

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into between the **STATE DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS** whose address is _____ (hereinafter referred to as the **"Department"**) and **XYZ**, whose address is _____ (hereinafter referred to as **"Contractor"** or **"Vendor"**), to provide professional administrative services for the _____ Program as provided for in its proposal which is incorporated herein by reference, and the attached Scope of Services Attachment A. The Department and the Contractor may be referred to as a **"Party"** and collectively as the **"Parties"**.

In consideration of the promises and mutual benefits contained herein, the Department and the Contractor acknowledge and agree as follows:

1. The United States Department of Energy (USDOE) awarded funding to the Department pursuant to USDOE American Recovery and Reinvestment Act (ARRA) Grant Agreement No. _____. The Department has determined a vendor relationship exists between the Parties in accordance with Office of Management and Budget (OMB) Circular A-133. The Contractor is responsible for complying with the appropriate state and federal guidelines in the performance of services pursuant to this Contract as required in Attachment A, Scope of Services.
2. The Contractor agrees to comply with, and include as appropriate in subcontracts, the applicable regulations listed in Attachment E, Federal Regulations, and the provisions contained in Attachment F, Federal Funding Grantee, Sub-grantee and Contractor Provisions.
3. Flow-down requirement. Contractor agrees to include any and all applicable provisions of this agreement, including its attachments, and particularly, but not limited to those pertaining to the ARRA, in any subaward.
4. This Contract shall begin on _____ and end no later than _____. Under any circumstances, all ARRA funds awarded under this Contract must be obligated and expended for eligible activities no later than _____.
5. As consideration for the satisfactory services rendered by the Contractor under the terms of this Contract and in order to operate the _____ program, the Department shall pay to the Contractor:
 - (1) _____ in accordance with the deliverable and payment schedule within Attachment A, Scope of Services and Attachment B, Budget for _____.
 - (2) _____ shall be paid to the contractor for _____ as specified in Attachment A, Scope of Services and Attachment B, Budget.

Any and all equipment, products or materials necessary to perform the services required by this Contract shall be supplied by the Contractor. The Department expressly reserves the right to withhold the disputed portion of any payment to the Contractor until documents, reports, or

services required for each deliverable under this Contract are complete and acceptable to the Department's Program Manager.

- A. All invoices submitted under this Contract shall be submitted using the Attachment C, Invoice Form. Source documentation for incurred expenditures must accompany all invoices. The Contractor shall submit a properly completed Attachment C, Invoice Form, including for the final invoice. Attachment C, Invoice Form, may not be submitted more frequently than on a monthly basis. The Contractor shall be paid on a periodic basis over the duration of the Contract upon receipt and approval by the Department of an invoice of actual expenditures by categories. The Contractor shall submit monthly invoices to the Department Program Manager **no later than the third (3rd) of each month** during the performance period of this Agreement whether there have been expenditures or not. If the third falls on a weekend or holiday, invoices shall be submitted earlier.
- B. Payment for services shall be in compliance with the provisions of all laws, rules and regulations applicable to the expenditure of federal funds. Federal program guidelines for allowable costs and related topics are listed in Attachment E, Federal Regulations and Attachment F, Federal Funding Grantee, Sub-grantee and Contractor Provisions.
- C. Advanced Funds: The Contractor may request advance payments provided that it maintains or demonstrates the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement by the Contractor. The amount of cash requested is based on a projected monthly need or as otherwise set forth in Attachment A, Scope of Services. If the advance requested exceeds the average monthly need the contractor shall provide a written explanation. The explanation must be submitted with the invoice and is subject to approval by the Department and the USDOE Project Officer. Source documentation and a follow-up invoice must be submitted to account for the actual expenditures made against advances. Advance payments must be maintained in interest-bearing accounts and handled in accordance with the provisions of 10 CFR 600.312. In the event of termination, or cancellation, the Contractor will comply with Department directives regarding the return of advanced funds, if applicable.
- D. Indirect Costs: The Department allows indirect cost reimbursement up to a maximum of 25 percent of the Contractor's indirect cost base (usually modified total direct costs) to be charged to the Project Award Amount and reimbursed. The Contractor must have a current written indirect cost plan prepared and approved in accordance with 2 CFR Part 225 (if a state or local government - formerly OMB A-87), or with 2 CFR Part 230 (for nonprofit organizations - formerly OMB A-122), or 2 CFR Part 220 (for educational institutions - formerly OMB A-21), or a negotiated indirect cost rate filed with its federal cognizant agency in order to claim reimbursement of indirect costs or to use indirect costs as its nonfederal contribution/in-kind match. A copy of the Contractor's current plan must be on file with the Department in order for the Contractor to claim indirect costs. This should be provided to the Department Program Manager. The Contractor may apply any difference between that rate and the amount reimbursed by the Department to its nonfederal contribution/in-kind match and may use the full rate on all eligible costs

contributed as its in-kind match. The Contractor's indirect cost rate to be reimbursed is **0** percent.

- E. Program Income. The use of program income earned as a result of this project shall comply with the applicable provisions of 10 CFR 600.314. The Contractor may retain certain portions of program income in compliance with Federal Regulations and as approved and outlined in Attachment A, Scope of Services and Attachment B, Budget for conducting the program. The Contractor may receive certain commercially reasonable fees as set forth in Attachment A, Scope of Services.
 - F. Interest income. Any interest income earned on the advanced funds shall be handled in compliance with the provisions of 10 CFR 600, Subpart D, Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations.
6. The Department's performance and obligation to pay under this Contract is contingent upon the availability of federal funding for the specific purpose of funding the Department's obligations under this Contract. In the event of a rescission of federal funding, the total funding may be reduced accordingly. The Department, in accordance with direction from the Governor, shall be the final determiner of the availability of any funds. Payments made by the Department under the terms of this Agreement shall not constitute final approval of documents submitted by the Contractor or of procedures used in formulating requests for payment to the Contractor.
7. For purposes of this Contract, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor, subcontractor, grantee, or subgrantee, as the case may be, if the contractor, subcontractor, grantee, or subgrantee is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the Federal government.

8. Protecting State and Local Government and Contractor Whistleblowers. The requirements of Section 1553 of the Recovery Act are summarized below. They include, but are not limited to:
- A. Prohibition on Reprisals: An employee of any non-Federal employer receiving Covered Funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is

evidence of:

- gross mismanagement of an agency contract or grant relating to Covered Funds;
- a gross waste of Covered Funds
- a substantial and specific danger to public health or safety related to the implementation or use of Covered Funds;
- an abuse of authority related to the implementation or use of Covered Funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to Covered Funds.

B. Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

9. Subgrantee means any entity that receives Recovery Act funds as a result of this Agreement (including Recovery Act funds received through subgrant, loan, or contract) other than an individual. The Contractor agrees to perform the services required by and in accordance with the terms and conditions set forth in this Contract, its attachments and exhibits named and incorporated by reference. The Contractor shall perform the services as an independent contractor and not as an agent, representative or employee of the Department or the State of State. The Contractor shall perform the services in a proper and satisfactory manner as determined by the Department.

10. National Environmental Policy Act (NEPA) Requirement: The Contractor and its subawardees are restricted from taking any action using federal funds for projects under this Contract award that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to the U.S. Department of Energy (DOE) providing a final NEPA determination regarding these projects.

"Prohibited" project activities that will require additional review include ____ projects funded under the _____ Program. ____ project activities will require an individual NEPA review and determination. An environmental questionnaire must be submitted to the DOE Project Officer through the Department for each project to allow DOE to conduct an individual NEPA review and determination. As projects are identified, the Contractor should immediately contact the Department Program Manager assigned to the project in order to procure a determination of Categorical Exclusion or to further the NEPA review process.

If the Contractor or any subawardee proceeds with activities that are not authorized for federal

funding by the DOE Contracting Officer in advance of the final NEPA determination, the Contractor does so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share. The Department Program Manager assigned to the project will notify the Contractor that authorization to proceed with regard to NEPA has been received from DOE.

If DOE determines that NEPA requires the preparation of an environmental assessment (EA) or environmental impact statement (EIS) for a project proposed by the Contractor, the Contractor will be responsible for paying the cost of preparing an EA or EIS. Preparation of these types of NEPA documents can require 6-24 months. Accordingly, the Contractor should carefully consider whether such projects are consistent with the objectives of the ARRA and will permit the expenditure of funds within the time periods allowed for by terms of this subgrant Agreement.

11. No funds provided under this Contract derived from the ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool or structure housing a swimming pool.
12. The Contractor shall submit, using Attachment D, Program Status Report, monthly reports on programmatic and fiscal operations. The Department may require changes to the reporting format as necessary for its convenience or to comply with USDOE requirements. It is expressly agreed that full compliance with the reporting requirements contained in this Contract is a condition for continuation of funding under the Contract. Failure to submit timely and complete monthly reports shall be grounds for Contract termination for cause. At a minimum, the reports should include the following information: a description of project progress, work performed, problems encountered, problem resolution, schedule updates and proposed work for the next reporting period. Monthly Program Status reports shall be submitted to the Department no later than the third (3rd) of each month during the performance period of this Agreement. If the third falls on a weekend or holiday, reports shall be submitted earlier. The Department's Program Manager may request additional information if the Department's Program Manager determines it is necessary. The Department's Program Manager shall have ten calendar days to review deliverables and payment requests submitted by the Contractor.
13. The Contractor shall submit an Annual Report 15 calendar days after the end of the first year of the project, if the term of the project exceeds one year. The Annual Report shall provide a narrative detailing and evaluating the accomplishments and impact of the project in the prior twelve months. The Annual Report shall follow the format described in Attachment J, Annual Report form.
14. The Contractor shall also submit a Final Report 15 calendar days prior to the expiration date of the Contract. The Final Report will provide a narrative detailing and evaluating the total work performed and a comprehensive description of the accomplishments and results achieved, including, but not limited to, (1) Jobs created or retained; (2) Economic benefits; (3) Energy saved (reported as mWh/therms/gallons/BTUs/etc.); (4) Energy cost savings; (5) Renewable energy installed capacity and amount generated; (6) GHG (greenhouse gas) emissions reduced (reported as CO2 equivalents); and (7) Funds leveraged. The report shall be submitted to the Department Program Manager no later than thirty (30) days following the completion or termination of this Agreement. The Final Report should also include projections of estimated energy savings expected to accrue from the project and any policy recommendations which may be regarded as helpful in the implementation of other projects of a similar nature.

15. The Contractor shall save and hold harmless and indemnify the State of State, the Department and USDOE against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss of damage to any property resulting from the use, service, operation or performance of work under the terms of this Contract, resulting from the negligent acts of the Contractor, his subcontractor or any of the employees, agents or representatives of the Contractor or subcontractor to the extent allowed by law.
16. Department staff will perform compliance monitoring in addition to the periodic review of deliverables and payments, and the review of Program Status Reports during the term of the Contract. Monitoring shall include, but is not limited to, a periodic review of compliance with the Contract, the management plan, timely submission of Program Status reports, and review of all contractual terms. The Department reserves the right for any STATE or USDOE staff to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Contractor must provide, and must require all subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work. The Department also reserves the right for any STATE or USDOE staff to make scheduled compliance monitoring visits at any site where services are delivered pursuant to this Contract. For each on-site compliance monitoring visit, Department staff will provide an oral exit interview and a written monitoring report to the Contractor. If issues of non-compliance are identified in the monitoring report, a written Corrective Action Plan (CAP) may be required of the Contractor. If required, the CAP is to be submitted to the Department within ten calendar days of receipt of the monitoring report. If a CAP is required of the Contractor, failure to correct deficiencies after fifteen calendar days from the date of receipt of a written monitoring report notating the deficiencies may result in a determination of breach of Contract and termination of services. If issues of non-compliance are identified in the monitoring report and a CAP is not required of the Contractor, the Department may proceed with terminating services as provided for in this Contract.
17. Termination/Cancellation:
- A. For Cause: If through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, the Department shall thereupon have the right to terminate or suspend this Agreement by giving written notice to the Contractor of such termination or suspension and specifying the effective date thereof, at least five days before such effective date. (In the event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, computer tapes, computer programs, and reports prepared by the Contractor under this Agreement shall, at the option of the Department, become its property.) The Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Department reserves any and all administrative, contractual or legal remedies available to it in the event of the violation or breach of the terms of this agreement by the Contractor or its subcontractors, including but not limited to penalties or sanctions it deems appropriate. The Contractor shall not be

relieved of liability to The Department for damages sustained by the Department by virtue of any breach of the Agreement by the Contractor and the Department may withhold any payments to the Contractor for the purpose of setoff until such times as the exact amount of damages due the Department from the Contractor is determined. The parties hereto agree that in the event of a breach of any of the terms of this agreement by the Contractor, any expense (including the cost of mediation) incurred by or on behalf of the Department to enforce such terms shall be reimbursed by the Contractor. It is further agreed that such reimbursement shall be in addition to any other reimbursement or damages due the Department as a result of the breach.

- B. For Convenience: The Department or Contractor may terminate this Agreement at any time by giving written notice of such termination and specifying the effective date thereof, at least 30 days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described in Paragraph A above shall, at the option of the Department, become its property. If the Agreement becomes terminated by the Department as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the satisfactory services actually performed bear to the total services of the Contractor covered by this Agreement, less payments as compensation previously made. Provided however, that if less than 60 percent of the services covered by this Agreement have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Contractor during the Agreement period which are directly attributable to the uncompleted portion of the services covered by this Agreement. If this Agreement is terminated due to the fault of the Contractor, Paragraph 17A hereof, relative to termination, shall apply.

18. If the Contractor materially fails to comply with the terms and conditions of this Contract, including any Federal or State statutes, rules or regulations, applicable to this Contract, the Department may take one or more of the following actions, as appropriate for the circumstances.

- A. Temporarily withhold cash payments pending correction of the deficiency by the Contractor.
- B. Disallow (that is deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- C. Wholly or partly suspend or terminate this Contract.
- D. Withhold further awards for the project or program.
- E. Take other remedies that may be legally available.
- F. Costs of the Contractor resulting from obligations incurred by the Contractor during a suspension or after termination of the Contract are not allowable unless the Department expressly authorizes them in the notice of suspension or termination.
- G. The remedies identified above, do not preclude the Contractor from being subject to debarment and suspension under Presidential Executive Orders 12549 and 12689.

19.

- A. In accordance with Presidential Executive Order 12549, Debarment and Suspension (10 CFR Part 606, later moved to 2 CFR Part 901), the Contractor shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Contractor shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction, unless authorized in writing by USDOE to the Department.
- B. Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return a copy of the form entitled "Certification Regarding Debarments, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Federally Funded Transactions", attached as Attachment G.
- C. As required by paragraphs A and B above, the Contractor shall include the language of this Section and Attachment G in all subcontracts or lower tier Contracts executed to support the Contractor's work under this Contract.

20. The Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles. The Department, the State of State, USDOE or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for three years following Contract completion. In the event any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

21.

- A. The Contractor shall retain and maintain all records referenced in Section 20 and make such records available for an audit as may be requested. Such records shall include independent auditor working papers, books, documents and other evidence, including but not limited to, vouchers, bills, invoices, requests for payment and other supporting documentation, which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all program costs expended in the performance of this Contract.
- B. The Contractor must provide copies of any audit referencing this Contract, the audit transmittal letter, and any response to such audit to the Department within 30 calendar days of its receipt. The Contractor should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

22.

- A. The Contractor may subcontract performance of services only with review and prior written approval of the Department's Program Manager if the subcontracting is not included in Attachment A, Scope of Services. If the Contractor utilizes a subcontractor not previously approved in writing by the Department's Program Manager, the Contractor may not be eligible for reimbursement of funds for the work performed by that subcontractor. The Department's Program Manager will review the amount and short description of the work to be performed by the subcontractor to

determine if the subcontracting request is of such a minor or incidental nature as to not require a formal mutually signed amendment to Attachment A, Scope of Services. However, the Department reserves the right to require a mutually signed amendment to this Contract for this and other purposes. The Contractor shall be solely responsible for all work performed and all expenses incurred in connection with the development and implementation of the services, programs and activities under this Contract whether directly performed or by subcontract. As applicable, each monthly Attachment D, Program Status Report, must contain a current list of subcontractors, the amount of each subcontract and a short description of work performed by that subcontractor during that month. Amendments and/or modifications to the Scope of Services and Project Budget line items may be requested. All requests for amendments and/or modifications must be submitted in writing to the Department Program Manager prior to implementation and appropriate written approval must be received from the Department before proceeding. The Contractor shall contact the Department Program Manager to determine the type of written approval necessary before implementing any changes. Certain changes may require a formal amendment to this Contract and in certain situations may require review of the Legislative Contract Oversight Review Committee. The Department Program Manager will provide guidance regarding necessary procedures. Any change requiring an amendment to the Contract shall be submitted in writing no later than 45 (forty-five) days prior to the end of the performance period of the Contract.

- B. As applicable under State law, the Contractor shall not enter into subcontracts in which the Department or USDOE could be held liable to a subcontractor for any expenses or liabilities. The Contractor shall defend and hold the Department and USDOE harmless of any liabilities incurred under any of the subcontracts entered into by the Contractor. The Contractor shall be liable for all work performed and all expenses incurred as a result of any subcontract.
 - C. The Contractor is encouraged to use small businesses, including minority, woman and service-disabled veteran-owned businesses as subcontractors or sub-vendors under this Contract. The Contractor shall report to the Department in each monthly Attachment D, Program Status Report, its expenditures with minority, woman and service-disabled veteran-owned businesses. The Attachment D, Program Status Report, shall contain the names and addresses of the minority, woman and service-disabled veteran-owned businesses; the aggregate dollar figure disbursed that month for each business; the time period; type of goods or services and whether the business is minority, woman or service-disabled veteran-owned. If no expenditures were made to minority, woman and service-disabled veteran-owned businesses, the Contractor shall state "None" on that portion of the monthly Attachment D, Program Status Report.
23. The Contractor agrees to permanently refrain from using or mentioning its association with the Department in advertisements, letterhead, business cards, etc. The Contractor's project with the Department may be generally stated and described in the Contractor's professional resume and general marketing materials, including its website. The Contractor may not give the impression in any event or manner, that the Department endorses or recommends the Contractor. Any press release related to the Contractor's services under this Contract shall be subject to the prior written approval of the Department.

24.

- A. The Contractor certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative Contract. If any non-Federal funds are used for lobbying activities as described above, the Contractor shall submit Attachment I, Standard Form-LLL, "Disclosure of Lobbying Activities", and shall file quarterly updates of any material changes. The Contractor shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly. [10 CFR Part 601]
- B. The Contractor is hereby prohibited from using funds provided by this Contract for the purpose of lobbying the Legislature, the judicial branch or a State agency. The Contractor agrees that none of the funds shall be expended directly, or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.
- C. Pursuant to the Lobbying Disclosure Act of 1995, any organization described in Section 501(c)4 of the Internal Revenue Code of 1986 shall not be eligible for subgrants under this Contract, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subgrant. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.

25. The Contractor shall comply and cause its subcontractors to comply with all applicable federal, state and local rules and regulations that govern the use of the funds under this Contract. The Contractor acknowledges that this requirement includes obtaining any required permits and compliance with all applicable federal, state and local health and safety rules and regulations. The Contractor further agrees to include this provision in all subcontracts issued as a result of this Contract.

26. The Department's Program Manager for this Contract is identified below.

Department Program Manager:	
Telephone:	
Fax No.:	
E-mail:	

27. The Contractor's Representative for this Contract is identified below.

Contractor's Representative:	
XYZ	
Telephone:	
Fax No.:	
E-mail:	
Contractor D-U-N-S :	
CCR Registration Expiration Date:	

28. To the extent required by law, the Contractor will be self-insured against, or will secure and maintain during the life of this Contract, Workers' Compensation Insurance for all of its employees connected with the work of this project. The Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such self-insurance program or insurance coverage shall comply fully with State's Workers' Compensation law. The Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of its employees not otherwise protected if any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation statutes.

29. The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. Documentation of all insurance coverage(s) required below, shall be submitted by the Contractor to the Department. Upon expiration of documented proof of insurance coverage, the Contractor shall submit proof of continued insurance coverage to the Department within 30 calendar days of insurance coverage expiration.

- E. The Contractor shall secure and maintain Commercial General Liability insurance including bodily injury, personal injury and property damage with combined single limits of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. This insurance will provide coverage for all claims that may arise from the services and/or operations completed under this Contract, whether such services and/or operations are by the Contractor or anyone directly or indirectly employed by him. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for the entire length of the Contract for: liability arising out of activities performed by or on behalf of the Contractor, including insured's general supervision of the Contractor; products and completed operations; and premises owned, leased, occupied or used.
- F. The Contractor shall maintain Errors and Omissions insurance in an amount and upon such terms as are reasonably requested by the Department. The Department shall be named as an Additional Insured under such policy.

- G. The Contractor shall secure and maintain Commercial Automobile Liability insurance for all claims which may arise from the services and/or operations under this Contract, whether such services and/or operations are by the Contractor or by anyone directly or indirectly employed by him.
- H. All insurance policies shall be with insurers licensed or eligible to do business in the State of State. The Contractor's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after 30 calendar days written notice (with the exception of non-payment of premium which requires a 10 day notice) to the Department. The Contractor must notify the Department immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc.
30. Audits shall be conducted as required by and in accordance with OMB Circular No. A-133 at the conclusion of the Contractor's fiscal year. The Contractor shall send one (1) copy of the audit report directly to the STATE Audit Section within nine (9) months after the end of the audit period. Pursuant to Act 00-0000, a copy of every audit report issued as a result of this Agreement where public funds are received and/or disbursed shall be forwarded to the following:

State Department of Examiners of Public Accounts
P.O. Box 00000
City, State 00000-0000
ATTN: Audit Report Repository

STATE Audit Section
P.O. Box 0000
City, State 00000-0000

The Department shall not enter into a contract, agreement, grant, etc., with any individual, agency, company, governmental entity, etc., who has an unresolved audit exception or unresolved questioned costs or finding of fiscal inadequacy as a result of project monitoring. The Department shall not enter into a contract, agreement, grant, etc., with any individual, agency, company, governmental entity, etc., who owes money to any division of STATE or to the federal government under any program administered by any division of STATE that has not arranged a repayment reschedule.

31. Disclaimer:

- A. The Department specifically denies liability for any claim arising out of any act or omission by any person or agency receiving funds from the Department whether by contract, subgrant, loan or by any other means.
- B. No Subgrantee, Contractor or Agency performing services under any agreement, contract, subgrant or any other understanding, oral or written, other than an actual employee of the Department shall be considered an agent or employee of the State of State or the Department or any division thereof. The State of State, the Department and their agents and employees assume no liability to any Subgrantee, Contractor or Agency, or any third party, for any damages to property, both real and personal, or personal injuries, including death, arising out of or in any way connected with the acts or omissions of any contractor or agency or any other person.
32. Not to Constitute a Debt of the State: It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of State in violation of Article XI, Section

213, Constitution of State 1901, as amended by Amendment No. 26. It is further agreed that if any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then that conflicting provision in the contract shall be deemed null and void. The Contractor's sole remedy for the settlement of any and all disputes arising under the terms of this Agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of State. For any and all disputes arising under the terms of this Agreement, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or where appropriate, private mediators.

33. Records shall be kept for a period of three (3) years from the submittal of the final financial report or receipt of final payment with the exception of the following qualification, whichever is the latest: If any litigation, claim or audit is started before the expiration of the three-year (3) period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The Contractor will provide the Department, the Comptroller General of the United States or any of their authorized representatives access to any pertinent books, documents, papers or other records in order to make audits, examinations, excerpts and transcripts. NOTE: Property/equipment records should be kept for three (3) years from date of disposition. Retention of records involving competitive bids should comply with Code of State § 41-16-54 (e), as applicable, which requires a retention period of at least seven (7) years.
34. Access to Records: With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –
- A. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and
 - B. to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.
35. Assignability and Interest: The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of STATE thereto. Provided however, that claims for money due, or to become due to the Contractor from STATE under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished promptly to STATE.

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

36. The employment of unauthorized aliens by any Contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor/vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.

37.

- A. No person on the grounds of race, creed, color, national origin, age, sex or disability shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Contract.
- B. The Contractor agrees to comply with 10 CFR Part 1040 "Nondiscrimination in Federally Assisted Programs."

38.

- A. If the Contractor brings to the performance of this Contract pre-existing intellectual property, the Contractor shall retain all rights and entitlements to that pre-existing intellectual property. Any and all patents, copyrights or trademarks accruing under or in connection with the performance under the Contract are hereby exclusively reserved to the State of State consistent with State law. All work created or prepared pursuant to this solicitation or performed under the Contract shall be considered "work made for hire".
- B. All patent rights, copyrights, and data rights must be in accordance with 10 CFR Part 600 as referenced in Attachment H, Intellectual Property Provisions.
- C. If, during the course of the Contract, the Contractor modifies a pre-existing invention to the point where it is a new invention, patentable in its own right, or if any discovery or subject invention arises or is developed in the course of, or as a result of, work or services performed under this Contract, or in any way connected herewith, the Contractor shall retain the entire right, title, and interest to each discovery or subject invention, subject to the provisions of this Section. With respect to any subject invention in which the Contractor retains title, the Department shall have a royalty-free, nonexclusive, transferable, irrevocable, paid up license to practice or have practiced for, or on behalf of, the Department or the State of State the subject invention and sublicense the same.
- D. Publication. A proposal may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the proposal. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the proposal with the following Notice as well as referring to the Notice on each page to which the Notice applies:
 - i. *Notice of Restriction on Disclosure and Use of Data - "The data contained in pages __ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant."*

- ii. Information about this Agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under Sections 552 and 552a of Title 5, United States Code. The terms and conditions specified in Section 37 shall also apply to any subcontracts made under this Contract. The Contractor shall be responsible for informing the subcontractor of the provisions of this Section and obtaining disclosures.
39. The Contractor is encouraged to publish or otherwise make publicly available the results of the work conducted under this Contract. USDOE requires an acknowledgement of Federal support. A disclaimer must appear in the publication of any material, copyrighted or not, which was based on or developed under this Contract, as follows:
- A. *Acknowledgement: "This material is based upon work supported by the U.S. Department of Energy and the State Department of Economic and Community Affairs under Award Number _____."*
 - B. *Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, nor any of their contractors, subcontractors or their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or any third party's use or the results of such use of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof or its contractors or subcontractors. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."*
40. Any and all materials developed and/or printed under this Agreement, including survey instruments must be reviewed and released by the Department prior to their application or printing, such release not to be unreasonably withheld. Unless otherwise specified in the scope of work, three (3) copies of such materials must be submitted to the Department once completed.
41. Funding credit shall be given to the Energy Division of the State Department of Economic and Community Affairs using the Division logo on any materials based on or developed under this Agreement or reports/presentations given or published and, if applicable, on any conference/workshop promotions.
42. The Parties agree they will seek to resolve any disputes between them regarding their responsibilities as soon as possible and at the lowest level reasonable, in order to conserve the resources of the Parties. The Parties further agree to use their best efforts to assure speedy and non-confrontational resolution of any and all disputes between them.
43. This Contract is executed and entered into in the State of State and shall be construed, performed and enforced in all respects in accordance with the laws and rules of the State of State. Any litigation arising under this Contract shall be brought in the appropriate court in County County, State, applying State law.
44. This Contract represents the entire Contract of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties within the dates of services stated in Section 3 and attached to the original of this Contract, unless otherwise provided herein.

45. Resolution of conflicting conditions: Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.
46. Open Meetings Act: Contractor agrees to adhere to all applicable requirements of Act No. 2005-40 (State Open Meetings Act).
47. The following are referenced Attachments included as part of this Contract:

Attachment A	Scope of Services
Attachment B	Budget
Attachment C	Invoice Form
Attachment D	Program Status Report
Attachment E	Federal Regulations
Attachment F	Federal Funding Grantee, Sub-grantee and Contractor Agreement Provisions
Attachment G	Debarment and Suspension Form
Attachment H	Intellectual Property Provisions
Attachment I	Disclosure of Lobbying Activities
Attachment J	Annual Progress Report
Attachment K	National Policy Assurances

IN WITNESS WHEREOF, the Parties have caused this Contract to be duly executed, the day and year last written below.

CONTRACTOR NAME
XYZ

STATE OF STATE
State Department of Economic
and Community Affairs

by: _____

by: _____
Director

Date: _____

Date: _____

FEIN: _____

This contract has been reviewed for content and legal form, and complies with all applicable laws, rules and regulations of the State of State governing these matters.

John Smith
State General Counsel

John Smith
Governor

Catalog of Federal Domestic Assistance Number: 81-041
Federal Agency: U.S. Department of Energy (DOE)
Pass-through Agency: State Department of Economic and Community Affairs (State)