

MISSOULA COUNTY PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into by and between Missoula County, hereinafter referred to as “the County”, and **Climate Smart Missoula**, hereinafter referred to as “Contractor”, identified as follows:

Organization Name: **Climate Smart Missoula**
Organization Type: **Nonprofit Organization**
Principal Contact: **Amy Cilimburg**
Mailing Address: **PO Box 8945, Missoula, MT 59807**
Telephone Number: **406-926-2847**
E-mail Address of Principal Contact: **amy@climatesmartmissoula.org**

Contractor will provide either a Social Security Number or an Employer Identification Number on IRS Form W-9 as provided by law.

1. Purpose

The purpose of this Agreement is support for three Missoula County sustainability initiatives: Climate Ready Missoula, 100% Clean Electricity, and Building(s) for the Future. The County desires to enter into an agreement with Contractor for services desired, in return for the compensation stated. To this end, the parties mutually agree as follows.

2. Relationship of the Parties

Missoula County is a political subdivision of the State of Montana. Contractor is a **private nonprofit organization**.

This Agreement is not intended to constitute or create a joint venture, partnership or formal business organization of any kind whatsoever among and between the parties, and their respective rights and obligations will be only those expressly set forth herein. Neither party will have any authority to bind the other except to the extent authorized herein.

Each party will furnish to the other such cooperation and assistance as may be reasonably required and specified hereunder. However, at all times, each party shall remain an independent contractor with respect to the other. Employees and agents of each party will not be deemed to be employees or agents of the other party. Contractor will perform or provide its services free from the supervision, direction or control of the County.

The Contractor is required to comply with the provisions of the Montana Worker’s Compensation Act and shall provide proof of compliance as provided in Paragraph 8.

3. Required Work or Product

The Contractor shall provide the specific services, tasks, or work products shown on the

attached Exhibit A, which lists the scope of services relating to this Agreement. By this reference, Exhibit A is made a part of the Agreement.

4. Performance Schedule and County Assistance

Contractor shall commence performance of services identified in Exhibit A of this Agreement on the **31st day of October, 2023** and shall complete performance of this Agreement by the **30th day of June, 2024**.

The County may, by written change order, request changes within the general scope of this Agreement in the schedule, specifications, or quantity of work to be performed hereunder, and Contractor shall be entitled to a reasonable period of time to perform or provide said changes. Additional fees will be charged to the County for such changes as set out in Exhibit A.

County's Responsibilities - The County shall be responsible for assisting with the performance of this Agreement by doing or providing the following:

- a. **Provide oversight for the project.**
- b. **Collaborate closely with Contractor on the completion of all Contract tasks (see Exhibit A for details).**
- c. **Respond to Contractor inquiries in a timely manner.**

5. Place where service will be rendered

Contractor will perform most services in accordance with this Agreement at a location of Contractor's discretion. In addition, Contractor will perform services via the telephone, electronic mail, or at such other places as necessary to perform these services in accordance with this Agreement.

6. Compensation for Services

For the satisfactory completion of services to be performed under Exhibit A, the County will pay Contractor a sum not to exceed **\$35,000 (thirty-five thousand dollars)**. Any modifications must be approved by the County Commissioners through the change order process and will be compensated according to the fee schedule contained on Exhibit A. Invoices must be submitted to the Principal Contact for the County identified in Paragraph 11 of this Agreement with complete supporting documentation.

7. Other Payments

All other payments or reimbursements, other than those made to compensate for completion of services, shall not exceed \$0 (zero dollars). Requests for payment must be submitted to the Principal Contact for the County, as identified in Paragraph 11, with complete supporting documentation.

Other payments shall be made at the times, in the amounts, for the purposes, and to the following parties:

- a. Not applicable

8. Insurance and Workers' Compensation

Contractor will be required to maintain general liability insurance in the amount of one million dollars (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate. Contractor will not be required to provide professional liability insurance.

In accordance with §§ 39-71-401 and 39-71-405 MCA, Contractor agrees to provide workers' compensation insurance for its employees while performing work under this Agreement. Contractor shall provide proof of compliance in the form of workers' compensation insurance or documentation of corporate officer status and maintain such insurance or corporate officer status for the duration of the contract.

All insurance policies required must be from an insurance carrier licensed to do business in the State of Montana. Contractor agrees to furnish proof of required insurance to the County prior to commencing work under Agreement. County must be listed as an additional insured on the general liability insurance certificate for this Agreement unless otherwise specified by the County.

9. Records

Contractor shall maintain sufficient records incident to the performance of this Agreement to enable the County to document the performance of the Agreement. Contractor shall allow access to those records by the County and the County Auditor, any independent auditor employed by the County and to representatives of the state or federal government. Records shall be retained for at least three years after completion of the Agreement.

10. Principal Contact for the County

The County official with whom the Contractor must communicate regarding this Agreement and who shall have the authority to accept completion of performance and to submit requests for payment to the County Auditor and Commissioners is:

Name: **Caroline Bean**
Title: **Climate Action Program Manager**
Address: **200 W. Broadway, Missoula MT 59802**
Telephone Number: **(406) 258-3445**
Email Address: **cbean@missoulacounty.us**

11. Ownership and Publication of Materials

All reports, information, data, and other materials prepared by Contractor pursuant to this Agreement are the property of the County, which has the exclusive and unrestricted authority to release, publish, or otherwise use, in whole or in part, information relating thereto. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the County.

12. Public Access to Information

Contractor acknowledges that the County is a local government unit and its records are public and subject to disclosure under Montana law. Certain information may be protected from disclosure. Protected information includes information concerning an individual privacy interest, legitimate trade secrets and other constitutionally protected proprietary information and certain information relating to individual or public safety. The parties agree to confer prior to disclosure of information relating to this Agreement and its performance which may include protected information.

13. Termination

This Agreement may be terminated by either party unilaterally by giving notice of termination in writing at least 30 days prior to the date of the intended termination.

If the Agreement is terminated prior to completion, County shall be responsible for paying Contractor for completed and accepted work and billed to the County as provided in Paragraphs 6 and 7 within thirty (30) days of termination.

14. Failure to Perform

Upon any material default or substantial failure to perform this Agreement by either party, the other party shall be entitled to the following remedy:

- a) Stop performing or accepting performance of the contracted work until the matter is resolved;
- b) Within a reasonable time of discovery of the defect of failure to perform, mail a written description of the defect or failure to the other party, and:
 - 1) If the defect or failure to perform can be cured, demand specific remedial action within a reasonable time certain; or
 - 2) If the defect or failure to perform cannot be cured, specify any alternative performance which would be acceptable in lieu of the required performance and a time within which the alternative performance would be required; or
 - 3) If the defect or failure to perform cannot be cured and no reasonable alternative performance is acceptable, notify the other party of the termination of the Agreement as of a date certain and state therein whether an action for breach of Agreement will be brought.
 - 4) Where appropriate, obtain completion of the performance of the remaining balance of the Agreement with the original party.
- c) If the defect or failure to perform is not corrected or alternative performance completed within the time certain specified, the party alleging breach may initiate an action in the District Court of the Fourth Judicial District, Missoula County. If an action is brought, the prevailing party shall be entitled to attorney's fees as well as other costs of suit.

15. Income Tax Designation

In the event that the Internal Revenue Services should determine that Contractor is, according to IRS guidelines, an employee subject to withholding and social security contributions, Contractor shall acknowledge, as Contractor acknowledges herein, that all payments to Contractor are gross payments and Contractor is responsible for all income taxes and social security payments received prior to such IRS determination.

16. Indemnification

Contractor shall defend, indemnify and hold harmless the County, its employees and agents, from all claims, liabilities, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of Contractor, its employees or agents.

County shall defend, indemnify and hold harmless Contractor, its employees and agents, from all claims, liabilities, demands, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of the County, its employees or agents.

17. Entire Agreement, Modifications and Non-Assignment

This Agreement contains the entire Agreement between the parties. All preliminary negotiations and Agreements are merged herein. This Agreement cannot be changed or modified in any manner except by a written Agreement signed by both parties.

No obligation or right hereunder may be assigned, transferred, subcontracted or otherwise given to or imposed on any other party in the absence of a written Agreement signed by both parties.

18. Compliance with Laws and Non-Discrimination

Contractor agrees to comply with all federal, state and local laws, rules and regulations. In accordance with §49-3-207 MCA, all hiring must be on the basis of merit and qualifications; and there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

19. Place of Performance and Venue

Contractor and County agree that performance of this Agreement is in Missoula County, Montana. In the event of litigation concerning it, venue is in the 4th Judicial District, in and for the County of Missoula, State of Montana. This Agreement will be construed under and governed by the laws of the State of Montana.

20. Severability

If any part of this Agreement is hereafter held to be void, illegal or unenforceable, the validity of the remaining portion or provisions will not be affected hereby.

Professional Services Agreement for Support for Missoula County Sustainability Initiatives:

DATED this 31st day of October, 2023.

Contractor:

Amy Cilimburg,
Executive director

Climate Smart Missoula

BOARD OF COUNTY COMMISSIONERS
Missoula County, Montana

Chair

Commissioner

Commissioner

ATTEST:

Clerk & Recorder

Exhibit A – Missoula County Professional Services Agreement
Project: **Support for Missoula County Sustainability Initiatives**

Referenced to and made a part of the Professional Services Agreement between Missoula County and **Climate Smart Missoula**, dated October 31, 2023.

Under the terms of the Professional Services Agreement, **Climate Smart Missoula** will provide the following services or tasks or work products:

Support for three Missoula County sustainability initiatives: (1) Climate Ready Missoula, (2) Building(s) for the Future and (3) 100% Clean Electricity.

(1) Climate Ready Missoula Implementation

In May 2020, the Board of County Commissioners and the Missoula City Council jointly adopted the Climate Ready Missoula Plan as an issue plan of the county and city growth policies, respectively. The Climate Ready Missoula Plan was developed over two years through a partnership between the county, Climate Smart Missoula, and the city, and involving the input of hundreds of stakeholders and community members. The Climate Ready Missoula Plan includes 77 strategies to prepare for and adapt to the impacts of climate change in Missoula County, and covers eight sectors: human health; business, recreation, and tourism; buildings, land use, and transportation; agriculture; water; ecosystems; energy; and emergency preparedness and response. Climate Smart Missoula continues to be a key partner in this effort.

Under this Agreement, Climate Smart Missoula will support the implementation of Climate Ready Missoula by assisting with the following activities.

- Support and serve on the Climate Ready Missoula Implementation Task Force
- Assist with the review and potential update of the Climate Ready Missoula plan, including performance metrics and efforts to expand messaging about the plan and its strategies.
- Lead implementation of Wildfire Smoke, Heat, and Health goals and strategies, including:
 - Lead the Wildfire Smoke, Heat, and Health working group, with secondary support from Missoula County.
 - Lead coordination and execution of Wildfire Smoke Ready Week and associated activities, including community events and media campaigns
 - If conditions indicate the need for portable air cleaners, coordinate the distribution of portable air cleaners with community partners
 - Collaborate with partners to research the feasibility of available policy options to improve access to clean indoor air during wildfire smoke events.
 - Collaborate with partners to develop an extreme heat action plan for Missoula County, based on best practices and community engagement.
- Support related County funding applications and pursue relevant funding opportunities to advance the work above
- Establish and maintain connections to related community and regional efforts

- Ensure that equity and inclusion is centered in all Climate Ready Missoula activities

(2) 100% Clean Electricity

In April 2019, the Missoula Board of County Commissioners and the Missoula City Council jointly adopted a goal of 100 percent clean electricity by 2030 for the Missoula urban area. The resolution is rooted in “Missoula’s 100% Clean Electricity Options Report,” developed jointly by Climate Smart Missoula, the County, and the City of Missoula. Reaching this goal will require a broad array of programs and policies to accelerate the implementation of large-scale renewable energy, small-scale renewable energy, and energy efficiency.

Under this Agreement, Climate Smart Missoula will support this effort by:

- Support community outreach efforts on the Renewable Rate Option
- Collaborate with County staff to identify and advance pathways to 100% Clean Electricity.

(3) Building(s) for the Future Initiative

The Building(s) for the Future Initiative identifies and prioritizes policies and programs that will most effectively accelerate energy efficiency and fuel switching to cleaner energy sources in existing buildings and new construction. Electrify Missoula, a community-wide electrification campaign launched in September 2021, is part of this initiative. In addition to being an important component of the 100% clean electricity effort, building energy efficiency is also a climate adaptation strategy identified in Climate Ready Missoula. Specific activities include the following (to be conducted in partnership with county staff):

- Expand and execute the Electrify Missoula campaign, including:
 - Support the contractor badge program.
 - Assist with evaluation of the City-County Heat Pump Water Heater Pilot program
 - Promote electrification to Missoula County residents and businesses through engaging outreach materials, program websites, and events.
 - Support federal funding applications and help connect resources to residents and businesses to reduce cost of electrification and energy efficiency.
 - Support and share Missoula County focused IRA outreach materials
 - Support community’s capacity to install solar, including knowledge of IRA incentives, robust workforce, and outreach and education.

4) Outreach and Engagement

- Continue to explore ways to integrate environmental justice into climate work.
- Collaborate with local government partners to create a joint outreach strategy.

- Continue to conduct community engagement and outreach to support local government and community climate and energy efforts. This includes facilitating meetings of the “ad hoc” group of local climate advocates and preparing to host the Climate and Clean Energy Expo (September 2024).

Contractor shall submit invoices for work completed in three installments over the contract term.