

Department of Public Works

City Hall
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Racine, WI 53403
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Mark H. Yehlen, P.E.
Commissioner of Public Works / City Engineer

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Asst. Comm. of Public Works / Operations

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Asst. Comm. of Public Works / Engineering

August 31, 2011

Legistar Item: 11-6862

TO: Alderman Q.A. Shakoor, II, Chairman
Finance and Personnel Committee

FROM: Thomas M. Eeg *TME*
Assistant Commission of Public Works/Operations

RE: Focus on Energy Grant 42527/15606 – Grant Control No. 2011-029

We are requesting authorization to apply and accept a Focus on Energy Grant (Grant control No. 2011-029) from WE Energies for upgrading light fixture in the Library and park area lots.

The estimate project cost is \$8,400.00, with the grant in the amount of \$394.00. Funds for the project are available in Account No. 106.991.6750, Parking System LED Lights.



Program Manager Approval

Project/Grant: 42527/15606
 Grant Amount: \$394.00
 Project Cost: \$8,400.00
 Approved Date: 8/30/2011
 Approved By: Jason Nicholas

BUSINESS PROGRAMS GRANT AGREEMENT

Customer Profile

Customer Name: Racine, City of	Project Contact: Thomas Eeg
Tax ID: 39-6005581	Contact Address: 730 Washington Avenue, Room 302 Racine WI 53403-1441
Type of Business: Government - Local	Contact Phone: 262 636-9121
Focus on Energy Sector: Schools and Government	Contact Fax: 262 636-9142
Business Classification: Other	Contact Email: thomas.eeg@cityofracine.org

Certification

The following certifications are required in order for this form to substitute for the IRS Form W-9.

Under penalties of perjury, I certify that:

1. The number shown on this form is the correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest of dividends, or (c) The IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (including a U.S. resident alien).

Project Profile

Site Location: Library and park LED parking lot retrofit (8/11)
 75 7th St
 Racine WI 53403-1201

ELECTRIC PROVIDER: _____

GAS PROVIDER: _____

Estimated Baseline System Usage			Recommendations	Estimated System Savings			
Peak Summer Demand*	Annual			Description	Peak Summer Demand (kW)	Annual	
	Electric (kWh)	Gas (Therm)	Electric (kWh)			Gas (Therms)	\$ Saving
0.0000	25,236		2.0950 - LED CUSTOM LIGHTING, NOT OTHERWISE SPECIFIED LED custom lighting, not otherwise specified	0.0000	13,140		\$1,558.00
0.0000	25,236		<----- TOTAL ----->	0.0000	13,140		\$1,558.00

* Peak demand savings are those that are reduced during the periods of weekdays in June, July, or August. Please provide descriptions of all variables used in these formulas.

The undersigned agrees that to the best of my knowledge, the renewable or energy efficiency measure(s) listed above is/are representative of the project I expect to implement as part of the Focus on Energy program. I understand that grant amounts are determined from the customer specific data submitted on this agreement form and that grants for similar measures may vary from customer to customer based on specific cost and savings. Submission of this agreement does not guarantee that your project will receive funding or a specific level of funding. Focus on Energy may conduct a pre-installation inspection to verify potential savings. I agree, at Focus on Energy's discretion, that I am liable to refund to Focus on Energy some or all of the funding received for this project if Focus on Energy determines that I have misrepresented information such as but not limited to eligibility or project information. I have read and agree to the Grant Agreement Terms & Conditions below. Any customer receiving an incentive check may be contacted by an evaluator to verify service/equipment installation or be asked to participate in a customer survey. This agreement must be signed and returned by the Agreement Return Date below.

Customer Signature

Customer Name (Print)

Date

Focus Representative Signature

Focus Representative Name (Print)

Date

Agreement Return Date: 10/29/2011

Project Completion Deadline: 6/30/2012

GRANT AGREEMENT TERMS & CONDITIONS

This Focus on Energy Program Grant Agreement ("Agreement") is by and between the Focus on Energy Program ("Focus") and the applicant ("Customer"). Shaw Environmental and Infrastructure, Inc. ("Admin") is Administrator for Focus and bound by contract to Statewide Energy Efficiency and Renewable Administration, Inc. ("SEERA"). As Administrator, Admin is directed to act on behalf of Focus and SEERA. Admin, Focus and Customer may be individually referred to herein as a "Party" and collectively as the "Parties."

ARTICLE 1: PROJECT TERM AND DESCRIPTION

The Term of this Agreement shall begin on the Approval Date as shown on the Agreement and shall run continuously through the Project Completion Deadline, unless extended or terminated pursuant to this Agreement or by mutual agreement of the parties. The energy savings project (the "Project") shall be as described on the Agreement and approved by Admin. The Project shall be implemented in accordance with the Agreement.

ARTICLE 2: PROJECT PAYMENTS

Admin shall direct the fiscal agent to make payment in the amount set forth in the Agreement upon Admin's receipt and acceptance to Admin's satisfaction of a Completion Notice and any other required project documentation as defined in Article 3 hereof. Admin shall be under no obligation to make any payments to the Customer if SEERA does not provide the funds to Admin for this purpose or if Admin is not under contract with SEERA for this purpose. Focus reserves the right to decrease incentive amounts if the criteria and information considered at the time of project approval are not met at project implementation. This includes but is not limited to project cost and project scope. Customer is only entitled to one payment per project measure. Should customer or its representative make duplicate application for payment of project measure, Admin reserves the right to recover any payments made in excess of the entitled project payment. Focus excludes internal, non-contracted labor for private companies or individuals when calculating the total project cost.

Incentives are available on a first-come, first-served basis. This offer is subject to change or termination without notice at the discretion of the Focus on Energy Program. Some Focus participating electric and/or natural gas providers have incentive programs outside of Focus on Energy. Customers of these providers might not qualify for incentives from both programs. These customers should check with their electric and/or natural gas provider to verify eligibility for dual incentives in order to comply with program rules.

ARTICLE 3: MISREPRESENTATION

Making false statements in any Focus on Energy incentive application is punishable by law. Any person who knowingly files an application containing any materially false information or who purposely and misleadingly conceals information commits a fraudulent act that subjects such person to criminal and civil penalties. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the Focus on Energy program. This article shall not limit other remedies that may be available for the filing of false or fraudulent applications, including, but not limited to, referral to law enforcement authorities.

ARTICLE 4: PROJECT IMPLEMENTATION

The Customer's procurement, installation and implementation (completion) of renewable and/or energy efficiency measures shall be accomplished in accordance with the requirements outlined in the approved Agreement. The Customer shall deliver to Admin a Completion Notice by the Project Completion Deadline noted in the Agreement. Customer will provide invoices for equipment purchased or service performed as well as documentation that verifies that the renewable and/or energy efficiency measures, (i) have been properly installed, (ii) are functioning properly and (iii) have the potential to generate energy savings if properly maintained and operated. All projects are expected to comply with federal, state and local codes. All equipment must be new. Used or rebuilt equipment is eligible only when pre-approved by Admin. Displaced equipment must be removed and not reused. Equipment purchased under a capital lease structure may qualify for an incentive, but must be pre-approved by Admin before project initiation or entering into the equipment lease.

Should Admin discover that the project was not implemented as attested to in the Completion Notice, Customer shall be in breach of the Agreement and subject to recovery of any incentive payment made by Focus. At the discretion of Focus, the Customer is liable to refund to Focus funding received for this project if Focus determines that the customer has misrepresented information such as, but not limited to, eligibility or project information.

ARTICLE 5: RIGHT TO INSPECT

Admin, and its designated representatives, shall have the right to observe and inspect all Project work in any of the Customer's facilities at any reasonable time for a period of two (2) years from the incentive payment date. The Customer and its subcontractors shall maintain accurate records of the Project work (e.g., installation records, invoices, and maintenance information) that is performed hereunder for a period of two (2) years from the date of incentive payment under this Agreement. Admin and SEERA shall have the right from time to time and at all reasonable times during the term of the Agreement and for a two-year period thereafter to inspect such records of the Project.

ARTICLE 6: MONITORING AND VERIFICATION

Admin, and its designated representatives, shall have the right to monitor energy use/production prior to and after installation of the project or to perform an inspection of the project to evaluate program efficacy for a period of two (2) years from the date of incentive payment under this Agreement.

ARTICLE 7: MANNER OF PERFORMANCE

The Customer shall perform its responsibilities under this Agreement in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Customer shall make all reasonable attempts to ensure that all Project work, as described in the Agreement, is performed in accordance with current professional standards and with the diligence and skill expected for the performance of such work.

ARTICLE 8: REPRESENTATIONS/WARRANTY

Focus does not endorse any particular ally, manufacturer, product, or system design by offering an incentive. Focus is not responsible for any tax liability imposed on the recipient as a result of the payment of Rewards. Focus makes no representation or warranty, and assumes no liability with respect to the quality, safety, performance, or other aspect of any design, consulting, product, system, equipment, or appliance installed or received and expressly disclaims any such representations, warranties, and liability, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. Focus does not guarantee that installation and operation of energy-efficient equipment will result in reduced usage or in cost savings. Focus is not responsible for the proper disposal/recycling of any waste generated as a result of this project. Focus is not liable for any damages, including any incidental or consequential damages, arising out of the operation or malfunction of the products, equipment, or appliances, or the installation thereof.

ARTICLE 9: DEFAULT AND TERMINATION

9.1 Subject to Section 9.3, this Agreement shall remain in effect until the Project Completion Deadline as specified in Article 1 hereof unless a Party is in breach of any provision of this Agreement.

9.2 In the event that SEERA terminates, for any cause, Admin's Contract with SEERA, which terminates Admin's right to act as Administrator of the Focus on Energy Program, responsibility for this Agreement transfers to the new Program Administrator.

9.3 This Agreement may be terminated at Admin's sole discretion if Customer does not complete implementation of the Project on or before the Project Completion Deadline, unless extended by mutual agreement of the Parties.

ARTICLE 10: INDEMNIFICATION AND DAMAGES

The Customer shall protect, indemnify, defend and hold harmless Focus, Admin, SEERA, the State of Wisconsin and participating utilities, their respective affiliates, subsidiaries, parent companies, officers, directors, agents, and employees, against all losses, damages, expenses, fees, costs and liability arising from any design, consulting, product, system, equipment, or appliance. The Customer agrees that such obligations under this Article shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage. To the maximum extent permitted by law, the Customer agrees to limit Admin's liability to the Customer for any reason to the total amount of the payments identified in this Agreement. This limitation shall apply regardless of the cause of action or legal theory pled or asserted. Customer hereby expressly waives the right to specifically enforce this Agreement.

ARTICLE 11: PUBLICITY

The Customer shall not use Admin's or SEERA's corporate name, logo, identity, any affiliation, and any related logo including the "Focus on Energy" name, logo, or identity, for any marketing, advertising or solicitation without prior written consent of Admin, which consent may be withheld in Admin's sole and absolute discretion. When referencing Focus involvement with any project, the Customer shall collaborate with Admin to prepare any press release and to plan for any news conference and agrees to provide Admin, for its prior written approval, a written copy of any advertisements or promotional material regarding this program prior to publishing any such advertisements or promotional material. Focus reserves the right to publicize the Customer's participation in the Focus on Energy program unless requested otherwise in writing and submitted to bpforms@focusonenergy.com.

ARTICLE 12: REVIEW AND DISCLAIMER

Admin's execution of this Agreement with the Customer and any review of the design, construction, operation, or maintenance of the Project by Admin or any of its subcontractors shall not constitute any representation or warranty by Admin as to the economic or technical feasibility, operational capability or reliability of any renewable and/or energy efficiency measures or the capability or reliability of any market provider performing any work on the Project. The Customer shall in no way represent to any third party that Admin's execution of this Agreement or any reviews by Admin or its subcontractors, including, but not limited to, Admin or its subcontractors review of the design, construction, operation, or maintenance of the Project is a representation or warranty by Admin as to the economic or technical feasibility, operational capability or reliability of the renewable and/or energy efficiency measures or an endorsement of the contractor performing work on the Project. The Customer is solely responsible for the technical feasibility, operational capability and reliability of the renewable and/or energy efficiency measures.

ARTICLE 13: ACCEPTANCE

The Customer is required to acknowledge its understanding and acceptance of the terms and conditions of this Agreement by returning an executed copy of this Agreement to the Customer's Focus on Energy Advisor or to Focus on Energy – Business Programs Office, 8383 Greenway Blvd, Suite 600, Middleton, WI 53562 on or before the Agreement Return Date. If the Customer's Focus on Energy representative does not receive the executed copy of this Agreement by the Deadline, Admin will consider that Customer's decision is to decline the terms and conditions contained herein and this Agreement will be of no force and effect.

ARTICLE 14: MISCELLANEOUS

§14.1. Governing Law. This Agreement shall be interpreted according to the laws of the State of Wisconsin.

§14.2. Assignment. Admin may assign, transfer or convey this Agreement or any of Admin's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the consent of Customer.

§14.3. Severability. If any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect, and such invalid or unenforceable provision shall be construed in a manner so as to give the maximum valid and enforceable effect to the intent of the parties expressed therein.

ARTICLE 15: ENTIRE AGREEMENT

The Agreement constitutes the entire understanding and acceptance of the parties concerning its subject matter and supersedes all other agreements, whether oral or written. No modification shall be binding on either party unless reduced to writing and signed by both parties.