



Program Services Agreement

Technical Assistance for Federal Funding Opportunities in the Inflation Reduction Act

This Program Services Agreement (**Agreement**) is entered into by and between Philadelphia Energy Authority (**PEA**) and [company name] (**the Contractor**), as of _____, 202_.

Background

- A. PEA is a municipal authority and political subdivision of the Commonwealth of Pennsylvania, formed by the City of Philadelphia under the Pennsylvania Municipality Authorities Act, 53 Pa. C. S. § 5601 *et seq.* (**the Act**) to develop and finance energy efficiency and clean energy supply projects, educate consumers, and promote a vital clean energy sector in Philadelphia.
- B. [Brief background on the Contractor.]
- C. PEA is leading the City of Philadelphia's Inflation Reduction Act (**IRA**) strategy in partnership with the City of Philadelphia's Office of Sustainability. PEA leads programs and projects that align closely with the goals of the IRA. The IRA is a once-in-a-generation opportunity to bring \$5 billion in climate funding to Philadelphia. The recently-passed IRA includes \$369 billion in federal climate-related funding with a focus on equity. Philadelphia is well-positioned to receive funds as a leader in building an equitable clean energy economy.
- D. Contractor will lead technical assistance in designing and implementing PEA's strategic plan to maximize Philadelphia's IRA funding potential.

Agreements

In consideration of the mutual promises made herein, the parties, intending to be legally bound, agree as follows:

1. Term of Agreement

This Agreement is effective as of the date in the first paragraph of the Agreement and will continue through December 31, 2025 or the delivery of all final deliverables, unless earlier terminated in accordance with its terms.

2. Services

a. Services. Contractor shall complete tasks and develop deliverables in accordance with the requirements and specifications set forth in Attachment A (Scope of Work) in accordance with the terms and conditions set forth herein.

b. Reports. On a monthly basis during the Term of the Agreement, Consultant will submit to PEA a written status report describing its activities during the preceding month, including the current status of activities (with an explanatory narrative when appropriate). The precise content and format of the status report shall be determined by the parties.

3. Personnel

a. Project Managers. Both parties shall designate a project manager to serve as the main point of contact between the parties (the Contractor Project Manager and PEA Project Manager, respectively). The scope of the services provided by Contractor and conduct of the Contractor's personnel engaged in the provision of services that is not specifically outlined in this Agreement must be coordinated with and assented to by PEA Project Manager at all times.

b. Continuity of Contractor Personnel. Contractor will use its best efforts to ensure the continuity of Contractor employees assigned to perform the Services hereunder.

4. Compensation and Expenses

PEA shall pay Contractor for its Services based on Contracted deliverables at pricing listed on the attached Pricing Schedule as Attachment B.

Payments will be made upon submission of invoices by Contractor. Invoices should be submitted based upon satisfactory completion of services and submission of deliverables.

Contractor must provide PEA with a signed IRS Form W-9 and PEA shall issue an IRS Form 1099 in connection with the payments which Contractor receives hereunder.

5. Change Orders

Any material additions, revisions, or adjustments to the Services, including cost, period for provision of the Services or delivery dates, will be effected only pursuant to a written order signed by an authorized representative of both parties. If PEA initiates a change order request, Contractor will promptly respond to such request in writing. If Contractor initiates a change order

request, PEA failure to affirmatively accept the request within a reasonable period of time shall be deemed a rejection.

6. Work Product

Contractor acknowledges that the deliverables specified herein are “work for hire” and hereby transfers and assigns to PEA the ownership of all deliverables including all copyrights to works of authorship created by Contractor on behalf of PEA. Contractor represents and warrants that it has good title to all deliverables and that they do not infringe the intellectual property rights of others.

7. Standard of Care

If Contractor provides professional services under this Agreement, Contractor shall perform the Work in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill, and diligence ordinarily exercised by members of the profession currently practicing under similar conditions.

Contractor shall perform, or cause to be performed, all Services in accordance with the specific standards, methods and requirements set forth in this Agreement and all applicable laws rules and regulations applicable to the Services. Contractor shall maintain all licenses required to perform the Services.

8. Insurance

At all times during the term of this Agreement, Contractor and its subcontractors, shall maintain in full force and effect, at its expense, a commonly available commercial general liability policy of insurance through a company or companies rated A- or above by A. M. Best providing coverages for workers' compensation, comprehensive automobile insurance and commercial general liability. In addition, Contractor providing professional services shall maintain all required professional liability insurance.

9. Indemnity

Contractor agrees to unconditionally indemnify and hold harmless PEA, its affiliates, and their respective agents, employees, offices, directors, and owners, from and against all liabilities, costs, expenses, claims, disputes, damages, lawsuits, losses, or assessments (including attorney's fees) suffered or incurred in connection with any claim asserted by any party (regardless of the form of or forum in which such claim may be asserted) whether (1) based upon Contractor's negligent or willful act or omission, or that of anyone employed, retained, or utilized by Contractor, (2) based upon events or activities of Contractor during the rendering or performance of, or attempts to render or perform, the services of Contractor for PEA in accordance with this Agreement, or (3) based on failure to deliver clear, non-infringing title to any deliverables.

Any amount reasonably required to be paid pursuant to the above shall be paid to PEA on demand and may, at PEA's option, be deducted from or offset against any debt, obligation or liability of PEA to Contractor in such order as PEA deems advisable.

10. Force Majeure

Notwithstanding any provision of this Agreement, neither party shall have any responsibility or liability for any failure, error, malfunction, or delay resulting from events due to any cause beyond its reasonable control, including, but not limited to sabotage, fire, flood, explosion, acts of God, epidemics, civil commotion, strikes, stoppages or labor or industrial action of any kind, riots, insurrections, war or acts of government power or equipment failure (including that of any common carrier, or transmission line), emergency condition or cause. Further, neither party shall be liable for any failure to perform any of its obligations under this Agreement if such performance would result in it being in breach of any law, regulation, requirement or provision of any government or government agency in accordance with which it is required to act, as it shall determine.

Where a force majeure event has occurred that prevents to any extent a party in the performance of its obligations under this Agreement, the party that is unable to perform shall promptly notify the other party and shall be excused from further performance or observance of the obligations(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance as soon as possible and to whatever extent possible without delay. The parties shall negotiate in good faith to adopt amendments to deadlines or other provisions included herein that give effect to excused delays in performance.

11. Termination for Cause

Either party (**the Non-defaulting Party**) may terminate the Agreement immediately upon notice to the other party (**the Defaulting Party**), or at such later date as the Non-defaulting Party may establish in its notice to Defaulting Party, upon occurrence of any of the following events:

- a. The Defaulting Party fails to perform any material covenant or obligation set forth in this Agreement if that failure is not cured within fifteen days after receipt of written notice from the Non-defaulting Party.
- b. Any representation or warranty made by the Defaulting Party is false or misleading in any material respect when made.
- c. The insolvency, liquidation, or bankruptcy of the Defaulting Party.

12. Remedies

In the event of termination for cause by either party, the non-defaulting party shall have any remedy available to it in law or equity.

13. Post-termination Procedures

Upon expiration or earlier termination of this Agreement for any reason, all rights and obligations of the parties shall cease, except:

- a. Obligations for the payment of money that accrue prior to the date of termination shall survive termination.
- b. Obligations for the completion of reporting of key data and documentation about each Participant collected prior to the date of termination shall survive termination.
- c. Contractor shall deliver to PEA all materials or deliverables prepared for PEA during the term of this Agreement.
- d. Contractor's obligation to indemnify PEA shall survive termination.
- e. The parties' obligations under Section 11 (Confidentiality) shall survive Termination

14. Representations of Contractor

Contractor represents and warrants that:

- a. it is duly organized and in good standing in the jurisdiction of its organization and, if not organized in the Commonwealth, is licensed to do business as a foreign corporation in the Commonwealth;
- b. it has the power, authority and legal right to enter into and perform this Agreement and Contractor's execution and delivery of, and its performance under, this Agreement will not violate Contractor's organizational documents or any judgment, order, law or regulation;
- c. no consent, permission or approval is required for the valid execution and delivery by Contractor of this Agreement or for Contractor's performance hereunder, except those that have been obtained; and
- d. this Agreement has been duly authorized, executed and delivered by Contractor and constitutes a legal, valid and binding obligation of Contractor, enforceable in accordance with its terms, except to the extent limited by bankruptcy or similar laws or by general equitable principles concerning remedies.

e. Contractor is not subject to backup withholding because Contractor is exempt from backup withholding, Contractor has not been notified by the Internal Revenue Service (IRS) that Contractor is subject to backup withholding, or the IRS has notified Contractor that Contractor is no longer subject to backup withholding.

15. Assignment

Neither this Agreement nor any duties or obligations under this Agreement may be assigned by PEA or Contractor without the prior written consent of Contractor and PEA; provided that Contractor may engage subcontractors to assist with its performance so long as it remains liable for its obligations.

16. Subcontracting

Contractor may employ subcontractors to complete its obligations under this Agreement but shall remain fully liable for the supervision of such subcontractors and the completion of all of Contractor's obligations. Contractor shall ensure that all subcontractors comply with Philadelphia City taxes and licensing requirements and may be required to submit compliance documents to PEA from time to time. Contractor shall track whether subcontractors are designated Minority, Women or Disabled-Owned Business Enterprises and provide that information and supporting documentation to PEA for work undertaken as part of the Program. Contractor shall procure its subcontractors in compliance with [2 CFR § 200.318-326](#).

17. Relationship of the Parties

Contractor is an independent contractor. Nothing in this agreement shall be interpreted to create a partnership or make Contractor a coventurer or an agent of PEA. Employees, subcontractors or agents of Contractor shall not be deemed to be employees of PEA for any purpose. Contractor will determine the method, details, and means of performing the Services, and Contractor will supply all tools, equipment, and supplies required to perform the Services.

18. Non-Exclusivity; Non-Contravention

Contractor is under no obligation to work exclusively with PEA, and may accept engagements, work, and assignments outside of the Project on a regular basis. PEA has no obligation to work exclusively with Contractor, or to continue this collaboration after completion of the Project.

19. Notices

Unless otherwise specifically provided in this Agreement, all notices, consents, waivers, authorizations and approvals given under this Agreement must be in writing and may be telecopied, delivered by hand, mailed by first class, registered mail (return receipt requested) or sent by FedEx or similar courier service and addressed as follows:

If to Contractor:
[Name]
[email]

If to PEA:
Katie Bartolotta
kbartolotta@philaenergy.org

With a copy to:
[Name]
[email]

With a copy to:
Emily Schapira
eschapira@philaenergy.org

[mailing address]

Philadelphia Energy Authority
1400 J.F.K. Blvd. City Hall, Room 566
Philadelphia, PA 19107

Each party may change the address to which its communications are delivered by giving notice to the other party. Any communication given in accordance with this Section will be deemed to have been given to a party upon its receipt thereof.

20. Audits, Inspection Rights, Records

a. **Audits.** From time to time during the term of this Agreement and for a period of five (5) years after termination of this Agreement, PEA may audit all aspects of the Contractor's performance under this Agreement, including but not limited to its billings and invoices, at Contractor's office. If so requested, Contractor shall submit to the requesting party all vouchers or invoices presented for payment pursuant to this Agreement, all canceled check, work papers, books, records, and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Agreement. All books, invoices, vouchers, records, reports, canceled checks and other materials shall be subject to periodic review and audit. Notwithstanding the foregoing Contractor shall not be required to maintain such documentation in excess of five (5) years from the expiration or termination of this Agreement.

b. **Independent Reports.** If requested by PEA, Contractor shall submit an independent report prepared and certified by a Certified Public Accountant (CPA) acceptable to PEA.

c. **Inspection.** All services and materials provided under this Agreement shall be subject to inspection and review by PEA and city, state and federal representatives. Contractor shall cooperate with all inspections and reviews conducted in accordance with the provisions of this Agreement. Such inspection and review of Contractor's rendering of services and materials, including without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with Customers, review of staffing demographics and job descriptions, verification of account accuracy, and meetings with any staff members who are either directly or indirectly involved in providing services and materials under this Agreement.

d. **Availability of Records.** Contractor shall make available at Contractor's office, during the term of this Agreement, all records pertaining to this Agreement for the purpose of inspection, audit, or reproduction by any authorized PEA representative, or the Pennsylvania Auditor General, and any other federal, state or City auditors.

e. **Retention of Records.** Contractor shall retain all records, books of account and documentation pertaining to this Agreement for a period of five (5) years following expiration or termination of this Agreement; however, if any litigation, claim, or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims, or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.

21. Nondiscrimination

This Agreement is entered into in concert with the terms of the Philadelphia Home Rule Charter and in its performance. Contractor shall not discriminate nor permit discrimination against any person Contractor because of race, color, religion, gender identity or expression, national origin or sex. In the event of such discrimination, the Authority may terminate this Agreement forthwith.

In addition, Contractor shall, in performing the Agreement, comply with the provisions of the Fair Practices Ordinance of the Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 04-86 (prohibiting discrimination on the basis of Human Immunodeficiency Virus infection), as each may be amended from time to time and which, as applicable, prohibit, among other things, discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information, or domestic or sexual violence victim status, or other act or practice made unlawful under Chapter 9-1100 or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania.

In accordance with Act 57 of 1998, 62 Pa.C.S. § 3701, in the hiring of employees for the performance of work under the Agreement or any Subcontract, neither the Contractor nor any of its Subcontractors, nor any person acting on their behalf shall discriminate, by reason of gender, race, creed or color, against any citizen of the Commonwealth who is qualified or available to perform the work to which the employment relates.

Neither the Contractor nor any of its Subcontractors, nor any person acting in their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the Agreement on account of gender, race, creed or color.

In the event of any breach of this Article, PEA may, in addition to any rights and remedies available under this Agreement, or at law or in equity, immediately cancel, terminate or suspend this Agreement, and all payments for Work not yet performed under this Agreement may be forfeited for a violation of the terms and conditions of this Section. In addition, a violation of any provisions of this Section may serve as grounds for suspension and debarment of the Contractor or its subcontractors from contracting activities by the City.

22. Chapter 17-400 of the Philadelphia Code

Contractor agrees to include the following paragraph, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed on projects as part of the Project:

“In accordance with Chapter 17-400 of the Philadelphia Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring tenure of employment, promotion, terms privileges or condition of employment, on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Agreement entitling the Authority to all rights and remedies provided in this Agreement or otherwise available in Law or equity.”

Contractor further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Agreement entitling the Authority to all rights and remedies provided herein or otherwise available in Law or equity.

Authority to all rights and remedies provided herein or otherwise available in Law or equity.

23. Entire Agreement; Amendments

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the performance of services by Contractor for PEA and contains all of the covenants and agreements between the parties with respect to the rendering of the Services. Any amendment or modification of this Agreement will be effective only if it is in writing and signed by both parties.

24. Partial Invalidity

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

25. Governing Law; Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Each party consents to jurisdiction and venue in courts in the Commonwealth of Pennsylvania.

Signatures

As evidence of their intent to be legally bound, the parties have signed this agreement as of the date set forth in the first paragraph.

Philadelphia Energy Authority

Contractor

By: _____

By: _____

Emily Schapira

[Name]

President and CEO

[Title]

Attachment A: Scope of Work

[to be added]

Attachment B: Pricing Schedule

[to be added]