

Interagency Agreement

Date: January 7, 2008

Department of General Administration

Interagency Agreement No: 2008-508

Interagency Agreement Between the Department of General Administration and the City of Kirkland

This Agreement, pursuant to Chapter 39.34 RCW, is made and entered into by and between the Department of General Administration, Division of Facilities, Engineering & Architectural Services, hereinafter referred to as "GA", and the City of Kirkland, hereinafter referred to as the City.

It is the purpose of this Agreement to provide Energy Conservation Project Management Services. Now therefore, in consideration of the terms and conditions contained herein, or attached and incorporated by reference and made a part hereof, the above-named parties mutually agree as follows:

1. Statement of Work

GA shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A," attached hereto and incorporated herein by reference. Unless otherwise specified, GA shall be responsible for performing all fiscal and program responsibilities as set forth in Attachment "A."

2. Terms and Conditions

All rights and obligations of the parties to this Agreement shall be subject to and governed by the terms and conditions contained in the text of this Agreement.

3. Period of Performance

Subject to its other provisions, the period of performance of this Agreement shall commence when this Agreement is properly signed, and be completed on December 31, 2009 unless altered or amended as provided herein.

4. Consideration

For Project Management Services provided by GA under Attachment "A" of this Agreement, the City will pay a fee for services based on the total project value. (See Attachment "B".) A payment schedule will be incorporated by an Amendment to this Agreement.

Compensation for services provided by the ESCO shall be paid directly to the ESCO by the City, after GA has reviewed and approved and sent the invoices to the City for payment.

For Monitoring Services provided by GA under Attachment "C" of this Agreement, the City will pay a fee annually for the term of this Agreement based on Attachment "C." A payment schedule will be incorporated by an Amendment to this Agreement.

5. Billing Procedure

The City will reimburse GA upon receipt of properly executed vouchers. Each voucher will indicate clearly that it is for the services rendered in performance under this Agreement and shall reflect this Agreement number. Invoices for payment submitted by GA to the City for GA fees due and payable under this Agreement that were incurred before the expiration date of this Agreement shall be paid by the City if received by the City within 120 days after the expiration date.

6. Non-Discrimination

In the performance of this Agreement, GA shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 USC 200d), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and Chapter 49.60 RCW, as now or hereafter amended. GA shall not discriminate on the grounds of race, color, national origin, sex, religion, marital status, age, creed, Vietnam-Era and Disabled Veterans status, or the presence of any sensory, mental, or physical disability in:

- a) Any terms or conditions of employment to include taking affirmative action necessary to accomplish the objectives of this part and
- b) Denying an individual the opportunity to participate in any program provided by this Agreement through the provision of services, or otherwise afforded others.

In the event of GA's non-compliance or refusal to comply with the above provisions, this Agreement may be rescinded, canceled, or terminated in whole or in part, and GA declared ineligible for further Agreement with the City. GA shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth therein.

7. Records Maintenance

The City and GA shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. GA will retain all books, records, documents, and other material relevant to this agreement for five years after expiration; and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

8. Contract Management

- a. The City's Representative on this Agreement shall be:

Erin J. Leonhart
Public Works Department
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189
Telephone 425-587-3931

The Representative shall be responsible for working with GA, approving billings and expenses submitted by GA, and accepting any reports from GA.

- b. The GA Project Manager on this Agreement shall be:

Robert Johnson, P.E.
Dept. of General Administration
Division of Facilities
Engineering and Architectural Services
PO Box 41012
Olympia, WA 98504-1012
Telephone 360-902-7236

Robert Johnson will be the contact person for all communications regarding the conduct of work under this Agreement.

9. Hold Harmless

Each party to this agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.

10. Agreement Alterations and Amendments

The City and GA may mutually amend this Agreement. Such Amendments shall not be binding unless they are in writing and signed by personnel authorized to bind the City and GA or their respective delegates.

11. Termination

Except as otherwise provided in this Agreement, either party may terminate this Agreement upon thirty (30) days written notification. If this Agreement is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination.

12. Disputes

If a dispute arises under this Agreement, it shall be determined in the following manner: the City shall appoint a member to the Dispute Board. The Director of GA shall appoint a member to the Dispute Board. The City and GA shall jointly appoint a third member to the Dispute Board. The Dispute Board shall evaluate the dispute and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto, unless one of the parties requests intervention by the Governor as provided by RCW 43.17.330.

13. Order of Precedence

In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- a) Applicable Federal and State Statutes and Regulations
- b) Terms and Conditions
- c) Attachment "A," Statement of Work; Attachments "B" and "C", Management & Monitoring Fees and
- d) Any other provisions of the Agreement whether incorporated by reference or otherwise.

14. All Writings Contained Herein

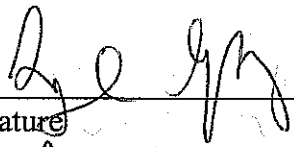
This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

AUTHORIZATION TO PROCEED

Agreed to and signed by:

City of Kirkland

**Department of General Administration
Division of Facilities
Engineering & Architectural Services**



 Signature

 Darl Grigsby

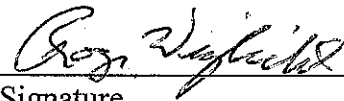
 Name

 Public Works Director

 Title

 1/18/08

 Date



 Signature

 Roger Wigfield, P.E.

 Name

 Energy Program Manager

 Title

 2/15/08

 Date

The Department of General Administration provides equal access for all people without regard to race, creed, color, religion, national origin, age, gender, sex, marital status, or disability. Contract information is available in alternative formats. For more information, please call Eddie Miller at (360) 902-7219.

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ATTACHMENT A

SCOPE OF WORK ENERGY SERVICES

STATEWIDE ENERGY PERFORMANCE CONTRACT PROJECT NO. 2007-041

GA will provide the following project management services for the City of Kirkland:

1. Assist the City in the selection of an Energy Service Company (ESCO) consistent with the requirements of 39.35A RCW.
2. Identify potential utility conservation measures and approximate cost savings.
3. Negotiate scope and fee for ESCO audit of the facility(s).
4. Identify appropriate project funding sources and assist with obtaining project funding.
5. Review and approve ESCO audits and technical studies.
6. Assist in negotiating the technical, financial and legal issues associated with the ESCO's Energy Services Proposal.
7. Provide assistance during the design, construction and commissioning processes.
8. Assist with final project acceptance.
9. Provide other services as required to complete a successful energy performance contract.
10. If the audit fails to produce a project that meets the City's established payback Cost Effectiveness Criteria, then there is no cost to the City and no further obligation by the City.

ATTACHMENT B

2007-09 Interagency Reimbursement Costs for Project Management Fees to Administer Energy/Utility Conservation Projects

| <u>TOTAL PROJECT VALUE</u> | <u>PROJECT MANAGEMENT FEE</u> | <u>TERMINATION</u> |
|----------------------------|-----------------------------------|--------------------|
| \$5,000,000 - or more | Negotiate | Negotiate |
| Below 5,000,000 | \$68,800 | \$25,500 |
| " 4,000,000 | 64,900 | 23,600 |
| " 3,000,000 | 59,900 | 21,700 |
| " 2,000,000 | 52,800 | 19,600 |
| " 1,500,000 | 47,800 | 17,150 |
| " 1,000,000 | 40,800 | 16,150 |
| " 900,000 | 38,900 | 15,000 |
| " 800,000 | 36,900 | 13,950 |
| " 700,000 | 34,600 | 12,800 |
| " 600,000 | 31,900 | 11,500 |
| " 500,000 | 28,700 | 10,100 |
| " 400,000 | 24,800 | 8,800 |
| " 300,000 | 19,800 | 7,300 |
| " 200,000 | Hourly Cost | Hourly Cost |

NOTES:

1. These fees cover the project management of a contract for energy/utility/conservation projects where funding comes from utility grants, Energy Service Companies (ESCO), State Treasurer's Office LOCAL program, capital funds, third party financing or any combination thereof.
2. The Energy Section of the Division of Facilities, Engineering and Architectural Services will assist in: identifying appropriate cost effective energy conservation projects; identifying appropriate funding sources; obtaining project financing; selecting and contracting for ESCO services; obtaining technical studies which meet the approval of funding agencies; and, representing the client's interest during the design, construction and commissioning processes.
3. Termination fees cover the selection and project management costs associated with managing the ESCO's technical study that identifies cost effective energy conservation measures if the client decides not to proceed with the project through GA. The client will have no financial obligation to GA in the event cost effective energy conservation measures are not identified.

ATTACHMENT C

Interagency Reimbursement Costs for Monitoring Energy Conservation Projects

| <u>RANGE OF ANNUAL SAVINGS</u> | <u>% FEE</u> | <u>RANGE OF ANNUAL FEE</u> |
|--------------------------------|--------------|----------------------------|
| \$150,000 - and over | 5.00% | \$8,250 - upward |
| 125,000 - 149,999 | 5.50% | 7,500 - 8,250 |
| 100,000 - 124,999 | 6.00% | 6,500 - 7,500 |
| 90,000 - 99,999 | 6.50% | 6,300 - 6,500 |
| 80,000 - 89,999 | 7.00% | 6,000 - 6,300 |
| 70,000 - 79,999 | 7.50% | 5,600 - 6,000 |
| 60,000 - 69,999 | 8.00% | 5,100 - 5,600 |
| 50,000 - 59,999 | 8.50% | 4,500 - 5,100 |
| 40,000 - 49,999 | 9.00% | 3,800 - 4,500 |
| 30,000 - 39,999 | 9.50% | 3,000 - 3,800 |
| 20,000 - 29,999 | 10.00% | 2,000 - 3,000 |
| Under 20,000 | | 2,000 - 2,000 |

Scope of Work for Monitoring Energy Conservation Projects:

1. Monitor actual energy use and dollar costs, compare with the ESCO's annual Measurement and Verification (M&V) report and any ESCO guarantee, resolve differences, if needed, and approve any vouchers for payment.
2. Monitor facility operations including any changes in operating hours, changes in square footage, additional energy consuming equipment and negotiate changes in baseline energy use which may impact energy savings.
3. Negotiate change orders to an ESCO or Grant Agreement for the acquisition of additional equipment or services.
4. Manage and coordinate any ESCO and/or facility efforts in maintaining and operating the installed equipment.
5. Oversee training programs to ensure that the facility operating personnel are adequately trained in the operation and maintenance of the energy systems installed.
6. Provide annual letter report describing the ESCO's performance, equipment performance and operation, energy savings and additional opportunities, if any, to reduce energy costs.