

Interagency Agreement

Date: May 8, 2012

Department of Enterprise Services

Interagency Agreement No: 2012-ERG-568

Interagency Agreement Between the Department of Enterprise Services and Arlington School District No. 16

This Agreement, pursuant to Chapter 39.34 RCW, is made and entered into by and between the Department of Enterprise Services, Facilities Division, Engineering & Architectural Services, hereinafter referred to as "DES", and Arlington School District No. 16, hereinafter referred to as the "DISTRICT".

The purpose of this Agreement is to establish a vehicle for DES to provide future Energy/Utility Conservation Project Management and Monitoring Services to the DISTRICT and to authorize the development of the energy services proposal.

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

DES 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" and Attachment "C", attached hereto and incorporated herein by reference. Unless otherwise specified, DES shall be responsible for performing all fiscal and program responsibilities as set forth in Attachment "A" and Attachment "C".

Energy/Utility Conservation projects shall be authorized by Amendment to this Agreement.

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 master Agreement shall commence when this Agreement is properly signed, and be completed on **June 30, 2014** unless altered or amended as provided herein.

4. Consideration

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

For Project Management Services provided by DES under Attachment "A" of this Agreement, the DISTRICT will pay DES a Project Management Fee for services based on the total project value per Project Management Fees Schedule set forth in Attachment "B".

If the DISTRICT decides not to proceed with an Energy/Utility Conservation project that meets DISTRICT's cost effective criteria, then the DISTRICT will be charged a Termination Fee per Attachment "B". The Termination Fee will be based on the estimated Total Project Value outlined in the Energy Audit and Energy Services Proposal prepared by Energy Services Company (ESCO).

If monitoring and verification services are requested by the DISTRICT and provided by DES under Attachment "C" of this Agreement, the DISTRICT will pay DES \$2,000.00 annually for each year of monitoring and verification services requested.

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

5. Billing Procedure

DES shall submit a single invoice to the DISTRICT at substantial completion of each authorized project, unless the DISTRICT requests a Special Billing Condition in the Amendment. Substantial completion of the project will include the delivery and acceptance of closeout documents and commencement of energy savings notification. Each invoice will indicate clearly that it is for the services rendered in performance of this Agreement and shall reflect both the Agreement and amendment number.

DES will invoice for any remaining services within 60 days of the termination of this Agreement.

6. Payment Procedure

The DISTRICT shall pay all invoices received from DES within 90 days of receipt of properly executed invoice vouchers. The DISTRICT shall notify DES in writing if the DISTRICT cannot pay an invoice within 90 days.

7. Non-Discrimination

In the performance of this Agreement, DES 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. DES 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 DES'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 DES declared ineligible for further Agreement with the DISTRICT. DES 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.

8. Records Maintenance

The DISTRICT and DES 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. DES will retain all books, records, documents, and other material relevant to this agreement for six 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.

9. Contract Management

- a. The DISTRICT Representative on this Agreement shall be:

Sid Logan, Executive Director of Operations
Arlington School District No. 16
315 North French Avenue
Arlington, WA 98223
Telephone (360) 618-6238

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

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

Ron Major
Department of Enterprise Services
Facilities Division
Engineering and Architectural Services
PO Box 41012
Olympia, WA 98504-1012
Telephone (360) 239-4134

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

10. 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.

11. Agreement Alterations and Amendments

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

12. 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.

13. Disputes

If a dispute arises under this Agreement, it shall be determined in the following manner: The DISTRICT shall appoint a member to the Dispute Board. The Director of DES shall appoint a member to the Dispute Board. The DISTRICT and DES 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.

14. 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", Project Management Scope of Work; Attachments "B", Project Management Fees; and Attachment "C", Monitoring Services Scope of Work, and
- d) Any other provisions of the Agreement incorporated by reference.

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:

The Department of Enterprise Services 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) 407-9363.

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REVIEWED BY DES CONTRACT UNIT 5/4/12

ATTACHMENT A

Scope of Work Energy/Utility Conservation Projects Management Services

Statewide Energy Performance Contracting Program
Master Energy Services Agreement No. 2011-169

DES will provide the following project management services for each specific project for the DISTRICT. Each individual project shall be authorized by Amendment to this Agreement.

1. Assist the DISTRICT 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 ESCO audit of the facility(s).
4. Assist in identifying appropriate project funding sources and assist with obtaining project funding.
5. Negotiate the technical, financial and legal issues associated with the 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 and approve the ESCO invoice vouchers for payment.
9. Assist with final project acceptance.
10. Provide other services as required to complete a successful energy performance contract.

ATTACHMENT B

Fee Schedule

2011-13 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>
5,000,001 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 DES termination fee is \$25,700.

1. These fees cover project management services for energy/utility conservation projects managed by DES's Energy Program.
2. Termination fees cover the selection and project management costs associated with managing the ESCO's investment grade audit and proposal that identifies cost effective conservation measures if the DISTRICT decides not to proceed with the project through DES.
3. If the project meets the DISTRICT's cost effectiveness criteria and the DISTRICT decides not to move forward with a project, then the DISTRICT will be invoiced per Attachment B Termination or \$25,700.00 whichever is less. If the DISTRICT 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 DISTRICT's established Cost Effectiveness Criteria, then there is no cost to the DISTRICT and no further obligation by the DISTRICT.

Rev. 3/12/12

ATTACHMENT C

Scope of Work Energy/Utility Conservation Projects Monitoring Services

Statewide Energy Performance Contracting Program Master Energy Services Agreement No. 2011-169

If requested DES will provide the following monitoring services for each specific project for the DISTRICT.

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. Provide annual letter report describing the ESCO's performance, equipment performance and operation, energy savings and additional opportunities, if any, to reduce energy costs.