# Interagency Agreement

Date: January 20, 2016

*Department of Enterprise Services*
Interagency Agreement No: K3890

**Interagency Agreement Between the**
**State of Washington**
**Department of Enterprise Services**
**and**
**City of Sequim**

This Agreement, pursuant to Chapter 39.34 RCW, is made and entered into by and between the Department of Enterprise Services, Engineering & Architectural Services, hereinafter referred to as "DES", and the **City of Sequim**, hereinafter referred to as the "CLIENT AGENCY".

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 CLIENT AGENCY 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.

The CLIENT AGENCY shall provide the Energy Services Company (ESCO) with any additional contract language necessary to comply with the requirements established under federal grants, the American Recovery & Reinvestment Act of 2009 (ARRA) and the Energy Efficiency and Conservation Block Grant (EECBG). The ESCO and their subcontractors are required to comply with all applicable federal regulations and reporting procedures.

## 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 **December 31, 2019** 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 CLIENT AGENCY 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 CLIENT AGENCY 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 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 the ESCO.

If monitoring and verification services are requested by the CLIENT AGENCY and provided by DES under Attachment "C" of this Agreement, the CLIENT AGENCY 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 CLIENT AGENCY, after DES has reviewed, approved and sent the invoices to the CLIENT AGENCY for payment.

## 5. Billing Procedure

DES 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 closeout documents and commencement of energy savings notification. 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.

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

## 6. Payment Procedure

The CLIENT AGENCY shall pay all invoices received from DES within 90 days of receipt of properly executed invoice vouchers. The CLIENT AGENCY shall notify DES in writing if the CLIENT AGENCY 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 CLIENT AGENCY. 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 CLIENT AGENCY 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 CLIENT AGENCY Representative on this Agreement shall be:

Joe Irvin, Assistant to the City Manager
City of Sequim
152 West Cedar Street

Sequim, WA 98383
Telephone (360) 582-2457

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:

Lisa Steel
Department of Enterprise Services
Engineering and Architectural Services
PO Box 41476
Olympia, WA 98504-1476
Telephone (360) 407-9373

Lisa Steel 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 CLIENT AGENCY 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 CLIENT AGENCY 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 CLIENT AGENCY shall appoint a member to the Dispute Board. The Director of DES shall appoint a member to the Dispute Board. The CLIENT AGENCY 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.

**15. 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 Sequim**

Charles P. Bush
Signature

Charles P. Bush
Name

City Manager
Title

4-11-2016
Date

**Department of Enterprise Services**
**Engineering & Architectural Services**

Signature

William J. Frare, P.E.
Name

Assistant Director
Title

4-5-2016
Date

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 Laura Haima at (360) 407-9362

K3890CityofSequimlh

# ATTACHMENT A

## Scope of Work
## Energy/Utility Conservation Projects
## Management Services

### Statewide Energy Performance Contracting Program
### Master Energy Services Agreement No. 2015-181

DES will provide the following project management services for each specific project for the CLIENT AGENCY. Each individual project shall be authorized by 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 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 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.

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# ATTACHMENT B
# Fee Schedule

2015-17 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 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 CLIENT AGENCY decides not to proceed with the project through DES.

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
## Monitoring Services

### Statewide Energy Performance Contracting Program
### Master Energy Services Agreement No. 2015-181

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

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.