

CONSULTANT AGREEMENT

THIS CONSULTANT’S AGREEMENT (the “Agreement”) is effective this ____ day of _____, 2012, by and between the TOWN OF UNIVERSITY PARK (the “Town”), a municipal corporation of the State of Maryland, whose address is 6724 Baltimore Avenue, University Park, Maryland 20782 and _____, hereinafter referred to as “Consultant,” a Maryland corporation, whose address is _____.

WHEREAS, the Town is implementing the Small Town Energy Program for University Park (“STEP-UP”), a 3-year effort designed to achieve energy efficiency market transformation within University Park and to serve as a roadmap for energy transformation in small towns across the United States; and

WHEREAS, the Town desires to engage a consultant with expertise in Social Marketing, Community Based Social Marketing, and / or Energy Efficiency Program Evaluations to provide relevant consulting services to STEP-UP, including development of a social marketing and program evaluation plan, survey instruments and data collection protocols, evaluation data and analysis files, evaluation reports, and an operating database; and

WHEREAS, Consultant desires to act for the Town as STEP-UP’s Social Marketing, Community Based Social Marketing, and / or Energy Efficiency Program Evaluation Consultant; and

WHEREAS, the Town desires that Consultant provide such consulting services.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Appointment.** The Town hereby engages Consultant, as an independent contractor, who will be primarily responsible to provide consulting services to STEP-UP in Social Marketing, Community Based Social Marketing, and / or Energy Efficiency Program Evaluations, including development of a social marketing and program evaluation plan, survey instruments and data collection protocols, evaluation data and analysis files, evaluation reports, and an operating database, all as more fully set out in the Contract Documents, and Consultant hereby accepts such work, subject to the terms and provisions of this Agreement.

2. **Scope of Social Marketing / Energy Efficiency Program Evaluation Services**
Services. Pursuant to the Agreement, Consultant agrees to furnish all the material and equipment and perform all of the work in compliance with the requirements and standards contained in the Contract Documents, as defined herein. Consultant shall provide consulting services as and when needed, which shall include the following:

- a. Directed by the STEP-UP Energy Coach, the STEP-UP Program Director and/or designate(s) from the STEP-UP Advisory Committee, the Consultant will:
 - i. Provide an analytical summary of the *quantitative* household, audit and retrofit data collected to date for the UP households participating in STEP-UP (note that this quantitative data has already been collected for participants within UP);
 - ii. Analyze the *qualitative* data that has been collected from current STEP-UP stakeholders on the extent to which individual program elements are motivating, facilitating, and/or supporting program objectives (note again that this data has been collected for UP participants);
 - iii. Provide recommendations on any additional qualitative data that should be collected from UP residents and current STEP-UP participants;
 - iv. Assist in the design and implementation of baseline surveys to determine basic building and household characteristics, community profiles, and KABB with respect to residential energy efficiency within the surrounding communities into which STEP-UP will be expanding;
 - v. Advise STEP-UP with respect to any necessary program adjustments to address the specific barriers to participation that may be present in the surrounding communities into which STEP-UP will be expanding; and
 - vi. Track and analyze the data on an ongoing basis that results from STEP-UP expansion, correlating results with contributing programmatic and community factors.

- b. The key deliverables expected under this award include:
 - i. A draft and final STEP-UP Social Marketing and Program Evaluation plan;
 - ii. Draft and final survey instruments and data collection protocols;
 - iii. Original data files, and final, cleaned evaluation data and analysis files resulting from the evaluations;
 - iv. Draft and final evaluation reports;
 - v. An operating database; and
 - vi. Regular reporting as agreed upon by both parties.

c. The Consultant shall provide the following services (the “Services”), under the supervision of the STEP-UP Energy Coach, the STEP-UP Program Director or their designate:

i. Social Marketing and Program Evaluation Harmonization:

- a) Research the social marketing and program evaluation efforts of key STEP-UP partners, including the Maryland Energy Administration, Pepco and the Department of Energy (DOE). Identify key elements of their approach to social marketing and program evaluation that should / could be integrated into STEP-UP efforts.
- b) Research social marketing and program evaluation efforts under way within other DOE Better Buildings Neighborhood Program grantees’ programs. Identify key best practices that should be integrated into STEP-UP efforts.
- c) Research social marketing and program evaluation efforts under way by other relevant organizations, including but not limited to: the National Association of State Energy Offices, the State and Local Energy Efficiency Action Network, the Consortium for Energy Efficiency [Market Assessment and Program Evaluation Clearinghouse](#), the NEEP EM&V Forum [Repository of State and Topical EM&V Studies](#), and other utility social marketing and program evaluation efforts. Identify key best practices that should be integrated into STEP-UP efforts.
- d) Compile a repository and summary report of recommendations of social marketing and program evaluation instruments and best practices relevant to STEP-UP.

ii. Development of Social Marketing / Energy Efficiency Program Evaluation Instruments

- a) Develop a methodology and recommended instrument(s)/protocols to determine baseline information for the STEP-UP clientele in the communities into which STEP-UP is to expand.

Examples of prospective questions to be answered include, but are not limited to:

- Why are people signing up to participate in STEP-UP?
- Why are people not signing up to participate in STEP-UP?

- How did/are homeowners learn(ing) about STEP-UP?
- What specific barriers to program participation may exist within the target clientele and communities?

Examples of prospective recommended instruments/protocols include but are not limited to: surveys, observation, focus groups, literature and analogous programs (see Section (i) above).

- b) Develop a methodology and instrument(s) to determine answers to key KABB questions, delineated by respondents who are participating in the program and those who are not. Examples of questions to be answered include, but are not limited to:

- What do homeowners think about energy efficiency investments in their home?
- How is each part of the STEP-UP model affecting participation in the program (i.e. audit uptake) and conversion of audits to implemented measures?
- What is the perceived usefulness / benefit of each program element?
- What key parts of the program should be sustained after the grant expires?
- What types of financing have been the most appealing to the homeowners?
- Have awareness, knowledge, and interest in energy efficiency upgrades increased?

- c) Develop a checklist of community-specific factors that may contribute to the success of STEP-UP, and a methodology for identifying which factors have the greatest impact on program participation rates. Factors to be considered may include, but are not limited to:

- Demographic elements, such as education, age, income, etc.;
- Community infrastructure, such as strength and commitment of elected officials and community leaders, communication channels, community integrity, etc.

iii. Implementation of Social Marketing / Energy Efficiency Program Evaluation Instruments:

Deploy the surveys, observation protocols, focus groups or other recommended instruments in the surrounding communities into which STEP-UP will be expanding.

iv. Data Analysis and Reporting:

- a) Analyze the results of the baseline information questionnaire and KABB questions. Provide a report of the findings, including recommendations for program design.
- b) Analyze the results of the existing 3-tiered survey for STEP-UP participants. Provide a report of the findings, including recommendations for program design (note that this data has already been collected).

- c) Analyze the results of the technical data that is being collected for STEP-UP and reported quarterly to DOE. Provide a report of the findings, including recommendations for program design. The report should include but not be limited to: operations impact, cost savings, cost effectiveness, environmental savings, and a benchmark of these outcomes compared with similar programs.
- d) Provide a recommended approach to applying different analytical techniques to the different STEP-UP data sets. Potential approaches may include, but are not limited to:
 - Longitudinal, cross sectional, multivariate, and / or conjoint analysis;
 - Descriptive statistics;
 - Factor and cluster analysis;
 - Measures of central tendency and associations;
 - Qualitative choice modeling;
 - Regression-based modeling.
- e) Provide a methodology and recommended approach for addressing program free ridership, spillover and additionality, given the presence within the market of utility and state energy office efficiency programs.

v. Database Development and Support:

Review the current program database. If needed, develop a database for the storage and analysis of STEP-UP program and administrative data. The proposal should include, at a minimum, descriptions and summary specifications for the following:

- a) Preferred SQL platform, preferably open-source;
- b) Confirmation that the database is server-based, and can support multiple users, a VPN, and different user platforms (Mac, PC);
- c) Preferred GIS platform and the proposed manner through which to link the database;
- d) Preferred statistical package, and the proposed manner through which to link the database;
- e) The recommended specifications and methodology to ensure data security;
- f) The proposed approach to scripts for XML export and queries for regular reports as provided by the Better Buildings Neighborhood Program guidelines; and
- g) Confirmation of a user manual and initial training.
- h) Provide basic training for the database users and be available, as needed, to provide assistance with and editing of the database package periodically to suit user/program preferences.

3. **Contract Term.** The term of the Contract is from *****, 2012 through July 31, 2013. Consultant agrees to commence work within five days of notice to proceed. It is understood by the parties hereto that time is of the essence in the completion of the services to be provided pursuant to this Agreement.

4. **Contract Price.** The Town agrees to pay Consultant, as consideration for the Consultant's satisfactory performance of all obligations under this Agreement, a fixed price of \$*****, plus costs as follows:*****

Additional services related to STEP-UP shall be provided by Consultant on an as-needed basis as directed by the Town in writing. Such services shall be billed to the Town at the hourly rates of \$*****. In the event that the scope is changed, the parties to this Agreement will negotiate a change in the payment schedule accordingly. Invoices for payment of services shall be submitted on a monthly basis and must be accompanied by daily time sheets detailing the work done, and any other documentation required by the Town. Invoices will be paid after approval by the Town. Except as noted herein, in no event shall the amount billed by Consultant exceed that amount attributed to the work completed as of the date of the bill.

5. **Contract Documents.** This Agreement and the following enumerated documents, which are incorporated by reference as if fully set forth herein, form the contract and are termed the Contract Documents:

Required affidavits and certifications
Schedule of Work

6. **Other Payments; Expenses; Taxes.** The Town will not be responsible for any cost or expenses of operation of any kind associated with Consultant's provision of services pursuant to this Agreement, except as set out herein. Consultant shall be entitled to no fees, bonuses, contingent

payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of Consultant in connection with the performance of his obligations under this Agreement.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that Consultant, as an independent Consultant of the Town, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Consultant is deemed not to be an independent Consultant by any local, state or federal governmental agency, Consultant agrees to indemnify and hold harmless the Town for any and all fees, costs and expenses, including, but not limited to, attorneys' fees incurred thereby.

7. **Insurance.** Consultant will purchase and maintain during the entire term of this Agreement, comprehensive general liability insurance, professional errors and omissions insurance, and workers' compensation insurance with limits of not less than those set forth below. On each policy, Consultant will name the Town of University Park as an additional insured.

A. Comprehensive General Liability Insurance

- (1) Personal injury liability insurance with a limit of \$1,000,000 each occurrence/aggregate;

(2) Property damage liability insurance with limits of \$500,000.00 each occurrence/aggregate.

All insurance shall include completed operations and contractual liability coverage.

B. Professional Errors and Omissions Insurance. The Consultant shall maintain a policy with limits of not less than \$1,000,000.00 each occurrence/aggregate.

C. Automobile Liability Coverage Automobile fleet insurance \$1,000,000.00 for each occurrence/ aggregate; property damage - \$500,000.00 for each occurrence/aggregate.)

D. Workers' Compensation Insurance. Consultant shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance. The Town may deduct a predetermined percentage of each payment to any Consultant who has failed to provide a Certificate of Insurance for Workers' Compensation, in order to defray coverage costs of the Town. This percentage is subject to change. The Consultant will be provided notification of any change. All Corporations are required to provide Workers' Compensation Certificates of Insurance.

Consultant covenants to maintain insurance, in these amounts, which will insure all activities undertaken by Consultant on behalf of the Town under this Agreement and will name the Town as an insured under such policy. Copies of the certificates of insurance for all required coverage shall be furnished to the Town prior to beginning work.

Provision of any insurance required herein does not relieve consultant of any of the responsibilities or obligations assumed by the consultant in the contract awarded, or for which the consultant may be liable by law or otherwise. Provision of such insurance is not intended in any

way to waive the Town's immunities or any damage limits applicable to municipal government as provided by law.

8. Indemnification. Consultant shall indemnify and save harmless the Town, its officers, employees and agents, from all suits, actions and damages or costs of every kind and description, including attorneys' fees, arising directly or indirectly out of the performance of work under this Agreement, whether caused by the negligent or intentional act or omission on the part of Consultant, its agents, servants, employees and subcontractors.

9. Licenses, Applicable Laws. Consultant will be responsible for obtaining any and all licenses pertaining to performance of work under this Agreement. All services, equipment and materials provided by Consultant shall conform to all applicable laws and regulations.

10. Materials and Standard of Work. All work performed and equipment and material provided pursuant to this Agreement shall be in conformance with standards and specifications applicable in the industry. All work shall be performed in a neat and workmanlike manner by trained and experienced personnel. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by Consultant at Consultant's expense, notwithstanding that such deficiencies have been previously accepted or were due to no fault of Consultant.

11. Subcontracting. Consultant may not subcontract any work required under this Agreement without the consent of the Town. If Consultant wishes to subcontract any of the said work, it must provide subcontractor names, addresses, and telephone numbers and a description of the work to be done. Consultant is not relieved of primary responsibility for full and complete performance of any work identified to the subcontractor. There shall be no contractual relationship between the Town and the subcontractor.

12. **Accurate Information.** Consultant certifies that all information provided in response to the invitation to bid or other requests for information is true and correct. Any false or misleading information is grounds for the Town to reject the bid and terminate this Agreement.

13. **Errors in Specifications.** Consultant shall take no advantage of any error or omission in the specifications or scope of work. The Town shall make such corrections and interpretations as may be deemed necessary and that decision shall be final.

14. **Construction and Legal Effect.** This Agreement, including all Contract Documents, constitutes the entire understanding between the parties. No modification or addition to this Agreement shall have any effect unless made in writing and signed by both parties hereto.

15. **No Assignment.** This Agreement shall not be assigned or transferred by Consultant, whether by operation of law or in any other manner, without prior consent in writing from the Town. In the event of insolvency of either party, this Agreement shall terminate immediately at the election of the other party.

16. **Relief.** Consultant recognizes the substantial and immediate harm that a breach or threatened breach of this Agreement will impose upon the Town, and further recognizes that in such event monetary damages may be available to the Town. Accordingly, in the event of a breach or threatened breach of this Agreement, Consultant consents to the Town's entitlement to seek ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and fully enforcing the Town's rights hereunder and preventing Consultant from further breaching any of its obligations set forth herein. Nothing herein shall be construed as prohibiting the Town from pursuing any other remedies available to the Town at law or in equity for such breach or threatened breach, including the recovery of damages from Consultant.

17. Termination for Default. Notwithstanding anything to the contrary herein, this Agreement may be terminated upon the failure of Consultant to deliver work, supplies, materials or services in a timely manner, to correct defective work or materials, to act in good faith, or to carry out the work in accordance with the Contract Documents, each of which shall constitute a breach of this Agreement. In such event, the Town may give notice to Consultant to cease work until the cause for such order has been eliminated. Should Consultant fail to correct such default within 24 hours after receipt of notification, the Town may terminate this Agreement. This provision shall not limit the Town in exercising any other rights or remedies it may have.

18. Termination for Convenience. The performance of work or delivery of services under this Agreement may be terminated in whole or in part at any time upon written notice when the Town determines that such termination is in its best interest. The Town will be liable only for labor, materials, goods, and services furnished prior to the effective date of such termination.

19. Notices. All notices shall be sufficient if delivered in person or sent by certified mail to the parties at the following addresses:

John Rogard Tabori, Mayor
6724 Baltimore Avenue
University Park, MD 20782

20. Costs. In the event of any breach or failure by a party to fulfill any term, covenant or provision of this Agreement, the breaching party shall be responsible for any and all costs and expenses, including reasonable attorneys' fees, incurred on account of such breach.

21. Enforcement Provisions. The failure of the Town or Consultant, at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, will in no way be construed to be a waiver of such provisions or right, or in any way to affect the validity of this

Agreement. The exercise by either party of any rights under this Agreement shall not preclude or prejudice the subsequent exercise of the same or any other rights under this Agreement.

22. Governing Law. This Agreement shall be governed by the laws of the State of Maryland, excluding its conflict of law rules, as if this Agreement were made and to be performed entirely within the State of Maryland.

23. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

24. Set-Off. In the event that Consultant shall owe an obligation of any type whatsoever to the Town at any time during the term hereof or after termination of the relationship created hereunder, the Town shall have the right to offset any amount so owed by the Consultant against any compensation due Consultant from the Town.

25. Materials and Ownership of Work.

A. Information contained in records that may be given to Consultant for review remain the property of the Town and may not be duplicated or distributed or otherwise published without the express consent of the owner. Material provided to Consultant for review shall be returned to the Town upon completion of the task.

B. Consultant understands that information and records provided to or made available about participants and clients or services during the performance of this Agreement are considered confidential and shall not be used for any purpose other than to perform the required services. Regardless of the data format, Consultant agrees that it, and any of its employees, shall not disclose or allow disclosure of any such data or derivatives of it to any third party without the written permission of the Town. Any copies of such records made

during performance of this Agreement shall be returned to the Town upon the expiration of this Agreement.

C. All work performed by the Consultant pursuant to this Contract shall be the property of the Town.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal the day and year first above written.

ATTEST: TOWN OF UNIVERSITY PARK, MARYLAND

By: _____

By: _____
Mayor John Rogard Tabori

CONSULTANT

By: _____

By: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Suellen M. Ferguson, Town Attorney