan or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

17.4. Debarment, Suspension, Ineligibility and Voluntary Exclusion (CFR). Contractor certifies that it and its principals: (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by any federal department or agency; (2) have not within a 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; been in violation of federal or state antitrust statutes, or been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in (2) above; and, (3) have not within a 3-year period preceding this Contract, had one or more contracts terminated for cause or default by any federal or state agency.

17.5. Procurement of Recycled Good (USC). In accordance with Section 6002 of the Resource Conservation and Recovery Act, when the purchase of an item exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more, Contractor and subcontractors shall give preference to the purchase of specific products containing recycled materials.

17.6. Use of Recycled Paper (EO). Contractor certifies that recycled paper will be used for all reports, documents, or other submittals prepared by Contractor under the terms of this Contract. This requirement does not apply to reports that are prepared on forms supplied by the federal awarding agency.

17.7. Copyright And Right To Use (CFR). Any discovery or invention made, or data or text developed, or under development, as a result of work conducted under this Contract, is subject to DOE requirements and regulations pertaining to reporting and patent rights, and copyrights and rights in data. In any event, the State and DOE shall have a royalty-free, nonexclusive, and irrevocable right to

reproduce, publish or otherwise use and authorize others to use, any patented or copyrightable property developed under this Agreement.

17.8. Equipment, Supplies and Materials (CFR).

17.8.1. Any purchase of equipment required under this Contract, other than that described in Attachment A, must be approved in advance and in writing by the State prior to purchase by the Contractor.

17.8.2. Title to the equipment as described in Attachment A, defined as having a purchase price of over \$5,000 and a useful life of more than one year, shall vest with the Contractor. Title to any other equipment acquired under this Contract having a purchase price of over \$5,000 and a useful life of more than one year, may also, at the discretion of the State, vest with the Contractor. Contractor shall maintain equipment in good working condition and provide accountability of the equipment per state law and rule concerning Asset Management.

17.8.3. At the conclusion of this Contract any equipment to which the State retained title shall be returned in good working condition to the State unless otherwise authorized in writing by the State and the Surplus Property Program of the Property and Supply Bureau of the General Services Division of the Montana Department of Administration. Supplies and materials with a value of less than \$5,000, purchased for and used in completing the terms of this Contract shall be the property of Contractor.

17.9. Acknowledgement Requirements

17.9.1. Any reports, documents, publications or other materials developed for public distribution supported by this Contract shall contain the following statement:

"This project has been funded wholly or in part by the U.S. Department of Energy (DOE) under assistance agreement EE0007672 to the Montana Department of Environmental Quality. The contents of this document do not necessarily reflect the views and policies of DOE, nor does DOE endorse trade names or recommend the use of commercial products mentioned in this document."

17.10. Subcontracting Under Disadvantaged Business Enterprise (DBE) (CFR)

17.10.1. Contractor shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

17.10.2. Affirmative steps shall include:

17.10.2.1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

17.10.2.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

17.10.2.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.

17.10.2.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises

17.10.2.5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

17.10.2.6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs **17.xx.2.1** through **17.xx.2.5** of this section.

17.11. Use of Funds for Refreshments or Meals. Contractor and any subcontract must obtain prior approval from DOE through the State prior to using these funds for the purchase of light refreshments or meals served at meetings, conferences, training workshops, and outreach activities (events) unless the event has been specified in the approved work plan. Requests for approval must include:

17.11.1. An estimated budget and description for the light refreshments, meals, and beverages to be served at the event(s);

17.11.2. A description of the purpose, agenda, location, length and timing for the event;

17.11.3. An estimated number of participants in the event and a description of their roles.

17.12. Hotel-Motel Fire Safety. Contractor agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). The Hotel-Motel National Master List (<http://www.usfa.dhs.gov/applications/hotel/>) may be used to determine if a property is in compliance, or to find other information about the Act.

17.13. Trafficking Victim Protection Act of 2000. The Contractor, Contractor's employees, and any subcontractor and subcontractor's employees, must not engage in any form of trafficking in persons, procure a commercial sex act, or use forced labor in the performance of services under this Contract or subcontract at any time during the period the Contract or subcontract is in effect.

17.14. Limit on Funds. Contractor and any subcontractor shall not use these funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

17.15. Protection Of Whistleblowers. In accordance with Section 1553 of the Recovery Act, Contractor and subcontractor employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds ; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of Contract funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a Contract awarded or issued relating to covered funds .

17.16. False Claim. Contractor and subcontractors agree to promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract or subcontracts awarded by the Contractor.

18. CONFLICT OF INTEREST

18.1. For the purposes of the Montana Code of Ethics, Contractor and each of its employees and subcontractors, is a "public employee" for the purposes of this Section. As such, Contractor and each of its employees and subcontractors is subject to the requirements of Title 2, Chapter 2, MCA, regarding conflicts of interest, including but not limited to sections §2-2-104, §2-2-105, §2-2-121, and §2-2-201, MCA.

18.2. If the State discovers that an employee of Contractor or subcontractor is in violation of this Section, the State may, after consulting with Contractor, terminate this Contract or take other

appropriate measures to address the conflict and Contractor shall reimburse the State for any services the State requires be performed by another Contractor that duplicate the services performed by the employee who violated this Section.

19. DISCLOSURE

19.1. Contractor shall notify the State of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). In the event that a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

19.2. Contractor certifies that it has identified all current employees and proposed subcontractor's employees that will perform work under this Contract and that have worked for the State in the last two years prior to submitting the solicitation request which resulted in the award of this Contract. Contractor further certifies that no former employee of the State of Montana or local government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee's public employment. Pursuant to §2-2-201, MCA, a former employee of state or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the State of Montana or any of its subdivisions involving matters with which the former public employee was "directly involved", as defined in §2-2-201, MCA, during employment. Contractor further certifies it shall identify any new employees hired during this Contract that will perform work under this Contract and that have worked for the State of Montana in the last two years prior to the submission of the solicitation request which resulted in the award of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

20. CONTRACT TERMINATION

20.1. Termination for Cause with Notice to Cure Requirement. Either party may terminate this Contract in whole or in part for failure of the other party to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving the other party written notice identifying items not performed. The written notice must demand performance of the items not performed within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

20.2. Reduction of Funding. In accordance with §18-4-313(4), MCA, the State must terminate this Contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Contract in a subsequent fiscal period. If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this Contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

20.3. Any termination of this Contract is subject to the exception that Section 6 (ACCOUNTING, AUDIT AND RETENTION OF RECORDS), relating to retention of and access to records, remain in effect.

21. EVENT OF BREACH – REMEDIES

21.1. Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

21.1.1. products or services furnished fail to conform to any requirement;

21.1.2. failure to submit any report required by this Contract;

21.1.3. failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval and breaching Section **xx.1 Technical or Contractual Problems** obligations; or

21.1.4. financial inability to perform its obligations under this Contract.

21.2. Event of Breach by State. The State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

21.3. Actions in Event of Breach.

21.3.1. Upon a material breach by either party, the non-breaching party may:

21.3.1.1. terminate this Contract after giving written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period; or

21.3.1.2. treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law or in equity.

22. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than 5 working days after the onset. If the notice is not provided within the 5 day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

23. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

24. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Products or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

25. LIAISONS AND SERVICE OF NOTICES

25.1. Contract Liaisons. All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison who will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between the State's liaison and Contractor's liaison.

insert name, or their designee or successor, is the State's liaison.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

insert name, or their designee or successor, is Contractor's liaison.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

25.2. Notifications. The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three (3) business days of mailing. The party receiving a notice shall sign and date an acknowledgement of the notice and mail it to the sending party.

26. MEETINGS

26.1. Technical or Contractual Problems. The Contractor may be required to attend a post-contract meeting with the State's Liaison named in the Contract. Contractor shall meet with the State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise; such meetings will be coordinated by the State. The State shall provide Contractor a minimum of three full working-days-notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

26.2. Progress Meetings. During the term of this Contract, the State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and the State's progress in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform

its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

26.3. Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

26.4. State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

27. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This Contract may be cancelled for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to cancel this Contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of Contract cancellation. Performance assessments may be considered in future solicitations.

28. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of the original term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor must provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If there are no established Contract rates, then the rate must be mutually agreed upon. If the State terminates a project, or this Contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

29. CHOICE OF LAW AND VENUE

In accordance with §18-1-401, MCA, Montana law governs this Contract. If there is a dispute under this Contract the Parties will meet in person and attempt to resolve the dispute. If the dispute cannot be settled through negotiation, the parties agree that prior to resorting to litigation they will attempt to settle the dispute by nonbinding mediation administered by a neutral mediator agreed to by the parties.

Both parties waive objection to personal jurisdiction in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Any litigation concerning this bid, proposal, or contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

30. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

31. SEVERABILITY CLAUSE

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

32. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

32.1. Contract. This Contract consists of xx numbered pages and any Attachments as required, Solicitation #DEQ-RFA2019-519001, as amended, and Applicant's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

32.2. Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

33. WAIVER

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

34. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

CONTRACTOR

DATE

BY: _____
NAME, Title
Address

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE

BY: _____
VICKI J. WOODROW, Contracts Officer

Centralized Services Division
Financial Services Bureau
Metcalf Building, Room 003
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Legal Content:

DATE

BY:

DEQ Attorney