

(REVISED 06/05/14)

For OFFICE OF ENVIRONMENTAL SUSTAINABILITY USE ONLY

US Department of Energy Cooperative Agreement
CFDA No 81.086 Award No. DE-EE0007069
Local Grant No: GR1501415000

FORMAL CONTRACT FOR SERVICES

FUND NO.:

PURCHASE ORDER NO.:

City of Milwaukee
Department of Administration
Office of Environmental Sustainability

REQUISITION NO.:

DATE OF AWARD:

The provisions of this contract have been reviewed and approved by the Office of the City Attorney.

SERVICE DESCRIPTION (General):

The City of Milwaukee filed an Application for and received a grant award from the United States Department of Energy (DOE) in Funding Opportunity Announcement Number DE-FOA-0001168 Advancing Solutions to Improve the Energy Efficiency of U.S. Commercial Buildings in the amount of \$750,000. The "Statement of Project Objectives", attached to the Grant Agreement between DOE and the City of Milwaukee as Attachment 1 and attached to this Agreement as Exhibit B (Statement of Project Objectives), describes the general project objectives for the Better Buildings Challenge - Milwaukee (BBC), referred to in the grant application as the Location, Location, Efficiency! program. Total funding of the BBC program is \$1,500,000, with maximum grant funding of \$750,000. \$36,000 of the available grant funds is allocated to the Wisconsin State Energy Office for its administrative and program services. Due to restrictions associated with the grant funds, the Wisconsin State Energy Office will not provide in-kind contributions. Allocation of the total funds among all of the grant partners and the distinction of in-kind contributions and grant funds is set forth in Exhibit C. While supporting the program's overall objectives as outlined in the Statement of Project Objectives, the City reserves the right to revise the BBC program strategies and tasks within DOE parameters. This Agreement acknowledges that the project objectives must be achieved within a rapidly evolving policy environment at the federal government level and that all funding is contingent upon successful completion of Go/No-Go checkpoints for the program as a whole set by DOE.

This Agreement sets forth the roles, responsibilities, and allocation of resources between the City of Milwaukee and the Wisconsin State Energy Office (SEO) both as to general project oversight and the allocation and use of grant award funds for the BBC program, consistent with the objectives, terms, and conditions of the DOE grant award. This Agreement does not create any liability or penalty for the City or SEO if customer demand does not meet projections set forth in the Statement of Project Objectives, including the projected number of schools to be served by the BBC program. If any part of the Statement of Project Objectives conflicts with the terms of this Agreement, this Agreement shall govern.

TIME OF PERFORMANCE: Date of Contract Execution – 10/10/2018

TOTAL AMOUNT OF CONTRACT:

Maximum Amount of Compensation Not to Exceed
(36,000 00/100 Dollars)
In-Kind Contribution from SEO: \$0

THIS AGREEMENT, entered into by and between the Wisconsin State Energy Office (hereinafter referred to as the "CONTRACTOR"), and the City of Milwaukee, a municipal corporation of the State of Wisconsin (hereinafter referred to as the "CITY"), acting by and through its Office of Environmental Sustainability,

Performance and schedules will be approved by Erick Shambarger, of the City of Milwaukee.

The following constitute the Contract documents. If there is a conflict or ambiguity, the Contract shall be governed by these listed documents in descending order of precedence.

- A. This Contract for Services
- B. EERE 350: Special Terms and Conditions
- C. Statement of Project Objectives
- D. Grant Budget Allocation
- E. CONTRACTOR Proposed Use of Funds
- F. Invoice Template
- G. Narrative Progress Report Template

Work may commence in accordance with the terms and conditions of this Contract after the CONTRACTOR has executed the Contract, and (a) been notified in writing to commence the Performance of Services, or (b) received from the CITY an original of the Contract that is complete and fully executed.

WHEREAS, THE CONTRACTOR represents self as being capable, experienced and qualified to undertake and perform those certain services, as hereinafter set forth, as are required in accomplishing fulfillment of the obligations under the terms and conditions of this Contract as an independent entrepreneur and not as an employee of the CITY.

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

1. **RETENTION OF SERVICES.** The CITY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to personally perform, as an independent contractor and not as an employee of the CITY, the services hereinafter set forth, all in accordance with the terms and conditions of this Contract. CONTRACTOR agrees time is of the essence and will meet all deadlines and any schedules as herein set forth.
2. **REQUIREMENTS.** The CONTRACTOR is required to
 - A. Do, perform, and carry out in a satisfactory, timely, and proper manner, the services delineated in this Contract.
 - B. Comply with requirements listed with respect to reporting on progress of the services, additional approvals required, and other matters relating to the performance of the services.
 - C. Comply with time schedules and payment terms.
3. **SCOPE OF SERVICES.** (To include specific duties and responsibilities, time schedules and deadlines, compensation, terms, and approval requirements.)
 - A. **City of Milwaukee Roles & Responsibilities**

The CITY, as the Recipient of the DOE grant award, will be the Project Administrator of the DOE grant award and will use a portion of the direct grant award for the following roles and responsibilities:

 - a. Overall BBC program administration and disbursement of grant funds and interaction with DOE.
 - b. Program design, implementation, and administrative functions of the BBC program.
 - c. All grant administration, tracking, and reporting tasks required by DOE.
 - d. Provision of the financial management infrastructure to manage, control, and disburse all grant funds to the CONTRACTOR according to project requirements for project and BBC program activities.
 - e. The CITY shall issue a Request for Qualifications ("RFQ") to qualify contractors to perform work under the BBC program. The RFQ shall contain the requirements for contractor participation in the BBC program. Contractors shall satisfy all requirements to become and remain a qualified contractor eligible to participate in the BBC program. The CITY shall disqualify contractors who fail to meet the requirements.
 - f. As it deems necessary or appropriate, the CITY will coordinate and provide outreach and advocacy to eligible properties, including marketing and advertising of the BBC program and other relevant programs through other grant partners.
 - g. Establish at least monthly meetings and other communications with the grant partners.
 - h. Communicate quarterly goals and objectives to the CONTRACTOR at the beginning of the quarter.
 - B. **Wisconsin State Energy Office Roles & Responsibilities**

SEO, as a Contractor of the CITY under the DOE grant award, is subject to and shall comply with the "Special Terms & Conditions" attached to the DOE grant award for vendors (attached as Exhibit A) and shall use its vendor award funds and its portion of the other "contractual" funds for the following roles and responsibilities under this Agreement:

 - a. As appropriate, the CONTRACTOR will adapt the Municipal Energy Efficiency Technical Assistance Program (MEETAP) to incorporate DOE tools such as Asset Score, the Standard Energy Efficiency Data (SEED) platform, and the Interior Lighting Campaign (ILC). Utilization of the SEED platform, or the production of information to be incorporated into the SEED platform, will only be required for customers located within the City of Milwaukee.

- b. Assist the CITY in developing a list of eligible Participating Contractors to complete projects with schools by working with Focus on Energy staff and communicating the RFQ opportunity for the BBC program.
- c. CONTRACTOR will provide a resource to manage customer leads generated through the program intake process handled by Franklin Energy.
- d. CONTRACTOR will send appropriate staff to initial visits with customers. These visits may also include CITY staff, interns, work-study students, customers, and others as appropriate. At this visit, the following will occur:
 - i. Discussion of the customer's interests and needs as they relate to the BBC program.
 - ii. Discussion and adaptation of the Customer Charter template created by the CITY outlining the needs and responsibilities of both the customer and the BBC program. Staff will be required to record the specific needs and responsibilities of the customer for each project, as each project will be somewhat unique. They will also walk the customer through the Charter, addressing questions and concerns as needed.
 - iii. Signing of the Better Buildings Challenge pledge.
 - iv. Collection of benchmarking data for input by the CONTRACTOR, CONTRACTOR's intern, or work-study student into ENERGY STAR Portfolio Manager. See more details in part 3(B)(7).
 - v. If a CONTRACTOR audit is not scheduled to occur as part of this visit, should the customer be interested in continuing with the program, the audit will be scheduled at this time and the CONTRACTOR will come back at the appointed date and time. If a CONTRACTOR audit was scheduled previously, it will occur following the initial visit.
- e. CONTRACTOR staff will perform ASHRAE level 2 energy assessments for a minimum of twenty-five (25) schools, with a focus on public and private schools located in the City of Milwaukee. More schools will be completed as the budget allows, with an overall goal of fifty (50) completed schools. Each assessment will include completion of an Asset Score. If a work-study student or intern is available, they will complete the Asset Score under the supervision of the CONTRACTOR. If a work-study student or intern is not available, the Asset Score will be completed by the CONTRACTOR.
- f. Provide benchmarking assistance entering data into ENERGY STAR Portfolio Manager and analyzing the data for every initial visit, sharing the data with BBC-Milwaukee and the City-of-Milwaukee accounts.
- g. As it deems necessary or appropriate, the CONTRACTOR will coordinate and provide outreach and advocacy to eligible schools, including marketing and advertising of the BBC program and other relevant partner programs.
- h. Assist the CITY by tracking and providing available information from functions performed by the CONTRACTOR necessary for the CITY to meet its quarterly DOE project reporting requirements. This includes financial reporting on both in-kind contributions as well as grant funds expended. Examples of the type of information needed can be found in Exhibit E (Invoice Template) and Exhibit F (Narrative Progress Report Template).
- i. Provide a mechanism to report on other metrics including, but not limited to the number of schools visited or impacted by the BBC program, at what stage of the program a lead drops out, the number of projects completed, metrics from completed projects such as kWh/therms/Btus saved and cost savings, and metrics around job creation, among others.
- j. CONTRACTOR will submit reports and invoices to the CITY as detailed in part 3(C).

C. Time Schedules & Deadlines

- **January 10, 2016:** Information for 2015 Q4 quarterly report due to the CITY.
- **February 29, 2016:** Process for moving leads through entire program (management of leads from Franklin Energy intake, initial visits, benchmarking, audits/assessments, etc.) developed and ready to implement with trial schools.
- **March 7, 2016:** Invoice for 2016 Q1 expenses (December 1, 2015 – February 29, 2016 billing period) due to the CITY
- **March 30, 2016:** DOE Go/No-Go Decision Point #1.
- **March 31, 2016:** Integration of DOE tools into MEETAP program.
- **April 10, 2016:** Information for 2016 Q1 quarterly report due to the CITY.
- **May 31, 2016:** Conduct initial visit and walkthrough, collect data, create baseline, benchmark, and provide ASHRAE Level 2 audits and Asset Scores for a minimum of three (3) schools.
- **June 7, 2016:** Invoice for 2016 Q2 expenses (March 1 – May 31, 2016 billing period) due to the CITY.
- **July 10, 2016:** Information for 2016 Q2 quarterly report due to the CITY.

- **September 7, 2016:** Invoice for 2016 Q3 expenses (June 1 – August 31, 2016 billing period) due to the CITY.
- **October 10, 2016:** Information for 2016 Q3 report due to the CITY.
- **December 7, 2016:** Invoice for 2016 Q4 expenses (September 1 – November 30, 2016 billing period) due to the CITY.
- **December 31, 2016:** Complete program through the audit/assessment phase for fifteen (15) additional schools. This only applies if customer demand meets projections.
- **January 10, 2017:** Information for 2016 Q4 quarterly report due to the CITY.
- **March 7, 2017:** Invoice for Q1 expenses (December 1, 2016 – February 28, 2017 billing period) due to the CITY.
- **April 10, 2017:** Information for 2017 Q1 quarterly report due to the CITY.
- **June 7, 2017:** Invoice for 2017 Q2 expenses (March 1 – May 31, 2017 billing period) due to the CITY.
- **July 10, 2017:** Information for 2017 Q2 quarterly report due to the CITY.
- **September 7, 2017:** Invoice for 2017 Q3 expenses (June 1 – August 31, 2017 billing period) due to the CITY.
- **September 30, 2017:** DOE Go/No-Go Decision Point #2.
- **October 10, 2017:** Information for 2017 Q3 quarterly report due to the CITY.
- **December 7, 2017:** Invoice for 2017 Q4 expenses (September 1 – November 30, 2017 billing period) due to the CITY.
- **December 31, 2017:** Complete program through the audit/assessment phase for a minimum of fifteen (15) additional schools. This only applies if customer demand meets projections.
- **January 10, 2018:** Information for 2017 Q4 quarterly report due to the CITY.
- **March 7, 2018:** Invoice for 2018 Q1 expenses (December 1, 2017 – February 28, 2018 billing period) due to the CITY.
- **March 31, 2018:** DOE Go/No-Go Decision Point #3.
- **April 10, 2018:** Information for 2018 Q1 quarterly report due to the CITY.
- **June 7, 2018:** Invoice for 2018 Q2 expenses (March 1 – May 31, 2018 billing period) due to the CITY.
- **July 10, 2018:** Information for 2018 Q2 quarterly report due to the CITY.
- **July 31, 2018:** Customer work for grant complete. The remaining time included in this contract is to be used for data collection, reporting, and invoicing needs.
- **September 7, 2018:** Invoice for 2018 Q3 expenses (June 1 – July 31, 2018 billing period) due to the CITY.
- **September 30, 2018:** Grant period ends.
- **October 10, 2018:** Information for 2018 Q3 quarterly report and final grant report due to the CITY.
- Other schedules can be found in Exhibit B.

D. Compensation

- a. The BBC program funds budgeted for the CONTRACTOR's portion of the program (\$36,000), set forth in Exhibit C, shall be a maximum amount and includes federal grant funds and in-kind contributions from the CONTRACTOR. The allocation of total grant funds between the CITY, the CONTRACTOR, and the other partners is also set forth in Exhibit C to this Agreement. If a partner does not participate in the BBC program or terminates its participation prior to its budgeted project funds being committed or expended, the remaining project funds shall with the approval of DOE be apportioned among the remaining partners.
- b. The CONTRACTOR shall receive \$36,000 in grant funds to provide administrative, program and other services including personnel and other direct costs for the BBC program. The CONTRACTOR's proposed use of grant funds is shown in Exhibit D.
- c. Grant funds obligated by DOE for the BBC program are only available for reimbursement of costs incurred within thirty eight (38) months of the grant award date of August 1, 2015.
- d. For eligible costs that have not been requested and paid by an advance to the CONTRACTOR, the CONTRACTOR shall submit detailed invoices for reimbursement to the CITY quarterly on the expenditure of grant funds. The schedule is detailed in part C of this Agreement. Each invoice submitted by the CONTRACTOR shall identify and separately enumerate its administrative costs, subcontractor costs, and program costs for both grant funds and in-kind contributions. An example invoice can be found in Exhibit E.

E. Terms

- a. **Commencement**

This Agreement and the terms herein shall become binding as of the Effective Date of this Agreement. This Agreement supersedes all other contracts, discussions, agreements, negotiations, oral statements, or representations between the Parties.

b. **Provisions Not Affected by Termination**

Any termination shall not affect the provisions of this Agreement relating to records retention and access (Sections 7, 11, 12, and 20), indemnity, warranties made herein by the Parties, warranties implied by law, or remedies for breach of the Agreement, either by contract or by common law.

CONTINUATION OF THIS CONTRACT BEYOND DECEMBER 31 OF ANY YEAR IS CONTINGENT UPON THE APPROPRIATION OF SUFFICIENT FUNDS BY THE PROPER CITY OFFICIALS.

4. **SPECIFIC CONDITIONS OF PAYMENT:** Payment will be made to the following schedules if completion is satisfactory.

UPON RECEIPT OF A PROPERLY SUBMITTED AND APPROVED INVOICE, CONTRACTOR SHALL BE COMPENSATED AT THE AMOUNT SHOWN IN THE "TOTAL TO BE PAID" SECTION OF THE INVOICE. (MAXIMUM COMPENSATION SHALL NOT TO EXCEED \$36,000):

It is the CITY's policy to pay all invoices within 30 days. If the CITY does not make payment within 45 days after receipt of properly completed supporting payment and other required Contract documentation, the CITY shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute and, before the 45th day of receipt, notice of the dispute is sent to the CONTRACTOR by first-class mail, personally delivered, or sent in accordance with the notice provisions in the Contract). If there are subcontractors, consistent with s.66.0135(3), Wis. Stats., the CONTRACTOR must pay the subcontractors for satisfactory work within seven days of the CONTRACTOR's receipt of payment from the CITY, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the CONTRACTOR fails to make timely payment to a subcontractor, the CONTRACTOR shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day. Reference Common Council File No. 101137 adopted January 2011.

5. **PAYMENT MONITORING REQUIREMENTS:** All contractors awarded a contract valued at \$25,000.00 or more that require utilization of the CITY's SBE program must participate in training on the CITY's contract compliance software. Contractors must complete the training no later than 30 days after the date of contract award. Throughout the contract term, Contractors are required to regularly provide timely payment information in the CITY's contract compliance software. Please contact the Office of Small Business Development (OSBD) at 414-286-5553 should you have any questions or concerns regarding the training process.

6. **NOTICES:** Any and all notices shall be in writing and deemed served upon depositing same with the United States Postal Services as "Certified Mail, Return Receipt Requested", addressed to the CONTRACTOR at:

Attention:

and to the CITY at:

DOA-OFFICE OF ENVIRONMENTAL SUSTAINABILITY
200 EAST WELLS SUITE 603
MILWAUKEE, WISCONSIN 53202

Attention: Erick Shambarger, Sustainability Director

All other correspondence shall be addressed as above, but may be sent "Regular Mail" and deemed delivered upon receipt by the addressee.

7. **REPORTS**

- A. The CONTRACTOR agrees to submit reports as may be required by the CITY at such times as may be scheduled

for submittal, unless otherwise agreed to in writing.

B. All reports, studies, analysis, memoranda and related data and material as may be developed during the performance of this Contract shall be submitted to and be the exclusive property of the CITY, which shall have the right to use same for any purpose without any further compensation to the CONTRACTOR other than hereinafter provided. All of the aforesaid documents and materials prepared or assembled by the CONTRACTOR under this Contract are confidential and the CONTRACTOR agrees that it will not, without prior written approval by the CITY, submit or make same available to any individual, agency, public body or organization other than the CITY, except as may be otherwise herein provided. Both parties understand that the CITY is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, *et seq.* CONTRACTOR acknowledges that it is obligated to assist the CITY in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the CONTRACTOR must defend and hold the CITY harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Contract.

8. **TIME OF PERFORMANCE.** The services to be performed under the terms and conditions of this Contract shall be in force and shall commence upon execution of this Contract by the CONTRACTOR and upon written notice from the CITY to proceed, or when the CONTRACTOR has received an original of the Contract which is complete and fully executed, and shall be undertaken and completed in such sequence as to assure its expeditious completion in the light of the purposes of this Contract, but in any event all of the services required hereunder shall be completed as indicated on page 1 under "Time of Performance", which is the termination date of this Contract. In addition to all other remedies inuring to the CITY should the Contract not be completed by the date specified in accordance with all of its terms, requirements and conditions therein set forth, the CONTRACTOR shall continue to be obligated thereafter to fulfill CONTRACTOR's responsibility to complete the scope of services and to execute any necessary amendments to this CONTRACT.

9. **CONDITIONS OF PERFORMANCE AND COMPENSATION.**

A. Performance. Notwithstanding any references to the contrary in the Contract documents, the CONTRACTOR agrees that the performance of CONTRACTOR's work, services and the results therefrom, pursuant to the terms, conditions and agreements of this Contract, shall conform to such recognized high professional standards as are prevalent in this field of endeavor and like services.

B. Place of Performance. The CONTRACTOR shall conduct CONTRACTOR's services as required under the terms and conditions of this Contract at such place or places as is necessary so as to enable the CONTRACTOR to fulfill CONTRACTOR's obligations under this Contract.

C. Compensation. The CITY agrees to pay, subject to the contingencies herein, and the CONTRACTOR agrees to accept for the satisfactory performance of the services under this Contract the maximum as indicated on page 1 under "Total Amount of Contract," inclusive of all expenses, it being expressly understood and agreed that in no event will the total compensation to be paid hereunder exceed the maximum sum for all of the services required.

D. Additional Fringe or Employee Benefits. The CONTRACTOR shall not receive nor be eligible for any fringe benefits or any other benefits to which CITY salaried employees are entitled to or are receiving.

E. Taxes, Social Security, Insurance, and Government Reporting. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the CONTRACTOR receiving payment under this Contract shall be the sole responsibility of the CONTRACTOR.

F. Subcontracting. The CONTRACTOR shall not subcontract for the performance of any of the services herein set forth without prior written approval obtained from the CITY.

10. **METHOD OF PAYMENT.** The CITY agrees that subsequent to the full and complete performance of this Contract and satisfactory performance of the services in accordance with the "work schedules" set forth herein it will pay the amount or amounts as hereinafter set forth. In the event of a dispute as to the services performed or the compensation to be paid, the decision of the CITY or its designee shall prevail. The conditions of payment are as follows: Compensation for services required under this Contract shall be contingent upon each activity being reviewed for approval by the CITY approving officer designated on page 1 and approved by them for payment (as referenced and stipulated on page 2, under Specific Conditions of Payment).

11. **DEFENSE OF SUITS.** In case any action in court or proceeding before an administrative agency is brought against the CITY or any of its officers, agents, or employees for the failure or neglect of the CONTRACTOR in whole or in part to perform any of the covenants, acts, matters or things by this Contract undertaken, or for injury or damage caused by the alleged negligence of the CONTRACTOR, its officers, agents or employees, the CONTRACTOR shall indemnify and save harmless the CITY and its officers, agents and employees from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. The CITY shall tender the defense of any claim or action at law or in equity to the CONTRACTOR or CONTRACTOR's insurer, and upon such tender it shall be the duty of the CONTRACTOR and CONTRACTOR's insurer to defend such claim or action without cost or expense to the CITY or its officers, agents, or employees. The CONTRACTOR shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Contract and for the results therefrom.
12. **INDEMNIFICATION.** Notwithstanding any references to the contrary in the Contract documents, CONTRACTOR assumes full liability for all of its acts in the performance of this Contract. CONTRACTOR will save and indemnify and keep harmless the CITY against all liabilities, judgments, costs, and expenses which may be claimed against the CITY in consequence of the granting of this Contract to said CONTRACTOR, or which may result from the carelessness or neglect of said CONTRACTOR, or the agents, employees or workmen of said CONTRACTOR in any respect whatever. If judgment is recovered, whether in suits of law or in equity, against the CITY by reason of the carelessness, negligence, or by acts of commission of the CONTRACTOR, such persons, firms or corporations carrying out the provisions of the contract for the CONTRACTOR, the CONTRACTOR assumes full liability for such judgment not only as to the amount of damages, but also the cost, attorneys fees or other expenses resulting therefrom.
13. **REGULATIONS.** CONTRACTOR agrees to comply with all of the requirements of all federal, state and local laws related thereto, including the provisions required pursuant to a grant which is funding this Contract, in whole or in part.
14. **JURISDICTION, VENUE, CHOICE OF LAW.** This Contract shall be governed by and construed according to the laws of the State of Wisconsin. Any litigation relating to the formation, interpretation or alleged breach of this Contract must be brought in the state and federal courts having jurisdiction in Milwaukee County, Wisconsin, and CONTRACTOR consents to the jurisdiction of such courts.
15. **TERMINATION OF CONTRACT FOR CAUSE.** If, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the effective date of the termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports, or other materials related to the services prepared by the CONTRACTOR under this Contract shall, at the option of the CITY, become the property of the CITY.

Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the CONTRACT by the CONTRACTOR, and the CITY may withhold any payments to the CONTRACTOR for the purpose of set off until such time as the exact amount of damages due to the CITY from the CONTRACTOR is determined.
16. **TERMINATION FOR CONVENIENCE OF THE CITY.** The CITY may terminate this Contract at any time for any reason by giving at least ten (10) days' notice in writing from the CITY to the CONTRACTOR. If the CONTRACTOR is terminated by the CITY as provided herein, the CONTRACTOR will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the CONTRACTOR covered by this Contract, less payments for such services as were previously made. Provided, however, that if less than sixty percent (60%) of the services covered by this Contract have been performed upon the effective date of such termination the CONTRACTOR shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the Contract) incurred by the CONTRACTOR during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. If this Contract is terminated due to the fault of the CONTRACTOR, Paragraph 15 hereof, relative to termination, shall apply.
17. **CHANGES.** The CITY may, from time to time, request changes in the scope of services of the CONTRACTOR to be performed hereunder. Such changes, including any increase or decrease in the amount of CONTRACTOR's compensation which are mutually agreed upon by and between the CITY and the CONTRACTOR, shall be incorporated in written amendments to the Contract.
18. **PERSONNEL**

- A. The CONTRACTOR represents that it has or will secure at its own expense all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.
 - B. All of the services required hereunder will be performed by the CONTRACTOR or under their supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
 - C. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the CITY. If any work or services is subcontracted, it shall be specified by written contract or agreement and shall be subject to each provision of this Contract. The CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it, as well as for the acts and omissions of persons directly employed by them.
19. **ASSIGNABILITY.** The CONTRACTOR shall not assign any interest in this Contract and shall not transfer any interest in same (whether by assignment, novation or any other manner), without the prior written consent of the CITY. Provided, however that claims for money due or to become due the CONTRACTOR from the CITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval. Notices of any such assignment or transfer shall be furnished promptly to the CITY.
20. **RECORDS.**
- A. Establishment and Maintenance of Records. Records shall be maintained in accordance with requirements prescribed by the CITY with respect to all matters covered by this Contract. Both parties understand that the CITY is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, *et seq.* CONTRACTOR acknowledges that it is obligated to assist the CITY in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the CONTRACTOR must defend and hold the CITY harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of the final payment under this Contract.
 - B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to this Contract and shall be clearly identified and readily accessible.
21. **REPORT AND INFORMATION.** At such times and in such forms as the CITY may require, there shall be furnished the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Contract. These include the reports referred to in parts 3(B)(f) and 3(B)(i), the templates attached to this Agreement as Exhibit E and Exhibit F, other reports required by the grant, and other reports mutually agreed upon by the CITY and the CONTRACTOR.
22. **AUDITS AND INSPECTIONS.** At any time during normal business hours and as often as the CITY, or if federal or state grants or aids are involved, as the appropriate federal or state agency may deem necessary, there shall be made available to the CITY or such agency for examination all of its records with respect to all matters covered by this Contract and CONTRACTOR shall permit the CITY or such agency and/or representatives of the Comptroller General to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.
23. **FINDINGS CONFIDENTIAL.** All of the reports, information, data, etc. prepared or assembled by the CONTRACTOR under this Contract are confidential and the CONTRACTOR agrees that they shall not be made available to any individual or organization, other than an appropriate agency of the United States Government, without the prior written approval of the CITY.
24. **CONFLICT OF INTEREST**
- A. Interest in Contract. No officer, employee or agent of the CITY who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Contract pertains, shall have any personal interest, direct or indirect in this Contract.

- B. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Contract, shall have any personal interest, direct or indirect, in this Contract.
- C. Interest of Contractor and Employees. The CONTRACTOR covenants that no person described in Paragraph 24 A and B above who presently exercises any functions or responsibilities in connection with the Contract has any personal financial interest, direct or indirect, in this Contract. The CONTRACTOR further covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The CONTRACTOR further covenants that in the performance of this Contract no person having any conflicting interest shall be employed. An interest on the part of the CONTRACTOR or its employees must be disclosed to the CITY. Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area.

25. **DISCRIMINATION PROHIBITED**

- A. CONTRACTOR shall not discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause.
- B. No person in the United States shall, on the ground of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. The CONTRACTOR will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.
- C. CONTRACTOR agrees that it will comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et. Seq.

CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

26. **INSURANCE.**

- A. The CONTRACTOR shall be solely responsible to meet the CONTRACTOR's insurance needs as required by the CITY during the term of this Contract or any extension thereof.
- B. A certificate of insurance shall be provided to the CITY naming the CITY as an additional insured with respect to liability coverage other than professional liability, and providing at least 30 days notice of cancellation to the CITY prior to any material limitation of coverage, termination, cancellation, or non-renewal of any insurance policies required by this Contract, for any reason, including non-payment of premium.
- C. A copy of an endorsement of Earlier Notice of Cancellation or Non-Renewal must be submitted with the certificate of insurance. Such endorsement must contain the following stipulation:

"We will mail notice of cancellation (including for nonpayment of premium), non-renewal, or material limitation of coverage to the organization shown in the schedule. We will mail the notice at least 30 days before the effective date of the action."

- D. The certificate holder shall be noted as:

City of Milwaukee
 DOA – Office of Environmental Sustainability
 200 E. Wells Street, Room 603

Milwaukee, WI 53202

Required?	COVERAGE	MINIMUM AMOUNT OF COVERAGE REQUIRED	
Yes	Worker's Compensation	Statutory Limits	
	(The City does require Worker's Compensation coverage for Sole Proprietorships)		
Yes	Commercial General Liability	\$500,000 each occurrence \$2,000,000 aggregate	
Yes	Automobile Liability	Combined Single Limit Bodily Injury	\$1,000,000 each accident
		Medical Expense:	\$10,000 each person
Yes / No	Professional Liability	\$ 5,000,000 each claim \$ 5,000,000 aggregate	

27. **WITHHOLDING OF SALARIES.** If in the performance of this Contract there is any underpayment of salaries by the CONTRACTOR or by any subcontractor thereunder, the CITY shall withhold from the CONTRACTOR out of payments due to it an amount sufficient to pay to employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the CITY for and on account of the CONTRACTOR or subcontractor, if any, to the respective employees to whom they are due.
28. **CLAIMS AND DISPUTES PERTAINING TO SALARY RATES.** Claims and disputes pertaining to salary rates or to classifications of architects, draftsmen, technical engineers, and technicians, if any, performing work under this Contract shall be promptly reported in writing by the CONTRACTOR to the CITY for the latter's decision, which shall be final with respect thereto.
29. **FEDERAL EXECUTIVE ORDERS 12549 AND 12689 DEBARMENT AND SUSPENSION.** The CITY reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

DRY

IN WITNESS WHEREOF, the CONTRACTOR and the CITY have caused this Contract to be executed for and on their respective behalf as of the dates hereinafter set forth.

CITY OF MILWAUKEE, a municipal corporation:

CONTRACTOR:

By: _____
Sustainability Director

Firm: _____

Date: _____

Address: _____

Countersigned by: _____
Comptroller

City, State, Zip: _____

Date: _____

Phone: _____

Fax: _____

Email: _____

Federal ID: _____

By: _____

Title: _____

Date: _____

Witness: _____

Title: _____

PLEASE NOTE: CORPORATIONS MUST COMPLETE THE FOLLOWING:

(Someone other than the individual who executed this Contract must certify the following):

I, _____ certify that I am the _____
PRINT NAME PRINT TITLE

of the above CONTRACTOR named herein; that _____
PRINT SIGNATOR OF CONTRACT

who executed this Contract on behalf of the CONTRACTOR was then _____
OFFICIAL CAPACITY OF SIGNATOR

of said corporation, and in said capacity, duly signed said Contract for and on behalf of said corporation, being duly authorized so to do under its bylaws or is authorized so to do by action of its duly constituted board, all of which is within the scope of its corporate powers.

Dated at _____ this _____ day of _____, 20____.
LOCATION

SIGNATURE

Shared\FORMS\Terms & Conditions\Formal Service Contract, 2012.06.15.docx

KZB:kzb
1052-2014-1549:204227

Exhibit A
EERE 350: Special Terms and Conditions

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**Exhibit B
Statement of Project Objectives**

STATEMENT OF PROJECT OBJECTIVES

City of Milwaukee

Location, Location, Efficiency! (L.L.E!)

A. PROJECT OBJECTIVES

The goals of the Location, Location, Efficiency (L.L.E!) program are to 1) Demonstrate how energy efficiency increases profitability of commercial buildings; 2) Track energy savings impact for up to 200 buildings in Wisconsin through retrofits or commissioning; 3) Increase Wisconsin's building footprint in the Better Buildings Challenge, with an individual building goal of 20% energy reduction; 4) Make lasting improvements to Wisconsin's existing energy efficiency framework by coordinating partners and integrating various Department of Energy (DOE) tools, and 5) Assist customers in benchmarking using Portfolio Manager, piloting the Standard Energy Efficiency Data (SEED) Platform™, and using Asset Score to conduct building energy audits or other DOE tools.

B. TECHNICAL SCOPE SUMMARY

Milwaukee will deploy Department of Energy tools and practices in Class B&C Offices, schools, municipal buildings, and small commercial to demonstrate the value of building energy efficiency. Programmatic activities will begin in the City of Milwaukee and expand statewide through various partner organizations (Partners). Partners will recruit participants for the Better Buildings Challenge. Partners will bundle energy efficiency services including project development, financing, Operations and Maintenance support, and deployment and awards. Milwaukee will incorporate various DOE tools into a Deep Energy Efficiency Program (DEEP).

C. TASKS TO BE PERFORMED

BUDGET PERIOD (BP) 1- PLAN

TASK 1.0: DEVELOP PROJECT MANAGEMENT PLAN AND WORK PLAN

Develop a cohesive framework that addresses how DOE tools align and support the activities associated with this project. This task includes the creation of a workplan and timeline for a DEEP including Benchmarking, Property Assessed Clean Energy (PACE) finance, and a pathway for buildings to proceed from energy analysis (benchmarking, audits, evaluation) to retrofit planning (procurement and technical assistance) to operations and maintenance such as retro-commissioning (RCx) or Existing Building Commissioning (EBCx) to tracking impact (cost, energy, labor savings, etc.) to recognition (awards, deployment, outreach).

D1.1. Initial Project Management Plan (PMP) to be maintained throughout the course of the project (20 days from award, BP1, Q1)

D1.2. Workplan outlining specific DOE tools and specific partner roles (BP1, Q2)

D1.3. Contract with primary vendor to deliver DEEP (BP1, Q4)

D1.4. PMP Update 1 (BP1, Q4)

D1.5. PMP Update 2 (BP2, Q4)

Subtask 1.1: Develop Project Management Plan

M1.1. Submit initial PMP to project Officer for review (20 days of award, BP1, Q1)

M1.2. Submit PMP update (BP1, Q4)

M1.3. Submit PMP update (BP2, Q4)

Subtask 1.2: Develop Work Plan and Evaluate Tools

M1.4. Confirm selected DOE tools with DOE project officer. The City and DOE will select among SEED, Asset Score, Advanced Energy Resource Guides (AERGs), Better Buildings Resources, Workforce Guidelines, Procurement Specifications, Better Buildings Challenge recruitment (BP1, Q1)

M1.5. City submits Work Plan and framework identifying specific project partners, DOE tools, and anticipated duties (BP1, Q2)

Subtask 1.3: Assess and Adopt Customer Process Management Tool

M1.6. Partner's customer relationship management (CRM) tool evaluated for compatibility with DOE tools and other project activities such as Operations and Maintenance (O&M) Support. (BP1, Q3)

M1.7. If Partner's CRM tool is insufficient, adopt a simplified customer management process (BP1, Q4 only if needed).

Subtask 1.4: Negotiate and Execute Contracts with Vendors

M1.8. Negotiate and execute first round of contracts with vendors to deliver DEEP including benchmarking.

Budget Period 1 Go/No-Go Decision Point (BP1 Q2): The framework and selected customer process management tool have been presented to DOE, and DOE has approved the framework and tool for implementation over the remaining term of the award. A PMP has been submitted and approved by DOE. The PMP outlines all key partner goals and activities, project milestones, dates, dependencies and includes spending targets for each milestone and budget period.

BUDGET PERIOD 2: INTEGRATION AND LAUNCH

TASK 2.0: INTEGRATION

Bundle and integrate 1) customer engagement and customer defined goals with 1) benchmarking, 2) energy audit, 3) financing, 4) retrofit or operational improvements, 5) building operations staff development. Create a clear customer path for improving their building and reducing energy consumption, depending on its size and use. Create clear pathways for Existing Building Commissioning (ECBx), standard retrofits, and/or deep retrofits.

D2.1. Documented configuration of CRM to incorporate DOE tools and DEEP. (BP2, Q1)

D2.2. Copy of training content (BP2, Q2)

D2.3. Data input into DOE tool, such as Asset Score, for at least 10 buildings (BP2, Q3)

Subtask 2.1: Incorporate DOE Tools

M2.1. DOE tools incorporated into DEEP (BP2, Q1).

Subtask 2.2: Train Staff

M2.2. Staff trained on DOE tools and DEEP (BP2, Q2)

Subtask 2.3: Complete Trial Projects

M2.3. At least five buildings analyzed using DOE tools such as Asset Score (BP2, Q3)

Subtask 2.4: Rollout Milwaukee Better Buildings Challenge Website

M2.4. New Milwaukee Better Buildings Challenge website launched to public offering DEEP and O&M support services (BP2, Q4)

TASK 3.0: OPERATIONS AND MAINTENANCE (O&M) SUPPORT

Develop a matrix outlining the appropriate pathways for Existing Building Commissioning (ECBx) as an alternative/addition to retrofits. Develop a matrix outlining how available training and educational resources apply for building staff. Participate in planning for DOE's Retro-commissioning Campaign.

D3.1. Documentation of first five RCx/EBCx buildings (BP2, Q3)

D3.2. Documentation of Work Study program with technical college (BP2, Q3)

D3.3. Documentation of DOE tools into curriculum of local technical college. (B2, Q3)

Subtask 3.1: Provide Seminars to Building Owners

M3.1. Provide seminars to building owners to support energy management and control strategies for energy savings such as Existing Building Commissioning, monitoring-based commissioning, Re-tuning and retro-commissioning. Survey applicable workshops and other degree and certificate programs and keep an updated central resource for building staff with education and training offerings. (BP2, Q2)

Subtask 3.2: Partner with Technical College and Establish Work Study Program

M3.2. Establish work study opportunities for students through partner technical colleges. Based on partnerships, identify student candidates for work study and develop pathways for participation. (BP1, Q4)

Subtask 3.3: Incorporate DOE Tools

M3.3. Incorporate DOE tools selected in subtask 1.2 into curriculum of local training partners (BP2, Q2)

M3.4. Participate in DOE Retro commissioning Campaign (subject to DOE timeline)

TASK 4.0: TECHNOLOGY INTEGRATION

L.L.E! will work with partners to incorporate into energy efficiency evaluation and selection processes or policies for those technologies identified by US DOE's Building Technology Office as well as technologies developed through local partners. L.L.E! will catalogue Wisconsin and American made building efficiency products, work with Focus on Energy to develop efficiency programs, and deploy them to customers via the L.L.E! DEEP. Through this integration, energy efficiency retrofit projects create not only installation jobs, but jobs throughout the supply chain. L.L.E! will do the same for RcX/EBCx tools and technologies, such as user-friendly monitoring and controls interfaces.

D4.1. Catalogue of Wisconsin and American made building efficiency products and other technology-related products such as new technology specifications, energy performance policies or entries into the Technology Performance Exchange (TPEX). (BP2, Q4)

D4.2. List of Focus on Energy incentive programs developed in partnership with L.L.E! (BP3, Q4)

Subtask 4.1: Incorporate DOE procurement, HITS, or Specifications into Energy Audits

M4.1. Incorporate local high impact technology performance information into audit and evaluation tools or processes. Where possible, support the use of Open Studio platform-based products. (BP2, Q4)

M4.2. Catalogue Wisconsin and American made building efficiency products, work with Focus on Energy to develop performance specification (as applicable) and energy savings data to pre-qualify them for incentives, and deploy them customers via the L.L.E! contractor network. (BP3, Q1)

Budget Period 2 Go/No-Go Decision Point (BP2 Q4): The L.L.E! Program has been launched to the public and has completed 30-50 test buildings in multiple commercial sectors.

BUDGET PERIOD 3: ACCELERATE

TASK 5.0: DEPLOYMENT AND AWARDS

Conduct a comprehensive and coordinated deployment campaign (pre-retrofit) and awards and recognition for buildings that have retrofitted through L.L.E! (post-retrofit). Both the initial deployment campaign and post retrofit awards will have public support from the Mayor of Milwaukee will be coordinated by business improvement districts throughout the City, and other partners that represent building constituencies.

D5.1. Documentation of Deployment Strategy (BP3, Q1)

D5.2. 100+ buildings impacted by DOE (BP3, Q4)

D5.3. Documentation of Awards for buildings that have most aggressively implemented energy efficiency solutions (BP3, Q4)

D5.4. Case study of overall effectiveness of L.L.E! (BP3, Q4)

Subtask 5.1: Deployment Campaign: Promote L.L.E! through events, direct calls to building owners, and website.

M5.1 Deployment Campaign Launched (BP3, Q1).

Subtask 5.2: Awards

M5.2 Award event scheduled (BP3, Q2)

M5.3 Award event held (BP3, Q4)

Budget Period 3 Go/No-Go Decision Point (BP3 Q2): L.L.E! has 100 buildings in its project pipeline.

D. PROJECT MANAGEMENT AND REPORTING

The City of Milwaukee Office of Environmental Sustainability will be the project's prime recipient, administrator, and project manager. The City will manage tasks from other partners via vendor or informal partner relationships. The City of Milwaukee Office of Environmental Sustainability will provide oversight and contractually manage project risk through the more in-depth timelines and milestones represented in the PMP.

Reports and other deliverables will be provided in accordance with the Federal Assistance Reporting Checklist following the instructions included therein.

Exhibit C
Grant Budget Allocation

Comment [BR1]: This is a spreadsheet that I will turn into a PDF and attach once we are finished with the contract

Exhibit D
CONTRACTOR Proposed Use of Funds

Comment [BR2]: SEO to provide this

Exhibit E
Invoice Template

Comment [BR3]: This is a spreadsheet that I will turn into a PDF and attach once we are finished with the contract. I will be sending out a workbook for each partner so that partners can track their total spending with instructions on how to fill out and submit each invoice to me and will add those here as well.

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Exhibit F
Narrative Progress Report Template

Project Title: "Location, Location, Efficiency!"
Period Covered by Report: (e.g. Q1: Jan. 1 – Mar. 31, 2015)
Report Submission Date: (e.g. April 10/July 10/October 10/January 10, 201x)
Partner: Franklin Energy Services, LLC
Submitted by: Name
Title
Phone: 555-555-1000
Email:

Section 1. Accomplishments and Status Update: [Provide a summary of the actual accomplishments for the reporting period. Discuss what was accomplished during the goals/objectives established for this reporting period, including major activities, significant results, major findings or conclusions, key outcomes, or other achievements. If goals and/or objectives for the reporting period were not met, include a detailed description of the variance.]

Section 2. Changes in Approach: [Describe any changes during the reporting period in project approach and the reasons for these changes.]

Section 3. Issues, Risks, and Mitigation: [Describe any actual or anticipated problems or delays and any actions taken or planned to resolve them.]

Section 4. Changes in Key Personnel

Section 5. Project Output: [List and describe any of the following products produced or technology transfer activities accomplished during this reporting period.

- Publications; conference papers; or other public releases of results (attach copy)
- Websites featuring project work/results
- Networks/collaborations fostered
- Technologies/Techniques
- Invention/Patent Applications
- Other products]

** If nothing to report in a section, write "Nothing to Report"*