

# FY27 CLEAN TRUCK, BUS AND AIRPORT EQUIPMENT GRANT

## DRAFT – CONTRACT – DRAFT

This Contract No 527XXX is hereby made between XXXXXX (Contractor) and the Montana Department of Environmental Quality (DEQ) for the purpose of replacing PROJECT DESCRIPTION funded under this Contract. This Contract is issued in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, Chapter 5. The parties, in consideration of mutual covenants and stipulations described below, agree as follows:

### SECTION 1. EFFECTIVE DATE AND DURATION

Performance of the Contract shall take effect on the date of final signature (execution date) and terminate 20 months after execution date. The services provided pursuant to Section A of Attachment A must be completed except for the assurances provided in Section A.2. of Attachment A, which is a continuing obligation, unless this Contract is terminated or modified as provided herein.

### SECTION 2. SERVICES

Contractor shall follow all directions set forth in Attachment A: Scope of Work.

### SECTION 3. CONSIDERATION/PAYMENT

A. In consideration of services rendered pursuant to this Contract, the value of which constitutes good and sufficient consideration, DEQ agrees to reimburse Contractor XX% of the total cost for the purchase of one (1) new VEHICLE/AGSE up to a maximum of \$XXXXXX. Contractor agrees to provide at least XX% of the total VEHICLE/AGSE cost for the VEHICLE/AGSE as match towards the purchase. (IF APPLICABLE) DEQ agrees to reimburse the Contractor XX% of the total cost for the purchase and installation of electric vehicle charging infrastructure for the purpose of charging the VEHICLE/AGSE funded under this Contract, up to a maximum of \$XXXXX. Contractor agrees to provide at least XX% of the total purchase and installation of the electric vehicle charging infrastructure cost as match towards the purchase.

1. Subject to DEQ approval of the documentation required under Attachment A, paragraph A, DEQ shall reimburse Contractor within 30 days after receipt and approval of said documentation.
2. This Contract is funded through the Volkswagen Diesel Emissions Environmental Mitigation Trust for State Beneficiaries, Puerto Rico, and the District of Columbia.

### SECTION 4. ACCOUNTING, AUDITING AND RETENTION OF RECORDS

- A. 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 capable of allocating costs associated with this Contract in a manner that keeps these costs separate from the costs of other contracts, and Contractor shall so allocate all such costs accordingly.
- B. DEQ, the Legislative Auditor, the Legislative Fiscal Analyst, the Wilmington Trust, or their authorized agents, 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 Contract Manager (CM) in Section 14 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 IV.E. This Contract may be terminated by DEQ upon any refusal of Contractor to allow access to such records (§18-1-118, MCA).

- C. Contractor shall disclose all information and reports resulting from access to the records maintained in paragraph IV.A to any of the agencies referred to in paragraph IV.B.
- D. 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.
- E. 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 DEQ or a third party. Contractor may not destroy any records without first offering the records to DEQ.
- F. 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 shall correct the areas of non-compliance within six months after DEQ receives the audit report.

## **SECTION 5. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

In accordance with §18-4-141, MCA, Contractor may not assign, transfer, or subcontract any portion of this contract, other than services related to the purchase and installation of the infrastructure, without the State's prior written consent. Any subcontracting of services under this Contract, must be done in a competitive manner. Contractor is responsible to DEQ 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 DEQ under this contract.

## **SECTION 6. DEFENSE/INDEMNIFICATION/HOLD HARMLESS**

To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the State and its elected and appointed officials, agents, 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.

## **SECTION 7. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance sections 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 employees of the State. This insurance/exemption must be valid for the entire term of this contract. **Upon expiration of insurance coverage or exemption, a renewal document must be sent to the Montana Department of Environmental Quality, Attention Rebecca Gregg, Office of Financial Services, 1520 E. 6<sup>th</sup> Avenue, Helena, MT 59601, upon expiration.**

## SECTION 8. COMPLIANCE WITH LAWS

Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, 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. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, 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 upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

## SECTION 9. CONTRACT OVERSIGHT

- A. **Right to Assurance.** If the State, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this contract, the State may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five (5) business days) may, at the State's option, be the basis for terminating this contract under the terms and conditions or other rights and remedies available by law or provided by this contract.
- B. **Stop Work Order.** The State may, at any time, by written order to Contractor, require Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this contract shall be amended in writing accordingly.

## SECTION 10. CONFLICT OF INTEREST

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.

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 (which are defined as the same types of relationships as organization conflicts of interest, but applicable to an individual). If 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.

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.

## SECTION 11. CONTRACT TERMINATION

- A. **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 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.
- B. **Reduction of Funding.** In accordance with §18-4-313(4), MCA, DEQ must terminate this Contract if funds are not appropriated or otherwise made available to support DEQ's continuation of performance of this Contract in a subsequent fiscal period. If state or Settlement 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, DEQ shall terminate this Contract as required by law. DEQ shall provide Contractor the date DEQ's termination shall take effect. DEQ 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, DEQ shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date DEQ's termination takes effect. This is Contractor's sole remedy. DEQ 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.
- C. **Bankruptcy or Receivership.** Voluntary or involuntary bankruptcy or receivership by Contractor may be cause for termination.
- D. Any termination of this Contract is subject to the exception that Section 4 (ACCOUNTING, AUDITING AND RETENTION OF RECORDS), relating to retention of and access to records, must remain in effect.

## SECTION 12. EVENT OF BREACH-REMEDIES

- A. **Event of Breach.** Any one or more of the following acts or omissions of Contractor shall constitute an event of breach:
  - a. Products or services furnished by Contractor fail to conform to any requirement of this contract; or
  - b. Failure to submit any report required by this contract; or
  - c. Failure to fulfil any of the other covenants and conditions of this contract, including beginning work under this contract without prior State approval.
- B. **Actions in Event of Breach.** Upon the occurrence of any material breach of this contract, either party may take either one, or both, of the following actions:
  - a. Give the breaching party a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater specification of time, thirty (30) days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the breaching party notice of termination; or
  - b. Treat this contract as materially breached and pursue any of its remedies at law or in equity, or both.

No failure by either party to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be

deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of either party to enforce each and all of the provisions hereof upon any further or other breach on the part of the breaching party.

### **SECTION 13. 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 non-performing 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 five (5) working days after the onset. If the notice is not provided within the five (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.

### **SECTION 14. CONTRACT MANAGERS**

Contractor's liaison to DEQ for purposes of this Contract is **CONTACT NAME** or successor at Contractor's address **CONTACT ADDRESS** Phone: **CONTACT PHONE**, e-mail: **CONTACT E-MAIL**. DEQ's liaison to Contractor for purposes of this Contract is Neal Ullman or successor at DEQ's Energy Bureau, 1520 East Sixth Avenue, Helena, Montana 59620, phone (406) 444-6582, e-mail Neal.Ullman@mt.gov. Either party's contract manager may reach out with questions and/or status updates at will.

### **SECTION 15. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent 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. (See section 18-1-401, MCA.) 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 provisions of the Contract, unless the provisions are mutually and materially dependent.

### **SECTION 16. TAX EXEMPTION**

The State of Montana is exempt from Federal Excise Taxes except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-\*148, 124 Stat. 119].

### **SECTION 17. PERSONAL PROPERTY TAX**

All personal property taxes will be paid by Contractor.

### **SECTION 18. SCOPE, AMENDMENT AND INTERPRETATION**

- A. This Contract consists of **X** numbered pages, **DEQ-RFP2025-525XXX**, and Attachments A-Scope of Work and Attachment B-Contractor's Application Response. In the case of dispute or ambiguity about the minimum levels of performance by Contractor to fulfill this Contract, the order or precedence of document interpretation is as follows: 1) amendments to this Contract, 2) this Contract, 3) Attachment B, 4) Attachment

A, and 5) solicitation. A copy of the original has the same force and effect for all purposes as the original. Any enlargement, alteration, or modification requires a written amendment signed by both parties.

**SECTION 19. EXECUTION**

To express the parties' intent to be bound by the terms of this Contract, they have executed this document on the dates set out below.

**ENTITY NAME**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**Name, TITLE**  
**ADDRESS**  
**CITY, MT ZIP**  
**FEIN –**

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**REBECCA GREGG, Contracts Officer**  
Centralized Services Division  
Financial Services Bureau  
Metcalf Building  
1520 E. Sixth Avenue  
Helena, MT 59620-0901

Approved as to Legal Content:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DEQ Attorney

## ATTACHMENT A: SCOPE OF WORK

As a recipient of Volkswagen Environmental Mitigation Trust (EMT) funds, the Contractor shall complete the following tasks by the deadline stated in Contract Section 1, Effective Date and Duration or as otherwise provided within the Contract.

A. Contractor shall do the following:

1. Replace the following **PROJECT DESCRIPTION**. The Contractor shall purchase the **VEHICLE/AGSE** through blanket purchase agreements or some other mechanism that ensures a fair and reasonable price for the item from one of the vendors as submitted with the application. The **VEHICLE/AGSE** being scrapped and replaced will be:
2. Make/Model/Year: **PROJECT INFORMATION**
3. VIN: **XXXXXXXXXXXXXX**
4. Ensure that for its minimum five-year lifespan, the **VEHICLE/AGSE** purchased with funding under this Contract is used only by the Contractor.
5. **(IF APPLICABLE)** Purchase and install electric vehicle charging infrastructure. This charging infrastructure must be installed for the purpose of charging the vehicle/AGSE funded through this Contract. The Contractor may also use this charging infrastructure for other vehicle/AGSE owned by the Contractor. The Contractor shall purchase the Infrastructure through blanket purchase agreements or some other mechanism that ensures a fair and reasonable price for the item from one of the vendors as submitted with the application.
6. As soon as practicable, provide DEQ with the following:
7. Copies of the title of the old **VEHICLE/AGSE** showing the VIN
8. Photos of the old **VEHICLE/AGSE** VIN plate with the gross vehicle weight rating (GVWR);
9. Provide copy of the **VEHICLE/AGSE** Purchase Order (PO), including the line-item sheet, sent by the **VEHICLE/AGSE** manufacturer noting estimated delivery of the purchased **VEHICLE/AGSE** on or before Contract end date.
10. **(IF APPLICABLE)** Provide copies of the Infrastructure Purchase Order (s), including Infrastructure serial number(s).
11. Upon manufacturer's delivery to Contractor of the new **VEHICLE/AGSE**, provide DEQ with copies of the bills of lading, reflecting total amount of the purchases, including line-item sheet indicating item-by-item pricing, and actual date(s) of delivery to the Contractor. The line-item sheet must include the model years and vehicle Identification Numbers (VIN) of the purchased **VEHICLE/AGSE**. The line-item sheets must also clearly identify the **(IF APPLICABLE)** battery capacity, model, gross vehicle weight rating and horsepower.
12. Provide a copy of the invoices from the vendor showing total **VEHICLE/AGSE** purchase price (for each **VEHICLE/AGSE**).
13. **(IF APPLICABLE)** Provide a copy of the invoice(s) from the charging Infrastructure vendor showing total Infrastructure purchase price.
14. **(IF APPLICABLE)** Provide a copy of the line-item invoice(s) from the electrical or other contractor(s) installing the Infrastructure.
15. Provide DEQ with photographic (color electronic images are sufficient) evidence of the new **VEHICLE/AGSE**, **VEHICLE/AGSE** serial/identification number, **VEHICLE/AGSE** production date, **VEHICLE/AGSE** VIN plate, the DEQ-supplied decal(s), title or proof of ownership, and interior views **(IF APPLICABLE)**, and side and front views showing the **VEHICLE/AGSE** number and license (if available at the time of photographing). Said written and photographic verification must be submitted to DEQ before final payment is processed.

16. (IF APPLICABLE) Provide DEQ with photographic (color electronic images are sufficient) evidence of the installed electric vehicle charging infrastructure clearly showing the serial number and location of the Infrastructure. Said written and photographic verification must be submitted to DEQ before final payment is processed.
17. Provide DEQ with documentation that shows Contractor complied with the RECYCLING/SCRAPPAGE requirements. This includes the method used to recycle the replaced VEHICLE/AGSE. Contractor must submit written and photographic verification of the VEHICLE/AGSE disposal process that includes the engine serial number and chassis vehicle identification numbers (VIN) of the VEHICLE/AGSE to be recycled described in Section II paragraph A.1, and the Certificate of Engine/Chassis Destruction with this information. Said written and photographic verification must be submitted to DEQ before final payment is processed.
18. Notify DEQ immediately should the Contractor receive notice of a significant delay in the delivery of the VEHICLE/AGSE and/or installation of the Infrastructure (IF APPLICABLE) that will impact completion of tasks required by this section, and work with vehicle/AGSE manufacturer and DEQ to resolve any issues to the satisfaction of Contractor and DEQ. DEQ will issue a modification to formalize the delay and new anticipated delivery date. No related cost increases will be passed on to/requested from the State. The same completion deadlines once received apply as if the vehicles were on time. The State reserves the right to require Contractor to provide supporting justification documentation for extension requests.
19. Contribute matching funds equal or greater than XX% of the total VEHICLE/AGSE cost for the VEHICLE/AGSE shown on the final invoice.
20. (IF APPLICABLE) Contribute matching funds equal to or greater than XX% of the total charging infrastructure purchase and installation cost.
21. Comply with all applicable federal and state laws, executive orders, regulations, and applicable written policies in performance of services under this Contract.
22. Contractor and any subcontractors must have a current contractor registration profiles in the System for Award Management (SAM <https://www.sam.gov/SAM/>), [formerly the Central Contractor Registration – CCR] for the duration of this Contract.

B. Upon request, DEQ will provide consultation to Contractor concerning the subject matter of this Contract. Questions during the Solicitation phase MUST be submitted through the Q&A Board. Failure to do so is the Applicant's sole risk. No material changes will be considered during contract negotiation.

C. Both parties agree that Contractor shall have control over the disposition of the VEHICLE/AGSE at the conclusion of the VEHICLE/AGSE typical lifespan and that the requirements outlined in Section II.A no longer applies.



## **ATTACHMENT B: CONTRACTOR'S APPLICATION RESPONSE**

Insert a copy of the awarded application response and supplemental materials (i.e., pictures, quotes, etc.)