



State of Wyoming Pilot Project: Design and/or Construction of a Pilot Project
Demonstrating “Green” or “Blue” Hydrogen Production and Use

REQUEST FOR PROPOSALS

Issued by:

Wyoming Energy Authority
325 W. 18th Street, Suite 1
Cheyenne, WY 82001
PHONE: (307) 635-3573
wyoenergy.org

Issue date: March 17, 2021

Closing date: April 28, 2021

Additional copies of this solicitation are available from
the Wyoming Energy Authority website at
<https://www.wyoenergy.org/financing/>

This program is subject to the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. Ann. §§ 27-9-101 - 106), the Americans with Disabilities Act, 42 U.S.C. § 12101 - 12213, and the Age Discrimination Act of 1975, 42 U.S.C. § 6101 - 6107, and any rules or regulations promulgated under these state and federal anti-discrimination statutes. Funding recipients shall not discriminate against any individual on the grounds of age, sex, sexual orientation, creed, color, race, religion, national origin, ancestry, pregnancy, or disability in connection with funding under this Request for Proposals.

REQUEST FOR PROPOSALS
State of Wyoming Pilot Project: Design and/or Construction of a Pilot Project
Demonstrating “Green” or “Blue” Hydrogen Production and Use

1. INTRODUCTION

The mission of the Wyoming Energy Authority (WEA) is to advance Wyoming’s energy strategy by driving data, technology and infrastructure investments. On behalf of the Wyoming Energy Resources Council (ERC)¹, the WEA is issuing a request for proposals (RFP) from research and technology providers and other interested entities seeking resources for the design and/or construction of a pilot project demonstrating hydrogen production and/or use from renewable (green) or hydrocarbon with carbon capture and sequestration (blue) feedstock, within the boundaries of Wyoming. Successful proposals will specifically address the proposed direct and indirect actual and potential public benefits of the project, which will accrue to the State of Wyoming, its residents and communities, including, but not limited to: infrastructure development, business creation or retention, job creation or retention, technological advancement, intellectual property rights, commercialization, and additional state taxes, such as sales and use and/or property tax.

2. RESEARCH AND TECHNOLOGY TOPICS, AND PROJECT GUIDELINES

The aim of this program is to assist the design and/or construction of a project demonstrating viability of hydrogen as a component of the Wyoming energy economy. As such, the project will leverage existing natural resources and infrastructure within Wyoming, test configurations of these resources and infrastructure in order to establish technical feasibility, and establish economic viability of the scenario as a whole. It is also anticipated that studies that test the viability or feasibility of a potential commercial project will be considered reasonable.

The technology platforms included in this announcement may include, but are not limited to, schemes that employ critical components in the following areas:

- Hydrogen from hydrocarbon feedstock with carbon capture and sequestration (blue hydrogen)
- Hydrogen production using renewable energy (green hydrogen)
- Upgrading of hydrogen to ammonia or other hydrogen based products such as synthetic methane, etc.
- Transportation of hydrogen
- Use of hydrogen as an energy carrier and storage mechanism
- Co-firing or other hydrogen utilization options

All projects should use a project management structure appropriate for the proposed work demonstrating a clear path to commercialization after completion of the project.

¹ The ERC was established by Wyoming Statute § 21-17-117(e) to guide the University of Wyoming School of Energy Resources in setting priorities for energy-related academics, research, and outreach. The ERC consists of leaders from industry, the Wyoming legislature, and the University of Wyoming. Together they provide direction for responsive, internationally recognized, interdisciplinary, energy-related programs.

3. FUNDING AND PROJECT PERIOD

A. Funding

Project funding is limited and non-state matching funds are expected. Projects with higher matching amounts will be scored more favorably. Funding requests of up to \$1 million will be considered.

If program funds are to be matched by outside funding, the matching funds should be verifiable as available to and/or secured by the requesting organization through documentation verifying that matching funds have been committed. Verification can be in the form of a signed letter from a non-State of Wyoming funding organization.

In-kind support may be used for a portion of the outside funding match with program funds, but the amount must be verifiable and may not constitute greater than 40% of the total (cash + in-kind) match. Any in-kind match may include non-cash contributions of time, equipment, space (least preferred), and other items committed to the goals of the project. In-kind matching may include the use of items already owned by the Applicant. In-kind matches must be itemized in the project budget.

Collaboration – including with international entities – is encouraged, but not necessary. Any foreign-derived funds² may be counted as match, but no funds provided by the State of Wyoming can be expended to support work performed outside of Wyoming.

B. Project Period

The project period will be negotiated with the awardee(s) based on the project requirements.

4. APPLICANT ELIGIBILITY

Participation in this program is open to private industry, to public and private universities, to government agencies, to research institutions, and to individuals that can undertake a demonstration project of this magnitude (Applicant).

5. PROPOSAL PREPARATION

A. Minimum Requirements

To be eligible for funding, proposals must describe how the project leverages existing natural resources and infrastructure within Wyoming, the critical technical challenges governing the success of the project in Wyoming, and the primary economic drivers for viable deployment of the process at scale in Wyoming.

² The value of match derived from foreign funds will be determined by the exchange rate published by the *Wall Street Journal* for the close of business in New York on April 1, 2021. The rate can be found at http://online.wsj.com/mdc/public/page/2_3021-forex.html. That rate will stay in effect for the duration of the project to avoid complications that might be caused by exchange rate fluctuations.

All proposals submitted must contain each of the following, and items 5-14 must not exceed 25 pages of no less than 11 pt. font text and single line spacing:

1. **Application Form**, signed (Exhibit 1)
2. **Confidential Disclosure Agreement**, signed (Exhibit 2)
3. **Table of Contents**
4. **Abstract** (300 words or less)
5. **Introduction**
6. **Pilot Project Plan**. Detailed project plan that specifically addresses the project's proposed impact on the development of a hydrogen energy sector utilizing Wyoming resources and infrastructure. The project plan should also specifically address the proposed direct and indirect actual and potential public benefits of the project, which will accrue to the State of Wyoming, its residents and communities, including, but not limited to: infrastructure development, business creation or retention, job creation or retention, technological advancement, intellectual property rights, commercialization, and additional state taxes, such as sales and use and/or property tax.
7. **Pilot Project Discussion** (including schematic design)
8. **Statement of Work** (including schedule and methods)
9. **Milestones**. Full description of how the project will be managed and structured to judge successful achievement of critical milestones. The proposed milestones must be measurable and must reflect progress towards achievement of the objectives of the project in fulfillment of the overarching aim of this RFP.
10. **Proprietary and Confidential Information** (separate attachment). Identification and disclosure of all information that the Applicant deems proprietary and confidential including notation at the top of each page of the attachment. This attachment counts towards the 25 page limit. The entire proposal is considered a public record; however, financial and commercial information provided by the business is exempt from disclosure to the extent permitted by Wyoming Statute 16-4-203(d)(v).
11. **Market Comparison**. A comparison with existing commercially available platforms is requested to evaluate the potential advantage of the pilot project proposed.
12. **Collaboration Explanation** (if applicable). If collaboration between different entities is proposed, a clear statement designating the lead Organization and the contributions to the project by all the cited Organizations participating in the project.
13. **Project Management Organizational Chart**. A project management organizational chart should be included that clearly shows the relationships between all project entities, the names of the contributors to the project, and how the project will report to the WEA to assure fulfillment of project deliverables.
14. **Wyoming Host** (if applicable). A letter from the Wyoming entity that will host the project, confirming their participation.
15. **Site Information** (if applicable). If the proposal pertains to a specific piece of property, indicate who owns the site, how it is currently used, and if the proposed use is consistent with the zoning designation. Are there any known environmental concerns at the site, especially wetlands, floodplains, or sage grouse area? What infrastructure is necessary to serve the proposed site (i.e., water, sewer, electricity, natural gas, transportation facilities, and telecommunications). If there are deficiencies within any of the infrastructure systems, explain how the deficiencies will be improved.
16. **Match Verification**. Letters verifying match, which identify the source and amount.
17. **Appendix**, to include:
 - a. Short vitae (total maximum 3 pages) for principal investigators
 - b. Description of facilities and equipment to be used
 - c. Other pertinent information bearing on qualifications to conduct the project
18. **Budget** (see below).

B. Budget Format

A detailed budget is required. For a study, the project budget pages need to show how all eligible costs will be covered by both cash and in-kind contributions.

For equipment or infrastructure, the following minimum information must be included.

1. Supplies – including a breakdown by major category.
2. Equipment (generally considered to be valued at greater than \$5,000) – including a breakdown by item. Existing non-consumable equipment costs will not be an allowable cost, but a portion of the original purchase cost may be considered as a match if justified. Only pro-rated costs for new non-consumable equipment (i.e., analytical instruments, computers, etc.) will be allowed unless the equipment is an integral part of the technology, plant, or implement to be developed.
3. Consultant costs – including descriptive job titles, rates of pay, and man-hours/months/days. Fringe benefits should be shown as a separate item, with a brief explanation of the formula used.
4. Subcontracted work – funds that will be dedicated to outsourced work through subcontract require full details as described in B.3 above.
5. Total Amount - A clear statement of the total amount requested under the terms of the RFP.
6. Match – a clear statement of the portion of the total project budget supplied or matched from other sources. Full information on the sources of the funds, including the same level of detail found in categories B.1 – 4 above, must be included. No more than 40% of the match can be in-kind. We recommend a budget format that includes a separate column for each funding source.

C. Open Call and RFP Questions and Answers

The WEA will host and record an open call to discuss this RFP and take questions from the public. All are welcome to participate, however due to logistical constraints, participants will be required to register at <https://www.wyoenergy.org/financing/>

Additionally, if you have questions regarding this RFP or if you need more information, please email:

Anja Bendel, Wyoming Energy Authority Program Director
anja.bendel@wyo.gov with “Hydrogen Pilot Project RFP query” in the subject line

Answers to all questions emailed and posed in the open call will be posted on the website. The dates for the open call as well as the deadline for when questions can be emailed are listed in Section 9, “Dates.”

6. SCREENING AND EVALUATION PROCESS

A. Screening

The WEA will screen all submitted proposals prior to official review to ensure compliance with the requirements of this RFP. Those proposals that do not comply, or are otherwise deemed to be non-responsive, will be returned to the Applicant with an explanation of the

proposal's deficiencies. Applicants whose proposals are returned will be provided with a short deadline by which to resubmit a corrected proposal. All accepted proposals will be forwarded for official review to a review committee consisting of WEA staff and outside experts. The WEA will execute the Confidential Disclosure Agreement (Exhibit 2) and all members of the review committee will execute a non-disclosure and confidentiality agreement prior to receiving individual proposals.

B. Evaluation Criteria

Proposals will be evaluated primarily by the criteria described in the Ranking Form (Exhibit 3). This includes, but is not limited to:

- Relevance and importance of the proposed project
- Scientific merit
- Feasibility
- Technology transfer
- Qualifications of proposing entities
- Robust budget information
- Technology topics proposed
- High impact and relevance to the future utilization of Wyoming resources and infrastructure furthering hydrogen generation
- High direct and indirect actual and potential public benefits
- Adherence to proposal guidelines

Failure to substantially leverage existing natural resources and infrastructure within Wyoming, according to the reviewers' judgment, will result in a proposal be deemed non-responsive.

Members of the review committee will rank the proposals, selecting those that demonstrate the highest merit within the program guidelines and that are judged to deliver the highest benefits and impacts to the State of Wyoming. The review committee will make a funding recommendation(s) to the ERC for final approval. Decisions of the ERC are final and are not subject to appeal.

C. Applicant Notification

All Applicants will be notified by email regarding the outcome of the evaluation process and final project selections by the dates indicated in Section 9 "Dates."

>>NOTE: Costs may NOT be incurred prior to an executed Funding Agreement.<<

D. Public Hearing

It is required to inform and educate the public and business community to the greatest extent possible about the proposed pilot project utilizing a variety of techniques and media. The application and associated materials, exclusive of business plans or business financial information which are not subject to public information statutes, will be made readily available to public access.

A public hearing will be held by the WEA or the ERC after the evaluation process and prior to the final project selection. Citizen input will be actively solicited which can be submitted via writing, electronically, or in person at the public hearing.

Public notice will be published in a newspaper of general circulation within the boundaries of Wyoming with circulation in the proposed project area. The notice shall contain a concise description of the proposed project and state that time will be set-aside at the public hearing to take testimony from citizens about the project. To inform the public and to gather information, the public hearing will, at a minimum: identify the economic development opportunity(ies); explore all possible funding sources and alternative solutions to the opportunity(ies); contain a comprehensive description of the proposed project; and solicit testimony from citizens who may feel that the proposed use of the project might compete with an existing business.

7. PROJECT CONTRACT REQUIREMENTS

The following project contract requirements are set out by the WEA. Applicants whose proposals are funded are required to:

A. Execute a Funding Agreement

The Funding Agreement shall specify terms and conditions under which funds shall be disbursed, including but not limited to:

1. A methodology, including the ability for the State of Wyoming to audit records as necessary, to ensure matching funds committed under the proposal are available and actually expended for the project as described.
2. A means for the executive summary and final technical report to be submitted to the WEA to verify that the proposed project, as funded, was completed as represented in the proposal.

A fully executed Funding Agreement, based on the template provided in Exhibit 4, between the WEA and every contributing entity to the pilot project (those receiving program funds and providing cash and/or in-kind match, if any) must be in place prior to disbursement of funds from the program. The Funding Agreement shall also contain provisions regarding the ownership, licensing and use of data, information, studies, analysis and intellectual property, of any kind, produced utilizing funds from this program. As part of the funding agreement between Recipient and WEA, the Recipient will require all Project contractors to provide appropriate and sufficient payment and performance bonds.

The WEA will work closely with awardees to negotiate and finalize the Funding Agreement after notification of award.

>>**NOTE:** Costs may NOT be incurred prior to an executed Funding Agreement.<<

B. Submit Quarterly Progress Reports

These reports shall be submitted no later than January 1, April 1, July 1, and October 1 of each year of active grant status to the Program Director of the WEA. Progress reports should not exceed three pages and should report status of work, achievements, variance in timing, and activity versus project plan and expenditures against assigned project budget.

C. Submit a Final Executive Summary Report

This report should be a concise, non-technical summary of project results and recommendations including statements regarding the relevance and impact of the project to the aims and goals of this RFP. The report audience will include user groups, the general public, and non-specialists in the field. This report should be less than 15 double spaced pages in length and no less than a font size of 11. The Final Executive Summary Report will be placed on the WEA website.

D. Submit a Final Technical Report

The Final Technical Report is intended for use by professionals in the general field of green and blue hydrogen technologies. It should contain a complete and thorough report of project activities conducted. Minimum content of the technical report should be as follows:

1. Abstract (less than 300 words)
2. Introduction
3. Objectives
4. Methods
5. Results
6. Technical Information (not to exceed 40 double spaced pages) and no less than a font size of 11
7. Relevance and impact to the project goals and aims of this RFP
8. Conclusions and recommendations
9. Development Plan for commercialization of successful outcomes from the project

Confidential information, including business secrets and intellectual property, that forms part of the Final Technical Report must be attached as a separate appendix marked "Confidential." Any such confidential information will remain confidential to the WEA and will neither be published, posted, summarized, nor abstracted by the WEA or the program funding partner, the ERC.

The Final Executive Summary Report and the Final Technical Report are due no later than 90 days after the completion of the project. **The Final Technical Report will be placed on the WEA website** without any confidential information from an included "Confidential" appendix.

8. SUBMITTAL INFORMATION

Proposals need to be uploaded to the website address below before the date and time indicated in Section 9 "Dates." No exceptions will be made for late arrival of proposals, for any reason. A confirmation email acknowledging receipt of the proposal will be sent within 2 hours of submission. If you do not receive a confirmation, please call (307) 635-3573 x 3

Website: <https://www.wyoenergy.org/financing/>

Please use the following format for naming files:

H2 2021_[Company Name]_[Principal Investigator Last Name]_[File Description]

Example 1: "H2 2021_ABC Energy_Smith_Proposal.pdf"

Example 2: "H2 2021_ABC Energy_Smith_Confidential Attachment.pdf"

9. DATES

All dates and times are Mountain Time.

Issue Date:	March 17, 2021
Open Call:	10:00 a.m. March 31, 2021. Please register for the call on the website. Early submission of questions via email is encouraged. A recording of the call will be made available on the website.
Closing for email questions:	5:00 p.m. April 9, 2021. Early submission of questions is encouraged.
Questions and Answers posted:	April 16, 2021
Closing Date:	2:00 p.m. April 28, 2021. Please upload the proposal on the website shown in Section 8 "Submittal Information"
Evaluation Process Notification:	No later than June 30, 2021
Public Hearing:	Between June 30 and July 30, 2021
Final Project Selection:	No later than July 30, 2021



Exhibit 1

APPLICATION FORM

Wyoming Pilot Program: Design and/or Construction of a Pilot Project Demonstrating “Green” or “Blue” Hydrogen Production and Use

Proposal Title: _____

Instructions: Please complete the form below. Attach additional pages as needed for additional investigators. Each additional investigator shall provide a brief letter from their organization authorizing their participation in the project signed by both the additional investigator and the organization authority, if that is a separate person.

Principal Investigator Information

Name	
Title	
Organization	
Mailing Address City, State ZIP	
Phone	
Email	

Additional Investigator Information (attach additional pages as necessary)

Name	
Title	
Organization	
Mailing Address City, State ZIP	
Phone	
Email	

Signatures

Signature of Applicant		Date
Authority from Organization (name, title, email, phone) <i>Please type or print</i>		
Signature of Authority		Date



Exhibit 2

CONFIDENTIAL DISCLOSURE AGREEMENT

The Wyoming Energy Authority (“WEA”), 325 W. 18th St., Suite 1, Cheyenne, Wyoming 82001, understands that [Submitting Company Name and Address] (“Company”) wishes to disclose to the WEA information related to “State of Wyoming Pilot Project: Design and/or Construction of a Pilot Project Demonstrating ‘Green’ or ‘Blue’ Hydrogen Production” hereinafter referred to as “Proprietary Information” for evaluation purposes. All Proprietary Information shall be disclosed in writing and identified by **Company** as confidential or proprietary, or disclosed orally and then promptly reduced to writing and identified in such writing by **Company** as confidential or proprietary.

The **WEA** agrees (i) to hold Proprietary Information in confidence and to take all reasonable precautions to protect such Proprietary Information including, without limitation, all precautions that the **WEA** employs with respect to its confidential materials, (ii) not to divulge any Proprietary Information or any information derived therefrom to any third party, (iii) not to make copies of any Proprietary Information except as necessary for the purpose expressly allowed hereunder, (iv) not to use the Proprietary Information for any commercial purposes, except with the prior agreement of **Company**. Disclosure of Proprietary Information by the **WEA** shall only be made to those employees, directors, officers, consultants, and outside reviewers who have a need to know the Proprietary Information for the purpose described above and who are under similar obligations of confidentiality and non-use. Should the **WEA** be required by judicial or other governmental authority to disclose Proprietary Information, it shall inform and cooperate with **Company** in responding to such requirement.

The foregoing obligations shall not apply with respect to information the **WEA** can document (i) is in or enters the public domain through no improper action or inaction by the **WEA**, or (ii) was in its possession or known by it prior to receipt from **Company**, or (iii) was rightfully disclosed to it by a third party without restriction, or (iv) was independently developed by the **WEA** or its employees, without use of the subject Proprietary Information.

The **WEA** understands that nothing herein (i) requires the disclosure of any Proprietary Information; Proprietary Information shall be disclosed, if at all, solely at the option of **Company** or (ii) requires **Company** to proceed with any proposed transaction or relationship in connection with which Proprietary Information may be disclosed.

The **WEA** does not waive its sovereign immunity or its governmental immunity by entering into this agreement and fully retains all immunities and defenses provided by law with regard to any action based on this agreement. The laws of Wyoming shall govern this agreement.

This agreement is effective on the date of last signature hereto. This agreement shall expire one (1) year from the effective date, and all Proprietary Information shall be subject to the restrictions of this agreement for five (5) years after expiration.

Wyoming Energy Authority	[Insert Submitting Company Name]
By:	By:
Typed Name:	Typed Name:
Title:	Title:
Date:	Date:



Exhibit 3

RANKING FORM - template

Wyoming Pilot Program: Design and/or Construction of a Pilot Project Demonstrating “Green” or “Blue” Hydrogen Production and Use

REVIEWER _____

PROPOSAL NUMBER _____ Describe briefly the focus of the project (one or two sentences).

Please rank the proposal in each of the following categories by marking the desired ranking.

1. Relevance and Importance: Does this proposal address a pilot demonstration that directly relates to hydrogen production technologies? If so, does it deal with a subject of particularly high importance to present and future use of Wyoming resources?

Poor 1 2 3 4 5 Excellent

2. Scientific Merit: Does this proposal have potential to expand the fundamental knowledge of green or blue hydrogen production, use, storage or transportation in Wyoming? Is it technically sound? Is the investigator cognizant of past work?

Poor 1 2 3 4 5 Excellent

3. Feasibility: Are the objectives, methodologies, designs, and techniques adequate and completely described? What is the likelihood of success given the methods and time frame proposed?

Poor 1 2 3 4 5 Excellent

4. Technology Transfer: Does the proposal actively address the eventual commercialization of a successful study or demonstration? Does it actively address the impact that positive results could have?

Poor 1 2 3 4 5 Excellent

5. Qualifications: Are the qualifications of the proposing group commensurate with the proposed demonstration? Are the facilities and equipment adequate? If appropriate, have external funding agencies and cooperators been identified? Has the nature of such cooperation been described?

Poor 1 2 3 4 5 Excellent

6. Budget: Is the budget reasonable for the work proposed? Are significant outside funds leveraged?

Poor 1 2 3 4 5 Excellent

7. Public Benefit: Does the project have relevance and importance to the economy of the State of Wyoming? Does it demonstrate high direct and indirect actual and potential public benefits?

Poor 1 2 3 4 5 Excellent

8. Proposal Guidelines: Have format requirements been met? Is the proposal well written, organized, and complete?

Poor 1 2 3 4 5 Excellent

IMPORTANT! EVALUATORS, PLEASE COMPLETE THE REVERSE SIDE OF THIS FORM

REVIEWER _____

PROPOSAL NUMBER _____

STRONG POINTS: (Novelty, readiness of technology for a pilot demonstration, exceptional qualifications, etc. Please feel free to use additional pages.)

WEAK POINTS: (Please provide substantive, constructive comments and state the shortcomings. Please feel free to use additional pages.)

NOTES TO REVIEWERS: Comments that do not appear on this form or on an attached sheet will not be considered. We will not search your copy of the proposal for comments. A synthesis of review comments will be provided to proposers if requested.

Exhibit 4
Project Template

**FUNDING AGREEMENT BETWEEN
THE WYOMING ENERGY AUTHORITY
AND [REDACTED]**

1. **Parties.** This Funding Agreement (“**Agreement**”) is made between the Wyoming Energy Authority, an instrumentality of the State of Wyoming (“**WEA**”), 325 West 18th Street, Suite 1, Cheyenne, WY, 82001, and [Recipient], (“**Recipient**”), [Recipient’s Address], each a (“**Party**”) or collectively the (“**Parties**”). In consideration of the mutual covenants contained herein, the Parties agree as follows:

2. **Purpose of Agreement.**
 - A. The mission of the WEA is to advance Wyoming’s energy strategy by driving data, technology and infrastructure investments. On behalf of the Wyoming Energy Resources Council (“**ERC**”), the WEA has issued a request for proposals for the design and/or construction of a pilot project demonstrating hydrogen production from renewable (green) or hydrocarbon with carbon capture and sequestration (blue) feedstock, within the boundaries of Wyoming (the “**Program**”).

 - B. The aim of the Program is to assist with the design and/or construction of a project demonstrating the viability of hydrogen as a component of the Wyoming energy economy.

 - C. Recipient has submitted a successful proposal for funding as part of the Program for which it intends to carry out the pilot project described in Exhibit A attached hereto and incorporated herein by this reference (the “**Project**”).

 - D. Therefore, the Parties desire to enter into this Agreement defining their rights, duties, and liabilities relating to the funding of Recipient’s Project. The Parties agree to not take any action or actions inconsistent with the laws, rules, regulations or ordinances governing this Agreement and the actions of the Parties.

3. **Term of Agreement.** This Agreement shall commence upon the date the last signature is affixed hereto and all approvals pursuant to this Agreement are granted, and shall terminate on [Date], or sooner as provided herein. Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term described herein.

4. **Responsibilities of the WEA.**
 - A. The WEA shall contribute to Recipient a sum of [Funding Amount].

 - B. Funding for the Program and the Project will be provided to the WEA from the ERC and 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. Funds in the amount listed in Section 4.A above will be paid to Recipient by the WEA in consideration for Recipient's performance as described in this Agreement and the terms and conditions of all other agreements required, if any, to be entered into by and between the ERC, the WEA and the Recipient. Notwithstanding the foregoing, the WEA shall not be obligated to proceed with the Project, including contributing the funds described above, and may terminate the Agreement at the end of the period for which funds are available if it does not receive the requested funding from the ERC, or if funds are not allocated or available for the continued performance of the Project. The WEA shall not be obligated to expend funds for the Project in excess of the funds received from the ERC as described above, and the WEA shall not be liable for any future payments due or for any damages as resulting from termination of this Agreement under this section.

- C. The responsibilities and obligations of the WEA are limited to payment of the amount specified above. The WEA assumes no other obligations or liability, except those expressly stated in this Agreement.

5. Responsibilities of Recipient.

- A. Secure sufficient non-State of Wyoming funds to meet the match required under the terms of the Program. The Recipient is exclusively responsible for any and all costs associated with the Project which may exceed the total amount awarded through WEA funding.
- B. Complete the Project, pursuant to the terms of Recipient's successful proposal for funding, as described in Exhibit A.
- C. Maintain reasonable and responsible accounting procedures and practices, and maintain books, records, documents and other evidence to sufficiently and properly reflect all transactions of any nature relating to this Agreement and any funds provided by or through the WEA. Such books, records, documents, and other evidence shall be made available upon written request of the WEA for inspection at the offices of the WEA in Cheyenne, Wyoming or other such location as approved by the Parties. Recipient shall also retain all required records for three (3) years after receipt of final payment of the WEA funds.
- D. Provide invoices and/or reimbursement requests to the WEA for payment of the Project grant.
- E. Timely submit all deliverables due to the WEA including, but not limited to: (i) quarterly progress reports; (ii) final executive summary report; and (iii) final technical report. Said deliverables shall in all respects comply with the requirements set forth in the initial request for proposals, and any additional

requirements agreed to by the Parties.

- F. Recipient and its agents shall adhere to a standard of reasonable care while conducting all activities as part of the Program.
- G. Recipient, in exchange for funding from the WEA, shall provide the WEA with performance and technical data and information that is first developed or that may arise in connection with the Project (“**Technical Data**”), but will not be required to provide background data, information, knowledge, know-how or intellectual property that is used in the development of Technical Data. In conjunction with its receipt of such Technical Data, Recipient grants the WEA a non-exclusive, royalty free, fully paid up, perpetual license to use such data for its own business purposes, but the WEA will have no other ownership of, title to, interest in or other similar proprietary right (other than the license granted above) to such Technical Data.
- H. The release of any data and information to the WEA in connection with this Agreement will be subject to and in accordance with (i) the confidentiality obligations described in this Agreement, and (ii) any applicable legal requirements, including applicable United States export laws and regulations.
- I. Recipient shall use all reasonable efforts to complete the Project, however, the WEA recognizes the research, experimental and developmental nature of the Project and acknowledges that the Recipient does not make any warranty or representation, express or implied, regarding the Technical Data, the research or with respect to the results or anticipated results associated with the Project.

6. Project Management and Fund Management.

- A. The WEA understands and agrees that Recipient has final responsibility and authority with regard to project management, direction and all decisions related to the scope of work and schedule or timing of project activities. The WEA will be afforded the rights and benefits described herein, but, in all events, Recipient will have sole discretion over all plans and decisions relating to the Project and will make the final determination as to the use and inclusion of the WEA’s input regarding expenditure of Program funds.
- B. Recipient agrees to use and apply the WEA’s funds solely in connection with the Project described in Exhibit A as part of the Program. The WEA understands and agrees that the funds it provides will be commingled with other non-State of Wyoming funds and used by Recipient in the execution of its rights and obligations related to the Project, and that the WEA’s funds will be indistinguishable from the funds of other sponsors and participants; however, Recipient will not commingle any funds provided by the WEA with any funds that are not dedicated to the Project described in Exhibit A.

7. **Special Provisions.**

- A. See Exhibit B attached hereto and incorporated herein by this reference.

8. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement that are mutually agreed upon by the Parties to this Agreement shall be incorporated by written instrument, and executed by all Parties to this Agreement.
- B. **Americans with Disabilities Act and Nondiscrimination.** Recipient shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. Ann. §§ 27-9-101 - 106), the Americans with Disabilities Act, 42 U.S.C. § 12101 - 12213, and the Age Discrimination Act of 1975, 42 U.S.C. § 6101 - 6107, any rules or regulations promulgated under these state and federal anti-discrimination statutes. Recipient shall not discriminate against any individual on the grounds of age, sex, sexual orientation, creed, color, race, religion, national origin, ancestry, pregnancy, or disability in connection with the performance under this Agreement.
- C. **Applicable Law/Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Parties further agree and consent that the Courts of the State of Wyoming shall have jurisdiction over this Agreement and the Parties, and that venue shall be in the First Judicial District, Laramie County, Wyoming.
- D. **Assignment.** Recipient shall not assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the WEA.
- E. **Compliance with Laws.** Recipient shall comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- F. **Entirety of Agreement.** This Agreement, and all attached exhibits, constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations or contracts, either written or oral.
- G. **Ethics.** Recipient shall read and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. Ann. §§ 9-13-101 - 109.), State of Wyoming Executive Order 1997-4, and any other applicable laws and ethical standards governing their professions.
- H. **Force Majeure.** No Party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming Party or Parties. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods,

epidemics, quarantine restrictions, freight embargoes, unforeseen legal, regulatory, or governmental delay, or unusually severe weather. This provision shall become effective only if the Party failing to perform immediately notifies the other Parties 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.

I. No Joint Venture or Agency. This Agreement is not intended to and will not be construed to create any partnership, joint venture, employment or agency relationship between or among the Parties, and no Party will be liable for the payment or performance of any debts, obligations, or liabilities of any other Party, unless expressly assumed in writing. Additionally, neither Party shall have the power to bind the other Party to any agreement. The WEA's liability shall be strictly limited to the funds invested by it in Recipient's Project in accordance with Section 4.A. of this Agreement.

J. Indemnification. The Recipient shall release, indemnify, and hold harmless the State of Wyoming, the Office of the Governor, the WEA, the ERC, and their officers, agents, employees, and successors from any and all claims, suits, liability, causes of action, injuries, judgments, claims or demands, damages, costs, attorneys' fees, and expenses arising out of this Agreement, or caused by the disregard of State or federal environmental statutes or regulations by Recipient or any employee, contractor, guest or observer of the Recipient.

K. Notice. All notices arising out of, or from, the provisions of this Agreement shall be in writing and provided either by certified mail, return receipt requested, or in-person hand delivery to the addresses below. Courtesy copies may be provided via email but are not required.

i. The WEA:
Dr. Glen Murrell
Executive Director
325 W. 18th Street #1
Cheyenne, WY 82001
glen.murrell@wyo.gov
307-635-3573

ii. [Recipient]:
[name and address and contact information]

L. Publicity. The Parties shall not use the other Party's name, logo, or mark in advertising, signage, promotion, publicity, or fund-raising without the other's prior approval.

Recipient shall have the right to publish at any time and in any publication that it shall choose in its sole discretion any results or findings that have been previously

released to the public, and may publish any other results and findings with the prior written approval of the WEA, which approval shall not be unreasonably withheld, conditioned or delayed.

Before releasing publicity that includes any specific references to a Wyoming state official or state agency, the Recipient shall contact the Governor's Communication Director, via telephone at (307) 777-7437, to obtain prior approval.

- M. Public Records and Meetings Acts.** The Parties acknowledge that the WEA, as an instrumentality of the State of Wyoming, is subject to the requirements of the Wyoming Public Meetings Act (Wyo. Stat. Ann §§ 16-4-401 - 408) and the Wyoming Public Records Act (Wyo. Stat. Ann. §§ 16-4-201 - 205) ("**Acts**").

The Parties acknowledge that the Acts may require the WEA to conduct certain business in public and make certain records available for public inspection, on request. The WEA shall provide the Recipient with all public notices required under the Public Meetings Act. If the Recipient is concerned about any information that could be revealed or discussed during the noticed public meeting, the Recipient and the WEA shall work together prior to the public meeting to address those concerns, with the final decision on any disclosure being made in the sole discretion of the WEA.

If the WEA receives a public records request, the WEA shall forward a copy of the request to the Recipient. Recipient shall communicate any objection or concerns regarding the request to the WEA within ten (10) business days of receipt of the request. Recipient and the WEA shall work together to respond to any public records request and shall fully cooperate and assist one another in responding to any such request, with the final decision on any disclosure being made in the sole discretion of the WEA.

The WEA shall work in good faith to protect from disclosure any materials properly exempted under the Acts, and the Recipient shall hold the WEA harmless for any disclosures the WEA is required to make under either Act or any accidental disclosures made in the course of seeking to comply with the Act.

- N. Confidentiality.** Each Party ("**Receiving Party**") may receive or be exposed to information of the other Party ("**Disclosing Party**") concerning the Disclosing Party's business, plans or technology designated as confidential, privileged, proprietary or trade secrets or, due to its nature, that the Receiving Party should know is confidential ("**Confidential Information**"). The Receiving Party agrees that it will not use the Confidential Information except as necessary in connection with and in accordance with this Agreement. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any third party except as required by law, and will take reasonable precautions to protect the confidentiality of such Confidential Information.

The obligations to hold the Confidential Information in confidence will continue for five (5) years after the completion, cancellation, termination or expiration of this Agreement. The duty of non-disclosure relative to trade secrets (if any) shall continue for as long as an item remains a trade secret, no matter how long this may be.

Notwithstanding anything to the contrary, the term “Confidential Information” shall not include, and nothing in the Agreement will limit the WEA’s use or disclosure of, information that is: (i) now generally known or available on an unrestricted basis to the public or becomes so known or available on an unrestricted basis through no fault of the WEA; (ii) already in the WEA’s possession without restriction as to its use or disclosure before receiving it from Recipient; (iii) developed by or for the WEA independently of and without reference to the Confidential Information; or (iv) is required by any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court of competent jurisdiction, governmental agency or governmental or regulatory authority; *provided, however*, that prior to making such disclosure, the WEA will provide Recipient with prompt written notice of any requirement so that Recipient may seek a protective order or other appropriate protection or remedy.

- O. Ownership and Return of Documents and Information.** Where specifically requested by the other Party, each Party shall return all specifically identified original and derivative information, documents and materials to the requesting Party 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. Except as required for compliance with the Acts, with written consent of the requesting Party such materials may be destroyed, with certification of destruction provided to the requesting Party.
- P. Intellectual Property.** Subject to the other terms and provisions of this Agreement, the WEA understands and agrees that, as between the WEA and Recipient, Recipient shall own all right, title and interest in and to all data, information, and results developed during the course of, and arising out of the performance of the activities conducted with regard to Recipient’s Project, including all know-how, inventions and intellectual property. The WEA agrees that it will not, in any manner, assert or claim any ownership rights in any invention or intellectual property that is generated, developed, conceived of or first reduced to practice during the Project.

Should the WEA and Recipient contemplate the joint development of inventions or intellectual property related to the Project, the terms and conditions of such involvement and activities will be governed by a separate written agreement(s) that establishes the rights and obligations of the respective parties.

This section is not intended to, and shall not, diminish the license granted by Recipient to the WEA in Section 5.G.

- Q. Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the Parties may renegotiate the terms affected by the severance.
- R. Sovereign Immunity.** The State of Wyoming and the WEA expressly reserve sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The Parties agree that any ambiguity in the Agreement shall not be strictly construed, either against or for any Party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- S. Successors and Assigns.** This Agreement and the terms and conditions hereof apply to and are binding on the purchasers, heirs, legal representatives, successors, assigns, agents and employees of all Parties.
- T. Taxes.** Recipient shall be responsible for and pay all taxes, fees, 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, property and sales and use taxes associated with Recipient's Project.
- U. Termination.** The WEA or the Recipient may terminate this Agreement upon thirty (30) days written notice to the other Party. This Agreement may be terminated by the WEA immediately for cause if the Recipient fails to perform in accordance with the terms of this Agreement.

Notwithstanding anything to the contrary contained herein, the license granted by Recipient to the WEA in Section 5.G. shall survive any termination of this Agreement, other than Recipient's termination of this Agreement as a result of the WEA's breach of any of its obligations under this Agreement. In the event of any termination, the WEA may – subject to the confidentiality obligations – retain any information and data that it received from Recipient pursuant to this Agreement (including, without limitation, Technical Data and Confidential Information) and will be entitled to receive (i) any Technical Data identified as a deliverable that began to be developed and would become due before such termination and (ii) any Technical Data identified as a deliverable that began to be developed and was previously identified as becoming due within thirty (30) days after the effective date of such termination.

- V. Third Party Beneficiary Rights & Obligations.** The Parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to

this Agreement and shall inure solely to the benefit of the Parties to this Agreement. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement.

W. Time is of the Essence. Time is of the essence in all provisions of this Agreement.

X. Titles Not Controlling. Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.

Y. Unlawful Activity. Both Parties shall refrain from unlawful activity during the term of this Agreement. A violation of this section by either Party shall constitute sufficient grounds for immediate termination of this Agreement by the non-violating Party in its absolute discretion.

Z. Waiver. The failure by a Party to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right, power or remedy consequent upon a breach, shall not constitute a waiver of any such breach of such term or condition. A waiver of any breach shall not affect or alter this Agreement, and each and every term and condition of this Agreement shall continue in full force and effect regardless of any breach.

AA. Counterparts. This Agreement may be executed at different times in one or more counterparts and by signatures transmitted electronically, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

9. Signatures. The Parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understand, and agree to the terms and conditions of this Agreement.

The Parties have executed this Agreement on the dates show below.

[Recipient]:

[Authorized Signor] Date:

WYOMING ENERGY AUTHORITY:

Dr. Glen Murrell, Executive Director Date:

Exhibit A –Project Purpose and Description

Exhibit B – Special Provisions

- A. Insurance.** During the term of this Agreement, the Recipient shall meet and comply with the insurance requirements as set forth below.

[Insert Specific Requirements – may need to be customized based on nature of proposed pilot project]

- B. Bonding.** As part of this Agreement, the Recipient shall require all Project contractors to provide payment and performance bonds pursuant to the terms set forth below.

[Insert Specific Requirements – may need to be customized based on nature of proposed pilot project]