

APPENDIX 1



LEED® Canada Initiative

Pilot Project
Participant Agreement

Between:

Canada Green Building Council

And

[Insert Company Name here]

February ___, 2008

This Agreement dated the _____ day of _____, 2008

BETWEEN:

CANADA GREEN BUILDING COUNCIL

("CaGBC")

-and-

[Insert Company Name here]

("Participant")

WHEREAS CaGBC intends to develop and test a new evolution of its LEED Canada building rating system (LEED Canada Initiative) in a pilot project;

AND WHEREAS Participant wishes to support this development by participating in the pilot project, along with other government organizations, property owners and utility companies;

Now therefore in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. INTERPRETATION

1.1 In this Contract, unless the context otherwise requires,

"Contract" means this written agreement between the Parties, including schedules and every other document specified or referred to herein as forming part of the Contract, all as amended by agreement of the Parties, from time to time;

"Deliverable" means all data, charts or other parts of the Work identified in Schedule A to be delivered;

"Nominated Group" means the buildings proposed by Participant and accepted by CaGBC;

"Party" means CaGBC or Participant or any other signatory to the Contract and

"Parties" means all of them;

“Pilot Fee” means the amount payable by Participant to CaGBC for the Pilot Project as described in Schedule “B”;

“Work” means the whole of the activities, services, matters and things required to be done, delivered or performed by CaGBC and Participant, as described in Schedule “A”.

- 1.2 The headings used in this Contract are inserted for convenience of reference only and shall not affect the interpretation of the Contract.
- 1.3 In the Contract, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

2. PILOT FEE AND TERMS OF PAYMENT

- 2.1 In consideration of the provision to Participant of the Work, Participant shall pay to the CaGBC the Pilot Fee as set forth in Schedule “B”.

3. TERM

- 3.1 The term of this agreement shall commence on the effective date of this Contract set out on the front page of this document and shall continue until the 31st day of December, 2008. The Parties may agree to extend or modify this Agreement on such terms and conditions as are mutually acceptable.

4. GOVERNING LAW

- 4.1 The national office of the CaGBC is located in Ottawa and the Parties hereto agree that this Agreement is made in the Province of Ontario and that it shall be governed by and interpreted in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein and that the courts of the Province of Ontario shall have exclusive jurisdiction with respect to any matter set out herein.
- 4.2 All matters in dispute between the parties in relation to this Contract shall be referred to the arbitration of a single arbitrator, if the parties so agree, or to three arbitrators failing such agreement, in which case each party shall appoint one arbitrator, and the first two named shall choose the third arbitrator. Any arbitration shall be conducted in accordance with the Arbitration Act (Ontario). The award and determination of the arbitration shall be binding upon the parties hereto and their respective successors and assigns.

5. RESPONSIBILITIES OF PARTICIPANT

- 5.1 Participant shall nominate the office buildings as set out in Schedule “A”.
- 5.2 Participant shall appoint a project manager to be its primary liaison with CaGBC throughout the pilot project and term of this Contract.
- 5.3 Participant shall register on the CaGBC pilot project website and shall provide all the required contact and other information.

- 5.4 Participant shall provide, and enter on the pilot project website, complete utility information in the required format for all buildings in the Nominated Group. The utility information shall include electricity, natural gas, water and any other fuel use for the period from January 1, 2005 through June 30, 2007.
- 5.5 Participant shall update the utility information for all buildings in the Nominated Group on a monthly basis until December 31, 2008.
- 5.6 Participant shall complete a building profile for each of the buildings in the Nominated Group and shall update the profile periodically to include any changes or further information required.
- 5.7 Participant shall support the execution of a building performance inventory by an outside firm for the purpose of measuring and documenting the operating performance of building systems for up to three (3) of its buildings, if identified by CaGBC to be among the most efficient in the pilot project, and as selected by CaGBC. Participant shall provide access to the buildings, all available drawings, plans, and other documents, guidance in and around the building, a review of building automation system set-points and graphics, and provide a qualified electrician for up to one full day.
- 5.8 Participant shall complete the initial LEED Canada rating system checklists for each of its buildings in the Nominated Group.
- 5.9 Participant shall participate in a two day regional workshop to prepare LEED Attainment Action Plans for all buildings in the Nominated Group.
- 5.10 Participant may, at its sole option, nominate one or more individual candidates for the LEED for Administrative Buildings Working Group. All nominations will be subject to approval by the CaGBC.

6. RESPONSIBILITIES OF CaGBC

- 6.1 CaGBC shall establish and maintain the pilot project website for use by all project participants until December 31, 2008.
- 6.2 CaGBC shall provide training and assistance in the use of the website to the Participant in connection with the registration of buildings, entry of utility data, and acquisition of reports.
- 6.3 CaGBC shall appoint a project manager to be the primary liaison with participants in the pilot project.
- 6.4 CaGBC shall report to Participant on the results of energy and water use benchmarking for the Participant's buildings in the Nominated Group.
- 6.5 CaGBC shall arrange for a building performance inventory by an outside firm for each building identified by CaGBC as among the most efficient in the pilot projects.
- 6.6 CaGBC shall provide a LEED Canada rating system checklist template to Participant.

- 6.7 CaGBC shall conduct a two-day workshop for Participant and other participants in the pilot project at a location as defined in Schedule A. The workshop shall provide guidance to participants on how to prepare LEED Action Plans for their buildings.
- 6.8 CaGBC shall prepare a final report on the results of the pilot project, including conclusions and recommendations. This report will address the manner in which pilot project participants and other building owners may proceed, following the pilot project, to certify individual buildings or portfolios of their buildings.

7. WARRANTY

- 7.1 Participant warrants that the utility and building information that it provides and updates for all buildings in the Nominated Group shall be accurate and complete.

8. INFORMATION

- 8.1 All information provided to CaGBC by or on behalf of Participant in connection with the Work and all information developed by the CaGBC and Participant as part of the Work, title to which vests in CaGBC under the Contract, shall be used and disclosed, in an aggregated and/or anonymous format, at the sole discretion of CaGBC acting reasonably.
- 8.2 CaGBC shall have the right to post the information on its website or disclose it to third parties provided CaGBC takes all reasonable steps to protect specific locations and ownership of the buildings for which information has been provided.
- 8.3 Subject to section 9, Participant shall have the right to communicate its participation in the pilot project, the content of project reports which may be issued to all participants, and the data and charts obtained from the project website showing Participant's own buildings (but not identifying any other Participants' buildings), to tenants, shareholders or other stakeholders.
- 8.4 The provisions of this section shall survive the termination of this Agreement.

9. INTELLECTUAL PROPERTY

- 9.1 In this section, "New Works" means anything that is created or developed by or on behalf of CaGBC in the course of preparing or performing the Work under the Contract, and in which intellectual property rights subsist. For greater certainty, intellectual property rights include patent, copyright, trade-mark, integrated circuit, and trade secrecy rights available under the laws of Canada or its provinces, the common law or the laws of any other country. Under this Contract New Works includes all data and charts delivered by CaGBC as part of the Deliverables.
- 9.2 Intellectual Property in the New Works shall vest in CaGBC at the time of creation.

10. TERMINATION FOR CONVENIENCE

- 10.1 Notwithstanding anything contained in the Contract, CaGBC may, at any time prior to the completion of the Work, by giving notice to Participant (in this section sometimes referred to as a "termination notice"), terminate the Contract as regards to all or any part of the Work not completed. Upon a termination notice being given, CaGBC shall cease work in accordance with and to the extent specified in the notice.
- 10.2 In the event of a termination notice being given pursuant to section 10.1, CaGBC shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for the purpose of performing the Contract and to the extent that CaGBC has not already been so paid or reimbursed by Participant, including the unliquidated portion of any advance payment. In the event that CaGBC has been paid all or a portion of the Pilot Fee in advance in an amount that exceeds the portion of the Work completed as of the date of termination, CaGBC shall refund the remainder of the advance payment of the Pilot Fee to the Participant.
- 10.3 Participant shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by CaGBC under this section, except to the extent that this section expressly provides.

11. NOTICE

- 11.1 Any notice shall be in writing and may be delivered by personal delivery to an officer or other responsible employee or the addressee, by registered mail, or by facsimile or other electronic means that provides a paper record of the text of the notice, addressed to the Party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section. Any notice personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Any communication sent by registered mail shall be deemed to have been validly and effectively given on the fourth business day following the day on which it was sent. Any notice sent by facsimile or other electronic means that provides a paper record of the text of the notice shall be deemed to have been validly and effectively given on the business day on which it was sent.
- 11.2 All such notices shall be addressed to the party to whom it is directed at the following addresses:

If to CaGBC:

Canada Green Building Council
325 Dalhousie Street, Suite 800
Ottawa, Ontario
K1N 7C2
Attention: Julea Boswell
Phone: 613-241-1184
Fax: 613-241-4782

If to Participant:

Insert Contact Name here

Insert Contact Organization here

Insert Contact Address here

Phone:

Fax:

12. SUCCESSORS AND ASSIGNS

- 12.1 The Contract shall enure to the benefit of, and shall be binding upon, the successors and permitted assignees of CaGBC and of Participant.

13. ENTIRE AGREEMENT

- 13.1 The Contract constitutes the entire and sole agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.

14. SURVIVAL

- 14.1 The warranties set out in the Contract as well as the provisions concerning indemnity against third party claims, and intellectual property rights shall survive the expiry of the Contract or the termination of the Contract, as shall any other provision of the Contract which, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive.

15. SEVERABILITY

- 15.1 If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from the Contract and all other provisions of the Contract shall remain in full force and effect.

16. PRESS RELEASES

- 16.1 In order to ensure that information concerning the Pilot project is presented in an accurate and consistent manner, Participant shall request permission from CaGBC to issue press releases. Consent to such requests shall not be unreasonably withheld.

LANGUAGE OF CONTRACT

The parties hereto have required that this Contract be written in English. Les parties aux présentes ont exigé que le présent contrat soit rédigé en anglais.

ACCEPTED and executed on the date listed on the front page of this Agreement.

Canada Green Building Council

Per: _____

Name: Thomas Mueller

Title: President and CEO

I have authority to bind the Corporation.

[Participant]

Per: _____

Name: _____

Title: _____

Per: _____

Name:

Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"

CaGBC and Participant shall perform their respective responsibilities as set out in Section 5 and 6 of the Contract.

Participant shall nominate a total of one (1) of its administrative office buildings, which Participant believes to be its most energy efficient.

CaGBC shall provide the final report described in section 6 of the contract to Participant by February 28, 2009.

The workshop to be conducted in accordance with section 6 of the Contract will be held at a location of CaGBC's choosing in your area.

The Work does not include the LEED certification of any of the buildings in the Nominated Group. The Participant must apply separately for certification of any of its buildings in accordance with LEED Canada rating accreditation service.

SCHEDULE "B"

Participant shall pay CaGBC a Pilot Fee of Three Thousand One Hundred Twenty Five Dollars (\$3,125.00). The total payment will be based on the program cost of Six Thousand Two Hundred and Fifty Dollars (\$6,250.00) minus Province contribution of Three Thousand One Hundred and Twenty Five Dollars (\$3,125.00). Payment of the Pilot Fee will be due, in full, thirty (30) days from the effective date of the Contract.