

**CONTRACT NO. 1158**

This number must appear  
on all invoices

**PORT OF PORTLAND  
AMENDMENT NUMBER 2  
PERSONAL SERVICES CONTRACT  
Energy Savings Performance Contracting Technical Energy Audit Services**

**Parties:** Port of Portland ("Port")  
P.O. Box 3529  
Portland, Oregon 97208

McKinstry Essention, LLC ("Provider")  
5005 3rd Ave S  
Seattle, WA 98134

**RECITALS**

- A.** The parties entered into a Personal Services Contract effective December 19, 2017, (the "Contract") under which Provider offers Preliminary and Technical Energy Audit Services (the "Services") to the Port.
- B.** Amendment No. 1, executed on January 30, 2018, amended the Contract to add new Contract Sections: Section 22. FEMA Standard Terms and Conditions; Section 23. Community Development Block Grant Addendum; and Section 24. Uniform Administrative Requirements.
- C.** The parties now wish to amend the Contract as follows:
1. Add a new Contract Section titled "Energy and Infrastructure as a Service."

**AGREEMENT**

**1 SERVICES**

Section 2.1 is amended to modify Schedule 2.1 General Scope of Services to add a new section 2.1.6. as follows:

**2.1.6 Energy and Infrastructure as a Service**

**DEFINITIONS:**

**Energy/Infrastructure as a Service Provider (E/laaS):** For purposes of this General Scope of Services, E/laaS is the Provider named in this Contract.

### **Scope of Services**

Purchases made under this Contract Section are delivered “as-a-service”. This as-a-service Contract is designed to deliver energy efficiency and renewable energy projects using private finance. The Provider’s investment in the assets is repaid by energy savings (**see A.3, A.4 and A.5 regarding financing, below**) and these repayments are categorized in terms of accounting treatment as service fees, i.e., expenses, on the Owner’s operating statement. The Provider shall own the assets; own the tax benefits of the assets; and provide the energy savings guarantee over the term of the Contract. The Contract shall include a purchase option should the Owner wish to exit the Contract at any time. At the end of the term, the assets shall be returned to the Owner at market value or removed by the Owner at the Owner’s expense.

Provider shall establish a special purpose vehicle (SPV) that will contract with the Owner; contract with the Provider; contract with third parties delivering services for the project; plan, design, and construct the project; finance the project; provide measurement and verification; own the assets; and maintain the assets over the Contract term. The Provider shall receive the value of rebates, grants, incentives, environmental attributes, and discounts related to the implementation of the assets.

Upon the Owner’s acceptance of the recommendations described in the Preliminary Assessment Report (**see A.1 below**), the Owner and Provider agree to negotiate a Contract amendment for each scope within the project selected by the Owner (**see B. Scopes, below**). The Distributed Infrastructure Services Agreement (DISA) shall be negotiated between the parties and incorporate agreed state and local requirements for such work that may include, when applicable, small, local & disadvantaged business participation goals and good faith efforts; project labor agreements; workforce development goals; and wage & benefit requirements.

The Provider will provide a comprehensive array of services required to deliver the project. Each project typically consists of the following phases.

#### **A. SERVICES**

##### **1. Preliminary Assessment (PA)**

- a. The PA shall consist of exploring opportunities for an organization to improve energy performance and realize cost savings. This assessment shall conclude in a written report delivered to the Owner. The written report shall contain, at a minimum, an analysis of energy operating costs to identify potential cost savings and may include the following:
  - i. Utility data analyses.
  - ii. Preliminary Facility Condition Assessments – high-level site-walks on select buildings or systems.

- iii. Preliminary design/construction estimates.
- iv. Preliminary energy savings calculations.
- b. The PA shall be conducted by the Provider at no cost to the Owner.

## **2. Detailed Assessment & Design (DAD)**

The Detailed Assessment & Design (DAD) identifies energy conservation opportunities at various facilities and include a corresponding Project Development Plan (PDP) – see **A.6 Project Development Plan (PDP)**, below. The DAD shall detail essential services and improvements that will reduce energy consumption in facilities including, without limitation, an upgrade in capital energy-related equipment; improved building operations; fuel cost savings and improved demand management; and assistance in meeting environmental management responsibilities. This phase shall conclude with a written report and technical drawings, including but not limited to:

- a. Detailed Facility Condition Assessment.
- b. Detailed site-walks on select buildings or systems.
- c. Established energy baseline (derived from actual energy measurements taken in the year preceding the implementation).
- d. Total equipment and construction costs.
- e. Projected savings by energy conservation measure by year for the term of the Contract.
- f. Projected greenhouse gas emission savings by year for the term of the Contract.
- g. Maintenance support services for the term of the Contract.
- h. Measurement and verification for the term of the Contract.
- i. Any capital avoidance calculations with yearly savings per year for the term of the Contract.
- j. The DAD shall be signed and stamped/sealed by a professional engineer licensed to practice in the state where the facility is located.

## **3. As a Service Project Funding**

If off-credit financing is desired by the Owner, Provider shall fund the project “as-a-service”. Off-credit financing requires that energy savings repay the Providers investment over the agreed term following generally accepted accounting procedures and rules established by the U.S. Internal Revenue Service. Off-credit financing is structured so that the assets under this Contract are categorized and shown on the SPV’s balance sheet.

## **4. Financing of Scopes that Do Not Generate Energy Savings**

If the project includes scopes that do not generate energy savings or scopes that generate energy savings that cannot be measured and verified using established protocols, the Provider may, at the Owner’s option, fund the project with on-credit debt and/or equity. Example scopes include doors, windows, insulation, roofing, window films, etc. On-credit financing is structured so that assets financed under this Contract are categorized and shown on the Owner’s balance sheet.

**5. Combined On- and Off- Credit Financing**

The Owner and Provider may agree to deploy a combination of off- and on-credit financing for discrete scopes under this Contract. Should the Owner opt for combined financing, Provider shall prepare Service Orders that include the respective forms of financing.

**6. Project Development Plan (PDP)**

Provider shall develop a plan addressing the phasing, packaging, and scheduling of the project.

**7. Design and Construction Services**

As provided for in Section 6 of this Contract, Provider shall design, construct, install, implement, maintain and measure and verify savings from such energy, water and operating saving measures, i.e. assets.

**8. Implementation of the Energy/Infrastructure as a Service Project**

Provider shall implement and execute the full project following the plan agreed in the DAD. As a part of this phase, the Provider shall:

- a. Provide a documented guarantee clearly communicating the energy and operational savings process that defines responsibilities of both the Provider and the Owner.
- b. Provide monitoring, measurement and verification of energy and cost avoidance throughout the contract period. This process requires baseline measurements to be recorded during the PIBA phase.
- c. Provide a documented process of crediting the Owner if energy savings and operational savings are not met on an annual basis.
- d. Schedule the preventative maintenance and service, up to and including full replacement, for all work installed, throughout the contract period.
- e. Supervise and direct all phases of the work, using its best skill and attention. The Provider shall be solely responsible for all feasibility studies, design and construction means, methods, techniques, sequences, measurements and verification and procedures and for coordinating all portions of work inclusive of a construction services contract if utilized.
- f. Supply and maintain warranties for equipment included in the project along with operation and maintenance manuals to the Owner.

**9. Measurement and Verification**

Provider shall implement a Measurement and Verification Plan (M&V) that includes, as a minimum, information on the overall project level and energy conservation measures specific items. The M&V plan will be developed during

discussions between the E/laaS and the Owner, however the plan should contain these essential elements:

- a. Projected savings from the project
- b. Details of baseline conditions and data collected.
- c. As-built construction documentation
- d. Pre and post measurement and verification
- e. Determination of what items will be verified.
- f. Detailed engineering analysis.
- g. Schedule of M & V activities.
- h. Description of how energy and cost savings are calculated.
- i. A risk and responsibility matrix:
  - i. Include in this section the minimum and maximum maintenance required to ensure the guarantee.
  - ii. Assign preventative maintenance responsibilities between E/laaS and Owner.

**10. Maintenance and/or Operations Optimization**

- a. Provider shall perform system commissioning, and maintenance of the project assets. Alternatively, the Owner and Provider may agree to have the Owner's in-house or third-party service providers maintain the equipment. Provision of maintenance for the Provider's assets that is performed by the Owner shall meet the requirements of warranty and operations & maintenance documentation.
- b. If agreed with the Owner as an option to this Contract, Provider may provide work order management and labor optimization services and solutions.

**11. Infrastructure and Energy Master Planning (IEMP)**

- a. In close cooperation with the Owner and the Owner's third-party consultants, Provider shall create an Integrated Energy Master Plan (IEMP) that integrates the Owner's Campus Master Plan, Long-Range Strategic Plan, and energy/infrastructure plan into a single, cohesive, and unified plan.
- b. An IEMP addresses the following systems: In-building systems, chilled water, steam & condensate, electrical, on-site power generation, grid-supplied power, thermal energy storage, battery energy storage, on-site renewable energy generation, telecommunications, potable water, storm water, sanitary/sewer, and distribution (of the above).
- c. The IEMP addresses the following topics:
  - iii. Demand side audit & analysis for buildings
  - iv. Energy saving initiatives for buildings
  - v. Fuel & energy sources (electricity, coal, natural gas, fuel oil)
  - vi. Energy consumption & cost
  - vii. Energy saving initiatives for central plants (including changes in fuel type)

- viii. Renewable energy initiatives
- ix. Zero net energy and carbon reduction strategies
- x. Resiliency & risk mitigation initiatives
- xi. Greenhouse gas emission reduction initiatives
- xii. Behavior-based energy conversation measures
- xiii. Capital investment recommendations

**B. SCOPES** to be assessed by the Provider and considered for implementation in the project may include but are not limited to:

1. **Energy Efficiency Measures**
  - a. Retro-Commissioning
  - b. HVAC Optimization
  - c. Active Energy Management
  - d. Smart Metering
  - e. Intelligent Thermostats and Sensors
  - f. Master System Integration
  - g. Remote Scheduling, Fault Detection and Control
2. **Energy Efficiency Capital Project Investments**
  - a. LED Lighting Retrofit
  - b. HVAC System Retrofit
  - c. Central Utility Plant and Distribution Retrofit
  - d. Thermal Energy Storage
  - e. Ground Source Geothermal Energy Systems
3. **Renewable Energy Capital Project Investments**
  - a. Solar PV Power
  - b. Battery Storage
  - c. Micro Wind Power
  - d. Biogas Power
  - e. Waste to Energy Power
  - f. Microgrids
4. **Transportation**
  - a. Fleet Electrification and EV Charging
5. **Building System Infrastructure**
  - a. Door, Window, Insulation, Film and Roof Replacements (Building Envelope)
  - b. Indoor Air Quality and Filtration

**C. PRICING OF SERVICES**

1. **Preliminary Assessment (PA)**

- a. The Preliminary Assessment and Report are produced at the Provider’s expense (no cost to the Owner).

**2. Implementation of the E/laaS Project**

- a. The following services, accompanying assets, and solutions included in the Contract shall be consolidated and amortized by the Provider and included in the service fee:
  - i. Design Assessment and Design (DAD)
  - ii. Financing
  - iii. Project Development Plan (PDP)
  - iv. Design and Construction Services
  - v. Measurement and Verification
  - vi. Maintenance and/or Operations Optimization
  - vii. Integrated Energy Master Planning (Optional)

**D. PRICING**

Assessment	Fee
Preliminary Assessment (PA)	No Charge
Design and Detailed Assessment (DDA) - 0 to 100,000 SF	\$0.18 - \$0.30
Design and Detailed Assessment (DDA) - 100,000 to 500,000 SF	\$0.10 - \$0.20
Design and Detailed Assessment (DDA) - 500,000+ SF	\$0.06 - \$0.12
Pre-Construction, Project/Construction Management, General Conditions, Permits, Overhead & Profit, Performance Bonds, Construction, Commissioning and Warranty Services	Included in Energy/Infrastructure as a Service
Financing/Funding Costs	
Measurement and Verification	

- 1. The following schedule shall apply for the Energy/Infrastructure as a service offering:
- 2. The following schedules, described in Schedule 3.1 in the Contract, shall apply to Amendment 2:
  - a. Schedule 3.4 – Travel Expense Reimbursement Guidelines
  - b. Schedule 4.2.1 – Sample Invoice
  - c. Schedule 14.5.1 – Sample Insurance Certificate
  - d. Schedule 16.3 – Conflict of Interest – Waivers

**2 INTEGRATION**

Except as expressly provided otherwise by this Contract Amendment Number 2, all provisions of the Contract, as it may have been previously amended, shall remain in effect.

**3 AUTHORITY OF SIGNERS**

The individuals signing below represent that they are authorized by the party for which they sign to contractually bind that party to the provisions of this Contract Amendment Number 2.

**Provider:**

McKinstry Essention, LLC

By:

DocuSigned by:  
*Michael Grabham*  
97ED0C20810E479...

Print name:

Michael Grabham

As its:

Vice President, National Energy

Date signed:

10/20/2021

Phone:

214-213-0906

**Port:**

Port of Portland

By:

DocuSigned by:  
*Bobbi Matthews*  
052FD30738F4479...

Print name:

Bobbi Matthews

As its:

Director, Administrative Services

Date signed:

10/21/2021



**Certificate Of Completion**

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Document Pages: 8	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Yessenia Carlos
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	7200 NE Airport Way
	Portland, OR 97218
	Yessenia.Carlos@portofportland.com
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10/18/2021 9:29:37 AM	Yessenia.Carlos@portofportland.com	

**Signer Events**

Michael Grabham  
 MichaelG@McKinstry.com  
 Vice President, National Energy  
 Security Level: Email, Account Authentication (None)

**Signature**

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Accepted: 10/18/2021 9:45:28 AM  
 ID: 1b58a87a-da1c-4388-9625-024383b70966  
 Company Name: Port of Portland

Yessenia Carlos  
 yessenia.carlos@portofportland.com  
 Administrative Coordinator II  
 Port of Portland  
 Security Level: Email, Account Authentication (None)

**Completed**

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 ID: d0acc26c-3159-49f6-a5e0-2c5e04cfd806  
 Company Name: Port of Portland

Bobbi Matthews  
 Bobbi.Matthews@portofportland.com  
 Director, Administrative Services  
 Security Level: Email, Account Authentication (None)

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 052FD30738F4479...  
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 ID: c96226e0-e716-4090-b290-7902daeb37a3  
 Company Name: Port of Portland

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<b>Carbon Copy Events</b> Bill Greek BillGr@McKinstry.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 10/21/2021 9:32:41 AM
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Jessica Goforth Jessica.Goforth@omniapartners.com Contract Manager OMNIA Partners, Public Sector Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 10/21/2021 9:32:41 AM
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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	10/18/2021 9:44:21 AM
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- ii. send us an email to [evelyn.bian@portofportland.com](mailto:evelyn.bian@portofportland.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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- Until or unless you notify Port of Portland as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Port of Portland during the course of your relationship with Port of Portland.