

**CONSULTING SERVICES CONTRACT FOR ENERGY CONSULTING AND
MANAGEMENT SERVICES
WITH TFS ENERGY SOLUTIONS, LLC**

THIS CONTRACT is made and entered into by and between the **CITY OF MESQUITE**, a Texas municipal corporation, of Dallas County, Texas, (hereinafter called "City") and **TFS ENERGY SOLUTIONS, LLC** d/b/a Tradition Energy, a Delaware limited liability company duly authorized to transact business in the State of Texas, with an address of 9 West Broad Street, Suite 9, Stamford, CT 06902-3734 (hereinafter called "Consultant").

1. PURPOSE

The purpose of this Contract is to state the terms and conditions under which Consultant shall provide Energy Consulting and Management Services.

2. DESCRIPTION OF SERVICES

Consultant's services hereunder shall consist of the following:

A. Consultant shall perform all the services as set forth in City's Request for Proposals No. 2018-017 (the "RFP"), attached to and incorporated into this Contract as Exhibit A, and Consultant's Technical Proposal of January 26, 2018, Cost Proposal of May 8, 2018, and Response to Clarification Questions of March 15, 2018, all three documents attached to and incorporated into this Contract as Exhibit B (hereinafter collectively referred to in this Contract as "Proposal"); provided, however, should there be any conflict between the terms of the Proposal and the terms of the RFP, the terms of the RFP shall control, and should there be any conflict between the terms of the RFP and the terms of this Contract, the terms of this Contract shall be final and binding.

B. Consultant shall work closely with City's Director of Finance, or the Director's designee (hereinafter referred to as "Director"), and other appropriate City officials as directed and shall perform any and all related tasks required by the Deputy in order to fulfill the purposes of this Contract.

C. Consultant shall deliver to the Director all reports and related documents, information, or other data which are required to be produced and given to City in performing services under this Contract (hereinafter called "deliverables") in the format required by the Director.

3. PERFORMANCE OF SERVICES

Consultant and its employees or associates shall perform all the services under this Contract. Consultant represents that all its employees or associates who perform services under this Contract shall be fully qualified and competent to perform the services described in Section

4. TERM

The term of this Contract shall be one year, beginning on May 17, 2018, and ending on May 16, 2019, unless extended by City, at its sole option and discretion, for up to additional six (6) one-year Terms in accordance with City's RFP. Consultant understands and agrees that time is of the essence for any applicable timetable agreed to by the parties. All deliverables are to be completed and delivered to City by the termination date, or by the milestone or completion date or dates provided in a performance schedule agreed upon between Consultant and the Director, unless an extension of time, based upon good reasons presented by Consultant, is approved by the Director.

5. PAYMENT FOR SERVICES

In consideration of the services to be performed by Consultant under the terms of this Contract, City shall pay Consultant at the prices set forth in the Price List in the Consultant's Proposal, for Basic services actually performed, a fee in the not-to-exceed amount of \$35,000.00, paid directly to Consultant as provided in Consultant's Proposal. If other conditions necessitate Additional services or a change in services as provided in Section 6, any increase in compensation must be authorized and funded in advance by supplemental agreement duly signed by the City Manager, attested to by the City Secretary, and approved as to form by the City Attorney. Consultant's charges for its services are not to exceed similar charges of Consultant for comparable services to other customers. Payments made directly to Consultant shall be in the amount shown by the itemized billings and other documentation submitted and shall be subject to the Director's approval. All services shall be performed in accordance with reasonable industry standards, and City shall not be liable for any payment under this Contract for services which are not consistent with such standards and which have not been approved by the Director prior to commencement of services. The final payment due under this Contract will not be paid until the required deliverables have been received in the format agreed-upon by the parties. City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Consultant, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

6. CHANGE IN SERVICES

City, acting through its Director, may request from time to time changes in the scope or focus of the activities conducted or to be conducted by Consultant pursuant to this Contract. Any change in the scope or focus which varies significantly from the scope of services set out in Section 2 and would entail a significant increase in cost or expense to Consultant shall be mutually agreed upon by Consultant and the Director in writing. Changes in the scope which in the opinion of Consultant and the Director would justify an increase in compensation requiring additional funding by City must first be authorized as described in Section 5.

7. CONFIDENTIAL WORK

No deliverables or other information which consists of information given by City to Consultant to assist Consultant's performance under this Contract or was based on such information (minus that portion which consists of Consultant Property which is hereinafter defined) developed by, given to, prepared by or assembled by Consultant under this Contract ("Developed Works") shall be disclosed or made available to any third party individual or organization by Consultant without the express prior written approval of the Director.

8. OWNERSHIP OF DOCUMENTS

Upon acceptance or approval by City, the Developed Works shall become the sole property of City and shall be delivered to City, without restriction on future use. Consultant may make copies of any and all deliverables and related documents or items for its files. By execution of this Contract and in consideration of the fee for services to be paid under the Contract, Consultant hereby conveys, transfers and assigns to City all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Developed Works. City agrees that Consultant shall remain the exclusive owner of and retain all right, title and interest in all products, services, documentation, modifications to documentation, processes, know-how, techniques, software and other products and inventions of Consultant (the "Consultant Property"). Consultant may, in connection with the performance of the services delivered under the Contract, including the delivery of the Developed Works, use, modify, create, acquire or otherwise obtain rights in, ideas, procedures, processes, know-how, techniques, and software, all of which shall also be included in the Consultant Property. Consultant acknowledges that the Consultant Property shall not include any of the Developed Works or City confidential information or tangible or intangible property, and Consultant shall have no ownership rights in such property.

9. CONSULTANT'S LIABILITY

Approval of City shall not constitute or be deemed a release of the responsibility and liability of Consultant, its employees, agents, associates, or subconsultants for the accuracy and competency of the deliverables prepared by Consultant, its employees, agents, associates, or subconsultants, as required under this Contract. In addition, approval of City shall not be deemed to be the assumption of any responsibility by City for any defect, error, or omission in the deliverables prepared by Consultant, its employees, agents, associates, or subconsultants.

10. COMPLIANCE WITH LAWS AND REGULATIONS

This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Mesquite, as amended, and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. Consultant shall, during the course of performance of this Contract, comply with all applicable City codes and ordinances, as amended and all applicable State and Federal laws, rules and regulations, as amended. In particular, Consultant is put on notice that City will require the Consultant to comply with Chapter 176 of the Texas Local Government Code by completing the attached Conflict of

Interest questionnaire (FORM CIQ) and returning the completed FORM CIQ to the CITY. Additionally, Consultant must comply with Section 2252.908 of the Texas Government Code, which was enacted in 2015 by the Texas Legislature pursuant to HB 1295, providing that a governmental entity may not enter into certain contracts with a business entity on or after January 1, 2016, unless the business entity submits a disclosure of interested parties (FORM 1295) to the governmental entity at the time the business entity submits the signed contract to the governmental entity. Further, information regarding the disclosure of interested parties law and instructions on filing FORM 1295 can be found at the Texas Ethics Commission website at the following web address:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Failure to comply with any applicable laws, including Chapter 176, may result in: (1) the forfeiture by Consultant of all benefits of this Contract; (2) the retainage by City of all services performed by Consultant; and (3) the recovery by City of all consideration, or the value of all consideration, paid to Consultant pursuant to this Contract.

11. INDEPENDENT CONSULTANT

Consultant's status shall be that of an independent Consultant and not an agent, servant, employee, or representative of City in the performance of the services under this Contract. Consultant shall exercise independent judgment in performing services under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Contract or act of Consultant in the performance of this Contract shall be construed as making Consultant the agent, servant or employee of City, or making Consultant or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

12. INDEMNITY AND LIMITATION OF LIABILITY

Consultant agrees to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Consultant's breach of any of the terms or provisions of this Contract, or by any negligent or strictly liable act or omission of Consultant, its officers, agents, employees or subconsultants, in the performance of this Contract. The provisions of this paragraph are solely for the benefit of the parties to this Contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Except for claims based upon Consultant's willful misconduct or gross negligence, Consultant's liability shall not exceed Consultant's aggregate compensation received as a result of this Contract in the twelve (12) month period immediately preceding the date on which the claim arose. In no event shall Consultant be liable for consequential, incidental, punitive, exemplary or indirect damages, including, without limitation, lost profits or lost opportunities or any other business interruption damages, in tort, contract or otherwise.

13. INSURANCE REQUIREMENTS

A. Consultant shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to City, the minimum insurance coverage contained in the RFP.

B. Approval, disapproval or failure to act by City regarding any insurance supplied by Consultant or its subconsultants shall not relieve Consultant of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of Consultant's insurer or any denial of liability by Consultant's insurer shall not exonerate Consultant from the liability or responsibility of Consultant set forth in this Contract.

14. GIFT TO PUBLIC SERVANT

City may terminate this Contract immediately if Consultant has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, City may require Consultant to remove any employee of Consultant from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

15. ASSIGNMENT

This Contract provides for unique consulting services. Consultant, therefore, shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of City's Director.

16. TERMINATION

City's Director may, at its option and without prejudice to any other remedy City may be entitled to at law, in equity or elsewhere under this Contract, terminate further work under this Contract in whole or in part for cause or for the convenience of City by giving at least twenty (20) days advance written notice of termination to Consultant, with the understanding that all performance being terminated shall cease as of a date to be specified in the notice. City also has the right to request that Consultant assign and transfer to City all of Consultant's rights and obligations under existing subcontracts it has to perform Contract work in the event of termination under this Section. City shall compensate Consultant in accordance with the terms of this Contract for Contract work properly performed prior to the date of termination specified in the notice, following inspection and acceptance of same by City's Director. Consultant shall not, however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate.

17. NOTICES

Except as otherwise provided in Section 18, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:

Debbie Mol, Director of Finance
757 North Galloway Avenue
Mesquite, Texas 75149

If intended for Consultant, to:

Brian McDermott, Executive Director and Head of Operations
9 West Broad Street, 9th Floor
Stamford, CT 06902

18. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

A. Consultant shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, military or veteran status, genetic characteristics, or disability unrelated to job performance. Consultant shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. Consultant agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

B. If Consultant fails to comply with the equal employment opportunity/nondiscrimination provisions of this Contract, it is agreed that City at its option may do either or both of the following:

(1) Cancel, terminate or suspend this Contract in whole or in part.

(2) Declare Consultant ineligible for further City contracts until it is determined to be in compliance.

19. RIGHT OF REVIEW AND AUDIT

City may review any and all of the services performed by Consultant under this Contract. City is granted the right to audit, at City's election, all of Consultant's records and billings relating to the performance of this Contract. Consultant agrees to retain such records for a

minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

20. VENUE

The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

21. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

22. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

23. MISCELLANEOUS

A. Pursuant to Section 2270.002, Texas Government Code, Consultant hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of the Agreement. As used in the immediately preceding sentence, "boycott Israel" shall have the meaning given such term in Section 2270.001, Texas Government Code.

B. Consultant further represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.

23. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

24. CAPTIONS

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

25. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties and their respective administrators, successors and, except as otherwise provided in this Contract, their assigns.

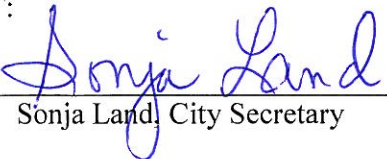
26. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

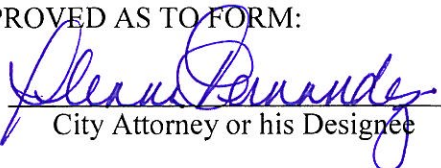
This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

EXECUTED this the 17th day of May, 2018, by City, signing by and through its City Manager, duly authorized to execute same by the City Council, and by Consultant.

**CITY OF MESQUITE
(CITY)**

By: 
Cliff Keholey, City Manager

ATTEST:
By: 
Sonja Land, City Secretary

APPROVED AS TO FORM:
By: 
City Attorney or his Designee

**TFS ENERGY SOLUTIONS, LLC
(CONSULTANT)**

By: 
Alan Kurzer, CEO and Manager

By: _____

Printed Name: Alan Kurzer
CEO and Manager

Title: _____

Acknowledgment

State of CONNECTICUT, County of
Fairfield:

Before me the undersigned authority of this date personally appeared Alan Kurzer, known to be the person whose name is subscribed to the foregoing document and known to me to be the Chief Executive and Manager of TFS Energy Solutions, LLC, and acknowledged to me that he/she executed said document with full authority to do so and for the purposes and consideration expressed therein. Given under my hand and seal of office the 12th day of July 2018.



Notary Public in and for the State of CONNECTICUT

