



REAL ESTATE DEVELOPMENT AND MANAGEMENT

**AGREEMENT BETWEEN OWNER AND QUALIFIED POTENTIAL
SHARED SAVINGS PARTNER**

FOR A CONTINUING CONTRACT

PROJECT NAME: Shared Savings Partners for
Energy Efficiency Upgrades

CATEGORY OF SERVICES:

SHARED SAVINGS PARTNER:

Rick Scott
Governor

Chad Poppell
Secretary

Shared Savings Continuing Contract

AGREEMENT FOR POTENTIAL SHARED SAVINGS SERVICES

THIS AGREEMENT

made this _____ day of _____ in the year 2015

BY AND BETWEEN THE STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF REAL ESTATE DEVELOPMENT AND MANAGEMENT hereinafter called the OWNER, and hereinafter called the VENDOR.

FEDERAL I.D. TAX NO.:

WITNESSETH that the Owner intends to periodically implement Shared Savings Services within the category(ies) of service shown on the cover page of this Agreement. This continuing contract implements the legislative direction of section 255.252(4), Florida Statutes, for shared savings services having estimated costs not exceeding the amounts as provided in section 287.055(2)(g), Florida Statutes.

NOW THEREFORE, the Owner and the Vendor agree as follows:

ARTICLE 1 – VENDOR'S RESPONSIBILITIES

- 1.1 The Vendor shall be contacted through the personnel listed in response to RFQ 14/15-031 for potential shared savings projects (“Opportunity(ies)”) developed and proposed by the Owner within the Florida Facilities Pool or other state owned properties.
- 1.2 The Vendor understands that any award of a contract for Shared Savings Financing of Energy Efficiency Upgrades is dependent upon selection and negotiation under the Consultants’ Competitive Negotiation Act, section 287.055, Florida Statutes.
- 1.3 The Vendor shall consider new Opportunities through a request for qualifications (Project Specific RFQ) process outlined within section 287.055, Florida Statutes.
- 1.4 The Vendor has sole discretion whether to provide a response to the Project Specific RFQ for each Opportunity.
- 1.5 The Vendor shall not submit proposed pricing or competitive bids in response to the Project Specific RFQ for each Opportunity.
- 1.6 The Vendor shall keep the Owner informed of any adjustments to previous qualifications submitted in accordance with RFQ 14/15-031, and will incorporate any modifications into its response to each Project Specific RFQ for each Opportunity.

ARTICLE 2 - THE OWNER'S RESPONSIBILITIES

- 2.1 The Owner has sole discretion to determine the relevant scope of work and the applicable Service Category(ies) (section 1.2.3 of RFQ 14/15-031) for each Opportunity.

- 2.2 The Owner has sole discretion to determine whether the scope of work for the Opportunity is a cost or a study activity in accordance with the thresholds set forth in section 287.055(2)(g), Florida Statutes.
- 2.3 The Owner shall provide a scope of work with each Project Specific RFQ in accordance with the Consultants' Competitive Negotiation Act, section 287.055, Florida Statutes.
- 2.4 The Owner shall designate representatives authorized to act on its behalf and shall examine documents submitted by the Vendor in response to each Project Specific RFQ.
- 2.5 If the Owner observes or otherwise becomes aware of any defects in the Opportunity, written notice shall be given to the Vendor participating in the Project Specific RFQ process under section 287.055, Florida Statutes.

ARTICLE 3 - PAYMENTS TO VENDOR

- 3.1 In accordance with section 255.252, Florida Statutes, the resulting Shared Savings Financing of Energy Efficiency Upgrades contracts, if awarded to the Vendor, will split the resulting savings for a specific period of time between the state agency and the Vendor.
- 3.2 Payments made to the Vendor by the state will be made solely by cost savings achieved under the Shared Savings Financing of Energy Efficiency Upgrades contract. The Owner may assign applicable rebates, grants, and other incentives to the Vendor as part of the available compensation.
- 3.3 Payments under Category 5 of RFQ 14/15-031 may be subject to direct purchase via a separate purchase order following the process outlined in section 287.055, Florida Statutes.

ARTICLE 4 – TERM OF CONTINUING CONTRACT

- 4.1 The initial term of the continuing contract(s) with the pre-qualified vendors will be three years with up to three, one year renewals. The continuing contract may be renewed in whole or in part for a period that will not exceed the renewal years specified in RFQ 14/15-031.

ARTICLE 5 - TERMINATION OF AGREEMENT

- 5.1 Termination For Cause Or Mutual Agreement

This Agreement may be terminated by either Party upon seven days' notice by mutual agreement, or should one Party fail substantially to perform in accordance with its terms through no fault of the other. Also, this Agreement may be unilaterally terminated by the Owner for refusal by the Vendor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement.

- 5.2 Termination For Convenience

The ability to participate in future Project Specific RFQs for Opportunities under this contract may be terminated by the Owner in accordance with this clause in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interest of the state.

ARTICLE 6 – INCORPORATION OF RFQ 14/15-031

- 6.1 The terms and conditions of RFQ 14/15-031 are incorporated herein by reference, including the attachments thereto. It is understood that from the pre-qualified vendor pool selected as a result of RFQ 14/15-031, a separate Project Specific RFQ will be issued for each Opportunity in accordance with section 287.055, Florida Statutes.

- 6.2 The Vendors under this contract will not bid against each other, as the response to the Project Specific RFQ will not include price. Price will become a factor after the Owner has selected the most qualified Vendor and then negotiates for compensation which is fair, competitive, and reasonable.

ARTICLE 7 – GENERAL PROVISIONS

7.1 Public Entity Crime Information Statement

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods and services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list."

7.2 Unauthorized Aliens

The Owner shall consider the employment by any contractor of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract.

7.3 Unauthorized Aliens Checks through E-Verify System

Pursuant to the State of Florida, Office of the Governor, Executive Order Number 11-02 entered on January 4, 2011, Vendor will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the term of the Contract by Vendor to perform employment duties within Florida within three business days after the date of hire; and (b) all persons (including sub-consultants) assigned by Vendor to perform work pursuant to the Contract with the Owner within 90 calendar days after the date the Contract is executed or within 30 days after such persons are assigned to perform work pursuant to the Contract, whichever is later.

7.4 Annual Appropriation

The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

7.5 Indemnification and Waiver of Liability

The Vendor agrees, to the fullest extent permitted by law, to indemnify and hold the Agent and Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Vendor negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her sub-consultants or anyone for whom the Vendor is legally liable.

The Vendor is not obligated to indemnify the Agent or Owner in any manner whatsoever for the Agent's or Owner's own negligence.

ARTICLE 7 – SEVERABILITY CLAUSE

If any term or provision of this Contract is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of the Contract, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the Parties.

ARTICLE 8 - BUILDING PLANS EXEMPTION POLICY

Pursuant to section 119.071(3)(b), Florida Statutes, all building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from inspection or disclosure under Florida’s Sunshine laws. The Vendor agrees to protect and ensure the confidentiality of such documents under its custody or control in conformance with the requirements of section 119.071(3), Florida Statutes, and all applicable law and shall include on the cover page of all plans the following statement:

“All drawings contained herein are confidential”

Any knowing violation of Chapter 119, Florida Statutes, may be sufficient grounds for immediate termination of the Contract by the Department of Management Services.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written above.

VENDOR

Attest:

APPROVED:

By _____
(Corporate Secretary's Signature)

By _____
, President

As Witnessed:

By _____

(Corporate Seal)

DEPARTMENT OF MANAGEMENT SERVICES

Attest:

Approved:

By _____

Real Estate Development and Management
Department of Management Services

By _____

Tom Berger, Director
Real Estate Development and Management
Department of Management Services

As Witnessed:

By _____