

## **City of Racine, Wisconsin**

### **Letter of Intent and Investment Grade Audit**

This Letter of Intent ("Agreement") is made and entered into as of 8 / 25 , 2022, between McKinstry Essention, LLC ("McKinstry") and the City of Racine, WI, 730 Washington Avenue Racine, Wisconsin 53403.

#### **WITNESSETH**

WHEREAS, MCKINSTRY is a company with experience and technical and management capabilities to provide for the discovery, engineering, packaging, procurement, installation, financing, maintenance and monitoring of energy and water saving measures at facilities similar in size, function and system type to Owner's facilities; and

WHEREAS, the City of Racine has reviewed the OMNIA contracting program and has selected MCKINSTRY to provide these services described herein; and

WHEREAS, the City of Racine desires to enter into an agreement to have MCKINSTRY perform an Investment Grade Audit to determine the feasibility of entering into an Energy Savings Performance Contract, as well as other professional services; and

WHEREAS MCKINSTRY enters into this Contract in reliance on the City of Racine, et al's representations concerning the appropriateness and validity of using the OMNIA contracting agreement as the procurement mechanism under which this contract is procured, and City of Racine as a fiduciary acknowledges such reliance by MCKINSTRY.

THEREFORE, the parties agree as follows:

#### **1. Investment Grade Audit Project Package**

McKinstry agrees to complete the Investment Grade Audit project package and present the City of Racine, et al (the "Owner"), a final report within 90 calendar days from the execution of this Agreement. However, McKinstry and the Owner may mutually agree to extend the dates on all associated deadlines for this Agreement in the event the Owner wishes to expand the scope of work to a degree sufficient enough to warrant an extension.

The Investment Grade Audit will be completed for the following Federal Funding energy project to evaluate, develop, specify and price the following energy efficiency and solar PV energy systems projects at the following locations. Locations are subject to change:

**FEDERAL FUNDING REQUEST – Revised May 4, 2022**

SELF-SUSTAINING SHOVEL READY PROJECT	COST ESTIMATE	% OF PROJECT COST
<u>Federal Funding Request via Congressionally Directed Spending</u>	<u>\$1,235,000</u>	<u>50%</u>
Local Contribution	\$1,235,000	50%
Total Project Cost Estimate	\$2,470,000	100%

**SUMMARY OF SELECTED LOCATIONS AND SOLUTIONS**

SELECTED LOCATIONS	ELECTRIC VEHICLE CHARGING	SOLAR PV	ENERGY EFFICIENCY UPGRADES	SUSTAINABLE ENERGY DEMONSTRATION SITE
<b>Bus Storage Garage Site</b> 1900 Kentucky Street City of Racine, WI 53405	9 City EV Buses and charging in process per existing project	X		X
<b>City Hall Annex</b> 800 Center Street City of Racine, WI 53403			X	
<b>Safety Building</b> 730 Center Street City of Racine, WI 53403			X	

NOTE: All information included herein is preliminary and intended for high-level estimates. All information requires further investigation for final scope selection, equipment selection, final pricing, and/or implementation strategies.

The Owner agrees to assist McKinstry in performing the Investment Grade Audit. The Owner agrees to work diligently to provide full and accurate information. McKinstry agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

## **2. Agreement with MCKINSTRY**

Except, as provided for below, within 60 days after McKinstry's submission of the final Investment Grade Audit report, The Owner shall compensate McKinstry for performance of the development work by payment to McKinstry of no more than **\$102,00 (One hundred two thousand dollars)**. The owner and McKinstry will work cooperatively to fill out all Department of Energy forms to receive the federal funding match and will also explore all possible Federal, State and Local grants, rebate programs, and other available funding sources. This fee will be included in the full project budget estimate.

- a. The Owner shall have no payment obligations at the time of execution of this Agreement, but acknowledges that the fee indicated above shall be incorporated into McKinstry's project costs, in the event McKinstry and Owner execute an Energy Savings Performance Contract within 60 days, or such longer period as the parties may mutually agree upon in the form of a executed contract, after submission of the final Investment Grade Audit report by McKinstry to Owner.
- b. Should the Owner opt not to proceed with the Energy Savings Performance Contract, even after McKinstry has met the financial and energy savings requirements mutually agreed to by both parties, the Owner shall then compensate McKinstry for performance of the Investment Grade Audit by payment to McKinstry of no more than the above negotiated audit fee. The negotiated audit fee above does not represent the true cost of executing the audit analysis and is, in effect, a "walk-away" fee. McKinstry reserves the right to include the actual development costs into the overall project. The Investment Grade Audit does not include the actual construction design cost portion of the project. The cost for construction design will be included in the final contract. McKinstry may opt to perform, at their own risk, some of the construction design during the Audit phase as a way to expedite the development the project. This design cost is separate from the Investment Grade Audit and will be included in the final Energy Savings Performance Contract's total implemented cost.
- c. The Owner acknowledges that this Agreement is the governing agreement for each additional engineering scope sufficient for subsequent phases of Energy Savings Performance Contracts. Each additional engineering study or audit sufficient for subsequent phases of will incur a compensation requirement for each additional audit.

Persuant to the work above and the terms following:

**MCKINSTRY ESSENTION, LLC**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date:** \_\_\_\_\_

---

**CITY OF RACINE**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## TERMS & CONDITIONS

**PERFORMANCE OF WORK.** McKinstry shall perform the scope of work ("Work") specified herein. McKinstry shall furnish all services necessary to perform the Work and perform the Work to completion diligently, expeditiously and with adequate forces. Customer shall use its best efforts to provide all information, materials, documents, and assistance that is reasonably required for McKinstry to perform all aspects of the Work.

**PAYMENTS.** Customer shall pay McKinstry the compensation specified herein ("Price") for the value of Work that McKinstry has completed, as the Work is completed. Customer shall pay McKinstry within thirty (30) days of receiving an invoice. McKinstry will be entitled to interest at the maximum rate allowed by law on all sums overdue and unpaid from the date due.

**WARRANTIES.** Customer shall receive a one (1) year warranty that covers labor and materials provided by McKinstry as part of the Work. This warranty commences on the date that the portion of the Work warranted is substantially complete. However, McKinstry makes no warranty whatsoever regarding components of the Work provided by third parties, and in such case the terms of the third party's warranty, including manufacturers' warranties, if any, shall apply between Customer and the third party. The warranties in this section are exclusive and in lieu of all other warranties, whether express or implied.

**TERMINATION.** Either Party may terminate this agreement upon fifteen (15) days written notice to the other Party. In such case the rights and obligations of each Party that arose prior to the termination date shall survive such termination, except that McKinstry shall have no obligation to perform Work after termination.

**DISPUTES.** In case of dispute between the Parties, the Parties will attempt to negotiate a resolution. If a dispute remains unresolved more than thirty (30) calendar days after the commencement of negotiation, then the Parties shall pursue mediation. If any dispute remains unresolved more than sixty (60) calendar days after the commencement of mediation, then either Party may commence binding arbitration. No litigation will be commenced by either Party unless all of the foregoing steps have been pursued to completion.

**CHOICE OF LAW, VENUE.** The validity, interpretation, and performance of this agreement shall be governed by the laws of the state in which the Work is performed. The venue for resolving any dispute shall be the county in which the Work is performed.

**FORCE MAJEURE.** Neither McKinstry nor Customer shall be considered in breach of this agreement to the extent that the Party's performance is prevented by an event or events that are beyond the control of such party, including but not limited to acts of God, fire, earthquake, flood, storm, war, rebellion, revolution, insurrection, riot, strike, nuclear contamination, and/or acts or threats of terrorism.

**NO WAIVER.** No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether similar, nor shall any waiver constitute a continuing waiver.

**INTELLECTUAL PROPERTY.** Intellectual property provided by McKinstry to Customer as part of the Work are instruments of service owned by McKinstry and are not "work made for hire" as such term is defined under U.S. copyright law. When the Work is performed to completion, McKinstry grants to Customer a limited license to use the Intellectual Property to operate, maintain, renovate, and manage the subject matter of the Work.

**DAMAGES LIMITATION.** Neither party shall be liable for any consequential, indirect, special, incidental, exemplary, or similar, damages or losses, including loss of profits, whether based in contract or tort or any other theory, even if a party has been advised of the possibility of such damages. Furthermore, the total aggregate liability of either party, under any theory, is limited to the agreement Price.

**INDEMNIFICATION.** Each party shall indemnify and hold harmless the other party from and against all third-party claims, damages, losses and expenses for bodily injury, sickness, disease, or death or destruction of tangible property but only to the extent directly caused by the negligent acts or omissions of the indemnitor.

**SEVERABILITY, SURVIVAL.** If any portion of this agreement shall be held invalid in whole or in part under any law, rule, regulation, or order, then such portion shall remain in effect only to the extent permitted, and the remaining portions of the agreement shall remain in full force and effect. Any invalid portions shall be substituted with an interpretation that most accurately reflects the Parties' intentions.

**AMENDMENT.** This agreement may not be amended except pursuant to a written amendment signed by an authorized signer of each Party.

**COMPLETE AGREEMENT.** This agreement, including the exhibits attached hereto, is a fully integrated agreement. Any legal terms and conditions appearing elsewhere in this agreement shall be ignored to the extent they contradict or are inconsistent with the terms and conditions contained in the foregoing list. All previous agreements between McKinstry and Customer as to the Work are superseded by this agreement.