CONTRACT APPROVAL REQUEST

BSD
Board Approval Yes
Board Date 03/14/2023

Requestor: Lydia Reaves Ext.: 4410 Date: 03/10/2023
Print Name

Location: Maintenance **Refer** to Contract Agreement Process Instructions for the contract destination located on the Business Office webpage.

Required Data	Complete This Column
Vendor name or name of	Washington Dept. of Enterprise Services
Vendor ***email address, contact name*** and ***phone number.*** Vendor ***mailing address*** (If not on contract)	Contact: Kim Obi Phone: 360-407-8167 Signer's email: kim.obi@des.wa.gov Address: PO Box 41476 City, State, Zip: Olympia, WA 98504
Detailed description of the purpose for this contract. ***Answer the who, what, when and where***	HVAC energy upgrades and improvements throughout the district
Duration of Contract	Start Date: 03/10/2023 End Date: 12/31/2027
Auto Renewal Clause? No	Renewal Terms Annually
Contract amount OR Increase amount including any taxes.	Specify the contract amount or increase amount 9,000,000 Enter total contract amount to-date here
BSD department or location	Maintenance
Name of the administrator	Dave Wells
Source of funds. **Not** the fund name	ESSER
Expenditure budget code. Example: 10 E 530 0100 27 5000 3050 3050 0000 0	10 E 530 1404 64 7410 XXXX 0080 0000 0 10 E 530 1404 64 7450 XXXX 0080 0000 0

School Level		Policy 6260 Procedure 6260PR	Department Level (Area of Responsibility)	District Level
$0 - $15,000	Less Than $1,000,000		Less Than $1,000,000	$1,000,000 or More
Principal	Exec. Dir. of Education		Director or Above	Superintendent/Designee

DEPARTMENT Level - Director or Above

It is the responsibility of the budget authority to ensure there is budget capacity.

Dave Wells — *Print Name*

Dave Wells — ***Signature* (Administrator)**

03/10/2023 — ***Date***

FOR VENDORS ONLY

Click here for instructions on how to upload a signed contract and return this form

State of Washington **ENERGY PROGRAM** Department of Enterprise Services P.O. Box 41476 Olympia, WA 98504-1476	**INTERAGENCY AGREEMENT**	
	IAA No.:	K8185
BETHEL SCHOOL DISTRICT 4015 224th St. E. Spanaway, WA 98387	Date:	March 10, 2023

INTERAGENCY AGREEMENT

BETWEEN

BETHEL SCHOOL DISTRICT

AND

WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES

Pursuant to RCW chapter 39.34 and RCW chapter 39.35C, 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 Bethel School District, a Washington State governmental agency ("Client Agency") and is dated and effective as of the date of the last signature.

R E C I T A L S

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 in 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 reduce carbon emissions in their publicly-owned facilities. 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 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.

A G R E E M E N T

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

1. **TERM**. The term of this *Agreement* commences on the date of the last signature and ends **December 31, 2027**.

2. **STATEMENT OF WORK.**

   A. ENERGY PROGRAM. Energy Program agrees to provide the following Services:

      i. Upon request by Client Agency for energy services for a specific Energy/Utility Conservation Project(s), the Parties shall execute an amendment to this *Agreement* to specify the project and associated project management fees as set forth by Attachment B. Enterprise Services shall furnish necessary personnel and services as specified and set forth in Attachment A, *Project Management Services Scope of Work.*

      ii. Assist in Dispute Resolution. Dispute resolution is an ongoing process throughout the project. However, this assistance does not include formal dispute resolution, arbitration or legal advice or representation in any legal action, and does not include legal fees and costs related to any dispute. Formal dispute resolution begins when a written claim is received demanding arbitration or other legal process is received. All formal dispute fees and costs will be borne separately by Client Agency. The Attorney General cannot and will not represent or advise a non-state agency.

   B. CLIENT AGENCY. Client Agency agrees to the following:

      i. Will conform to the protocols of this *Agreement*, including Enterprise Services' *General Conditions for Washington State Energy Savings Performance Contracting ("General Conditions")*, and as supplemented.

      ii. Will conform to the requirements of the *General Conditions* for timely processing and approval of agreed upon changes to construction contracts involving cost, and for payment.

      iii. Will conform to the following guidelines for communications between Client Agency, Enterprise Services and ESCOs (Energy Services Company) through the design, construction and post-construction phases as outlined below:

         a) Communications between Client Agency, Energy Program Project Manager ("PM") and ESCO shall go through the PM. The PM may authorize exceptions for specific projects or situations. The PM may authorize the ESCO to communicate directly with Client Agency personnel to expedite the design and to avoid communication delays. This action does not authorize additional work, change in scope, or exclude copying all communications between ESCO and Client Agency to the PM.

         b) All drawings, specifications, reports, and project correspondence must contain the State Project Number and suffix.

            - The State Project Number consists of the fiscal year and a numerical sequence number, for example 2018-024, followed by an alphabetical suffix.

- Professional services agreements have suffixes A through F, for example 2018-024 A.
- Construction contracts have suffixes G through Z, for example 2018-024 G.

iv. All identification and monitoring of documentation required by the funding source shall remain the responsibility of Client Agency.

3. **COMPENSATION AND REQUIREMENTS.**

A. 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 Scope of Work (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 (including Washington state sales tax) per the Project Management Fee 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 Project Management Fee Schedule. The termination fee shall be based on the estimated total project value outlined in the energy services proposal prepared by the ESCO as set forth in Attachment B.

iii. Measurement & Verification Services ("M&V") Scope of Work (Attachment C): If M&V are requested by Client Agency beyond the first three years following the notice of commencement of energy cost savings, Client Agency shall pay Enterprise Services $2,000.00 annually for each year that such M&V are provided.

B. PAYMENT FOR ESCO SERVICES. In the event that Client Agency enters into a contract with an Energy Program pre-qualified ESCO, pursuant to an *Enterprise Services Main Energy Services Agreement for ESCO Services*, Client Agency shall make payment for such contracted services directly to the ESCO, after Energy Program has reviewed and sent such invoices to Client Agency for payment.

C. FURTHER ASSURANCES. Client Agency shall provide the 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.

D. MANAGING COMPLIANCE WITH STATE AND FEDERAL LAW. In all ESCO project agreements and contracts pertaining to this *Agreement*, Energy Program will require ESCO's 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

Upon request by Client Agency, 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 Energy Program and added by amendment to this *Agreement*. In the event that Energy Program becomes aware of a possible violation, it will notify Client Agency.

4. **INVOICES AND BILLING**.

   A. BILLING PROCEDURE. Enterprise Services shall submit invoices to Client Agency upon substantial completion and notice of commencement of energy cost savings of each authorized project, unless an amendment specifies special billing conditions and timeline. Substantial completion of the project will include the delivery and acceptance of the notice of commencement of energy cost savings issued by the energy services company. 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 provided services within sixty (60) days of the expiration or termination of this *Agreement*.

   B. PAYMENT PROCEDURE. Client Agency shall pay all invoices received from Enterprise Services within thirty (30) days of receipt of properly executed invoice vouchers.

   C. BILLING DETAIL. Each invoice submitted to Client Agency by Enterprise Services 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: mrushton@bethelsd.org

5. **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
Attn: Steve Bolinger, PE
Energy Project Manager
Energy Program
Washington Dept. of Enterprise Services
PO Box 41476
Olympia, WA 98504-1476
Tel: (360) 407-8167
Email: steve.bolinger@des.wa.gov

Client Agency
Attn: Michael Rushton
Facilities Manager – Energy/Grounds
Bethel School District
4015 224th St. E.
Spanaway, WA 98387
Tel: (253) 800-4415
Email: mrushton@bethelsd.org

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 or ESCO.

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

6. **RECORDS**.

   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 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. 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. OWNERSHIP. Records and other information, in any medium, furnished by one party to this *Agreement* to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third party without first providing notice to the other party and allowing ten (10) business days in which to file, at its sole expense, a motion seeking a protective order, or other legal action. Each party will utilize reasonable security procedures and protections to assure that records and information provided by the other party are not erroneously disclosed to third parties.

   D. PUBLIC RECORDS. This *Agreement* and all related records are subject to public disclosure as required by RCW 42.56, the Public Records Act (PRA). Neither party shall release any record that would, in the judgment of the party, be subject to an exemption from disclosure under the PRA, without first providing notice to the other party and allowing ten (10) business days in which to file, at its sole expense, a motion seeking a protective order, or other legal action.

7. **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.

8. **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 regarding this *Agreement* 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 produce its description of the dispute in 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.

9. **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.

10. **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.

    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 exclusive 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 date of the last signature.

BETHEL SCHOOL DISTRICT		**STATE OF WASHINGTON** **DEPARTMENT OF ENTERPRISE SERVICES**	
By:	_____	By:	_____
Name:	_____	Name:	Kirsten G. Wilson, PE
Title:	_____	Title:	Energy Program Manager
Date:	_____	Date:	_____

ATTACHMENT A

PROJECT MANAGEMENT SERVICES SCOPE OF WORK

Energy/Utility Conservation Projects

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. Assist in negotiating 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. Assist in resolution of disputes with the ESCO that arise during this *Agreemen*t, not to include formal disputes.

11. Review up to the first three years of the ESCO's annual Measurement and Verification (M&V) reports for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and forward ESCO invoice vouchers for payment by the Client Agency.

ATTACHMENT B

PROJECT MANAGEMENT FEE SCHEDULE

2021-23 Interagency Reimbursement Costs
for Project Management Fees to Administer Energy/Utility Conservation Projects

TOTAL PROJECT VALUE	PROJECT MANAGEMENT FEE	TERMINATION FEE
5,000,001 – 6,000,000	$68,800	25,700
4,000,001 – 5,000,000	67,700	25,400
3,000,001 – 4,000,000	66,700	25,000
2,000,001 – 3,000,000	62,500	23,400
1,500,001 – 2,000,000	58,300	21,800
1,000,001 – 1,500,000	51,600	19,300
900,001 – 1,000,000	43,800	16,400
800,001 – 900,000	41,300	15,400
700,001 – 800,000	38,300	14,400
600,001 – 700,000	36,500	13,700
500,001 – 600,000	33,800	12,600
400,001 – 500,000	30,200	11,300
300,001 – 400,000	25,800	9,700
200,001 – 300,000	20,700	7,700
100,001 – 200,000	14,400	5,400
50,001 – 100,000	7,800	3,500
20,001 – 50,000	4,200	2,000

The project management fee on projects over $6,000,000 is 1.15% 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 Client Agency decided not to proceed to construction based on an energy services proposal that identifies projects that met Client Agency's cost effectiveness criteria.
3. If the project meets Client Agency's cost effectiveness criteria and Client Agency decides not to move forward with a project, then Client Agency will be invoiced per the above listed Termination Fee or $25,700 whichever is less. If Client Agency decides to proceed with the project then the *Agreement* will be amended to include the Project Management Fee listed above.
4. If the audit fails to produce a project that meets Client Agency's established cost effectiveness criteria, then there is no cost to Client Agency and no further obligation by Client Agency.

ATTACHMENT C

***MEASUREMENT & VERIFICATION SERVICES* SCOPE OF WORK**

Energy/Utility Conservation Projects

Statewide Energy Performance Contracting Program

If requested, Energy Program will provide the following measurement and verification services for each year beyond the first three years following the Notice of Commencement of Energy Cost Savings by the ESCO for the specific Client Agency project:

1. Review the ESCO's annual Measurement and Verification report for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and forward 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 Client Agency that may impact achieved energy savings.

3. Attend a meeting or meetings with Client Agency and ESCO to review and discuss the annual Measurement and Verification report.