

HOME PERFORMANCE WITH ENERGY STAR® PARTICIPATING CONTRACTOR AGREEMENT

THIS AGREEMENT (hereinafter “Agreement”) is by and between the City of Columbia, Missouri (hereinafter “City”), a municipal corporation and _____ (hereinafter “Contractor”), a person or business authorized to transact business within the state of Missouri, and is entered into on the date of the last signatory below (hereinafter “Effective Date”). City and Contractor are each individually referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS, City encourages efficiency in the use of utilities to reduce costs and protect environmental resources, and in furtherance thereof administers a Home Performance with ENERGY STAR® Program (hereinafter “Program”), which allows for rebates and loans for energy efficiency improvements;

WHEREAS, Contractor wishes to provide, and City wishes to purchase, home performance assessment services to assist City in the administration of Program pursuant to the terms and conditions provided for herein.

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

1. SERVICES DEFINITION.

For purposes of this Agreement, “Services” shall mean providing and performing home energy efficiency assessment services as part of the Program, the details of which are more fully described in the Scope of Services, attached hereto as **Exhibit A** and made a part of this Agreement.

2. CONTRACTOR RESPONSIBILITIES

2.1. Provision of Services.

(a) General. Contractor agrees to perform Services at the direction of City and in accordance with the Program requirements. Contractor shall exercise reasonable skill, care and diligence in the performance of Services and will carry out its responsibilities in accordance with the generally accepted standards of good professional practices in effect at the time of performance.

(b) Amending Scope of Services. City reserves the right to update the Scope of Services, including the pricing therein, prior to the renewal of each term. City shall submit a new proposed Scope of Services for the next term at least thirty (30) days before the term begins to provide Contractor with an opportunity to review the Scope of Services. If City does not submit a new proposed Scope of Services, then the Scope of Services of the previous term will control.

2.2. **Pricing and Billing.** Both Parties agree the prices for Services will be set at provided in the Scope of Services, attached hereto as *Exhibit A*, for the duration of this Agreement. Contractor shall invoice the City in writing in the form and time as required by the Utilities Department and consistent with the Scope of Services.

2.3. **Job Reporting and Completion Requirements.** Contractor shall meet all reporting requirements as directed by City.

2.4. **Permits and Records.** Contractor is responsible for obtaining all licenses, permits, and certifications required by local, state or federal law to perform Services. Contractor shall keep necessary records for performance of Services as required by law.

2.5. **Marketing and Logo Usage.**

(a). Relationship to City. At all times, Contractor shall properly represent its relationship with the City as a Home Performance Contractor. Contractor shall not represent itself as an employee of the City or any state or federal entities associated with Program.

(b). Use of City's Name and Logo. Contractor shall not use the City's name or logo on any marketing materials unless the proposed design and form of the marketing material has been reviewed and approved by the City in writing. City may revoke its permission to use the City's name or logo at any time and for any reason. Contractor agrees to promptly remove City's name and logo from any marketing materials upon receipt of notice from City.

(c). Use of Home Performance with ENERGY STAR's Name and Logo

(i) *Adhering to ENERGY STAR Identity Guidelines.* Contractor is responsible for the proper use of the ENERGY STAR marks, as well as the proper use of the Home Performance with ENERGY STAR marketing graphic. The Contractor must comply with current ENERGY STAR Identity Guidelines (available at www.energystar.gov), which describe how the ENERGY STAR marks, marketing graphics, and name may be used. Contractor is responsible for adhering to these guidelines and ensuring that its authorized representatives, such as advertising agencies, are also in compliance. City will actively pursue resolution of noncompliance related to the use of the ENERGY STAR marks.

(ii). *Promoting Whole-House Process.* When using the Home Performance with ENERGY STAR marketing graphic, it must be used to promote a comprehensive, whole-house process for improving the energy efficiency of homes to prevent pollution, protect the environment, and save money on energy bills.

2.6. **Field Inspections & Services Warranty.** Contractor shall allow random field inspections by City or its designee of work that has been performed. Contractor, upon request by City, and at no additional cost to the customer, shall make reasonable repairs or corrections to work that Contractor has performed to bring such work up to Program standards.

3. CITY RESPONSIBILITIES

3.1. **Purchase of Services.** Provided Contractor performs the Services in the manner set forth in this Agreement, City agrees to pay all uncontested amounts of an invoice within thirty (30) days of its receipt. City expressly reserves the right to disapprove in whole or in part a request for payment where the Services rendered are not performed in a timely or satisfactory manner. If an amount of invoice is contested, then City shall notify Contractor in writing within twenty (20) days of receipt of the invoice. Within this written notice, City shall provide the reasoning for City's disapproval.

3.2. **Additional Commitments by City.** City agrees to promote the Program and to provide customer literature and handouts as it relates to the Program. City will provide mentoring in the field and be available by email and phone during business hours.

3.3. **Nature of City's Obligations.** The obligations of City under this Agreement which require the expenditure of funds shall be conditional obligations subject to the availability of funds appropriated for those purposes during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year, then this Agreement will terminate at the end of the then current fiscal year as if terminated for convenience. The failure or inability of City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement.

4. TERM AND TERMINATION

4.1. **Term.** The initial term of this Agreement shall be one (1) year commencing on the Effective Date. Thereafter, the term of this Agreement shall automatically renew for successive one (1) year terms unless one Party provides written notice to the other Party at least sixty (60) days in advance of the end of the then existing term that it does not wish to renew the term of this Agreement. In no event shall this Agreement be binding on either Party beyond five (5) years from the Effective Date.

4.2. **Termination for Default.** If either Party fails to perform its duties and obligations provided for herein, then that Party shall be in default. The non-defaulting Party may terminate this Agreement in whole or in part for failure to perform by providing written notice of termination. The written notice of termination will be effective immediately upon its receipt. In such event, the defaulting Party shall be liable for all damages (including all costs and attorney fees) arising out of or related to the default.

4.3. **Termination for Convenience.** City may terminate this Agreement for convenience at any time by providing written notice of termination for convenience. This termination goes into effect immediately upon Contractor's receipt of written notice.

5. INSURANCE

Contractor shall maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein.

- a. **Workers' Compensation & Employers Liability.** Contractor shall maintain Workers' Compensation in accordance with Missouri State Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 for each accident, and \$500,000 disease policy limit.
- b. **Commercial General Liability.** Contractor shall maintain Commercial General Liability at a limit of \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- c. **Business Auto Liability.** Contractor shall maintain Business Automobile Liability at a limit of \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- d. Contractor may satisfy the minimum liability limits required for General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit should not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. Contractor agrees to endorse the City as an Additionally Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- e. The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the Project to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided prior to the Effective Date of the Agreement between the Contractor and City. Contractor shall maintain coverages as stated and shall notify City of a Carrier Change or cancellation within two (2) business days.

6. MISCELLANEOUS

6.1. **Hold Harmless Agreement.** To the fullest extent not prohibited by law, Contractor shall indemnify and hold harmless City, its directors, officers, agents, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise of Contractor, of any subcontractor (meaning anyone including but not limited to consultants having a contract with Contractor) or a subcontractor may be liable, in connection with providing these service. This provision does not,

however, require Contractor to indemnify, hold harmless, or defend City from its own negligence.

6.2. **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or laws.

6.3. **Governing Law and Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri.

6.4. **Unauthorized Aliens Prohibited.** Contractor shall comply with Missouri Revised Statute Section 285.530 in that Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, Contractor shall by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted Services. Contractor shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted Services. Contractor shall require all subcontractors to observe the requirements of this section and shall obtain a Work Authorization Affidavit from each subcontractor performing any of the contracted Services.

6.5. **General Laws.** Contractor shall comply with all federal, state and local laws, rules, regulations and ordinances.

6.6. **Amendment.** No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

6.7. **No Third Party Beneficiary.** No provision of this Agreement is intended to, nor shall it in any way, inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person a third-party beneficiary under this Agreement.

6.8. **Notice.** Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand or mailed by certified mail, return receipt request, with postage prepaid to:

IF TO CITY:
City of Columbia, MO
Utilities Department
P.O. Box 6015

IF TO CONTRACTOR:

Columbia, MO 65205-6015
ATTN: Director of Utilities

Any notice required by this Agreement shall be signed by or on behalf of the Party giving notice. The notice shall be deemed to have been completed when sent by certified or registered mail to the other Party at the address set forth herein, or delivered in person to said Party or their authorized representative.

6.9. **Contract Documents.** The Contract Documents include this Agreement and Exhibit A, Scope of Services. In the event of a conflict between the terms of this Agreement and the terms of the Exhibit, the terms of this Agreement control.

6.10. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Parties relative to the contracted Services herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the contracted Services herein are superseded.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

CITY: City of Columbia, Missouri

BY: _____
John D. Glascock, City Manager

*As authorized by Resolution

 .

DATE: _____

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

CERTIFICATION: I hereby certify that this contract is within the purpose of the appropriation to which it is to be charged, Account No. _____, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

Matthew Lue, City Director of Finance

CONTRACTOR: _____

BY: _____

PRINTED
NAME: _____

TITLE: _____

DATE: _____

EXHIBIT A
CONTRACTOR'S SCOPE OF SERVICES
FOR HOME PERFORMANCE WITH ENERGY STAR PROGRAM

Contractor shall perform all services at the direction of the City and consistent with the provisions herein.

Job Reporting and Completion Requirements.

(a) Program Response and Reporting.

- (i) Respond to customer referrals within forty-eight (48) hours;
- (ii) Use forms and procedures as required by City;
- (iii) Deliver reports to the City and to customer within two (2) weeks of completion at the latest (preferably one week);
- (iv) Pre and Post Assessments must be on file before rebates/incentives or loans can be processed;
- (v) Rebates/incentives and invoices must be on file before post assessment can be processed;
- (vi) Use calculator and post form to verify projected savings;
- (vii) All eligible homes must be scored with the Home Energy Score

(b) Annual Minimum Completions.

Contractor must complete and report a minimum of ten (10) jobs per year to remain on the City's approved list. If the minimum number of jobs are not reported, the contractor will be reviewed and may be placed on a probationary period at the discretion of the City.

BPI Certification.

- (i) Maintain at least one staff member who is certified with the BPI Building Analyst, BPI Energy Auditor, or BPI Quality Control Inspector.
- (ii) Ensure BPI certification is in good standing and does not lapse
- (iii) BPI certified staff shall complete all requirements of City's mentoring process and training
- (iv) BPI staff must be on site at all times when performing assessments
- (v) BPI staff shall be the only person to perform the blower door and combustion testing

Equipment

(a) Required Equipment. While performing assessment services, Contractor shall have in its possession, in good working order, the following equipment:

- (i) Blower door and Tectile software
- (ii) diagnostic smoke
- (iii) combustion analyzer
 - includes Carbon Monoxide air free readout and nitrogen scrubber
- (iv) Gas leak detector
- (v) Ambient Carbon Monoxide reader

(b) Maintenance and Calibration Records. Contractor shall properly maintain all diagnostic equipment, including calibration according to manufacturers recommended calibration schedules. Contractor shall maintain, and make available to the City upon request, calibration records for diagnostic testing instruments.

Recommended Improvements

Contractor shall only suggest improvement recommendations that are approved by City and prioritize for each customer. The following recommendations are approved:

- (i) Air Sealing to building tightness limit if possible;
- (ii) Insulation
 - Attic Up to R-50, strongly suggest cellulose;
 - Crawl space to R-19 – insulation must be in contact with floor decking and suggest encapsulating insulation.
 - Alternatively, crawl space wall to R-10 min with 6 mil plastic vapor barrier covering exposed ground – not suggested if ground moisture issues are present;
- (iii) Ducts at min of R-13;
- (iv) Rim joist – min R-13;
- (v) Replace windows and doors if existing are single pane or beyond repair - Windows and doors must be 0.30 U-value or less and low E for windows;
- (vi) Replace furnace if older than 20 years;
- (vii) Replace condensing unit if older than 15 years;
- (viii) Suggest installing qualifying heat pump - Contact City or Boone Electric for further information;
- (ix) Replace refrigerators, freezers and washing machines if older than 16 years;
- (x) Suggest installing Carbon Monoxide (CO) alarms if not present
 - Required for any home with gas appliances or attached garages.

Marketing

Contractor shall only market the program in a manner consistent with Section 1.5 of the Agreement.

Assessment Incentives

(a) General. Except as otherwise provided herein, Contractors will be entitled to receive \$100 for all pre-assessments and up to \$400 for post-assessments.

(b) Tier I Post.

- (i) Appliances located within thermal boundary – Standard Combustion Appliance Zone (CAZ) testing must be performed during pre and post assessment, if applicable, to receive \$400 post incentives.
- (ii) Homes with no CAZ testing will receive \$300 post incentive

(c) Tier II Post.

- (i) Appliances located in intermediate zones, zones potentially outside of thermal boundary, standalone 80% furnaces or draft induced water heaters – natural condition CAZ testing

must be performed during pre and post assessment, if applicable to receive \$330 post incentive.

- Appliances must be tested for spillage, draft, and Carbon Monoxide if applicable
- (ii) Zonal pressure testing is required. This quantified connectedness of CAZs locate in intermediate zones or zones potentially outside of thermal boundary.
 - If the house to CAZ pressure is between -25 pa and -50 pa, perform Tier I CAZ test

(d) Minimum 15% Savings to Receive Maximum Incentive

- (i) A minimum of 15% savings is required to receive a maximum post incentive;
- (ii) Less than 15% savings will receive a \$200 post incentive with Tier I CAZ testing;
- (iii) Less than 15% savings will receive a \$130 post incentive with Tier II CAZ testing;
- (iv) Less than 15% savings will receive a \$100 post incentive with no CAZ testing;
- (v) A savings of 7.5% or less will not receive a post audit assessment incentive;

(e) Follow BPI recommendations

- Contractor must follow BPI recommendations for Combustion Safety Test Action Levels

[END OF EXHIBIT A, SCOPE OF SERVICES]