

Memorandum of Understanding for Participatipation
Arkansas Energy Performance Contracting Program



Department of Energy and Environment
Arkansas Department of Environmental Quality – Arkansas Energy Office
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North Little Rock, Arkansas 72118-5317
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THIS MEMORANDUM OF UNDERSTANDING (MOU) is made this day of _____ in the year 20_ between the State of Arkansas, acting by and through the Arkansas Department of Environmental Quality – Arkansas Energy Office, hereinafter called AEO, and _____ hereinafter called the Owner.

WHEREAS, in 2013 the 89th General Assembly of the State of Arkansas amended the Guaranteed Energy Cost Savings Act, A.C.A. § 19-11-1201, with Act 554 that required the AEO to establish rules that set standards and govern the process in which state agencies engage Energy Service Companies (ESCOs) who pursue guaranteed energy cost savings contracts, also known as energy performance contracts (EPCs);

WHEREAS, in 2015 the 90th General Assembly of the State of Arkansas enacted the Local Government Energy Efficiency Project Bond Act, A.C.A. § 14-164-821, with Act 1275 that allowed local governments to pursue EPCs through the Arkansas Energy Performance Contracting (AEPC) Program;

WHEREAS, in 2019 the 92nd General Assembly of the State of Arkansas amended the Guaranteed Energy Cost Savings Act, A.C.A. § 19-11-1201, with Act 507 that allowed school districts to pursue EPCs through the Arkansas Energy Performance Contracting (AEPC) Program;

WHEREAS, AEO used a state-approved process to certify Qualified Providers (pre-qualified ESCOs) to provide energy performance contracting services for AEPC Program participants; and

WHEREAS, AEO is authorized to establish and collect a reasonable fee to cover the costs of administering the AEPC Program (Arkansas Code 19-11-1207.2); and

NOW, THEREFORE, it is agreed that:

1. **Purpose of MOU.** The purpose of this MOU is to provide the Owner access to the services and support provided under the AEPC Program to assist in the development and implementation of EPC projects and to encourage the Owner to follow, adhere to, and benefit from the guidelines of the program.
2. **Term of MOU.** This MOU becomes effective on the date which both the Director or authorized designee of AEO and the Director, or authorized representative, for the Owner have signed it. This MOU may be terminated by either party without cause upon 30 days written notice.
3. **Consideration.** In consideration for the services rendered by the AEO under this MOU, the Owner shall engage in a good faith effort to reduce its energy and water consumption through participation in the AEPC Program and follow and generally adhere to its guidelines, rules, and provisions, herein.
4. **Responsibilities of Owner.** The responsibilities of the Owner include, but are not necessarily limited to:
 - a. Agree to program participation by executing this MOU and engage the AEPC Program for assistance in project development;
 - b. Comply with the procedures, rules and responsibilities outlined in the AEPC Program Manual;
 - c. Select an Energy Service Company (ESCO) from the AEPC Pre-Qualified ESCOs list, using a secondary selection process that fulfills all applicable procurement laws, rules and policies;
 - d. Use/execute the AEPC contracts with the selected ESCO;

- e. Assign members to the Owner's project team which may include operations, maintenance, financial and upper management personnel;
- f. Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed;
- g. Provide access and escort to buildings under reasonable conditions;
- h. Provide information as needed for a feasibility study, if performed, the Investment Grade Audit, and other project development activities;
- i. Work with selected ESCO to develop/refine project parameters;
- j. Review/approve the ESCO's proposals, designs, and reports in a timely manner;
- k. Ensure recommendations of the AEPC Program during reviews are addressed to the extent that such recommendations are reasonable;
- l. Make arrangements for project funding/financing, as necessary, and with the assistance and upon the advice of legal counsel, execute appropriate financing and EPC contracts,
- m. Provide project management, as necessary;
- n. Make payments for ESCO services per contract terms;
- o. Authorize payment of the AEO Administration Fee. This fee may be financed as part of the project costs and is payable by the ESCO after EPC contract signing, per the AEPC Program Manual and AEPC EPC Schedule Q; and
- p. Provide information to AEO as needed for project results tracking.

5. Responsibilities of AEO. The responsibilities of the AEO, and its designees, include, but are not necessarily limited to:

- a. Actively educate potential participants about the benefits and implementation of energy performance contracts;
- b. Help Owner through AEPC selection process by providing technical assistance;
- c. Help Owner develop and initiate an energy performance contracting project;
- d. Review both Investment Grade Audit Report and Energy Performance Contract Proposal for accuracy and to ensure best value for Owner.
- e. Facilitate the performance contracting process to help ensure commitments are met by both the Owner and the ESCO,
- f. Provide technical guidance to the Owner and attend on-site meetings between the Owner and ESCO, as needed and subject to availability;
- g. Review measurement and verification reports;
- h. Monitor project implementation; and
- i. Identify solutions to mediate any conflicts between Owner and ESCO.

6. This MOU is not intended to create, nor will this MOU ever be construed or interpreted as creating, a binding and legally enforceable contract between the parties. There will be no legal or equitable remedies available to either party in the event either party fails to fully comply with the provisions of this MOU. The sole remedy for the failure of a party to fully comply with the provisions of this MOU will be termination of this MOU. The Owner acknowledges and agrees that AEO's services may include advice and recommendations, but all decisions in connection with the Owner's EPC participation shall be the responsibility of and made by the Owner, its agents and contractors.

7. Signatures. In witness thereof, the parties to this MOU, either personally or through their duly authorized representatives, have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU.

STATE OF ARKANSAS

Acting by and through the Arkansas Department of Environmental Quality – Energy Office

Name (print)

Signature

Date

OWNER

Name (print)

Signature

Date

AEPC Program – Contact Information Sheet

Primary Contact at Owner

Name: _____
Title: _____
E-mail: _____
Phone: _____
Address: _____

Project Information

Type of buildings/facilities included in your project:

Please list any immediate needs you have related to your performance contract.