FY26 Energy Study Project
DRAFT – Contract – DRAFT

THIS CONTRACT is entered into by and between the State of Montana Department of Environmental Quality (State) and XXXXXX (Subrecipient), collectively the Parties, for the purpose of funding PROJECT DESCRIPTION. This Contract is entered into in accordance with Title 18, Montana Code Annotated (MCA) and Administrative Rules of Montana (ARM) Title 2 chapter 5 is exempted from the provisions of the Montana Procurement Act under § 18-4-132(3)(a), MCA.

THIS CONTRACT is funded in whole or in part by grant funding from the United States Department of Energy (DOE) under the Bipartisan Infrastructure Law. The State, as a pass-through entity, has accepted this grant funding subject to the Special Terms and Conditions attached to this Contract as Attachment C. By entering this Contract, Subrecipient agrees to comply with all applicable provisions of the Special Terms and Conditions including, but not limited to the prevailing wage requirements of the Davis-Bacon Act and associated reporting provisions. Furthermore, Subrecipient shall ensure that all applicable provisions of the Special Terms and Conditions are included in any qualifying subcontract Subrecipient enters into and is associated with any project funded under this Contract. Should any provision of the Special Terms and Conditions conflict with a term or condition of this Contract, the Special Terms and Conditions supersede this Contract.

1 EFFECTIVE DATE, DURATION, AND RENEWAL

The Contract's term is effective upon the last signature through 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 Department of Environmental Quality Agency Procurement Officer, or their designee.

2 SERVICES/SUPPLIES

Contractor shall provide State the following services described in Attachment A: Scope of Work.

2.1 **Unique Entity Identification (UEI) Requirement.** As part of the reporting requirements under the Federal Grant Award, Contractors and any subcontractors must have and maintain active and current contractor profiles in the System for Award Management (SAM-SAM.gov | Home) for the duration of this Contract. The UEI replaced the Data Universal Numbering System (DUNS), managed by Dun and Bradstreet, in 2023.

2.2 **Report Requirements.**

All reports must accompany the invoice relative to the month submitted. For example, 1st report will be submitted with October invoice; 2nd report will be submitted with January invoice, 3rd report will be submitted with April invoice, and 4th report will be with July invoice. To the extent not required by Sections 2.2.1 and 2.2.2 below, Subrecipient shall comply with the reporting requirements set forth in the Federal Assistance Reporting Checklist in the Special Terms and Conditions.

2.2.1 **Quarterly Reports.** When requesting reimbursement of funds per the schedule specified in Section 5, Consideration and 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. These reports must be provided within 30 days after the end of each quarter. At minimum, each report shall include:

- A short narrative of the original project (this will be the same for each report)
- Project progress during the reporting period (i.e., activities initiated, accomplishments, and highlights)
- Problems, corrective actions, other issues/concerns encountered. Go into detail what each is and note recommended/requested next steps for State's consideration.
- Funding expenditure status. Show your spend down compared to stated requirements, funding sources including matches, and explain any discrepancies. Are you under/on/over budget? What were the driving elements for budget savings/constraints experienced during the reporting period?
- Planned activities for next quarter.

2.2.2 **Final Report.** Subrecipient shall provide a final report within 45 days after project completion. At minimum, the report shall include:

- A summary of activities performed.
- Overall accomplishments
- Successes/failures, including significant problems or unique situations encountered, corrective actions taken, recommended solutions/next steps if applicable.
- Summary of funding expenditure status. Show your spend down compared to stated requirements, funding sources including matches, and any discrepancies. Are you under/on/over budget? What were the driving elements for budget savings/overages experienced during the reporting period?

3. **WARRANTY**

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

4. **CONSIDERATION/PAYMENT**

This Contract is funded in whole or in part by a portion of Federal Grant No.DE-EE0010083 from the United States Department of Energy.

4.1 **Payment Schedule.** As consideration of the goods and services described in Attachment A: Scope of Work to be provided by Subrecipient, the State shall award Subrecipient up to $XX,XXX subject to the milestone schedule described in section 4.2.2. Final award amount is subject to the grant number referenced above and as further clarified in Attachment C. Federal Terms and Conditions

4.2 **Allowable Costs and Invoice Requirements.**

4.2.1 **Allowable Costs.** The allowable expense categories that may be reimbursed under this Contract for the fulfillment of the services provided are as follows:

- Supplies and materials necessary in the performance of the Contract including newsletter/articles and display boards and the cost of developing supplies and materials;
- Communications and reproduction expenses necessary in performance of the Contract including telephone, postage, facsimiles, and photocopying.

Further guidance on allowable costs under this Contract can be found in Term 27 of the Special Terms and Conditions, and the relevant provisions of 2 CFR part 200.

4.2.2 **Invoice Requirements, Inspections, and Payments.** The State shall award Subrecipient based on completion and acceptance of each milestone defined below.

Line	Milestone/Deliverable	Award Amount	Payment % of Total (est).
1			
2			
3			
	Subaward Grand Total	$***XX,XXX***	

Subrecipient shall include the Contract numbers on all invoices, packing lists, packages and correspondence pertaining to the Contract. If the numbers are not provided, the State is not obligated to pay the invoices.

Because Subrecipient's program meets "small grant" criteria (under $250,000), the waiver for Build America, Buy America (BABA) applies.

- Company Logo, Name, Address, Remittance Information
- Contract and/or Purchase Order numbers*
    - Subrecipient shall include the Contract and/or Purchase Order numbers on all invoices, packing lists, packages, and correspondence pertaining to the Contract and/or Purchase Order. If the numbers are not provided, the State is not obligated to pay the invoices.
- Contract and/or Purchase Order Date
- Description of Service/Purchase (Item #, Description, Quantity, Unit Cost, Discount if Applicable, Total
- Extended Cost Per Line, Grand Total)
- E-mail invoice(s) to State's Contract Manager named in Section 24.1, or their designee, within 30 consecutive days after Purchase Order fulfillment and/or contract payment schedule.

The State reserves the right to inspect invoices and seek clarifications and/or corrections for all invoices submitted for reimbursement. Reimbursement for questioned costs may be withheld pending resolution and may require Subrecipient to correct and resubmit with additional documentation, including any records required to be kept by Subrecipient; or may withhold reimbursement 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.

The Subrecipient shall, upon execution of this Contract, provide the State with its banking information in order to facilitate the State's electronic transfer of payments.

5 ACCOUNTING, AUDIT AND RETENTION OF RECORDS

5.1 **Maintenance of Records.** Subrecipient 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 as defined by Generally Acceptable Accounting Principles (GAAP) and Office of Management and Budget (OMB) guidance provided in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. 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.

5.2 **Access to Records.** The State, the Legislative Auditor, the Legislative Fiscal Analyst, DOE, and the Comptroller General of the United States, or their authorized representatives, have the right of access to accounting records of Subrecipient for purposes of inspection, audit, excerpts, or transcripts of funds received and expended by Subrecipient pursuant to this Contract. Subrecipient shall maintain the records at the address of its contract manager in Section 21.1 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 Subrecipient retains the records under paragraph 5.5. Notwithstanding the provisions of the Contract Termination section of this Contract, this Contract may be terminated by the State upon any refusal of Subrecipient to allow access to such records necessary to carry out an audit and analysis (§18-1-118, MCA).

5.3 **Disclosure of Reports.** Subrecipient shall disclose all information and reports resulting from access to the records maintained in paragraph 5.1 to any of the agencies referred to in paragraph 5.2.

5.4 **Standard Audit Procedures.** Audits conducted under this section must be as defined in by Generally Accepted Auditing Standards (GAAS) as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency.

5.5 **Retention of Records.** All books, records, reports, accounting, and other documents maintained by Subrecipient under this Contract must be retained for a period of eight (8) 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. Subrecipient may not destroy any records without first offering the records to the State.

5.6 **Timely Remedy of Noncompliance.** If an audit shows that Subrecipient 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, Subrecipient must correct the areas of non-compliance within six (6) months after DEQ receives the audit report.

5.7 **Funding Level Requirements.**

5.7.1 **$1,000,000 or More in Annual Federal Funding.** If Subrecipient receives a total of $1,000,000 or more in federal funds from any and all sources of federal funding during any fiscal year during which this Contract is performed, it must comply with the accounting and audit requirements of the most current version of the 2 CFR Part 200, Subpart F, Audit Requirements, concerning the use of the funds provided under this Contract. Subrecipient shall provide a copy of its annual or biennial audit report covering the year in question to the State within 30 days after the report's issuance. The audit report must include all the following information:

- Federal grantor/pass-through grantor program title;
- Federal CFDA number;
- Pass-through grantor's number or this Contract number;
- Program or award amount;
- Cash accrued or deferred revenue on July 1 or the first day of Contractor's fiscal year;
- Receipts or revenue recognized during the period;
- Total disbursements/expenditures;
- Cash accrued or deferred revenue on July 1 or the last day of Contractor's fiscal year; and
- An indication of the basic accounting used in determining the above information in a footnote to the schedule of federal financial awards.

5.7.2 **Less than $1,000,000 in Annual Federal Funding.** If a Subrecipient receives less than $1,000,000 in total federal assistance during any fiscal year during which this Contract is performed, and therefore does not need to submit an audit report to the State, Contractor shall notify the State in writing within 30 days after the end of that fiscal year.

5.7.3 **Mandatory Inclusion in Subcontracts.** Subrecipient must incorporate Section 5 in its entirety in any subcontract it awards in excess of $5,000, at any tier, and in all charge orders directly related to project performance.

6 PREVAILING WAGE REQUIREMENTS

6.1 **Montana Resident Preference.** The nature of the work performed, or services provided, under this Contract meets the statutory definition of a "public works contract" in §18-2-401, MCA. Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of $25,000 for construction or non-construction services in accordance with §18-2- 401 through §18-2-432, MCA, and all administrative rules adopted under these statutes.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with §18-2-403 and §18-2-409, MCA. Any and all questions concerning prevailing wages and Montana resident issues should be directed to Montana Department of Labor and Industry, (406)-444-5600.

6.2 **Standard Prevailing Rate of Wages.** In addition, unless superseded by applicable Federal Law contained in Attachment C to this Contract, all employees working on a public works contract must be paid prevailing wage rates in accordance with §18-2-401 through §18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in §18-2-401, MCA, in which the total cost of the Contract is greater than $25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

6.3 **Notice of Wages and Benefits.** Furthermore, §18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, not later than the first day of work and continuing for the entire duration of the Contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with §18-2-423, MCA.

6.4 **Wage Rates, Pay Schedules, and Records.** All contractors, subcontractors, and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such a craft, classification, or type of employee established by the Commission or the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates (Prevailing Wage).

7 ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Subrecipient may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent (18-4-141, MCA). Subrecipient is responsible to 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 Subrecipient. No contractual relationships exist between any subcontractors and State under this Contract.

8. HOLD HARMLESS, INDEMNIFICATION, AND INSURANCE REQUIREMENTS

8.1 **Assumption of Liability.** Subrecipient is a self-insured entity under Montana law. Accordingly, 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.
- Maintain reasonable coverage for such liabilities, whether through commercial insurance or a reasonable self- insurance mechanism under the provisions of Title 2, Chapter 9, MCA, and the minimums prescribed by law.
- Provide the other party a certificate of insurance upon request.

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

8.2 **Conformance with Law.** Subrecipient shall follow all federal requirements applicable to federal grants and agreements including provisions in the Special Terms and Conditions, which are incorporated in this Contract as if fully set forth within this section.

9. 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 Manager identified herein. Interested parties should provide as much advance notice as possible.

10 COMPLIANCE WITH WORKER'S COMPENSATION ACT

Subrecipient shall comply with the provisions of the Montana Worker's 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 worker's compensation insurance, an independent contractor's exemption certificate, or documentation from Montana Department of Labor and Industry of corporate officer status. Proof of compliance must be submitted on an ACCORD form, or other similar form, and can be included with the proof of insurance required in Section 11, Required Insurance. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be mailed to Montana Department of Environmental Quality ATTN Rebecca Gregg, PO Box 200901, Helena, MT 59620-0901.

11 REQUIRED INSURANCE

11.1 **General Requirements.** Subrecipient 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 Subrecipient, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

11.2 **Primary Insurance.** Subrecipient'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 Subrecipient's insurance and shall not contribute with it.

11.3 **Specific Requirements for Commercial General Liability.** Subrecipient shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $750,000 per occurrence and $1,500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Subrecipient 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 Subrecipient, including the State's general supervision of Subrecipient, products, and completed operations, and the premises owned, leased, occupied, or used.

11.4 **Specific Requirements for Automobile Liability.** Subrecipient shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 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, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by Subrecipient.

11.5 **Professional Liability.** Subrecipient shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of $750,000 per occurrence and $1,500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Subrecipient or its officers, agents, representatives, assigns, or subcontractors.
NOTE: If "occurrence" coverage is unavailable or cost prohibitive, Subrecipient may provide "claims made" coverage provided the following conditions are met: (i) the commencement date of this Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years, and (ii) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

11.6 **Deductibles.** Any deductible is not effective unless it is declared to and approved by the State. At the request of the State, either (i) the insurer shall reduce or eliminate such deductibles as respects the State, its officers, officials, employees, or volunteers; or (s) at the expense of Subrecipient, Subrecipient shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

11.7 **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 Department of Environmental Quality ATTN Rebecca Gregg PO Box 200901 Helena, MT 59620-0901. The certificates must name the State of Montana as certificate holder and Subrecipient shall provide copies of additional insured endorsements required for Commercial General Liability, Automobile Liability, Professional Liability insurances. Subrecipient must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times. Failure to comply with this requirement may result in Contract termination per Section 16, Contract Termination.

12 INTELLECTUAL PROPERTY/OWNERSHIP

12.1 **Mutual Use.** Subrecipient 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, non-exclusive, 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 Subrecipient has developed or prepared for the State under this Contract; (ii) any program code, or site-related program code that Subrecipient has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) is collectively called the "Work Product".

12.2 **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 Subrecipient the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

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

12.4 **Copy of Work Product.** Subrecipient shall, at no expense 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.

12.5 **Ownership of Contractor Pre-Existing Materials.** Subrecipient 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 Subrecipient owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Subrecipient in connection with the services provided to the State (the "Subrecipient Pre-existing Materials"). Subrecipient Pre-existing Materials are not Work Product.

Subrecipient shall provide full disclosure of any Subrecipient Pre-Existing Materials to the State before its use and to prove its ownership. If, however, Subrecipient fails to disclose to the State such Subrecipient Pre-existing Materials, Subrecipient shall grant the State a non-exclusive, worldwide, paid-up license to use any Subrecipient Pre-Existing Materials embedded in the Work Product to the extent such Subrecipient 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 12.2 above, or as may be expressly agreed in any statement of work, Subrecipient shall retain title to and ownership of any hardware it provides under this Contract.

13 PATENT AND COPYRIGHT PROTECTION

13.1 **Third Party Claim.** If a third party makes a claim against the State that the products furnished under this Contract infringe upon or violate any patent or copyright, the State shall promptly notify Subrecipient. Subrecipient shall defend such claim in the State's name, or its own name, as appropriate, but at Subrecipient's expense. Subrecipient shall indemnify the State against all costs, damages, attorney fees, and all other costs and expenses of litigation that

accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter into any action.

13.2 **Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Subrecipient may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by an injunction, the State will determine whether the Contract has been breached.

14 CONFLICT OF INTEREST

For the purposes of the Montana Code of Ethics, Subrecipient and each of its employees and subcontractors, is a “public employee” for the purposes of this Section. As such, Subrecipient 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.

If the State discovers that an employee of Subrecipient or subcontractor is in violation of this Section, the State may, after consulting with Subrecipient, terminate this Contract or take other appropriate measures to address the conflict and Subrecipient shall reimburse the State for any services the State requires to be performed by another Subrecipient that duplicate the services performed by the employee who violated this Section.

15 DISCLOSURE

15.1 Subrecipient 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.

15.2 Subrecipient 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. Subrecipient further certifies that no former employee of the State of Montana or local government may work under this Contract for a period of twelve (12) 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.

16 CONTRACT TERMINATION

Any termination of this Contract is subject to the exception that Section 5 (Accounting, Audit, and Retention of Records), relating to retention of and access to records, remain in effect.

16.1 **Termination for Cause.** Either party may, by written notice to the other party, immediately terminate this Contract in whole or in part for failure to materially perform any of the services, duties, terms, or conditions contained in this Contract.

16.2 **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. The written notice must demand performance of the items not performed within a specified period 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.

16.3 **Reduction of Funding.** Under §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 Subrecipient the date the State's termination shall take effect. The State shall not be liable to Subrecipient for any reimbursement that would have been payable had the Contract not been terminated under this provision. As stated above, the State shall be liable to Subrecipient only for the reimbursement, or prorated portion of that reimbursement, owed to Contract up to the date the State's termination takes effect. This is Subrecipient's sole remedy. The State shall not be liable to Subrecipient for any other reimbursements or damages arising from termination under this section, including but not limited to general special, or consequential damages such as lost profits or revenues.

16.4 **Stop Work Order.** The State may, at any time, by written order to Subrecipient require Subrecipient 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 Subrecipient. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Subrecipient 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, Subrecipient shall resume work. The State Contract Manager shall make the necessary adjustment in the delivery schedule or contract price or both, and this Contract shall be amended in writing accordingly.

17 EVENT OF BREACH-REMEDIES

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

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without State's prior approval and breaching Section 25 obligations; or
- Financial inability to perform its obligations under this Contract.

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

17.3 **Actions in Event of Breach.** Upon a material breach by either party, the non-breaching party may:

- Terminate this Contract as defined under Section 19 (Contract Termination), and pursue any of its remedies under this Contract; at law or in equity; or
- 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.

18 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.

19 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.

20 CONFORMANCE WITH CONTRACT

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

21 CONTRACT MANAGERS AND SERVICE OF NOTICES

21.1 **Contract Managers.** All management and coordination on State's behalf must be designated through a single point of contact as State's Contract Manager. Subrecipient shall designate a Contracts Manager that will provide a single point of contact for management and coordination of Subrecipient's work. All work performed under this Contract must be coordinated between State's Contract Manager and Subrecipient's Contract Manager.

The State CM is designated by the agency program manager to provide technical liaison duties between the Subrecipient's management and the Contracting Officer in routine technical matters constituting general program direction within the scope of the Contract. Under NO circumstances is the CM authorized to effect any changes in the work required under this Contract whatsoever or enter into any agreement that has the effect of changing the terms and conditions of this Contract or that causes the Subrecipient to incur any costs.

In addition, except as otherwise authorized in this Contract, the CM will NOT supervise, direct, or control Subrecipient employees. Notwithstanding this provision, to the extent that Subrecipient accepts any direction that constitutes a change to his Contract without prior written authorization of the Contracting Officer, costs incurred in connection therewith are incurred at the sole risk of the Subrecipient, and if involved under this Contract, may be disallowed.

On all matters that pertain to the Contract terms, the Subrecipient must communicate with the Contracting Officer. Whenever, in the opinion of the Contractor, the CM requests efforts beyond the terms of the Contract, the Contractor shall so advise the Contracting Officer. IF the CM persists and there still exists disagreement as to the proper contractual coverage, the Contracting Officer will be notified immediately, preferably in writing.

Proceeding with work without proper contractual coverage and/or allowable lead preparation time, may result in nonpayment or necessitate submittal of a Contract claim per the provisions contained herein (i.e., breach of contract, termination, deficiency notice). The Subrecipient's management should clearly communicate this position to its employees working on this Contract and to any subcontractors also providing support.

[Name] is State's Contract Manager
PO Box 200901
Helena, MT 59620-0901
Phone Number(s)
e-mail

[Name] is ENTITY NAME
Address
City, State, Zip Code
Phone Number(s)
e-mail

21.2 **Service of Notices.** State's Contract Manager and Subrecipient's Contract Manager may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the named contract managers, or their designee. 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 withing three (3) business days of mailing. A signed and dated acknowledgement of the Notice is required by both parties.

The personnel identified or described in Subrecipient's proposal shall perform the services provided for the State under this Contract. Subrecipient agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Subrecipient personnel assigned to work under this Contract and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonable withheld. This approval or disapproval shall not relieve Subrecipient to perform and be responsible for its obligations under this Contract. The State reserves the right to require Subrecipient personnel replacement. If Subrecipient personnel become unavailable, Subrecipient shall provide equally qualified replacement in time to avoid delays to the work plan.

22 MEETINGS

22.1 **Technical or Contractual Problems.** Subrecipient shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Subrecipient and State in the performance of their respective obligations, at no additional cost to the State. State may request and coordinate meetings as problems arise. State shall provide Subrecipient a minimum of three (3) full business days' notice of meeting date, time, and location. State prefers virtual meetings; however, State reserves the right to conduct site visits with face-to-face meetings. Subrecipient's consistent failure to participate in problem resolution meetings, Subrecipient missing or rescheduling two (2) consecutive meetings, or Subrecipient's failure to make a good faith effort to resolve problems may result in Contract termination.

22.2 **Failure to Notify.** If Subrecipient 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 the Subrecipient knew or reasonably should have known with respect to the period during the term covered by Subrecipient's status report, Subrecipient 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.

23 **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, Subrecipient must provide transition assistance for a reasonable, mutually agreed period 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 reimburse Subrecipient 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 reimbursing Subrecipient for the additional resources Subrecipient utilized in providing transition assistance with any damages the State may have sustained as a result of Subrecipient's breach.

24 **CHOICE OF LAW AND VENUE**

Montana law governs this Contract as defined in §18-1-401, MCA. 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, except as provided in Section 8, Defense, Indemnification/Hold Harmless.

25 **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].

26 **PERSONAL PROPERTY TAX**

All personal property taxes will be paid by Subrecipient.

27 **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 provisions of the Contract, unless the provisions are mutually and materially dependent.

28 **SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

28.1 **Contract.** This Contract consists of XX numbered pages and any Attachments as required as amended, and Subrecipient's response, as amended. In the case of dispute or ambiguity the order of precedence of document interpretation is the same, EXCEPT the Special Terms and Conditions in Attachment C shall take precedence over all other documents.

28.2 **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.

29 **WAIVER**

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

30 **EXECUTION**

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

ENTITY NAME

_________________________ ____

DATE **Name, TITLE**
ADDRESS
CITY, MT ZIP

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

_________________________ ____

DATE **REBECCA GREGG, Contracts Officer**
Financial Services Bureau
PO Box 200901
Helena, MT 59620-0901

Approved as to Legal Content:

_________________________ ____

DATE DEQ Attorney

ATTACHMENT A: SCOPE OF WORK

Insert scope of work here when finalizing the contract.

ATTACHMENT B: CONTRACTOR’S APPLICATON RESPONSE

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

ATTACHMENT C: FEDERAL TERMS AND CONDITIONS

Federal Terms and Conditions may be added as appropriate.