

Ordinance 200177

PROFESSIONAL SERVICES AGREEMENT

Beneficiary: City of Kansas City, Missouri CONTACT: Daniel Williams, Fleet Manager PHONE: 816-513-6948 EMAIL: Daniel.Williams@KCMO.org	Contracting Agency:	Metropolitan Energy Center 31 W 31 St Kansas City, MO 64108	
	PO#	S-17D01	
	Project Director:	Kelly Gilbert Phone: 816-531-7283 Email: kelly@metroenergy.org	
	Award Name:	Mid-America Clean Trucks	
	Award Number:	DE-97763201	
	CFDA Number:	66.039	

This Professional Services Agreement ("Agreement") is by and between Metropolitan Energy Center, Inc., hereinafter referred to as "MEC", and City of Kansas City, Missouri ("Beneficiary"), and is effective this ____ day of _____, 2019.

Background

WHEREAS, MEC has been awarded a Cooperative Agreement Award No. DE-97763201 (the "Award") with the U.S. Environmental Protection Agency ("EPA"); and

WHEREAS, the EPA Award was based upon MEC's proposal (the "Proposal"); and

WHEREAS, MEC desires to contract with the Beneficiary so that the Beneficiary can support the performance of the EPA Award; and

WHEREAS, the Beneficiary is willing and able to provide support in the performance of the EPA Award to MEC in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

Agreement

1. THE AGREEMENT

As used herein, the term "Agreement" shall mean, include and consist of this agreement, the Exhibits attached hereto, the Provisions Incorporated by Reference (collectively the "Contract Documents").

The Exhibits to this Agreement, all of which are incorporated herein by reference, are as follows:

- | | |
|-----------|--|
| Exhibit A | Scope of Services; |
| Exhibit B | Budget for Services; |
| Exhibit C | Beneficiary Fleet Data Worksheet |
| Exhibit D | Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements; |
| Exhibit E | The EPA Cooperative Agreement (as amended by Modification No. 1); |

- | | |
|-----------|--|
| Exhibit F | EPA General Terms and Conditions Effective April 27, 2017; |
| Exhibit G | 2017 Clean Diesel Funding Assistance (DERA) Programmatic Terms and Conditions; and |
| Exhibit H | Prime Recipient application/proposal as approved by EPA dated 1 October 2017. |

2. **SCOPE OF SERVICES**

Beneficiary shall perform and accomplish in compliance with the requirements of the Proposal and Award, and in a manner satisfactory to MEC, those tasks described in the Scope of Services set forth in Exhibit A, (the "Services"). The Beneficiary shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession who is currently practicing under similar circumstances.

3. **TIME OF PERFORMANCE**

- A. Term - Beneficiary shall begin performing the Services on the issuance of a Notice to Proceed by MEC and shall work diligently to complete the Services by 31 December 2019, to the satisfaction of MEC, in accordance with the terms provided herein.
- B. Extension of Term - The time frame for the completion of the Services under this Agreement may be extended at MEC's sole discretion upon request by the Beneficiary timely submitted no later than 60 days prior to the then current date for completion of services. Any request for an extension of time to complete the Services shall be made in writing to MEC. The Beneficiary shall provide to MEC, upon request, documentation to substantiate the justification for additional time needed to complete the Services. MEC shall provide the Beneficiary with written notice of its decision within thirty (30) days of the date that MEC received the written extension request.

4. **BUDGET**

Attached hereto as Exhibit B and made a part hereof is Beneficiary's budget corresponding to the Services, which budget is approved by EPA for the use of funds awarded to MEC for performance of the Services (the "Budget"). The Beneficiary agrees to perform all Services under this Agreement in conformance with the Budget, including upholding the financial commitment (\$776,160) corresponding to the Local Cost Share amount and equating to 77% of Beneficiary total project cost.

5. **COMPENSATION**

- A. Maximum Obligation - During the term of this Agreement, the compensation paid by MEC to Beneficiary for all Services specified herein shall not exceed \$231,840, corresponding to the Federal Reimbursement amount in the Budget. Reimbursement shall be made as a percentage of all eligible costs, with 77% being applied to the required Local Cost Share amount.
- B. Method and Time of Payment - Payment shall be made in the following manner:
- (i) Beneficiary shall submit invoices to MEC no more frequently than monthly. All

invoices shall (a) provide an itemization of vehicles and equipment purchased; (b) provide copies of bills of sale, vehicle titles and CARB or Smartway certification for new vehicles or equipment purchased; (c) provide a summary of all other direct costs incurred by Beneficiary in performance of Services; and (d) other information identified on MEC's Beneficiary invoice form. Further, Beneficiary must provide invoices detailing any sales or other disposition of scrapped vehicles and/or equipment. Such sales are considered Program Income under EPA Programmatic Terms and Conditions, Sections E.8.3.5 and E.8.3.6. All invoices will be based on actual cost incurred.

- (ii) MEC will reimburse Beneficiary within sixty (60) calendar days after MEC's approval of each invoice.
- (iii) In order for MEC to release payment on each invoice, Beneficiary must be current on all program documentation required under the Services.
- (iv) In no event shall MEC be obligated to pay any invoices for work exceeding the scope of (i) the Services or (ii) the Budget, unless both MEC and the EPA have previously approved such changes in writing.
- (v) Beneficiary shall maintain complete records of all costs incurred under this Agreement. All such records shall be maintained on a generally accepted accounting basis for the minimum period required by 2 CFR 200.333 (generally a minimum period of three (3) years after the date of submission of the final expenditure report with certain exceptions specified in the regulation). Cost records shall be clearly identifiable and readily accessible to authorized representatives of MEC or of the Government pursuant to 2 CFR 200.336 for inspection and audit.
- (vi) Unless specifically identified in this Agreement, MEC shall not be responsible for any additional costs and expenses incident to Beneficiary's performance of the services hereunder including but not limited to, costs of equipment provided by the Beneficiary, all fees, fines, licenses, bonds or taxes required of or imposed against the Beneficiary and any other of Beneficiary's costs of doing business.

C. Compensation After Termination - In the event that this Agreement is terminated as provided herein, the Beneficiary shall solely be compensated for such sums as are due and unpaid to the Beneficiary for Services provided, properly invoiced and recognized as allowable by MEC up to the effective date of the termination. The Beneficiary shall submit its termination settlement invoice within thirty (30) days of the date of written notice of termination. The Beneficiary and any of its subcontractors, agents and legal representatives agree to accept this amount of compensation in full satisfaction of all claims for compensation under this Agreement.

D. Appropriation of Funds; Disqualified Costs. Beneficiary acknowledges that funds expended for the purposes of the Agreement pursuant to the EPA Award are appropriated by State and/or Federal sources. In the event that such EPA Award funds are not appropriated, or in the event that the EPA shall determine for any reason that it will not provide further funds to MEC under the EPA Award, MEC shall give Beneficiary immediate notice in writing of the same, and this Agreement shall automatically terminate without penalty or termination costs within ten (10) calendar days of Beneficiary's receipt of such notice (and

upon giving such notice MEC shall not, in any event, be deemed in default hereunder). In such event, MEC will pay to Beneficiary all amounts due and owing Beneficiary for undisputed invoiced Services performed, provided that Beneficiary is not otherwise in default of this Agreement, for which MEC has received funding from the EPA; however, MEC shall not be obligated to pay to Beneficiary any costs for which MEC has not received reimbursement from the EPA. Beneficiary acknowledges and agrees that the EPA, in its sole and absolute discretion, may seek to recapture all or a portion of the EPA Award funds expended pursuant to this Agreement. In such event, Beneficiary shall tender to MEC the full amount of any repayment of EPA Award funds so disqualified by the EPA within the time period prescribed in the Recapture Notice from MEC detailing the known basis of such disqualification and the amount and terms of any such repayment request (the "**Recapture Notice**"). Should Beneficiary fail to tender any repayment to MEC within the time period prescribed in the Recapture Notice, Beneficiary shall be deemed in default hereunder. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend this Agreement.

6. **INDEPENDENT CONTRACTOR** Beneficiary will act as an independent contractor in the performance of the Services under this Agreement and not as an employee, agent, joint venture, or partner of MEC. Nothing in this Agreement shall be construed as creating or establishing the relationship of employer and employee between MEC and the Beneficiary or between MEC and any employees or agents of the Beneficiary. The Beneficiary retains the right to perform services for the general public during the term of this Agreement.
 - A. **Fees, Taxes and Benefits.** Beneficiary shall be responsible for the payment of all required business license fees and all taxes including Federal, State and local taxes arising from Beneficiary's activities under the terms of this Agreement. The Beneficiary and its employees/agents are not covered by the MEC Workers Compensation Insurance Policy, MEC liability insurance policies, MEC personnel policies, MEC performance evaluation and compensation systems or any MEC employee group benefit program.
 - B. **Liability of Beneficiary for All Services.** Beneficiary shall be liable for the performance of all Services under this Agreement and all work performed and materials supplied under any collateral agreements relating the Services, whether such Services, work or materials are performed or provided by Beneficiary or by its subcontractor. Beneficiary shall further be responsible for all costs associated with the performance of the Services, and materials supplied pursuant to this Agreement and by itself or any subcontractor, to the extent such costs exceed the Budget or are disqualified by MEC or the EPA.
 - C. **Beneficiary Supervision and Liability.** Beneficiary shall supervise and inspect the results and products of all Services performed by all its subcontractors and shall be obligated and liable for completion of all work by the subcontractors in accordance with the terms of this Agreement. Approval by MEC of a subcontractor shall in no way release the Beneficiary of its responsibility to fulfill its obligations under this Agreement, whether performed by Beneficiary or any subcontractor.
 - D. **Terms of Subcontracts.** All subcontracts shall include a clause identifying MEC as a third-party beneficiary of the subcontract, shall include a clause indemnifying MEC from all liability in connection with any Services performed under such subcontract, shall name MEC as an additional insured, and shall require the subcontractor to secure and maintain all insurance as set forth in this Agreement or required by the EPA Award (except and unless agreed to

in writing in advance by MEC). All subcontracts shall include any Flowdown Clauses identified in paragraph 6 below.

7. COMPLIANCE WITH FEDERAL, STATE AND MUNICIPAL LAWS AND REGULATIONS

Beneficiary shall comply with applicable Federal, State and local laws, regulations and ordinances, Executive Orders, OMB Circulars, and agency requirements in the performance of all work under this Agreement. Beneficiary shall obtain all necessary Federal, State and local permits, authorizations, and approvals of all work performed under this Agreement.

8. FEDERAL AND/OR STATE TERMS AND CONDITIONS

- A. All terms and conditions of the EPA Grant (as hereinafter defined) are hereby incorporated by reference into this Subaward. The EPA Grant award/agreement consists of the Cooperative Agreement, plus the Flowdown Clauses as defined below (collectively, the “EPA Grant”).
- B. The following are incorporated by reference into this Subaward: (i) the EPA Grant clauses and requirements specifically identified in this Subaward, including all Exhibits and attachments; and (ii) even if not specifically identified in this Subaward, any and all clauses that are required by the EPA Grant or other applicable Federal, State, or local law, regulation, ordinance, Executive order, OMB Circular, or other agency requirement to be included in any subaward (collectively, the “Flowdown Clauses”).
- C. The Flowdown Clauses specifically identified in this Subaward include, but are not limited to, the following:
 - i. EPA General Terms and Conditions Effective April 27, 2017 or later
https://www.epa.gov/sites/production/files/201704/documents/epa-general_terms_and_conditions.pdf (included in this document as Exhibit F).
 - ii. FY2017 National Clean Diesel (Diesel Emissions Reduction Act) Programmatic Terms and Conditions https://www.epa.gov/sites/production/files/2017-6documents/dera_fy_17_national_terms_and_conditions.pdf (included in this document as Exhibit G).
 - iii. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 and 2 CFR 1500 at <http://www.eCFR.gov>.
 - iv. Prime Recipient application/proposal as approved by EPA dated 1 October 2017.
 - v. The Clauses required by Appendix II to 2 CFR Part 200;
 - vi. 40 CFR Chapter 1 Subchapter B.
 - vii. 2 CFR Part 180 Subpart C.
- D. The “Flowdown Clauses” shall apply whenever this form is incorporated by reference into any subaward, order, subcontract, purchase order (“PO”), agreement, other contractual document, or any quotation or solicitation (hereinafter referred to as “RFQ/RFP”) entered into or issued by the Prime Awardee or the Beneficiary.
- E. As used in the Flowdown Clauses, the term “contract” or “award” shall mean this Subaward, the terms “Government,” “Contracting Officer,” and the like shall mean the Prime Awardee, the term “Contractor” shall mean the Beneficiary, and the term “COTR” or “COR” and the like shall mean the Prime Awardee’s technical point of contact, except that the terms “Government,” “Contracting Officer,” and the like do not change: (1) when a right, act, authorization, or

obligation can be granted or performed only by the Government; or (2) when access to proprietary financial information is required.

- F. When any of the Flowdown Clauses specify a period of time within which the Prime Awardee is to provide any notice, information, or document to the Government, the Beneficiary must provide any such notice, information, or document to the Prime Awardee within a sufficiently shorter time in order to provide the Prime Awardee a reasonable opportunity to consider the Beneficiary's material and prepare its own submission before the EPA Grant deadline.
- G. The Beneficiary shall include the Flowdown Clauses and insert the provisions of this Article in all lower tier subawards or subcontracts, either verbatim or in substance, and by incorporation by reference or otherwise as appropriate.
- H. The Beneficiary hereby certifies to the same Certifications and Representations as were set forth in the EPA's Funding Opportunity Announcement. All such Certifications and Representation are hereby incorporated by reference into this Subaward.

9. REQUIREMENT FOR DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBERS.

- A. Beneficiary must provide to MEC its DUNS number and maintain a current DUNS number. Failure to provide and maintain a current DUNS number may result in termination of the Agreement under Section 16. The City's DUNS number is 073134231.
- B. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

10. WARRANTIES FOR PRODUCTS AND SERVICES [delete unless contract is for construction or equipment purchase or other high-capital projects]

Unless otherwise agreed by the parties hereto, the Beneficiary warrants that materials used to complete the Services contemplated hereunder will conform to any specifications, drawings, samples or other descriptions specified by MEC or required by the EPA, and that all items will be new or like-new, merchantable, of good material and workmanship and free from defect. Beneficiary further warrants that all materials installation methods shall comply with applicable building codes, manufacturers' specifications and applicable performance specifications and standards, if any. Such warranties, together with Beneficiary's Services representations as described in this Agreement shall survive inspection tests, acceptance of and payment for items and shall run to MEC, and its successors and assigns. Notice of any defect or nonconformance shall be promptly given by MEC to the Beneficiary, in writing, within twelve (12) months after acceptance. MEC may, at its option, following a reasonable opportunity for the Beneficiary to cure a defect, return for credit or require prompt correction or replacement of any defective or nonconforming items or have the defective item corrected or replaced at the Beneficiary's expense, provided that such replacement item is of comparable material and quality, in accordance with the specifications set forth in this Agreement. Items required to be corrected or replaced shall be subject to all terms and conditions of this Agreement. The warranties set forth in this paragraph shall not be extended as a result of the repair or replacement of any such defective item.

11. CLEAN CITIES MEMBERSHIP AND REPORTING

For a period of no less than five (5) years from the date of this Agreement, Beneficiary will maintain membership with Kansas City Regional Clean Cities Coalition or Central Kansas Clean Cities Coalition; and perform duties required by membership, including a) providing data and information for the Clean Cities Annual Report, b) providing data for a quarterly price report, if applicable, and c) making appropriate personnel available at least once per year for alternative fuel best practices sharing to other members via webinar, seminar, case study, or other method.

12. INTELLECTUAL PROPERTY RIGHTS, COPYRIGHT AND OWNERSHIP OF DOCUMENTS

Except as specifically provided in this paragraph, Beneficiary acknowledges that it is bound by the provisions of 2 CFR 200.315, 37 CFR Part 401, and 35 USC Sections 200-212, which grant certain rights in Intellectual Property prepared under this Agreement. and which are incorporated by reference herein.

No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Beneficiary. Ownership of all intellectual property rights, designs, reports, drawings, studies, estimates, models, computations, and other related items ("Work Product") prepared under this Agreement shall vest in MEC upon payment to the Beneficiary for all Services rendered herein through the date of the expiration or termination of this Agreement. Beneficiary hereby assigns to MEC all right, title and interest in any Work Product, including any copyrights or other intellectual property therein.

13. PUBLIC RELATIONS AND APPROVALS

- A. Neither the Beneficiary nor its employees, agents, representatives, contractors, subcontractors or affiliates shall issue any media releases, public announcements or public disclosures of any kind (including, but not limited to, promotional or marketing material) relating to this Agreement or the Services without prior written consent of MEC. This paragraph shall survive the expiration or earlier termination of this Agreement.
- B. MEC agrees it will not make any press release or other formal publicity, nor conduct any marketing activities directly related to the work by Beneficiary under this Agreement without first consulting with Beneficiary.
- C. Marketing or publicity efforts by Beneficiary must be sent for approval by email or postal mail to Project Director to the following address or email address, or through any means, electronic or otherwise, agreeable to both Project Director and Beneficiary:

Kelly Gilbert
Metropolitan Energy Center
31 W 31 St
Kansas City, MO 64108
kelly@metroenergy.org

- D. Except where MEC is obligated by a primary contract to obtain such approvals from the EPA, Project Director will make comments or approve marketing or publicity efforts within 10 working days. With time-sensitive publicity and marketing efforts, the Project Director will endeavor to make comments or approvals as quickly as possible.

14. CONFLICTS OF INTEREST

- A. Beneficiary hereby certifies that the company and any personnel assigned to work for MEC under this Agreement are not involved in other community projects that would pose a conflict to the Beneficiary's ability to successfully carry out the responsibilities of this Agreement. If potential conflicts arise during the term of this Agreement, the Beneficiary shall notify MEC immediately in writing and discuss the potential issues and work with MEC to address any potential issues arising from the situation. MEC retains the final sole discretion to determine whether a conflict exists and the appropriate steps to be taken in the event of a conflict.
- B. The Beneficiary covenants that it presently has no known personal or pecuniary interest and shall not knowingly acquire such interest, directly or indirectly, which could conflict in any manner with the performance of Services under this Agreement, including the submission of impartial reports and recommendations.

15. **INSURANCE**

A. The Beneficiary is self-insured.

16. **INDEMNIFICATION**

To the fullest extent permitted by law, Beneficiary shall indemnify and hold harmless MEC and its agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, providing that any such claim, damage, loss or expense is not attributable MEC's act of negligence or deliberate intention to cause harm.

17. **CONFIDENTIALITY**

- A. Except as is necessary in the performance of this Agreement, or as authorized in writing by the other party, the parties shall not disclose to any person, institution, entity, company, or other third party any information directly or indirectly related to the parties that the other party (or its employees, agents and contractors) receives as a result of performing its obligations under this Agreement, or of which it is otherwise aware.
- B. The parties (and their employees, agents and contractors) shall not disclose, except to each other or to the agency pursuant to applicable federal regulations, any proprietary information, professional secrets or other information, records, data and data elements (including, but not limited to, protected health information) collected and maintained in the course of carrying out the responsibilities under this Agreement, unless such party receives prior written authorization to do so from the other party or as required by law.
- C. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The parties shall ensure that their respective employees, agents and contractors are aware of and shall comply with the aforementioned obligations.
- D. Beneficiary may be asked to use the Internet as a means for communicating about matters concerning this Agreement. Any such communication could be randomly intercepted and otherwise used or disclosed by anyone, including someone specifically interested in MEC's matter or business. To facilitate the performance of Beneficiary's services under this Agreement, MEC approves the use of Internet communications, but requests caution regarding the use of Internet communications for sensitive communications.

- E. Remedy. If Beneficiary commits a breach of the above provisions, MEC may enforce any right it may have at law for damage in, and in addition, shall be entitled, as of a matter of right to have such provisions specifically enforced by any Court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to MEC and that money damages will not provide an adequate or complete relief to MEC. MEC shall have the right to enforce its rights under this Article immediately and without first resorting to the procedures set forth in Articles 18, Disputes, or 19, Default.
- F. The parties acknowledge that the Beneficiary is a Missouri political subdivision subject to the Missouri Sunshine Law (Chapter 610) and that the parties did not exchange and will not exchange any confidential information in the negotiation and implementation of this Agreement.

18. DISPUTES

- A. In the event that Beneficiary becomes aware of a dispute between MEC and the Beneficiary regarding either funding or performance, Beneficiary shall bring this fact to the attention of MEC and both parties shall immediately attempt to resolve the concern at the lowest level possible within 15 days. If the parties cannot expeditiously agree to a resolution, then Beneficiary shall, within fifteen (15) days of the time it first knew or should have known of the dispute, or within five (5) days of the failure to reach a resolution at the lowest level, whichever is greater, provide MEC with a written statement of the disputed matter with adequate supporting justification, requesting a resolution at a higher level. Within ten (10) days of receipt of the written dispute notification, senior representatives from MEC and Beneficiary, each with decision making authority over the dispute, shall meet and attempt to resolve the issue. In the event the senior representatives are unable to resolve the dispute within 30 days, MEC may exercise its rights under Article 21, Termination, or pursue any other remedy available to it.
- B. At no time shall the existence of a dispute result in the failure of Beneficiary to continue performance of both its contractual obligations and the disputed work during the pendency of any disputed issue.

19. DEFAULT

In the event there is a default with respect to any of the provisions of this Agreement or its obligations under it, the non-defaulting party shall give the defaulting party written notice of such default. After receipt of such written notice, the defaulting party shall have fifteen (15) days in which to cure any monetary default and thirty (30) days in which to cure any non-monetary default, provided the defaulting party shall have such extended period as may be required beyond the thirty (30) days if parties agree that the nature of the cure is such that it reasonably requires more than thirty (30) days and the defaulting party commences the cure within the thirty (30) day period and diligently pursues the cure to completion. The non-defaulting party may not maintain any action or effect any remedies for default against the defaulting party unless and until the defaulting party has failed to cure the same within the time periods provided in this paragraph. The provisions of this paragraph, however, do not apply to disputes arising under paragraph 17, Confidentiality.

20. TERMINATION

- A. Termination for Convenience. MEC may terminate this Agreement with Beneficiary for its convenience at any time. In the event of a Termination of Convenience, Beneficiary shall immediately stop performance of the work and follow the close-out procedures set forth in Subparagraph C below. Within fifteen (15) days of any Termination for Convenience, the Beneficiary shall present to MEC a written statement, with supporting justification, of the direct costs incurred as a result of the termination, to include a summary of any outstanding submitted by unpaid invoices.
- B. Termination for Default. MEC may terminate this Agreement with Beneficiary for Default in the event that, in the sole discretion of MEC, it is determined that Beneficiary has breached its obligations under paragraph 19, Confidentiality, or has failed to adequately correct any other default under the procedure set forth in Paragraph 19, Default, of this Agreement. Any amounts due Beneficiary as a result of this termination will first be offset by costs incurred by MEC as a result of Beneficiary's default. In the event that Beneficiary does not cure the default to the satisfaction of MEC, Beneficiary shall immediately stop performance of the work and follow the close-out procedures set forth in Subparagraph C below.
- C. In the event of any such termination, the Beneficiary shall deliver to MEC, as the property of MEC, all designs, reports, drawings, studies, estimates, computations, memoranda, documents, and other papers or materials either furnished by MEC or prepared by or for the Beneficiary under this Agreement.

21. ASSIGNMENT

The Beneficiary's rights, obligations and duties under this Agreement shall not be assigned in whole or in part without the prior written consent of MEC. None of the Services covered by this Agreement shall be subcontracted without the prior written approval of MEC.

22. PROHIBITED INTERESTS

No officer, member or employee of MEC, no member of MEC's governing body and no public official of the locality or localities in which the Services are being carried out who exercises any functions or responsibilities in the review and approval of this Award shall participate in any decision related to this Agreement affecting, either directly or indirectly, his or her own personal interest.

23. CHANGES AND ADDITIONAL SERVICES

This Agreement constitutes the entire agreement between MEC and Beneficiary and it may not be amended or altered in any way except by a written amendment signed by both parties to this Agreement; provided, however, that at any time during the term of this Agreement MEC, by written notice to Beneficiary, may unilaterally modify the scope of the Services to be furnished by Beneficiary under this Agreement. If such modification causes an increase or decrease in the amount of Services to be provided by Beneficiary or in the amount of time required for their performance, equitable adjustment shall be made to the provisions of this Agreement for payments to Beneficiary. Further, at any time, MEC may, in writing, order the Beneficiary to stop all work (the "Stop Work Order"). Upon receipt of the Stop Work Order, the Beneficiary will immediately stop all work under the Agreement. MEC will not be liable to the Beneficiary for any Services provided, or any costs or expenses incurred, by the Beneficiary after its receipt of the Stop Work

Order and during the pendency of the Stop Work Order.

24. AUDITS

MEC, and the agency as applicable pursuant to 2 CFR Part 200 as amended by 2 CFR Part 1500, shall have the right to audit the Beneficiary to verify the Beneficiary is in compliance with the terms of this Agreement and with applicable EPA requirements. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

25. CERTIFICATIONS BY BENEFICIARY

Beneficiary must deliver to MEC one executed original of each of the following documents: (a) Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements, as set forth in Exhibit D hereto; and (b) Assurance of Compliance, Nondiscrimination in Federally Assisted Programs (collectively, the "Certifications"), as set forth in Exhibit E hereto. Notwithstanding the foregoing, even if Beneficiary does not deliver executed originals of the Certifications to MEC, by executing this Agreement, the Beneficiary represents to MEC that: (i) Beneficiary has reviewed and understands the Certifications; (ii) Beneficiary will comply with all requirements described in the Certifications; and (iii) the representations made by Beneficiary in the Certifications are truthful, accurate, and complete.

26. GOVERNING LAW

This Agreement shall be interpreted under and governed by the laws of the State of Missouri. Whenever there is no applicable state statute or decisional precedent governing the interpretation of this Agreement, then the federal common law of contracts shall govern. The venue of any court action relating to this agreement shall vest in any federal or state court having jurisdiction over Jackson County, Missouri.

27. NOTICES

Any action by MEC under this Agreement may be taken by Kelly Gilbert, Executive Director, or such other person as MEC may designate for such purpose by written notice to Beneficiary. All compensation and written notices to Beneficiary shall be considered to be properly given if mailed, delivered in person or emailed to:

Daniel Williams
Fleet Manager
5300 Municipal, 2nd floor/East
Kansas City, MO 64120
Daniel.Williams@KCMO.org

All invoices, written reports and written notices given to MEC shall be considered to be sufficiently given if mailed, delivered in person or e-mailed to:

Kelly Gilbert
Metropolitan Energy Center
31 W 31 St
Kansas City, Missouri 64108
kelly@metroenergy.org

28. ENTIRE AGREEMENT

This Agreement cancels and supersedes all previous discussions, negotiations, understandings, representations, warranties and agreements, written or oral, relating to the subject matter of this Agreement, and contains the entire understanding of the parties hereto.

29. SEVERABILITY

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

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original and all of which constitute one agreement that is binding upon all of the parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the dates set forth below.

METROPOLITAN ENERGY CENTER

CITY OF KANSAS CITY, MISSOURI

By:



Kelly Gilbert
Executive Director

By:

Earnest Rouse
Director of General Services

Date: 7/11/2019

Date: _____

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Randall J. Landes

Director of Finance

Approved as to form and legality:

James Brady
Assistant City Attorney

Exhibit A

SCOPE OF SERVICES

In consideration of compensation specified elsewhere in the Agreement, Beneficiary agrees to perform the following tasks:

1. **Meetings and Cooperation.** As part of its obligations under this Agreement, Beneficiary will schedule, participate in and conduct periodic and other meetings with MEC and the designated representative of the EPA to discuss such matters as procedures, progress, coordination, scheduling, and the status of the Services, among others. MEC reserves the right to determine the frequency of such meeting based upon progress of the Services. The Beneficiary agrees to maintain a list of risks and issues relating to the Services, including, but not limited to, mitigation methods, responsible party identification, and deliverable status, and the Beneficiary agrees to alert MEC within three (3) days after learning of such risks and issues.
2. **Progress Reports.** On or before the tenth day of each month following the end of a calendar year (i.e. January 10), Beneficiary shall submit a progress report (hereinafter the "Progress Report") to the Project Director. The Progress Report shall update the status of the Services performed by Beneficiary pursuant to this Agreement during the preceding year, and shall include such detail as may be requested by MEC. Each Progress Report shall be supported by such documentation as may be required by MEC. The form of any such Progress Report, and the information required to be included therein, shall be prescribed by the Project Director in her sole and absolute discretion.
3. **Special Status Reports.** The Beneficiary must report the following events by e-mail as soon as possible after they occur:
 - i. Developments that have a significant favorable impact on the Services.
 - ii. Problems, delays, or adverse conditions which materially impair the Beneficiary's ability to meet the objectives of the Agreement, which materially impair the MEC's ability to meet the objectives of the EPA Award, or which may require EPA to respond to questions relating to such events from the public. The Beneficiary must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition: (1) Any single fatality or injuries requiring hospitalization of five or more individuals. (2) Any significant environmental permit violation. (3) Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes. (4) Any incident which causes a significant process or hazard control system failure. (5) Any event which is anticipated to cause a significant schedule slippage or cost increase. (6) Any damage to Government-owned equipment in excess of \$50,000. (7) Any other incident that has the potential for high visibility in the media.

4. **Tasks and Deliverables.**

Task 1: Project Management and Planning

The Beneficiary will manage project planning and execution of activities in order to achieve project objectives. The activities will include the writing of reports, invoice control, and expense tracking. Other tasks include providing MEC with updates from subcontractors, attendance at bi-monthly status review meetings, tracking and reporting information regarding the performance of the project, and administrative tasks.

Task 2: Community Outreach and Engagement

Community Outreach and Engagement encompasses media relations, stakeholder contact management and public engagement, including community workshops and public events. Multiple

media channels will be utilized to describe the projects occurring under the grant, including local news outlets, social media, and newsletters.

Subtask 2.1 The Beneficiary will identify key media contacts in their participating community and determine the best timing inviting stories. Typically, local media may be invited to attend community workshops and will be invited to celebrate project completion, i.e. during showcase of new vehicles.

Subtask 2.2 Project staff will work with project partners to convene an educational event explaining the project and the alternative fuels involved to other community members. In addition to broad awareness, the emphasis will be to strengthen understanding and support for the alternative fuel project, among members of school boards or city councils in a decision-making role regarding the project, as well as other potential fleets or fueling customers who could participate with the lead institution.

Task 3: Vehicle Procurement

Beneficiaries complete actions necessary to enable the purchase of eight (8) vehicles. MEC staff will provide coaching and consultation as needed. Aggregated purchasing will be utilized where possible.

Subtask 3.1 Beneficiaries procure vehicles in accordance with their own policies and procedures. Including, but not limited to drafting specifications, issuing Requests for Quotes (RFQs), Evaluating Quotes, Selecting Vehicle Vendor, Negotiating Agreements with Vendor, etc.

Subtask 3.2 The Beneficiary will report on vehicle procurement process to MEC to assess any areas of risk.

Subtask 3.3 The Beneficiary will report on destruction of the engine and chassis frame of each vehicle being replaced per EPA scrappage requirements.

Task 4: Data Management

Data is tracked and reported throughout the project. The Beneficiary will assist in compiling data for annual reports, as well as results of educational outreach efforts, including agendas, dates, sign-in sheets, and contact information. Once vehicles and/or station equipment become operational, fuel use, vehicle performance, equipment and maintenance issues will be compiled as applicable.

Subtask 4.1 Compilation of vehicle and/or station data

Subtask 4.2 Sign-in sheets and agendas from educational workshops and events will be collected and retained to identify the number and type of individuals communicated with. Contact information for relevant partners and stakeholders should be retained and reported.

Exhibit B**BUDGET FOR SERVICES**

Budget expenditures cover the period between October 1, 2017, and December 31, 2019, corresponding with the project term. This budget period may be amended through contract between MEC and EPA.

Beneficiary agrees to stay within budget. Overspending may result in non-payment of such overspending. Any deviations from the budget must be pre-approved and signed off by all parties.

Spending Category	Federal Cost Share	Beneficiary Cost Share	Budget Totals
Equipment	\$231,840	\$776,160	\$1,008,000
Contractual	\$0	\$0	\$0
Supplies	\$0	\$0	\$0
Other Direct Costs (labor, shipping, P.E., permits, etc.)	\$0	\$0	\$0
Total Project Costs	\$776,160 \$231,840	\$776,160	\$1,008,000

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Exhibit C

Fleet Data Worksheet (attached)

EXHIBIT D**CERTIFICATION REGARDING LOBBYING, DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS; AND DRUG FREE WORKPLACE REQUIREMENTS**

Signature of this form provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," 2 CFR Part 180 and 2 CFR Part 1532 "Governmentwide Debarment and Suspension (Nonprocurement)," and 2 CFR Part 182 and 2 CFR Part 1536 "Governmentwide Requirements for Drug-Free Workplace (Grants)." Beneficiary should review the instructions for certifications included in the regulations before completing this form. The certifications shall be treated as a material representation of fact upon which reliance will be placed when MEC determines to award the Agreement.

1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subawardees shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADDITIONAL LOBBYING REPRESENTATION

Applicant organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, are not eligible for the receipt of Federal funds constituting an award, grant, or loan.

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory,

and program administrative matters.

Check the appropriate block:

The applicant is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986?

☐ Yes ☐ No

If you checked "Yes" above, check the appropriate block:

The applicant represents that after December 31, 1995 it ☐ has ☐ has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The Beneficiary hereby certifies to the best of its knowledge and belief that it and its principals, affiliates and approved subcontractors:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not within a three (3) year period preceding the date of the Agreement been convicted of or had a civil judgment rendered against them for commission of (i) fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, (ii) violation of Federal or State antitrust statutes, or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 3(b) of this certification; and
 - D. Have not within a three (3) year period preceding the date of this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

In the event Beneficiary is unable to certify to any of the statements in this certification, the Beneficiary shall attach an explanation to this certification that must be approved in writing by MEC prior to the commencement of the Agreement.

4. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub.L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

- (1) The Beneficiary certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Beneficiary's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

- (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Beneficiary's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Agreement, the employee will:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace not later than five calendar days after such conviction;
 - (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose EPA Award activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant, loan, and cooperative agreement;
 - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (i) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
 - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- (2) The Beneficiary may insert in the space provided below the site(s) for the performance of work done in connection with the specific Agreement:

Place of Performance: (Street address, city, county, state, zip code)

☐ Check if there are workplaces on file that are not identified here.

5. SIGNATURE

As the duly authorized representative of the Beneficiary, I hereby certify that the Beneficiary will comply with the above certifications.

Name of Beneficiary: _____

Printed Name and Title of
Authorized Representative: _____

Signature: _____

Date: _____

EXHIBIT E**ASSURANCE OF COMPLIANCE, NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS**

(Hereinafter called the “**Beneficiary**” or “**Applicant**”) HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L.88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub.L.93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub.L.93-438), Title IX of the Education Amendments of 1972, as amended (Pub.L.92-318, Pub.L.93-568, and Pub.L.94-482), Section 504 of the Rehabilitation Act of 1973 (Pub.L.93-112), the Age Discrimination Act of 1975 (Pub.L.94-135), Title VIII of the Civil Rights Act of 1968 (Pub.L.90-284), the Department of Energy Organization Act of 1977 (Pub.L.95-91), and the Energy Conservation and Production Act of 1976, as amended (Pub.L.94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant, either directly or as a subawardee of MEC, receives Federal assistance from the Environmental Protection Agency.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant, either directly or as a subawardee of MEC, by the Environmental Protection Agency, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant, either directly or as a subawardee of MEC, by the Environmental Protection Agency.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

Beneficiary Assurance

The Applicant shall require any individual, organization, or other entity with whom it subcontracts, subawards, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the Beneficiary shall be required to sign a written assurance form, however, the obligation of both recipient and Beneficiary to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Environmental Protection Agency, either directly or as a subawardee of MEC. Such information shall include, but is not limited to, the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Environmental Protection Agency to be relevant to its obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to MEC or the Environmental Protection Agency, as appropriate, regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Environmental Protection Agency, Facilities of the Applicant (including the physical plants, building, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of MEC or an officer or employee of the Environmental Protection Agency specifically authorized to make such inspections. Instructions in this regard will be provided by MEC or the Director, Office of Civil Rights, U.S. Environmental Protection Agency.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, cooperative agreements, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicant, either directly or as a subawardee of MEC, by the Environmental Protection Agency, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representation and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

Beneficiary Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the EPA Award, it will comply with all applicable requirements of 10 C.F.R. 1040.5 [now 10 CFR 1040.4].

Designated Responsible Employee

Name and Title (Printed or Typed)

(____) ____ - ____
Telephone Number

Signature

Date

Applicant/Beneficiary's Name

(____) ____ - ____
Telephone Number

Address:

Date

Authorized Official:

President, CEO, or Authorized Designee

Name and Title (Printed or Typed)

(____) ____ - ____
Telephone Number

Signature

Date