



PROJECT AGREEMENT



This Project Agreement (this "Agreement") is entered into as of \_\_\_\_\_ (the "Effective Date"), by and between CMC Energy Services, Inc. (the "Contractor") and \_\_\_\_\_ (the "Customer").

WHEREAS, the Customer and the Contractor desire to enter into this Agreement to provide for the terms and conditions applicable to the services to be performed by the Contractor under a Scope of Work Agreement ("SOWA") attached to this Agreement.

NOW, THEREFORE, the Customer and the Contractor hereby agree as follows:

1. Scope of Work

- (a) The Contractor, under the NJ Clean Energy Direct Install Program ("Program"), shall provide the installation of Energy Efficiency Measures ("Services") to the Customer at the address specified on the SOWA. Please refer to the attached SOWA for the list of proposed measures. The Customer understands that conditions discovered during the installation may prevent some measures identified in the energy assessment from being installed or areas may require additional measures/quantities to be installed. Any changes to the original SOWA will only be commenced upon written or verbal order for the changes. If there is any charge of monies for such alteration to the original SOWA, the additional charge or credit will be added or subtracted from the SOWA.
(b) In the event that any changes to the original SOWA exceed ten percent (10%) of the Total Project Cost, an updated SOWA will be presented for execution. Additional SOWAs shall be deemed accepted and incorporated into this Agreement only if signed by an authorized representative of each of the Customer and the Contractor. The Contractor shall provide the Services in accordance with the terms and subject to the condition set forth in the respective SOWA and this Agreement.

2. Work Not Covered by the Program

- (a) The Customer understands that conditions may be discovered during installation, including but not limited to apparent or concealed health and safety issues or code violations, which may result in additional work and costs, which do not qualify for incentive monies under the Program. Unless specifically included in the SOWA, this Agreement specifically excludes: changing electrical service or electrical equipment that is in violation of any applicable electrical or building codes, remediation of any code violations, structural or roof repairs, guard rails, privacy screens, remote test stations, smoke detector tie-ins, outlet lights, asbestos removal, engineering fees, BAS system integrations, duct work modifications in excess of two (2) linear feet, gas piping and/or condensate lines in excess of ten (10) linear feet, painting of interior and/or exterior surfaces, and any unforeseen circumstances, all which may be required for the completion of the SOWA and therefore shall be the responsibility of the Customer. The Customer expressly acknowledges and understands that these costs fall outside the parameters of the Program, and such work does not qualify for any Program incentive monies.

3. Contract Price

- (a) The Customer agrees to pay the Contractor the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) representing the Customer Portion as shown on the SOWA, subject to provisions regarding Work Not Covered by the Program as set forth in Section 2a of this Agreement.

4. Payment

- (a) The Customer agrees to pay one hundred percent (100%) of the Customer Portion, as shown on the MAF within thirty (30) days from the date of the final invoice. The Incentive Portion from the Program shall be paid directly to the Contractor upon project close-out.

## 5. Term and Termination

- (a) This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all SOWAs unless terminated pursuant to Section 5(b).
- (b) Both the Contractor and Customer secure the right to terminate this Agreement for any reason upon fifteen (15) days of notice to the other party. In the event the Customer terminates the Agreement, the Project no longer qualifies for any incentives under the Program. Therefore, upon termination, the Customer agrees to pay Contractor all costs incurred including the full cost of any work performed, re-stocking fees, permit fees, and any other costs incurred by the Contractor under this Project Agreement prior to the date of termination.

## 6. Customer Responsibilities

- (a) The Customer shall (i) make the installation area accessible and clear of all debris; (ii) provide a safe and accessible work space; (iii) provide access to the site for all phases of (pre)construction; (iv) notify the Contractor of any known asbestos and/or environmental issues; (v) provide sufficient area for crane, dumpster, and other related construction equipment and materials if required. Failure to fulfill the Customer Responsibilities outlined above, may lead to Termination of this Agreement without breach pending resolution of any dispute.

## 7. Indemnification

- (a) Each of the Contractor and the Customer (the “Indemnifying Party”) agrees to defend, indemnify and hold the other party and Program and its directors, officers, and employees (collectively, the “Indemnified Party”) harmless from and against any and all costs, liabilities, fees, losses, and expenses (including, but not limited to, reasonable attorneys’ fees) (collectively, “Losses”) resulting from any claim, suit, action, or proceeding (each, an “Action”) brought by any third party against the Indemnified Party alleging; (i) personal injury caused by the negligence or willful misconduct of the Indemnifying Party; or (ii) any breach by the Indemnifying Party of any of its representations, warranties or covenants contained in this Agreement.
- (b) An Indemnifying Party’s indemnification obligations hereunder shall be subject to (i) receiving prompt written notice of the existence of any Action or Loss from the Indemnified Party (provided, that the failure to give such notice will not relieve a party of its indemnification obligations unless such party is prejudiced in the defense of a claim); (ii) being able to, at its option, control the defense of such Action; (iii) permitting the Indemnified Party to participate in the defense of any Action; and (iv) receiving the full cooperation of the Indemnified Party in the defense thereof.
- (c) Notwithstanding the foregoing, an Indemnifying Party will not be responsible for any settlement it does not approve in writing.

## 8. Limitation of Liability.

- (a) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 9(a) NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND EXCEPT AS OTHERWISE STATED HEREIN OR IN A SOW, EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY MAKES NO WARRANTY THAT THE SERVICES WILL BE ACCESSIBLE WITHOUT INTERRUPTION.
- (b) EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS CONTAINED IN SECTION 7, A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF THE SERVICES, OR A PARTY’S BREACH OF AN OBLIGATION OF CONFIDENTIALITY (COLLECTIVELY, THE “EXEMPTED CLAIMS”), THE LIABILITY OF THE CONTRACTOR, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR LOSSES ON ACCOUNT OF ALL CLAIMS OF ANY KIND WHATSOEVER

UNDER THIS AGREEMENT, WHETHER ARISING IN TORT OR CONTRACT OR OTHERWISE, WILL NOT BE GREATER THAN FIFTY PERCENT (50%) OF THE PAYMENTS ACTUALLY PAID TO THE CONTRACTOR UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS, OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM OR RELATING TO THIS AGREEMENT.

- (c) The parties acknowledge that the Contractor has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

## 9. General Provisions

- (a) The Contractor represents and warrants that the Services shall be performed in accordance with accepted professional practices, free from any defects, conform to the requirements of this Agreement and are suitable for the use intended. The Contractor warrants all labor and material for a period of one (1) year following the installation of Energy Efficiency Measure(s). The warranty on the applicable measures starts from the day of installation of the Energy Efficiency Measures(s). The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the work not executed by the Contractor, improper or insufficient maintenance, or improper operation. All manufacturer warranties apply and are subject to the proper maintenance by the Customer per manufacturer's guidelines. In order to maintain a valid warranty on all installed measures installed under the MAF, all concerns must be directed to the Contractor only. If installed measures are serviced by any contractor that is not delegated by the Contractor, then the Customer is responsible for all costs and the warranty will be voided.
- (b) The Contractor shall provide Services (a) in accordance with the terms and subject to conditions set forth in the SOWA and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely and professional manner; (d) in accordance with generally recognized industry standards in the Contractor's industry; and (e) to the reasonable satisfaction of the Customer.
- (c) The Contractor may at its discretion engage sub-contractors to perform the work hereunder, provided the Contractor shall pay said sub-contractor and in all instances remain responsible for the proper completion of the work under the SOWA and this Agreement.
- (d) If the Customer Portion of the payment is not made when due, the Contractor may suspend work on the Project until all payments due have been made. Failure to make payments when due shall be deemed a material breach of this Agreement. If the Customer has multiple projects with the Contractor, the Contractor reserves the right to suspend installation on all projects until payment is made.
- (e) The Contractor and/or its sub-contractors shall obtain all permits necessary for the Services to be performed. The Customer is not responsible for the permit costs associated with the installation of the measures listed in the SOWA; however, the Customer is responsible for all permit costs associated with additional work that is not part of the SOWA.
- (f) The Customer is to supply all relevant utility bills and usage to the Contractor upon request and also permits the Contractor to obtain utility bills, usage summary reports, and statements from their Gas and Electric utility providers on their behalf when needed.
- (g) The Contractor shall not be liable for any delay in provided Services outlined in the SOWA and this Agreement due to circumstances beyond its control including pre-existing conditions of the Customer's facility, weather conditions, or general unavailability of materials.

- (h) The Customer shall not make any alterations or modifications to the installed Energy Efficiency Measures and Services provided by the Contractor prior to the NJ Clean Energy Direct Install Program post inspection and authorization for incentive payment by the Program. The Customer also agrees to allow access for any pre-, in-progress, and post-inspection requests by the Contractor and the Program.
- (i) In the event the Customer fails to pay any amount owed to the Contractor, the Customer agrees that if the Contractor proceeds with collection of any outstanding amount due under this Agreement, including but not limited to, communications with the Customer, filing of mechanics lien or the filing of a suit against the Customer for any amount owed to the Contractor, the Contractor will be entitled to collect from the Customer and the Customer agrees to be responsible for and to pay all reasonable attorney's fees, interest, and cost. Any payment that remains unpaid for thirty (30) days after the date of invoice shall thereafter bear interest at a monthly rate of one and one-half percent (1.5%) until paid.
- (j) The pricing and Program parameters have been established by the Program and are subject to change. This Agreement shall be considered void upon any Program changes. In such cases, an updated SOWA and Project Agreement will be presented.
- (k) This Agreement, including and together with any related SOWAs, exhibits, schedules, attachments, and appendices constitutes the sole and entire agreement between the Contractor and Customer with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

\_\_\_\_\_  
Date Signed

CMC ENERGY SERVICES, INC.

\_\_\_\_\_  
Authorized Customer Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Customer (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title