



Program Manager Approval	
Application ID:	126171
Incentive to Customer:	\$38,458.61
Incentive to Design Team:	\$5,095.55
Total Project Incentive:	\$43,554.16
Total Project Cost:	\$205,000
Approved Date:	8/14/2013

**INCENTIVE AGREEMENT**

**Customer Profile**

Customer Name:	Madison, City of - 4768	Primary Contact:	James Whitney
Tax ID :	39-6005507	Contact Address:	210 Martin Luther King Jr Blvd Rm 115 Madison, WI 53703
Building Type:	Fire Station	Contact Phone:	608 266-4563
Program:	Design Assistance	Contact Fax:	
Tax Classification:	Other	Contact Email:	<a href="mailto:jwhitney@cityofmadison.com">jwhitney@cityofmadison.com</a>

**Certification**

The following certifications are required in order for this form to substitute for the IRS Form W-9.

Under penalties of perjury, I certify that:

1. The number shown on this form is the correct taxpayer identification number (or I am waiting for a new number to be issued to me) and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest of dividends, or (c) The IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (Including a U.S. resident alien)

**Project Profile**

Address	Recommendations Measure Name	Estimated System Savings			
		Peak Summer Demand (kW)	Annual Electric (kWh)	Annual Gas (Therms)	\$ Annual Savings
6350 Town Center Drive Madison, Wisconsin 53718	Design and Modeling Assistance, Measure ID: 156FQ4	0.0000	0.0000	0.0000	
6350 Town Center Drive Madison, Wisconsin 53718	Design and Modeling Assistance, Renewable Group 1, Measure ID: 156FQH	0.0000	0.0000	0.0000	
6350 Town Center Drive Madison, Wisconsin 53718	Project Savings Verification, Measure ID: 156FS2	11.0000	368,814.0000	440.0000	
6350 Town Center Drive Madison, Wisconsin 53718	Project Savings Verification, Renewable Group 1, Measure ID: 156FU7	1.0000	55,815.0000	0.0000	
	<-----Total----->	12.0000	424,629.0000	440.0000	

\* Peak demand savings are determined through examining reductions during weekdays in June, July, or August. Please provide descriptions of all variables used in these formulas.

I, the undersigned, agree that I expect to implement the renewable or energy efficiency measure(s) listed above. I understand that incentive amounts are determined from the customer specific data identified on this Incentive Agreement and that incentives for similar measures may vary from customer to customer based on specific cost and savings. Furthermore, I understand that execution of this agreement does not guarantee a specific incentive amount.

Focus on Energy may conduct a pre-installation inspection to verify potential savings. I agree, to refund to Focus on Energy some or all of the funding received for this project if Focus on Energy determines, at Program Administrator's sole discretion, that I have misrepresented any information. I have read and agree to the Incentive Agreement Terms & Conditions below. Any customer receiving an incentive check may be contacted by an evaluator to verify service/equipment installation or be asked to participate in a customer survey. This agreement must be signed and returned by the Agreement Return Date below.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Focus Representative Signature

\_\_\_\_\_  
Focus Representative Name (Print)

\_\_\_\_\_  
Date

**Incentive Agreement Return:10/15/2013**

**Project Estimated Completion Deadline : 4/1/2014**

**INCENTIVE AGREEMENT TERMS & CONDITIONS**

This Incentive Agreement is by and between Focus on Energy and the applicant ("Customer"). Shaw Environmental and Infrastructure, Inc. is the Program Administrator for Focus on Energy ("Program Administrator") and bound by contract to Statewide Energy Efficiency and Renewable Administration, Inc. ("SEERA"). The Program Administrator, Focus on Energy and the Customer may be individually referred to herein as a "Party" and collectively as the "Parties."

**ARTICLE 1: PROJECT TERM AND DESCRIPTION**

The Term of this Agreement shall begin on the Approval Date as shown on the Agreement and shall run continuously through the Project Completion Deadline, unless extended or terminated pursuant to this Agreement or by mutual agreement of the parties. The energy savings project (the "Project") shall be as described on the Agreement and approved by Focus on Energy. The Project shall be implemented in accordance with the Agreement.

**ARTICLE 2: PROJECT PAYMENTS**

Focus on Energy shall direct the Focus on Energy Fiscal Agent to make payment in the amount set forth in the Agreement upon Focus on Energy's receipt and acceptance to the Focus on Energy's satisfaction of a Completion Notice and any other required project documentation as defined in Article 3 hereof. Focus on Energy shall be under no obligation to make any payments to the Customer if SEERA does not provide the funds to Focus on Energy for this purpose or if Focus on Energy is not under contract with SEERA for this purpose. Focus on Energy reserves the right to decrease incentive amounts if conditions change from the time of project approval to the time of project implementation. This includes but is not limited to project cost and project scope. Customer is only entitled to one payment per project measure. Should customer or its representative make duplicate application for payment of project measure, Focus on Energy reserves the right to recover any payments made in excess of the entitled project payment. Focus on Energy excludes internal, non-contracted labor for private companies or individuals when calculating the total project cost.

Incentives are available on a first-come, first-served basis. Incentives are subject to change or termination without notice at the discretion of Focus on Energy. Some utilities have incentive programs outside of Focus on Energy for which customers may or may not qualify. Eligibility for these programs is determined solely by the utility, and not by Focus on Energy. Customers should check with their electric and/or natural gas provider concerning such incentives.

**ARTICLE 3: MISREPRESENTATION**

Making false statements on any Focus on Energy incentive application is punishable by law. Any person who knowingly files an application containing any materially false information or who purposely and misleadingly conceals information commits a fraudulent act and may be subjected to criminal and civil penalties. Any and all funds determined by Focus on Energy to have been acquired on the basis of fraudulent information must be returned to Focus on Energy. This article shall not limit other remedies that may be available for the filing of false or fraudulent applications. Customer shall be responsible for all costs incurred for collection of monies owed due to any misrepresentation or false statements.

**ARTICLE 4: PROJECT IMPLEMENTATION**

The Customer's procurement, installation and implementation ("Completion") of renewable and/or energy efficiency measures shall be accomplished in accordance with the requirements outlined in the approved Agreement. The Customer shall deliver to Focus on Energy a Completion Notice by the Project Completion Deadline noted in the Agreement. The Customer must provide invoices for equipment purchased or service performed as well as documentation that verifies that the renewable and/or energy efficiency measures, (i) have been properly installed, (ii) are functioning properly and (iii) have the potential to generate energy savings if properly maintained and operated. All projects are expected to comply with federal, state and local codes. All equipment must be new; used or rebuilt equipment is eligible only when pre-approved by Focus on Energy in writing. Displaced equipment must be removed and not reused. Equipment purchased under a capital lease structure may qualify for an incentive, but must be pre-approved by Focus on Energy in writing before project initiation or entering into the equipment lease.

Should Focus on Energy discover that the project was not implemented as attested to in the Completion Notice the Customer shall be in breach of the Agreement and subject to recovery of any incentive payment made by Focus on Energy. At the discretion of Focus on Energy, the Customer is liable to refund to Focus on Energy incentives received for this project if Focus on Energy determines that the customer has misrepresented information such as, but not limited to, eligibility or project information.

#### ARTICLE 5: RIGHT TO INSPECT

Focus on Energy and SEERA shall have the right to inspect any and all project records during the term of the Agreement and for a two-year period thereafter. Focus on Energy, and its designated representatives, shall have the right to observe and inspect all project work in any of the Customer's facilities at any reasonable time for a period of two (2) years from the incentive payment date. The Customer and its subcontractors shall maintain accurate records of the project work (e.g., installation records, invoices, and maintenance information) that is performed hereunder for a period of two (2) years from the date of incentive payment under this Agreement.

#### ARTICLE 6: MONITORING AND VERIFICATION

Focus on Energy, and its designated representatives, shall have the right to monitor energy use/production prior to and after installation of the project or to perform an inspection of the project to evaluate program efficacy for a period of two (2) years from the date of incentive payment under this Agreement.

#### ARTICLE 7: MANNER OF PERFORMANCE

The Customer shall perform its responsibilities under this Agreement in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Customer shall strive to resolve differences in a respectful and fair manner. The Customer shall make all reasonable attempts to ensure that all project work, as described in the Agreement, is performed in accordance with current professional standards and with the diligence and skill expected for the performance of such work.

#### ARTICLE 8: REPRESENTATIONS/WARRANTY

Focus on Energy does not endorse any particular trade ally, manufacturer, product, system, or design by offering an incentive. Focus on Energy is not responsible for any tax liability imposed on the recipient as a result of the payment of incentives. Focus on Energy makes no representation or warranty, and assumes no liability with respect to the quality, safety, performance, or other aspect of any design, consulting, product, system, equipment, or appliance installed or received and expressly disclaims any such representations, warranties, and liability, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. Focus on Energy does not guarantee that installation and operation of energy-efficient equipment will result in reduced usage or in cost savings. Focus on Energy is not responsible for the proper disposal/recycling of any waste generated as a result of this project. Focus on Energy is not liable for any damages, including any incidental or consequential damages, arising out of the operation or malfunction of the products, equipment, or appliances, or the installation thereof.

#### ARTICLE 9: DEFAULT AND TERMINATION

- (1) Subject to Article 9(3), this Agreement shall remain in effect until the Project Completion Deadline as specified in Article 1 hereof unless a Party is in breach of any provision of this Agreement.
- (2) In the event that SEERA terminates, for any cause, Program Administrator's Contract with SEERA, which terminates Program Administrator's right to act as Program Administrator of the Focus on Energy Program, responsibility for this Agreement transfers to the new Program Administrator.
- (3) This Agreement may be terminated at Focus on Energy's sole discretion if Customer does not complete implementation of the project on or before the project Completion Deadline, unless the project Completion Date is extended by mutual written agreement of the Parties.

#### ARTICLE 10: INDEMNIFICATION AND DAMAGES

The Customer shall protect, indemnify, defend and hold harmless Focus on Energy, Program Administrator, SEERA, the State of Wisconsin and participating utilities, their respective affiliates, subsidiaries, parent companies, officers, directors, agents, and employees, against all losses, damages, expenses, fees, costs and liability arising from any design, consulting, product, system, equipment, or appliance. The Customer agrees that such obligations under this Article shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

To the maximum extent permitted by law, the Customer agrees to limit Focus on Energy's and Program Administrator's liability to the Customer for any reason to the total amount of the payments identified in this Agreement. This limitation shall apply regardless of the cause of action or legal theory pled or asserted. Customer hereby expressly waives the right to specifically enforce this Agreement. Under no circumstances shall Focus on Energy, Program Administrator, SEERA, the State of Wisconsin, and participating utilities be liable for any special, indirect or consequential damages, however the same may be caused.

#### ARTICLE 11: PUBLICITY

The Customer shall not use Program Administrator's or SEERA's corporate name, logo, identity, any affiliation, or any related logo including the "Focus on Energy" name, logo, or identity, for any marketing, advertising or solicitation without prior written consent of Focus on Energy. Such written consent may be withheld in Focus on Energy's sole discretion. When referencing Focus on Energy involvement with any project, the Customer shall collaborate with Focus on Energy to prepare any press release and to plan for any news conference and agrees to provide Focus on Energy, for its written approval prior to publication, a written copy of any advertisements or promotional material regarding this program prior to publishing any such advertisements or promotional material. Focus on Energy reserves the right to publicize the Customer's participation in the Focus on Energy program unless requested otherwise in writing and submitted to [focusonenergy.marketing@shawgrp.com](mailto:focusonenergy.marketing@shawgrp.com).

#### ARTICLE 12: REVIEW AND DISCLAIMER

Focus on Energy's execution of this Agreement and any review of the design, construction, operation, or maintenance of the project by Focus on Energy or any of its subcontractors shall not constitute any representation or warranty by Focus on Energy as to the economic or technical feasibility, operational capability or reliability of any renewable and/or energy efficiency measures or the capability or reliability of any market provider performing any work on the Project. The Customer shall in no way represent to any third party that Focus on Energy's execution of this Agreement or any reviews by Focus on Energy or its subcontractors, including, but not limited to, Focus on Energy or its subcontractors review of the design, construction, operation, or maintenance of the Project is a representation or warranty by Focus on Energy as to the economic or technical feasibility, operational capability or reliability of the renewable and/or energy efficiency measures or an endorsement of the contractor performing work on the Project. The Customer is solely responsible for the technical feasibility, operational capability and reliability of the renewable and/or energy efficiency measures.

#### ARTICLE 13: ACCEPTANCE

The Customer is required to acknowledge its understanding and acceptance of the terms and conditions of this Agreement by returning an executed copy of this Agreement to Focus on Energy at the address identified in this form on or before the Agreement Return Date. If the Customer's Focus on Energy representative does not receive the executed copy of this Agreement by the Deadline, Focus on Energy will consider that Customer's decision is to decline the terms and conditions contained herein and this Agreement will be of no force and effect.

#### ARTICLE 14: MISCELLANEOUS

- (1). Governing Law. This Agreement shall be governed, construed and enforced in accordance with the internal laws of the State of Wisconsin, without regard to any law of conflicts that may direct the application of the laws of another jurisdiction. The Customer irrevocably submits to the original jurisdiction of the state and federal courts sitting in Madison, Wisconsin with regard to any controversy in any way relating to the execution, delivery or performance of this Agreement that is not resolved by Arbitration. Suits, claims or actions founded upon such controversies shall be brought or filed exclusively in such courts and nowhere else. The exclusive venue for any dispute or controversy arising under this Agreement shall be the Dane County, Wisconsin Circuit Court or the Federal District Court for the Western District of Wisconsin.
- (2)- Compliance with Applicable Laws. The Customer shall at all times comply with and observe all federal and Wisconsin state laws and published circulars, local laws, ordinances, rules and regulations which are in effect during the period of this Agreement and which in any manner affect the performance of this Agreement. This Agreement has been executed and delivered in, and shall be construed and enforced, in accordance with the laws of the State of Wisconsin and the laws of the United States. All references to statutes or regulations contained in this Agreement shall be construed to include successors thereto.
- (3). Assignment. Focus on Energy may assign, transfer or convey this Agreement or any of Focus on Energy's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the consent of Customer.
- (4). Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, that provision shall be fully severable and this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, this Agreement shall be reformed to include as a part of this Agreement a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, or enforceable.
- (5). Risk of Loss. Focus on Energy and Program Administrator at no time assumes risk of loss for any personal property of the Customer.
- (6). Waiver. Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

#### ARTICLE 15: ENTIRE AGREEMENT

The Agreement constitutes the entire understanding and acceptance of the parties concerning its subject matter and supersedes all other agreements, whether oral or written. No modification shall be binding on either party unless reduced to writing and signed by both parties. All prior or contemporaneous Agreements, representations, statements, negotiations, and understandings are merged herein and shall have no effect