

CONTRACT FOR PROFESSIONAL SERVICES

Agreement for Update of Kane County Energy Plan and Energy Efficiency Documents and the Revolving Loan Fund for Public and Nonprofit Energy Efficiency Improvement Projects

This agreement is entered into and will be effective as of the date of final execution of this contract, between the COUNTY OF KANE (the "*County*"), a body corporate and politic existing under the laws of the State of Illinois and a unit of local government under §1 of Article VII of the Illinois Constitution (Ill. Const., Art. VII, §1), and CNT (the "*Consultant*"). For and in consideration of the mutual promises set forth herein, the parties agree as follows:

§ 1. Purpose of agreement

The County hereby retains the Consultant to update the Kane County Energy Plan developed in 2005 and the Energy Efficiency Chapter of the Kane County 2030 Land Resource Management Plan adopted in 2004; and to establish a Revolving Loan Fund to encourage public and nonprofit energy efficiency improvements under Kane County's Energy Efficiency and Conservation Block Grant.

§ 2. Scope of services

The services to be provided by the Consultant (the "*Work*"), are set forth in **Exhibit 2**.

§ 3. Terms of this agreement

The terms of this agreement will commence as of the date hereof and continue, unless earlier terminated in accordance herewith, until the Work is completed.

§ 4. Relationship of parties

The Consultant will serve as the County's energy and financing consultant in the performance of the Work. The relationship between the parties is that of a buyer and seller of professional services and as such the Consultant is an independent contractor of the County in the performance of the Work and it is understood that the parties have not entered into any joint venture or partnership. The Consultant is not an employee or the agent of the County for any purpose.

§ 5. Compensation

The County will pay the Consultant an amount not to exceed \$28,000 for the update of the Kane County Energy Plan and energy efficiency documents and \$7,000 for the establishment of the Revolving Loan Fund for Public and Nonprofit Energy Efficiency Improvement projects for which the Consultant will fully complete the Work. The Consultant will submit to the County an itemized monthly invoice reflecting the work completed within the preceding calendar month and the time spent thereon. The monthly invoice will also include a summary of all previous invoices up to, and including, the invoice for the current month. The Work will be billed at the hourly rates set forth in **Exhibit 1**. The County will pay each such invoice within 45 days of its receipt.

§ 6. Time for completion of the work

CNT and Kane County envision a six-month total time frame for updating the Kane County Energy Plan. Tasks 1 and 2 will be completed within two months of final contract execution by CNT Energy and Kane County. Tasks 3 and 4 will be completed in the following three months, with ongoing interaction of the Energy & Environmental Committee and staff. Task 5 will take place in the following month.

Upon completion of this update, CNT will conduct the Energy Efficiency Documents review with estimated completion time, including feedback from the appropriate committee(s) and staff, in three months.

Chicago Community Loan Fund will complete Tasks 1, 2 and 3 in a three-month time frame.

§ 7. Terms and conditions

- (a) The Director of the Kane County Department of Environmental Management (the "*Director*"), or his written designee, shall act as the County's representative with respect to the Work and shall transmit to and receive from the Consultant information with respect to the Work. The Consultant shall coordinate all work through the Client and shall report results of all work directly to the Client.
- (b) The Director may, by written order, make changes in specific work items if such changes are within the scope of services set forth in **Exhibit 2**. If any such change is not within the scope of services, the Consultant will so notify the Director and will submit a proposed change order reflecting an increase (or decrease) in the work. No such change order will be effective to modify this agreement unless it has first been reduced to writing and approved by all undersigned parties.
- (c) The County may, anytime and without cause, upon notice to the Consultant terminate this agreement before completion of the Work. Upon termination, the Consultant will cease all work under this agreement and will turn over to the County all information, records, documents, data, property, publications or other material theretofore received or prepared by the Consultant under or resulting from this agreement, all of which will become the property of the County. The Consultant will submit a final invoice for all work done through the date of termination which will be paid within 45 days of its receipt. In the event of termination, only actual time spent and expenses incurred in the performance of the Work prior to termination will be compensated. The County will have no liability for lost profits, overhead or other consequential or incidental damages. In the event of termination, the County will be free to abandon the work or retain another consultant to complete the Work.

- (d) The obligations of the County under this agreement are contingent upon the prior appropriation of funds by the Kane County Board if applicable.
- (e) The Consultant will maintain books, records, documents, time sheets and other evidence pertinent to its performance of the Work according to generally accepted accounting principles and practices consistently applied. The County or its authorized representatives will have access to such books, records, documents and other evidence for inspection, audit, and copying. The Consultant will provide appropriate facilities for such access and inspection during normal business hours.

§ 8. Ownership of Documents and Confidentiality

All documents, including all original drawings, specifications, tables and data prepared or collected in the course of the Work are and remain the property of the County; shall be maintained as confidential property of the County, shall not be disclosed in whole or in part, to any non-parties to this agreement except at the direction of the County. All data obtained from the County, including digital mapping information, is to be used solely for the purpose of the Work, and shall not be retained by the Consultant for use in any other manner.

§ 9. Responsibility of Consultant

The Consultant shall perform the Work in accordance with generally accepted and currently recognized practices and principles applicable to the performance thereof and in a manner consistent with that level of care and skill ordinarily exercised by professionals currently performing such work in the same locality under similar conditions. The Consultant represents and warrants that it has thoroughly reviewed the Work; that it is thoroughly familiar with the field of knowledge bearing upon the performance of the Work; that it has any licenses, permits or approvals necessary or appropriate to perform the Work; and that it can produce the Work within the term of this agreement and for the compensation stated herein.

§ 10. Indemnity

The Consultant shall indemnify, defend (with counsel reasonably satisfactory to those parties to be defended), and hold the County, its elected officials, the Committee, the Director, and their respective agents and employees, harmless from any and all claims, demands, liabilities, damages, loss, cost or expense for or on account of any injury or damage which may arise or which may be alleged to have arisen out of or in connection with, or as a result of any negligent acts, errors and/or omissions of the Consultant, its subcontractors, and their respective employees and agents, in performing the Work, including, but not limited to, claims for releases or disposal of hazardous substances or wastes under CERCLA, RCRC, or any similar federal or state environmental law or regulation.

§ 11. Insurance

The Consultant will obtain prior to the commencement of the Work and will maintain for a minimum of 3 years following completion of the Work the following insurance coverage:

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|----------------------------|--|
| (a) Workers Compensation | Shall be in accordance with the provisions of the laws of the State of Illinois; |
| (b) General Liability | \$2,000,000 combined single limit (or equivalent); |
| (c) Automobile Liability | \$1,000,000 combined single limit (or equivalent); |
| (d) Excess Liability | \$2,000,000 each occurrence; and |
| (e) Professional Liability | \$2,000,000 per claim. |

Prior to commencement of the Work, the Consultant will furnish the County with a certificate of insurance evidencing the coverage listed above which names the County as an additional insured and provides that the County will receive not less than 30 days' prior written notice of any cancellation of or material change in the policy.

§ 12. Equal Employment Opportunity

Section 6.1 of the Illinois Department of Human Rights Rules and Regulations is hereby incorporated herein by this reference as though fully set forth.

§ 13. Subcontractors

The Consultant may use a Subcontractor, if approved by the County, and shall be bound by the conditions of this agreement between the County and Consultant. All subcontractors shall perform their work in accordance with all terms of the agreement and specifications. Lien waivers for any subcontractor shall be submitted to the County through the Consultant from the various subcontractors upon completion of the individual work.

§ 14. Notice

Any notice, invoice, certification or communication required or permitted hereunder shall be sufficiently given if served personally, sent *via* fax, or sent by first class mail, postage prepaid to the Kane County Department of Environmental Management, attention Tim Harbaugh, Director, Kane County Government Center, 719 S. Batavia Ave., Geneva, IL 60134, (Fax No. 630/208-5137).

Notice *via* fax shall be effective as of the date and time set forth on the fax transmittal sheet produced by the sending fax machine. Notice by first class mail shall be effective four days after mailing.

§ 15. Miscellaneous

- (a) This agreement constitutes the entire agreement between the parties and supersedes any prior agreement relating to the subject matter hereof. This agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

- (b) The agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any action brought under or which relates to this agreement shall be brought in Kane County, Illinois.
- (c) This agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns, provided, however, that neither party may assign this agreement without the prior written consent of the other.
- (d) The waiver by one party of any breach of this agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance and shall not be deemed to be a waiver of any future breach or a waiver of any provision of this agreement.
- (e) Nothing in this agreement shall be construed as creating any personal liability on the part of any officer, employee or agent of any public body that may be a party to this agreement, nor shall it be construed as giving any rights or benefits under this agreement to anyone other than the parties hereto.
- (f) All exhibits referred to in this agreement are attached and by this reference incorporated herein as though fully set forth.
- (g) This agreement may be executed in any number of counterparts, all such counterparts taken together constituting but one and the same agreement.
- (h) If any action is filed under or relating to this agreement, the non-prevailing party (as determined by the Court) shall pay, in addition to all other amounts which the non-prevailing party may be ordered to pay, the prevailing party's costs, expenses and reasonable attorney's fees.

§ 16. ARRA AND EECBG REQUIREMENTS ACKNOWLEDGEMENT

The Consultant acknowledges that this project is funded in part, or in whole, by an Energy Efficiency and Conservation Block Grant (EECBG) from the U.S. Department of Energy through the Federal American Recovery and Reinvestment Act of 2009 (ARRA). As such, the Consultant shall abide by all regulations set forth by the U.S. Department of Energy for EECBG funding and the United States Government for ARRA funds. Consultant acknowledges that they have received and reviewed a copy of the Kane County EECBG DOE grant agreement, number DE-EE0000818/000, dated 8/24/09, and will comply with all applicable requirements and regulations. Further, Consultant shall (if not already) obtain a DUNS number and register with the U.S. Central Contractor Registration (CCR) and provide DUNS number and CCR verification to the County upon receipt.

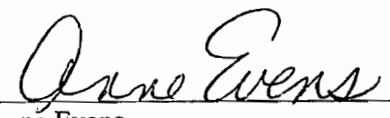
Consultant DUNS #: (to be filled out by Consultant) 057206042

The County of Kane

CNT



Karen McConnaughay
Chairman, Kane County Board



Anne Evans
Director

Date

12/17/2009

Date

**EXHIBIT 1
Budget**

Update Kane County Energy Plan and Energy Efficiency Documents

Deliverables	Staff	Hours	Rate	Total
Update the ComEd electricity data to the most recent available.	Lindy;Kimberly; Jessica	16	125	\$2,000
Add natural gas consumption data from Nicor Gas and tri-cities electricity data	Lindy;Kimberly; Jessica	16	125	\$2,000
Update and organize recommendations	Lindy; Kimberly; Anthony	60	125	\$7,500
Create Strategy Matrix to replace Action Projects.	Lindy; Kimberly; Anthony	60	125	\$7,500
Conduct County workshop.	Lindy; Kimberly	8	125	\$1,000
Energy Efficiency Documents	Lindy; Kimberly; Anthony	20	125	\$2,500
Travel				\$1,750
Overhead				\$3,000
Supplies				\$750
			proposed total	28,000

Revolving Loan Fund for Public and Nonprofit energy Efficiency Improvement Projects

Deliverables	Staff	% Time	Total
Establish lending and monitoring goals, criteria and procedures	Mark	70	
	Kate	10	
	Rhonda	10	
	Calvin	10	
			\$ 5,300
Non-Deliverables			
Overhead			\$700
Supplies/Materials			\$250
Travel			\$750
			Proposed total \$ 7,000

EXHIBIT 2
Scope of Services

Update Kane County Energy Plan and Energy Efficiency Documents

Kane County Energy Plan

CNT authored the original Kane County Energy Plan (KCEP) and proposes an update to the plan that will provide useful new data and information, revise and prioritize recommendations, and reformat the action projects into a strategy matrix. The strategy matrix will highlight a variety of projects and policies designed to reduce energy consumption and will provide a level of detail that will allow for implementation. To accomplish this activity, CNT proposes the following tasks including a combination of in-person meetings (including presentations to the Regional Planning Commission, Energy & Environmental Technology and Development Committees and the Kane County Board), electronic communication and telephone consultation:

Task 1 Update the ComEd electricity data to the most recent available and add tri-cities data

The KCEP utilized 2003 consumption data. CNT currently has possession of 2005 data sets and is in the process of acquiring 2007 data via an updated data sharing agreement with ComEd. Data from the tri-cities utilities will also be acquired. As in the original plan, the update will include actual consumption data for a set point year, and forecasts for four different scenarios: business as usual and three different levels of conservation implementation. As appropriate, CNT will comment on trends and normalize for consumption and population growth to allow County officials to understand how energy consumption has changed with growth.

Task 2 Add natural gas consumption data from Nicor Gas

The KCEP had no natural gas consumption data. However, CNT currently has possession of 2005 data sets and is acquiring the 2007 data set pursuant to a data sharing agreement with Nicor Gas for the purpose of this project. Adding natural gas consumption allows for a much more complete picture of how energy is used in the County. In addition to providing actual consumption data for a set point year, a forecast will be developed for four different scenarios: business as usual, and three different levels of conservation implementation.

Task 3 Update and organize recommendations

Recommendations will be revised and updated into three distinct categories: recommendations that fall directly within the County's control and jurisdiction; recommendations that require partnerships with other governmental and organizational entities; and recommendations that demonstrate guidance and leadership for municipalities within the County. The updated portions will reflect the recent changes in energy policy and funding.

Task 4 Create Strategy Matrix to replace Action Projects

CNT will revise this section of the KCEP to create a more user-friendly strategy matrix that incorporates strategies relating to both electricity and natural gas usage. The strategy matrix will include both projects and policies designed to decrease energy consumption. Each strategy will include a project/policy description; estimated energy savings per unit (household or business); and financial savings in relation to cost and other implementation factors. Because a strategy may not be applicable in all areas of the County, each description will be paired with at least one of the 2030 Plan's three conceptual corridors (urban, critical growth and agricultural) and will highlight ideal characteristics such as land use composition and age of housing stock. The matrix will be useful for the County and will include a pull-out menu of options for local municipalities.

Task 5 Conduct internal County workshop

The KCEP is an action document that requires steps for implementation and partners who take responsibility. To accomplish this level of cooperation, CNT will conduct an internal workshop for relevant County elected officials, department chairpersons, staff and others to present the draft update plan, answer questions and gather pertinent feedback. This will take place after a draft plan has been written, but before completion of the final document. Upon completion of the final document, CNT will help County staff outline an agenda, presentation, and outreach plan for the purpose of a countywide workshop for its municipalities. Other strategies for involving key decision makers can be employed in partnership with Kane County leadership.

Energy Efficiency Documents

CNT will review the Energy Conservation Chapter of the 2030 Land Resource Management Plan and assess each section: energy resources; energy conservation and design; and energy efficiency, and make connections to the updated Kane County Energy Plan (KCEP) when applicable. CNT believes it is important to attach energy consumption data in this section to establish a baseline-a starting point-for its energy efficiency goals and objectives, much like the open space and agricultural sections discuss number of acres devoted to that land use form. CNT will provide a set of recommendations to the County pertaining to the introductory objectives and the concluding policy statements, and provide additional information and sources for each Figure. Finally, CNT will work with the County to include forecast and target numbers from the KCEP when applicable.

Monthly Updates

CNT will coordinate with team partners to produce a brief status report to be submitted monthly to the lead County staff and/or the Energy and Environmental Technology Committee and/or the Development Committee.

Feedback Session

Specific feedback sessions for each task will occur as determined by project partners and appropriate County staff.

Revolving Loan Fund for Public and Nonprofit Energy Efficiency Improvement Projects

The Chicago Community Loan Fund (CCLF) will provide technical assistance to Kane County as it works to establish a revolving loan fund to support energy efficiency improvements to facilities owned and/or operated by public and private sector organizations.

The technical assistance proposal will involve the following stages to be adjusted according to the final master Kane County Energy Efficiency Plan. The market analysis and development of loan documentation will be based on existing models of successful revolving loan funds that are effectively lending for energy efficiency projects.

Task 1 Lending Goals and Criteria

CCLF will assist with setting lending criteria and borrower requirements based upon the Kane County Energy Plan created in Activity One. In addition, CCLF will assist in the identification of opportunities to leverage other resources with the revolving loan program.

Task 2 Lending procedures

CCLF will assist Kane County with the establishment of standard loan documents, underwriting procedures, borrower evaluation and credit review procedures.

Task 3 Monitoring

CCLF will assist Kane County with establishing basic borrower/loan monitoring procedures and evaluation of loan success. CCLF will work in conjunction with Kane County legal counsel and management staff to produce these procedures and documentation. The work under this Activity will be conducted via a combination of in-person meetings, electronic communication and telephone consultation. To accomplish the work of this Activity, CCLF will use both in-house expertise and external consultants where appropriate. All procedures and documentation created under this process will be subject to the review of Kane County legal counsel and management staff.