



To: Montana Rail Operators and interested parties  
From: Neal Ullman, Montana Energy Office, Clean Engine Project  
Date: October 29, 2021  
Subject: Request for Applications: Funding to repower switcher locomotive engines

The U.S. Environmental Protection Agency (EPA) allocates funds to reduce diesel emissions under the Diesel Emissions Reduction Act (DERA). DERA authorizes the EPA to support states' clean diesel grant programs to replace higher-polluting diesel engines. The Montana Department of Environmental Quality (DEQ) was awarded a state clean diesel grant and proposes to partner with eligible applicants to repower up to two unregulated or Tier 0 switcher locomotive engines with Tier 3 engines.

DEQ has supplemented its DERA funds with funding from the Volkswagen Environmental Mitigation Trust Settlement. The Settlement allows states to fund certain diesel vehicle replacements and other eligible mitigation actions with Settlement funds. Switcher engine repowers are eligible for funding under the Settlement. With the supplementary funding, there are \$800,000 in total project funds available for awards. Applicants are required to provide at least 60 percent non-federal match to DEQ's share.

Interested applicants must submit their applications and the required supporting documents in accordance with the attached Request for Applications. All application materials must be postmarked or e-mailed by **5:00 p.m. MDT on January 14, 2022**. Applications received with a postmark or time stamp after the stated date/time will not be accepted. DEQ will notify the successful applicants on or before **February 1, 2022**. All activities and billing under this program must be completed by **August 31, 2023**. Additional copies of these application materials can be obtained via the DEQ website at: <https://deq.mt.gov/energy/Programs/fuels>.

**Program Contact**

Neal Ullman  
Montana DEQ – Energy Bureau  
P.O. Box 200901  
Helena, MT 59620-0901  
Phone: 406-444-6582, E-mail: [neal.ullman@mt.gov](mailto:neal.ullman@mt.gov)

**REQUEST FOR APPLICATIONS**  
**Montana Department of Environmental Quality**  
**Montana Clean Engine Project**  
**October 29, 2021**

**1. Program Overview:**

The goal of the Montana Clean Engine Project is to reduce NOx emissions, achieve long term air quality benefits for the greatest number of Montanans, and reduce exposure of sensitive populations to diesel emissions. The Montana Clean Engine Project will prioritize projects based on the factors described in Appendix A, Evaluation Criteria Form. Any awards in response to this solicitation are subject to the applicable regulatory provisions in 40 CFR Chapter 1, Subchapter B, all terms and conditions of each DEQ contract, and any attachments from EPA with respect to DERA. This Request for Applications is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**2. Purpose**

The purpose of this Request for Applications (RFA) is to solicit applications for funding to repower unregulated or Tier 0 switcher locomotive engines with Tier 3 engines.

**3. Point of Contact**

Starting on the issue date of this RFA applicants must communicate only with Neal Ullman at DEQ via e-mail at [neal.ullman@mt.gov](mailto:neal.ullman@mt.gov) or telephone at 406-444-6582.

Complete applications (one per engine repower) must be postmarked or e-mailed to the point of contact by **5:00 pm MDT on January 14, 2022**. DEQ will also not accept any applications received with a postmark or e-mail time stamp later than **5:00 pm MDT on January 14, 2022**.

DEQ will first review each application for completeness and compliance in accordance with this RFA. Complete and compliant applications will then be forwarded to the review team. The review team will evaluate the applications and recommend engines for repower in an order of ranking. Successful applicants will be notified on or before **February 1, 2022**. The switcher locomotive with the repowered engine will need to operate within the State of Montana for the useful life of the engine.

The term for funding of each successful applicant will begin when the final contract is signed by all parties and will end on or before **August 31, 2023**. Expenditures before the signature date of the contract are not reimbursable. The switcher locomotive engine being repowered shall be recycled or scrapped within 90 days of installation of the replacement engine, in accordance with Appendix C – Sample Contract.

**4. Evaluation Priorities**

The Montana Clean Engine Project will prioritize the repower of existing switcher locomotive engines with Tier 3 engines using a ranking system described in Appendix A. The goal of the Montana Clean Engine Project is to permanently reduce diesel emissions, reduce diesel fuel use and reduce NOx emissions. This will occur by permanently removing the higher polluting older diesel switcher locomotive engine from service and replacing it with a cleaner Tier 3 engine purchased under this program. The responses to this RFA will establish a list of engines prioritizing repowers based on the factors detailed in Appendix A – Evaluation Criteria Form.

**5. Best Achievable Technology Analysis**

In addition to application materials described in this RFA, applicants must submit a best achievable technology analysis. The analysis must be prepared by the engine manufacturer or installer for the proposed project and determine that no engine certified to Tier 4 is produced by any manufacturer with the appropriate physical or performance characteristics to repower the equipment. Additional information on the requirements of the best achievable technology analysis can be found on page 14 of the 2021 DERA State Grants Program Guide at: <https://www.epa.gov/sites/production/files/2021-05/documents/420b21027.pdf>.

## **6. Recycling/Scrappage of Replaced Engine**

The successful applicant(s) shall ensure the existing engine is scrapped or recycled and shall bear the cost of recycling/scraping the old engine. Successful applicants must agree to meet all the EPA and DEQ recycling/scraping and documentation requirements. The old engine must be recycled or scrapped at a recycling or scrapping facility; successful applicants should communicate with DEQ to ensure the method and selection of a recycler/scrapper that can complete EPA requirements.

To be considered a replacement, the engine repower must be accompanied by the recycling of the old engine listed in the DEQ contract. The engine being replaced must be recycled within ninety (90) days of the acceptance of the engine repower and before final payment is made. Any funds from recycling and scrapping will be directed back to the applicant to off-set the costs of recycling.

For this RFA, recycling is defined by EPA as a permanently disabled engine so that the engine is no longer suitable for use. Written and photographic evidence of appropriate disposal, including the engine serial number, EPA engine family name and scrapped engine identification number, is required as part of the deliverables submitted to DEQ, and necessary for final payment. The recycling entity must place this information on the EPA Certificate of Engine/Chassis Destruction, and color photo evidence of the engine label and identification number is also required. The applicant is responsible for documenting the recycling of the existing engine.

## **7. Other Requirements**

In accordance with §18-4-313(4), MCA, the State must terminate any resulting 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.

## **8. Mandatory Match**

For the switcher locomotive engine repower, applicants are required to provide at least 60 percent non-federal match to DEQ's share. The awarded funds for the project may cover a maximum of 40 percent of the cost of the engine repower, dependent on available funding, including the costs of installing such engine, **based on the lowest bid including options.**

## **9. Applicant's Signature**

The application and letter of commitment must be signed by an individual authorized to legally bind that party. The applicant's signature on an application in response to this RFA guarantees that the offer has been established without collusion and without effort to preclude the State of Montana from obtaining the best possible supply or service. Proof of authority of the person signing the request for application response must be furnished upon request.

## **10. Offer in Effect for 120 Days**

An application may not be modified or canceled by the applicant for a 120-day period following the deadline for application submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and applicant so agrees in submitting the application.

## 11. Application Materials and Instructions

In addition to the application page, a complete application shall include:

Bids for the Engine: One bid from each of the three different vendors for each engine to be repowered. For example, an applicant seeking to repower two switcher locomotive engines would require submittal of two applications. Each application would be separate, and the three vendor bids would need to clearly identify that the bid is in support of the engine being repowered. If applicant is not able to receive three bids, please include a written explanation of the reason why.

DEQ will award grants based on the lowest of the three bids with options. The applicant may choose to purchase the engine from a vendor with a higher bid provided the applicant covers any cost above that of the lowest bid, including options.

Signed Letter of Commitment: Applicants are required to use Attachment B – Required Letter of Commitment for Match to state the amount of matching funds. Non-federal matching funds are required in this solicitation.

Proof of Ownership: The applicant must provide proof of ownership of the engine to be repowered which may include a copy of the bill of sale, maintenance records, or in some cases a title.

## 12. List of Attachments and Appendices

- Application Form and Detailed Instructions
- Appendix A. Evaluation Criteria Form
- Appendix B. Sample Letter of Commitment for Match (only acceptable format)
- Appendix C. Sample Contract
- Appendix D. Priority Air Quality Counties and Areas

## 13. Important Dates

DEQ will accept questions regarding this RFA that are submitted before 5pm Mountain on December 10, 2021. Answers to substantive questions will be posted by December 17, 2021. Non-substantive questions can be answered any time before the application deadline but should be submitted by the December 10 deadline.

Answers will be posted to DEQ's Alternative Fuels & Transportation website at

<https://deq.mt.gov/energy/Programs/fuels>.

- Release of RFA – October 29, 2021
- Question submittal deadline – December 10, 2021
- Questions and answers posted to DEQ website – December 17, 2021
- Deadline for Applications – January 14, 2022
- Evaluation Process Completed – January 31, 2022
- Final Selections – January 31, 2022
- Notification of Awards – February 1, 2022
- DEQ submits D-4 draw down request to Volkswagen Settlement Trustee – February 7, 2022
- Sign Contracts and Begin Project – April 15, 2022
- Deliverables due and projects Completed – August 31, 2023

## 14. Complete Application Checklist

- Completed and signed 1-page application
- Letter of Commitment for match
- Proof of ownership of engine to be repowered
- Best Achievable Technology analysis showing that a Tier 4 engine is not available
- Bids from three vendors clearly showing base cost, options and their costs. If applicant is not able to receive three bids, please include a written explanation of the reason why.
- Postmarked on or before January 14, 2022

**MONTANA CLEAN ENGINE PROJECT  
2022 APPLICATION FORM**

Contact Person: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Organization: \_\_\_\_\_  
D-U-N-S® Number: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Physical Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
County: \_\_\_\_\_

<b>Low engine cost bid with all options</b>	\$ _____
<b>Total cost of engine chosen</b>	\$ _____
<b>Grant request</b>	\$ _____
<b>Mandatory Match</b>	\$ _____

**Existing Engine Data (from the old engine being replaced and scrapped)**

Horsepower rating (bhp/hr): \_\_\_\_\_ Hours used/year: \_\_\_\_\_  
Engine Manufacturer, Model, Year Built: \_\_\_\_\_  
Engine Serial/Identification Number: \_\_\_\_\_ Gallons of Diesel/Year: \_\_\_\_\_  
Total Current Diesel Engine Miles: \_\_\_\_\_

**New Clean Engine Information**

Horsepower rating: \_\_\_\_\_ Engine Model Year: \_\_\_\_\_  
Federal NOx Emissions Standard (g/bhp-hr): \_\_\_\_\_  
Anticipated Active Life of Engine (years): \_\_\_\_\_

Authorized Official's Signature \_\_\_\_\_  
Authorized Official's Title \_\_\_\_\_ Date \_\_\_\_\_

This project is advertised as a part of the EPA State Clean Diesel Grant Program as authorized under Title VII, Subtitle G, Section 793 of the Diesel Emissions Reduction Program (DERA) in the Energy Policy Act of 2005 (codified at 42 U.S.C. 16133). An award of funds under this project is automatically canceled if federal funds under the Act are not appropriated or otherwise made available to support the contract's commencement or continuation of performance. Applications and signed letters of commitment match must be postmarked by January 14, 2022.

**Send all application materials to:**

Neal Ullman  
Montana DEQ – Energy Bureau  
P.O. Box 200901  
Helena, MT 59620-0901  
406-444-6582 (phone), E-mail: [neal.ullman@mt.gov](mailto:neal.ullman@mt.gov)

*Please refer to the detailed instruction and the following pages for instructions on completing the application.*

## **MONTANA CLEAN ENGINE PROJECT DETAILED INSTRUCTIONS FOR APPLICATION FORM**

**Note:** A separate application must be submitted for each engine to be repowered.

**Contact Person, E-mail, & Phone Number:** The person(s) responsible for the financial and technical application and authorized to sign the contract for the replacement engine.

**Name of Organization:** Please provide the name of the entity that would receive the funding.

**D-U-N-S® Number:** EPA requires all applicants receiving or applying for DERA funding to provide their Dun and Bradstreet Universal Numbering System (DUNS) number. Applications cannot be accepted without a DUNS number.

**Mailing Address, Physical Address, City, State, Zip, and County:** Provide the mailing and physical address of the entity where an agreement may be sent and the county where the switcher locomotive engine is primarily located.

**Lowest bid with All Options and Costs:** This is the cost of the engine with all options. Engine bids must clearly identify engine cost, options and all applicable costs.

**Total Cost of Engine Chosen:** Applicant is not required to purchase the lowest bid engine. Insert the total cost of the engine chosen.

**Grant Request:** This is the amount of funds requested for the replacement engine based on the lowest bid with options. The awarded funds for the project may cover a maximum of 40 percent of the cost of the engine repower including the costs of installing such engine, based on the lowest bid including options.

**Mandatory Match:** The mandatory match is the difference between the cost of the engine chosen and the grant amount.

### **Existing Engine Data**

The following information is from the engine to be replaced and scrapped.

**Horsepower Rating:** Horsepower rating of existing engine.

**Hours Used/Year:** Hours existing engine has operated per year during each of the two years prior to the proposed repower.

**Engine Manufacturer, Model, Year Built:** Please provide the engine manufacturer, the model, and the engine year built (original date).

**Engine Serial/Identification Number:** Serial number or other identification numbers for the existing engine.

**Gallons of Diesel per Year:** Please provide the estimated diesel gallons per year used by the engine to be replaced.

**Total Current Diesel Engine miles:** The current miles traveled reading for the engine to be replaced.

### **New Replacement Engine Information**

The following information is for the replacement engine.

**Horsepower Rating:** Horsepower rating of replacement engine.

**Engine Manufacturer, Model, Year Built:** Please provide the engine manufacturer, the model, and the engine year built.

**Federal NO<sub>x</sub> Emissions Standard (g/bhp-hr):** Use the certified emission standard, grams per brake horsepower-hour (g/bhp-hr), of the engine installed on the replacement equipment.

**Anticipated Active Life of Engine (years):** Estimated years the repowered engine will actively operate.

## APPENDIX A – EVALUATION CRITERIA FORM

DEQ will score complete applications according to the following criteria:

- A. NOx emissions** – Please provide an estimate of the remaining useful life of the existing engine, and emission calculation methodology explaining the annual NOx emissions reductions that will occur through the implementation of the proposed project. Projects achieving the greatest NOx emission reductions over the first five years of operation will receive priority over projects with lesser emissions reductions. Annual NOx reduction estimates may be calculated with the EPA’s Diesel Emissions Quantifier located at <https://cfpub.epa.gov/quantifier/>.
- B. Achieving long-term air quality benefits for the greatest number of Montanans** – Priority will be given to projects operating within counties that include areas that are currently in non-attainment, maintenance, or high risk for pollutants associated with mobile sources under the National Ambient Air Quality Standards (NAAQS); counties with the highest mobile non-road NOx emission rankings for Montana as provided in the 2017 National Emissions Inventory (2017 NEI); and/or areas that are eligible for designation as a Class I area. See Appendix D for a listing of priority air quality counties and areas.
- C. Reducing diesel emission exposure of sensitive populations** – Priority will be given to projects operating in proximity to sensitive populations that may bear a disproportionate burden associated with high concentrations of diesel emissions. Please provide documentation of the proposed project location (e.g., map showing address of switcher locomotive storage/operational location). DEQ staff will evaluate proximity of the proposed project location to sensitive populations using the U.S. Environmental Protection Agency EJSCREEN tool (<https://ejscreen.epa.gov/mapper/>) for diesel particulate matter exposure, on a Montana-based percentile scale (EJ Index, NATA Diesel PM).

Criteria	Points Available		
<b>A. NOx emissions</b>	Estimated five-year NOx emissions reduction of greater than 0 to 20 short tons. (5 points)	Estimated five-year NOx emissions reduction of greater than 20 to 40 short tons. (10 points)	Estimated five-year NOx emissions reduction of greater than 40 short tons. (15 points)
<b>B. Achieving long-term air quality benefits for the greatest number of Montanans</b>	Not operating in top 15 NOx emission areas or Priority Air Quality Area/County. (0 points)	Operating in a county ranking 1-15 for highest NOx emissions in Appendix A. (8 points)	Operating in Priority Air Quality Areas/Counties and/or Class I Areas listed in Appendix A and ranked 1-15 for highest NOx emissions in Appendix A. (15 points)
<b>C. Reducing diesel emission exposure of sensitive populations</b>	Engine operates in an area in which the population is less than the 50 <sup>th</sup> percentile in the EJ Index for diesel particulate matter exposure. (0 points)	Engine operates in an area in which the population is between the 50 <sup>th</sup> and 79 <sup>th</sup> percentile in the EJ Index for diesel particulate matter exposure. (5 points)	Engine operates in an area in which the population is between the 80 <sup>th</sup> and 100 <sup>th</sup> percentile in the EJ Index for diesel particulate matter exposure. (10 points)

## **APPENDIX B – REQUIRED LETTER OF COMMITMENT FOR MATCH**

### **Letter of Commitment Instructions:**

The required Letter of Commitment (see next page) is the only acceptable format applicants may use to submit this information to DEQ.

A signed Letter of Commitment is required with each application for a replacement engine under this Request for Applications.

The Letter of Commitment must be written by the entity agreeing to provide the mandatory match. The Letter of Commitment must be signed by an official authorized to commit funds to this project.

Please include a Letter of Commitment from each funding source if match is being provided by more than one entity. For example, one from the switcher locomotive engine owner and one from a partner organization, if each are contributing.

The required Letter of Commitment format is on the following page.

**Required Letter of Commitment Format**

To: Neal Ullman  
Montana Department of Environmental Quality  
PO Box 200901  
Helena, MT 59620-0901

From: \_\_\_\_\_ (responsible official and entity providing the matching funds)  
\_\_\_\_\_ Address  
\_\_\_\_\_, \_\_\_\_\_ Location Name, State Zip

Date:

Subject: Cash Match Commitment for Switcher Locomotive Engine Application for \_\_\_\_\_

Dear Sir:

Thank you for supporting our effort to reduce emissions and partnering with \_\_\_\_\_ in the switcher locomotive engine repower project. If selected, we will accept the Department of Environmental Quality (DEQ) Clean Engine Project award. This award will replace one \_\_\_\_\_ -model year engine with a new Tier 3 engine.

We understand the new engine must remain in service in our fleet for its lifespan.

We will provide \$\_\_\_\_\_ match to fund this engine repower purchase. Based on the lowest bid with option of \$\_\_\_\_\_ (low bid amount) from (name of engine vendor), we understand the maximum award from DEQ will be \$\_\_\_\_\_. In addition, we understand if we elect to purchase an engine from a vendor other than the low bidder, we will pay for the difference in cost.

The engine replaced under this program will be recycled and documented according to EPA and DEQ requirements. We have reviewed the draft Clean Engine Project sample contract provided. We have determined no impediments to signing the contract and to complying with the requirements.

We understand that the award is not official or final until DEQ's draw down request to the Volkswagen Trustee is approved and the contract with DEQ has been completed and signed by both DEQ and parties.

Sincerely,

<Actual signature>

Responsible Official's Name and Title

Applicant Entity Name

## APPENDIX C – SAMPLE CONTRACT

### State Clean Engine Project Grant CONTRACT NO. XXXXXX

This Contract No XXXXXX is hereby made between \_\_\_\_\_ (Contractor) and the **Montana Department of Environmental Quality** (DEQ) for replacing an old, high-polluting diesel switcher locomotive engine. 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 I. TERM OF CONTRACT**

Performance of the Contract shall begin upon signature by both parties with the effective date being the latter of the two signatures. **The services provided pursuant to Section II Paragraph A must be completed by August 31, 2023** except for the assurance provided in Section II paragraph A.2, which is a continuing obligation, unless this Contract is terminated or modified as provided herein.

#### **SECTION II. SERVICES**

A. Contractor shall do the following:

1. Replace the following switcher locomotive engine through the purchase of a new, clean, Tier 3 engine. The contractor shall purchase the engine through blanket purchase agreements or some other mechanism that ensures a low price for the item from one of the approved vendors as submitted with the application. The engine being replaced will be:

Make/Model/Year: XXXXXXXXXXXXXXXXXX

Engine Serial/Identification Number: XXXXXX

- a. Provide DEQ with a revised Letter of Commitment giving the dollar amount of non-federal match.
2. Ensure that for its lifespan, the engine purchased with funding under this Contract is used only for the entity for which it was purchased for the intended purposes of typical switcher locomotive activities.
3. Provide DEQ with a replacement engine point of contact, proof of ownership of the engine to be repowered, and a letter of commitment identifying the amount of cash and excess match.
4. Provide a copy of the Purchase Order (PO), including the line item sheet, sent by the engine manufacturer noting estimated delivery of the purchased engine on or before Contract end date. The PO will indicate EPA emission standards for the engine ordered.
5. Upon manufacturer's delivery to Contractor of the new engine, provide DEQ with a copy of the bill of lading reflecting total amount of the purchase, including line item sheet indicating item-by-item pricing, and actual date of delivery. The line item sheet must include the model year and engine serial number); and must certify the engine meets Tier 3 standards. The line item sheet must also clearly identify the engine make, model and horsepower; engine components and specific engine emissions configuration installed including model year and emission control equipment installed.
6. Provide a copy of the invoice from the vendor showing total engine purchase price including EPA emissions year.
7. Provide DEQ with a copy of the EPA Certificate of Conformity provided for the new engine and photographic (color electronic images are sufficient) documentation that the engine family emissions listed

in the certificate matches that on the engine name plate. If this is not possible, then Contractor shall include the required information on the Emissions Verification Form provided by DEQ.

8. Provide DEQ with documentation that shows Contractor complied with the RECYCLING/ SCRAPPAGE requirements of EPA's DERA program and DEQ's work plan. This includes the method used to recycle the replaced engine. Contractor must submit written and photographic verification of the engine disposal process that includes the engine identification number of the engine to be recycled described in Section II Paragraph A.1, and the EPA Certificate of Engine/Chassis Destruction with this information. DEQ will also provide an Emissions Verification Form for the Contractor to complete and sign to confirm information that is not always legible in the images of the old engine plate, odometers and other items. Said written and photographic verification must be submitted to DEQ before final payment is processed.

9. Notify DEQ immediately should Contractor receive notice of a significant delay in the delivery of the engine that will impact completion of tasks required by this section, and work with the engine manufacturer and DEQ to resolve any issues to the satisfaction of Contractor and DEQ.

10. Contribute a non-federal match in the amount of \$XXXXXX.

11. Comply with all applicable federal and state laws, executive orders, regulations, and applicable written policies in performance of services under this Contract.

12. Contractor and any subcontractors must have a DUN and Bradstreet Universal Number System (DUNS) number ([www.dnb.com](http://www.dnb.com)) and must maintain active and 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.** DEQ shall upon request provide consultation to Contractor concerning the subject matter of this Contract.

**C.** Both parties agree that Contractor shall have control over the disposition of the new Tier 3 engine at the conclusion of the typical lifespan and that the requirements outlined in Section II.A no longer applies.

### **SECTION III. CONSIDERATION**

**A.** In consideration of services rendered pursuant to this Contract, the value of which constitutes good and sufficient consideration, DEQ agrees to reimburse Contractor up to a maximum of \$XXX,XXX for the purchase and installation of 1 new Tier 3 engine. Contractor agrees to provide at least \$XXX,XXX as match toward this purchase.

1. Subject to DEQ approval of the documentation required under Section II Paragraph A, DEQ shall reimburse Contractor within 30 days after receipt and approval of said documentation.

2. This Contract is funded in whole or in part by a federal grant from the U.S. Environmental Protection Agency (EPA) in the amount of \$507,599 (Federal Grant #: DS95819302; Federal Catalog #: 66.040).

### **SECTION IV. 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 Environmental Protection Agency, and the Comptroller General of the United States, 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

liaison in Section X 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 V. 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, available at <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages>. 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 VI. HOLD HARMLESS/INDEMNIFICATION AND INSURANCE REQUIREMENTS**

A. 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.

B. 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.

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

#### **SECTION VII. 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 of the Contract term. Upon expiration, a renewal document must be sent to the Montana Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

## **SECTION VIII. 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 shall subject subcontractors to the same provisions, and Contractor shall ensure the same via any subcontract. 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.

## **SECTION IX. 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.

## **SECTION X. 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>), (USC) the Code of Federal Regulations (<http://www.ecfr.gov/>) applicable to the Environmental Protection Agency, and Presidential Executive Orders (<http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>) as they apply to the federal grant from the Environmental Protection Agency for the state clean diesel grants under the Diesel Emissions Reductions Act. Citations to the relevant portions of the U.S. Code, Code of Federal Regulations (CFR), and Executive Orders (EOs) may be obtained at (<https://beta.sam.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.

- A. Supersession (CFR).** This Section applies to the work eligible for EPA assistance to be performed under this Contract, and the provisions within it supersede any conflicting provisions of this Contract.
- B. Drug Free Workplace (CFR).** Contractor agrees to maintain a drug-free workplace. Contractor certifies, by signing this Contract that its employees and subcontractors shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this Contract.
- C. Lobbying (CFR).** Contractor certifies that no federal appropriated funds have been paid or must 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, and the extension, continuation, renewal, amendment, or modification of any federal/state contract, grant, loan or cooperative agreement. If any funds other than federal or state appropriated funds have been paid or must 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.

**D. 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.

**E. 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.

**F. Use of Recycled Paper (EO).** Contractor certifies that recycled paper must 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.

**G. Equipment, Supplies and Materials**

1. Any purchase of equipment, other than the engine defined by Section II.A, required under this Contract must be approved in advance and in writing by DEQ prior to purchase by Contractor.
2. The title of equipment, other than the engine defined by Section II.A, defined as having a purchase price of over \$5,000 and a useful life of more than one year, acquired under this Contract, shall vest with DEQ. Title to the engine defined by Section II.A shall vest with Contractor. Contractor agrees to maintain the equipment in good working condition and provide accountability of the equipment per state law and rule concerning Asset Management.
3. At the conclusion of this Contract, other than the engine defined by Section II.A, equipment shall be returned in good working condition to DEQ unless otherwise authorized in writing by DEQ 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.

**H. Subcontracting Under Disadvantaged Business Enterprise (DBE) Program (CFR)**

1. Contractor shall assure compliance with the DBE Program when subcontracting, which includes, along with disadvantaged business enterprises, minority and women's business enterprise (MBE/WBE). Contractor shall ensure that DBEs have the opportunity to compete for procurements subcontracted under this Contract by following the Six Good Faith Efforts noted below:

- a. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local government recipients, this must include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
  - b. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
  - c. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government recipients, this must include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
  - d. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
  - e. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
  - f. If the Contractor awards subcontracts, require the subcontract to take the steps in paragraph X.H.1.a. through X.H.1.e of this Section.
2. Subcontracting done by Contractor under this Contract must, to the fullest extent possible, make available a "fair share" of at least 3% of funds for supplies, construction, equipment or services to "women business enterprises" (WBE), and 2% of funds to "minority business enterprises" (MBE). DEQ reserves the right to adjust the "fair share" percentages by providing written notice to Contractor. These are goals, not quotas. The requirement is that Contractor shows and documents good faith efforts to solicit DBE participation.
  3. Contractor shall employ the Six Good Faith Efforts regardless of whether Contractor has achieved its "fair share" objectives as described in Section X.H.2.
  4. Contractor shall ensure payment to a DBE subcontractor for satisfactory performance is no more than 30 days from the date Contractor receives payment from DEQ.
  5. Contractor shall notify the State in writing prior to termination of a DBE subcontractor for convenience.
  6. If a DBE subcontractor fails to complete work under the subcontract for any reason, Contractor shall employ the Six Good Faith Efforts when soliciting for a replacement subcontractor.

## **SECTION XI. 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 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, 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. Any termination of this Contract is subject to the exception that Section IV (ACCOUNTING, AUDIT AND RETENTION OF RECORDS), relating to retention of and access to records, must remain in effect.

## **SECTION XII. LIAISONS**

Contractor's liaison to DEQ for purposes of this Contract is **XXX** or successor at Contractor's address **XXXXXX** [Phone (xxx) xxx-xxxx, e-mail xxxxxxxx]. 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](mailto:neal.ullman@mt.gov).

## **SECTION XIII. 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.

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

A. This Contract consists of 8 numbered pages and contains the entire Contract of the parties. 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.

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

**SECTION XV. 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.

**(CONTRACTOR)**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**XXXX, Title**  
Address  
City, state, zip

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**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

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

## APPENDIX D – PRIORITY AIR QUALITY COUNTIES AND AREAS

**Table 1: Counties that include nonattainment, maintenance, or at-risk areas for certain pollutants associated with mobile sources (transportation).**

Pollutant	County	Status
PM-2.5	Lincoln	Nonattainment
PM-2.5	Flathead	At risk
PM-2.5	Missoula	At risk
PM-2.5	Lewis and Clark	At risk
PM-2.5	Silver Bow	At risk
PM-2.5	Powder River	At risk
PM-2.5	Ravalli	At risk
CO	Yellowstone	Maintenance
CO	Cascade	Maintenance
CO	Missoula	Maintenance

### Eligible Class I Areas

- Fort Peck Reservation
- Northern Cheyenne Reservation
- Flathead Reservation
- Yellowstone National Park
- Glacier National Park

### Mobile Non-road NOx Emissions – Top 15 Counties

- |                |              |
|----------------|--------------|
| 1. Flathead    | 9. Gallatin  |
| 2. Lincoln     | 10. Blaine   |
| 3. Roosevelt   | 11. Phillips |
| 4. Yellowstone | 12. Toole    |
| 5. Valley      | 13. Big Horn |
| 6. Glacier     | 14. Missoula |
| 7. Hill        | 15. Custer   |
| 8. Sanders     |              |