



CITY of Manchester  
Department of Public Works  
475 Valley Street  
Manchester, New Hampshire 03103

## AGREEMENT

This *AGREEMENT* is made effective this 18<sup>th</sup> day of April, 2018 ("Effective Date") by and between the City of Manchester, New Hampshire, through the Highway Department, hereinafter called "CITY" and Competitive Energy Services, LLC hereinafter called "CONTRACTOR".

*WHEREAS*, the CITY has selected CONTRACTOR to assist the CITY in developing and executing a comprehensive fuel consumption and procurement strategy for energy products and services including electricity, natural gas, propane, and liquid fuels.

*NOW, THEREFORE in consideration of* the promises, mutual covenants and Agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, CITY and CONTRACTOR agree as follows:

### 1. Scope of Work

CONTRACTOR will perform the following Scope of Work:

- A. Gather all energy usage data for the CITY and will use the data for building energy profiles and performing energy and utility portfolio evaluations. CONTRACTOR will gather usage for all proposed utilities utilizing a web-based service. CONTRACTOR will continue to use this information to create long range procurement plans for the purchase of electricity, natural gas and requested liquid fuels as well as for related services that may enhance and optimize the CITY'S long term budget.
- B. CONTRACTOR will provide a detailed utility budget. CONTRACTOR will identify each utility and liquid fuel account and with the CITY'S permission and help gather 12 to 36 months of historic usage information for the accounts either directly from a utility, supplier or from the CITY. CONTRACTOR will project the anticipated usage for electricity, natural gas and liquid fuels using historical averages. CONTRACTOR will also consider any future changes in usage anticipated by the CITY. CONTRACTOR will take into account current utility tariff and supply rates for each account, as well as forecasting certain regulatory changes. CONTRACTOR will track these budgeted costs against actual costs using CONTRACTOR's database. The budget will be organized by Facility or as requested by the CITY and will be modified so that it can be used by the CITY in its internal accounting systems.
- C. CONTRACTOR will assist the CITY in the development and implementation of a comprehensive energy portfolio risk strategy. CONTRACTOR will consider many factors, including the CITY'S financial risk tolerance, need for budget assurance and internal political structure to help develop the procurement/saving strategy that best meet the CITY'S goals.
- D. CONTRACTOR will plan, prepare, issue and administer competitive bid processes for electricity, natural gas and liquid fuels for the CITY, as requested, during the term of this Agreement. Based upon an agreed upon procurement strategy, CONTRACTOR will issue requests for bids on an aggregated basis for all or

selected accounts as well as for selected groupings of accounts. CONTRACTOR will issue multiple competitive solicitations for electricity, natural gas and liquid fuels and will request pricing for a minimum of four (4) terms and product options for the CITY to the extent feasible. CONTRACTOR will issue a minimum of three (3) competitive solicitations to procure electricity and for product options including but not limited to fixed and variable pricing. CONTRACTOR will provide a summary and detailed analysis of the competitive bids for all rounds of competitive bidding. CONTRACTOR will solicit energy contracts that include scheduling, nominating and balancing of energy, capacity, transmission (including congestion charges), ancillary services, dispatch services and losses, as well as resale of any fuel supply or transmission capacity reserved but not used. The CITY shall have sole discretion to determine whether to execute a contract for the supply of a commodity with any supplier.

- E. CONTRACTOR will identify and pre-screen all potential suppliers and review all contract documents. CONTRACTOR will obtain contracts and credit approvals with the energy suppliers. CONTRACTOR will review all contract documents for the CITY and will make sure that the suppliers are aware of any specific language requested by the CITY.
- F. CONTRACTOR will assist the CITY in the contracting process to ensure that all documents are complete and are turned around promptly. CONTRACTOR will follow up with each chosen supplier to ensure smooth transitions from one supplier to another and to make sure that a contract is booked and that all accounts are enrolled according to the agreed-upon terms and conditions. CONTRACTOR will manage all communications with suppliers on behalf of the CITY. CONTRACTOR will be responsible to resolve billing errors and facilitate the addition and deletion of accounts.
- G. The project manager and other required CONTRACTOR's staff will meet with the CITY on a monthly basis to review consumption data, purchase options, risk assessments, energy budget, hedged positions, project progress and energy goals. If requested by the CITY, CONTRACTOR will attend meetings and hearings of legislative or regulatory bodies, prepare and deliver testimony on the matters associated with the contract and any related work products.
- H. CONTRACTOR will assist the CITY in evaluating a formal demand response program and will provide notification of all demand response events.
- I. Upon the CITY'S request CONTRACTOR will seek suitable "green" procurement options for the CITY and will provide an analysis of the alternatives and recommendations to the CITY.
- J. CONTRACTOR will assist the CITY in evaluating trends in the energy market and will communicate any opportunities to achieve set goals and additional savings.
- K. CONTRACTOR will provide the CITY with its hosted system, CONTRACTOR's database, ensuring data access, privacy and security while handling all aspects of database maintenance. CONTRACTOR will provide/perform the following in regards to this:
  - Set up and administer all of the CITY'S energy accounts into database
  - Load historic data
  - Establish individual accounts for CITY'S staff
  - Generate interactive dashboards and reports, including but not limited to:
    - Use by facility, building and account by month and by year
    - Cost by facility, building and account by month and by year, both total and broken out by delivery and supply cost
    - Benchmarking of actuals against forecasted budget

- Ongoing monthly database update
- Set up an access for a CITY staff member to view all accounts and make updates if necessary
- Online reporting available 24x7 that can track the key elements of use and cost, including:
  - Use
  - Demand
  - Delivery charges
  - Supply charges
- Track carbon emissions
- CITY will have access to phone and email-based technical support during normal east coast business hours.

L. CONTRACTOR will provide other services as outlined in the CITY'S Request for Proposal FY18-500-27.

## **2. Term**

The initial term shall be for a period of three (3) years beginning on the Effective Date. At the CITY'S discretion, the term may be renewed for up to two (2) additional three (3) year period. The CITY reserves the right to cancel the Agreement, with or without cause at any time, by providing a 30 day written notice to CONTRACTOR. The rights, duties and responsibilities of the Parties hereto shall continue in full force until the expiration of the Term.

## **3. Compensation**

- A. In the event that the CITY executes a Contract during the Term or during the three (3) months following the Term with a Supplier brought to the CITY by CONTRACTOR, CONTRACTOR will receive compensation from the Supplier in accordance with the Compensation Schedule, attached hereto, not to exceed the maximum annual amount in any year.
- B. In the event that the CITY does not execute a Contract during the Term or during the three (3) months after the Term with a Supplier, CONTRACTOR is entitled to the minimum annual fee in accordance with the Compensation Schedule, attached hereto.
- C. In the event that the Contracts executed between Suppliers and the CITY does not meet CONTRACTOR'S minimum annual fee in accordance with the Compensation Schedule, attached hereto, the CITY shall pay CONTRACTOR the difference upon CONTRACTOR providing the appropriate paperwork to the CITY.

## **4. Ownership**

All reports and material prepared by CONTRACTOR specifically in the performance of this Agreement shall become property of the CITY.

## **5. Successors and Assigns**

This Agreement shall be binding upon the Parties and their respective partners, affiliates, heirs, legal representatives, successors and assigns. No portion of this Agreement or any right or obligation hereunder can be transferred or assigned, in whole or in part, whether by operation of law or otherwise, by either Party without prior written consent of the other Party.

## **6. No Joint Venture**

CONTRACTOR and CITY are and shall be independent contractors to one another, and nothing herein shall be deemed to cause the Agreement to create an agency, partnership or joint venture. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR or any employee or agent of CONTRACTOR.

## **7. No Consequential Damages**

In no event, shall either CONTRACTOR or CITY be liable to each other or any third party for any incidental, special, indirect, exemplary or consequential damages, including but not limited to loss of use of loss or loss of profits, whether foreseeable or not, occasioned by or arising out of CONTRACTOR'S or CITY'S breach hereof or performance hereunder, delay in performance or any other cause whatsoever.

## **8. Exclusive Remedy**

The CITY'S and CONTRACTOR'S sole obligation and exclusive remedy to each other, in the event of an alleged breach or defect in any service provided hereunder is the correction by that Party of such alleged breach or defect. If after repeated efforts that Party is unable to correct, or if that Party fails within reasonable time to attempt to correct and continues not to attempt to correct within ten (10) days of receipt from other Party of written notice of such breach or defect, the other Party shall be entitled to terminate this Agreement and to recover actual damages in an amount not to exceed the amount of fees due and payable to CONTRACTOR by Supplier under this Agreement. Both parties understand and agree that this exclusive remedy allocates risk of service defects between the Parties as authorized by applicable law.

## **9. Indemnification**

The CITY and CONTRACTOR mutually agrees to indemnify and hold harmless each other from any claims, actions or other proceedings and any losses, damages or liabilities asserted by third parties in respect to personal injury or death to any person, or damage to any property arising out of or based upon any act or omission of the Parties in performance of this Agreement, but only to the extent that the indemnifying Party is negligent or its action constitutes willful misconduct.

## **10. Arbitration**

All claim or controversy or claim arising out of or relating to this Agreement, or the formation or breach thereof, shall be settled by arbitration in Manchester, New Hampshire in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This Agreement shall be governed by, and construed in accordance with the laws of the State of New Hampshire

Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

**11. Miscellaneous**

This Agreement may be amended only by written instrument signed by both CITY and CONTRACTOR

In the case of a discrepancy between this Agreement and CONTRACTOR'S "Client Representation Agreement" (*Exhibit A*), this Agreement shall prevail.

This Agreement, together with the request for proposal FY18-500-27, the exhibits attached hereto and any written amendments thereof, constitutes the entire Agreement and understanding between the Parties with respect to the subject matter hereof and merges and supersedes all prior discussions and writings with respect thereto. If any provision contained in this Agreement shall for any reason be held unenforceable in any respect under the law of any state or the United States of America, such unenforceability shall not affect any other provisions in this Agreement; this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained.

*IN WITNESS WHEREOF*, the Parties hereto have caused this Agreement to be executed as of the date first above written.

Agreed and accepted on behalf of

*Contractor's Name*

*City of Manchester, New Hampshire*

By: RICHARD SILKMAN

By: TIMOTHY J. CLOUGHERTY

Name: [Signature]

Name: [Signature]

Title: CEO

Title: Deputy Director

Date: 4/18/18

Date: 4/20/18

## Compensation Schedule

For the City of Manchester, New Hampshire – pricing agreement from Proposal Submittal FY18-500-27 apply

CONTRACTORS fees are noted below:

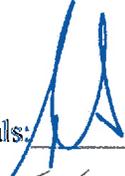
Electricity - \$0.000875 per kWh

Natural Gas - \$0.0700 per Dth

Liquid Fuels - \$0.0140 per gallon

Minimum Annual Fee - \$ NA

Maximum Annual Fee - \$ 70,000.00

Contractor Initials: 

City Initials: TC