

**ENERGY RETROFIT GRANT CONTRACT
BETWEEN THE WYOMING ENERGY AUTHORITY
AND
CITY OF LANDER**

1. **Parties.** The parties to this Grant Contract (“Contract”) are the Wyoming Energy Authority, State Energy Program (“WEA”), whose address is: 1912 Capitol Ave, Suite 305, Cheyenne, WY 82001, and the City of Lander (“Grantee”), whose address is: 240 Lincoln St., Lander, WY 82520 (UEI# J4WELFKSSKJ3). WEA and Grantee may individually be referred to herein as a “Party” or collectively as the “Parties.”
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Grantee shall use Federal Energy Program Funds (“Grant”) (CFDA 81.041) for energy conservation measures identified in the WyLite Energy Engineering Study (“Project”) at their facilities located at 125 Buena Vista Dr., Lander, WY 82520, as described in Section 5, below and in Attachment A, which is attached to and incorporated into this Contract by this reference. Performance by Grantee (and any Subgrantee hereunder) of the requirements of this Contract and compliance with all U.S. Department of Energy (“DOE”) program rules and regulations is a condition to Grantee’s receipt of monies hereunder (Federal Award Identification Number (FAIN) DE-EE0010053, dated June 21, 2022).
3. **Term of Grant.** This Contract is effective when all parties have executed it (“Effective Date”). The term of the Contract is from the Effective Date through June 30, 2026. All services shall be completed during this term.
4. **Payment.**
 - A. WEA agrees to pay the Grantee for the Project, as invoices are submitted for work done in connection with the Project, and completed in accordance with the requirements of this Contract. The total Grant amount shall not exceed fifteen thousand dollars (\$15,000.00). The Grantee will receive a reimbursement of ninety percent (90%) of retrofit activities as identified in the WyLite Energy Engineering Study. Payment will be made to Grantee upon submission of a completed Taxpayer ID Form, copies of paid invoices, and proof of payment. Payment will be made after sufficient documentation detailing the services performed in connection with the Contract. Payment shall be made from the WEA’s Exxon Petroleum Violation Escrow Fund budget. The monetary proceeds of the Grant are specifically for the program specified in this Contract and shall not be used for any lobbying efforts. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Grantee shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.
 - B. No payment shall be made for work performed before the Effective Date of this Contract. Should the Grantee fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Grantee performs its duties and responsibilities to

the satisfaction of the WEA.

5. **Responsibilities of Grantee.** Grantee agrees to:

- A. Use the funds for retrofits identified in the WyLite Energy Engineering Study at the facility located at 125 Buena Vista Dr., Lander, WY 82520. Eligible retrofits are described in Attachment A.
- B. Return this signed Contract to the WEA within thirty (30) days of receipt or forfeit all claims to monies.
- C. Provide the WEA with one (1) year of required energy savings data once retrofits are completed per Department of Energy requirements.

6. **Responsibilities of the WEA.** The WEA agrees to:

- A. Pay Grantee in accordance with section 4 above.

7. **Special Provisions.**

- A. **Administration of Federal Funds.** Grantee agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 CFR Part 200 *et seq.*, any additional requirements set forth by the federal funding agency; all applicable regulations published in the Code of Federal Regulations; and other program guidance as provided to it by the WEA.
- B. **Assumption of Risk.** Grantee shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to Grantee's failure to comply with state or federal requirements. The WEA shall notify the Grantee of any state or federal determination of noncompliance.
- C. **Copyright License and Patent Rights.** Grantee acknowledges that the DOE, the State of Wyoming, and the WEA reserve a royalty-free, nonexclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this Contract; and (2) any rights of copyright to which Grantee purchases ownership using funds awarded under this Contract. Grantee must consult with the WEA regarding any patent rights that arise from, or are purchased with, funds awarded under this Contract.
- D. **Decontamination and/or Decommissioning (D&D) Costs.** Notwithstanding any other provision of this Contract, the WEA and DOE shall not be responsible for or have any obligation to the recipient for D&D of any of the Grantee's facilities, or any costs which may be incurred by the Grantee in connection with the D&D of any of its facilities due to the performance of the work under this Contract, whether said work was performed prior to or subsequent to the effective date of this Grant.

- E. Default and Remedies.** In the event Grantee or any Subgrantee of Grantee under this Contract defaults or is deficient in the performance of any term of the Grant or any requirements of the DOE program rules and regulations, then the WEA and/or DOE shall have the right to exercise all remedies provided by law or in equity, including without limitation:
- (i) Immediately terminating this Contract without further liability or obligation of the WEA;
 - (ii) Issuing a letter or warning advising Grantee of the deficiency and putting the Grantee on notice that additional action will be taken if the deficiency is not corrected or is repeated;
 - (iii) Recommending, or requesting Grantee to submit proposals for corrective actions, including the correction or removal of the causes of the deficiency;
 - (iv) Taking enforcement action as described in 2 CFR Part 200.338.
- F. Environmental Policy Acts.** Grantee agrees all activities under this Contract will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.
- G. Federal Audit Requirements.** Grantee agrees that if it expends an aggregate amount of seven hundred fifty thousand dollars (\$750,000.00) or more in federal funds during its fiscal year, it must undergo an organization-wide financial and compliance single audit. Grantee agrees to comply with the audit requirements of U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 CFR Part 200, Subpart F. If findings are made which cover any part of this Contract, Grantee shall provide one (1) copy of the audit report to the WEA and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to the WEA's records.
- H. Federal Stewardship.** The DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.
- I. Historic Preservation.** Grantee will, in connection with its performance of environmental assessments under the National Environmental Policy Act ("NEPA"), comply with Section 106 of the National Historic Preservation Act of

1966, (16 U.S.C. § 470); Executive Order 11593 (Protection and Enhancement of the Cultural Environment), and 36 CFR Part 800 by consulting with the Wyoming State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects by the proposed activity.

- J. Human Trafficking.** As required by 22 U.S.C. § 7104(g) and 2 CFR Part 175, this Contract may be terminated without penalty if a private entity that receives funds under this Contract:
- (i) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (ii) Procures a commercial sex act during the period of time that the award is in effect; or
 - (iii) Uses forced labor in the performance of the award or sub-awards under the award.
- K. Indirect Costs.** There is no indirect cost rate for this Contract and the WEA will not reimburse Grantee for indirect costs.
- L. Kickbacks.** Grantee certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Grantee breaches or violates this warranty, the WEA may, at its discretion, terminate this Contract without liability to the WEA, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- M. Labor Standards Requirements.** Grantee will administer and enforce the labor standards requirements set forth in the Davis-Bacon Act (40 U.S.C. § 276a), the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 *et seq.*), and regulations issued to implement such requirements, as each may be amended from time to time.
- N. Limitations on Lobbying Activities.** By signing this Contract, Grantee certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Grantee or its subcontractors in connection with lobbying member(s) of Congress, or any other federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.
- O. Monitoring Activities.** The WEA, State of Wyoming, Comptroller General of the United States, and the DOE shall have the right to monitor all activities related to this Contract that are performed by Grantee or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with

reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Contract; and to observe personnel in every phase of performance of Contract related work.

- P. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract, shall be paid by either Party.
- Q. Nondiscrimination.** The Grantee shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual or entity on the grounds of age, sex, sexual orientation, sexual identity or preference, creed, color, race, religion, national origin, ancestry, pregnancy, or disability in connection with the performance under this Contract.
- R. Non-Supplanting Certification.** Grantee hereby affirms that federal grant funds shall be used to supplement existing funds, and shall not replace (supplant) funds that have been appropriated for the same purpose. Grantee should be able to document that any reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds under this Contract.
- S. Program Income.** Grantee shall not deposit grant funds in an interest-bearing account without prior approval of the WEA. Any income attributable to the grant funds distributed under this Contract must be used to increase the scope of the program or returned to the WEA.
- T. Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for Grantee and related to the services and work to be performed under this Contract, shall identify the WEA and/or DOE as the sponsoring agency and shall not be released without prior written approval of the WEA.
- U. Purchase of American-Made Equipment and Products.** To the greatest extent practicable, all equipment and products purchased with funds made available under this Contract should be American-made.
- V. Records Retention.** Grantee agrees to retain all records related to this Contract for a minimum of three (3) years after all payments have been made and all other pending matters have been closed.
- W. Reporting Requirements.** During the Term of this Contract, Grantee shall furnish the WEA with a monthly written progress report. Each progress report shall set forth, in narrative form; the work accomplished under the Contract during the

month and shall include a financial status report. At the end of the term, Grantee shall furnish the WEA with a comprehensive report of the accomplishments pursuant to the Grant. Grantee shall likewise furnish the WEA with a cumulative financial statement, reflecting total expenditures pursuant to this Contract. At the completion of the Project, Grantee will furnish the WEA with required monthly energy savings reports for a period of one (1) year per DOE requirements.

- X. Suspension and Debarment.** By signing this Contract, Grantee certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Contract suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), 44 CFR Part 17, or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained by the federal government. Further, Grantee agrees to notify the WEA by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Contract.

8. General Provisions.

- A. Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the Parties to this Contract shall be incorporated by written instrument, executed by all Parties to this Contract.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the Parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither Party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other Party. The Grantee shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the WEA.
- D. Availability of Funds.** Each payment obligation of the WEA is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the WEA at the end of the period for which the funds are available. The WEA shall notify the Grantee at the earliest possible time

of the services, which will or may be affected by a shortage of funds. No penalty shall accrue to the WEA in the event this provision is exercised, and the WEA shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

- E. Compliance with Laws.** The Grantee shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Contract.
- F. Confidentiality of Information.** Except when disclosure is required by the Wyoming Public Records Act or court order, all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Grantee in the performance of this Contract shall be kept confidential by the Grantee unless written permission is granted by the WEA for its release. If and when Grantee receives a request for information subject to this Contract, Grantee shall notify the WEA within ten (10) days of such request and shall not release such information to a third party unless directed to do so by the WEA.
- G. Counterparts.** This Contract may be executed in counterparts which, when taken together with other signed counterparts, shall constitute one Contract, binding and effective as to all Parties. The Parties agree that signatures by electronic transmission or PDF copies of signatures, either made by reliable means, shall be deemed valid and binding, as well as an original of this Contract.
- H. Entirety of Contract.** This Contract, consisting of eleven (11) pages; and Attachment A, Energy Efficient Eligible Retrofit Activities, consisting of one (1) page, represent the entire and integrated Contract between the Parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.
- I. Ethics.** Grantee shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Grantee's profession.
- J. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein.
- K. Force Majeure.** Neither Party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits

delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

- L. Indemnification.** Each Party to this Contract shall assume the risk of any liability arising from its own conduct. Neither Party agrees to insure, defend, or indemnify the other.
- M. Independent Contractor.** The Grantee shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming or the WEA for any purpose. Consistent with the express terms of this Contract, the Grantee shall be free from control or direction over the details of the performance of services under this Contract. The Grantee shall assume sole responsibility for any debts or liabilities that may be incurred by the Grantee in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes, which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Grantee or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the WEA or to incur any obligation of any kind on behalf of the State of Wyoming or the WEA. The Grantee agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to State of Wyoming or WEA employees will inure to the benefit of the Grantee or the Grantee's agents or employees as a result of this Contract.
- N. Insurance Requirements.** Grantee is protected by the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, *et seq.*, and certifies that it is a member of the Wyoming Association of Risk Management ("WARM") pool or the Local Government Liability Pool ("LGLP"), Wyo. Stat. § 1-42-201, *et seq.*, and shall provide a letter verifying its participation in the WARM or LGLP to the WEA.
- O. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
- P. Ownership and Destruction of Documents and Information.** The WEA owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Grantee in the performance of this Contract. Upon termination of services, for any reason, Grantee agrees to return all such original and derivative information and documents to the WEA in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon the WEA's verified receipt of such information, Grantee agrees to physically and electronically destroy any residual WEA-owned data, regardless of format, and any other storage media or areas containing such information. Grantee agrees to provide written notice to the WEA confirming the destruction of any such residual WEA-owned data.

- Q. Patent or Copyright Protection.** The Grantee recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Grantee or its subcontractors will violate any such restriction. The Grantee shall defend and indemnify the WEA for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- R. Prior Approval.** This Contract shall not be binding upon either Party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, and approved as to form by the WEA's legal counsel.
- S. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the Parties may renegotiate the terms affected by the severance.
- T. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and WEA expressly reserve sovereign immunity by entering into this Contract and the Grantee expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The Parties acknowledge that the State of Wyoming and the WEA have sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The Parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either Party, except that any ambiguity as to immunity shall be construed in favor of immunity.
- U. Subgrantee(s).** The grantee shall include the requirements of this Contract in any such agreement or contract, and shall ensure that Subgrantee(s) complies with the terms hereof as if he or it were the Grantee hereunder.
- V. Taxes.** The Grantee shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- W. Termination of Contract.** This Contract may be terminated, without cause, by the WEA upon thirty (30) days written notice. This Contract may be terminated by the WEA immediately for cause if the Grantee fails to perform in accordance with the terms of this Contract.
- X. Third Party Beneficiary Rights.** The Parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the Parties to this Contract and shall inure solely to the benefit of the Parties to this Contract. The provisions

of this Contract are intended only to assist the Parties in determining and performing their obligations under this Contract.

- Y. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- Z. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- AA. Unused/Misused Funds.** The WEA shall be entitled to recover from the Grantee any full or partial payment made under this Contract for: 1) any payments used for purposes not authorized, or performed outside this Contract, 2) any payments for services the Grantee is unable to provide, 3) any payments for services the Grantee did not provide but was required to provide under the terms of this Contract.
- BB. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

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9. **Signatures.** The Parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.


WYOMING ENERGY AUTHORITY

Rob Creager, Executive Director

Date



Wyoming Energy Authority Legal Counsel



Date

**Grantee
CITY OF LANDER**

Anne Even, Community Development Coordinator

Date