

THE FACILITY CONSERVATION IMPROVEMENT PROGRAM MANAGED BY KANSAS CORPORATION COMMISSION

CUSTOMER MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the Kansas Corporation Commission's Energy Division (KCC), and _____, (Customer).

WHEREAS, many publicly-owned facilities in Kansas are aging and energy inefficient, incurring high costs for energy and maintenance, and tight budgets often compel public entities to postpone large capital improvements;

WHEREAS, KCC has developed an Energy Savings Performance Contract (ESPC) program called the Facility Conservation Improvement Program (FCIP), a budget-neutral way to finance energy efficiency improvements in which the energy and operational and maintenance savings repay project costs;

WHEREAS, KCC has used a state-approved Request for Proposal (RFP) process to select Energy Service Companies (ESCOs) to provide services for its FCIP;

WHEREAS, KCC will maintain a list of those pre-qualified ESCOs that are eligible for final selection by the state's state and local governments to provide ESPC services.

NOW, THEREFORE, it is agreed that:

1.0 Purpose of MOU.

The purpose of this MOU is to provide Customer access to the services and support provided under the FCIP (Program) for development and implementation of ESPC projects and to obligate the Customer to follow and adhere to the guidelines of the Program.

2.0 Term of MOU.

This MOU shall become effective upon the later date on which the authorized representative of the KCC or Customer has signed it. The MOU shall commence upon the Effective Date and remain in effect through the term for which the project is financed.

3.0 Consideration.

In consideration for the services rendered by the KCC under this MOU, the Customer shall engage in a good faith effort to reduce its energy consumption through participation in the Program and follow and adhere to its guidelines, rules, and provisions.

In accordance with Kansas Statute 75-37,125 (e), an FCIP fee for administrative

support, resources, third-party oversight and review and other services made available by and through the KCC, will be calculated in accordance with the schedule below, where Project Fees and Costs, for purposes of calculating the FCIP fee, include all payments due to the ESCO (e.g., project costs, IGA Fee) and any consultant, but do not include financing.

Project Fees and Costs Exclusive of Financing: FCIP Fee First \$100,000 @ \$0.04; Next \$100,001 to \$500,000 @ \$0.03; Next \$500,001 to \$1,000,000 @ \$0.02; Next \$1,000,001 to \$5,000,000 @ \$0.01; Over \$5,000,000 @ \$0.005.

Attachment A provides an example of the fee schedule applied to various sizes of projects.

KCC shall submit a single invoice to the Customer upon signature of the Customer and the ESCO on an approved Energy Savings Performance Contract. Customer shall pay the KCC within ninety (90) days of receipt of a properly executed invoice. Customer shall notify the KCC in writing if payment cannot be remitted within the 90 days.

4.0 Responsibilities of Customer.

The responsibilities of the Customer include, but are not necessarily limited to:

- a) Agree to Program participation by executing this Customer MOU and engage the Program for assistance in project development,
- b) Select an ESCO from the current pre-qualified list, using a selection process currently approved by the Customer for the selection of contractors,
- c) Assign members to the facility project team, including operations, maintenance, financial and upper management personnel,
- d) Ensure appropriate personnel attend project development meetings, dependent upon the subject matter to be discussed,
- e) Provide access and escort ESCO and KCC personnel or representatives to buildings,
- f) Provide information as needed for the feasibility study, the Investment Grade Audit, and other project development activities,
- g) Work with ESCO to develop/refine project parameters,
- h) Review/approve ESCO proposals, designs, and reports,
- i) Ensure recommendations of the Program during reviews are addressed,
- j) Execute Program approved contracts with the ESCO,
- k) Make payments for ESCO services per contract terms,
- l) Make arrangements for project financing,
- m) Provide project management, and
- n) Provide information as needed for measurement and verification activities.

5.0 Responsibilities of Program.

The responsibilities of the Program include, but are not necessarily limited to:

- a) Actively promote the Program and educate potential participants about the benefits and implementation of ESPC,

- b) Work with Customers to become program participants and to commit to a Customer MOU,
- c) Help Customer procure services of an ESCO from the pre-qualified list,
- d) Provide information on the website for currently pre-qualified ESCOs, as provided and updated by the ESCO, providing a link to the ESCO's website for more detailed information,
- e) Help Customer develop and initiate an ESPC project,
- f) Facilitate the ESPC process, to help ensure commitments are met by both the Customer and the ESCO,
- g) Provide technical guidance to the Customer, attend on-site meetings between the Customer and ESCO as needed,
- h) Help develop the Investment Grade Audit and Energy Savings Performance Contracts for each project,
- i) Review audits, proposals, calculations, contracts, and measurement and verification reports,
- j) Monitor project implementation, and
- k) Identify solutions to mediate any conflicts between Customer and ESCO.

6.0 Responsibilities of ESCO.

The responsibilities of the ESCO shall include, but are not necessarily limited to:

Marketing and Preliminary Project Evaluation

- a) Promote the Program when marketing directly to Customers (within market sectors defined by the Program),
- b) Engage the Program immediately upon identifying a potential ESPC project,
- c) Perform an initial evaluation of project potential and discuss with the Customer,
- d) Provide a dedicated webpage for Program participants where Customers that seek ESCO services can gain access to the full proposal and any updated information. The Program website will provide a link to the ESCO website for this purpose.

Investment Grade Audit and Project Development

- a) Develop a Program Investment Grade Audit and Project Development Contract with the Customer,
- b) Comply with all requirements of the Investment Grade Audit and Project Development Contract, including but not limited to: conduct an Investment Grade Audit, prepare a detailed technical and financial proposal for the project, help arrange for or procure financing, and develop a measurement and verification plan,
- c) Assign individuals to the project team representing project development, engineering, project management, measurement and verification, and upper management support,
- d) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed,
- e) Address issues, recommendations and requests from KCC in support of the KCC independent technical review and facilitation process.

Energy Savings Performance Contract Project Implementation

- a) Develop a Program Energy Savings Performance Contract with the Customer based upon results of the Investment Grade Audit,
- b) Comply with all requirements of the Program Energy Savings Performance Contract (Attachment G to RFP), including but not limited to: design services, equipment procurement and purchasing, construction and construction management services, hazardous material abatement or disposal, commissioning services on installed measures, and measurement and verification services,
- c) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed,
- d) Address issues, recommendations and requests from KCC in support of the KCC's independent technical review and facilitation process,
- e) Provide KCC with an electronic copy of the final contract,
- f) Provide a post-implementation report to Customer and KCC.

Performance Period

- a) Comply with all requirements of the Program Energy Savings Performance Contract, including but not limited to, measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants,
- b) Provide the Customer and KCC with annual reports on project cost, status, savings achieved, and square footage impacted by the project,
- c) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed,
- d) Address issues, recommendations and requests from KCC in support of the KCC's independent technical review and facilitation process.

7.0 Signatures.

In witness thereof, the parties to this MOU, either personally or through their duly authorized representatives, have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU.

The Effective Date of this Memorandum of Understanding is the date of the signature last affixed to this signature page.

KANSAS CORPORATION COMMISSION

Director

Date

CUSTOMER

Date