

**CONTRACT AGREEMENT FOR SERVICES**  
**between**  
**the City of Missoula**  
**and Home ReSource**

This Contract is entered into on February 12, 2020 by and between the City of Missoula, Montana, herein referred to as the "City," or "Owner" and Home Resource herein referred to as the "Contractor" or "Vendor."

Witnesseth:

WHEREAS, the City desires to engage the Contractor and enter into agreement with the contractor to perform services to support the implementation of the City's adopted ZERO by FIFTY: Missoula's Pathway to Zero Waste Plan described within the Section or the Attachment to this contract entitled, "Scope of Services;" and

WHEREAS, the City has complied with the State, Federal, and local procurement requirements regarding the selection of contractors;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. EMPLOYMENT OF CONTRACTOR. Contractor agrees to perform the scope of services referenced in this agreement. Services to be performed under this Agreement shall commence upon the date specified in scope of services and shall remain in full force and effect unless formally modified or terminated by written notice, or until all project is completed and accepted by the Owner.
2. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and that neither its principals nor its employees, if any, are employees of the City for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Contractor has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.
3. LIAISON. The City's designated liaison with the Contractor is Chase Jones, Energy Conservation and Climate Action Coordinator with the City of Missoula. The Contractor's designated liaison with the City is Katie Deuel.
4. SCOPE OF SERVICES. See Attachment B for Scope of Services and Deliverables.
5. COMPENSATION. For the satisfactory completion of Tasks in Attachment B of this Contract entitled, "Scope of Services," the City will pay the Contractor the sum not to

exceed \$35,000 between August 1, 2019 and July 31<sup>st</sup>, 2020. The City agrees to pay the Contractor for actual portions of the work completed for each task described under the Scope of Services (Attachment B).

6. CONFLICT OF INTEREST. The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. The contractor further covenants that, in performing this Contract, it will employ no person who has any such interest.
  
7. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, who are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Contractor may not subcontract or assign its rights, including the right to compensation, or duties arising hereunder without the prior written consent of the City. Any subcontractor or assignee will be bound by all of the terms and conditions of this contract.
  
8. TERMINATION OF CONTRACT. This Contract may be terminated as follows:
  - (a) Termination due to loss of funding. This Contract will terminate, in whole or in part, at the discretion of the City in the event that the funds for the project are withdrawn. In this event, the City will give the Contractor advance written notice which sets forth the effective date of the termination and explain that the termination is due to a loss of Project funding.
  
  - (b) Termination for cause.
    - (i) If, at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Contract, the aggrieved party may give notice, in writing, to the defaulting party of any deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If the defaulting party fails to cure and correct all defaults claimed within a reasonable period to be specified in the notice, the aggrieved may, with no further notice, declare this Contract to be terminated in whole or in part.
  
    - (ii) If the Contractor is the defaulting party, it will thereafter be entitled to receive payment for those services satisfactorily performed to the date of termination less the amount of reasonable damages suffered by the City by reason of the Contractor's failure to comply with the contract's terms and conditions.

- (iii) If the City is the defaulting party it will pay the Contractor for those services satisfactorily performed to the date of termination plus the amount of reasonable damages suffered by the Contractor by reason of the City's failure to comply with the contract's terms and conditions.
- (iv) Notwithstanding the above, the defaulting party is not relieved of liability to the aggrieved party for damages sustained by the aggrieved party by virtue of any breach of this contract.
- (v) If the Contractor is the defaulting party, the City may withhold any payments to the Contractor for purposes of setoff until the exact amount of damages due the City from the Contractor is determined.

9. CIVIL RIGHTS ACT OF 1964. The Contractor will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VI, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
10. NONDISCRIMINATION. The Contractor will not discriminate against any employee or applicant for employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications and as described in **Attachment A** of this contract.
11. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). Contractor shall comply with any applicable provisions of the AMERICANS WITH DISABILITIES ACT with respect to the performance of this contract. Contractor shall incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs:  
"Contractor will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Contractor. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Contractor."
12. EVIDENCE OF WORKERS COMPENSATION COVERAGE. Contractor hereby certifies that Contractor is covered by a Workers' Compensation insurance program with either the State of Montana, a private insurance carrier, or an approved self-insurance plan in accordance with Montana State law and that the City has no liability for Contractor's worker's compensation insurance or claims or that the Contractor has received a waiver of such coverage from the State of Montana. If the Contractor has not

received a waiver from such coverage, the Contractor shall provide evidence of such coverage to the City prior to the City's validation of the agreement.

13. AFFIRMATIVE ACTION. The Contractor, subcontractors, subgrantees, and other firms doing business with the City of Missoula or any agency connected with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan and Title 49, MCA or forfeit the right to continue such business dealings. See **Attachment A.**
14. COMPLIANCE WITH OTHER FEDERAL, STATE, COUNTY, AND MUNICIPAL LAWS. Contractor shall obey all other laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to its operations. Said laws include, but are not limited to, the Equal Employment Opportunity laws, the Fair Labor Standards Act, and Occupational Safety and Health Administration (OSHA). Any violation of applicable law shall constitute a breach of this Agreement and Contractor shall hold the City harmless from any and all liability arising out of, or in connection with, said violations including any attorney's fees and costs incurred by the City as a result of such violation.
15. OWNERSHIP AND PUBLICATION OF MATERIALS. All records, drawings, reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the City, which has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the City.
16. REPORTS AND INFORMATION. The Contractor will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City or its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Contract unless permission to destroy them is granted by the City.
17. ACCESS TO RECORDS. It is expressly understood that the Contractor's records relating to this Contract will be available during normal business hours for inspection by the City, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst.
18. PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE. The parties understand and agree that performance of this contract is in the City of Missoula and that in the event of litigation concerning it, venue is the Fourth Judicial District in and for the County of Missoula, State of Montana. This Contract will be construed under and governed by the laws of the State of Montana.

19. INDEMNIFICATION. The Contractor waives any and all claims and recourse against the City including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Contractor's performance of this contract except for liability arising out of sole negligence of the City or its officers, agents or employees. Further, the Contractor will indemnify, hold harmless, and defend the City against any and all claims, demands, damages, costs, expenses or liability arising out of the Contractor's performance of this Contract except for liability arising out of the sole negligence of the City or its officers, agents or employees.
20. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.
21. TYPES OF INSURANCE. The Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed, and as will protect the Contractor, the vicarious acts of subcontractors, the Owner, and the respective directors, officers, partners, agents, employees and other consultants and subcontractors of each and any of all such additional insureds from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:
- A. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - B. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  - C. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  - D. claims for damages insured by reasonably available personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or by any other person for any other reason;
  - E. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
  - F. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
  - G. claims for bodily injury or property damage arising out of completed operations, and
  - H. claims involving contractual liability insurance applicable to the Contractor's Indemnification obligations of this Agreement.

22. INSURANCE - TERMS AND LIMITS. Without limiting any of the other obligations or liabilities of the Contractor, Contractor shall obtain and maintain all required insurance from companies lawfully authorized to do business in the State of Montana with minimum "A.M. Best Rating" of A-,VI.

A. ADDITIONAL NAMED INSURED. With respect to insurance required by subparagraphs 21.A through 21.F. inclusive, include as additional insured the City of Missoula as Owner; the Architect, the Engineer and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby.

B. TERMS OF COVERAGE. The insurance required by Paragraph 21 of this Agreement shall be written for not less than the limits of liability specified or required by law, which ever coverage is greater. Coverage shall be maintained without interruption from date of commencement of the Work until date of final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work. Any insurance coverage written on a claims-made basis, such coverage shall remain in effect for at least two years after final payment. Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should any policy be canceled before final payment by the Owner to the Contractor and the Contractor fails immediately to procure other insurance as specified, the Owner reserve the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under this Contract.

C. ADVANCE NOTIFICATION OF CANCELLATION, MODIFICATION OR NON-RENEWAL. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 21 of this Agreement shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 45 days prior written notice has been given to Owner and Contractor and to each other additional insured named to whom a certificate of insurance has been issued. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment.

D. CERTIFICATES OF INSURANCE. Contractor shall not commence work until Contractor has delivered to Owner, with copies to each additional insured, certificates of insurance as evidence of specified insurance coverage in force for the specified period. Failure of Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligations to maintain such insurance.

E. CONTRACTOR'S LIABILITY NOT LIMITED. By requiring such insurance and insurance limits as listed in this document, Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

F. COVERAGE AMOUNTS. The limits of liability for the insurance required by Paragraph 21 of this Agreement shall provide coverages for not less that the following amounts or greater where required by Law or Regulations:

1. Workers' Compensation and Related Coverages under subparagraphs 21.A and 21.B of this Agreement:

a. State Statutory

b. Applicable Federal Statutory

c. Employer's Liability \$1,000,000.00

2. General Liability: The General Aggregate Limit shall apply separately to each of the Contractor's projects.

a. General Aggregate per project \$2,000,000.00

b. Products- Completed Operations  
(Aggregate) \$2,000,000.00

c. Personal and Advertising Injury \$1,000,000.00

d. Bodily Injury and Property Damage  
(Each Occurrence) \$1,000,000.00

e. Coverage will include:

- (1) Premises - Operations
- (2) Operations of Independent Contractor
- (3) Contractual Liability
- (4) Personal Injury
- (5) Products and Completed Operations
- (6) Broad Form Property Damage (to include explosion, collapse, blasting and underground where applicable.

f. Contractor's Liability Insurance under 21.C through 21.E and 21.G may be satisfied by primary insurance or a combination of primary and excess or umbrella insurance. Primary occurrence limit cannot be less than \$1,000,000.00. The deductible, if any, may not exceed \$5,000.00 per occurrence.

g. If the General Aggregate Limit is diminished by an amount of \$500,000 or greater, Contractor shall provide notice to Owner of this fact, and shall again provide such notice on each subsequent occasion on which the General Aggregate Limit is again diminished by an amount of \$500,000 or greater.

3. Contractor's Contractual Liability Coverage required by Paragraph 21 of this Agreement shall provide coverage for not less than the amounts required by the contract for General Liability as follows:

a. General Aggregate Per Project \$2,000,000.00

b. Each Occurrence \$1,000,000.00  
(Bodily Injury and Property Damage)

23. PROFESSIONAL ERRORS AND OMISSIONS. Contractor shall maintain, during the term of this contract, **Professional Errors and Omissions Insurance** in the minimum amount of \$1,000,000.00

24. CHANGES IN THE WORK. The City liaisons reserve the right to make such alterations in the work plans or in the types and quantities of work as may be considered necessary. Any such alterations shall be expressed in writing to the Contractor by the City liaisons

and shall not be considered a waiver of any conditions of the contract nor to invalidate any of the provisions thereof; provided, however, that the execution of a supplemental agreement or amendment acceptable to both parties of the contract will be necessary before any alteration is made which involves (1) an extension or shortening of the length of the project by more than 25% (2) an increase or decrease of more than 25% of total cost of the work described within the Section or Attachment entitled "Scope of Services," or (3) an increase or decrease of more than 25% in the quantity of any one major contract task described under the Scope of Services.

25. PREVIOUS AGREEMENTS. This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.
26. BINDING EFFECT. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the CONTRACTOR respectively and his partners, successors, assigns and legal representatives. Neither the OWNER nor the CONTRACTOR shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party.
27. SEVERABILITY. If a part of this Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

28. NOTICES

All notices to the City of Missoula shall be sent to:

Attn: Chase Jones  
City of Missoula  
435 Ryman Street  
Missoula MT 59802

All notices to Contractor shall be sent to:

Attn: Katie Deuel  
Home ReSource  
1515 Wyoming  
Missoula, MT 59801



IN WITNESS WHEREOF, the parties hereto have executed this Contract on February 12, 2019.

CONTRACTOR:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Martha L. Rehbein, CMC, City Clerk

MAYOR  
City of Missoula, Montana

\_\_\_\_\_  
John Engen

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Jim Nugent, City Attorney

(SEAL)

## ATTACHMENT A

**NON-DISCRIMINATION.** All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

**AFFIRMATIVE ACTION POLICY.** Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

### **The City's Affirmative Action Policy Statement is:**

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, marital status, sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

## ATTACHMENT B Scope of Work

### I. Statement of Work

| HomeResource Scope of Work   |   |  |
|--|---|--|
| Goal   | Programs/Projects/Activities  | Deliverables   |
| Home ReSource will work with the building and development industries communities to maximize reuse and minimize building sector waste. | Identify stakeholders & schedule interviews   | Invitations sent and meetings scheduled  |
|  | Conduct detailed interviews; add results to Constructing Solutions, Demolishing Waste data compilation                                    | <a href="#">Data compilation revision</a>  |
|  | Do any further research needed to develop draft strategies and recommendations  | Draft strategy report  |
|  | Logistics & planning for Constructing Solutions, Demolishing Waste Part 2 event   | Facilitation plan  |
|  | Present strategies to stakeholders for buy-in, implementation, reality-testing  | Host Part 2 of Constructing Solutions, Demolishing Waste event   |
|  | Review stakeholder feedback and finalize strategies & recommendations   | Final strategy report  |
|  | Coordination with Climate Smart Missoula's work with building industry on energy  |  |
| Home ReSource will work to better understand, identify, and help move infrastructure needed for community-wide resource recovery.      | Identify and reach out to potential core members of Infrastructure Task Force & conduct individual meetings                               | List of core task force members  |
|  | Initial task force meeting with core members to set vision/goals, determine role and decision structure<br>- build to complete group ASAP | Document outlining Vision/Goals/Roles & decision structure   |
|  | Determine meeting space & needs & plan accordingly  |  |
|  | Convene monthly meetings<br>- 5 meetings by July 31   | Meeting agendas<br>Meeting reminders<br>Meeting minutes<br>Research summaries (as needed up to 5hrs/month) |
|  | Create guidelines/parameters for determining infrastructure needs based on task force input   | Guidelines/Parameters document   |
|  | Possibly ID projects to begin working on  | List of projects   |

### II. Roles and Responsibilities

- A. **City Leadership and Elected Officials** within the implementation of adopted policies and plans. City staff will manage all communication with leadership and elected officials and will directly report on progress that results from contractual work.
- B. **City of Missoula Staff Leads** consists of one dedicated full-time employee and support from the Department of Housing. These staff serve to coordinate and facilitate the work outlined in this contract; making sure decisions are in-line with their larger work plan; coordinating meetings; communicating with stakeholders; reporting progress; and setting agendas.
- C. **Contractors** are responsible for accomplishing the defined work plan objectives that support the City of Missoula's goals. They will communicate and collaborate directly with the identified Staff Leads.

### **III. Code of Conduct**

- A. **Purpose.** The intent of the Code of Conduct is to set the City of Missoula expectations for partners, stakeholders, and contractors.
- B. **Good faith.** All parties agree to act in a good faith effort. All accept that other participants bring with them the legitimate purposes and goals of their organizations. The work within this collaboration will remain as outlined in this contractual agreement. Any additional work that the contractor wishes to take on will be at their own will, and will occur without additional resource, including the support of staff time, from the City of Missoula.
- C. **Exchange of information.** All parties agree to exchange information in good faith and provide information in advance of meetings where such information will be necessary. All agree not to divulge information shared by others in confidence outside of the group.

### **IV. Meetings**

- A. All parties strive to attend meetings that require their feedback and participation. Members will make every effort to inform the group if they cannot attend a meeting ahead of time.
- B. All parties will read materials submitted in advance of meetings and complete assignments given, as we all value the importance of time well-spent in meetings.
- C. The City of Missoula will coordinate meeting scheduling and facilitation. A reminder will be sent out before meetings and if a decision is to be made, at least one week's notice will be given to all parties so they can make every effort to attend.
- D. Work plan reporting meetings are scheduled monthly.
- E. Working group meetings are coordinated by the City of Missoula as needed to meet the goals and objectives set forth in the work plan.