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State of Washington **ENERGY PROGRAM** Department of Enterprise Services P.O. Box 41476 Olympia, WA 98504-1476	**INTERAGENCY AGREEMENT**	
	IAA No.: Tririga No.	K5032 1000062
CITY OF DEER PARK 316 East Crawford, PO Box F Deer Park, WA 99006	Effective Date:	November 29, 2017

INTERAGENCY AGREEMENT

BETWEEN

CITY OF DEER PARK

AND

WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES

Pursuant to RCW Chap. 39.34, this Interagency Agreement ("Agreement") is made and entered into by and between the State of Washington acting by and through the Energy Program of the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and City of Deer Park, a Washington State governmental agency ("Client Agency") and is dated and effective as of November 29, 2017.

RECITALS

A. Enterprise Services, through its Energy Program ("Energy Program"), helps owners of public facilities reduce energy and operational costs. The Energy Program is a national leader in developing and managing energy savings performance contracts that help reduce energy and operational costs pertaining to publicly-owned facilities.

B. Upgrading to energy efficient infrastructure helps reduce long-term operations and maintenance costs. This allows owners to be better financial stewards while achieving their mission, so that Washington is a better place to live, learn, and work.

C. Acting as the owner's advocate, the Energy Program delivers professional expertise and contract management services. By leveraging capital investments, owners can achieve efficiencies, improve facilities, and yield carbon reductions in their publicly-owned facilities. The Energy Program also creates value to owners by managing risk through guaranteed total project costs, equipment performance, and energy savings.

D. Client Agency, an owner of a public facility, desires to contract with Energy Program to access and obtain certain Energy Program Services.

E. The purpose of this Agreement is to establish a vehicle for the Energy Program to provide future energy/utility conservation project management services to Client Agency and to authorize the development of the energy services proposal in a cost-effective, efficient manner as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. **TERM.** This Agreement commences **November 29, 2017,** and ends **December 31, 2020.**

2. **STATEMENT OF WORK; COMPENSATION.** Energy Program shall provide the following services, for the following compensation, to Client Agency.

   a. SERVICES. Upon request by Client Agency, and amendment to this Agreement to specify the individual Energy/Utility Conservation Project(s), Enterprise Services shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the Project Management Services set forth in Attachment A and the Measurement & Verification Services set forth in Attachment C. Unless otherwise specified, Energy Program shall be responsible for performing all fiscal and program responsibilities as set forth herein.

   b. COMPENSATION. Compensation under this Agreement shall be by amendment to this Agreement for each authorized project. Each amendment shall include a payment schedule for the specific project.

      i. Project Management Services (Attachment A): For Project Management Services provided by Energy Program, Client Agency shall pay Enterprise Services a project management fee for services based on the total project value per the project management fees schedule set forth in Attachment B.

      ii. Termination Fee: If Client Agency, after authorizing an investment grade audit and energy services proposal, decides not to proceed with an energy/utility conservation project that meets Client Agency's cost effective criteria, then the Client Agency will be charged a termination fee as set forth in Attachment B. The termination fee shall be based on the estimated total project value outlined in the energy services proposal prepared by the ESCO.

      iii. Measurement & Verification Services (Attachment C): If Measurement and Verification Services are requested by Client Agency and provided by Energy Program, Client Agency shall pay Energy Program $2,000.00 annually for each year that such Measurement and Verification Services are provided by Energy Program.

   c. PAYMENT FOR ESCO SERVICES. In the event that Client Agency authorizes Energy Program to contract with an ESCO, pursuant to an Enterprise Services Master Energy Services Agreement for ESCO Services, Client Agency shall make payment for such contracted services directly to the ESCO, after Energy Program has reviewed, verified, and sent such invoices to Client Agency for payment.

d. FURTHER ASSURANCES. Client Agency shall provide the Energy Services Company (ESCO) with any additional necessary or desired contract language to comply with Client Agency's obligations pertaining to its use of federal, state, or other grants, funding restrictions, or unique contract/entity requirements. The ESCO and their subcontractors are required to comply with all applicable federal regulations and reporting procedures.

e. MANAGING COMPLIANCE WITH STATE AND FEDERAL LAW. In all ESCO project agreements pertaining to this Agreement, the Energy Program will require ESCO compliance with applicable federal and state laws and state policies including, but not limited to, the following:

1. RCW Title 39 and 43
2. ADA Requirements
3. Buy America
4. Davis-Bacon
5. Prevailing Wage
6. DBE Participation
7. Apprentice Participation

The Energy Program will collect and provide the weekly-certified payroll to Client Agency. Client Agency, however, shall remain responsible for any documentation required by Client Agency's funding source. All federal verification, investigation, survey, reporting and enforcement requirements when there is a possible violation shall remain the responsibility of the federal grant recipient (Client Agency) unless negotiated by the Energy Program and added by amendment to this Agreement. In the event that the Energy Program becomes aware of a possible violation, it will notify the Client Agency.

3. **INVOICES; BILLING.**

a. BILLING PROCEDURE. Energy Program shall submit a single invoice to the Client Agency upon substantial completion of each authorized project, unless a project specified a special billing condition in the Amendment. Substantial completion of the project will include the delivery and acceptance of the notice of commencement of energy cost savings issued by the ESCO. Each invoice will clearly indicate that it is for the services rendered in performance under this Agreement and shall reflect this Agreement and Amendment number. Energy Program will invoice for any remaining services within sixty (60) days of the expiration or termination of this Agreement.

b. PAYMENT PROCEDURE. Client Agency shall pay all invoices received from Energy Program within ninety (90) days of receipt of properly executed invoice vouchers.

c. BILLING DETAIL. Each invoice submitted to Client Agency by Energy Program shall include information as is necessary for Client Agency to determine the exact nature of all expenditures. At a minimum, the invoice shall reference this Agreement and include the following:

- The date(s) such services were provided
- Brief description of the services provided
- Total invoice amount

d. BILLING ADDRESS. Invoices shall be delivered to Client Agency electronically to:

Email: rkrieger@ci.deerpark.wa.us

4. **AGREEMENT MANAGEMENT.** The parties hereby designate the following agreement administrators as the respective single points of contact for purposes of this Agreement, each of whom shall be the principal contact for business activities under this Agreement. The parties may change administrators by written notice as set forth below. Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services	**Client Agency**
Attn: Chris McCarthy, P.E.	Attn: Roger Krieger
Energy Project Manager	Community Services Director
Energy Program	City of Deer Park
Washington Dept. of Enterprise Services	316 East Crawford, PO Box F
PO Box 41476	Deer Park, WA 99006
Olympia, WA 98504-1476	Tel: (509) 276-8801
Tel: (509) 315-6701	Email: rkrieger@ci.deerpark.wa.us
Email: chris.mccarthy@des.wa.gov	

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

The Client Agency representative shall be responsible for working with Energy Program, approving billings and expenses submitted by Energy Program, and accepting any reports from Energy Program.

The Energy Program representative shall be the contact person for all communications regarding the conduct of work under this Agreement.

5. **RECORDS RETENTION.**

a. AGREEMENT AVAILABILITY. Prior to its entry into force, this Agreement shall be posted on the parties' websites or other electronically retrievable public source as required by RCW 39.34.040.

b. RECORDS RETENTION. Each party shall each maintain records and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance and payment 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 officials authorized by law. Such

records shall be retained for a period of six (6) years following expiration or termination of this Agreement or final payment for any service placed against this Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

c. PUBLIC INFORMATION. This Agreement and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. Neither party shall release any record that would, in the judgment of the party, be subject to an exemption from disclosure under the Public Records Act, without first providing notice to the other party within ten (10) business days of the receipt of the request. The parties will discuss appropriate actions to be taken, including release of the requested information, seeking a protective order, or other action prior to the release of records. Should one party choose to seek a protective order, it shall do so at its sole expense.

6. **RESPONSIBILITY OF THE PARTIES.** Each party to this Agreement assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, or its agents. Neither party assumes any responsibility to the other party for any third party claims.

7. **DISPUTE RESOLUTION.** The parties shall use their best, good faith efforts cooperatively and collaboratively to resolve any dispute that may arise in connection with this Agreement as efficiently as practicable, and at the lowest possible level with authority to resolve such dispute. The parties shall make a good faith effort to continue without delay to carry out their respective responsibilities under this Agreement while attempting to resolve any such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree on a mutual resolution within fifteen (15) business days, the parties shall abide by the Governor's dispute resolution process (RCW 43.17.330), if applicable, or collectively shall appoint a third party to evaluate and resolve the dispute and such dispute resolution shall be final and binding on the parties hereto.

8. **TERMINATION FOR CONVENIENCE.** Except as otherwise provided in this Agreement, either party may terminate this Agreement upon thirty (30) calendar days prior written notification. Upon such termination, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of such termination.

9. **GENERAL PROVISIONS.**

a. COMPLIANCE WITH LAW. The Parties shall comply with all applicable law.

b. INTEGRATED AGREEMENT. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.

c. AMENDMENT OR MODIFICATION. Except as set forth herein, this Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.

d. AUTHORITY. Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

e. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement. Neither party is an agent of the other party nor authorized to obligate it.

f. GOVERNING LAW. The validity, construction, performance, and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.

g. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Agreement, the parties agree to submit to exclusive in personam jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.

h. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Agreement in their entirety.

i. CAPTIONS & HEADINGS. The captions and headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.

j. ELECTRONIC SIGNATURES. A signed copy of this Agreement or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such other ancillary agreement for all purposes.

k. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.

EXECUTED AND EFFECTIVE as of the day and date first above written.

CITY OF DEER PARK	**STATE OF WASHINGTON** **DEPARTMENT OF ENTERPRISE SERVICES**
BY:	By:
Name: Helen B. Crayon	Name: Roger A. Wigfield, P.E.,
Title: Mayor Pro-Tem	Title: Energy Program Manager
Date: 06 December 2017	Date: 12/12/17

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ATTACHMENT A – SCOPE OF WORK

Energy/Utility Conservation Projects

PROJECT MANAGEMENT SERVICES

Statewide Energy Performance Contracting Program

Energy Program will provide the following project management services for each specific project for the Client Agency. Each individual project shall be authorized by an amendment to this Agreement.

1. Assist the Client Agency in the selection of an Energy Service Company (ESCO) consistent with the requirements of RCW 39.35A for local governments; or 39.35C for state agencies and school districts.

2. Assist in identifying potential energy/utility conservation measures and estimated cost savings.

3. Negotiate scope of work and fee for an ESCO audit of the facility(s).

4. Assist in identifying appropriate project funding sources and assist with obtaining project funding.

5. Assist in negotiating the technical, financial and legal issues associated with ESCO's Energy Services Proposal.

6. Review and recommend approval of ESCO energy/utility audits and Energy Services Proposals.

7. Provide assistance during the design, construction and commissioning processes.

8. Review ESCO invoice voucher(s) received for reasonableness and forward to Client Agency for review and payment.

9. Assist with final project acceptance.

10. Provide other services as required to complete a successful energy performance contract.

ATTACHMENT B – FEE SCHEDULE

2017-19 Interagency Reimbursement Costs
for Project Management Fees to Administer Energy/Utility Conservation Projects

TOTAL PROJECT VALUE	PROJECT MANAGEMENT FEE	TERMINATION
5,000,001.....6,000,000	$66,000	25,700
4,000,001.....5,000,000	65,000	25,400
3,000,001.....4,000,000	64,000	25,000
2,000,001.....3,000,000	60,000	23,400
1,500,001.....2,000,000	56,000	21,800
1,000,001.....1,500,000	49,500	19,300
900,001. ... 1,000,000	42,000	16,400
800,001.....900,000	39,600	15,400
700,001.....800,000	36,800	14,400
600,001.....700,000	35,000	13,700
500,001.....600,000	32,400	12,600
400,001.....500,000	29,000	11,300
300,001.....400,000	24,800	9,700
200,001.....300,000	19,800	7,700
100,001.....200,000	13,800	5,400
50,001.....100,000	7,500	3,500
20,001.....50,000	4,000	2,000
0.....20,000	2,000	1,000

The project management fee on projects over $6,000,000 is 1.1% of the project cost. The maximum Energy Program termination fee is $25,700.

1. These fees cover project management services for energy/utility conservation projects managed by Enterprise Services' Energy Program.

2. Termination fees cover the selection and project management costs associated with managing an ESCO's investment grade audit and energy services proposal. No termination fee will be charged unless the client agency decided not to proceed to construction based on an energy services proposal that identifies projects that met the Client Agency's cost effectiveness criteria.

3. If the project meets the Client Agency's cost effectiveness criteria and the Client Agency decides not to move forward with a project, then the Client Agency will be invoiced per Attachment B Termination or $25,700 whichever is less. If the Client Agency decides to proceed with the project then the Agreement will be amended per Attachment B for Project Management Fee.

4. If the audit fails to produce a project that meets the Client Agency's established cost effectiveness criteria, then there is no cost to the Client Agency and no further obligation by the Client Agency.

ATTACHMENT C – SCOPE OF WORK

Energy/Utility Conservation Projects

MEASUREMENT & VERIFICATION SERVICES

Statewide Energy Performance Contracting Program

If requested Energy Program will provide the following measurement and verification services for each specific project for the Client Agency:

1. Review the ESCO's annual Measurement and Verification (M&V) report for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and approve any ESCO invoice vouchers for payment by the Client Agency.

2. Where necessary, review Client Agency facility operations including any changes in operating hours, changes in square footage, additional energy consuming equipment and negotiate changes in baseline energy use with the ESCO and the Client Agency that may impact achieved energy savings.

3. Attend a meeting or meetings with the Client Agency and the ESCO to review and discuss the annual M&V report.